

State of Minnesota

STATE REGISTER

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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.

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
37	Monday 29 February	Monday 7 March	Monday 14 March
38	Monday 7 March	Monday 14 March	Monday 21 March
39	Monday 14 March	Monday 21 March	Monday 28 March
40	Monday 21 March	Monday 28 March	Monday 4 April

*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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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

Contents

Minnesota Rules:

Amendments & Additions

Issues 27-37 inclusive 2008

Proposed Rules

Human Services Department

Aid to families with dependent children;
employment and training 2010
Preadmission screening and alternative care grants 2018

Adopted Rules

Human Services Department

Medical assistance reimbursement for training and
habilitation services 2044

Pollution Control Agency

Municipal project list and corrective action grants
program 2044

Waste Management Board

Hazardous and industrial waste reduction grants 2044

Emergency Rules

Public Service Department

Extension of rules on energy conservation investment
loans 2045

Official Notices

Finance Department

Maximum interest rate for municipal obligations in
March 2045

Pollution Control Agency

Cities of Greenwald, Elrosa, and Meire Grove
petition for formation of GEM Sanitary District 2046

Revisor of Statutes

Notice of publication of *Minnesota Rules Supplement* 2046

Teaching Board

Opinion sought on rules for redesign of teacher
education programs and teacher education
program evaluation 2046

Transportation Department

Notices of proposed debarments and opportunities for
hearings for:
Crane Creek Asphalt, Inc. 2046
Central Concrete, Inc. 2047
Hoffman Concrete, Inc. 2048
Guaranteed Gravel & Sand Co. 2049
Lundin Quarry, Inc. 2049

Larry Nurre 2050
Richard C. Lundin 2051
Lundin Construction Company, Inc. 2051
River Bend Asphalt Co., a Minnesota corporation 2052
Southern Minnesota Asphalt Supply, Inc. 2052
Empire Paving, Inc. 2053
Donald Showalter 2054
Colin Anderson, aka, Colin Taylor 2055
Kathryn Anderson, aka, Kathy A. Alfonsi 2055
Kathy Kranes and Construction Company, Inc., aka,
Kathy's Krane Corporation 2056

State Contracts & Advertised Bids

Administration Department

Materials Management Division 2056
Printing & Mailing Services Division 2057

Correctional Facility—Red Wing

Contract available for certified driver education instructor
services 2058
Contract for dietetic services 2058
Contract for Catholic chaplain 2058
Contracts for medical clinic services, psychological
evaluation services, and volunteer services
coordinator 2058

Human Services Department

Extension of deadline for request for proposals for
prepaid health plans 2060
Request for proposals to design and conduct a study
of case management ratios for case managers
providing services to persons with mental
retardation and related conditions 2060

Natural Resources Department

Request for proposals for financial advice for
Minnesota's COREX iron-making project 2061

Public Service Department

Request for proposals for conducting an assessment
of the organizational and management
effectiveness of the office of municipal energy finance 2062

State Grants

Legal Services Advisory Committee

Request for proposals for grant funding for legal
services and alternative dispute resolution
programs for low income people 2063

Supreme Court Decisions

Decision filed Friday 11 March 1988 2063

Tax Court Decisions

. 2064

Announcements

. 2071

Minnesota Rules: Amendments and Additions

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."

Administration Department

1305.2050 s.801; .2100 s.802; .6200 table 33-A
(adopted) 1364

Agriculture Department

1502.0001-.0025 (adopted emergency) 1456
1502.0001-.0025 (withdrawn emergency) 1461
1506.0010-.0040 (proposed) 1501
1555.0005-.0010 (adopted effective 3/1/88) 1365
1555.0011-.0012 (adopted effective 9/1/88) 1365
1555.6950 (adopted) 1809
1562.0100-.2200 (withdrawn) 1504
1560.5400-.7600 (proposed repealer withdrawn) 1504
1562.0100-.2200 (proposed) 1597
1560.5400-.7600 (proposed repealer) 1597

Rural Finance Authority

1650.0010-.0070 (proposed) 1804

Animal Health Board

1700.2590; .2650; .2800; .2850; .3010; 1705.2400;
.2410; .2430; .2434; .2440; .2450; .2460; .2470; .2472;
.2474; .2476; .2480; .2500; .2520; 1715.0210; .0280;
.0290; .0300; .0305; .0370; .0390; .0420; .0450; .0460;
.0550; .0560; .0570; .0580; .0590; .0620; .0630; .0640;
.0705; .0760; .0770; .1290; .1315; .1370; .1400; .1440;
.1450; .1480 (adopted) 1748
Ibid. (errata) 1816

Architecture, Engineering, Land Surveying, and Landscape Architecture Board

1800.0500 (proposed) 1734

Barber Examiners Board

2100.5500 (adopted) 1710

Commerce Department

2640.0100; .1100; .1700; .3300; .3500; .4100; .5100;
.5200; .5500; .5600; .6000; .6700; .6800; .6900; 7000;
.8200; .8900; .9200 (proposed) 1504
2640.0100 s.7 (proposed repealer) 1504
2760.0300 (adopted) 1968

2760.0300 s.10 (repealed) 1968
2766.0010-.0140 (proposed) 1509
2766.0010-.0140 (withdrawn proposed) 1798
2766.0010-.0140 (proposed) 1846

Corrections Department

2945.0100; .0110; .0120; .0130; .0500; .0510; .0520;
.0530; .0540; .1000; .1600; .1610; .1620; .2100; .2110;
.2120; .2130; .2500; .2510; .2520; .2530; .2540; .2550;
.3400; .3410; .3420; .3430; .3440; .3450; .3460; .4700;
.4710; .4720; .4730; .4740; .4750; .4760; .5400; .5410;
.5420; .5430; .5440; .5450; .5460; .5470; .5480; .5490;
(withdrawn) 1389

Education Department

3500.0710 (proposed) 1518
3500.0700 (proposed repealer) 1518
3505.1000; .1200; .1500; .1700; .1900; .2000; .2100;
.2200; .2400; .2500; .2600; .4200; .4300; .4400; .4500;
.4600; .4700; .4900; .5200; .5300; .5400; .5500; .5600;
.5700 (proposed) 1692
3505.0200; .0300; .0400; .0500; .0600; .0700; .0800;
.0900; 3505.1000 subparts 2,18,27,42, and 44;
3505.6000; .6100; .6200; .6300; .6400; .6410; .6500;
.6600; .6700; .6800; .6900; .7000; .7100; .7200; .7300;
.7400; .7500; .7600; .7700; .7800; .7900; .8000; .8100;
.8200; .8300; .8400; .8410; .8500; .8600; .8700; .8800;
.8900; .9000; .9100; .9200; .9300; .9400; .9500; .9600;
.9700; .9800; .9900 (proposed repealer) 1692
3517.0350; .0520; .1240; .1500; .1520; .1560; .1600;
.3450 (proposed) 1646
3515.0075-.0084 (proposed emergency) 1661
3515.5067; .5070 (emergency extended) 1969
3700.0300; .0305; .0310; .0315; .0320; .0325; .0330;
.0335; .0340; .0350; .0355; .0360; .0365; .0370; .0375;
.0380 (adopted) 1618
3700.0380 (repealed) 1618

Public Utilities Commission (see also 7800)

4220.0100; .0200; .0300; .1100; .1200; .1300; .2100;

Minnesota Rules: Amendments & Additions

.2200; .2300; .2350; .2400; .2500; .2600; .2700; .2800; .2900; .3000; .3300; .3400; .4100 (proposed)	1396
4220.0100 s.4,8; .2100 s.5,6; .4100 s.2,3,4 (proposed repealer)	1396
Rural Development Board	
4370.0010-.0080 (proposed)	1800
Ethical Practices Board	
4500.1200; .1500; .2500; 4505.0300; 4510.1200; 4515.0300; 4525.0200; .0500 (adopted)	1809
4500.0500; .1800; .4100; .4200; .4300 s.3 (repealed)	1809
Health Department	
4700.1900; .2000; .2100; .2210; .2300; .2400; .2500; .2550 (adopted)	1563
4700.2200; .2400 s.3 (repealed)	1563
4717.0310 (adopted)	1660
Housing Finance Agency	
4900.0010 (adopted)	1564
4900.0010 (adopted)	1564
4900.0590; .0591; .0592 (proposed)	1702
4900.0930; .0980 (adopted)	1564
4900.1500; .1520; .1540; .1572; .1574; .1576; .1578 .1580; .1582; .1584; .1586 (proposed)	1521
Labor & Industry Department	
5205.0010 (adopted)	1618
5205.0010; .0015; .0040; .0065; .0070; .0080; .0100; .0105; .0110; .0115; .0116; .0140; .0200; .0400; .0410; .0420; .0430; .0450; .0460; .0490; .0650; .0660; .0665; .0675; .0680; .0685; .0686; .0690; .0700; .0710; .0750; .0755; .0760; .0765; .0770; .0860; .0865; .0870; .0880; .0890; .1000; .1010; .1020; .1030; .1040; .1200; .1210; .1220; .1230; .1240; .1250; .1260; .1270; .1280; .1290; .1300; 5207.0010; .0020; .0030; .0035; .0040; .0050; .0060; .0100; .0200; .0210; .0220; .0250; .0260; .0300; .0310; .0320; .0400; .0410; .0500; .0510; .0520; .0530; .0540; .0600; .0610; .0620; .0630; .0700; .0710; .0720; .0730; .0740; .0800; .0810; .0900; .0910 (adopted)	1754
5205.0160; .0170; .0180; .0210; .0220; .0230; .0240; .0250; .0260; .0270; .0280; .0290; .0300; .0310; .0320; .0460, subparts 15 and 19; .0900; .0910; .0920; .0930; .0940; .0950 (repealed)	1754
5219.0010; .0020; .0030 (adopted emergency)	1619
Mediation Services Bureau	
5510.1910; .2010 (proposed)	1798
Natural Resources Department	
6125.0100; .0200; .0300; .0400; .0500; .0600; .0700 (proposed)	1433
Nursing Board	
6310.2900 (proposed)	1737
Optometry Board	
6500.1800; .1900; .2100; .2700 (adopted)	1775
6500.2800; .2900 (adopted)	1564
Pharmacy Board	
6800.1250; .1600; .4210; .4220 (proposed)	1525
Podiatric Medicine Board	
6900.0010; .0020; .0030; .0160; .0200; .0210; .0250; .0300; .0400 (proposed)	1528
6900.0300 s.6 (proposed repealer)	1528

Pollution Control Agency

7001.0020; .0040; .0050; .0190; .4000; .4010; .4020; .4030; .4035; .4040; .4050; .4060; .4070; .4080; .4090; .4110; .4120; .4130; .4140; .4150 (adopted)	1564
7035.8200; .8205; .8210; .8220; .8230; .8240; .8250; .8260; .8270; .8280; .8290; .8300; .8400; .8410; .8420; .8430; .8440; .8450; .8460; .8470; .8480; .8490; .8500; .8510; .8520; .8530; .8540; .8550; .8560; .8570; .8580; .8590; .8700; .8710 (adopted)	1564
7001.0020; .0040; .0050; .0190; (proposed)	1541
7001.0020-.3550; 7035.0300-.2875 (proposed)	1855
7002.0100 (adopted)	1969
7035.0100; .0200; .0500; .0900; .1000; .1500; .2000; .2100; .2200; .2300; .2400 (proposed repealer)	1855
7001.0560; .0580; .0650; 7045.0020; .0075; .0120; .0219; .0292; .0452; .0478; .0490; .0498; .0528; .0556; .0564; .0584; .0600; .0608; .0628; .0629 (adopted)	2044
7045.0528 s.9 (repealed)	2044
7001.4000; .4010; .4020; .4030; .4040; .4050; .4060; .4070; .4080; .4090; .4100; .4110; .4120; .4130; .4140; .4150 (proposed repealer)	1541
7035.8200; .8205; .8210; .8220; .8230; .8240; .8250; .8260; .8270; .8280; .8290; .8300; .8400; .8410; .8420; .8430; .8440; .8450; .8460; .8470; .8480; .8490; .8500; .8510; .8520; .8530; .8540; .8550; .8560; .8570; .8580; .8590; .8700; .8710 (proposed repealer)	1541
7045.0020; .0125; .0135; .0139; .0219; .0296; .0302; .0375; .0381 (adopted)	1660
7050.0110; .0130; .0170; .0180; .0185; .0190; .0200; .0210; .0212; .0215; .0220; .0400; .0420; .0430; .0440; .0460; .0470 (adopted)	1810
7050.0210 s.6,6a,6b becomes 7050.0211; 7050.0210 s.8 becomes 7050.0213; 7050.0210 s.16 becomes 7050.0214; 7050.0480 becomes 7050.0465 (renumbered)	1810
7050.0210 s.11; 7065.0300; .0310; .0320; .0330; .0340; .0350; .0400; .0410; .0420; .0430; .0440; .0450 (repealed)	1810
Hazardous Substance Injury Compensation Board	
7190.0020 (adopted)	1710
7190.1000; .1005; .1010; .1015; .1020; .1025; .1026 (adopted)	1710
Public Safety Department	
7515.1100; .1110 (adopted)	1456
7515.1100 s.1 (repealed)	1456
Public Service Department	
7605.0010-.0080 (proposed)	1655
7660.0010-.0090 (proposed)	1651
Public Utilities Commission (see also 4220.0100)	
7815.0100; .0700; .0800; .0900; .1000; .1050; .1100; .1200; .1400; .1500; .1600 (proposed)	1534
Racing Commission	
7873.0190; 7875.0200; 7877.0125; 7883.0140; 7890.0110; 7892.0100; 7895.0110; .0125; .0250; .0275; .0300; .0350; 7897.0100 (proposed)	1738
7895.0100 subp. 7; .0110 subp. 7; .0125 subparts 4,5, and 6; .0250 subp. 7; .0275 subparts 3,4, and 5; .0350 subparts 4,5, and 6 (proposed repealer)	1738
Revenue Department	
8001.0300 (proposed)	1609

Minnesota Rules: Amendments & Additions

Secretary of State

8200.0300; .0400; .0700; .0800; .1100; .1200; .1500; .1700; .2100; .2200; .2600; .3700; .3800; .5100; .5400; .9910; .9919; 8220.1950; 8235.0200; 8240.2400 (proposed)	1611
8220.0650 (adopted)	1712
8200.1300; .1600; .3800 s.2; .9916; .9922; .9925 (proposed repealer)	1611
8210.3000; .3005; .3010; .3015 (proposed)	1446
8220.0650; .0800 (proposed)	1746

Public Service Department—Energy

8300.2500-.2509 (emergency extended)	2045
8300.2501 s.2,3 (emergency repealer extended)	2045

Teaching Board

8700.7600; .7700 (proposed)	1950
-----------------------------------	------

Transportation Department

8850.6900-9050; 8855.0300-.0850 (proposed)	1952
7800.0100 s.2,9,10; .0300; .1200; .1300; .1900; .3500; .3700-.8200; 7805.1400-.3600 (proposed repealer)	1952
8870.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100 (adopted)	1712

Veterinary Medicine Board

9100.0400 (proposed)	1450
----------------------------	------

Waste Management Board

9200.6000; .6001; .6002; .6003; .6004; .6007; .6008; .6010 (adopted)	1564
9200.6902-.6905 (proposed)	1807

9200.9501; .9502; .9503; .9506; .9508 (adopted)	2044
9220.0100; .0110; .0120; .0130; .0140; .0150; .0160; .0170; .0180 (proposed)	1704
9220.0200-.0680 (proposed)	1541

Human Services Department

9500.1100 (adopted)	1611
9500.2720; .2722; .2724; .2726; .2728; .2730 (proposed)	2010
9500.2700 s.13-19 (proposed repealer)	2010
9502.0335 (proposed)	1607
9505.2390-.2500 (proposed)	2018
9505.2250; .2260; .2270; .2280; .2290; .2300; .2310; .2320; .2330; .2340; .2350; .2360; .2370; .2380 (proposed repealer)	2018
9515.1000; .1200; .1300; .1400; .1500; .2200; .2300; .2400; .2500; .2600 (proposed)	1389
9515.1100 (proposed repealer)	1389
9525.1210; .1250 (adopted)	2044
9530.4100; .4120; .4130; .4200; .4210; .4220; .4230; .4250; .4260; .4270; .4280; .4300; .4310; .4320; .4330; .4340; .4350; .4370; .4380; .4390; .4400; .4410; .4450 (adopted)	1451
9530.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100; .1200; .1300; .1400; .1500; .1600; .1700; .2500; .2600; .2700; .2800; .2900; .3000; .3100; .3200; .3300; .3400; .3500; .3600; .3700; .3800; .3900; .4000 (repealed)	1451
9549.0059; .0060; (proposed)	1649
9553.0020; .0030; .0035; .0040; .0050; .0075 (adopted)	1711
9553.0041; .0050; .0060 (proposed)	1429

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.

Department of Human Services

Proposed Permanent Rules Relating to Aid to Families With Dependent Children; Employment and Training

Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing if Twenty-Five or More Persons Request a Hearing

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, section 14.22 to 14.28. The specific statutory authority to adopt the rule is in *Minnesota Statutes 1987 Supplement*, section 256.736, subdivision 7.

Persons interested in this rule shall 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 and 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*, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON APRIL 24, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 14 and April 24, 1988 at (612) 297-4302.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Dan Lipschultz
Department of Human Services
444 Lafayette Rd., 2nd Floor South
St. Paul, MN 55155-3816
612/297-4302

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on April 13, 1988.

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 free copy of this rule is available upon request for your review from: Nancy Storelee, Department of Human Services, 444 Lafayette Rd., 2nd Floor South, St. Paul, MN 55155-3816 or you may call at 612/296-2854.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

These rules are intended to implement statutory employment and training requirements applicable to AFDC recipients. The rules will affect AFDC recipients, local agencies and employment and training service providers.

Part 9500.2700 defines programmatic terms relevant to employment and training for AFDC recipients.

Part 9500.2722 establishes requirements and procedures applicable to orientation, a new mandatory program for most AFDC recipients which will help prepare them for employment and training. Specifically, this rule part identifies both local agency and recipient responsibilities regarding orientation. The rule part also specifies the content and timing of orientation as well as the sanctions imposed on recipients for failing to participate in orientation.

Part 9500.2724 specifies the general registration and participation requirements applicable to AFDC recipients required to register for and participate in employment training programs.

Part 9500.2726 sets forth the WIN requirements applicable to AFDC recipients and local agencies. Specifically, this part requires cooperation with WIN and identifies the conditions under which recipients are exempt from the cooperation requirement. The Department is proposing the repeal of part 9500.2700, subparts 13 to 18 which currently govern WIN.

Part 9500.2728 governs the new mandatory employment search program through which recipients are assisted in finding and securing employment.

Specifically, this rule part identifies those recipients who are required to participate in employment search and who must accept offers of employment. The rule part also defines good cause for failure to participate or accept employment and provides for a conciliation conference to resolve disputes between recipients and providers.

Part 9500.2730 identifies the sanctions for failure to cooperate with WIN, participate in employment search or accept offers of employment as required.

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Proposed Rules

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 Nancy Storelee upon request.

Adoption of these rules will not result in additional spending by local public bodies in the excess of \$100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered 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 Dan Lipschultz.

Sandra Gardebring, Commissioner
Department of Human Services

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Twenty-five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Rooms 1A and 1B, 1st Floor, 444 Lafayette Rd., St. Paul, MN 55155 on April 25, 1988 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 14 and April 24, 1988 at (612) 297-4302.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to George Beck, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7601, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in *Minnesota Statutes*, sections 14.15 and 14.50. The rule hearing is governed by *Minnesota Statutes*, sections 14.14 to 14.20 and by *Minnesota Rules*, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The agency's authority to adopt the proposed rules is contained in *Minnesota Statutes 1987 Supplement*, section 256.736, subdivision 7. Adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services, 444 Lafayette Rd., 2nd Floor South, St. Paul, MN 55155-3816 or you may call at 612/296-2854.

These rules are intended to implement statutory employment and training requirements applicable to AFDC recipients. The rules will affect AFDC recipients, local agencies and employment and training service providers.

Part 9500.2700 defines programmatic terms relevant to employment and training for AFDC recipients.

Part 9500.2722 establishes requirements and procedures applicable to orientation, a new mandatory program for most AFDC recipients which will help prepare them for employment and training. Specifically, this rule part identifies both local agency and recipient responsibilities regarding orientation. The rule part also specifies the content and timing of orientation as well as the sanctions imposed on recipients for failing to participate in orientation.

Part 9500.2724 specifies the general registration and participation requirements applicable to AFDC recipients required to register for and participate in employment training programs.

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Specifically, this rule part identifies those recipients who are required to participate in employment search and who must accept offers of employment. The rule part also defines good cause for failure to participate or accept employment and provides for a conciliation conference to resolve disputes between recipients and providers.

Part 9500.2730 identifies the sanctions for failure to cooperate with WIN, participate in employment search or accept offers of employment as required.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Storelee, Department of Human Services (address on p. 2011). This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Dan Lipschultz at 612/297-4302.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10a, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes*, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than \$250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

Sandra S. Gardebring
Commissioner

Rules as Proposed (all new material)

9500.2720 DEFINITIONS.

Subpart 1. **Applicability.** The terms used in parts 9500.2720 to 9500.2730 have the meanings given them in this part and in part 9500.2060 unless otherwise indicated.

Subp. 2. **Employability plan.** "Employability plan" means a plan written for a registrant by an employment and training provider

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Proposed Rules

in consultation with the registrant that defines the registrant's employment and training goals and outlines the training, education, and support services the registrant needs to achieve these goals.

Subp. 3. **Employment search.** "Employment search" means the program authorized under the Code of Federal Regulations, title 45, part 240, which provides AFDC recipients with training and assistance in finding and securing regular, unsubsidized employment.

Subp. 4. **Employment and training services.** "Employment and training services" means programs, activities, and services as defined in *Minnesota Statutes*, section 256.736, subdivision 1a, paragraph (d).

Subp. 5. **Employment and training service provider or service provider.** "Employment and training service provider" or "service provider" means a provider certified by the commissioner of jobs and training under *Minnesota Statutes*, section 268.0122, subdivision 3, to deliver employment and training services.

Subp. 6. **Priority caretaker.** "Priority caretaker" means a caretaker who:

- A. is under age 21;
- B. has not graduated from high school or received a general equivalency diploma; or
- C. has received AFDC for 24 or more months out of the last 36 consecutive calendar months.

9500.2722 ORIENTATION REQUIREMENT.

Subpart. 1. **Local agency responsibilities.** Each local agency shall:

A. provide orientation to AFDC caretakers residing in the local agency's jurisdiction who are required to attend orientation under subpart 2; and

B. provide or pay the reasonable cost of child care and transportation needed to enable a caretaker to attend orientation. A local agency is not required to pay child care costs that exceed limits established by the local agency under *Minnesota Statutes*, section 268.91, subdivision 8.

Subp. 2. **Mandatory participants.** A recipient shall attend an orientation session if the recipient is:

A. a caretaker who is a principal wage earner in an assistance unit whose eligibility is based on the unemployment of a parent under part 9500.2300;

B. a priority caretaker; or

C. a caretaker who is determined eligible for AFDC on or after July 1, 1988, and who has not attended an orientation within the previous 12 calendar months.

Subp. 3. **Orientation content.** Orientation must consist of a presentation that tells a recipient of the identity, location, and phone number of available employment and training, and support services relevant to the recipient's circumstances. Orientation must encourage recipients to view AFDC as a temporary program providing grants and services to clients who set goals and develop strategies for supporting their families without AFDC assistance. The content of orientation must not imply that a recipient's eligibility for AFDC is time limited.

Subp. 4. **Orientation format.** Videotaped presentations may be used, but orientation must include the opportunity for face-to-face interaction between the recipient and staff of the local agency or the entity providing orientation.

Subp. 5. **Good cause for failure to attend orientation.** Good cause for failure to attend orientation exists when a recipient cannot attend because of:

A. illness or injury of the recipient;

B. illness or injury of a member of the recipient's family that requires the recipient's care during the hours when orientation is offered;

C. an inability to obtain the necessary child care and transportation; or

D. employment, school, or employment and training service obligations that are scheduled during the hours when orientation is offered and that cannot be changed to allow participation in orientation.

Subp. 6. **Notice to mandatory participants.** Except as provided in subpart 7, the local agency shall provide written notice of the orientation requirement to a recipient required to attend orientation under subpart 2. The notice must tell the recipient the time, date, and location of the orientation that the recipient is scheduled to attend, the consequences of failing to attend on the scheduled date, and the recipient's appeal rights in part 9500.2740, subparts 8 to 10. The notice must be mailed or delivered to the recipient at least ten days before the recipient's scheduled orientation date.

Subp. 7. **Early participation in orientation.** If the local agency and recipient agree to have the recipient's orientation occur within ten days after the recipient is determined eligible for AFDC, no notice of orientation is required. If the recipient fails to attend

orientation within ten days immediately following the eligibility determination as agreed, the local agency shall schedule the recipient for orientation under subpart 8 and issue a notice under subpart 6.

Subp. 8. **Timing of orientation.** A recipient required to attend orientation under subpart 2 must attend orientation on the date scheduled by the local agency under this subpart unless the recipient has good cause for not attending on that date or the local agency and recipient agree on a different date. The local agency must schedule a recipient required to attend orientation under subpart 2, item A or B, for an orientation session to be held before January 1, 1989. The local agency must schedule a recipient required to attend orientation under subpart 2, item C, for an orientation session to be held within 60 days after the local agency mails the recipient's notice of eligibility.

Subp. 9. **Sanctions for failure to attend orientation.** If a recipient who is required to attend orientation under subpart 2 fails, without good cause, to attend orientation on a scheduled or agreed upon date after issuance of the notice required under subpart 6, the recipient must be sanctioned under items A to C.

A. When a recipient fails for the first time to attend an orientation session, the local agency shall issue a maximum of 50 percent of the next monthly payment to which the assistance unit is entitled in the form of a vendor or protective payment. The local agency shall schedule the recipient for another orientation session to be held during the payment month for which the sanction under this item is imposed and shall notify the recipient of the date, time, and location of the session under subpart 6.

B. When a recipient fails for the second time to attend an orientation session, the local agency shall issue 100 percent of the next monthly payment to which the assistance unit is entitled in the form of a vendor or protective payment. The local agency shall schedule the recipient for another orientation session to be held during the payment month for which the sanction under this item is imposed and shall notify the recipient of the date, time, and location of the session under subpart 6.

C. When a recipient fails for the third time to attend an orientation session, the local agency shall not take the recipient's needs into account when determining the amount of the next monthly payment to the assistance unit. The amount of the monthly payment to which the rest of the assistance unit is entitled, if any, must be issued in the form of a vendor or protective payment. The recipient's needs must not be considered again until the recipient has attended an orientation session. The local agency's notice of sanction under this item must include an offer to schedule the recipient for an orientation session. The recipient must contact the local agency to schedule an orientation session. If the recipient contacts the local agency and asks to be scheduled for orientation, the local agency must schedule the recipient's orientation to be held within 30 days of the request. The sanction under this item ends when the recipient attends the orientation, and the local agency shall issue prorated benefits for the rest of the payment month following the date the recipient attends the orientation.

9500.2724 GENERAL EMPLOYMENT AND TRAINING REQUIREMENTS.

Subpart 1. **Registration and referral for employment and training services.** Completion of the AFDC application form automatically registers the applicant for WIN and for other mandatory employment and training services that require registration. The local agency shall refer to the local WIN office recipients residing in WIN counties who are not exempt from mandatory WIN registration under part 9500.2726, subpart 1. The local agency shall refer to the local job service office recipients who are principal wage earners residing in non-WIN counties whose program eligibility is based on the unemployment of a parent under part 9500.2300.

Subp. 2. **Mandatory employment and training participation.** Recipients shall participate in WIN if required under part 9500.2726, subpart 1, in employment search if required under part 9500.2728, subpart 1, and in CWEP if required under parts 9505.1050 to 9505.1065 [Emergency]. When a principal wage earner who resides in a non-WIN county and who is eligible on the basis of unemployment of a parent under part 9500.2300 does not register with job service, the person's entire assistance unit shall be ineligible.

9500.2726 WIN REQUIREMENTS.

Subpart 1. **Participation in WIN.** A recipient living in a WIN county, regardless of the recipient's basis of program eligibility under parts 9500.2180 to 9500.2300, shall cooperate with the local WIN office as a condition of AFDC eligibility unless the local agency determines that the applicant or recipient is exempt. A recipient who is exempt from mandatory WIN registrant status is:

A. A child under the age of 16.

B. A student who is at least 16 but less than 18 years of age and meets the conditions of part 9500.2060, subpart 58, item A, B, C, or F

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Proposed Rules

C. A person who is 18 years of age and meets the conditions of part 9500.2060, subpart 39, items B and C.

D. A person who, for up to 90 consecutive days, is ill or injured to the extent that the illness or injury temporarily prevents participation in training or employment. Determination of an exemption under this item must be made by the AFDC unit and may be allowed without medical documentation when the illness or injury is evident. An exemption for an illness or injury that extends for 90 days or more must be documented by medical evidence described in item E.

E. A person who, for at least 90 consecutive days, is physically or mentally incapacitated when the incapacitating factors, by themselves or with the person's age, prevent participation in training or employment. The incapacity must be documented by medical evidence. The medical evidence must include a prognosis and diagnosis of the impairment from at least one licensed physician or licensed psychologist. The local agency shall give the applicant or recipient voluntary referral to the Minnesota Department of Vocational Rehabilitation upon determination of the exemption.

F. A person 65 years of age or older.

G. A person whose round trip commuting time from the person's residence to the local WIN office is more than two hours by the means of transportation available to the recipient and exclusive of the time needed to transport children to and from child care.

H. A person needed in the home to care for a physically or mentally incapacitated person living in the household. The incapacity and the need for care must be documented by medical evidence from a licensed physician or licensed psychologist.

I. A parent or caretaker of a child under age six who is providing full-time care for that child. A person who is anticipated to be absent from the child for an average of at least 30 hours per week during the current and following month, exclusive of absences related to providing care for the child, does not qualify for this exemption.

J. A person who is currently employed in unsubsidized employment that is expected to last at least 30 days and that provides a monthly average of at least 30 hours of employment per week.

K. A parent who is not a principal wage earner but who is in an assistance unit whose program eligibility is based on the unemployment of a parent, provided the principal wage earner in the assistance unit is not exempt under the other items of this subpart and is cooperating with WIN.

L. A person, who after applying for AFDC, volunteered to participate under the Volunteers in Service to America (VISTA) program as provided by United States Code, title 42, sections 4951 to 4959 as amended through December 31, 1987.

M. A pregnant woman when the pregnancy has entered the third trimester.

N. A person employed under a work supplement program established under the Code of Federal Regulations, title 45, part 239.

Subp. 2. **Good cause for noncooperation with WIN.** A recipient who has good cause for not cooperating with WIN shall not be sanctioned. Good cause for not cooperating with WIN must be determined under the Code of Federal Regulations, title 45, section 224.34.

Subp. 3. **Determination of noncooperation.** The WIN office shall determine whether a WIN registrant has, without good cause, failed to cooperate with WIN. The WIN office shall notify the local agency of a deregistration action taken against a registrant for noncooperation. When notified of deregistration, the local agency shall sanction the recipient under part 9500.2730, beginning with the first payment month following deregistration in which notification and appeal rights under part 9500.2740, subparts 5 to 10, allow application of those sanctions.

9500.2728 EMPLOYMENT SEARCH REQUIREMENTS.

Subpart 1. **Participation in employment search.** A local agency shall provide a mandatory employment search program for recipients whose participation is mandatory under item A. A local agency may provide a voluntary employment search program for recipients who are not required to participate under item A. The employment search program must be administered in accordance with items A to C.

A. A caretaker who is the principal wage earner in an assistance unit whose program eligibility is based on the unemployment of a parent under part 9500.2300 must participate in employment search as a condition of AFDC eligibility unless:

- (1) the caretaker is exempt from WIN participation under part 9500.2726, subpart 1, items A to F or H to N;
- (2) the caretaker is currently participating in another employment and training service, other than the employment search component of WIN, which can reasonably be expected to improve the recipient's ability to obtain and keep employment;
- (3) the caretaker's employability plan specifies other activities that prevent or contraindicate participation in employment search; or
- (4) the caretaker cannot secure employment because of an inability to communicate in the English language as determined

by the local agency, a specialist in English as a second language, or a vocational specialist as defined in part 9500.1206, subpart 33, and the recipient is attending a program in English as a second language, if available.

B. In the third month after determining that a recipient is required to participate in employment search, the local agency shall refer the recipient to the employment search service provider.

C. The employment search service provider shall specify the number of weeks and hours that a recipient must participate in employment search. The service provider shall not require a recipient to participate in employment search for more than eight weeks in any 12 consecutive calendar months and for more than 32 hours during any week.

Subp. 2. **Offers of employment.** A recipient who is the principal wage earner in an assistance unit whose program eligibility is based on the unemployment of a parent under 9500.2300 must, as a condition of AFDC eligibility, accept any bona fide offer of employment made by an employer.

Subp. 3. **Good cause for refusing or terminating employment or failing to comply with employment search requirements.** A recipient who fails to participate in employment search required under subpart 1 or accept employment as required under subpart 2 shall not be sanctioned if the recipient has good cause for the failure. A local agency shall determine good cause by applying the conditions in items A to I.

A. Good cause exists when a job or employment search is not suited to the physical or mental capacity of the person or when it will have an adverse effect on that person's physical or mental health. Evidence from a licensed physician or licensed psychologist must document a claim under this item.

B. Good cause exists when the round trip commuting time from a person's residence to the employment search or job site is more than two hours by available means of transportation, exclusive of the time to transport children to and from child care.

C. Good cause exists when licensed child care is required but not available.

D. Good cause exists when the work or employment search site is unsafe under health and safety standards established by the Occupational Safety and Health Administration and the Minnesota Department of Jobs and Training.

E. Good cause exists when a person documents discrimination at the job or employment search site on the basis of age, sex, race, religion, or place of national origin.

F. Good cause exists when the hourly gross employment earnings are less than the federal or state minimum wage for that type of employment, whichever applies.

G. Good cause exists when the gross monthly employment earnings are less than 185 percent of the AFDC family allowance for the recipient's assistance unit.

H. Good cause exists when the job that is offered is vacant due to a strike, lockout, or other bona fide labor dispute.

I. Good cause exists when the recipient incurs unreimbursed out-of-pocket expenses to participate in employment search.

Subp. 4. **Determination of failure to accept employment or participate in employment search.** The employment search service provider shall determine whether a recipient has failed, without good cause, to comply with employment search requirements under subpart 1 or accept employment as required under subpart 2. If the employment search or employment offer is provided through WIN, the WIN office shall make the determination. If the service provider determines that a recipient has failed, without good cause, to comply with the participation or employment requirements of subpart 1 or 2, the provider shall notify the recipient under subpart 5.

Subp. 5. **Notice of failure to participate or accept employment.** If a service provider determines under subpart 4 that a recipient has failed, without good cause, to participate in employment search or accept employment as required, the provider shall mail a written notice of its determination to the recipient at the recipient's last known mailing address. The notice shall provide a detailed explanation of the reasons for the determination, the consequences of failure to participate or accept employment, the actions the service provider believes are necessary for the recipient to comply with the employment and training requirements, the right to request a conciliation conference within 15 days after the date the notice is mailed, and the right to request a hearing under part 9500.2740, subpart 8.

Subp. 6. **Conciliation conference.** A service provider shall, according to its contract with the local agency, provide a conciliation conference to recipients who request a conference within 15 days after the notice under subpart 5 is mailed. The conciliation conference must be conducted according to items A to D.

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A. If a recipient requests a conciliation conference, the service provider shall provide the conference within 30 days after receiving the recipient's written request for a conference. The service provider shall notify the recipient of the conference date at least ten days before the date of the conference.

B. The local agency shall reimburse the recipient for the recipient's reasonable and necessary child care and transportation expenses incurred as a result of the recipient's attendance of the conciliation conference.

C. The service provider shall hold the conciliation conference during regular working hours at the service provider's office. If the service provider and the recipient agree, the conciliation conference may be conducted over the telephone.

D. If a conciliation conference is not requested or if the dispute is not resolved at the conference, the service provider shall provide to the local agency and to the recipient written notification of its determination that the recipient failed or refused without good cause to participate in employment search or accept employment.

Subp. 7. **Final determination before sanction.** When WIN does not sanction a recipient for failure to accept employment assigned by WIN or participate in an employment and training service provided through WIN, a local agency shall not apply sanctions for the same failure. The local agency shall make a final determination of whether the recipient has failed, without good cause, to accept employment that has not been assigned by WIN or to participate in employment search program that has not been provided through WIN. Upon final determination of failure to participate or accept employment, the local agency shall apply the sanctions under part 9500.2730.

9500.2730 SANCTIONS FOR FAILURE TO PARTICIPATE IN A MANDATORY EMPLOYMENT AND TRAINING SERVICE OR ACCEPT EMPLOYMENT.

Subpart 1. **Notice.** If a local agency is notified of WIN deregistration under part 9500.2726, subpart 3, or if a local agency determines under part 9500.2728, subpart 7, that a recipient has failed, without good cause, to participate in employment search or accept employment, the local agency shall notify the recipient that the local agency will impose the sanctions of subpart 2, beginning with the first payment month following deregistration or noncompliance in which notification and appeal rights under part 9500.2740, subparts 5 to 10, allow application of those sanctions.

Subp. 2. **Sanctions.** The following sanctions apply to recipients who do not comply with WIN, employment search, or employment requirements:

A. When a recipient is also the principal wage earner under part 9500.2300, the entire assistance unit is ineligible for three payment months for the first failure to comply or for six payment months for later failures to comply. When, during the period of sanction, the principal wage earner leaves the home or when either parent becomes incapacitated and eligibility is established under parts 9500.2180 to 9500.2260, the sanction period ends for the remaining members of the assistance unit.

B. When a recipient in an assistance unit that qualifies under part 9500.2300 is the parent who is not the principal wage earner, or when the recipient is a parent caretaker in an assistance unit that qualifies under part 9500.2180, 9500.2220, or 9500.2260, the parent caretaker shall be removed from the assistance unit. The parent caretaker shall be ineligible for a period of three payment months for the first failure to comply or for six payment months for later failures to comply. Protective or vendor payments shall be issued for the needs of the remaining members of the assistance unit under part 9500.2680, subpart 2, item A until the period of the sanction ends or the recipient who is under sanction is no longer a member of the assistance unit.

C. When a recipient who is under sanction is a caretaker relative other than a parent or is one of several dependent children, that person must be removed from the assistance unit for three payment months for the first failure to comply or for six payment months for subsequent failures to comply. When the recipient is the only dependent child in the assistance unit, the assistance unit shall be ineligible for AFDC for three payment months following the first occasion of noncompliance or for six payment months following later occasions of noncompliance.

REPEALER. *Minnesota Rules*, part 9500.2700, subparts 13, 14, 15, 16, 17, 18, and 19, are repealed.

Department of Human Services

Proposed Permanent Rules Relating to Preadmission Screening and Alternative Care Grants

Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing if Twenty-five or More Persons Request a Hearing

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, section 14.22 to 14.28. The specific statutory authority to adopt the rule is *Minnesota Statutes*, section 256B.091, subdivisions 1 to 9.

Proposed Rules

Persons interested in this rule shall 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 and 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*, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON APRIL 28, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 14, 1988 and April 27, 1988 at (612) 297-4301.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Eleanor Weber
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on April 13, 1988.

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 free copy of this rule is available upon request for your review from:

Eleanor Weber
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 297-4301

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

Minnesota Rules, Parts 9505.2390 to 9505.2500 establish the procedures that govern preadmission screening (PAS) for nursing home applicants and residents who request a screening, and alternate care (ACG) grants for eligible persons who choose to remain in the community with community services. The rules provide a framework for counties to: 1) maintain preadmission screening teams; 2) administer preadmission screening; 3) determine individual service plans which will enable persons to remain in the community; 4) select providers for alternative care grant services; 5) set standards for alternative care grant providers; 6) authorize services for reimbursement; 7) bill the department for reimbursement of eligible services; 8) provide for allocation and reallocation of the number of ACG clients a county may serve and the funds for the services; 9) establish penalties on counties and nursing homes that fail to provide preadmission screenings within required time limits; 10) establish standards for home health aide, homemaker, and personal care services that are provided under ACG grants; 11) require case managers to act to assure safety and health of ACG clients who are vulnerable adults; 12) establish limits on rates for services including screenings; and 13) set forth the conditions for appealing decisions resulting from screenings, rescreenings, and reassessments. The proposed rules, if adopted, will repeal the present rule, parts 9505.2250 to 9505.2380, and are necessary in order to ensure consistency with state and federal laws and regulations and the federal waiver granted under section 2176 of the Social Security Act which allows the state to use federal Medicaid funds to provide home and community-based services otherwise not allowed under the Medicaid program.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule

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Proposed Rules

and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from:

Eleanor Weber
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 297-4301

Adoption of these rules will not result in additional spending by local public bodies in the excess of \$100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from:

Eleanor Weber
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 297-4301

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered 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:

Eleanor Weber
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155

Sandra S. Gardebring, Commissioner
Department of Human Services

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Persons interested in this rule shall 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 and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

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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 upon request from:

Eleanor Weber
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Proposed Rules

Eleanor Weber
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155

Sandra S. Gardebring, Commissioner
Department of Human Services

Rules as Proposed (all new material)

9505.2390 SCOPE AND EFFECT.

Subpart 1. **Scope.** Parts 9505.2390 to 9505.2500 establish the standards and procedures applicable to the preadmission screening and alternative care grant program. The preadmission screening program screens persons who are applicants for admission to a nursing home or nursing home residents who request a screening as required under part 9505.2435, subpart 2. An alternative care grant pays for some community services in lieu of nursing home admission or continued nursing home resident status for persons who meet the requirements of parts 9505.2390 to 9505.2500.

Parts 9505.2390 to 9505.2500 must be read in conjunction with *Minnesota Statutes*, sections 256B.04, subdivision 2, 256B.05, 256B.091, subdivisions 1 to 9, and Code of Federal Regulations, title 42, sections 440.180 and 441.300 to 441.310. Unless otherwise specified, citations of Code of Federal Regulations, title 42, refer to the code amended as of October 1, 1986.

Parts 9505.2390 to 9505.2500 also must be read in conjunction with the requirements of the waiver obtained by the state from the United States Department of Health and Human Services.

Subp. 2. **Effect.** References to the waiver and waiver provisions that occur in parts 9505.2390 to 9505.2500 shall continue in effect only as long as the waiver from the United States Department of Health and Human Services remains in effect in Minnesota.

9505.2395 DEFINITIONS.

Subpart 1. **Applicability.** The definitions in this part apply to parts 9505.2390 to 9505.2500.

Subp. 2. **Adult day care services.** "Adult day care services" means services provided to alternative care grant clients by adult day care programs established under *Minnesota Statutes*, sections 245A.01 to 245A.17, including adult day care centers licensed under parts 9555.9600 to 9555.9730.

Subp. 3. **Adult foster care services.** "Adult foster care services" means supervised living arrangements for adults in an adult foster care home licensed under parts 9555.5105 to 9555.6265.

Subp. 4. **Alternative care grant or ACG.** "Alternative care grant" or "ACG" means funds allocated to a local agency by the commissioner under *Minnesota Statutes*, section 256B.091 to pay for alternative care services.

Subp. 5. **Alternative care grant client or ACG client.** "Alternative care grant client" or "ACG client" means a person who has been determined eligible to receive or is receiving services funded by an alternative care grant.

Subp. 6. **Alternative care grant services.** "Alternative care grant services" means the services listed in items A to G provided to ACG clients:

- A. case management services;
- B. respite care services;
- C. homemaker services;
- D. home health aide services;
- E. adult foster care services;
- F. adult day care services; and
- G. personal care services.

Subp. 7. **Applicant.** "Applicant" means a person who is seeking admission to a nursing home or who has been admitted to a nursing home but has not yet been screened by the preadmission screening team as required in part 9505.2420.

Subp. 8. **Assessment form.** "Assessment form" means the form supplied by the commissioner that is used to record the information required under parts 9505.2425, subpart 1 and 9505.2455, subpart 12.

Subp. 9. **Case management services.** "Case management services" means services that identify, acquire, authorize, and coordinate services for an ACG client; monitor the delivery of services to the ACG client; and adjust services to the needs of the ACG client.

Subp. 10. **Case manager.** "Case manager" means a social worker employed by or under contract with the local agency or a registered nurse who is employed by the local public health department and under contract with the local agency to provide case management services. "Local agency" in this subpart refers to the county of service.

Subp. 11. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's authorized representative.

Subp. 12. **Community services.** "Community services" means home and community-based services including services provided under the ACG as specified in part 9505.2430, subpart 4, item B, subitem (3), that can be used to meet the health or social needs of an ACG client.

Subp. 13. **County of financial responsibility.** "County of financial responsibility" means the county responsible for paying for preadmission screening of a recipient or the county responsible for paying for ACG services under part 9505.2455, subpart 3.

Subp. 14. **County of service.** "County of service" means the county whose local agency performs preadmission screening of an applicant or nursing home resident or arranges case management services for an ACG client. The county of service may be the same as or different from the county of financial responsibility.

Subp. 15. **Delay of screening.** "Delay of screening" means that preadmission screening has not been completed for an applicant but will be completed according to the time requirements established for:

- A. emergency admission under part 9505.2420, subpart 3;
- B. preadmission screening of hospital patients under part 9505.2420, subpart 2;
- C. 30-day exemption from screening under part 9505.2420, subpart 4; or
- D. admission of an applicant from another state under part 9505.2420, subpart 6.

Subp. 16. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 17. **Directory of services.** "Directory of services" means the list of all community services available in a geographic area that is developed under part 9505.2425, subpart 7.

Subp. 18. **Discharge planner.** "Discharge planner" means a person qualified as a public health nurse or a social worker who is employed by a hospital to coordinate the development of an individual service plan of a person who no longer needs the services of the hospital.

Subp. 19. **Emergency admission.** "Emergency admission" means the admission of an applicant from the community to a nursing home before completion of preadmission screening when a physician has determined that the delay in admission needed for preadmission screening would adversely affect the applicant's health and safety. For purposes of this definition, "community" does not include a hospital.

Subp. 20. **Formal caregivers.** "Formal caregivers" means persons or entities providing ACG services who are employed or who are under contract with a local agency, or other agency or organization, public or private.

Subp. 21. **Home health aide.** "Home health aide" means a person who meets the requirements of part 9505.2470 and provides home health aide services to an ACG client.

Subp. 22. **Home health aide services.** "Home health aide services" means services provided under part 9505.2470 that are written in the individual treatment plan. Home health aide services include the performance of procedures as an extension of therapy services, personal care, ambulation and exercise, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the ACG client's condition and needs, and completing necessary records.

Subp. 23. **Homemaker services.** "Homemaker services" means services that assist an ACG client as set forth in items A to G:

- A. performing house cleaning activities;
- B. laundering, ironing, and mending;
- C. meal planning, preparation, and cleanup;
- D. assisting with money management;
- E. providing companionship, emotional support, and social stimulation;

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Proposed Rules

F. observing and evaluating home safety practices and seeking to improve these practices where appropriate; and

G. performing essential errands and shopping.

Subp. 24. **Hospital.** "Hospital" has the definition given in *Minnesota Statutes*, section 144.696, subdivision 3.

Subp. 25. **Individual service plan.** "Individual service plan" means the written plan of a community service or a combination of community services designed to meet the health and social needs of an applicant or nursing home resident screened according to part 9505.2430. The individual service plan is the plan of care referred to in *Minnesota Statutes*, section 256B.091.

Subp. 26. **Individual treatment plan.** "Individual treatment plan" means the written treatment plan of care for providing personal care and home health aide services under part 9505.2475 to an ACG client.

Subp. 27. **Informal caregivers.** "Informal caregivers" means family, friends, neighbors, or others who provide services and assistance to the elderly without the sponsorship of an agency or organization.

Subp. 28. **Local agency.** "Local agency" means the county or multicounty agency that is required under *Minnesota Statutes*, section 256B.05, to administer the medical assistance program.

Subp. 29. **Medical assistance or MA.** "Medical assistance" or "MA" means the program established under title XIX of the Social Security Act and *Minnesota Statutes*, chapter 256B.

Subp. 30. **Mental illness.** "Mental illness" means an illness as defined in *Minnesota Statutes*, section 245.462, subdivision 20, clause (2).

Subp. 31. **Nursing home.** "Nursing home" means a facility licensed under *Minnesota Statutes*, chapter 144A or sections 144.50 to 144.56, that is certified to participate in the medical assistance program as a skilled nursing facility or an intermediate care facility. This definition includes boarding care homes.

Subp. 32. **Nursing home resident.** "Nursing home resident" means a person who resides, and expects to continue to reside, in a nursing home for more than 30 days. For purposes of parts 9505.2390 to 9505.2500, "nursing home resident" does not include a person who is in a nursing home for respite care.

Subp. 33. **Personal care services.** "Personal care services" means services meeting the requirements of part 9505.2465.

Subp. 34. **Personal care assistant.** "Personal care assistant" means a person who provides personal care services under part 9505.2465 and meets the training requirements of part 9505.2465, subpart 2.

Subp. 35. **Person with mental retardation or related conditions.** "Person with mental retardation or related conditions" means a person as defined in part 9525.0015, subpart 20.

Subp. 36. **Physician.** "Physician" means a person who is authorized to practice medicine under *Minnesota Statutes*, chapter 147.

Subp. 37. **Preadmission screening.** "Preadmission screening" means the activities performed by a preadmission screening team under *Minnesota Statutes*, section 256B.091, and parts 9505.2390 to 9505.2500. This definition does not include the activities of teams authorized under *Minnesota Statutes*, section 256B.092, and established in parts 9525.0015 to 9525.0165 and under the Minnesota Comprehensive Mental Health Act, *Minnesota Statutes*, sections 245.461 to 245.486.

Subp. 38. **Preadmission screening document.** "Preadmission screening document" means the document required in part 9505.2495, subpart 1, and supplied by the commissioner.

Subp. 39. **Preadmission screening team.** "Preadmission screening team" means the team authorized in *Minnesota Statutes*, section 256B.091, and required by part 9505.2410, to assess the financial, health, and social needs of an applicant or a nursing home resident.

Subp. 40. **Primary caregiver.** "Primary caregiver" means the informal caregiver who customarily provides care to the ACG client and cooperates with the case manager in assuring the provision of services by the formal caregivers.

Subp. 41. **Public health nurse.** "Public health nurse" means a registered nurse certified by the Minnesota Department of Health as a public health nurse and employed by a local board of health under *Minnesota Statutes*, sections 145.08 to 145.123.

Subp. 42. **Public health nursing services.** "Public health nursing services" means the nursing services provided by a board of health under *Minnesota Statutes*, sections 145.911 to 145.92.

Subp. 43. **Reassessment.** "Reassessment" means the reevaluation of an ACG client's financial, health, and social needs under part 9505.2455, subparts 11 and 12.

Subp. 44. **Recipient.** "Recipient" means a person who has been determined by the local agency to be eligible for medical assistance under parts 9505.0010 to 9505.0150.

Subp. 45. **Registered nurse.** "Registered nurse" means a person licensed under *Minnesota Statutes*, section 148.211.

Subp. 46. **Representative.** "Representative" means a person appointed by the court as a guardian or conservator under *Minnesota Statutes*, sections 252A.01 to 252A.21 or 525.539 to 525.6198 or a parent of a child under age 18 unless the parent's parental rights have been terminated.

Subp. 47. **Rescreening.** "Rescreening" means the completion of the activities in part 9505.2435, subpart 3, after an initial preadmission screening.

Subp. 48. **Resident class.** "Resident class" refers to the case mix classification required under *Minnesota Statutes*, section 256B.091, subdivision 2, and assigned to a person as required under parts 9549.0058, subpart 2, and 9549.0059.

Subp. 49. **Resident day.** "Resident day" means a day for which nursing services in a nursing home are rendered or a day for which a nursing home bed is held.

Subp. 50. **Respite care services.** "Respite care services" means short-term supervision, assistance, and care provided to an ACG client due to the temporary absence or need for relief of the ACG client's primary caregiver. Respite care services may be provided in the client's home or in a facility approved by the state such as a hospital, nursing home, foster home, or community residential facility.

Subp. 51. **Room and board costs.** "Room and board costs" means costs associated with providing food and shelter to a person, including the directly identifiable costs of:

- A. private and common living space;
- B. normal and special diet food preparation and service;
- C. linen, bedding, laundering, and laundry supplies;
- D. housekeeping, including cleaning and lavatory supplies;
- E. maintenance and operation of the building and grounds, including fuel, electricity, water, supplies, and parts and tools to repair and maintain equipment and facilities; and
- F. allocation of salaries and other costs related to items A to E.

Subp. 52. **Skilled nursing service.** "Skilled nursing service" refers to the term described in Code of Federal Regulations, title 42, section 405.1224.

Subp. 53. **Social worker.** "Social worker" means a person who has met the minimum qualifications of a social worker under the Minnesota Merit System or a county civil service system in Minnesota.

Subp. 54. **Unscreened applicant.** "Unscreened applicant" means an applicant for whom preadmission screening has not been completed under parts 9505.2390 to 9505.2500.

Subp. 55. **Waiver.** "Waiver" means the approval given by the United States Department of Health and Human Services which allows the state to pay for home and community-based services authorized under Code of Federal Regulations, title 42, section 441, subpart G. The term includes all amendments to the waiver including any amendments made after the effective date of parts 9505.2395 to 9505.2500, as approved by the United States Department of Health and Human Services.

Subp. 56. **Working day.** "Working day" means the hours of a day, excluding Saturdays, Sundays, and holidays, when a local agency is open for business.

9505.2396 COMPUTATION OF TIME INTERVALS TO MEET NOTICE REQUIREMENTS.

For purposes of parts 9505.2390 to 9505.2500, a required time interval to meet notice requirements must be computed to exclude the first and include the last day of the prescribed interval of time. The term "day" includes Saturday, Sunday, and holidays unless it is modified as "working day."

9505.2400 PREADMISSION SCREENING REQUIREMENT.

Subpart 1. **Coverage.** The preadmission screening team established by the local agency must complete the preadmission screening of all applicants except individuals who are exempt under subpart 2 and the preadmission screening of current nursing home residents who request a screening. The preadmission screening team shall complete the screening as specified in part 9505.2425, except in the cases of persons with mental retardation or related conditions. Persons with mental retardation or related conditions must be

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Proposed Rules

provided services according to parts 9525.0015 to 9525.0165. Persons with mental illness must be provided services according to the Minnesota Comprehensive Mental Health Act, *Minnesota Statutes*, sections 245.461 to 245.486.

Subp. 2. **Exemptions.** The following individuals are exempt from the requirement of subpart 1:

- A. a nursing home resident who transfers from one nursing home located within Minnesota directly to another nursing home located within Minnesota, regardless of the location of either nursing home;
- B. a nursing home resident who is admitted to a hospital from a nursing home and who returns to a nursing home;
- C. a nursing home resident who changes certified levels of care within the same nursing home;
- D. an applicant for whom preadmission screening was completed within the previous three months;
- E. an applicant who has been screened and who is currently receiving ACG services;
- F. an applicant who has been screened and who is currently receiving services from a certified home health agency;
- G. an applicant who is not eligible for medical assistance and whose length of residency in a nursing home is expected to be 30 days or less as determined under part 9505.2420, subpart 4;
- H. an applicant whose nursing home care is paid for indefinitely by the United States Veterans Administration;
- I. an applicant who enters a nursing home administered by and for the adherents of a recognized church or religious denomination described in *Minnesota Statutes*, section 256B.091, subdivision 4; and
- J. an applicant to a nursing home described in *Minnesota Statutes*, section 256B.431, subdivision 4, paragraph (c).

9505.2405 INFORMATION REGARDING AVAILABILITY OF PREADMISSION SCREENING.

The local agency must annually publish a notice that preadmission screening is available to persons in the area served by the local agency. At a minimum, the notice must appear in the newspaper that has the largest circulation within the geographic area served by the local agency. The notice must:

- A. explain the purpose of preadmission screening as stated in *Minnesota Statutes*, section 256B.091, subdivision 1;
- B. instruct the public how to contact the preadmission screening team; and
- C. state who is subject to and who may request preadmission screening under *Minnesota Statutes*, section 256B.091, subdivisions 2 and 4, and part 9505.2400.

9505.2410 ESTABLISHMENT OF PREADMISSION SCREENING TEAM.

Subpart 1. **Establishment.** A local agency must establish at least one preadmission screening team to complete preadmission screening of applicants and nursing home residents. In addition, a local agency may contract with a nonprofit hospital to perform the functions of a preadmission screening team under part 9505.2413 for applicants being discharged from the hospital. If a nonprofit hospital performs the functions of a preadmission screening team under contract with a local agency, the hospital's discharge planner shall not be a member of the team unless the applicant is a person being discharged from the hospital. If a nonprofit hospital does not have a contract with the local agency to perform the functions of a screening team, the hospital's discharge planner may be present at the preadmission screenings and may participate in the discussions but not in making the screening team's recommendations.

Subp. 2. **Composition of preadmission screening team.** A preadmission screening team must be composed as specified in items A to C.

A. The preadmission screening team must include a social worker and a public health nurse. The team must also include the applicant's or nursing home resident's physician if the physician chooses to participate.

B. The social worker of the local agency's preadmission screening team must be employed by or under contract with the local agency and must be designated by name as a member of the preadmission screening team.

C. If a local agency has a human services board organized under *Minnesota Statutes*, sections 402.01 to 402.10, the local agency must designate by name the public health nurse member of the preadmission screening team. If a local agency does not have a human services board organized under *Minnesota Statutes*, sections 402.01 to 402.10, the local agency must contract with the board of health organized under *Minnesota Statutes*, section 145.913, or a public or nonprofit agency under contract with the local agency to provide public health nursing services to provide the public health nurse member of the preadmission screening team. The local board of health or a public or nonprofit agency under contract with the local agency to provide public health nursing services must designate by name the public health nurse member of a preadmission screening team.

Subp. 3. **Number of preadmission screening team members present at screening.** Except as provided in subpart 5, the social worker and the public health nurse designated as members of the preadmission screening team must be present at a preadmission

screening. The applicant's or nursing home resident's physician may be present if the physician chooses to participate in the preadmission screening.

Subp. 4. Physician notification of preadmission screening. The local agency must notify the physician of the applicant or nursing home resident being screened, by telephone, of the date, time, and place the person's preadmission screening is to take place. The telephone notice must be made on the day that the preadmission screening team schedules the screening. The notice must state the physician's right to participate as a member of the preadmission screening team. No later than ten working days after the telephone notice, the local agency must send the physician a written notice that contains the information given in the telephone notice.

Subp. 5. Preadmission screening by public health nurse. Preadmission screening may be completed by the public health nurse member of the team, in consultation with the social worker, for applicants who are being admitted to a nursing home from a hospital and who are not eligible for medical assistance under parts 9505.0010 to 9505.0150. For the purpose of this subpart, "consultation" means a meeting or telephone conversation between the public health nurse and the social worker that takes place after the public health nurse has completed the preadmission screening. The purpose of the consultation is to discuss the assessment, the recommendation, and, as appropriate, the applicant's individual service plan or the applicant's plans for discharge from the nursing home.

Subp. 6. Physician consultant to preadmission screening team. A local agency must designate a physician who practices within the local agency's service area to serve as a consultant to the preadmission screening teams designated under subpart 2.

9505.2413 CONTRACTS FOR PREADMISSION SCREENING TEAM MEMBERS FOR APPLICANTS DISCHARGED FROM HOSPITALS.

The local agency may contract with a nonprofit hospital to provide one or both members of a preadmission screening team to screen applicants being discharged from the nonprofit hospital and to make recommendations for the screened applicants about nursing home admission and community services necessary for the applicant's individual service plan. The contract between the local agency and the nonprofit hospital must:

- A. set beginning and ending dates of the contract;
- B. specify the duties and responsibilities of the local agency and the nonprofit hospital;
- C. specify that a member of the preadmission screening team to be provided by the hospital must be a discharge planner;
- D. designate by name the person or persons to be provided by the hospital;
- E. require the designated preadmission screening team member or members to comply with parts 9505.2390 to 9505.2500;
- F. specify that the member or members of the preadmission screening team under contract will screen only applicants being discharged from that nonprofit hospital;
- G. designate the person employed by the hospital and the person employed by the local agency who are responsible for proper performance under the contract;
- H. state that the nonprofit hospital must complete a preadmission screening for an applicant before the applicant's discharge from the nonprofit hospital;
- I. require that a member of the nonprofit hospital's screening team have no direct or indirect financial or self-serving interest in a nursing home or other referral such that it would not be possible for the member to consider each case objectively;
- J. specify the amount the local agency must pay the nonprofit hospital for carrying out the terms of the contract;
- K. specify the person employed by the hospital who is responsible for implementing appropriate data practices; and
- L. specify reports and records to be kept by the nonprofit hospital.

9505.2415 HOSPITAL NOTICE REQUIREMENTS.

Subpart 1. Notification of preadmission screening team. Except as indicated under subpart 2, the discharge planner of a hospital must notify the preadmission screening team about a hospital patient who is an applicant. Oral and written notices must be given. The oral notice must be given to the preadmission screening team at least three working days before discharge of the applicant. The hospital must document the oral notice by sending the preadmission screening team a written notice within ten working days after the oral notice. The notice must:

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Proposed Rules

- A. provide the name of the applicant;
- B. provide the name of the nursing home that the applicant is considering;
- C. provide the applicant's primary diagnosis;

D. indicate the interval in which the applicant is expected to be discharged from the nursing home. The intervals are: less than 30 consecutive days; 30 days but less than three months; three months but less than six months; or six months or more;

E. indicate that the discharge planner gave information to the applicant about the purpose of preadmission screening and community services; and

F. indicate if the discharge planner wants to participate in the preadmission screening.

Subp. 2. **Exception to notice required of hospital.** If the applicant is in the hospital for less than three working days and preadmission screening is not completed, the hospital may discharge the applicant to a nursing home, but the hospital discharge planner must contact the preadmission screening team by telephone or in person before the applicant's discharge and complete the notice required under subpart 1.

9505.2420 TIME REQUIREMENTS FOR PREADMISSION SCREENING.

Subpart 1. **General time requirements.** Except as provided in subparts 2 to 6, the local agency must schedule a preadmission screening within five working days of receiving a request for the preadmission screening from an applicant or an applicant's representative. Except as provided in subparts 2 to 6, the preadmission screening must be completed within the period of ten working days following the applicant's request for preadmission screening.

Subp. 2. **Preadmission screening of hospital patients.** Notwithstanding subpart 1, the local agency must complete the preadmission screening of an applicant who is a hospital patient within three working days of receiving oral notice from the discharge planner under part 9505.2415, subpart 1. However, the local agency may delay the preadmission screening of an applicant who is a hospital patient when, based on information given in the oral notice, the preadmission screening cannot be completed before discharge from the hospital and the applicant's discharge plan indicates that the applicant must be admitted to a nursing home. If preadmission screening is delayed and the local agency and the nursing home are located in the same county, the local agency must notify the nursing home orally and in writing of the scheduled date for the preadmission screening and perform the preadmission screening within ten working days after the applicant's admission to the nursing home.

If preadmission screening is delayed and the nursing home and the local agency are located in different counties, the local agency of the county in which the nursing home is located must be responsible for the preadmission screening. The local agency of the county in which the hospital is located must send an oral and a written notice of the applicant's discharge plan to the local agency in the county where the nursing home is located. Oral notice must be given on the day that the local agency of the county in which the hospital is located delays preadmission screening. The written notice must be sent within ten working days after the oral notice. The written notice must include a copy of the delay-of-screening form completed by the local agency of the county in which the hospital is located and a copy of the hospital's discharge notice. The preadmission screening team from the local agency in the county where the nursing home is located must then notify the nursing home orally and in writing of the scheduled date for the preadmission screening and perform the preadmission screening within ten working days after the applicant's admission to the nursing home.

Subp. 3. **Emergency admission.** When preadmission screening is not completed due to an emergency admission, the procedures in items A to C must be followed.

A. The attending physician must certify the reason for the emergency in the applicant's medical record.

B. The nursing home must orally notify the preadmission screening team within two working days after the date of the emergency admission.

C. The preadmission screening team must complete the preadmission screening of the applicant within ten working days of the date of the applicant's admission to the nursing home or within ten working days after receiving the oral referral for preadmission screening, whichever is earlier.

Subp. 4. **Thirty-day exemption from preadmission screening.** A local agency must grant a 30-day exemption from preadmission screening to applicants who are not eligible for medical assistance if the requirements in items A and B are met.

A. The nursing home must notify the local agency of the applicant's admission no later than the day of the applicant's admission to the nursing home. The notice must include information stating that the requirements of item B have been met.

B. The attending physician must certify in the applicant's medical record in the nursing home that the applicant's expected length of stay in the nursing home will be 30 consecutive days or less.

The preadmission screening team of the local agency that has determined that the applicant's request for a 30-day exemption from preadmission screening meets the requirements in items A and B must complete and send the nursing home a form supplied by the

commissioner authorizing the 30-day exemption and at the same time must send a copy of the form to the applicant.

The nursing home must provide an update to the preadmission screening team before or on the 30th day of the applicant's stay if the applicant will continue to live in the nursing home for more than 30 consecutive days. The local agency must complete preadmission screening within ten working days after the 30th day unless the applicant is discharged within these ten working days, does not return to the nursing home, and does not become an applicant to a different nursing home.

Subp. 5. Nursing home applicant admitted to a hospital from a nursing home before completion of preadmission screening. The local agency must complete preadmission screening of a nursing home applicant who has been admitted to a nursing home within the periods required under subparts 1 to 4 unless the nursing home applicant is admitted to a hospital during these periods. If a nursing home applicant is admitted to a hospital during the periods under subparts 1 to 4, the preadmission screening time requirements begin again on the date of readmission to the nursing home.

Subp. 6. Applicant from another state. When an applicant from another state is admitted to a nursing home in Minnesota, the nursing home must notify the preadmission screening team within two working days after the date of the admission. The notice may be oral or written. The preadmission screening team must then complete the preadmission screening of the applicant within ten working days after the date of admission to the nursing home.

9505.2425 SCREENING AND ASSESSMENT PROCEDURES REQUIRED DURING PREADMISSION SCREENING.

Subpart 1. General requirements. The preadmission screening team must assess the health and social needs of the applicant or nursing home resident being screened using the assessment form provided by the commissioner. The preadmission screening team must carry out the responsibilities specified in subparts 2 to 14 and the duties listed in part 9505.0295, subpart 3, item C. The preadmission screening team must ask whether the person being screened has been determined eligible for or is receiving medical assistance and must give a person whose eligibility for medical assistance has not been determined information about making a medical assistance application.

Subp. 2. Assessment interview. The preadmission screening team must conduct the assessment in a face-to-face interview with the person being screened and the person's representative, if any.

Subp. 3. Information given to person being screened by screening team during preadmission screening. The preadmission screening team must give the person being screened or the person's representative the form or forms supplied by the commissioner containing the information specified in items A to E:

A. the purpose of the preadmission screening and alternative care grant program under *Minnesota Statutes*, section 256B.091;

B. the person's freedom to accept or reject the recommendation of the preadmission screening team;

C. the person's right to confidentiality under the Minnesota Government Data Practices Act, *Minnesota Statutes*, chapter 13;

D. the person's right to appeal the preadmission screening team's recommendation under part 9505.2500 and *Minnesota Statutes*, sections 256.045, subdivisions 2 and 3 and 256B.091, subdivision 5; and

E. if the person is not a recipient, the right of the person and the person's spouse to retain liquid assets up to the amount specified in *Minnesota Statutes*, sections 256B.14, subdivision 2; 256B.17; and 256B.48.

The preadmission screening team must document compliance with this subpart by signing and placing in the local agency's records of the person being screened the forms supplied by the commissioner that state the required information was given to the person being screened.

Subp. 4. Access to medical records. The preadmission screening team must ask the person being screened or the person's representative to sign forms necessary to authorize the team's access to the person's medical records. Furthermore, a nursing home or a hospital's discharge planner that conducts a preadmission screening must ask the person being screened or the person's representative to sign forms necessary to authorize the team's access to information that is needed to complete preadmission screening for the person. If the person or the person's representative agrees to sign the forms, the authorization must be completed as prescribed in subpart 14.

Subp. 5. Preadmission screening team recommendations. After completing the assessment form required in subpart 1, the preadmission screening team must offer the person being screened or the person's representative the most cost-effective alternatives available to meet the person's needs and must recommend one of the choices specified in items A to E.

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Proposed Rules

A. The preadmission screening team must recommend admission to a nursing home for an applicant or continued stay for a nursing home resident when the assessment indicates that the applicant or nursing home resident requires community services that are not available or that the anticipated cost of providing the required community services would exceed the annual monthly statewide average payment of the resident class under parts 9549.0050 to 9549.0059 that would be applicable to the person being screened if the person were placed in a nursing home, calculated from the payments made for that resident class in the previous fiscal year.

B. The preadmission screening team must recommend use of community services when the assessment indicates that the community services needed by the person are available and the anticipated cost of providing the community services is less than the total annual statewide monthly average payment of the resident class under parts 9549.0050 to 9549.0059 that would be applicable to the person if the person were placed in a nursing home, calculated from the payments made for that resident class in the previous fiscal year.

C. The preadmission screening team must recommend that the person live in the community without community services if the assessment indicates that the person does not need either admission to a nursing home or community services.

D. A preadmission screening team that has reason to believe that a person being screened has or may have a diagnosis of mental retardation or related conditions must refer the person for services including screening, development of the individual service plan, and case management services according to parts 9525.0015 to 9525.0165.

E. A preadmission screening team that has reason to believe that a person being screened has been diagnosed or may be diagnosed as mentally ill must refer the person for a diagnostic assessment as defined in *Minnesota Statutes*, section 245.462, subdivision 9. If the person is determined by the diagnostic assessment to have serious and persistent mental illness as defined in *Minnesota Statutes*, section 245.462, subdivision 20, and the person chooses community services under an ACG, the preadmission screening team must establish the individual service plan as required in part 9505.2430, subpart 4, and assure the assignment of a case manager as specified in part 9505.2430, subpart 6. The case manager shall incorporate the person's individual community support plan as defined in *Minnesota Statutes*, section 245.462, subdivision 12, into the person's individual service plan and shall coordinate the person's services that are specified in the Comprehensive Mental Health Act, *Minnesota Statutes*, sections 245.461 to 245.486.

Subp. 6. Required application for ACG services. If the person being screened chooses to remain in the community with community services the preadmission screening team must request the person or the person's representative to sign an application for the community services under the ACG. To be eligible to receive the community services under the ACG, the person being screened or the person's representative must sign the application. The application shall be on a form prescribed by the commissioner.

Subp. 7. Use of directory of services during preadmission screening. The preadmission screening team must use a directory of services provided by the local agency during the preadmission screening in determining the individual service plan of a person being screened. The local agency must make a directory of services available to the preadmission screening team, the person being screened, and other persons present at a screening. The local agency may compile its own directory of services or use a directory prepared by a community resource. In either event, the directory must be one that is updated annually.

Subp. 8. Notification of preadmission screening team recommendation. The preadmission screening team must give or send a written notice stating the team's recommendation to the person being screened, the person's representative, if any, and the person's physician. The preadmission screening team must also send the written notice to the county of financial responsibility. Both types of notice must be given or sent within ten working days after the date of the request for the preadmission screening.

Subp. 9. Individual service plan. The preadmission screening team must develop an individual service plan according to part 9505.2430 when the person or the person's representative chooses to use community services.

Subp. 10. Submittal of ACG client information to county of financial responsibility. If the county of service is different from the county of financial responsibility for an ACG client, the county of service must submit client information to the county of financial responsibility for approval of the individual service plan. The information must include items A to D:

- A. the original preadmission screening assessment form, including the original individual service plan;
- B. the original signed application if required under subpart 6;
- C. the original preadmission screening document; and
- D. a copy of the completed financial information form required in part 9505.2455, subpart 1, item C.

Subp. 11. County of financial responsibility review of individual service plan. The county of financial responsibility for an ACG client under part 9505.2455, subpart 3, must approve or reject the proposed individual service plan under items A to E and part 9505.2455, subpart 2.

A. If the costs of ACG services, together with the costs of skilled nursing services provided by public health nursing services that are reimbursable under medical assistance, if applicable, do not exceed the cost limitations in subpart 5, item B, the county of

financial responsibility must approve the proposed individual service plan. If the cost of ACG services together with the costs of skilled nursing services provided by public health nursing services that are reimbursable under medical assistance exceeds the cost limitations in subpart 5, item B, the county of financial responsibility must reject the individual service plan. Rejection of an individual service plan by the county of financial responsibility shall occur only if cost limitations of subpart 5, item B, are not met. If the county of financial responsibility and the county of service are the same, the county shall not reject the individual service plan prepared by the county's preadmission screening team if the individual service plan falls within the cost limitations of subpart 5, item B.

B. The county of financial responsibility must orally notify the preadmission screening team of the approval or rejection of the individual service plan within three working days after receiving the plan from the county of service. The county of financial responsibility must mail a written notice to the preadmission screening team within ten working days after receiving the individual service plan.

C. If the individual service plan is approved by the county of financial responsibility, the county of service must implement the plan upon oral notice of approval from the county of financial responsibility.

D. If the individual service plan is rejected by the county of financial responsibility because it exceeds the cost limitations in subpart 5, item B, the oral and written notice of rejection sent to the preadmission screening team must explain the reasons for the rejection and define the corrections needed to obtain approval. The preadmission screening team must develop a revised individual service plan for an ACG client whose initial individual service plan was rejected by the county of financial responsibility. The preadmission screening team must send the revised individual service plan to the county of financial responsibility within ten days after receiving the oral rejection.

E. If the revised individual service plan includes ACG services that meet the cost limitations in subpart 5, item B, the county of financial responsibility must approve the individual service plan and orally notify the preadmission screening team of the approval within three working days after receiving the revised plan. The county of financial responsibility must send a written notice of approval to the preadmission screening team within ten working days after receiving the revised plan.

Subp. 12. **Sending individual service plan to county of service.** If the county of financial responsibility approves an individual service plan, the preadmission screening team must send the written individual service plan to the county of service within ten working days after the approval.

Subp. 13. **Resident class assessment.** The preadmission screening team must complete the resident class assessment of the applicant required under parts 9549.0058 and 9549.0059 for an applicant who is not exempt from preadmission screening under part 9505.2400, subpart 5, or 9549.0059, subpart 1, item A, subitem (2). The resident class assessment shall be completed concurrently with preadmission screening performed within the time requirements of part 9505.2420.

Subp. 14. **Authorization to release information.** When a preadmission screening team, nursing home, or hospital's discharge planner asks a person being screened or the person's representative to sign forms needed to have access to information necessary to complete the preadmission screening, the following information must be on the form above the person's signature:

- A. the person's name;
- B. the date;
- C. the information authorized;
- D. who is authorized to give the information;
- E. to whom the information is to be given;

F. the information's use during the screening to determine the appropriateness of nursing home admission or continued nursing home placement or use of community services for the person; and

- G. the date of expiration of the authorization.

A separate form must be completed and signed for each authorization of access to a medical record. The period of the authorization must not exceed one year.

9505.2426 APPLICANT'S AND NURSING HOME RESIDENT'S RIGHT TO CHOOSE COMMUNITY SERVICES.

After completion of the preadmission screening required under part 9505.2425, subpart 5, or the rescreening required under part

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Proposed Rules

9505.2435, the applicant, nursing home resident, or the representative of the applicant or nursing home resident shall decide whether to accept or reject the recommendations of the preadmission screening team. If the applicant, nursing home resident, or the representative of the applicant or nursing home resident who is eligible for ACG services decides to receive the ACG services identified in his or her individual service plan, the applicant, nursing home resident, or the representative of the applicant or nursing home resident shall have the freedom to choose among the ACG providers under contract with the local agency to provide the identified ACG services.

9505.2430 ESTABLISHMENT OF INDIVIDUAL SERVICE PLAN.

Subpart 1. **Individual service plan required.** The preadmission screening team must establish an individual service plan for each applicant or nursing home resident who requests preadmission screening and who has been assessed under part 9505.2425, and who has chosen community services except persons referred under part 9505.2425, subpart 5, items D and E. The preadmission screening team must consult the applicant or nursing home resident or the person's representative in establishing the plan. Additionally, the preadmission screening team must ask the applicant or the nursing home resident or the representative of the applicant or nursing home resident whether he or she chooses to have other persons consulted about the plan. The preadmission screening team must consult the persons that the applicant, nursing home resident, or the representative of the applicant or nursing home resident has designated by name to be consulted about the plan.

Subp. 2. **Request for information about eligibility for medical assistance or 180-day eligibility determination.** The preadmission screening team must ask the applicant, nursing home resident, or the representative of the applicant or nursing home resident whether the applicant or nursing home resident receives medical assistance, is a recipient, or would be eligible to receive medical assistance within 180 days after admission to a nursing home. If the preadmission screening team has reason to believe the person being screened would be eligible to receive medical assistance within 180 days after admission to a nursing home, the preadmission screening team must estimate what the person's financial eligibility would be 180 days after admission using a form prescribed by the commissioner.

Subp. 3. **Individual service plan for a person not eligible for an ACG.** The individual service plan prepared by the preadmission screening team for a person being screened who is not eligible for an ACG must document compliance with items A to D:

A. the preadmission screening team determined that the person is not eligible for community services funded by an ACG under part 9505.2455, subpart 2;

B. the preadmission screening team discussed with the person the community services identified as needed in the assessment under part 9505.2425;

C. the preadmission screening team told the person what information is available in the directory of services; and

D. the preadmission screening team gave a copy of the individual service plan to the person.

Subp. 4. **Individual service plan for a person who is eligible for an ACG.** The individual service plan prepared by the preadmission screening team for a person being screened who is eligible for an ACG must document compliance with items A to D. The person or the person's representative and a member of the preadmission screening team must sign the individual service plan. The preadmission screening team must give the person or the person's representative a copy of the individual service plan.

A. The preadmission screening team has determined that the person being screened is eligible for community services funded by an ACG under part 9505.2455, subpart 2.

B. Recommendation of an individual service plan that identifies:

(1) any treatment prescribed by the individual's attending physician as necessary and any follow-up treatment as necessary;

(2) the community services needed by the person;

(3) the available providers of the identified community services including ACG service providers under contract with or employed by the local agency and informal support networks such as family, friends, volunteers, and church groups;

(4) the needed frequency of the services;

(5) the initial date on which each service must begin;

(6) the funding sources for the community services;

(7) the estimated cost of skilled nursing services provided by public health nursing services;

(8) the total cost of the ACG services;

(9) an estimate of the total cost of the community services; and

(10) the name of the case manager assigned by the county of service.

C. The preadmission screening team allowed the person or the person's representative to choose among the available providers listed in the directory of services who are under contract with or employed by the county of service.

D. The preadmission screening team reviewed the individual service plan with the person or the person's representative at the time of the completion of the preadmission screening.

Subp. 5. **Sliding fee information.** The preadmission screening team must tell the person being screened who would be eligible to receive medical assistance within 180 days after admission to the nursing home about the amount of the sliding fee that the person is required to pay for alternative care grant services according to the sliding fee schedule established by the commissioner under *Minnesota Statutes*, section 256B.091, subdivision 8, if the person will be receiving ACG services under an individual service plan developed under subpart 4.

Subp. 6. **Assignment of case manager.** Upon completion of the individual service plan, the local agency of the county of service shall assign a case manager to implement the individual service plan prepared for an ACG client under subpart 4.

9505.2435 RESCREENING.

Subpart 1. **Applicability.** The preadmission screening team must conduct a rescreening when the local agency receives either a written or oral request under subpart 2 suggesting that a recommendation resulting from a rescreening would differ from the recommendation given by the preadmission screening team at the last preadmission screening. Rescreenings must be conducted for all persons who meet the above criteria except ACG clients.

Subp. 2. **Request for rescreening.** The applicant, nursing home resident, or person's representative must submit a request to the local agency to be rescreened when the applicant or nursing home resident meets the criteria in subpart 1. The request may be oral or written and must state the date and location of the person's last preadmission screening and any changes in the person's health and social needs that have occurred since the last screening.

Subp. 3. **Rescreening procedure.** The rescreening must be conducted according to the procedures for preadmission screening in parts 9505.2390 to 9505.2450.

Subp. 4. **Reimbursement for rescreening.** Reimbursement to the local agency for rescreening must be the same as reimbursement of a preadmission screening under parts 9505.2440 and 9505.2445.

9505.2440 PREADMISSION SCREENING RATE.

For rate years beginning on January 1 following the effective date of parts 9505.2390 to 9505.2500, the commissioner shall annually establish the maximum statewide rate allowed for reimbursement of preadmission screening and the maximum reimbursement rate of a local agency for preadmission screening. The maximum statewide rate and the maximum reimbursement rate of a local agency shall not exceed the prior year's rate by more than the percentage change between the two previous Junes in the all urban consumer price index (CPI-U) for Minneapolis-St. Paul new series index (1967 = 100) as published by the Bureau of Labor Statistics, United States Department of Labor. The CPI-U is incorporated by reference and is available from the Minitex interlibrary loan system. The CPI-U is subject to frequent change. By January 15 of each year, the commissioner must send a written notice of the maximum reimbursement rate to a local agency.

9505.2445 REIMBURSEMENT FOR PREADMISSION SCREENING.

Subpart 1. **County of financial responsibility for preadmission screening of a recipient.** The county of financial responsibility for a recipient is as defined in *Minnesota Statutes*, chapter 256G.

Subp. 2. **Medical assistance reimbursement for preadmission screening of a recipient.** The medical assistance program must reimburse a local agency for the preadmission screening of a recipient if the local agency has complied with the time requirements of part 9505.2420. The local agency of the county of financial responsibility shall submit invoices for reimbursement of preadmission screening costs for a recipient to the department at the times and as required in part 9505.0450, subpart 2.

Subp. 3. **Reimbursement for preadmission screening of persons who are not recipients.** Reimbursement for the preadmission screening of persons who are not recipients must be made according to *Minnesota Statutes*, section 256B.091, subdivision 4.

Subp. 4. **Required local agency estimate of the cost and number of preadmission screenings of persons other than recipients.** Annually by February 15, a local agency must prepare and submit to the department an estimate for the following state fiscal

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Proposed Rules

year of the number and costs of preadmission screenings of persons who are not recipients and who will be applicants or nursing home residents for whom the county will provide preadmission screening.

Subp. 5. **Local agency's allocation of cost estimate to a nursing home.** Using the annual estimate of the number and costs of preadmission screenings required in subpart 4, a local agency must calculate the monthly amount to be paid by a nursing home to the local agency for preadmission screenings performed by the local agency for the following state fiscal year. The amount must be based on the nursing home's percentage of the number of licensed beds in nursing homes in the county of the local agency. The local agency must submit the amount to the nursing home by February 15.

Subp. 6. **Reconciliation of estimate required in subpart 4 with actual cost.** Annually by January 15, the department shall reconcile its estimated cost of a nursing home's number of preadmission screenings of persons who are not recipients as calculated under subpart 4 with the actual cost of preadmission screenings of these persons performed in the previous state fiscal year. The department shall notify the local agency of the amount of the overpayment or underpayment that the local agency must use in completing the calculation required under subpart 4.

9505.2450 PENALTIES.

Subpart 1. **Penalty to nursing home for admission of an unscreened applicant.** A nursing home that admits an unscreened applicant who is subject to the preadmission screening requirement under part 9505.2400 or that fails to notify the preadmission screening team about an emergency admission as required under part 9505.2420, subpart 3, item B, is subject to the penalties in items A to C.

A. If the applicant is a recipient, the nursing home must not be reimbursed by medical assistance for the applicant's resident days that preceded the date of completion of the applicant's assessment by the preadmission screening team under part 9505.2425. Furthermore, the nursing home must not bill an unreimbursed resident day to the unscreened applicant who is a recipient.

B. If the applicant is not a recipient, the nursing home must not bill the applicant for the applicant's resident days that preceded the date of completion of the applicant's assessment by the preadmission screening team under part 9505.2420.

C. The nursing home must include an unreimbursed resident day in the nursing home's resident day total reported to the department for the purpose of rate calculation under parts 9549.0010 to 9549.0080.

Subp. 2. **Penalty to county of service for late screening.** A county of service required to act within the time requirements in part 9505.2420 that fails to act within the time requirements shall not receive reimbursement for the preadmission screening under part 9505.2445, subparts 2 and 3, from medical assistance in the case of a recipient or from the nursing home in the case of a person who is not a recipient. Under these circumstances, the county of service shall be solely responsible for the costs of the preadmission screening. Nevertheless, the county of service must complete the preadmission screening as required in parts 9505.2400 and 9505.2425.

9505.2455 ALTERNATIVE CARE GRANTS.

Subpart 1. **Preadmission screening determination of eligibility.** The preadmission screening team must determine if the applicant or nursing home resident is eligible for an ACG under the criteria in subpart 2. If the person being screened is eligible for an ACG, the preadmission screening team must:

A. determine the county of financial responsibility according to subpart 3;

B. determine the county of service; and

C. determine the amount of the fee to be paid by the person if the person would be eligible to receive medical assistance within 180 days after admission to a nursing home. The amount of the sliding fee must be determined according to the sliding fee schedule established by the commissioner under *Minnesota Statutes*, section 256B.091, subdivision 8, and on forms provided by the commissioner.

Subp. 2. **Eligibility criteria.** A person is eligible for an ACG if the person meets the criteria in items A to G:

A. the person has been screened by the preadmission screening team;

B. the person is 65 years or older;

C. the person is a recipient or is eligible for medical assistance under parts 9505.0010 to 9505.0150 or would be eligible to receive medical assistance within 180 days after admission to a nursing home;

D. the person would require nursing home care if community services were not available;

E. the person is an applicant who chooses to remain in the community and use community services or a nursing home resident who chooses to leave the nursing home and receive community services;

F. the person requires community services that cannot be provided by services funded by sources other than alternative care grants;

G. the person has completed an application for community services; and

H. the cost of an ACG is within the monthly limitation specified in subpart 8.

Subp. 3. Determination of county of financial responsibility for alternative care grants. The preadmission screening team must determine the county of financial responsibility for an ACG client according to item A or B.

A. The county of financial responsibility for an ACG client who is a recipient is the county as defined in *Minnesota Statutes*, chapter 256G.

B. When ACG services begin, the county of financial responsibility for an ACG client who would be eligible to receive medical assistance within 180 days after admission to a nursing home is the county of financial responsibility as defined in *Minnesota Statutes*, chapter 256G for medical assistance recipients.

Subp. 4. Use of alternative care grants. ACG services may be reimbursed through an ACG if the person is eligible under subpart 2 and if the services are identified as needed in the ACG client's individual service plan and if the services are subject to the rates established in part 9505.2490. However, reimbursement for respite care services is limited to payment for 30 days of service in one state fiscal year.

Subp. 5. Supplies and equipment. If the ACG client is a recipient and the supplies and equipment are covered services under part 9505.0310, the cost of the supplies and equipment shall be paid as provided in the medical assistance program under parts 9505.0170 to 9505.0475 to the extent that reimbursement of the cost is not available from Medicare and a third party payer as defined in part 9505.0015, subpart 46. A local agency shall use ACG money to buy or rent care-related supplies and equipment for an ACG client as specified in items A to C.

A. If the supplies and equipment are not covered services under part 9505.0310 or the ACG client is not a recipient and the cost of the supplies and equipment for the ACG client is not more than \$100 per month, the local agency shall authorize the use of ACG funds.

B. If the supplies and equipment are not covered services under part 9505.0315 or the ACG client is not a recipient and the cost of the supplies and equipment exceeds \$100 per month, the local agency must obtain prior authorization from the department to use ACG funds to pay the cost of the supplies and equipment. For purposes of this subpart, "prior authorization" means written approval and authorization given by the department to the local agency before the purchase or rental of the supply or equipment.

C. The department shall have the right to determine whether the supplies and equipment are necessary to enable the client to remain in the community. If the department determines that the supplies and equipment are necessary to enable the ACG client to remain in the community and if the cost of the supplies and equipment together with all other ACG services and skilled nursing services provided by public health nursing services is less than the limitation in subpart 8, the department shall authorize the use of the ACG funds to pay the cost.

Subp. 6. Supervision costs. The cost of supervising a home health aide or personal care assistant must be included in the rate for home health aide or personal care services, unless payment for the cost of supervision is included in the rate for skilled nursing service. If the cost of supervising a home health aide or personal care assistant is included in the rate for skilled nursing service, the cost must not be included in the payment for a home health aide or personal care assistant. The cost of supervising an alternative care grant service other than a personal care service or a health aide service must be included in the rate for the service.

Subp. 7. Unallowable costs. Alternative care grants must not be used:

A. to establish community services for which funding sources are available through other programs;

B. to pay for community services that can be reimbursed through other funding sources including Medicare and third party payers as defined in part 9505.0015, subpart 46;

C. to pay for room and board costs except for respite care provided outside of the ACG client's residence; or

8. D. to pay providers that are not under contract with the local agency under *Minnesota Statutes*, section 256B.091, subdivision

Subp. 8. Costs included within the monthly limitation of an ACG to an ACG client. In a calendar month, the total cost of an ACG to an ACG client must not exceed the total statewide monthly average payment of the resident class to which the ACG client would be assigned under parts 9549.0050 to 9549.0059, calculated from the payments made for that resident class in the previous fiscal year. The following costs must be included in determining the total costs of an ACG:

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Proposed Rules

- A. cost of all ACG services;
- B. cost of skilled nursing services provided by public health nursing services and reimbursable under parts 9505.0170 to 9505.0475; and
- C. cost of supplies and equipment funded by an ACG.

Subp. 9. **Criteria for selection as an ACG provider.** A provider who provides ACG services must meet the criteria in items A and B.

- A. The provider must be employed by or have contracted with the local agency to provide ACG services.
- B. The provider must meet all licensure requirements and professional standards established in *Minnesota Statutes, Minnesota Rules*, and the Code of Federal Regulations that apply to the services provided.

Subp. 10. **Contract for ACG services.** If the local agency contracts with a provider under subpart 9, the contract must:

- A. set beginning and ending dates for the term of the contract;
- B. specify the duties and responsibilities of the local agency and the provider;
- C. require the provider to comply with parts 9505.2390 to 9505.2500;
- D. specify the amount that the local agency must reimburse the provider for the services;
- E. specify reports and record retention required of the provider by the local agency;
- F. specify the conditions under which the local agency shall terminate the provider's contract; and
- G. specify documentation of an individual abuse prevention plan that complies with parts 9555.8000 to 9555.8500 if such a plan is required of the provider by *Minnesota Statutes*, section 626.557.

Subp. 11. **Reassessment of ACG clients.** A face-to-face reassessment of an ACG client must be conducted by the case manager at least once every six months after ACG services have begun. The case manager must also reassess an ACG client when the case manager determines that changes in the health and social needs or the financial status of the ACG client require revisions in the individual service plan. When an ACG client leaves the county of service and establishes residence in another Minnesota county, the case manager responsible for implementing the ACG client's individual service plan must notify the local agency of the other county about the client's change in residence and request the other county to assign a case manager and conduct a reassessment.

Subp. 12. **Record of reassessment.** At the time of an ACG client's reassessment, the case manager must complete an assessment form and give the ACG client an information form or forms supplied by the commissioner containing the information required in part 9505.2425, subpart 3, items C to E. The case manager must document in the ACG client's case record that the client received the required information. The ACG client's case record of reassessment shall contain at least the information in items A to G:

- A. the completed assessment form;
- B. the reason for the reassessment;
- C. a redetermination of financial eligibility for the ACG client;
- D. the names and relationship to the client of the persons consulted during the reassessment;
- E. any revisions of the individual service plan that will occur in type, frequency, and cost of ACG services resulting from the reassessment;
- F. a completed quality assurance and review (QA&R) form, as required by part 9549.0059, with an estimate of the client's resident class; and
- G. a recomputed sliding fee for the client who would be eligible to receive medical assistance within 180 days after admission to a nursing home.

9505.2458 CASE MANAGER ACTIONS TO ASSURE SAFETY AND HEALTH OF ACG CLIENT WHO IS A VULNERABLE ADULT.

A case manager who has reason to believe an ACG client who is a vulnerable adult is or has been subject to abuse or neglect as defined in *Minnesota Statutes*, section 626.557, subdivision 2, that occurs at the client's residence or the place where the client receives the ACG service shall immediately comply with the reporting and other actions required under *Minnesota Statutes*, section 626.557, and shall determine how to assure the client's health and safety during the local agency's investigation. The case manager shall determine whether to withdraw the services, provide another living arrangement for the client, or arrange for the services of another ACG provider. When the case manager receives the findings of the local agency's investigation, the case manager shall amend the ACG client's individual service plan as needed to assure the client's health and safety.

9505.2460 LOCAL AGENCY SELECTION OF ACG PROVIDERS.

Subpart 1. **Public meeting to inform providers.** The local agency must hold an annual public meeting with possible providers of ACG services to inform providers about the criteria for provider selection as listed in subpart 4 and the date by which requests to be an ACG provider must be submitted to the local agency. The local agency may hold the annual public meeting at a time convenient to its schedule for completing service contracts to be included in its annual plan. The local agency must document that the notice required in subpart 2 was given and that the public meeting was held.

Subp. 2. **Notice of annual public meeting.** The local agency must place a notice of the public meeting required under subpart 1 in the newspaper that is the official newspaper designated by the county board of commissioners of the local agency under *Minnesota Statutes*, section 279.08. The notice must appear at least 14 days before the public meeting and must state the date, time, and place of the meeting, the type of services for which a need is anticipated, the criteria in subpart 3 for selection as an ACG provider, the date by which the local agency will complete its selection of ACG providers, and the name, telephone number, and address of the local agency's contact person who can provide information about the criteria for selection and contract terms.

Subp. 3. **Selection criteria.** The local agency must select providers for ACG contracts as required in *Minnesota Statutes*, section 256B.091, subdivision 8, using the criteria in items A to G and other criteria established by the local agency that are consistent with items A to G:

- A. the need for the particular service offered by the provider;
- B. the service needs of the ACG clients of the local agency including the number of ACG clients to be served, the length of time service will be provided, and the health status of the ACG clients;
- C. the geographic area to be served;
- D. the quality assurance methods to be used by the provider including compliance with required licensures, certifications, or standards and supervision of employees as required by parts 9505.2390 to 9505.2500;
- E. the rate for each service or unit of service;
- F. evaluation of services previously or currently provided by the provider; and
- G. the provider's previous compliance with contract provisions and future ability to comply with contract provisions including billing requirements, and terms related to contract cancellation and indemnification. The local agency must evaluate the ACG services that it provides to ACG clients using the criteria in this subpart.

Subp. 4. **Written record of reason for not selecting a provider.** A local agency must keep a written record of the reason a provider who requests a contract to provide ACG services was not selected and must notify the provider of the reasons.

9505.2465 STANDARDS FOR PERSONAL CARE SERVICES.

Subpart 1. **Definitions.** For purposes of this part, the following terms have the meanings given them.

A. "Personal care provider" means a home health agency that meets the requirements of subpart 5 and is under contract to the local agency to provide personal care assistants or a local agency licensed as a home health agency under *Minnesota Statutes*, sections 144A.43 to 144A.47.

B. "Personal care service" means a service listed in subpart 3 that is ordered by a physician and provided by a personal care assistant to an ACG client to maintain the ACG client in his or her residence.

Subp. 2. **Training requirements.** Personal care services must be provided by a personal care assistant who has successfully completed one of the training requirements in items A to E:

- A. a homemaker or home health aide preservice training program using a curriculum recommended by the Minnesota Department of Health;
- B. a nursing assistant training program or its equivalent for which competency as a nursing assistant is determined according to a test administered by the State Board of Vocational Technical Education;
- C. an accredited educational program for registered nurses or licensed practical nurses;
- D. a training program that provides the personal care assistant with skills required to perform the services specified in subpart 3; or

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Proposed Rules

E. determination by the supervising registered nurse that the personal care assistant has, through training or experience, the skills required to perform the duties specified in subpart 3.

Subp. 3. **Personal care services.** The duties specified in items A to N are components of personal care services:

A. bowel and bladder care;

B. skin care done to maintain the health of the skin, including prophylactic routine and palliative measures such as exposure to air, use of nondurable medical equipment, application of lotions, powders, ointments, and treatments such as heat lamp and foot soaks;

C. range of motion exercises;

D. respiratory assistance;

E. transfers;

F. bathing, grooming, and hairwashing necessary for personal hygiene;

G. turning and positioning;

H. assistance with furnishing medication that is ordinarily self-administered;

I. application and maintenance of prosthetics and orthotics;

J. cleaning equipment;

K. dressing or undressing;

L. assistance with food, nutrition, and diet activities;

M. accompanying an ACG client to obtain medical diagnosis or treatment and to attend other activities such as church if the personal care assistant is needed to provide personal care services while the recipient is absent from his or her residence; and

N. performing other services essential to the effective performance of the duties in items A to M.

Subp. 4. **Employment of personal care assistants.** A personal care assistant who provides personal care services under the ACG program is not an employee of the ACG client but must be employed by or under contract with a personal care provider. A personal care assistant employed by a personal care provider must meet the training requirements in subpart 2. The personal care provider shall terminate the personal care assistant's employment or assignment to an ACG client if the supervising registered nurse determines that the personal care assistant is not performing satisfactorily.

Subp. 5. **Personal care provider; eligibility.** Except as provided in subpart 11, a local agency that is not licensed as a home health agency under *Minnesota Statutes*, sections 144A.43 to 144A.47, and that wants to provide personal care services under the ACG program must contract with a personal care provider to provide the personal care services. To be eligible to contract with the local agency as a personal care provider, the provider must meet the criteria in items A to K. The local agency must assure the provider's compliance with the criteria in items A to K:

A. be licensed as a home health agency under *Minnesota Statutes*, sections 144A.43 to 144A.47;

B. possess the capacity to enter into a legally binding contract;

C. possess demonstrated ability to fulfill the responsibilities in this subpart and subpart 6;

D. demonstrate the cost effectiveness of its proposal for the provision of personal care services;

E. demonstrate a knowledge of, sensitivity to, and experience with the special needs, including communication needs, and the condition of the ACG client;

F. provide a quality assurance mechanism;

G. demonstrate the financial ability to produce a cash flow sufficient to cover operating expenses for 30 days;

H. disclose fully the names of persons with an ownership or control interest of five percent or more in the contracting agency;

I. demonstrate an accounting or financial system that complies with generally accepted accounting principles;

J. demonstrate a system of personnel management; and

K. if offering personal care services to a ventilator-dependent ACG client, demonstrate the ability to train and to supervise the personal care assistant and the ACG client in ventilator operation and maintenance.

Subp. 6. **Personal care provider responsibilities.** The personal care provider shall:

A. employ or contract with personal care assistants to provide personal care services and to train personal care assistants as necessary;

B. supervise the personal care services as in subpart 9;

C. if the provider is not the local agency, submit a bill to the local agency for personal care services provided by the personal care assistant;

D. establish a grievance mechanism to resolve consumer complaints about personal care services;

E. keep records as required in parts 9505.1750 to 9505.1880;

F. perform functions and provide services specified in the personal care provider's contract under subpart 5;

G. comply with applicable rules and statutes; and

H. perform other functions as necessary to carry out the responsibilities in items A to G.

Subp. 7. Employment prohibition. A local agency that provides ACG services to an ACG client whether the services are provided by the local agency as a personal care provider or under contract with a personal care provider must prohibit the employment of a person to provide personal care services for an ACG client if the personal care assistant:

A. refuses to provide full disclosure of criminal history records as specified in subpart 8;

B. has been convicted of a crime that directly relates to the occupation of providing personal care services to a qualified recipient;

C. has jeopardized the health or welfare of a vulnerable adult through physical abuse, sexual abuse, or neglect as defined in *Minnesota Statutes*, section 626.557; or

D. is misusing or is dependent on mood-altering chemicals including alcohol to the extent that the personal care provider knows or has reason to believe that the use of chemicals has a negative effect on the ability of the personal care assistant to provide personal care services or the use of chemicals is apparent during the hours the personal care assistant is providing personal care services.

Subp. 8. Preemployment check of criminal history. Before employing a person as a personal care assistant for an ACG client, the personal care provider shall require from the applicant for employment full disclosure of conviction and criminal history records pertaining to any crime related to the provision of health services under the medical assistance program or to the occupation of a personal care assistant.

Subp. 9. Supervision of personal care assistant. A personal care assistant must be under the supervision of a registered nurse. The supervising registered nurse shall not be a member of the family of the ACG client who is receiving personal care service from the personal care assistant under the registered nurse's supervision. The supervising registered nurse must:

A. ensure that the personal care assistant is capable of providing the personal care services required in the ACG client's individual treatment plan required by part 9505.2475 through direct observation of the assistant's performance or through consultation with the ACG client and the ACG client's primary caregiver when possible;

B. ensure that the personal care assistant is knowledgeable about the individual treatment plan before the personal care assistant performs the personal care services;

C. ensure that the personal care assistant is knowledgeable about essential observations of the ACG client's health, and about any conditions that should immediately be brought to the attention of either the nurse or the ACG client's physician;

D. evaluate the personal care services of an ACG client through direct observation of the personal care assistant's work or through consultation with the ACG client;

E. review the individual treatment plan with the ACG client and the personal care assistant at least once every 120 days and revise the individual treatment plan as necessary;

F. ensure that the personal care assistant and ACG client are knowledgeable about any change in the individual treatment plan; and

G. review all entries made in the ACG client's health care record showing the services provided and the time spent by the personal care assistant.

Subp. 10. Evaluation of services. The supervising registered nurse shall evaluate the personal care assistant's work under the schedule in items A to C.

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Proposed Rules

The supervising registered nurse must record in writing the results of the evaluation and action taken to correct any deficiencies in the work of the personal care assistant.

A. Within 14 days after the placement of a personal care assistant with the ACG client.

B. At least once every 30 days during the first 90 days after the ACG client first begins to receive personal care services under the individual service plan developed by the screening team.

C. At least once every 120 days following the period of evaluations in item B.

Subp. 11. **Employment and reimbursement of a relative as a personal care assistant.** A relative of an ACG client, with the exception of the ACG client's spouse, shall be reimbursed for providing personal care services to an ACG client only if the relative and the local agency meet the requirements in items A to D.

A. The relative must be employed by or under contract with the local agency or a personal care provider. A local agency employing a relative under this subpart does not have to be licensed as a home health agency under *Minnesota Statutes*, sections 144A.43 to 144A.47.

B. The relative would suffer financial hardship as a result of providing the ACG client's personal care services or a personal care assistant who is not a relative is not available to perform the ACG client's personal care services. For purposes of this subpart, financial hardship refers to a situation in which a relative incurs a substantial reduction in income because he or she resigns from a full-time job, goes from a full-time to a part-time job paying considerably less compensation, takes a leave of absence without pay from a full-time job to care for an ACG client, or incurs substantial expenses in making arrangements necessary to enable the relative to care for an ACG client.

C. The relative and the local agency must meet the requirements of subparts 2, 3, and 7 to 10.

D. The local agency has obtained the department's prior approval.

9505.2470 STANDARDS FOR HOME HEALTH AIDE SERVICES.

Subpart 1. **Employment of home health aide.** A home health aide who provides home health aide services under the ACG program to an ACG client must be an employee of a provider of home health aide services. The home health aide must be under the supervision of a registered nurse. Registered nurses and practical nurses licensed under *Minnesota Statutes*, sections 148.29 to 148.299 shall not be employed as home health aides under the ACG program.

Subp. 2. **Eligible providers.** To be eligible as a provider of home health aide services under the ACG program, a home health agency must be licensed under *Minnesota Statutes*, sections 144A.43 to 144A.46, and certified to participate under titles XVIII and XIX of the Social Security Act.

Subp. 3. **Approval and supervision of home health aide services.** A home health aide providing home health aide services in the ACG program must be approved by the supervising registered nurse to perform the medically oriented tasks written in the ACG client's individual treatment plan. The supervising registered nurse must be an employee of a home health agency that is providing the home health aide services.

Subp. 4. **Record of home health aide services.** A home health agency providing home health aide services to an ACG client must keep a record documenting the provision of home health aide services in the client's individual treatment plan. The documentation shall include the date and nature of the services provided and the names of the home health aide and the supervising registered nurse.

9505.2473 STANDARDS FOR HOMEMAKER SERVICES.

Subpart 1. **Qualified homemakers.** The local agency shall assure that each ACG client receiving homemaker services is served by a homemaker qualified under part 9565.1200, subpart 2. A person who is providing a homemaker service under the ACG program to an ACG client who is the person's relative must meet the standards in part 9565.1200, subpart 2.

Subp. 2. **Contracting for homemaker services and supervision of a homemaker.** The local agency may directly provide or contract for homemaker services that are part of the ACG client's individual service plan. If the local agency provides homemaker services directly, the local agency must also provide supervision of the homemaker's activities. If the local agency contracts with a provider for homemaker services, the provider must meet the requirements of *Minnesota Statutes*, sections 144A.43 to 144A.46.

Subp. 3. **Payment limitations; homemaker.** ACG payments shall be made only for the homemaker tasks specified in part 9505.2395, subpart 23, that are required by and indicated in the ACG client's individual service plan.

9505.2475 ESTABLISHMENT OF INDIVIDUAL TREATMENT PLAN.

Subpart 1. **Requirement.** An individual treatment plan must be developed for an ACG client who receives home health aide services or personal care services. The ACG client's physician and the supervising registered nurse, together with the personal care

assistant or the home health aide, the ACG client and the ACG client's representative, if any, must develop the individual treatment plan. The ACG client's physician and the supervising registered nurse must review the plan every 60 days and revise the plan if a revision is necessary to help the ACG client meet his or her needs. The supervising registered nurse must give a copy of the client's individual treatment plan to the ACG client's case manager and the home health agency that provides the home health or personal care services.

Subp. 2. **Contents of ACG client's individual treatment plan.** The ACG client's individual treatment plan must meet the requirements of Code of Federal Regulations, title 42, section 405.1223.

9505.2480 ALLOCATION OF STATE ACG MONEY.

Subpart 1. **Formula for allocation of state ACG money.** Annually before July 1, the commissioner must allocate state money available for alternative care grants to each local agency. The allocation must include the state share of money for services provided to recipients under the waiver and the state share of money for services to persons who would be eligible to receive medical assistance within 180 days after nursing home admission. The allocation must be made according to *Minnesota Statutes*, section 256B.091, subdivision 8. State funds allocated by the commissioner to a local agency for ACG services provided under the waiver shall not be used for any purpose other than services under the waiver.

Subp. 2. **Review of allocation; reallocation of state ACG money.** The commissioner must review the local agencies' projected and expended state ACG money on a quarterly basis. The commissioner must reduce the allocation of state ACG money to a local agency if the commissioner determines that the local agency will not use the full state allocation during the state fiscal year. The commissioner must reallocate the unused portion of the local agency's allocation to a local agency that has or wants to have more ACG clients than were projected to be served in its biennial plan.

9505.2485 ALLOCATION OF NUMBER OF ACG CLIENTS TO BE SERVED UNDER THE WAIVER.

Subpart 1. **Local agency allocation of ACG clients under the waiver.** At least annually, the commissioner must allocate the number of ACG clients who are recipients and for whom each local agency is financially responsible under the waiver. The commissioner must determine from the medical assistance eligibility data provided as of March 1 by the counties to the department each local agency's allocation according to the county's percentage of the statewide total number of recipients who are age 65 or older.

Subp. 2. **Review of allocation; reallocation of number of ACG clients under the waiver.** The commissioner shall review the projected and actual number of ACG clients served under the waiver by all local agencies on a quarterly basis. The commissioner may reduce the number of ACG clients allocated to a local agency if the commissioner determines that the local agency will serve fewer than its allocated number of ACG clients during the allocation period. The commissioner may reallocate the unused portion of the local agency's initial allocation to another local agency.

Subp. 3. **Notice to local agency.** The commissioner shall notify a local agency annually before May 15 of the number of recipients to be served as ACG clients under the waiver under subpart 1 and shall notify a local agency at least 15 days before the effective date of a change in the number of ACG clients allocated to the local agency under subpart 2.

9505.2486 LOCAL AGENCY ESTIMATION OF NUMBER OF PERSONS OTHER THAN RECIPIENTS TO BE SERVED AS ACG CLIENTS.

A local agency must estimate the number of persons other than recipients to be served as ACG clients. The estimate shall depend on the extent that ACG funds allocated to the local agency as required by part 9505.2480 are available. The local agency must report the estimate in the biennial plan and revisions to the biennial plan required in part 9505.2495, subpart 2.

9505.2490 RATES FOR ACG SERVICES.

Subpart 1. **Statewide maximum ACG service rate.** For years beginning on July 1 following the effective date of parts 9505.2390 to 9505.2500, the commissioner must annually set a statewide maximum rate allowed for payment of providing an ACG service. The statewide maximum rate must not exceed the prior fiscal year's rate by more than the percentage change between the two previous Januarys indicated by the all urban consumer price index (CPI-U) for Minneapolis-St. Paul new series index (1967 = 100), as published by the Bureau of Labor Statistics, United States Department of Labor. The CPI-U is incorporated by reference and is available from the Minitex interlibrary loan system. The CPI-U is subject to frequent change.

Subp. 2. **Local agency maximum ACG service rate set by commissioner; general.** The commissioner shall annually set the

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Proposed Rules

maximum rate that is available to a local agency for reimbursing an ACG provider for an ACG service. For years beginning on the first of July following the effective date of parts 9505.2390 to 9505.2500, the commissioner shall authorize an increase in the ACG rate available to a local agency for reimbursing an ACG provider equal to the percentage change between the two previous Januarys indicated by the all urban consumer price index (CPI-U) for Minneapolis-St. Paul new series index (1967 = 100), as published by the Bureau of Labor Statistics, United States Department of Labor.

Subp. 3. **Local agency maximum ACG service rate set by commissioner; new ACG service.** A local agency that wants to contract for an ACG service that has not been provided before the effective date of parts 9505.2390 to 9505.2500 shall propose a maximum rate to the commissioner that does not exceed the statewide maximum ACG service rate established by the commissioner under subpart 1.

Subp. 4. **Notice to local agency.** Annually by May 15, the commissioner shall notify each local agency of the statewide maximum rate allowed for payment of providing an ACG service under subpart 1. Additionally, the commissioner shall notify the local agency in writing of the percentage increase allowed under subpart 2.

Subp. 5. **Local agency request to exceed county's maximum rate.** Notwithstanding the limitation on the local agency's maximum rate for an ACG service in subpart 2, a local agency that wants to increase an ACG service rate more than the percentage authorized by the commissioner under subpart 2 may submit a request for the increase to the commissioner. The local agency must justify the need for the greater increase by submitting evidence that documents an increase in costs, such as wages established under a union contract, taxes, utility costs, or transportation charges, that exceeds the percentage change or that shows that the higher rate is necessary to obtain the desired service within the local agency's local trade area. For purposes of this subpart, "local trade area" has the meaning given in part 9505.0175, subpart 22.

Subp. 6. **Local agency ACG service rate subject to audit and approval.** A local agency ACG service rate and a request to exceed the local agency's maximum ACG service rate are subject to audit and approval by the commissioner.

9505.2495 LOCAL AGENCY REPORTS AND RECORDS.

Subpart 1. **Preadmission screening documents.** The local agency must complete and submit to the commissioner a preadmission screening document that summarizes the assessment and recommendations of the preadmission screening team on an applicant, nursing home resident, or ACG client for whom the local agency has completed a preadmission screening or a reassessment. The document must be submitted by the tenth of the month following the month in which a preadmission screening or reassessment was completed.

Subp. 2. **Local agency biennial plans.** The local agency must submit a biennial plan for preadmission screening and ACGs on forms prepared by the commissioner. The local agency must submit the biennial plan to the commissioner by July 1 of odd-numbered years in order for the local agency to receive preadmission screening funds or ACG funds during the next two state fiscal years. The local agency must submit revisions to the biennial plan to the commissioner for approval before implementing the revisions. The biennial plan must include items A to F:

- A. name and address of the local agency;
- B. names and titles of the preadmission screening team;
- C. names of ACG service providers;
- D. identification of the types of ACG services the local agency will provide and the rates for the services;

E. an ACG budget and estimates of the number of recipients and other persons to be served as ACG clients for the first year of the biennium and an estimated budget and estimated number of clients to be served for the second year of the biennium. No later than July 1 of the second year of the biennium, each local agency must submit the actual budget and revised estimate of the number of clients to be served proposed for the second year of the biennium; and

F. assurances of compliance with *Minnesota Statutes*, section 256B.091, and parts 9505.2390 to 9505.2500.

Subp. 3. **Commissioner approval of local agency biennial plan.** The commissioner must approve or reject by August 15 a biennial plan submitted by the local agency as required in subpart 2, item E.

Subp. 4. **ACG provider records.** The local agency and each ACG provider under contract with the local agency must maintain complete program and fiscal records and supporting documentation identifying the ACG clients served, the services provided, and the costs incurred. The records must be identified and maintained separate from other provider records. The local agency's and provider's records including the local agency's contract with the ACG provider are subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

9505.2496 CRITERION FOR DELAY IN SENDING REQUIRED NOTICES.

If information that the commissioner needs to prepare and send the notices required under parts 9505.2390 to 9505.2500 is not

provided in time for the commissioner to meet the time specified in these parts, the required notices shall be sent as soon as possible after the commissioner receives the needed information.

9505.2500 APPEALS OF SCREENINGS, RESCREENINGS, AND REASSESSMENTS.

Subpart 1. **Information about the right to appeal.** A preadmission screening team must provide a person being screened under part 9505.2400, rescreened under part 9505.2435, or reassessed under part 9505.2455, subpart 11, or the person's representative, information about the person's right to appeal the recommendation of the screening team. The information must be in writing and must be given to the person or the person's representative during the preadmission screening. The information must state the grounds for an appealable action and that ACG services will not be reduced, suspended, or terminated if the appeal is filed before the date specified in the information unless the person requests in writing not to receive continued ACG services while the appeal is pending.

Subp. 2. **Appealable actions.** A person being screened, rescreened, or reassessed may appeal if:

A. the recommendation of the preadmission screening team is to deny ACG services;

B. the preadmission screening team fails to determine with reasonable promptness whether the person is eligible for ACG services; or

C. the recommendation of the case manager based on a reassessment under part 9505.2455, subpart 11, is to reduce, suspend, or terminate ACG services.

Subp. 3. **Denial, reduction, suspension, or termination because of insufficient ACG funds or openings.** A denial, reduction, suspension, or termination of ACG services is not an appealable action if the county of financial responsibility has depleted the amount of money allocated under part 9505.2480 or assigned all the openings to serve ACG clients allocated under parts 9505.2485 and 9505.2486 or if the client's case manager withdraws ACG services as provided under part 9505.2458. Additionally, termination of an ACG service being provided to an ACG client under the waiver is not appealable if the termination results from termination of the waiver.

Subp. 4. **Submission of appeals.** The person being screened or the representative of the person being screened who wants to appeal the screening team's recommendation must submit the appeal in writing to the local agency of the county of service or to the department within 30 days after receiving written notice of the appealable action, or within 90 days of the written notice if a justified reason for delay can be shown.

Subp. 5. **Appeal of action.** An appeal of issues meeting the criteria under subparts 1, 2, and 4 shall be heard and decided in accordance with *Minnesota Statutes*, section 256.045.

REPEALER. *Minnesota Rules*, parts 9505.2250; 9505.2260; 9505.2270; 9505.2280; 9505.2290; 9505.2300; 9505.2310; 9505.2320; 9505.2330; 9505.2340; 9505.2350; 9505.2360; 9505.2370; and 9505.2380, are repealed.

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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.

Department of Human Services

Adopted Permanent Rules Relating to Medical Assistance Reimbursement for Training and Habilitation Services

The rules proposed and published at *State Register*, Volume 12, Number 23, pages 1178-1181, December 7, 1987 (12 S.R. 1178) are adopted as proposed.

Pollution Control Agency

Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Municipal Project List and Corrective Action Grants Program

The rules proposed and published at *State Register*, Volume 12, Number 22, pages 1138-1146, November 30, 1987 (12 S.R. 1138) are adopted as proposed.

Waste Management Board

Adopted Permanent Rules Relating to Hazardous and Industrial Waste Reduction Grants

The rules proposed and published at *State Register*, Volume 12, Number 16, pages 822-825, October 19, 1987 (12 S.R. 822) are adopted as proposed.

Emergency Rules

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§ 14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

- 1) that a free copy of the proposed emergency rule is available upon request from the agency;
- 2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
- 3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
- 4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§ 14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Department of Public Service

Extension of Emergency Rules Governing Energy Conservation Investment Loans

It is hereby ordered this 4th day of March, 1988 that the emergency rules in the above-entitled matter which were published in the *State Register* as adopted at Volume 12, Number 3, pages 98-101 (12 S.R. 98) are being continued in effect for an additional 180 days. This continuation is pursuant to *Minnesota Statutes*, section 14.35.

Tony Perpich, Commissioner
of Public Service

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.

Department of Finance

Maximum Interest Rate for Municipal Obligations in March

Pursuant to *Minnesota Statutes*, Section 475.55, Subdivision 4, Commissioner of Finance, Tom Triplett, announced today that the maximum interest rate for municipal obligations in the month of March, 1988 would be nine (9) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by General Obligations of the municipality may bear an interest rate of up to ten (10) percent per annum.

Dated: 1 March 1988

Peter Sausen
Assistant Commissioner
Cash and Debt Management

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Minnesota Pollution Control Agency

In the Matter of the Petition by the Cities of Greenwald, Elrosa and Meire Grove for the Formation of the GEM Sanitary District

PLEASE TAKE NOTICE that on February 23, 1987, the Minnesota Pollution Control Agency (Agency) adopted Findings of Fact and Conclusions determining that the conditions requisite for the formation of a sanitary district exist in the territory described in the petition submitted by the Cities of Greenwald, Elrosa and Meire Grove, Minnesota, on December 15, 1987, for the formation of a district. On February 23, 1987, the Agency issued its Order creating the GEM Sanitary District to include the Cities of Greenwald, Elrosa and Meire Grove and the land and easements necessary for construction of a sewage treatment plant to be located in Grove Township.

Gerald L. Willet, Commissioner
Minnesota Pollution Control Agency

Revisor of Statutes

Notice of Publication of *Minnesota Rules Supplement*

Minnesota Rules 1988 Supplement Number 1 is now available. This publication contains updates to *Minnesota Rules 1987* adopted between March 31, 1987 and November 30, 1987. If you purchased *Minnesota Rules 1987*, you will automatically receive *Minnesota Rules 1988 Supplement Number 1*. *Minnesota Rules 1987* and its 1988 supplements may be purchased from the Documents Division, Department of Administration, 117 University Avenue, St. Paul, MN 55155. The cost of the 11 volume set and its supplements is \$160. Orders must be prepaid. *Minnesota Rules 1988 Supplement Number 2* is scheduled for December 1988 publication.

Board of Teaching

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules for the Redesign of Teacher Education Programs and Teacher Education Program Evaluation

Notice is hereby given that the Board of Teaching is seeking information or opinions from sources outside the Board in preparing to propose the adoption of rules governing the redesign of teacher education programs and teacher education program evaluation as directed by *Minnesota Statutes* Section 125.185, subd. 4. Any interested person may submit data or views on this subject in writing or orally to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
(612) 296-2415

Any written material received by the Board shall become part of the hearing record in the event that the rules governing these subjects are promulgated.

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Crane Creek Asphalt, Inc.

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Statutes*, Section 161.315, and *Minnesota Rule*, 1230.3200, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

Minnesota Rule 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

The debarment is proposed because Richard C. Lundin, President and majority shareholder of Crane Creek Asphalt, Inc. has been convicted of contract crimes and is suspended from receiving Mn/DOT contracts. Richard C. Lundin was convicted in United States District Court, District of Minnesota, on January 19, 1988, of knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the United States Air Force in violation of Title 18, *United States Code*, Section 1001. Debarment proceedings are pending against him. *Minnesota Rule* 1230.3200, subpart 1, requires that a business be debarred upon conviction of a principal, i.e., an officer or director of that business, for commission of contract crimes. Crane Creek Asphalt, Inc. must be debarred because one of its principals, Richard C. Lundin, has been convicted of contract crimes and has been suspended from receiving Mn/DOT contracts.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Central Concrete, Inc.

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Statutes*, Section 161.315, and *Minnesota Rule*, part 1230.3200 and part 1230.3600, subpart 2, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

Minnesota Rule 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

Minnesota Rule 1230.3600, Debarment Based On Affiliation, states:

Subp. 2. Debarment. A business must be debarred when it:

- A. employs a former principal of a debarred or suspended business or person described in subpart 1 as an officer, director, manager, or in another significant decision-making capacity;
- B. is owned by or associated in a joint venture with a debarred or suspended business or is controlled by a principal or former principal of a debarred or suspended business; or
- C. is a business in which a former principal of a debarred or suspended business has a significant financial interest and the former principal has the authority to or will control, direct, manage, or influence any activities of the business with respect to the Mn/DOT contract in question.

The debarment is proposed because Central Concrete, Inc. is wholly owned by Lundin Construction Company, Inc., which was convicted in United States District Court, District of Minnesota, on January 19, 1988, of contract crimes, i.e., knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the United States Air Force in violation of Title 18, *United States Code*, Section 1001. Lundin Construction Company, Inc. has been suspended, that is, temporarily disqualified from receiving Mn/DOT contracts, or from serving as a subcontractor or material supplier under such a contract. Debarment proceedings against Lundin Construction Company, Inc. are pending. *Minnesota Rule* 1230.3600, subpart 2, requires that a business be debarred when it is owned by a debarred or suspended business. "Business" includes corporations.

Official Notices

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota, 55155 by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Hoffman Concrete, Inc.

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Statutes*, Section 161.315, and *Minnesota Rule*, part 1230.3200 and part 1230.3600, subpart 2, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

Minnesota Rule, 1230.3600, Debarment Based On Affiliation, states:

Subp. 2. Debarment. A business must be debarred when it:

A. employs a former principal of a debarred or suspended business or person described in subpart 1 as an officer, director, manager, or in another significant decision-making capacity;

B. is owned by or associated in a joint venture with a debarred or suspended business or is controlled by a principal or former principal of a debarred or suspended business; or

C. is a business in which a former principal of a debarred or suspended business has a significant financial interest and the former principal has the authority to or will control, direct, manage, or influence any activities of the business with respect to the Mn/DOT contract in question.

The debarment is proposed because Hoffman Concrete, Inc. is wholly owned by Lundin Construction Company, Inc., which was convicted in United States District Court, District of Minnesota, on January 19, 1988, of contract crimes, i.e., knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the United States Air Force in violation of Title 18, *United States Code*, Section 1001. Lundin Construction Company, Inc. has been suspended, that is, temporarily disqualified from receiving Mn/DOT contracts, or from serving as a subcontractor or material supplier under such a contract. Debarment proceedings against Lundin Construction Company, Inc. are pending. *Minnesota Rule* 1230.3600, subpart 2, requires that a business be debarred when it is owned by a debarred or suspended business. "Business" includes corporations.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Guaranteed Gravel & Sand Co.

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Statutes*, Section 161.315, and *Minnesota Rule*, part 1230.3200 and part 1230.3600, subpart 2, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

Minnesota Rule, 1230.3600, Debarment Based On Affiliation, states:

Subp. 2. Debarment. A business must be debarred when it:

A. employs a former principal of a debarred or suspended business or person described in subpart 1 as an officer, director, manager, or in another significant decision-making capacity;

B. is owned by or associated in a joint venture with a debarred or suspended business or is controlled by a principal or former principal of a debarred or suspended business; or

C. is a business in which a former principal of a debarred or suspended business has a significant financial interest and the former principal has the authority to or will control, direct, manage, or influence any activities of the business with respect to the Mn/DOT contract in question.

The debarment is proposed because Guaranteed Gravel & Sand Co. is wholly owned by Lundin Construction Company, Inc., which was convicted in United States District Court, District of Minnesota, on January 19, 1988, of contract crimes, i.e., knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the United States Air Force in violation of Title 18, *United States Code*, Section 1001. Lundin Construction Company, Inc. has been suspended, that is, temporarily disqualified from receiving Mn/DOT contracts, or from serving as a subcontractor or material supplier under such a contract. Debarment proceedings against Lundin Construction Company, Inc. are pending. *Minnesota Rule* 1230.3600, subpart 2, requires that a business be debarred when it is owned by a debarred or suspended business. "Business" includes corporations.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Lundin Quarry, Inc.

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Statutes*, Section 161.315, and *Minnesota Rule*, part 1230.3200 and part 1230.3600, subpart 2, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

Official Notices

Minnesota Rule, 1230.3600, Debarment Based On Affiliation, states:

Subp. 2. Debarment. A business must be debarred when it:

A. employs a former principal of a debarred or suspended business or person described in subpart 1 as an officer, director, manager, or in another significant decision-making capacity;

B. is owned by or associated in a joint venture with a debarred or suspended business or is controlled by a principal or former principal of a debarred or suspended business; or

C. is a business in which a former principal of a debarred or suspended business has a significant financial interest and the former principal has the authority to or will control, direct, manage, or influence any activities of the business with respect to the Mn/DOT contract in question.

The debarment is proposed because Lundin Quarry, Inc. is wholly owned by Lundin Construction Company, Inc., which was convicted in United States District Court, District of Minnesota, on January 19, 1988, of contract crimes, i.e., knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the United States Air Force in violation of Title 18, *United States Code*, Section 1001. Lundin Construction Company, Inc. has been suspended, that is, temporarily disqualified from receiving Mn/DOT contracts, or from serving as a subcontractor or material supplier under such a contract. Debarment proceedings against Lundin Construction Company, Inc. are pending. *Minnesota Rule* 1230.3600, subpart 2, requires that a business be debarred when it is owned by a debarred or suspended business. "Business" includes corporations.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Larry Nurre

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Rule* 1230.3200, and *Minnesota Statutes*, Section 161.315, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

The debarment is proposed because you were convicted of 1 count of knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, in the United States District Court, District of Minnesota on January 19, 1988. That is a contract crime as defined in *Minnesota Rule* 1230.3100, subpart 5.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Richard C. Lundin

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Rule* 1230.3200, and *Minnesota Statutes*, Section 161.315, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

The debarment is proposed because you were convicted of knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the Veteran's Administration in violation of Title 18, *United States Code*, Section 1001, in the United States District Court, District of Minnesota on January 19, 1988. Those are contract crimes as defined in *Minnesota Rule* 1230.3100, subpart 5.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo A. Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Lundin Construction Company, Inc.

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Rule* 1230.3200, and *Minnesota Statutes*, Section 161.315, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

The debarment is proposed because you were convicted of knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the Veteran's Administration in violation of Title 18, *United States Code*, Section 1001, in the United States District Court, District of Minnesota on January 19, 1988. Those are contract crimes as defined in *Minnesota Rule* 1230.3100, subpart 5.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo A. Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for River Bend Asphalt Co., a Minnesota Corporation

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Statutes*, Section 161.315, and *Minnesota Rule*, part 1230.3200, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

The debarment is proposed because River Bend Asphalt Company is wholly owned by Richard C. Lundin, who is also the President and Treasurer of River Bend Asphalt Company. Richard C. Lundin is suspended from receiving Mn/DOT contracts because he was convicted in United States District Court, District of Minnesota, on January 19, 1988, of contract crimes, i.e., knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the United States Air Force in violation of Title 18, *United States Code*, Section 1001. Those are contract crimes as defined in *Minnesota Rule* 1230.3100, subpart 5. Debarment proceedings are pending against him.

Minnesota Rule 1230.3200, subpart 1, requires that a business be debarred upon conviction of a principal, i.e., an officer, director, or shareholder engaged in management of that business, for commission of contract crimes. River Bend Asphalt Company must be debarred because one of its principals has been convicted of contract crimes and has been suspended from receiving Mn/DOT contracts.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Southern Minnesota Asphalt Supply, Inc.

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Statutes*, Section 161.315, and *Minnesota Rule*, part 1230.3200 and part 1230.3600, subpart 2, B, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

Minnesota Rule, 1230.3600, Debarment Based On Affiliation, states:

Subp. 2. Debarment. A business must be debarred when it:

A. employs a former principal of a debarred or suspended business or person described in subpart 1 as an officer, director, manager, or in another significant decision-making capacity;

B. is owned by or associated in a joint venture with a debarred or suspended business or is controlled by a principal or former principal of a debarred or suspended business; or

C. is a business in which a former principal of a debarred or suspended business has a significant financial interest and the former principal has the authority to or will control, direct, manage, or influence any activities of the business with respect to the Mn/DOT contract in question.

The debarment is proposed because Richard C. Lundin, the Vice-President and Treasurer of Southern Minnesota Asphalt Supply, Inc. was convicted in United States District Court, District of Minnesota, on January 19, 1988, of contract crimes and is suspended from receiving Mn/DOT contracts. Richard C. Lundin was convicted of knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the United States Air Force in violation of Title 18, *United States Code*, Section 1001. Debarment proceedings are pending against him.

Minnesota Rule 1230.3200, subpart 1, requires that a business be debarred upon conviction of a principal, i.e., an officer or director, of that business for commission of contract crimes. Southern Minnesota Asphalt Supply, Inc. must be debarred because one of its principals, Richard C. Lundin, has been convicted of contract crimes and has been suspended from receiving Mn/DOT contracts.

In addition, Southern Minnesota Asphalt Supply, Inc. is wholly owned by River Bend Asphalt Company, which has been suspended from receiving Mn/DOT contracts because it is wholly owned by Richard C. Lundin.

Minnesota Rule 1230.3600, subpart 2, B., requires that a business be debarred when it is owned by a debarred or suspended business.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Empire Paving, Inc.

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Statutes*, Section 161.315, and *Minnesota Rule*, part 1230.3200 and part 1230.3600, subpart 2, B., the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

Minnesota Rule, 1230.3600, Debarment Based On Affiliation, states:

Subp. 2. Debarment. A business must be debarred when it:

A. employs a former principal of a debarred or suspended business or person described in subpart 1 as an officer, director, manager, or in another significant decision-making capacity;

B. is owned by or associated in a joint venture with a debarred or suspended business or is controlled by a principal or former principal of a debarred or suspended business; or

C. is a business in which a former principal of a debarred or suspended business has a significant financial interest and the former principal has the authority to or will control, direct, manage, or influence any activities of the business with respect to the Mn/DOT contract in question.

The debarment is proposed because two of the principals, i.e., officers and directors of Empire Paving, Inc. have been convicted of contract crimes. Richard C. Lundin, who is Vice-President, Treasurer, and Director of Empire Paving, Inc. is suspended from

Official Notices

receiving Mn/DOT contracts because he was convicted in United States District Court, District of Minnesota, on January 19, 1988, of contract crimes, i.e., knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the United States Air Force in violation of Title 18, *United States Code*, Section 1001. Larry Nurre, President of Empire Paving, Inc. was convicted in United States District Court, District of Minnesota, on January 19, 1988, of knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371. Debarment proceedings are pending against both.

In addition, Empire Paving, Inc. is wholly owned by River Bend Asphalt Company, which has been suspended from receiving Mn/DOT contracts because it is wholly owned by Richard C. Lundin. *Minnesota Rule* 1230.3600, subpart 2. B. requires that a business be debarred when it is owned by a debarred or suspended business or is controlled by a principal of a debarred or suspended business.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Donald Showalter

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Rule* 1230.3200, and *Minnesota Statutes*, Section 161.315, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

The debarment is proposed because you were convicted of knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, in the United States District Court, District of Minnesota on January 19, 1988. That is a contract crime as defined in *Minnesota Rule* 1230.3100, subpart 5.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo A. Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 24 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Colin Anderson, aka, Colin Taylor

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Rule 1230.3200*, and *Minnesota Statutes*, Section 161.315, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

The debarment is proposed because you were convicted of knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and 2 counts of knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the United States Air Force in violation of Title 18, *United States Code*, Section 1001, in the United States District Court, District of Minnesota on January 19, 1988. Those are contract crimes as defined in *Minnesota Rule 1230.3100*, subpart 5.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo A. Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 36 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Kathryn Anderson, aka, Kathy A. Alfonsi

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Rule 1230.3200*, and *Minnesota Statutes*, Section 161.315, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

The debarment is proposed because you were convicted of 1 count of knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and 2 counts of knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the United States Air Force in violation of Title 18, *United States Code*, Section 1001, and 4 counts of knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and Veteran's Administration in violation of Title 18, *United States Code*, Section 1001, in the United States District Court, District of Minnesota on January 19, 1988. Those are contract crimes as defined in *Minnesota Rule 1230.3100*, subpart 5.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo A. Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 36 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

Official Notices

Department of Transportation

Notice of Proposed Debarment and Notice of Opportunity for Hearing for Kathy Kranes and Construction Company, Inc., aka, Kathy's Krane Corporation

Pursuant to *Laws 1984*, Chapter 654, Article 2, Section 8, *Minnesota Rule* 1230.3200, and *Minnesota Statutes*, Section 161.315, the Commissioner of Transportation proposes to disqualify you from receiving Minnesota Department of Transportation contracts and from serving as a subcontractor or material supplier under a Mn/DOT contract.

The debarment is proposed because you were convicted of knowingly and intentionally conspiring to defraud the United States by impeding, impairing, obstructing and defeating the administration of the "8(a) program" of the Small Business Administration in violation of Title 18, *United States Code*, Section 371, and knowingly and willfully making a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of the SBA and the Veteran's Administration in violation of Title 18, *United States Code*, Section 1001, in the United States District Court, District of Minnesota on January 19, 1988. These are contract crimes as defined in *Minnesota Rule* 1230.3100, subpart 5.

Minnesota Rule, 1230.3200, Grounds For Debarment states:

Subpart 1. Contract crime. A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

You may request a hearing under *Minnesota Statutes*, Chapter 14, by submitting a written request for a hearing to Leo A. Korth, Department of Transportation, Transportation Building, Room 413, John Ireland Boulevard, St. Paul, Minnesota 55155, by March 31, 1988. If you request a hearing, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings to recommend to the Commissioner of Transportation whether there are grounds for debarment and the period of the debarment.

If you do not request a hearing within 20 days from the date of this notice, the allegations in this notice will be considered true and you will be debarred for a period of 36 months, effective April 1, 1988.

Dated: 8 March 1988

Douglas Differt
Deputy Commissioner

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: Trucks schedule 113F
Contact: D.M.
Bid due date at 2pm: March 17
Agency: Natural Resources
Deliver to: Various
Requisition #: 29000 49404

Commodity: Fine paper—cut sheets
Contact: A.W.
Bid due date at 2pm: March 17
Agency: Central Stores & Various
Deliver to: Various
Requisition #: Price Contract

Commodity: Crawler tractor w/dozer
Contact: B.T.
Bid due date at 2pm: March 17
Agency: Natural Resources
Deliver to: Grand Rapids
Requisition #: 29000 49574

State Contracts and Advertised Bids

Commodity: Compaq portable III
Contact: B.V.
Bid due date at 2pm: March 17
Agency: Governor's Office
Deliver to: St. Paul
Requisition #: 55000 90635

Commodity: Unisys system
Contact: B.V.
Bid due date at 2pm: March 18
Agency: State University
Deliver to: Mankato
Requisition #: 26071 18037

Commodity: Snowmobile half tracks
Contact: B.T.
Bid due date at 2pm: March 21
Agency: Natural Resource, So. Service
Deliver to: Grand Rapids
Requisition #: 29000 49409

Commodity: Surveillance equipment
Contact: J.D.
Informal Bid Opening: March 17
Agency: Public Safety
Deliver to: St. Paul
Requisition #: 07300 48011

Commodity: Conflict monitors
Contact: P.A.
Bid due date at 2pm: March 18
Agency: Transportation, Elec. Service
Deliver to: St. Paul
Requisition #: 79000 83884

Commodity: Cameras, rebid
Contact: P.A.
Bid due date at 2pm: March 21
Agency: Public Safety, Warehouse
Deliver to: St. Paul
Requisition #: 07500 469131

Commodity: Laboratory oven
Contact: J.G.
Bid due date at 2pm: March 18
Agency: Various
Deliver to: Various
Requisition #: 79000 84002

Commodity: Bituminous materials
Contact: J.J.
Bid due date at 2pm: March 18
Agency: Transportation
Deliver to: Various
Requisition #: Price Contract

Commodity: Offset supplies
Contact: A.W.
Bid due date at 2pm: March 21
Agency: Various
Deliver to: Various
Requisition #: Price Contract

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: 1,000 28# kraft envelopes, 9½" × 11½", negs furnished
Contact: Printing Buyer's Office
Informal Bid Opening: 4:30pm, 15 March
Agency: Human Services
Deliver to: St. Paul
Requisition #: 5586 & 5587

Commodity: 10M 4-part contracts, numbering, type to be set, 8½" × 6¼" w/tab
Contact: Printing Buyer's Office
Informal Bid Opening: 4:30pm, 15 March
Agency: Administration
Deliver to: St. Paul
Requisition #: 5558

Commodity: 50,000 newspaper, 2-fold 15" × 22¾" sheet size, 2 sheets, 2 sides
Contact: Printing Buyer's Office
Informal Bid Opening: 4:30pm, 15 March
Agency: Natural Resources
Deliver to: Itasca State Park
Requisition #: 4927

Commodity: 102M window envelope, type to set, #10 size
Contact: Printing Buyer's Office
Informal Bid Opening: 4:30pm, 15 March
Agency: PERA
Deliver to: St. Paul
Requisition #: 5519

Commodity: 1,000 folders, 11½"
Contact: Printing Buyer's Office
Informal Bid Opening: 4:30pm, 15 March
Agency: Agriculture
Deliver to: St. Paul
Requisition #: 5573

Commodity: Various posters, type to be set, one-sided, 9" × 12" and 12" × 18"
Contact: Printing Buyer's Office
Informal Bid Opening: 4:30pm, 16 March
Agency: Secretary of State
Deliver to: statewide
Requisition #: 5600

Commodity: 103M 1-ply continuous form, type to be set, 17½" × 14 w/ pinfeeds
Contact: Printing Buyer's Office
Informal Bid Opening: 4:30pm, 15 March
Agency: PERA
Deliver to: St. Paul
Requisition #: 5520

Commodity: 10M mailing labels, 3⅞" × 2⅞", continuous form fed, pressure sensitive
Contact: Printing Buyer's Office
Informal Bid Opening: 4:30pm, 15 March
Agency: Voc-Tech Education Board
Deliver to: St. Paul
Requisition #: 5196

Commodity: 250M registration stamps, negs furnished, 1¼" × 1½" sheet size
Contact: Printing Buyer's Office
Informal Bid Opening: 4:30pm, 16 March
Agency: Charitable Gambling Control Board
Deliver to: St. Paul
Requisition #: 5639

State Contracts and Advertised Bids

Commodity: 50M 2-part continuous form sets, fan fold 2 up, pin feed left & right, 7 $\frac{3}{8}$ " \times 5 $\frac{1}{2}$ " finished size, negs furnished

Contact: Printing Buyer's Office

Informal Bid Opening: 4:30pm, 16 March

Agency: Jobs & Training

Deliver to: St. Paul

Requisition #: 5637

Commodity: 75M brochure, 2-fold, 8 $\frac{1}{2}$ " \times 11" sheet size, negs furnished

Contact: Printing Buyer's Office

Informal Bid Opening: 4:30pm, 16 March

Agency: Public Safety

Deliver to: St. Paul

Requisition #: 5578

Commodity: 180M 5-part form, 4 $\frac{5}{8}$ " \times 9 $\frac{1}{2}$ ", negs furnished

Contact: Printing Buyer's Office

Informal Bid Opening: 4:30pm, 17 March

Agency: Jobs & Training

Deliver to: St. Paul

Requisition #: 5673

Commodity: 5,500 booklets, 32pp., 8 $\frac{1}{2}$ " \times 11" finished, type to be set

Contact: Printing Buyer's Office

Informal Bid Opening: 4:30pm, 17 March

Agency: Secretary of State

Deliver to: 87 MN Counties

Requisition #: 5646

Minnesota Correctional Facility—Red Wing

Notice of Availability of Contract for Certified Driver Education Instructor Services

The program at the Minnesota Correctional Facility requires the services of a certified driver education instructor. This position requires up to 60 hours per month of instruction. Responsibilities include classroom and behind-the-wheel instruction, testing and record keeping. The instructor shall provide a safety certified driver education car. The instructor would also be required to provide special instruction to students on a special need basis. Hours of instruction will be coordinated with general school schedules. Payment is \$10.00/hour. Annual cost would be limited to \$7,200.00.

For further information on this contract, contact:

John Odden, Director of Education
Minnesota Correctional Facility—Red Wing
1079 Highway 292
Red Wing, Minnesota 55066
Telephone: (612) 388-7154

Final submission date for this contract is May 1, 1988.

NOTARY PUBLIC LAWS

Statutory requirements regarding the oath of office, necessary bond, and taking of depositions. Includes an explanation of the term of office and procedures for removal from office. Code No. 2-13. \$4.00.



Jane Smith

NOTARY PUBLIC-MINNESOTA

RAMSEY COUNTY

My Commission Expires January 1, 1994

U.S. SMALL BUSINESS ADMINISTRATION PUBLICATIONS:

Insurance and Risk Management for Small Business

Code No. 16-50. \$3.00.

Small Business Finance

Code No. 16-42. \$2.00.

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Code No. 16-40. \$4.75.

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.

Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

Minnesota Correctional Facility—Red Wing

Notice of Availability of Contract for Dietetic Services

The program at the Minnesota Correctional Facility—Red Wing requires the services of a licensed dietitian. This person will provide professional dietetic consultation, enabling dietetic staff to provide hygienic dietetic services that meet the daily nutritional needs of residents, ensures that special dietary needs are met and, provides palatable, attractive and acceptable meals. The consultant will provide a minimum of 12 hours per month of professional services. Annual cost is limited to \$3,000.00.

For further information on this contract, contact:

Richard Ottoson, Business Manager
Minnesota Correctional Facility—Red Wing
1079 Highway 292
Red Wing, Minnesota 55066
Telephone: (612) 388-7154

Final submission date for this contract is May 1, 1988.

Minnesota Correctional Facility—Red Wing

Notice of Availability of Contract for Catholic Chaplain

The program at the Minnesota Correctional Facility—Red Wing requires the services of an ordained Catholic Priest from 7/1/88 to 6/30/89. This person will provide weekly Mass and spiritual guidance and counseling for the Catholic students at MCF—Red Wing as requested. This person will provide up to 20 hours per week for 50 weeks at \$10.50 per hour. Annual cost is limited to \$10,500.00.

For further information on this contract, contact:

Kenneth Williams, Assistant Superintendent
Minnesota Correctional Facility—Red Wing
1079 Highway 292
Red Wing, Minnesota 55066
Telephone: (612) 388-7154

Final submission date for this contract is: May 1, 1988.

Minnesota Correctional Facility—Red Wing

Notice of Availability of Contracts for Medical Clinic Services, Psychological Evaluation Services and Volunteer Services Coordinator

Notice of Availability of Contract for Medical Clinic Services

The program at the Minnesota Correctional Facility—Red Wing requires the services of a medical clinic. This clinic will provide all clinic services as ordered by the medical staff at MCF—Red Wing. Annual cost is limited to \$7,000.00.

Notice of Availability of Contract for Psychological Evaluation Services

The program at the Minnesota Correctional Facility—Red Wing requires the services of a licensed psychologist. This person will provide the written psychological evaluation—through testing, interviews, etc., on up to a twice weekly basis for all new admissions to the institution, to re-test selected youths based upon specific staff referral, plus limited staff training in the area of his/her expertise. Payment is \$263.16 per 8-hour day. Annual cost is limited to \$25,000.00.

Notice of Availability of Contract for Volunteer Services Coordinator

The program at the Minnesota Correctional Facility—Red Wing requires the services of a volunteer coordinator. Position requires

State Contracts and Advertised Bids

up to 50 hours per week. Responsibilities include the providing of professional volunteer services for juvenile clients at the institution through the recruiting and training of volunteers, plus the development of a coordinated scheduling of the volunteers, plus the development of a coordinated scheduling of the volunteers to augment the on-going programs. Payment is \$2,141.00 per month. Annual cost is limited to \$25,692.00.

Department of Human Services

Notice of Extension of Deadline for Request for Proposals for Prepaid Health Plans

The Department of Human Services originally published a Notice of Request for Proposals for prepaid health plans to provide Medical Assistance services to Aid to Families with Dependent Children (AFDC) recipients in the *State Register* on February 8, 1988. The Department is now extending the deadline one week for health plans to submit a proposal. The new deadline for submitting a complete proposal is 4:30 p.m., on April 4, 1988. An original and four copies are required. Selection of health plans will be made in April 1988. Please direct all correspondence to:

William E. Novak
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155-3854
Phone: 612/296-1725

Department of Human Services

Division for Persons With Developmental Disabilities

Request for Proposals to Design and Conduct a Study of Case Management Ratios for Case Managers Providing Services to Persons With Mental Retardation and Related Conditions

I. Introduction

The Department of Human Services has entered into a settlement in the *Welsch vs. Gardebring* case. Part IX, section B of the Settlement requires that the Department prepare a report including data regarding the average caseload ratio and the caseload ratio range of case managers to persons with mental retardation and related conditions for each county, and summaries of findings are made by Department personnel with regard to the adequacy of case management services provided persons with mental retardation and related conditions based on other studies completed by the Department.

II. Request for Proposals

Therefore, the Division for Persons with Developmental Disabilities is issuing a request for proposals from qualified consultants to:

1. design a study to determine, by county, across time, the average caseload ratio of case managers to persons with mental retardation and related conditions, and the range of caseload ratios for such case managers; and
2. conduct the study, collecting data between June and August 1988; and
3. determine whether the average caseload ratio by county is changing; and
4. analyze the relationships between the caseload size and range data and the services actually provided to persons with mental retardation and related conditions based on studies completed by the Department; and
5. make recommendations to the Department.

This request does not obligate the State to complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interests.

III. Required Elements

Proposals *must* include:

1. research strategies for determining the following for each of the 87 counties at several points in time:

- a. the county caseload of persons with mental retardation and related conditions; and
- b. the case management effort (FTEs) for serving this population; and
- c. the average caseload ratio; and
- d. the caseload range; and

2. strategies for analysis of the results of this study and for the analysis of the results of other studies conducted by the Department pursuant to Part V, section B.1. and Part IX, section D of the *Welsch* Settlement to determine the impact of case load size on service provision; and

3. a summary of other recent studies in the area of case management; and
4. qualifications of persons who would be designing or conducting the survey; and
5. identification of all personnel including sub-contractors, who will perform each task, including their training and experience; and
6. a description of the applicant's ability to perform the study, including data analysis; and
7. assurance that the results of the study and required analysis will be available by September 1, 1988; and
8. a proposed budget.

IV. Funding

Approximately \$15,000 are available for this study.

V. Evaluation

All proposals submitted by the deadline will be evaluated. An oral interview may be part of the selection process.

Evaluation will be based on the following:

1. expressed understanding of project objectives; and
2. proposed strategies for research and analysis; and
3. project management capabilities; and
4. proposed workplan and timetable; and
5. qualifications of applicant(s); and
6. projected costs.

Evaluation and selection will be completed by May 11, 1988. All proposals must be received by 4:30 PM April 17, 1988. Late proposals will not be accepted. The proposal must be signed by an authorized member of the firm. Prices and terms must be valid for 120 days. The applicant must submit 5 copies of the proposal to Karen Peed, Department of Human Services, Division for Persons with Developmental Disabilities, 2nd Floor North, 444 Lafayette, St. Paul, MN 55101.

Applicants with questions may contact Karen Peed at (612) 297-4980.

Department of Natural Resources

Minerals Division

Request for Proposals for Financial Advice for Minnesota's COREX Iron-making Project

The Minnesota Department of Natural Resources is requesting proposals from individuals and organizations capable of providing the state with financial advice which will be used in negotiation with the U.S. Department of Energy (USDOE). The state's COREX Process Proposal was recently selected for negotiation in USDOE's Clean Coal Technology program. As a result \$60 million of federal funding is available as an interest-free forgivable loan to cover a portion of the cost of constructing a COREX iron-making plant in northeastern Minnesota.

The state must present a financing plan to the federal government which assures repayment of the federal loan. In addition, the state must assure itself that the project can be financed if the costs generated as part of future engineering studies match the costs contained in preliminary estimates. The federal government also requires assurances that the private funding will be available in the future if it commits federal funding to the project. The requirements for financial assurances generate a need for competent financial advice at an early stage in the project.

State Contracts and Advertised Bids

Respondents to the solicitation should be able to demonstrate capability in a broad range of capital markets including debt and equity financing, and familiarity with the requirements lenders typically place on projects of this type. In addition, they should be familiar with federal funding programs in a variety of agencies, and able to apply that knowledge to the current project. Finally, they should be able to provide project sponsors with access to existing capital markets. A proven track record in achieving financing for projects built with a mix of public and private funds is mandatory.

The Commissioner of the Department of Natural Resources will award contracts after internal review. The issuance of the Request for Proposals does not require the department to award a contract. All proposals must be received no later than 4:30 P.M. CST on April 12, 1988.

All proposals and inquiries should be directed to:

Ronald D. Visness
Minnesota Department of Natural Resources
Minerals Division
500 Lafayette Road, Box 45
St. Paul, MN 55155-4045
(612) 296-9562

Department of Public Service

Energy Division: Office of Municipal Energy Finance

Notice of Request for Proposals for Conducting an Assessment of the Organizational and Management Effectiveness of the Office of Municipal Energy Finance

The Energy Division is seeking proposals from firms or individuals to assess the office's organizational and management structure, conduct team building exercises and provide assistance in diagnosing problems and facilitate problem solving. The deadline for receipt of proposals is March 30, 1988.

The total cost of this contract is estimated not to exceed \$8,000. The formal Request for Proposals (RFP) may be requested from and all inquiries should be directed to:

Claudia Anderson
Department of Public Service
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-1220

State Grants

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Legal Services Advisory Committee

Request for Proposals for Grant Funding for Legal Services and Alternative Dispute Resolution Programs for Low Income People

The Legal Services Advisory Committee is requesting proposals for grant funding for legal services and alternative dispute resolution programs for low income people.

To request information on the grant application process, please contact:

J. L. Rehak
230 State Capitol
St. Paul, MN 55155
Phone: (612) 296-6822

Application Deadline: 15 April 1988

Dated: 12 February 1988

Supreme Court Decisions

Decision Filed 11 March 1988

C1-87-631 Antonia Searles v. Scott Searles, Jr., petitioner, Appellant. Court of Appeals.

Plaintiff's complaint, alleging a marital property ownership interest in Minnesota land held in her former husband's name alone, states a cause of action for partition sufficient to defeat a Rule 12 motion; even though the parties were married and divorced in Missouri, the Minnesota court has jurisdiction of the partition action.

Affirmed. Simonett, J.

Took no part, Popovich, J.

Catching criminals is only one part of law enforcement. Here's the rest of it.

Police Report Writing Style Manual 1986—A common framework for report writing throughout the state. Discusses the general purpose of police reports, reviews field notetaking, offers instructions on completing common report forms, and introduces the Data Practices Law. Code No. 14-13. \$12.50.

Background Investigation Manual 1986—A guide to conducting effective thorough background investigations of peace officer candidates. Included are various criteria for use in the selection process: experience, education, and past behavior. Sample forms. Code No. 14-15. \$10.00.

Motor Vehicle Traffic Laws 1987—Includes laws governing motor carriers, motor vehicle registration and no-fault auto insurance. Code No. 2-85. \$13.00.

Criminal Code & Selected Statutes 1987—Governs the conduct of peace officers. Includes continuing education requirements, sentencing standards, and more. Code No. 2-68. \$15.00.

Blue Binder—3 ring, 2" capacity. Criminal Code and Motor Vehicle Traffic Laws require 1 binder each. Code No. 10-21. \$4.25.

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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. 4800—Dated: 19 February 1988

Florence Johnstone, Appellant, vs. Commissioner of Revenue, Appellee.

The above-entitled matter came on for hearing before the Honorable M. Jean Stepan, Judge of the Minnesota Tax Court, on August 7, 1987, at the Hennepin County Government Center in Minneapolis, Minnesota. Post-trial briefs were filed by both parties and the matter was submitted to the Court for decision on November 30, 1987.

Thomas M. Zappia, Attorney at Law, appeared on behalf of the appellant.

David T. Schultz, Special Assistant Attorney General, appeared on behalf of the appellee.

Syllabus

Minnesota Statutes, Section 290.92, subd. 1 (4), and 297A.01, subd. 2, do not limit personal liability of a responsible person to the single "most responsible" person, nor do they exclude placing responsibility on an individual who had full-time employment outside of the business with the tax deficiency.

* * *

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. At all times relevant hereto, the Triangle Restaurant, Inc. was a Minnesota corporation engaged in running a bar and restaurant at 1822 Riverside Avenue in Minneapolis.
2. The appellant initiated the process of incorporating the restaurant. She retained the attorneys who prepared the incorporating documents and met with them on at least two occasions.
3. At all times relevant hereto, appellant was the chief financial officer, secretary and the treasurer of the corporation. As an officer of the corporation the appellant had the authority to sign all checks drawn on corporate accounts, to open new accounts, to deposit money and other valuables in those accounts, to deal directly with the corporation's suppliers, and to bind the corporation generally.
4. The appellant held herself out to the public as an officer of the corporation who had the authority to bind the corporation.
5. The appellant was also a director and a 50% shareholder in the corporation.
6. The appellant hired Joseph Swanson, the corporation's accountant, and met with him at least twice prior to the restaurant's opening for business.
7. Robert Johnstone, the appellant's son, was the president, chief executive officer, and a 50% shareholder of the corporation. The appellant instructed Robert Johnstone on preparing the corporation's payroll.
8. On November 14, 1985 the appellant and Robert Johnstone executed a personal guarantee to Johnson Brothers Wholesale Liquor Company for the debts of the corporation to that creditor.
9. The restaurant opened for business on November 15, 1985.
10. On November 19, 1985, the corporation opened two accounts at the Riverside Community State Bank in Minneapolis. Florence Johnstone and Robert Johnstone were each authorized to sign checks on either account on their own signature. The appellant exercised her authority to sign checks drawn on corporate accounts at the Riverside Bank on several occasions between February 7, 1986 and November 5, 1986.
11. The corporation was subject to Minnesota sales and withholding taxes.
12. The corporation failed to remit sales and withholding taxes for the periods December, 1985 through October, 1986. The total amount of delinquent taxes is \$29,570.80.
13. By Order dated December 31, 1986, the appellee assessed the above unpaid sales and withholding taxes against the appellant pursuant to *Minnesota Statutes* § 297A.01 and § 290.92, which provide that any person responsible for filing sales and withholding tax returns and making payment of those taxes is personally liable for those taxes.

14. By April, 1986, the appellant knew of the corporation's delinquent sales and withholding taxes. As a result of those delinquencies, the appellant began regular meetings with the accountant to organize the books and records of the corporation and to pay the delinquent taxes. The appellant, sometime near July, 1986, hired Steve Brandreit to assist the accountant. The three met on several occasions in the basement office of the restaurant.

15. On May 30, 1986, the appellant opened a checking account on behalf of the corporation at the Northeast State Bank of Minneapolis and committed the funds in that account to pay the corporate creditors. The appellant was the only authorized signator on that account. All of the checks drawn on that account were to creditors of the corporation.

16. The appellant actively preferred some creditors of the corporation over the State of Minnesota.

17. The appellant signed federal withholding tax returns in her capacity as an officer of the corporation for the first three quarters of the tax year 1986. The appellant also signed a Minnesota employers' quarterly withholding form for 1986 and a Minnesota Department of Jobs and Training return as well.

18. The appellant was responsible for making payment of the sales and withholding taxes involved in this lawsuit.

Conclusions of Law

1. The appellant is a responsible person who is personally liable for the taxes at issue in this lawsuit under *Minnesota Statutes* §§ 297A.01 and 290.92.

2. The Order of the Commissioner of Revenue assessing the appellant personally liable for sales and withholding taxes is hereby affirmed.

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

BY THE COURT,
M. Jean Stepan, Judge
Minnesota Tax Court

Tax Court—Regular Division: Docket No. 4839—Dated: 24 February 1988

Dale A. Schafer, 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 October 16, 1987, at the Courtroom of the Tax Court, 520 Lafayette Road, St. Paul, Minnesota.

James McNary and Curt Stine, from the office of Legal Assistance at William Mitchell College of Law, represented the appellant.

Thomas Overton, Special Assistant Attorney General, and Lynn Belgea, from the office of the Attorney General, represented the appellee.

The issue in this appeal is whether amounts diverted by the appellant from the Winona Police Relief Association (WPRA) in 1984 constitute taxable income to the appellant.

Post-trial briefs were filed and the case was submitted to the Court for decision on December 28, 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. In the calendar years 1981 through 1985, the appellant was engaged in farming and feeding operations on a farm he owned and also on a nearby farm that he rented. Appellant made his 115-acre farm a hog and beef feeding operation. In addition he added a dairy operation on the adjacent rental property. Appellant added new feedlots, silos, bins, and automated feeding and manure handling equipment.

2. Appellant also owned several farm equipment dealerships. He sold livestock trailers, calf domes and manure handling equipment. All of appellant's farm related businesses were conducted under the names "The Ranch" and "Schafer Agri-Enterprises."

3. Appellant was also a full-time member of the Winona police force for 19 years, rising to the rank of lieutenant.

4. Appellant was elected by fellow officers to serve on the Board of Directors of the Winona Police Relief Association (hereinafter "WPRA") which managed the police pension funds. Appellant was later elected WPRA secretary and still later, secretary/treasurer.

As secretary/treasurer, appellant was entrusted with responsibility for all the financial affairs of the WPRA. This included paying out pensions, structuring liquidity, making investments, calculating contributions, keeping books and accounts, and, in later years, overseeing the work of the accountants. Appellant had authority to, and did, sign checks, make telephone transfers of funds, make investment decisions, and inform members about legal changes affecting the WPRA.

Tax Court

5. To carry out these duties, appellant attended investment seminars and had a computer system supplemented with a satellite link to financial markets.

6. Appellant invested pension funds in the Rollingstone State Bank (hereinafter "RSB") as well as other banks and financial institutions during the years 1981 through 1985.

7. During the years 1981 through 1985, appellant transferred \$498,500 from WPRA funds to his personal accounts which he utilized for personal use. Ten thousand dollars was repaid in 1984.

8. In 1981 the appellant transferred a total of \$120,000 from pension accounts to his personal account, usually by phone transfer. A personal note to RSB, along with two mortgages of \$100,000 and \$20,000 executed March 17, 1982 pledging his property as security, were executed to secure the \$120,000 transferred from the pension accounts.

9. On January 26, 1982, appellant executed a note and chattel mortgage to RSB covering his personal property (due January 26, 1985) pursuant to which the bank permitted the diversion of \$110,000 of funds from the pension accounts to his personal account.

10. In the years 1983, 1984 and 1985, appellant executed notes to RSB of \$113,000, \$70,000 and \$85,500, respectively, pursuant to which the bank permitted transfers from the pension fund to appellant's personal account. At least two of the notes were blank except for the amount and the signature of the appellant. Of the \$70,000 taken in 1984, \$10,000 was returned.

11. Kenneth Harstad, President of RSB, took \$193,000 of the WPRA funds for himself and his bank.

12. The appellant alleged that the bank president, K. L. Harstad, assured him the bank was pledging securities to the pension fund for the amount of the diversions.

13. Mr. K. L. Harstad assured pension fund officials that bank securities were transferred to the pension fund to cover the amount of the diversions.

14. The pension fund membership considered hiring a money manager in 1985, but were assured by appellant that this was not necessary if a personal computer and a satellite dish were purchased to permit appellant to monitor security and money markets. This computer and satellite dish, along with software, were purchased.

15. The note and mortgage covering the 1981 diversions by the appellant were recorded on the books of the bank and at one time were among the securities allegedly pledged to secure the amounts diverted.

16. The notes executed with respect to 1982 through 1985 were not listed in the bank records, the notes having been located in Mr. Harstad's home pursuant to a search conducted after obtaining a search warrant.

17. Appellant used most of the money he took from the WPRA in his farming activities, either for capital improvements or to cover substantial losses. He also lost money in commodity trading for his own account.

18. The appellant filed state income tax returns showing federal adjusted gross income as follows:

1981	Loss of \$38,630
1982	Loss of \$21,299
1983	Loss of \$52,570

No state tax returns were filed for 1984 and 1985.

19. The appellant failed to report the amounts taken from the WPRA on his federal or Minnesota income tax returns.

20. The Commissioner assessed additional tax based upon the inclusion of the amounts diverted as taxable income, as follows:

<u>Tax Year</u>	<u>Date of Assessment</u>	<u>Type of Assessment</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
1981	5-27-87	Add'l Tax	\$18,642.00	\$9,321.00	\$18,306.00	\$46,269.94
1872	5-27-87	Add'l Tax	18,074.31	9,037.16	12,795.10	39,906.57
1983	5-27-87	Add'l Tax	19,881.40	9,940.70	10,156.66	39,978.76
1984	1-14-87	Comm. Filed Return	11,566.00	8,674.50	3,972.12	24,212.62
1985	1-14-87	Comm. Filed Return	(1,278.00)*			(1,278.00)

*There being no tax due to farm loss carryforward, the refund represents amounts withheld, which was applied to other deficiencies.

Additional tax and interest charges were also imposed by order dated 5-27-87, as follows:

<u>Tax Year</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
1981	\$522.50	\$280.78	\$803.28
1982	275.00	110.58	385.58
1983	475.00	137.00	612.00

21. The Winona Police Relief Association recovered \$77,000 of the amounts diverted from the proceeds of an auction sale of appellant's property. A judgment as amended was entered against appellant on January 16, 1987 for \$120,413.91.

22. In December, 1985, appellant was charged with 24 counts of theft under *Minnesota Statutes* § 609.52, subds. 2(4) and 3(1), 24 counts of theft under *Minnesota Statutes* § 609.52, subds. 2(5)(a) and 3(1), 24 counts of conspiracy to commit theft under *Minnesota Statutes* § 609.175, subd. 2(3), one count of aggravated forgery under *Minnesota Statutes* § 609.625, subd. 1(1), two counts of aggravated forgery under *Minnesota Statutes* § 609.625, subd. 3, and two counts of conspiracy to commit aggravated forgery under *Minnesota Statutes* § 609.175, subd. 2(3).

In a bargained plea, appellant pled guilty to 21 counts of felony theft from the WPRA in violation of *Minnesota Statutes* § 609.52, subds. 2(5)(a) and 3(1), and the State dismissed the other charges. Appellant was sentenced to serve 36 months in a state correctional facility and was ordered to make restitution of the \$488,500 (\$498,500 less the \$10,000 repaid in 1984) he had taken from the WPRA, plus interest. Appellant subsequently was successful in having the amount of the restitution reduced to \$115,000 plus interest because the restitution statute could not be applied to amounts taken prior to its effective date.

23. The withdrawal of WPRA funds cannot be characterized as a loan since the WPRA had no knowledge of the withdrawals and did not consent. Consent cannot be inferred where the alleged lender had no knowledge of the transaction.

24. The conduct of the appellant and Mr. Harstad is not consistent with the appellant's contention that the \$70,000 constituted a loan.

25. The amounts diverted constitute taxable income to the appellant.

26. The attached Memorandum is hereby made a part of these Findings of Fact.

Conclusions of Law

1. The amounts diverted do not represent loans to the taxpayer and therefore constitute taxable income to the appellant.

2. The Order of the Commissioner of Revenue assessing additional tax and penalty for calendar year 1984 is hereby modified to reflect misappropriated income of \$60,000 instead of \$70,000. Penalty and interest computed on the \$10,000 reduction shall be abated.

3. The Order, as modified herein by Conclusion No. 2, is hereby affirmed.

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

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

Tax Court—Regular Division: Docket No. 4792—Dated: 8 March 1988

L. M. Berry and Company, Appellant, vs. Commissioner of Revenue, Appellee.

This is an appeal from an Order of the Commissioner of Revenue dated December 19, 1986 assessing the amount of \$44,236.94, plus penalties and interest, for sales tax on telephone directories printed outside Minnesota and delivered to telephone subscribers within Minnesota, during the period from November 31, 1981 through January 31, 1985.

The matter came on for hearing before the Honorable Earl B. Gustafson, Chief Judge of the Minnesota Tax Court, on October 6, 1987 at the Courtroom of the Tax Court in St. Paul, Minnesota. A partial Stipulation of Facts was filed. Post-trial briefs were also filed and the case was submitted to the Court for decision on January 28, 1988.

Merle F. Wilberding, of Coolidge, Wall, Womsley & Lombard, P. A., appeared for appellant.

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

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. L. M. Berry and Company ("Berry") is an Ohio corporation engaged in soliciting of the bold face listings placed in the non-classified section, and the soliciting and writing of the advertising placed in the classified section (herein called "Yellow Pages"), of printed telephone directories (hereinafter "directory" or "directories").

2. Berry performs this service for local telephone companies throughout the United States.

3. The balance of each directory consists of an alphabetical list of subscribers, directory covers, telephone usage instructions, and general civic information, including zip codes, street names, government offices, and so forth (herein collectively called "White Pages").

4. The contents of the White Pages are specified and controlled by the telephone companies and are public information.
5. Berry has no office in the State of Minnesota, but does have employees (sales personnel) who personally contact telephone companies and telephone company customers in Minnesota. These employees are under the supervision and control of Berry's office in Kansas City, Missouri.
6. In conducting its business Berry enters into various contracts with the local telephone companies. There are two types of contracts used in Minnesota: a) Commission Contract, and b) Publication Contract (herein collectively called "directory contracts").
7. Whenever Berry does business with a local telephone company in Minnesota, one of the above types of contract is used.
8. Under both directory contracts Berry contracts with telephone companies to sell all of the Yellow Pages advertising and is responsible for procuring the printing of both the White Pages and the Yellow Pages of the directories.
9. Under the Commission Contract, the telephone company directly reimburses Berry for the directory printing costs, and under the Publication Contract, the telephone company indirectly reimburses Berry for the directory printing costs.
10. Under both directory contracts Berry receives a stated percentage ("commission") of the advertising revenue derived from the Yellow Pages advertising Berry has sold to telephone company customers.
11. The commission received by Berry under the Publication Contract is from ten to fifteen percent greater than it is under the Commission Contract. This difference reflects the approximate estimated cost of printing the directories.
12. The amount of Berry's commission varies with each directory contract because it is the result of negotiation between Berry and the telephone company.
13. Under both directory contracts, the telephone company provides instructions to Berry and Berry delivers those instructions to the printer, which then distributes the directories to either the telephone company or its subscribers.
14. With respect to all of the transactions at issue in this case, the telephone companies derive revenue from the sale of Yellow Pages advertising in excess of their cost of printing the directories. The effect of this marginal revenue is to lower the monthly cost for telephone service to its subscribers.
15. Under Public Utilities Commission Rules, a telephone company subscriber is entitled to the use of a telephone directory. The local telephone company is required to provide this directory as a part of the local telephone service.
16. Directories furnished to the telephone company subscribers become property of the customers.
17. A telephone company subscriber in Minnesota pays a Minnesota sales tax on the cost of telephone service.
18. The name of each telephone company appears in that company's directories.
19. Berry solicits Yellow Pages advertising by having its sales representatives personally contact the business customers that subscribe to the telephone company's service.
20. If the subscriber indicates that an advertisement is desired, he enters into a contract ("advertising agreement") for the creation and placement of the advertisement.
21. The advertising agreement is, by its terms, a contract between the subscriber and the telephone company.
22. Berry's name does not appear in the advertising agreement.
23. Berry's sales representatives who contact telephone company subscribers inform the subscribers that they work for the telephone company, such as saying that they are with the "Yellow Pages" or with the "Directory Department."
24. All sales representatives are instructed to follow this procedure.
25. The subscribers are never made aware by Berry employees that any entity other than the telephone company is working on the publication of the Yellow Pages.
26. Berry has never arranged for the printing of directories for a local telephone company without having a contract to solicit advertising for the Yellow Pages.
27. The large volume of printing that Berry purchases enables it to negotiate lower printing costs, which can be passed on to the telephone companies.
28. Under the Commission Contract, the printing costs are passed on to the telephone company by Berry without any markup, and Berry receives no direct discount or other benefit from the printer.
29. The printing of the directories under both types of [directory] contracts is accomplished by the use of master printing contracts between Berry and various printers.
30. Generally, delivery instructions are given directly to the printer by the local telephone company. Where Berry gives delivery instructions, it is merely passing on the instructions it has received from the telephone company.

31. The telephone companies determine what information is contained in the White Pages, and furnish this information to Berry; Berry then furnishes the information to the printer.

32. *Minnesota Statutes*, § 237.10 requires the Public Utilities Commission to prescribe uniform rules applicable to telephone utilities operating within the State of Minnesota (hereinafter "PUC Rules").

33. Sections 7810.2900-7810.3100 of the PUC Rules (as recodified but which were in full force and effect throughout the assessment period at issue herein) provide as follows:

DIRECTORIES

7810.2900 CONTENT OF DIRECTORIES.

Telephone directories shall be regularly published, listing the name, address when practical, and telephone number of all customers, except public telephones and numbers unlisted at customer's request. The name of the telephone utility, the area included in the directory, the year and month of issue, shall appear on the front cover. Information pertaining to emergency calls such as for the police and fire departments shall appear conspicuously in the front part of the directory pages. The directory shall contain such instructions concerning placing local and long distance calls, calls to repair and directory assistance services, and location of telephone company business offices as may be appropriate to the area served by the directory. Upon issuance, a copy of each directory shall be distributed to all customers served by that directory and a copy of each directory shall be furnished to the commission, upon request.

7810.3000 DIRECTORY ASSISTANCE.

Directory assistance or intercept operators shall maintain records of all telephone numbers (except telephone numbers not listed or published at customer request) in the area for which they are responsible for furnishing directory assistance service.

Each telephone utility shall make every effort to list its customers with directory assistance as necessary for the directory assistance operators to provide the requested telephone numbers based on customer names and post office addresses to eliminate "not found" numbers where the address is different from the address normally associated with an exchange directory.

7810.3100 CHANGES OR ERROR OF LISTED NUMBER.

In the event of an error in the listed number of any customer, the telephone utility shall intercept all calls to the listed number for a reasonable period of time provided existing central office equipment will permit and the number is not in service. In the event of an error or omission in the name listing of a customer, such customer's correct name and telephone number shall be in the files of the information or intercept operators and the correct number furnished the calling party, either upon request or interception.

Whenever any customer's telephone number is changed after a directory is published, the utility shall intercept all calls to the former number for a reasonable period of time, and give the calling party the new number, provided existing central office equipment will permit, and the customer so desires. Provided, however, the telephone utility may refuse to take such action for good and sufficient reason.

When additions or changes in plant, records, or operations which will necessitate a large group of number changes are scheduled, reasonable notice shall be given to all customers so affected even though the additions or changes may be coincident with a directory issue.

34. Telephone utilities with whom Berry contracts for the right to solicit advertising charge a fee to consumers for the telephone directories whenever directories are purchased for areas outside the telephone exchange area for which the purchasing consumer has paid a service fee for his/her local telephone service. If a person is not a telephone subscriber, then a directory cannot be obtained without payment of a fee to the telephone utility from which the directory is requested.

35. A fee for directories is established by the International Telephone Directory Price List (published annually and listing directories for the Bell system and most independent telephone companies' directories published in the United States).

36. In addition to the telephone directory or directories which the customer is entitled to receive as a part of the telephone service, telephone utilities within the State of Minnesota upon the occasional request of their customers will ordinarily transfer without additional charge an additional copy of the telephone directory for which they are subscribers.

37. By his order dated December 19, 1986, the Minnesota Commissioner of Revenue made a sales tax assessment against Berry in the following amounts: \$44,236.94 tax, \$4,128.57 penalty, and \$17,004.38 interest. This assessment applies to telephone directories printed outside Minnesota and delivered to telephone companies or telephone company customers within Minnesota during the period November 30, 1981 through January 31, 1985 ("assessment period").

38. Berry has brought this appeal to the Tax Court from that Order.

39. The Commissioner contends that Berry was engaged in making taxable retail sales of the directories within the State of Minnesota during the assessment period.

Tax Court

40. If Berry was engaged in making taxable retail sales of the directories within the State of Minnesota during the assessment period, the measure of the tax is based on the gross receipts for printing, i.e., on the charges made by the printer to Berry for the printing costs of directories printed outside the State of Minnesota and delivered into Minnesota by common carrier or United States Mail.

Conclusions of Law

1. Appellant, L. M. Berry and Company, was not engaged in making taxable retail sales of telephone directories within the State of Minnesota during the assessment period at issue.
2. Appellant is not liable for a Minnesota sales tax under *Minnesota Statutes* § 297A.02, subd. 1 (1984).
3. The attached Memorandum is hereby made a part of these Findings of Fact and Conclusions of Law.
4. The Order of the Commissioner of Revenue dated December 19, 1986 should be reversed.

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

BY THE COURT,
Earl B. Gustafson, Chief Judge
Minnesota Tax Court

Tax Court—Regular Division: Docket No. 4224—Dated: 8 March 1988

NCR Corporation, Appellant, vs. Commissioner of Revenue, Appellee.

The above-entitled matter was submitted to the Court for decision through a Stipulation of Facts and briefs of the parties. Oral arguments were presented before the Honorable Earl B. Gustafson, Chief Judge of the Minnesota Tax Court, on January 8, 1988 at the Courtroom of the Tax Court in St. Paul, Minnesota.

James W. Littlefield, of Hart, Bruner, O'Brien & Thornton, P.A., appeared for appellant.

Thomas R. Muck, Deputy Attorney General, appeared for the appellee.

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

Findings of Fact

1. Appellant, NCR Corporation (hereinafter "NCR"), appeals from an assessment of additional corporation franchise taxes for the tax years 1977 through 1981 contained in an assessment bearing a notice date of September 21, 1984.
2. On or about November 16, 1984, NCR paid to the appellee the amount of \$319,640.93 and on November 20, 1984 filed the above-captioned appeal.
3. NCR is incorporated under the laws of the State of Maryland and has its corporate offices and principal place of business at 1700 South Patterson Boulevard, Dayton, Ohio.
4. NCR transacts business partly within and partly without the State of Minnesota. It has done business in Minnesota in all tax years at issue and in each of those years maintained manufacturing and sales facilities in Minnesota.
5. NCR has a network of foreign subsidiaries which, with the parent NCR, form a unitary business. These foreign subsidiaries have not conducted any business within the State of Minnesota.
6. NCR obtains and utilizes patents as a part of its ordinary business and pursuant to patent licensing agreements, grants to its foreign subsidiaries the right to manufacture and sell business machines and equipment patented by NCR.
7. For the years 1977 through 1981, NCR received dividends, interest and royalties from its foreign subsidiaries as follows:

<u>Year</u>	<u>Dividends</u>	<u>Interest</u>	<u>Royalties</u>
1977	\$41,983,566	\$ 3,197,520	\$21,656,173
1978	41,931,362	5,852,927	19,466,545
1979	51,576,630	9,027,754	16,830,324
1980	61,583,067	15,325,626	28,462,939
1981	34,416,542	20,769,392	40,153,073

8. NCR represents that for the years 1977 through 1981 those foreign subsidiaries from whom NCR received the aforementioned royalties had total net sales, payroll and properties as follows:

<u>Year</u>	<u>Net Sales</u>	<u>Payroll</u>	<u>Properties</u>
1977	\$ 784,563,576	\$245,614,128	\$ 572,151,937
1978	733,390,600	235,891,484	585,423,054
1979	920,776,019	305,273,740	679,024,091
1980	1,336,081,709	439,517,670	904,220,615
1981	1,280,299,312	424,380,977	1,039,846,133

These figures have not been audited or otherwise verified by appellee. However, the parties have agreed that NCR may use them for illustrative purposes only in this appeal and that, should the Court enter some order requiring a recomputation of tax which would depend on these figures, they would be first audited by appellee.

9. For the years 1977 through 1981, for purposes of determining Minnesota taxable income, NCR's apportionable income was as follows:

<u>Year</u>	<u>Apportionable Income</u>
1977	\$131,514,040
1978	278,240,145
1979	299,499,453
1980	186,791,768
1981	168,347,373

10. The 1978 and 1979 apportionable income figures include \$25,070,121 and \$66,568,278, respectively, which income resulted from NCR's sale of the assets of one of its divisions, Appleton Paper Company.

11. NCR asserts that because the proportion of its apportionable income received from its foreign subsidiaries is so great, the net sales, property and payroll of its foreign subsidiaries must be included in calculating the sales, payroll and property factors of Minnesota's three-factor apportionment formula.

12. NCR further asserts that that portion of *Minnesota Statutes* § 290.21, subd. 4 (1980) is unconstitutional which allows a tax exemption of 15% of the dividends paid by a subsidiary corporation to a parent corporation that owns 80% or more of its stock if the "dividends were paid from income arising out of business done in this state by the corporation paying such dividends."

Conclusions of Law

1. The Commissioner correctly did not include the net sales, payroll and property of NCR's foreign subsidiaries in calculating the sales, payroll and property factors that were applied to NCR's apportionable income.

2. The Order of the Commissioner of Revenue dated September 21, 1984, relating to the corporate income tax liability of appellant for the years 1977, 1978, 1979, 1980 and 1981, is affirmed.

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

BY THE COURT,
Earl B. Gustafson, Chief Judge
Minnesota Tax Court

Announcements

Environmental Quality Board (EQB): Comments on Environmental Assessment Worksheets (EAWs), and the regional governing unit to address, are due April 6 for the following projects: Cloud Drive Area, City of Blaine; Lakeville Manor (Goff Homes PUD); City of Lakeville; and Monticello East Sewer, MPCA (Minn. Pollution Control Agency). The City of Apple Valley will hold a scoping EAW meeting Wednesday, April 6, 7:30 pm at Apple Valley City Hall, 14200 Cedar Ave., S. with a comment period ending the same day. A public meeting will be held on the Shepard/Warner/East CBD Bypass on April 28 at 7 pm in the St. Paul City Council Chambers, with the public hearing record remaining open until May 31. The Metropolitan Mosquito Control District has applied for a special local need registration for application of "Altosid Liquid Larvicide" in Hennepin, Ramsey, Dakota, Anoka, Wright, Washington, Scott, and Carver Counties. Comments should be submitted to Michael Fresvik, MN Dept. of Agriculture, Agronomy Services, Division, 900 W. Plato Blvd., St. Paul, MN 55107. The Minnesota DNR-Forestry Division will solicit bids for the aerial application of herbicides on 90 sites covering 3,250 acres this spring, summer and fall. Public review of the Minnesota Ground Water Protection strategy is in the final stages of preparation, and will be the subject of public meetings planned throughout the state in the first weeks of April. Contact Gregg Downing, *EQG Monitor* editor, (612) 296-8253, for more information on any of the above.

Announcements

Reducing Herbicides and Fertilizers: Written summaries of a conference on land stewardship values that lead to increased use of alternate sources of nitrogen, crop rotation and reduced-chemical weed control will be available in April. To obtain a copy and information regarding future sustainable agriculture meetings, contact Rick Gauger at (612) 297-1320, coordinator for Sustainable Agriculture, MN Dept. of Agriculture, 90 W. Plato Blvd., St. Paul, MN 55107.

Free Tax Information Workshops Open to Businesses: The Minnesota Department of Revenue and the IRS are combining efforts at a series of two-day workshops on business taxes now through mid-June. The first day of the workshop will cover business taxes and expenses, including sessions on state sales taxes, recordkeeping, travel costs, depreciation and investment credits. The second day will cover federal and state withholding, unemployment taxes and Social Security taxes. Workshops are scheduled for the following days at the Ft. Snelling Federal Building, room 568, from 8:30 a.m. until 4 p.m.: March 29 and 30, April 12 and 13, May 10 and 11, and June 14 and 15. To register for one or both sessions, call the Internal Revenue Service at (612) 290-3320. There is no fee for the workshops.

Project Learning Tree Workshop Set: Project Learning Tree Program introduces children to environmental awareness lessons or a school yard safari. It is a program designed for teachers and other educators who wish to inform students, K-12, about conservation practices and wise resource use. As an environmental education program it has ready-made lessons and action-oriented activities that can stand alone or be used to supplement existing curricula. A Project Learning Tree workshop and leader training session will be held on Saturday, April 16, from 8:30 a.m. to 4:30 p.m. at Wood Lake Nature Center in Richfield. Teachers, youth leaders, foresters, soil conservation personnel, and all other interested individuals are invited to participate in this workshop. They will receive training to become part of a team that conducts similar sessions throughout the Twin Cities Metropolitan Area. There is a \$10 charge. Lunch and learning materials will be provided. More Project Learning Tree leaders are needed since the demand for workshops is high. For additional information, write Project Learning Tree Coordinator, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, MN 55155-4005 or call (612) 297-2214.

DNR Announces 1988 Bear Hunting Guidelines: The 1988 statewide bear season will open Sept. 1 and close Oct. 16, the Department of Natural Resources (DNR) has announced. Most bear hunting will continue to be by permit, selected in a computerized drawing. Portions of the bear range will again be open to hunting on a no-quota basis in 1988. The no-quota area was first implemented in 1987 in response to increased bear depredation problems in crops. The department will issue a maximum of 5,310 bear hunting permits in seven areas located in the primary bear range. A computerized drawing will be held to select hunters who will receive these permits. Those planning to enter the drawing have until April 15 (same deadline as last year), to submit their applications. Applications for the drawing will be available from license agents about March 15. Application information contains a map of the permit areas and the new no-quota area where the number of licenses is no longer limited. Hunters are advised to study the map to be certain of the area where they wish to apply. Applicants must be at least 12 years of age prior to Sept. 1, possess a valid firearms safety certificate and not have had their big game hunting privileges suspended. Preference will be given to hunters who applied in previous drawings but were not selected. An applicant's Drivers License Number or Identification Card Number (issued in-lieu-of a Drivers License Number by the Department of Public Safety) must be used to enter the drawing. A person seeking a permit may apply either individually or as a maximum four-person party. No person may apply more than once. Those applying as a group must put all their applications together in one envelope. Either all party members will receive permits or none will. The preference rating of a group will be determined by the group member with the lowest preference. Licenses for the no-quota areas will be available at the DNR License Bureau and County Auditors Offices after July 1. Hunters chosen in the drawing for the permit areas are not eligible to purchase licenses for the no-quota areas. Hunters are advised that bears occur in limited numbers in the no-quota area. Most of this area is private land, where landowners' permission is required. Hunters will be limited to taking one bear for the season. The cost of a bear hunting license for resident is \$30.75 and the non-resident fee is \$150.75, including the 75-cent issuing fee.

Two Islands Acquired for Swan Lake Project: Pie Island and Nosey Island, in the western part of Swan Lake, have been turned over to the Minnesota Department of Natural Resources (DNR) and will be part of the Swan Lake Wildlife Management Area. These two popular hunting islands have been transferred to the state by the Federal Bureau of Land Management (BLM). The DNR becomes only the second recorded owner of the islands, which have been public domain lands held by the U.S. Government since it was part of the Northwest Territory. The transfer process involved no fee, but took over five years because it involved the original land patent. The DNR was able to acquire the land under the Recreation and Public Purposes Act of 1926, to be used for wildlife management and public recreation. The DNR has currently applied for land patents of 1,171 islands throughout Minnesota. The islands range in size from .1 acres to 75 acres, a total of 2,239 acres. Twenty-six islands, mostly in northern Minnesota, have already been transferred to the state. The federal government will retain all mineral rights.

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Its voice severs the bonds to the world of cities, traffic, crowds, lights and noise. The lyrical magic of the loon, sometimes hauntingly eerie, makes the skin tingle, and the hair on the back of the neck stand on edge, awakening a primitive response. Its solitary wail turns the shadowy wilderness into a mysterious path into eternity.

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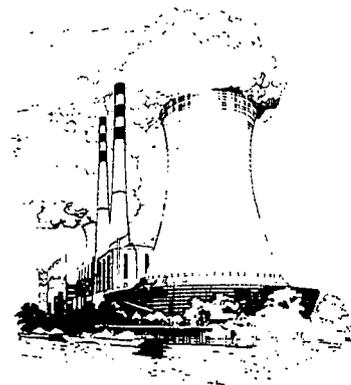
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