

86, FEB 10

STATE REGISTER

4

STATE OF MINNESOTA

RECEIVED
FEB 11 1986
LEGISLATIVE REFERENCE LIBRARY
STATE CAPITOL
ST. PAUL, MN. 55155



VOLUME 10, NUMBER 33

February 10, 1986

Pages 1637-1700



Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 10			
34	Monday February 3	Monday February 10	Monday February 17
35	Monday February 10	Friday February 14	Monday February 24
36	Friday February 14	Monday February 24	Monday March 3
37	Monday February 24	Monday March 3	Monday March 10

*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 Office of the State Register, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$3.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

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, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

Rudy Perpich
Governor

Marsha Storck
Editor

Sandra J. Hale
Commissioner
Department of Administration

Robin PanLener, Paul Hoffman,
Ruth Werness
Editorial Staff

Stephen A. Ordahl
Director
Minnesota State Documents Division

Debbie Kobold
Circulation Manager

Bonnie Karels
Support Staff

CONTENTS

MINNESOTA RULES AMENDMENTS AND ADDITIONS

Issues 27-33, inclusive 1640

EXECUTIVE ORDERS

Executive Order 86-1 Providing for Assistance to Officials of Mower County, Minnesota 1642

PROPOSED RULES

Agriculture Department

Proposed Rules Relating to Milk and Cream Grading 1643

Health Department

Proposed Rules Relating to Review of Care and Classification of Residents in Facilities Participating in the Medical Assistance Program 1644

Higher Education Coordinating Board

Proposed Rules Relating to Financial Assistance 1649
Proposed Rules Relating to Part-time Student Grants 1654

Human Services Department

Proposed Rules Relating to Nursing Home Operating Cost Payment Rate Determination 1656

Racing Commission

Proposed Rules Governing Horse Racing 1672

ADOPTED RULES

Energy & Economic Development Department

Adopted Rules Revising the Minnesota Energy Code 1687

Health Department

Division of Environmental Health

Adopted Rules Relating to Licensing Fees 1687

Human Services Department

Extension of Emergency Rules Governing General Assistance 1688
Extension of Emergency Rules Governing the Work Readiness Program 1688

Pollution Control Agency

Adopted Rules Relating to Hazardous Waste; Interim Status 1688
Adopted Rules Relating to Hazardous Waste Recycling and Reuse 1688

Secretary of State

Adopted Rules Relating to Voter Registration, Absentee Voting, Recounts, Ballots, Certification and Testing of Lever Voting Machines; and Certification, Testing, and Use of Electronic Voting Systems 1690

OFFICIAL NOTICES

Finance Department

Maximum Interest Rate for Municipal Obligations, February, 1986 1692

Health Department

Health Systems Development Office

Outside Opinion Sought Concerning Requests for Waiver of HMO States and Rules by Physicians' Health Plan, MedCenters Health Plan and Primary Care Network 1692

Human Services Department

Mental Retardation Division

Outside Opinion Sought Concerning Proposed Rules Governing Use of Aversive or Deprivation Procedures 1692

Transportation Department; and Transportation Regulation Board

Outside Opinion Sought Concerning Proposed Rules Governing Operations of Motor Carriers and Motor Carrier Tariff, Accounting and Insurance Rules 1693

STATE CONTRACTS

Administration Department

Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding 1695

Metropolitan Council

Request for Proposals to Perform Audits of 54 Parks and Open Space Grants 1696

STATE GRANTS

Supreme Court

Lawyer Trust Account Board

Notice of Grant Cycle, July 1, 1986 to June 30, 1987 1697

SUPREME COURT DECISIONS

Decisions Filed Friday, January 31, 1986 1697
Orders Filed Friday, January 31, 1986 1698

NOTICE

How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the State Register. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION also.

The PROPOSED RULES section contains:

- Calendar of public hearings on proposed rules.
• Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
• Proposed amendments to rules already in existence in the Minnesota Rules.
• Proposed emergency rules.
• Withdrawal of proposed rules (option; not required).

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the State Register unless an agency requests this.)
• Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
• Notice of adoption of emergency rules.
• Adopted amendments to emergency rules (changes made since the proposed version was published).
• Extensions of emergency rules beyond their original effective date.

The OFFICIAL NOTICES section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
• Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register and filed with the Secretary of State before April 8, 1985 are published in the Minnesota Rules 1985. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 will be included in a supplement scheduled for publication in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the State Register but are generally not published in the Minnesota Rules due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The State Register publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue range and Issue number. Includes: Issues 1-13, inclusive; Issues 14-25, inclusive; Issue 26, cumulative for 1-26; Issues 27-38, inclusive; Issue 39, cumulative for 1-39; Issues 40-51, inclusive; Issue 52, cumulative for 1-52.

The listings are arranged in the same order as the table of contents of the Minnesota Rules 1985.

MINNESOTA RULES AMENDMENTS AND ADDITIONS

AGRICULTURE DEPARTMENT

1530.0740; .0820 (proposed) 1643
1530.0830; .0840; .0850; .0860; .0870; .0880; .0890; .0900; .0910; .0920; .0930; .0940; .0950; .0960; .1120; .1130; .1140; .1150; .1160; .1170; .1180; .1190; .1200; .1210; .1220; .1230; .1240; .1250; .1260; .1270; .1280; .1290; .1300; .1310; .1320; .1330; .1340 (proposed repealer) 1643

OFFICE OF THE ATTORNEY GENERAL

2000.0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .9900; .9905; .9910; .9915; .9920; .9925; .9930; .9935; .9940; .9945; .9950; .9955; .9960; .9965; .9970; .9975; .9977; .9980; .9983; .9985 (proposed repealer) 1457
2010.0200-.1400; .9900-.9960 (proposed) 1457
2000.0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .9900; .9905; .9910; .9915; .9920; .9925; .9930; .9935; .9940; .9945; .9950; .9955; .9960; .9965; .9970; .9975; .9977; .9980; .9983; .9985 (Errata) 1547
2010.0200-.1400; .9900-.9960 (Errata) 1547

DEPARTMENT OF COMMERCE

2700.3200 (adopted) 1499
2742.0100-.0400 [effective 60 days after adoption notice] (proposed) 1528

2875.1590 (proposed) 1525

BOARD OF DENTISTRY

3100.0100; .3100; .3200; .6200; .6325; .6350; .9100; .9200; .9300; .9500 (adopted) 1613
3100.0100, s.12,19 (repealed) 1613
3100.1100-.1400; .1700; .1850; .3300; .3400 (adopted) 1612
3100.1800; .1900; .4700 (repealed) 1612
3100.4100-.4400; .4600 (adopted) 1612
3100.4200; s.3 (repealed) 1612
3100.6400; .6500; .6600; .7100 (adopted) 1613
3100.6600, s.2 (repealed) 1613
3100.8400; .8500; .8700 (adopted) 1612
3100.8400, s.2 (repealed) 1612

ENERGY, PLANNING AND DEVELOPMENT

Energy Division

4200.2100-.4050; .4300 (adopted) 1501
4200.2100, s.3,6; .2200, s.3; .2400; .2500; .2700; .3000, s.3,4,9,10; .3300; .3400; .3500; .3600; .3700; .3800 (repealed) 1501
4200.4500; .4600; .4700; .4800; .4900; .5000 (adopted) 1500
4215.1400; .2100; .2200; .2450; .2750; .4700 (adopted) 1687

DEPARTMENT OF HEALTH

4615.0750-.0760 (proposed) 1609

MINNESOTA RULES AMENDMENTS AND ADDITIONS

4625.2300; .5000; 4630.2000; 4695.2900;	
4715.3150; .3160; .5900; 4720.0015;	
4730.0600 (adopted)	1687
4647.0100-.0400 (adopted)	1589
4656.0010-.0100 (proposed)	1644
4670.0100;.0900;.0930;.0950;.1000;.1200;	
.1220;.1320;.3070;.4050;.4200;.4210;.4220;	
.4230;.4240 (adopted)	1502
4670.0930, s.3,4;.3900;.3910;.3920;.3930;	
.3940 (repealed)	1502
4695.0300;.0800 (second notice)	1473
4695.0300;.0800 (Errata)	1548

HIGHER EDUCATION COORDINATING BOARD

4810.2100;.2500; 4830.0100;.0400;.0600;	
.0700;.2200;.2300;.2500;.2600;.5200;.5300;	
.5400; 4840.0500 (proposed)	1649
4830.0600, s.3;.5200 s.2 (proposed repealer)	1649
4830.1000;.1100;.1200;.1300;.1400;.1500	
(proposed repealer)	1654
4830.1550-.1555 (proposed)	1654

MN HOUSING FINANCE AGENCY

4900.0010;.1330 (adopted)	1557
4900.0550;.0750;.0760;.0770;.0780	
(adopted)	1557
4900.1800-.1803 (proposed)	1495
4900.1804-.1808 (proposed)	1497
4910.0010, s.23, i.B. (repealed)	1557

DEPARTMENT OF LABOR AND INDUSTRY

5205.0010 [Standards, 10 SR 1150] (adopted)	1507
5221.0100-.3200 [republished] (Errata)	1548

BOARD OF MEDICAL EXAMINERS

5600.2500 (adopted)	1476
---------------------------	------

MN POLLUTION CONTROL AGENCY

7001.0520; 7045.0020;.0075;.0120;.0125;	
.0135;.0214;.0219;.0296;.0450;.0542;.0552;	
.0640;.0665;.0675;.0685 (adopted)	1688

7002.0010-.0110 (adopted)	1537
7045.0020, s.69;.0125, s.2;.0142 (repealed)	1688
7045.0065;.0552;.0638 (adopted)	1688
7045.1240;.1250;.1260 (repealed)	1688

DEPARTMENT OF PUBLIC SAFETY

7520.0100;.0500;.0550;.0600;.0620;.0640;	
.0650;.0700;.1000;.1100 (adopted)	1507
7520.0530, s.3-5 (repealed)	1507

RACING COMMISSION

7869.0100; 7873.0127;.0130;.0140; 7875.0200;	
7876.0110; 7877.0110;.0120;.0130;.0140;	
.0145;.0170;.0175;.0180; 7878.0130;.0140;	
.0150;.0160; 7883.0100;.0140;.0150; 7891.0100;	
7892.0150; 7895.0125;.0250;.0275;.0300;.0350	
(proposed)	1672

SECRETARY OF STATE

8200.1500;.9919; 8210.0200;.9930;.9955;	
8235.1000; 8250.0200;.0600; 8220.0050-.4250;	
8230.0050-.2350;.3050-.4250 (adopted)	1690
8200.2300; 8220.0100-.0500;.1000-.1400;	
.2000-.3200;.4000-.4800;.5000-.6400;	
8230.0200-.0500;.1000-.2600;.2610;.2700-.3000;	
.3300;.3500-.4400;.5000-.5800 (repealed)	1690

**DEPARTMENT OF PUBLIC WELFARE
(Now HUMAN SERVICES)**

9500.1101-.1108 [Emer] (extended)	1688
9500.1210-.1221 [Emer] (extended)	1688
9502.0315-.0365;.0375-.0445 (proposed)	1573
9502.1315, s.23;.0415, s.2, 11 (proposed repealer)	1573
9515.1200; 1300;.1400;.1600;.1700;.2200;.2300;	
.2400;.2500;.2600 (adopted)	1589
9515.1200, s.9;.2300, s.1 (repealed)	1589
9549.0050-.0059 (proposed)	1656
9553.0010-.0080 (adopted)	1502
9575.0010;.0300;.0320;.0340;.0350;.1070;.1400;	
.1500;.1550;.1570;.1580 (adopted)	1507
9575.1580, s.4-6 (repealed)	1507

EXECUTIVE ORDERS

Executive Order No. 86-1

Providing for Assistance to Officials of Mower County, Minnesota

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

Whereas, the Sheriff of Mower County has requested assistance in the maintenance of law and order in the community of Austin, Minnesota during a local labor dispute; and

Whereas, the potential for injury to persons and damage to property are beyond the capabilities of local law enforcement officials;

NOW, THEREFORE, I hereby order that:

1. The Adjutant General of Minnesota order to active duty on or after January 20, 1986, in the service of the State, such elements and equipment of the military forces of the State as required and for such period of time necessary to ensure the safety of our citizens.

2. Cost of subsistence, transportation, fuel and pay allowances of said individuals shall be defrayed from the General Fund of the State as provided for by Minnesota Statutes, Section 192.49, subdivision 1, Section 192.51, and Section 192.52.

Pursuant to Minnesota Statutes, Section 4.035, this Order shall be effective retroactive to January 20, 1986 and shall remain in effect until such date as elements of the military forces of the State are no longer required.

IN TESTIMONY WHEREOF I have set my hand this twenty-third day of January, 1986.



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 Agriculture

Proposed Rules Relating to Milk and Cream Grading

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to amend the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28.

Persons interested in this rule are encouraged to submit comment in support of or in opposition to the proposed rule, and shall have 30 days to do so. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit them to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt this rule is contained in Minnesota Statutes, Section 31.10. Additionally, 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 amendment has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. 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 final rule as adopted, should submit a written statement of such request to Mr. Heil.

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

Copies of this notice and the proposed rule are available and may be obtained by contacting Mr. Heil.

January 23, 1986

Jim Nichols
Commissioner of Agriculture

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

PROPOSED RULES

Rules as Proposed

1530.0740 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 2. **Grade A Pasteurized Milk Ordinance.** "Grade A Pasteurized Milk Ordinance" shall ~~mean~~ means the "Grade A Pasteurized Milk Ordinance—1978 Recommendations" and the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey—Supplement I to the Grade A Pasteurized Milk Ordinance 1978 Recommendations," including all footnotes ~~and~~, appendixes, ~~standards and published~~ revisions of the United States ~~Public Department of Health Service/Food and Human Services, Food and Drug Administration.~~ A copy of this ordinance ~~shall and all revisions must~~ must be filed in the office of the regulatory agency.

Subp. 3. [Unchanged.]

1530.0820 GRADING PROCEDURE FOR MILK AND CREAM.

All milk and cream offered for sale and purchased for manufacturing purposes ~~shall be purchased and paid for on the grades adopted herein.~~ All of the following tests shall be used in determining the grades for milk for manufacturing purposes at the frequencies established by these rules: bacterial content estimates test; sediment test; abnormalities detectable by sight and odor test; antibiotics and bacterial growth inhibitors test; and abnormal milk test. must meet all grading and inspection standards as published in the Federal Register, volume 50, number 166, pages 34726 to 34729, on Tuesday, August 27, 1985, as stated under the Agricultural Marketing Service "Notice to Revise the Requirements Recommended for Adoption by State Regulatory Agencies Regarding Milk for Manufacturing Purposes and its Production and Processing."

REPEALER. Minnesota Rules, parts 1530.0830; 1530.0840; 1530.0850; 1530.0860; 1530.0870; 1530.0880; 1530.0890; 1530.0900; 1530.0910; 1530.0920; 1530.0930; 1530.0940; 1530.0950; 1530.0960; 1530.1120; 1530.1130; 1530.1140; 1530.1150; 1530.1160; 1530.1170; 1530.1180; 1530.1190; 1530.1200; 1530.1210; 1530.1220; 1530.1230; 1530.1240; 1530.1250; 1530.1260; 1530.1270; 1530.1280; 1530.1290; 1530.1300; 1530.1310; 1530.1320; 1530.1330; and 1530.1340 are repealed.

EFFECTIVE DATE. These rules are effective July 1, 1986.

Department of Health

Proposed Rules Relating to Review of Care and Classification of Residents in Facilities Participating in the Medical Assistance Program

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held at the Minnesota Veteran's Home Auditorium, Building 15, 5101 Minnehaha Avenue, Minneapolis, Minnesota 55417 on March 12, 13 and 14, 1986 commencing at 9:00 a.m. and continuing until all interested or affected parties 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.

The hearing on these rules will be part of a hearing on Minnesota Department of Human Services Proposed Rules parts 9549.0050 to 9549.0059. The Department of Human Services Rules will implement a case mix reimbursement system for long term care facilities. All references to parts 9549.0050 to 9549.0059 found in these rules are to the rules as proposed.

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 proposed rules. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Howard L. Kaibel, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415; telephone (612) 341-7608 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 hearing record, the Administrative Law Judge will write a report as provided for in Minnesota Statutes,

section 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.01 to 14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

These rules, parts 4656.0010 to 4656.0090 require the Department of Health to conduct annual resident assessments in accordance with procedures established by 42 Code of Federal Regulations (C.F.R.), sections 456.600 to 456.614. The rules also incorporate by reference specific pages of the January 24, 1986 version of the Quality Assurance & Review (QAR) Instruction Manual, as well as the Guideline for Isolation Precautions in Hospitals. These documents are available for review at the Ford Law Library at 117 University Avenue, St. Paul, Minnesota 55155 and through the minitex interlibrary loan system.

In addition, the rules establish requirements for the assessment of mentally retarded residents; address the basis for making level of care recommendations; establish procedures for the classification of residents in nursing homes and boarding care homes participating in the Medical Assistance Program; provide a mechanism for reconsidering Department of Health classifications; and establish a process for auditing resident assessments referred by nursing homes or boarding care homes.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, sections 144.072; 144.0721; 144.0722; and 2568.502. The department estimates that the total cost to local public bodies will not exceed \$100,000 in either of the two years immediately following adoption of these rules. Therefore, no fiscal note is required under subdivision 1 of Minnesota Statutes, section 14.11.

The Department of Health is exempt from Minnesota Statutes 14.115, Small Business Considerations in Rulemaking, by virtue of Subdivision 7(c) of that statute.

Copies of the proposed rules are now available and one free copy may be obtained by writing to Gary A. Goetzke, Health Resources Division, Minnesota Department of Health, 717 Delaware Street S.E., P.O. Box 9441, Minneapolis, Minnesota 55440.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Gary A. Goetzke, at the address listed above or at (612) 623-5627.

NOTICE: Any person may request notification of the date on which the Administration Law Judge's report will be available, after which date the agency may not take any final action on the rules for 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 traveling 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, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

January 27, 1986

Sister Mary Madonna Ashton
Commissioner Minnesota Department of Health

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

PROPOSED RULES

Rules as Proposed (all new material)

4656.0010 SCOPE.

Parts 4656.0010 to 4656.0100 establish procedures to review the appropriateness of care and services furnished to residents of facilities participating in the medical assistance program, and for the classification of residents of nursing homes and boarding care homes participating in the medical assistance program to determine the operating cost payment rates for all nursing homes and boarding care homes participating in the medical assistance program under Minnesota Statutes, sections 256B.41 to 256B.48 and parts 9549.0050 to 9549.0059.

4656.0020 DEFINITIONS.

Subpart 1. **Applicability.** As used in parts 4656.0010 to 4656.0100 the following terms have the meanings given them.

Subp. 2. **Assessment form.** "Assessment form" means the form developed by the department's quality assurance and review program and used for performing resident assessments.

Subp. 3. **Department.** "Department" means the Minnesota Department of Health.

Subp. 4. **Guideline for Isolation Precautions in Hospitals.** "Guideline for Isolation Precautions in Hospitals" means the guidelines written by Julia S. Garner, RN, MN and Bryan P. Simmons, MD, reprinted by the U.S. Department of Health and Human Services, Public Health Service, Center for Disease Control, from Infection Control July/August 1983 (Special Supplement); 4 (suppl): pp. 245-325. The guidelines are incorporated by reference. They are available at the Ford Law Library, 117 University Avenue, Saint Paul, MN 55155, and through the minitex interlibrary loan system. This material is not subject to frequent change.

Subp. 5. **Medical plan of care.** "Medical plan of care" means documentation signed by the resident's physician which includes the resident's primary diagnoses, secondary diagnoses, orders for treatments and medications, rehabilitation potential, rehabilitation procedures if ordered, clinical monitoring procedures and discharge potential.

Subp. 6. **Quality assurance and review or QA&R.** "Quality assurance and review" or "QA&R" means the program established under Minnesota Statutes, sections 144.072 and 144.0721.

Subp. 7. **Resident.** "Resident" means an individual residing in a facility certified to participate in the medical assistance program.

Subp. 8. **Resident class.** "Resident class" means each of the 11 categories established in part 9549.0058.

Subp. 9. **Resident plan of care.** "Resident plan of care" for residents of nursing homes means the patient care plan specified in part 4655.6000. "Resident plan of care" for residents in boarding care homes means the overall plan of care as defined in Code of Federal Regulations, title 42, section 442.319, as amended through December 31, 1984.

Subp. 10. **Resident record.** "Resident record" means the entire record of a resident compiled by the nursing home or boarding care home. The resident record must include the following:

- A. the admission record;
- B. the medical plan of care;
- C. the resident plan of care;
- D. documentation from services providing care to the resident;
- E. reports of any diagnostic testing, consultation, and other services;
- F. a copy of any transfer data provided to another health care facility; and
- G. a discharge summary.

Subp. 11. **Review team.** "Review team" means the inspection team described by Code of Federal Regulations, title 42, section 456.602, as amended through December 31, 1984.

APPROPRIATENESS AND QUALITY OF CARE AND SERVICES

4656.0030 ANNUAL RESIDENT ASSESSMENTS.

The department shall conduct annual assessments of all residents in each nursing home and boarding care home participating in the medical assistance program to determine the appropriateness and quality of care and services furnished to these residents. The assessments must be conducted in accordance with the inspection of care requirements established by Code of Federal Regulations, title 42, sections 456.600 to 456.614, as amended through December 31, 1984. However, those provisions regarding recommendations for changes in the level of care provided shall not apply to private paying residents.

4656.0040 PROCEDURES FOR ASSESSMENT.

Team reviewers shall follow the assessment procedures and requirements established in the Quality Assurance and Review Instruction Manual. Pages 5 to 17, beginning with "Instructions for Filling Out Mark Sense Portion" and pages 25 to 27 entitled "ICF/MR Residents Only" of the January 24, 1986, version of the Quality Assurance and Review Instruction Manual are incorporated by reference. These pages of the manual are available at the Ford Law Library, 117 University Avenue, Saint Paul, MN 55155 and through the minitex interlibrary loan system. This material is not subject to frequent change.

4656.0050 ADDITIONAL REQUIREMENTS FOR ASSESSING MENTALLY RETARDED RESIDENTS.

Subpart 1. **Active treatment.** Residents of intermediate care facilities for the mentally retarded (ICF/MR) shall be provided active treatment in accordance with the requirements established by Code of Federal Regulations, title 42, section 435.1009, as amended through December 31, 1984.

Subp. 2. **Individualized program plan.** For the purpose of determining active treatments under this part, individual program plan means the individual written plan of care described under Code of Federal Regulations, title 42, section 435.1009 as amended through December 31, 1984.

Team reviewers shall use pages 25 to 27 of the Quality Assurance and Review Instruction Manual to review the individual program plan for the purpose of determining the quality and adequacy of the facility's in-house current individual program and the programs and services being provided to the resident outside the facility.

4656.0060 LEVELS OF CARE.

Team reviewers shall base level of care recommendations upon the following categories:

A. skilled nursing care facility services, as defined by Code of Federal Regulations, title 42, section 440.40(a), as amended through December 31, 1984;

B. intermediate care facility services, including ICF I, ICF II, and ICF/MR, as defined by Code of Federal Regulations, title 42, section 440.150, as amended through December 31, 1984;

C. inpatient hospital services, including services as defined by Code of Federal Regulations, title 42, sections 440.10 and 440.140, as amended through December 31, 1984, and services provided in specialty hospitals;

D. inpatient psychiatric services for individuals under 21 years of age, as defined by Code of Federal Regulations, title 42, section 440.160, as amended through December 31, 1984;

E. mental hospitals, including hospitals that are licensed in accordance with Minnesota Statutes, sections 144.50 to 144.56, and meet the requirements of parts 4640.3600 to 4640.4300;

F. home or community-based services as defined by Code of Federal Regulations, title 42, section 440.180, as amended through December 31, 1984; and

G. semi-independent living services or SILS, which is a system of services that includes training, counseling, instruction, supervision, and assistance provided in accordance with the client's individual program plan. Services may include assistance in budgeting, meal preparation, shopping, personal appearance, counseling, and related social support services needed to maintain and improve the client's functioning. The services shall not extend to clients needing 24-hour per day supervision and services. Persons needing a 24-hour per day program of supervision and services shall not be accepted or retained in a semi-independent living service.

CASE MIX REIMBURSEMENT**4656.0070 CLASSIFICATION AND NOTIFICATION OF ANNUAL RESIDENT ASSESSMENTS.**

Subpart 1. **Written notice.** Within 15 working days of receiving assessment documents submitted in accordance with part 4656.0030, the department shall classify each nursing home and boarding care home resident into one of the resident classes prescribed by part 9549.0058, and mail a written notice of the classification to the resident and to the nursing home or boarding care home in which the resident resides. The written notice must specify that the resident, or the resident's authorized representative, and the nursing home or boarding care home have the right to review the department documents supporting the classification and to request a reconsideration of the classification.

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

PROPOSED RULES

Subp. 2. **Classification letter.** The nursing home shall ensure that each nursing home resident or the resident's authorized representative has received every classification letter within five days of the receipt of the classification letter by the nursing home. If the resident's classification has changed, the nursing home must include the current rate for the new classification with the classification letter.

4656.0080 REVIEW AND CLASSIFICATION OF FACILITY AND PREADMISSION SCREENING ASSESSMENTS.

Subpart 1. **Classification.** Within 15 working days of receiving each request for classification submitted in accordance with part 9549.0059, the department shall classify the resident into one of the resident classes established in accordance with part 9549.0058 or notify the individual completing the assessment or the nursing home or boarding care home furnishing the documentation of the need to submit additional information necessary to determine the classification.

Subp. 2. **Notification of classification.** Within 15 days of receiving a complete and accurate request for classification, the department shall mail a written notice of the resident's classification to the resident and the resident's nursing home or boarding care home. The written notice must specify that the resident or resident's authorized representative and the nursing home or boarding care home have the right to review the department's documents supporting the classification and the right to request a reconsideration of the classification.

Subp. 3. **Classification letter.** The nursing home shall ensure that each nursing home resident or the resident's authorized representative has received every classification letter within five days of the receipt of the classification letter by the nursing home. If the resident's classification has changed, the nursing home must include the current rate for the new classification with the classification letter.

4656.0090 REQUEST FOR RECONSIDERATION OF RESIDENT CLASSIFICATION.

Subpart 1. **Reconsideration permitted.** A resident, a resident's authorized representative, or a nursing home or boarding care home in which the resident resides may request the commissioner to reconsider the resident classification.

Subp. 2. **Request for reconsideration.** A reconsideration request must be in writing and received by the commissioner within ten working days of the receipt of the notice of resident classification. Requests must be accompanied by written documentation to support the claim that the resident's needs at the time of the assessment were different from those needs identified in the assessment, or that those needs identified in the assessment require a different resident classification than the classification assigned by the department. The nursing home or boarding care home shall provide a resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the department in support of the resident's assessment. This documentation must be provided within one working day of receipt of a written or verbal request from the resident or the resident's authorized representative. If a facility requests reconsideration of a resident's classification, the facility must provide a written notice to the resident or the resident's authorized representative on the date the request is submitted to the department. The notice to the resident or the authorized representative must contain the information provided to the department supporting the request for reconsideration.

Subp. 3. **Review of requests for reconsideration.** The department shall review the requests for reconsideration, affirm or modify the resident's classification, and notify the resident and the nursing home or boarding care home by letter of the classification within 20 working days.

Subp. 4. **Status of initial classification.** The resident classification established by the department must be the classification that applies to the resident while the request for reconsideration is pending.

Subp. 5. **Additional information.** The department reserves the right to request additional documentation regarding a reconsideration necessary to make an accurate reconsideration determination.

4656.0100 AUDITS OF ASSESSMENTS OF NURSING HOME AND BOARDING CARE HOMES.

Subpart 1. **Audits required.** The department shall audit the accuracy of resident assessments performed under parts 9549.0050 to 9549.0059 through desk audits and on-site reviews of residents and their records. The department shall reclassify a resident it determines to have been incorrectly assessed.

Subp. 2. **Audit reclassification.** Within 15 working days of a reclassification provided in subpart 1, the department shall mail a written notice to the resident and the nursing home or boarding care home of the resident's classification, the opportunity to review the department's documents supporting the classification, and the right of the resident, the resident's authorized representative, or the facility to request reconsideration of the classification.

Higher Education Coordinating Board

Proposed Rules Relating to Financial Assistance

Notice of Proposed Adoption of a Rule without a Public Hearing

Notice is hereby given that the Minnesota Higher Education Coordinating Board proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in Minnesota Statutes, Section 136A.111.

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

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

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

Rose Herrera Hamerlinck
Minnesota Higher Education Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
612/296-7963

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

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

The proposed rule changes relate to the Loans to Medical and Osteopathy Students program (4810.2100-4810.2500); Definitions for Higher Education programs (4830.0100); Scholarships and Grants-in-Aid program (4830.0400-4830.0700); Work Study Grants program (4830.2200-4830.2600); State Student Loans program (4830.5200-4830.5400); and Approval of Names and Degrees program (4840.0500).

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 Rose Herrera Hamerlinck upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Rose Herrera Hamerlinck, Minnesota Higher Education Coordinating Board, 400 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101.

1-24-86

David A. Longanecker
Executive Director, Minnesota Higher Education Coordinating Board

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

PROPOSED RULES

Rules as Proposed

4810.2100 DEFINITIONS.

Subpart 1 to 3. [Unchanged.]

Subp. 4. **Area in need of medical doctors or osteopaths.** "Area in need of medical doctors or osteopaths" shall be a rural community in Minnesota where the health care needs of its residents are not fully met by available physicians and/or osteopaths. At least annually, by resolution, the board shall adopt a list of such areas based upon recommendations of the Minnesota Board of Medical Examiners and other agencies concerned with planning health care of Minnesota residents. The list of areas in need is applicable to the student at the time the student commences practice.

Subp. 5 to 7. [Unchanged.]

4810.2500 TERMS OF LOANS.

Subpart 1 to 7. [Unchanged.]

Subp. 8. Appeal procedure. During the year that a recipient is due to commence service in Minnesota, the recipient may appeal the exclusion of a community from the list of eligible areas in need. The appeal must contain at least the following:

A. a written request for an appeal to the executive director; and

B. documentation to establish that a community be added to the board's list of eligible areas in need, including:

(1) documentation from the representative of the local health systems agency defining the health care needs of the residents, and services provided by available physicians and osteopaths;

(2) notarized statements from available physicians and osteopaths documenting their intention to retire, leave the area, or otherwise reduce their services to the community;

(3) demographic and geographic data demonstrating the level of medical service provided within the community; and

(4) other relevant data concerning the health care of the community.

The executive director shall initially decide the appeal. An adverse decision must automatically be forwarded to the financial aid committee of the board, or its representatives, for a decision. The recipient may appeal an adverse determination of the financial aid committee to the Office of Administrative Hearings.

4830.0100 DEFINITIONS FOR HIGHER EDUCATION PROGRAMS.

Subpart 1 to 4. [Unchanged.]

Subp. 5. **Eligible student.** "Eligible student" means a student who meets, at a minimum, all of the following requirements:

A. to C. [Unchanged.]

D. is enrolled or is intending to enroll as a ~~full-time~~ at least a half-time student in an eligible school;

E. and F. [Unchanged.]

Subp. 6 to 10. [Unchanged.]

Subp. 11. Audit requirements. Audit requirements means that the school must make available to the board and its authorized representatives all pertinent books, documents, papers, and records for audit and examination for five years after the last day of a fiscal year, unless all audit exceptions for the period are resolved earlier.

4830.0400 APPLICATION DATES AND STUDENT ELIGIBILITY.

Subpart 1. [Unchanged.]

Subp. 2. **Minnesota resident.** "Minnesota resident" means a student who graduated from a Minnesota high school and has not since established residence in another state, or a student whose parent or legal guardian resides in Minnesota on the date of application if the student:

A. lives with the parent or legal guardian for at least six weeks; or

B. receives support from the parent or legal guardian; or

C. is claimed as a tax exemption by the parent or legal guardian in the calendar year prior to or during the calendar year in which the application is made.

"Minnesota resident" means a student who graduated from a Minnesota high school and has not established residence in another state, or a student who has resided in Minnesota for other than educational purposes for at least 12 consecutive months prior to becoming a ~~full-time~~ an eligible student, for a student who meets the conditions indicated in part 4830.0600, subpart 1, item B, subitem (1), (2), or (3).

Subp. 3. **Eligibility for initial scholarship.** To be eligible for an initial scholarship a student must be an eligible student, as defined in part 4830.0100, subpart 5, except E, and must be all of the following:

- A. a ~~Minnesota resident in financial need;~~
- B. ~~applying as a first-year, first-time postsecondary student; and~~

~~C. ranked in the upper quarter of the class at the end of the junior year of senior high school, or the equivalent, based on the student's cumulative scholastic record in senior high school; and~~

- C. must not have received a previous scholarship or grant-in-aid.

Subp. 4. **Eligibility for initial grant-in-aid.** To be eligible for an initial grant-in-aid a student must be an eligible student, as defined in part 4830.0100, subpart 5, except E, and must be all of the following:

- A. a ~~Minnesota resident;~~

- B. ~~without a baccalaureate degree;~~

~~C. a student who has not completed the number of semesters or quarters normally required to complete a baccalaureate degree;~~

- D. ~~in financial need;~~

~~E. if applying for a nursing grant, enrolled or to be enrolled in a program leading to licensure as a registered nurse or a licensed practical nurse; and~~

- F. ~~B. if under 17 years old, a holder of a high school diploma or the equivalent; and~~

- C. must not have received a previous scholarship or grant-in-aid.

Subp. 5. **Renewal awards.** A scholarship or grant-in-aid is renewable for a maximum of six semesters, nine quarters, or the equivalent. To be eligible to renew a scholarship or grant-in-aid a student must apply each year and continue to meet the requirements for an initial scholarship or grant-in-aid, except for ~~subpart subparts 3 and 4, item B C.~~ A student must have made satisfactory progress as determined by the school ~~and have been enrolled in a postsecondary school as a full-time student for no more than four years or the equivalent.~~

4830.0600 AWARDS.

Subpart 1. **Monetary awards.** The amount of a scholarship or grant-in-aid financial stipend may not exceed an applicant's cost of attendance, as defined in Minnesota Statutes, section 136A.121, subdivision 6, after deducting the following:

- A. A contribution by the applicant of at least 50 percent of the cost of attending the institution of the applicant's choosing.

B. A contribution by the applicant's parents, as determined by a financial need analysis. The parental contribution will be considered in determining the state award, unless one of the four following situations applies.

(1) The applicant has been involuntarily separated from parental support because the applicant is an orphan or a ward of the state, the applicant's parents cannot be located, or the applicant has suffered mental or physical abuse necessitating the separation. The conditions must be established by court document or by an affidavit from a member of the clergy, social worker, lawyer, or physician.

(2) The applicant is 22 years of age or older on October 1 of the state fiscal year for which aid is received, and establishes that she or he is not dependent upon parental support, based on the following information for the applicant's parents' tax year ending during that fiscal year, and the preceding tax year:

- (a) the parents did not and will not claim the student as an income tax exemption;
- (b) the student did not and will not live with his or her parents more than six weeks in either calendar year; and
- (c) the parents did not and will not provide direct or indirect support worth \$750 or more in either calendar year.

If the board has reason to believe that the information provided by the student is not correct, the facts must be established by affidavit from the parents if they can be located, and by additional documentation, such as income tax returns, proof of residence, voter registration, or similar documentation that reasonably may be requested by the board or its agents and employees.

- (3) and (4) [Unchanged.]

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

PROPOSED RULES

C. [Unchanged.]

Subp. 1a. [Unchanged.]

Subp. 1b. **Letter.** The applicant applying under subpart 1, item B, subitem (4) shall write a letter requesting determination of eligibility to the board's manager of the scholarship and grant-in-aid program for presentation to the fact finding committee of the board. The letter must be accompanied by the following documentation:

A. ~~an affidavit a statement~~ from the applicant establishing that the applicant's parents have severed relations with the applicant and have refused to provide financial support to the applicant;

B. if possible, ~~an affidavit a notarized statement~~ from the applicant's parents establishing that they have severed relations with the applicant and have refused to provide financial support to the applicant;

C. two ~~affidavits~~ notarized statements from members of the clergy, social workers, ~~or lawyers~~ establishing, educational advisors, or professional counselors documenting from personal knowledge that the applicant's parents have severed relations with the applicant and refuse to provide financial support to the applicant; ~~and~~

D. additional documentation such as income tax returns, rent payments, proof of residence, or voter registration may be requested by the board or its agents and employees to establish that the applicant's parents have severed relations with the applicant and that the applicant has established a pattern of self-supporting behavior; and

E. the parents' addresses for the last two years.

Subp. 1c. [Unchanged.]

Subp. 1d. **Fact finding committee.** The fact finding committee of the board shall consist of ~~the deputy executive director of the board~~ the executive director of the board or a designee, one financial aid officer appointed by the board, and one student appointed by the board. The appointments will be for one year or until a successor is appointed. The ~~deputy executive director~~ board's representative will act as chairperson of the fact finding committee and will convene the committee as necessary. In the event the financial aid officer or the student is involved in any way in a case before the committee the involved one must be replaced by an alternate appointed by the board.

Subp. 2. [Unchanged.]

Subp. 3. [See Repealer.]

4830.0700 METHOD OF PAYMENT.

Subpart 1 and 2. [Unchanged.]

Subp. 3. **School accounting requirements.** Schools shall maintain separate accounts for scholarship and grant-in-aid funds. Refunds to the board must be ~~made by separate checks for scholarships and grants-in-aid accompanied with a list stating the social security number, name, award type, amount of refund, term, and refund code for each student included in the refund. The refund must be made to the board within 30 days of the end of the academic term, or 30 days from the date the school is notified of a student's withdrawal, whichever is less.~~ Schools must provide evidence, prepared according to generally accepted accounting principles, that all awards have either been distributed or refunded to the board. ~~Books and records relating to state scholarships and grants-in-aid must be made available for audit by representatives of the board or the state auditor.~~

4830.2200 APPLICATION AND DISTRIBUTION OF FUNDS FOR GRANTS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Accountability.** Each participating school shall be accountable for any funds disbursed to students for work-study grants. Funds may be used only during the fiscal year of disbursement. ~~At schools where the proportion of grants to students employed by off-campus employers is significantly less than the proportion at other schools, the executive director may require~~ The school to must document its efforts to place students with off-campus employers. The percent of the school's allocation provided to graduate students shall not exceed the percent of graduate students in the total enrollment at the participating school.

Subp. 5. **Unused funds.** ~~When requested by the board,~~ The school must ~~immediately~~ return funds which the school determines will not be used within 30 days of the date of a request by the board. The board shall reallocate the funds to other participating schools requesting additional funds.

Subp. 6. Reallocation. The board shall reallocate funds using the formula specified in subpart 2, items A and B.

4830.2300 ELIGIBLE STUDENTS.

A school shall determine if a student is eligible for a work-study grant. To be eligible a student must be an eligible student, as defined in part 4830.0100, subpart 5, except that the student may be a graduate student. A student employed during periods of nonenrollment must sign a statement of intent to enroll full-time the next term or provide proof of registration for the next term.

4830.2500 CONTRACTS WITH EMPLOYERS.

Subpart 1 to 4. [Unchanged.]

Subp. 5. Reasonable effort. An institution must make a reasonable effort to place a student in eligible off-campus employment. The institution must document its efforts with documents such as:

- A. copies of correspondence with eligible employers; and
- B. notes of telephone contact with eligible employers. This shall include name of person contacted and date.

4830.2600 REPORT BY SCHOOL.

When requested by the board, each school shall report demographic information and program activity about work-study grants by August 10, or the first working day after August 10.

4830.5200 ELIGIBLE STUDENTS.

Subpart 1. **In general.** To be eligible for a state student loan, a student must meet all of the following requirements:

- A. is eligible for the guaranteed student loan program created by the Higher Education Act of 1965, as amended, published in United States Code, title 20, chapter 28;
- B. demonstrates financial need;
- C. is enrolled at least half-time;
- D. C. is in good standing, as determined by the school;
- E. D. lives in Minnesota during the school period for which the loan is approved, for a student who is not a Minnesota resident;
- F. E. has a loan refusal letter from a commercial lender when applying for a loan for the first time as an undergraduate student; and
- G. F. is one of the following:
 - (1) enrolled in an eligible school in Minnesota; or
 - (2) a Minnesota resident enrolled in an eligible school in any other state.

Subp. 2. [See Repealer.]

Subp. 3. **Students in default.** A student is not eligible for a loan if the student is currently in default on a student loan or has a default claim filed with the guarantee agency at the time of application unless the student has made repayment arrangements satisfactory to the guarantee agency and the board.

4830.5300 SCHOOL AGREEMENTS AND STUDENT APPLICATIONS.

Subpart 1 and 2. [Unchanged.]

Subp. 3. **Application, guarantee, and note.** The student and school must complete appropriate parts of the application and promissory note and send ~~it~~ them to the board for its review. The board must complete the lender's part of the application and send it to the guarantee agency. The guarantee agency must determine the loan amount it will guarantee. ~~The board must send a promissory note to a student for a loan amount not to exceed the amount guaranteed. After the student signs and returns the promissory note~~ Once the loan amount has been guaranteed, the board must send the loan amount to the school made payable to the student as prescribed in the Higher Education Act of 1965, as amended.

4830.5400 AMOUNT, TERMS, AND PAYMENT.

Subpart 1 to 5. [Unchanged.]

Subp. 6. **Refunds.** Refunds from schools to the board ~~are allocable in a percentage greater than or equal to the percentage of the total cost of education funded by state student loans~~ must be made as prescribed in the Higher Education Act of 1965, as amended.

4840.0500 APPROVAL OF NAMES AND DEGREES.

Subpart 1. **In general.** A school must be registered if it uses the term "academy," "institute," "college," or "university" in its name or if it grants a degree to a student in Minnesota, where the student has not left Minnesota for the major portion of the program

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

PROPOSED RULES

or course leading to the degree. It also must substantially meet the criteria in subpart 2. In addition, it must meet the requirements in subparts 4 and 5, as applicable. ~~Annually~~ The board shall ~~adopt, by resolution, maintain~~ and publish a list of the schools approved to use regulated terms in their names and a list of schools approved to grant degrees with a list of the approved specified degrees.

Subp. 2 to 8. [Unchanged.]

REPEALER. Minnesota Rules, parts 4830.0600, subpart 3; and 4830.5200, subpart 2 are repealed.

Higher Education Coordinating Board

Proposed Rules Relating to Part-time Student Grants

Notice of Proposed Adoption of a Rule without a Public Hearing

Notice is hereby given that the Minnesota Higher Education Coordinating Board proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in Minnesota Statutes, Section 136A.111, and First Special Session 1985, Chapter 11, Section 80, Subd. 1.

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

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

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

Rose Herrera Hamerlinck
Minnesota Higher Education Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
612/296-7963

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

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

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

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Rose Herrera Hamerlinck, Minnesota Higher Education Coordinating Board, 400 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101.

1-24-86

David A. Longanecker
Executive Director, Minnesota Higher Education Coordinating Board

Rules as Proposed (all new material)

PART-TIME STUDENT GRANTS

4830.1550 SCOPE.

Parts 4830.1550 to 4830.1556 govern state grants-in-aid for part-time students.

4830.1551 ELIGIBLE SCHOOLS.

Schools eligible for part-time student grants are the same schools eligible for state scholarships and grants-in-aid under part 4830.0300.

4830.1552 APPLICATION AND DISTRIBUTION OF FUNDS FOR GRANTS.

Subpart 1. **Allocation formula.** The board shall allocate funds to each school according to the following formula:

A. Each school's share is the number of part-time students enrolled in the last fiscal year, multiplied by the average registration level of its part-time students in the last fiscal year, multiplied by the institutional budget used by the scholarship and grant-in-aid program for the current fiscal year.

B. Each school's allocation is:

- (1) the school's share, divided by the sum of school shares,
- (2) the result in subitem (1) multiplied by 90 percent of the total part-time grant allocation for the current year.

C. Each January, the board shall allocate the remaining ten percent of the total part-time grant allocation according to the same formula, except that current year part-time enrollment data and average registration levels may be used if the school has submitted by November 15 fall data for the current year that is acceptable to the board.

"Number of part-time students" means the sum of all enrolled resident, extension, and unclassified part-time students, who are Minnesota residents, and are reported to the board for its annual enrollment survey as lower division, upper division, and vocational students in the fall term of the school year.

"Registration level" is the number of credits (or an equivalent measure) taken by part-time students in the fall term of the school year as reported to the board for its annual enrollment survey, divided by 12 credits (or an equivalent measure).

Subp. 2. **Notification.** The board shall notify each school of the amount allocated to it.

Subp. 3. **Accountability.** Each participating school shall be accountable for any funds disbursed to students for grants-in-aid for part-time students. Funds may be used only during the fiscal year of disbursement. If a student does not use a grant because the student does not enroll or withdraws from school, the school may use the funds for other eligible students or return them to the board.

Subp. 4. **Unused funds.** When requested by the board, a school shall report its use of funds and shall return unused funds. The board shall reallocate unused funds to schools desiring additional funds.

4830.1553 DETERMINATION OF ELIGIBILITY.

A school shall determine if a student is eligible for a part-time student grant. To be eligible a student must be an eligible student as defined in part 4830.0100, subpart 5, items A, B, C, E, and F. The student must be pursuing course work applicable to a degree, diploma, or certificate. After July 1, 1986, a recipient of an award who is enrolled less than half-time, as defined by the board, may continue to apply for awards.

4830.1554 AMOUNT AND TERM OF GRANTS.

Subpart 1. **Financial need.** A school shall award a grant to each eligible student, to the extent allocated funds are available and to the extent the student demonstrates financial need according to a method consistent with the institution's financial aid policies and procedures.

Subp. 2. **Direct educational cost.** The direct educational cost includes, but is not limited to the following:

- A. resident tuition and fees at the institution;
- B. educational materials;
- C. transportation expenses; and
- D. an allowance for child care expenses.

The direct educational cost must be consistent with the institution's financial aid policies and procedures.

Subp. 3. **Amount.** The amount of the grant when combined with (a) federal, state, institutional, and private grant assistance that

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

PROPOSED RULES

the student receives, (b) employer reimbursement, and (c) the expected parent/student contribution resulting from the assessment of financial need under subpart 1, must not exceed the student's direct educational cost as defined in subpart 2.

4830.1555 REPORTS OF DATA.

The school must collect demographic, educational, and financial data specified by the board from eligible students requesting grants. The school shall provide the board with individual student data upon request.

REPEALER. Minnesota Rules, parts 4830.1000; 4830.1100; 4830.1200; 4830.1300; 4830.1400; and 4830.1500 are repealed.

Department of Human Services

Proposed Rules Relating to Nursing Home Operating Cost Payment Rate Determination

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in the Veterans Home, Auditorium, Building 15, 5101 Minnehaha Avenue, Minneapolis, Minnesota 55417 on March 12, 13, and 14, 1986 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.

These rules will be heard in conjunction with parts 4656.0010 to 4656.0090, which govern procedures for assessment and classification of residents by the Department of Health. All references to parts 4656.0010 to 4656.0090 found in these rule parts are references to the rules as proposed.

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 Howard Kaibel, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612/341-7608, 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, section 14.50. The rule hearing is governed by Minnesota Statutes, section 14.01 to 14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, parts 9549.0050 to 9549.0059 affect the operating costs payment rate for nursing homes licensed under Minnesota Statutes, chapter 144A or boarding care facilities under Minnesota Statutes, section 144.50 to 144.58 participating in the Medical Assistance Program.

The purpose of the proposed rule parts is to implement a case mix reimbursement system which establishes operating cost payment rates for the nursing homes based on the condition and needs of the residents in each nursing home. Under the proposed rule parts a statewide uniform classification system is used to classify residents into 11 resident classes. Payments to nursing homes are made based on the resident classes.

Ongoing assessment of resident's needs is required to determine to which of the eleven resident classes each resident belongs. These assessments are conducted on admission, every six months and after hospitalization. An additional assessment is required 30 to 35 days after a private paying resident returns to the nursing home after hospitalization.

A schedule of 11 prospective payment rates is established for each nursing home. For purposes of establishing these prospective payment rates, operating costs are divided into two parts: total care related operating costs, which include case mix and other care related costs; and other operating costs. Separate rate limitations are applied to each part and an efficiency incentive is established for other operating costs.

In establishing the rate limitations, nursing homes are grouped by geographic location. Additional distinctions are made based on type of facility. The rule parts contain standard scope and definition sections and specific provisions governing:

- A. establishment of geographic groups;
- B. determination and allocation of fringe benefits and payroll taxes, food costs, and dietician consulting fees;
- C. determination of allowable historical operating cost per diems;
- D. determination of operating cost adjustment factors and limits;
- E. indexing of limits;
- F. determination of operating cost payment rates including:
 - (1) application of limits,
 - (2) determination of efficiency incentives,
 - (3) eligibility for and determination of a one time adjustment;
- G. determination of interim and settle-up operating cost payment rates;
- H. establishment of resident classes and class weights;
- I. assessment of residents;
- J. resident access to assessments and documentation.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256B.41, subdivision 1 and Minnesota Statutes, section 256B.431, subdivision 6.

The system established under these rule parts is approximately budget neutral. The rule parts will not result in additional state or county spending beyond the amount appropriated by the legislature.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Mary Ann Bredesen, Department of Human Services, Sapse Center, 444 Lafayette Road, 6th Floor, St. Paul, Minnesota 55101.

Copies of the rule are available for public review at each county welfare or social services department.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Pam Parker, Department of Human Services at (612) 297-3209.

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 so 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 the 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 communicating 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

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

PROPOSED RULES

statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone 612/296-5615.

1-22-86

Leonard W. Levine, Commissioner
Department of Human Services

Rules as Proposed (all new material)

DEPARTMENT OF HUMAN SERVICES NURSING HOME PAYMENT RATE DETERMINATION

9549.0050 SCOPE.

Parts 9549.0050 to 9549.0059 establish procedures for determining the operating cost payment rates for all nursing homes participating in the medical assistance program. Parts 9549.0050 to 9549.0059 are effective for rate years beginning on or after July 1, 1986. Procedures for assessment and classification of residents by the Department of Health in accordance with parts 9549.0050 to 9549.0059 are found in parts 4656.0010 to 4656.0100.

9549.0051 DEFINITIONS.

Subpart 1. **Applicability.** As used in parts 9549.0050 to 9549.0059, the following terms have the meanings given them.

Subp. 2. **Assessment form.** "Assessment form" means the form developed by the Department of Health Quality Assurance and Review Program under parts 4656.0010 to 4656.0100, and used for performing resident assessments.

Subp. 3. **Base year.** "Base year" means the reporting year ending September 30, 1984.

Subp. 4. **Case mix index.** "Case mix index" means the sum of the results obtained by multiplying the number of residents in each resident class in each nursing home by the weights listed in part 9549.0058.

Subp. 5. **Case mix operating costs.** "Case mix operating costs" means the operating costs listed in part 9549.0040, subpart 5, and the portion of fringe benefits and payroll taxes allocated to the nursing services cost category in accordance with part 9549.0053.

Subp. 6. **Case mix score.** "Case mix score" means the case mix index divided by the total number of residents in the nursing home.

Subp. 7. **Medical plan of care.** "Medical plan of care" means documentation signed by the resident's physician which includes the resident's primary diagnoses, secondary diagnoses, orders for treatment and medications, rehabilitation potential, rehabilitation procedures if ordered, clinical monitoring procedures, and discharge potential.

Subp. 8. **Other care-related operating costs.** "Other care-related operating costs" means the operating costs listed in part 9549.0040, subpart 6, and the portion of fringe benefits and payroll taxes allocated to the other care-related cost category, the cost of food, and the dietician consulting fees in accordance with part 9549.0053.

Subp. 9. **Other operating costs.** "Other operating costs" means the operating costs listed in part 9549.0040, subparts 1, 2, 3, 4, and 7, excluding the cost of food and dietician consulting fees, and the portion of fringe benefits and payroll taxes allocated to each of these operating costs categories in accordance with part 9549.0053.

Subp. 10. **Productive nursing hours.** "Productive nursing hours" means all on-duty hours of nurses, aides, orderlies, and attendants. This term does not include the on-duty hours of the medical records personnel or the director of nursing for facilities with more than 60 licensed beds. Vacation, holidays, sick leave, classroom training, and coffee breaks are not included in productive nursing hours.

Subp. 11. **Quality assurance and review or QA&R.** "Quality assurance and review" or "QA&R" means the program established under Minnesota Statutes, sections 144.072 and 144.0721.

Subp. 12. **Resident class.** "Resident class" means each of the 11 categories established in part 9549.0058.

Subp. 13. **Resident plan of care.** "Resident plan of care" for residents of nursing homes not licensed as boarding care homes means the patient care plan specified in part 4655.6000. "Resident plan of care" for residents of nursing homes licensed as boarding care homes means the overall plan of care as defined in Code of Federal Regulations, title 42, section 442.319, as amended through December 31, 1984.

Subp. 14. **Short length of stay facility.** "Short length of stay facility" means a nursing home that is certified to provide a skilled level of care and has an average length of stay of 180 days or less in its skilled level of care. For the purpose of this definition the commissioner shall calculate average length of stay for the nursing home by dividing actual resident days in the skilled level of care for which the nursing home can bill, by the total number of discharges from the skilled level of care during the reporting year.

Subp. 15. **Standardized resident days.** "Standardized resident days" means the sum of the number of resident days in the nursing home in each resident class multiplied by the weight for that resident class listed in part 9549.0058. Standardized resident days must be determined in accordance with part 9549.0054, subparts 2 and 3.

9549.0052 ESTABLISHMENT OF GEOGRAPHIC GROUPS.

Subpart 1. **Classification process.** The commissioner shall classify Minnesota nursing homes according to their geographic location as indicated in subparts 2 to 4.

Subp. 2. **Group 1.** All nursing homes in Beltrami, Big Stone, Cass, Chippewa, Clearwater, Cottonwood, Crow Wing, Hubbard, Jackson, Kandiyohi, Lac Qui Parle, Lake of the Woods, Lincoln, Lyon, Mahnomen, Meeker, Morrison, Murray, Nobles, Pipestone, Redwood, Renville, Rock, Swift, Todd, Yellow Medicine, and Wadena counties must be placed in geographic group 1.

Subp. 3. **Group 2.** All nursing homes in counties other than the counties listed under subparts 2 and 4 must be placed in geographic group 2.

Subp. 4. **Group 3.** All nursing homes in Aitkin, Anoka, Carlton, Carver, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis, Scott, and Washington counties must be placed in geographic group 3.

9549.0053 DETERMINATION AND ALLOCATION OF FRINGE BENEFITS AND PAYROLL TAXES, FOOD COSTS, AND DIETICIAN CONSULTING FEES.

Subpart 1. **Fringe benefits and payroll taxes.** Fringe benefits and payroll taxes must be allocated to case mix, other care-related costs, and other operating costs according to items A to D.

A. Fringe benefits and payroll taxes must be allocated to case mix operating costs in the same proportion to salaries reported under part 9549.0040, subpart 5.

B. Fringe benefits and payroll taxes must be allocated to other care-related costs in the same proportion to salaries reported under part 9549.0040, subpart 6.

C. Fringe benefits and payroll taxes must be allocated to other operating costs in the same proportion to salaries reported under part 9549.0040, subparts 1, 2, 3, 4, and 7.

D. For any nursing home that cannot separately report each salary component of an operating cost category, the commissioner shall determine the fringe benefits and payroll taxes to be allocated under this subpart according to subitems (1) and (2).

(1) The commissioner shall sum the allowable salaries for all nursing homes separately reporting allowable salaries in each cost category, by cost category and in total.

(2) The commissioner shall determine the ratio of the total allowable salaries in each cost category to the total allowable salaries in all cost categories, based on the totals in subitem (1).

(3) The nursing home's total allowable fringe benefits and payroll taxes must be multiplied by each ratio determined in subitem (2) to determine the amount of payroll taxes and fringe benefits allocated to each cost category for each nursing home under item D.

Subp. 2. **Determination of food costs.** The commissioner shall determine the costs of food to be included in other care-related costs according to items A and B.

A. For any nursing home separately reporting food costs, food costs shall be the allowable food costs reported under part 9549.0040, subpart 1.

B. For any nursing home that cannot separately report the cost of food under part 9549.0040, subpart 1, the commissioner shall determine the average ratio of food costs to total dietary costs for all nursing home's that separately reported food costs. The nursing home's total allowable dietary costs must be multiplied by the average ratio to determine the food costs for the nursing home.

Subp. 3. **Determination of dietician consulting fees.** The commissioner shall determine the dietician consulting fees to be included in other care-related costs according to items A and B.

A. For any nursing home separately reporting dietician consulting fees, the dietician consulting fees shall be the allowable dietician consulting fees reported under part 9549.0040, subpart 1.

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

PROPOSED RULES

B. For any nursing home that has not separately reported dietician consulting fees, the commissioner shall determine the average cost per licensed bed of allowable dietician consulting fees for all nursing homes that separately reported dietician consulting fees. The nursing home's total number of licensed beds must be multiplied by the average cost per bed to determine the dietician consulting fees for the nursing home.

9549.0054 DETERMINATION OF THE ALLOWABLE HISTORICAL OPERATING COSTS PER DIEMS.

Subpart 1. Review and adjustment of costs. The commissioner shall annually review and adjust the operating costs reported by the nursing home during the reporting year preceding the rate year to determine the nursing home's actual allowable historical operating costs. The review and adjustment must comply with the provisions of parts 9549.0010 to 9549.0080.

Subp. 2. Standardized resident days for the rate year beginning July 1, 1986. For the rate year beginning on July 1, 1986, the commissioner shall calculate the nursing home's standardized resident days in accordance with items A to E.

A. The case mix score for a date prior to July 1, 1985, must be determined in accordance with subitems (1) to (4).

(1) Except as provided in subitem (2), the case mix score must be calculated using the most recent QA&R assessment completed prior to April 1, 1985.

(2) A QA&R assessment completed on or after April 1, 1985, may be used if the nursing home's most recent QA&R assessment completed before April 1, 1985, did not include assessments of nonmedical assistance residents and the nursing home has submitted a written request to the commissioner, requesting the use of a different QA&R assessment. The nursing home's request to the commissioner to use a different QA&R assessment must have been received by December 31, 1985. The commissioner shall use the requested QA&R assessment to compute standardized resident days if the requested QA&R assessment:

(a) was completed by the Minnesota Department of Health before July 1, 1985; and

(b) nonmedical assistance residents were included in the assessment.

(3) The case mix index for the QA&R assessment selected in subitem (1) or (2) must be the sum of the number of residents in each resident class multiplied by the weight for that resident class listed in part 9549.0058.

(4) The case mix index determined in subitem (3) must be divided by the total number of residents assessed to compute the case mix score for the QA&R assessment selected in subitem (1) or (2).

B. The case mix score for the period July 1, 1985, to September 30, 1985, must be determined according to subitems (1) to (3).

(1) The resident days in each resident class for the months of July, August, and September 1985 must be multiplied by the weight for that resident class listed in part 9549.0058.

(2) The amounts determined in subitem (1) must be summed to determine the nursing home's standardized resident days for the period July 1, 1985, to September 30, 1985.

(3) The standardized resident days determined in subitem (2) must be divided by actual resident days reported for the period July 1, 1985, to September 30, 1985, to determine the case mix score for that period.

C. The average monthly change in the case mix score must be computed by subtracting the case mix score determined in item A from the case mix score determined in item B, and dividing the result by the number of months between the date of the QA&R assessment selected in item A, subitem (1) or (2) and August 16, 1985. For the purposes of this item, the commissioner shall count as a full month any period of more than 14 days and shall disregard any period of 14 days or less.

D. The average case mix score must be determined by subtracting the product of the average monthly change in the case mix score times 4.5, from the case mix score determined in item B.

E. The standardized resident days for each nursing home must be computed by multiplying the average case mix score computed in item D by the total number of resident days during the reporting year.

Subp. 3. Standardized resident days for rate years beginning on or after July 1, 1987. For rate years beginning on or after July 1, 1987, each nursing home's standardized resident days must be determined in accordance with items A and B.

A. The nursing home's resident days for the reporting year in each resident class must be multiplied by the weight for that resident class listed in part 9549.0058.

B. The amounts determined in item A must be summed to determine the nursing home's standardized resident days for the reporting year.

Subp. 4. Allowable historical case mix operating cost standardized per diem. The allowable historical case mix operating cost standardized per diem must be computed by dividing the allowable historical case mix operating cost by the standardized resident days determined in subpart 2 or 3.

Subp. 5. **Allowable historical other care-related operating cost per diem.** The allowable historical other care-related operating cost per diem must be computed by dividing the allowable historical other care-related operating costs by the number of resident days in the nursing home's reporting year.

Subp. 6. **Allowable historical other operating cost per diem.** The allowable historical other operating cost per diem must be computed by dividing the allowable historical other operating costs by the number of resident days in the nursing home's reporting year.

9549.0055 DETERMINATION OF OPERATING COST ADJUSTMENT FACTORS AND LIMITS.

Subpart 1. **Annual adjustment factors.** The annual adjustment factors must be determined according to items A and B.

A. The annual adjustment factor for the case mix and other care-related operating costs must be established according to subitems (1) to (7).

(1) The components and indices specified in the following table must be used to establish the case mix and other care-related operating cost adjustment factor. These indices are incorporated by reference as specified in subpart 4.

CASE MIX AND CARE-RELATED COMPONENTS AND INDICES

Component	Weight	Index
Salaries	.7347	Average hourly earnings of employees in nursing and personal care facilities (SIC 805).
Benefits	.1107	Difference between movements in compensation and wages and salary index components of the Employment Cost Index for Service Workers.
Supplies and Drugs	.0363	Consumer Price Index for nonprescription medical equipment and supplies.
Food	<u>.1183</u>	Producer Price Index for consumer foods.
TOTAL	1.0000	

(2) The average index value for calendar year 1983 for each component in subitem (1) must be determined by summing the quarterly index values for the component and dividing the results by four.

(3) The average index value for the reporting year for each component in subitem (1) must be determined by summing the quarterly index values for the component and dividing the results by four.

(4) The composite price index for the reporting year must be determined by:

(a) dividing the amount in subitem (3) for each component by the corresponding amount in subitem (2) for that component;

(b) multiplying each amount determined in unit (a) by the corresponding weight for that component in subitem (1);

(c) summing the results of the calculations in unit (b); and

(d) multiplying the amount calculated in unit (c) by 100.

(5) The forecasted average index value for the rate year for each component in subitem (1) must be determined by summing the forecasted quarterly index values for that component and dividing the result by four.

(6) The forecasted composite price index for the rate year must be determined by:

(a) dividing the amount in subitem (5) for each component by the corresponding amount in subitem (2) for that component;

(b) multiplying each amount determined in unit (a) by the corresponding weight for that component in subitem (1);

(c) summing the results of the calculations in unit (b); and

(d) multiplying the amount calculated in unit (c) by 100.

(7) The forecasted adjustment factor is determined by dividing the forecasted composite price index for the rate year computed in subitem (6), unit (d) by the composite price index for the reporting year computed in subitem (4), unit (d).

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

PROPOSED RULES

B. The annual adjustment factor for the other operating costs must be established according to subitems (1) to (4).

(1) The components and indices specified in the following table must be used to establish the other operating cost adjustment factor. These indices are incorporated by reference as specified in subpart 4.

OTHER OPERATING COSTS COMPONENTS AND INDICES		
Component	Weight	Index
Utilities	.1099	Producer Price Index for natural gas (80 percent); and Producer Price Index for commercial power in west north central state (20 percent).
Salaries	.5864	Average hourly earnings of employees in nursing and personal care facilities (SIC 805).
Benefits	.0799	Difference between movements in compensation and wages and salaries index components of the Employment Cost Index for Service Workers.
Additional Professional Services	.1107	Employment Cost Index for wages and salaries of professional and technical workers.
Additional Miscellaneous Service Purchases	.0322	Consumer Price Index for maintenance and repair services.
Miscellaneous Purchases (Commodities).	.0809	Consumer Price Index for maintenance and repair commodities.
TOTAL	1.0000	

(2) The average index value for calendar year 1983 for each component in subitem (1) must be determined by summing the quarterly index values for the component and dividing the results by four.

(3) The average index value for the reporting year for each component in subitem (1) must be determined by summing the quarterly index values for the component and dividing the results by four.

(4) The composite price index for the reporting year must be determined by:

(a) dividing the amount in subitem (3) for each component by the corresponding amount in subitem (2) for that component, except that the utilities component must be 80 percent of the natural gas component plus 20 percent of the commercial power component;

(b) multiplying each amount determined in unit (a) by the corresponding weight for that component in subitem (1);

(c) summing the results of the calculations in unit (b); and

(d) multiplying the amount calculated in unit (c) by 100.

(5) The forecasted average index value for the rate year for each component in subitem (1) must be determined by summing the forecasted quarterly index values for that component and dividing the result by four.

(6) The forecasted composite price index for the rate year must be determined by:

(a) dividing the amount in subitem (5) for each component by the corresponding amount in subitem (2) for that component, except that the utilities component must be 80 percent of the natural gas component plus 20 percent of the commercial power component;

(b) multiplying each amount determined in unit (a) by the corresponding weight for that component in subitem (1);

(c) summing the results of the calculations in unit (b); and

(d) multiplying the amount calculated in unit (c) by 100.

(7) The forecasted adjustment factor is determined by dividing the forecasted composite price index for the rate year computed in subitem (6), unit (d) by the composite price index for the reporting year computed in subitem (4), unit (d).

Subp. 2. **Base year limits.** For each geographic group established in part 9549.0052 the base year operating costs limits must be determined according to items A to E. No redetermination of the base year operating costs limits shall be made due to audit adjustments or appeal settlement.

A. The commissioner shall compute 115 percent of the median of the array of the allowable historical case mix operating cost per diems for the base year.

B. The commissioner shall compute 115 percent of the median of the array of the allowable historical other care-related operating cost per diems for the base year. For the purpose of establishing operating cost limits, the commissioner shall compute the allowable historical other care-related per diems for the base year by dividing the allowable historical other care-related operating costs by the greater of resident days or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period. An exception to this calculation is made for a short length of stay facility. In that case, the allowable historical other care-related operating costs must be divided by the greater of resident days or 80 percent of its number of licensed beds multiplied by the number of days in the reporting period.

C. The total care-related operating cost limit for each resident class must be determined by multiplying the amount determined in item A by the weight for each resident class and adding the amount determined in item B. The total care-related operating cost limit for a short length of stay facility must be 125 percent of the total care-related operating cost limit. A nursing home licensed on June 1, 1983, by the commissioner to provide residential services for the physically handicapped under parts 9570.2000 to 9570.3600 is exempt from the total care-related operating cost limit.

D. The commissioner shall disallow any portion of the general and administrative cost category, exclusive of fringe benefits and payroll taxes that exceeds 15 percent of the allowable expenditures in all operating cost categories except fringe benefits, payroll taxes, and general and administrative.

E. The other operating costs limits must be determined in accordance with subitems (1) to (5). For the purpose of establishing operating costs limits, the commissioner shall compute the allowable historical other operating costs per diems for the base year by dividing the allowable historical other operating costs by the greater of resident days or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period. An exception to this calculation is made for a short length of stay facility. The allowable historical other operating costs for a short length of stay facility must be divided by the greater of resident days or 80 percent of the number of licensed beds multiplied by the number of days in the reporting period.

(1) For each geographic group in part 9549.0052, the commissioner shall group all hospital attached nursing homes, all short length of stay facilities, and nursing homes licensed on June 1, 1983, by the commissioner to provide residential services for the physically handicapped under parts 9570.2000 to 9570.3600.

(2) The other operating cost limit for hospital attached nursing homes in each geographic group in part 9549.0052 must be 105 percent of the median of the array of the allowable historical other operating cost per diem for each nursing home in the group established under subitem (1) in the base year.

(3) The other operating cost limit for all short length of stay facilities and nursing homes licensed on June 1, 1983, by the commissioner to provide residential services for the physically handicapped under parts 9570.2000 to 9570.3600 in each geographic group in part 9549.0052 must be 105 percent of the limit established in subitem (2).

(4) For each geographic group in part 9549.0052, the commissioner shall group all nursing homes not included in subitem (1).

(5) The other operating cost limit for each group established in subitem (4) must be 105 percent of the median of the array of the allowable historical other operating cost per diems for each nursing home in the group for the base year.

Subp. 3. **Indexed limits.** For a rate year beginning on or after July 1, 1986, the total care related operating cost limits and the other operating cost limits must be determined in accordance with items A and B.

A. The total care related operating cost limits must be determined in accordance with subitems (1) and (2).

(1) The composite price index for case mix and other care related operating costs for the current reporting year as determined in subpart 1, item A, subitem (4), must be divided by the corresponding composite price index for the previous reporting year.

(2) The limit for each resident class in subpart 2, item C, must be multiplied by the amount determined in subitem (1) to establish the indexed total care related operating cost limits.

B. Each total other operating costs limit must be determined in accordance with subitems (1) and (2).

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

PROPOSED RULES

(1) The composite price index for other operating costs for the current reporting year as determined in subpart 1, item B, subitem (4), must be divided by the corresponding composite price index for the previous reporting year.

(2) Each limit in subpart 2, item E must be multiplied by the amount determined in subitem (1) to establish the indexed other operating cost limits.

Subp. 4. Incorporations by reference. The references for the indices specified in this part are listed in items A to D, and are available through the Minitex interlibrary loan system. The references in items A to D are subject to frequent change.

A. The index for average hourly earnings of employees in nursing and personal care facilities is published monthly in "Employment and Earnings," Bureau of Labor Statistics, United States Department of Labor. (SIC 805) Standard Industrial Code 805 is the code used for employees in nursing and personal care facilities in this publication.

B. The Employment Cost Index for Service Workers and the Employment Cost Index for wages and salaries of professional and technical workers are published monthly in "Current Wage Developments," Bureau of Labor Statistics, United States Department of Labor.

C. The Consumer Price Index for nonprescription medical equipment and supplies and the Consumer Price Index for maintenance and repair commodities are published in the "Monthly Labor Review," Bureau of Labor Statistics, United States Department of Labor.

D. The Producer Price Index for consumer foods, the Producer Price Index for natural gas, and the Producer Price Index for commercial power in west north central states are published monthly in "Producer Prices and Price Indexes," Bureau of Labor Statistics, United States Department of Labor.

9549.0056 DETERMINATION OF OPERATING COST PAYMENT RATE.

Subpart 1. Nonadjusted case mix and other care-related payment rate. For each nursing home, the nonadjusted case mix and other care-related payment rate for each resident class must be determined according to items A to D.

A. The nursing home's allowable historical case mix operating cost standardized per diem established in part 9549.0054, subpart 4, must be multiplied by the weight for each resident class listed in part 9549.0058.

B. The allowable historical other care-related operating cost per diem established in part 9549.0054, subpart 4, must be added to each weighted per diem established in item A.

C. If the amount determined in item B for each resident class is below the limit for that resident class and group established in part 9549.0055, subpart 2, item C, as indexed in part 9549.0055, subpart 3, the nursing home's nonadjusted case mix and other care-related payment rate must be the amount determined in item B for each resident class.

D. If the amount determined in item B for each resident class is at or above the limit for that resident class and group established in part 9549.0055, subpart 2, item C, as indexed in part 9549.0055, subpart 3, the nursing home's nonadjusted case mix and other care-related payment rate must be set at the limit except as provided in subpart 7.

Subp. 2. Adjusted prospective case mix and other care-related payment rate. For each nursing home, the adjusted prospective case mix and other care-related payment rate for each resident class must be the nonadjusted case mix and other care-related payment rate multiplied by the case mix and other care-related adjustment factor determined in part 9549.0055, subpart 1, item A.

Subp. 3. Nonadjusted other operating cost payment rate. The nonadjusted other operating cost payment rate must be determined according to items A and B.

A. If the allowable historical other operating cost per diem determined in part 9549.0054, subpart 5, is below the limit for that group established in part 9549.0055, subpart 2, item E, as indexed in part 9549.0055, subpart 3, the nursing home's nonadjusted other operating cost payment rate must be the allowable historical other operating cost per diem.

B. If the allowable historical other operating cost per diem determined in part 9549.0054, subpart 5, is at or above the limit for that group established in part 9549.0055, subpart 2, item E, as indexed in part 9549.0055, subpart 3, the nursing home's nonadjusted other operating cost payment rate must be set at that limit except as provided in subpart 7.

Subp. 4. Adjusted prospective other operating cost payment rate. The adjusted prospective other operating cost payment rate must be determined according to items A to C.

A. Except as provided in item B, if the nursing home's nonadjusted other operating cost payment rate is below the limit for that group established in part 9549.0055, subpart 2, item E, as indexed in part 9549.0055, subpart 3, the nursing home's adjusted prospective other operating cost payment rate must be the nonadjusted other operating cost payment rate determined in subpart 3, item A, multiplied by the other operating cost adjustment factor determined in part 9549.0055, subpart 1, item B, plus an efficiency incentive equal to the difference between the limit in part 9549.0055, subpart 2, item E, as indexed in part 9549.0055, subpart 3, and the nonadjusted other operating cost payment rate in subpart 3 up to a maximum of two dollars per resident day.

B. For any short length of stay facility and any nursing home licensed on June 1, 1983, by the commissioner to provide residential services for the physically handicapped under parts 9570.2000 to 9570.3600 that is under the limits established in part 9549.0055, subpart 2, item E, subitem (3), as indexed in part 9549.0055, subpart 3, the nursing home's adjusted prospective other operating cost payment rate must be the nonadjusted other operating cost payment rate determined in subpart 3, item A, multiplied by the other operating cost adjustment factor determined in part 9549.0055, subpart 1, item B, plus an efficiency incentive equal to the difference between the limit in part 9549.0055, subpart 2, item E, subitem (2), as indexed in part 9549.0055, subpart 3, and the nonadjusted other operating cost payment rate in subpart 3, up to a maximum of two dollars per resident day.

C. If the nursing home's nonadjusted other operating cost payment rate is at or above the limit for that group established in part 9549.0055, subpart 2, item E, as indexed in part 9549.0055, subpart 3, the nursing home's adjusted prospective other operating cost payment rate must be the nonadjusted other operating cost payment rate determined in subpart 3, item B, multiplied by the other operating cost adjustment factor determined in part 9549.0055, subpart 1, item B, except as provided in subpart 7.

D. The nursing home's efficiency incentives as determined in item A or B must not be changed as a result of field audit adjustment.

Subp. 5. Total operating cost payment rate. The nursing home's total operating cost payment rate must be the sum of the adjusted prospective case mix and other care-related payment rate determined in subpart 2 and the adjusted other operating cost payment rate determined in subpart 4.

Subp. 6. One-time adjustment. Items A to F set forth the procedure to be applied to establish a one-time adjustment to the nursing home's case mix operating costs per diem for the period October 1, 1986, to September 30, 1987.

A. To qualify for a one-time adjustment to the case mix operating costs per diem, the nursing home or portion of the nursing home for which the adjustment is requested must be licensed under Minnesota Statutes, chapter 144A and the nursing home must not have received an interim or settle-up payment rate during the reporting year ending September 30, 1985.

B. To apply for the one-time adjustment to case mix operating costs per diem, the nursing home must submit a written request to the commissioner on or before July 31, 1986. The written request must include the information required in subitems (1) to (3).

(1) Documentation indicating that based on the productive nursing hours and standardized resident days for the reporting period, ending September 30, 1985, the nursing home cannot provide a minimum of 0.95 productive nursing hours per standardized resident day by reallocating existing staff and costs and that the nursing home cannot use other available resources, including any efficiency incentives effective July 1, 1986, to increase productive nursing hours to meet the minimum of 0.95 productive nursing hours per standardized resident day.

(2) A list of the number and type of staff positions including annual hours worked, and related fringe benefits and payroll taxes for the reporting years ending September 30, 1984 and September 30, 1985.

(3) A written nursing plan describing how the nursing home will meet the minimum of 0.95 productive nursing hours per standardized resident day if the nursing home receives a one-time adjustment. The plan must include the number and types of staff to be added to the current staff complement and the projected cost of the salary and related fringe benefits and payroll taxes for the additional staff. The plan must also specify any other increases in case mix operating costs.

C. The commissioner of human services and the commissioner of health shall review the documentation submitted by the nursing home under item B to determine if the nursing home meets the criteria in subitems (1) to (5).

(1) The nursing home meets the criteria in item A.

(2) The nursing home has submitted the documentation required in item B.

(3) The nursing home provided less than a minimum of 0.95 productive nursing hours per standardized resident day for the reporting period ending September 30, 1985.

(4) The nursing home cannot meet the minimum of 0.95 productive nursing hours per standardized resident day by reallocating staff and costs including efficiency incentives.

(5) The nursing home's allowable historical case mix and other care-related operating cost per diem plus the one-time adjustment is less than the case mix and other care-related operating cost limit.

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

PROPOSED RULES

D. If the request meets the criteria in item C, the commissioner shall make a one-time adjustment to the nursing home's payment rate. The one-time adjustment must be determined according to subitems (1) to (9) and must not exceed the amount computed in subitem (3).

(1) The nursing home's productive nursing hours per standardized days for the reporting period ending September 30, 1984, must be subtracted from 0.95 and the result must be multiplied by the nursing home's standardized resident days for the period beginning October 1, 1984, and ending September 30, 1985.

(2) The nursing home's nursing cost per hour must be determined by dividing the nursing home's total allowable historical case mix operating costs by the nursing home's total productive nursing hours for the reporting period ending September 30, 1985.

(3) The amount determined in subitem (1) must be multiplied by the amount determined in subitem (2) to determine the total maximum nursing costs required to meet the minimum of 0.95 productive nursing hours per standardized resident day.

(4) If the amount requested in the nursing hours plan submitted under item B is less than the amount in subitem (3) the difference must be subtracted from the amount in subitem (3).

(5) The amount determined in subitem (4) must be divided by the nursing home's standardized resident days for the reporting period ending September 30, 1985, to compute the maximum standardized case mix per diem costs to be allowed under this subpart.

(6) Any efficiency incentive included in the nursing home's total operating costs payment on July 1, 1986, must be subtracted from the amounts in subitem (5).

(7) Any further reduction that the commissioner determines would be possible by reallocating the nursing home's staff and costs must be subtracted from the amount computed in subitem (6).

(8) The amount computed in subitem (7) must be multiplied by the weight for each resident class contained in part 9549.0058, subpart 2.

(9) The amount computed in subitem (8) must be added to the adjusted prospective case mix and other care related payment rates for each corresponding resident class.

E. The one-time adjustment determined in item D, subitem (9) shall be implemented beginning October 1, 1986. No portion of the adjustment may be utilized to provide services that are not case mix operating costs according to part 9549.0051, subpart 5. The commissioner shall perform a fiscal review of the nursing home's cost report submitted for the reporting period ending September 30, 1987, and of any additional documentation required by the commissioner to determine if the nursing home provided 0.95 productive nursing hours per standardized resident day and to determine whether the nursing home has implemented the provisions of the plan specified in item B. The commissioner shall consult with the commissioner of health to verify compliance with any applicable care-related licensing or certification standards. Based on the results of the fiscal review and the information provided by the commissioner of health the commissioner shall implement either subitem (1), (2), or (3).

(1) If the nursing home has failed to implement the plan required in item B, the commissioner shall recover the total amount paid under this subpart in accordance with part 9549.0070, subpart 4 and shall disallow any increases in costs incurred by the nursing home under this subpart in establishing the payment rate for the rate year beginning July 1, 1988.

(2) If the nursing home has implemented or partially implemented the plan specified in item B and the actual case mix operating costs incurred during the reporting year ending September 30, 1987, are below the payment made under this subpart, the commissioner shall reduce the adjustment to the nursing home's payment rate and recover any overpayments in accordance with part 9549.0070, subpart 4. The reduced adjustment to the nursing home's total payment rate shall continue to be paid to the nursing home until June 30, 1988.

(3) If the actual costs of implementing the plan specified in item B, subitem (3) incurred during the reporting period ending September 30, 1987, exceed the payments made under this subpart there shall be no retroactive cost settle-up. The adjustment to the nursing home's total payment rate shall continue to be paid to the nursing home at the same level until June 30, 1988.

F. The nursing home must record the costs associated with this subpart separately from other nursing home costs until the commissioner's fiscal and compliance review under item E establishes that the nursing home has implemented the plan required in item B and has provided at least 0.95 productive nursing hours per standardized resident day during the reporting period ending September 30, 1987. To prevent duplicate payments, the case mix operating costs associated with this subpart are nonallowable until after the commissioner has reviewed and approved the costs under item E. If the commissioner approves the costs, the additional case mix operating costs incurred under this subpart are allowable costs and must be included in the computation of the allowable historical case mix operating cost per diem for the rate year beginning July 1, 1988.

Subp. 7. **Phase-in of rates.** Nursing home rate limits shall be phased-in in accordance with Minnesota Statutes, section 256B.431, subdivision 2h.

9549.0057 DETERMINATION OF INTERIM AND SETTLE-UP OPERATING COST PAYMENT RATES.

Subpart 1. **Conditions.** To receive an interim payment rate, a nursing home must comply with the requirements and is subject to the conditions in part 9549.0060, subpart 14, items A to C. The commissioner shall determine interim and settle-up operating cost payment rates for a newly constructed nursing home, or one with a capacity increase of 50 percent or more according to subparts 2 and 3.

Subp. 2. **Interim operating cost payment rate.** For the rate year or portion of an interim period beginning on or after July 1, 1986, the interim total operating cost payment rate must be determined according to parts 9549.0050 to 9549.0059, except that:

A. The nursing home must project its anticipated resident days for each resident class. The anticipated resident days for each resident class must be multiplied by the weight for that resident class as listed in part 9549.0058 to determine the anticipated standardized resident days for the reporting period.

B. The commissioner shall use anticipated standardized resident days in determining the allowable historical case mix operating cost standardized per diem.

C. The commissioner shall use the anticipated resident days in determining both the allowable historical other care-related operating cost per diem and the allowable historical other operating cost per diem.

D. The annual adjustment factors determined in part 9549.0055, subpart 1, must not be applied to the nursing home's allowable historical per diems as provided in part 9549.0056, subparts 2 and 4.

E. The limits established in part 9549.0055, subpart 2, items C and E, as indexed in part 9549.0055, subpart 3 and in effect at the beginning of the interim reporting period, must be increased by ten percent.

F. The efficiency incentive in part 9549.0056, subpart 4, item A or B, must not apply.

G. The phase-in provisions in part 9549.0056, subpart 7, must not apply.

Subp. 3. **Settle-up operating cost payment rate.** The settle-up total operating cost payment rate must be determined according to items A to C.

A. The settle-up operating cost payment rate for a nursing home that began construction before July 1, 1985, must be determined under 12 MCAR S 2.05014 [Temporary] for the interim period before July 1, 1985.

B. The settle-up operating cost payment rate for a nursing home that began construction after June 30, 1985, or whose interim reporting period included a period of time after that date, must be determined for the portion of that interim period occurring after June 30, 1985, under either parts 9549.0050 to 9549.0059 [Temporary] or parts 9549.0050 to 9549.0059, whichever was in effect during that portion of the interim period. For interim periods or the portion of an interim period occurring after July 1, 1986, subitems (1) to (7) must be applied.

(1) The standardized resident days as determined in part 9549.0054, subpart 2 or 3, must be used for the interim reporting period.

(2) The commissioner shall use the standardized resident days in subitem (1) in determining the allowable historical case mix operating cost standardized per diem.

(3) The commissioner shall use the actual resident days in determining both the allowable historical other care-related operating cost per diem and the allowable historical other operating cost per diem.

(4) The annual adjustment factors determined in part 9549.0055, subpart 1, must not be applied to the nursing home's allowable historical per diems as provided in part 9549.0056, subparts 2 and 4.

(5) The limits established in subpart 2, item E, must be the limits for the settle-up reporting period occurring after July 1, 1986. If the interim reporting period includes more than one July 1 date, the commissioner shall use the limit established in part 9549.0055, subpart 2, items C and E, as indexed in part 9549.0055, subpart 3, increased by ten percent for the second July 1 date.

(6) The efficiency incentive in part 9549.0056, subpart 4, item A or B, must not apply.

(7) The phase-in provisions in part 9549.0056, subpart 7 must not apply.

C. For the nine-month period following the settle-up reporting period, the total operating cost payment rate must be determined according to item B except that the efficiency incentive as computed in part 9549.0056, subpart 4, item A or B, applies.

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

PROPOSED RULES

9549.0058 RESIDENT CLASSES AND CLASS WEIGHTS.

Subpart 1. **Resident classes.** Each resident must be classified according to items A to E based on the information on the assessment form completed in accordance with part 9549.0059.

A. A resident or applicant must be assessed as dependent in an activity of daily living or ADL according to the following table:

ADL	Dependent if Score At or Above
Dressing	2
Grooming	2
Bathing	4
Eating	2
Bed mobility	2
Transferring	2
Walking	2
Toileting	1

B. A resident or applicant assessed as dependent in fewer than four of the ADL's in item A must be defined as Low ADL. A resident assessed as dependent in four through six of the ADL's in item A must be defined as Medium ADL. A resident assessed as dependent in seven or eight of the ADL's in item A must be defined as High ADL.

C. A resident or applicant must be defined as special nursing if:

- (1) the resident is assessed to require tube feeding; or
- (2) the resident is assessed to require clinical monitoring every day on each shift plus one or more of the following special treatments on the assessment form:
 - (a) oxygen and respiratory therapy;
 - (b) ostomy/catheter care;
 - (c) wound or decubitus care;
 - (d) skin care;
 - (e) intravenous therapy;
 - (f) drainage tubes;
 - (g) blood transfusions;
 - (h) hyperalimentation;
 - (i) symptom control for the terminally ill; or
 - (j) isolation precautions.

D. A resident or applicant must be defined as having a neuromuscular condition if the resident is assessed to have one or more of the diagnoses coded to the categories in subitems 1 to 8 according to the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM), as published by the Commission on Professional and Hospital Activities, 1968 Green Road, Ann Arbor, Michigan (1978). This publication is incorporated by reference. The publication is available through the Minitex interlibrary loan system and is not subject to frequent change.

- (1) diseases of nervous system excluding sense organs (320-359 excluding 331.0);
- (2) cerebrovascular disease (430-438 excluding 437);
- (3) fracture of skull (800-804), excluding cases without intracranial injury;
- (4) intercranial injury, excluding those with skull fracture (850-854);
- (5) fracture of vertebral column with spinal cord injury (806);
- (6) spinal cord injury without evidence of spinal bone injury (952);
- (7) injury to nerve roots and spinal plexus (953); or
- (8) neoplasms of the brain and spine (170.2, 170.6, 191, 192, 198.3, 198.4, 213.2, 213.6, 225, 237.5, 237.6, and 239.6).

E. A resident or applicant must be defined as having a behavioral condition if the resident's assessment score is two or more for behavior on the assessment form.

F. The commissioner shall establish resident classes for each nursing home according to subitems (1) to (11). The resident classes must be established based on the definitions in items A to E.

(1) Class A. Low ADL, and not defined behavioral condition, and not defined special nursing.

(2) Class B. Low ADL, and defined behavioral condition, and not defined special nursing.

(3) Class C. Low ADL, and defined special nursing.

(4) Class D. Medium ADL, and not defined behavioral condition, and not defined special nursing.

(5) Class E. Medium ADL, and defined behavioral condition, and not defined special nursing.

(6) Class F. Medium ADL, and defined special nursing.

(7) Class G. High ADL, and scoring less than three on the eating ADL in item A, and not defined special nursing, and not defined behavioral condition.

(8) Class H. High ADL, and scoring less than three on eating ADL in item A, and defined behavioral condition, and not defined special nursing.

(9) Class I. High ADL, and scoring three or four on eating ADL in item A, and not defined special nursing, and not defined neuromuscular condition.

(10) Class J. High ADL, and scoring three or four on the eating ADL in item A, and not defined special nursing, and defined neuromuscular condition or scoring three or four on behavior.

(11) Class K. High ADL, and defined special nursing.

Subp. 2. **Class weights.** The commissioner shall assign weights to each resident class established in subpart 1, item F, according to items A to K.

A. Class A, 1.00;

B. Class B, 1.30;

C. Class C, 1.64;

D. Class D, 1.95;

E. Class E, 2.27;

F. Class F, 2.29;

G. Class G, 2.56;

H. Class H, 3.07;

I. Class I, 3.25;

J. Class J, 3.53;

K. Class K, 4.12.

9549.0059 RESIDENT ASSESSMENT.

Subpart 1. **Assessment of nursing home applicants and newly admitted residents.** Each nursing home applicant or newly admitted resident must be assessed for the purpose of determining the applicant's or newly admitted resident's class according to items A to I.

A. The county preadmission screening team or hospital screening team under contract with the county must assess all nursing home applicants for whom preadmission screening is required by Minnesota Statutes, section 256B.091, and any applicant for whom a preadmission screening is not required but who voluntarily requests such a screening in accordance with Minnesota Statutes, section 256B.091, except as provided in subitems (1) and (2).

(1) The public health nurse of the county preadmission screening team or the registered nurse case manager shall assess a nursing home applicant, if the applicant was previously screened by the county preadmission screening team and the applicant is receiving services under the Alternative Care Grants program defined in part 9505.2340 or under the medical assistance program.

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

PROPOSED RULES

(2) An applicant whose admission to the nursing home is for the purpose of receiving respite care services need not be reassessed more than once every six months for the purpose of computing resident days under part 9549.0054, subpart 2, if the applicant has been classified by the Department of Health within the prior six-month period. In this case, the resident class established by the Department of Health within the prior six-month period may be the resident class of the applicant. A resident must not receive more than one assessment per respite care stay.

B. The nursing home must assess each applicant or newly admitted resident for whom a preadmission screening is not required by Minnesota Statutes, section 256B.091, or is not requested voluntarily in accordance with Minnesota Statutes, section 256B.091, except as provided in item A, subitem 2. For purposes of this item, the term "newly admitted resident" includes a resident who moves to a section of the nursing home that is licensed differently than the section the resident previously was placed in or a resident who has been transferred from another nursing home.

C. The assessment required by this subpart must be performed within ten working days before or ten working days after the date the applicant is admitted to the nursing home.

D. The nursing home must perform the assessment for any resident who is required to be assessed by the preadmission screening team under item A or who has received a prior preadmission screening, and for whom the assessment required under this subpart has not been performed by the preadmission screening team within ten working days before or ten working days after the date the applicant is admitted to the nursing home. The nursing home must perform the assessment and submit the forms to the Department of Health within 15 working days after admission.

E. Each assessment that the nursing home is required to perform must be completed by a registered nurse. The registered nurse performing the assessment must sign the assessment form.

F. The assessment of each applicant or newly admitted resident must be based on the QA&R procedures of the Department of Health, and must be recorded on the assessment form.

G. The preadmission screening team or hospital screening team under contract with the county must send the completed assessment form to the Department of Health, and provide a copy to the nursing home, within five working days following the assessment.

H. Each assessment completed in accordance with items A to G and a completed medical plan of care must be submitted to the Department of Health by the nursing home as a request for classification within ten working days after admission or after the assessment, whichever is later.

I. The resident class for applicants or newly admitted residents must be effective on the date of the person's admission to the nursing home.

Subp. 2. Semiannual assessment by nursing homes. Semiannual assessments of residents by the nursing home must be completed in accordance with items A to D.

A. A nursing home must assess each of its residents no earlier than 170 days and no later than 190 days after the date of the most recent annual assessment by the Department of Health's QA&R team.

B. A registered nurse shall perform the assessment on each resident according to QA&R procedures established by the Department of Health including physical observation of the resident, review of the medical plan of care, and review of the resident's care plan, and shall record the assessment on the assessment form. The registered nurse performing the assessment shall sign the assessment form.

C. Within five working days of the completion of the nursing home's semiannual resident assessments, the nursing home must forward to the Department of Health requests for classification for all residents assessed for the semiannual assessment. These requests must include the assessment forms, the resident plans of care, and the nursing home's daily census for the date on which the assessments were completed including an explanation of any discrepancy between the daily census and the number of assessments submitted. The nursing home must provide additional information to the Department of Health if the Department of Health requests the information in order to determine a resident's classification.

D. Any change in resident class due to a semiannual assessment must be effective on the first day of the month following the date of the completion of the semiannual assessments.

Subp. 3. Change in classification due to annual assessment by Department of Health. Any change in resident class due to an annual assessment by the Department of Health's QA&R team will be effective as of the first day of the month following the date of completion of the Department of Health's assessments.

Subp. 4. Assessment upon return to the nursing home from a hospital. Residents returning to a nursing home after hospitalization must be assessed according to items A to C.

A. A nursing home must assess any resident who has returned to the same nursing home after a hospital admission. The assessment must occur no more than five working days after the resident returns to the same nursing home.

B. In addition to the assessment required in item A, private paying residents who have returned to the same nursing home after hospital admission must be reassessed by the nursing home no less than 30 days and no more than 35 days after return from the hospital unless the nursing home's annual or semiannual reassessment occurs during the specified time period.

C. A registered nurse shall perform the assessment on each resident according to QA&R procedures established by the Department of Health, including physical observation of the resident, review of the medical plan of care, and review of the resident's plan of care, and shall record the assessment on the assessment form. The registered nurse who performs the assessment shall sign the assessment form. Within five working days of the completion of the assessment, the nursing home must forward to the Department of Health a request for a classification for any resident assessed upon return to the nursing home after a hospital admission. This request must include the assessment form and the resident's medical plan of care. Upon request, the nursing home must furnish the Department of Health with additional information needed to determine a resident's classification.

D. Any change in resident class due to an assessment provided under item A must be effective on the date the resident returns to the nursing home from the hospital. Any change in resident class due to a reassessment provided under item B must be effective as of the first of the month following the assessment.

Subp. 5. Change in resident class due to audits of assessments of nursing home residents. Any change in resident class due to a reclassification required by part 4656.0050 must be retroactive to the effective date of the assessment audited.

Subp. 6. False information. If the nursing home knowingly supplies inaccurate or false information in an assessment or a request for reconsideration, the commissioner shall apply the penalties in part 9549.0041, subpart 15.

Subp. 7. Change in resident class due to request for reconsideration of resident classification. Any change in a resident class due to a request for reconsideration of the classification must be made in accordance with items A and B.

A. The resident classification established by the Department of Health must be the classification that applies to the resident while any request for reconsideration under part 4656.0060 is pending.

B. Any change in a resident class due to a reclassification under part 4656.0060 must be effective as of the effective date of the classification established by the original assessment for which a reconsideration was requested.

Subp. 8. Reconsideration of resident classification. Any request for reconsideration of a resident classification must be made under part 4656.0060.

Subp. 9. Resident access to assessments and documentation. The nursing home must provide access to information regarding rates, assessments, and other documentation provided to the Minnesota Department of Health in support of the resident's assessments to each nursing home resident or the resident's authorized representative according to items A to D.

A. The nursing home must post a notice of its current rates for each resident class in a conspicuous place. The rates must be posted no later than five days after receipt by the nursing home. The nursing home may include a notice that the nursing home has chosen to appeal the rates under part 9549.0080.

B. The nursing home must provide written notice to each private paying resident or the resident's authorized representative of any increase in the total payment rate established by the commissioner 30 days before the increase takes effect as required by Minnesota Statutes, section 256B.47, subdivision 2. The notice must specify the current classification of the resident. This item does not apply to adjustments in rates due to a necessary change in the resident's classification as a result of an assessment required in this part.

C. The nursing home must provide each nursing home resident or the resident's authorized representative with each classification letter received from the Minnesota Department of Health within five days of the receipt of the classification letter. If the resident's classification has changed, the nursing home must include the current rate for the new classification with the classification letter.

D. The nursing home must provide each nursing home resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the Department of Health in support of the assessment within one working day of receipt of a written or verbal request from the resident or the resident's authorized representative.

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

PROPOSED RULES

Racing Commission

Proposed Rules Governing Horse Racing

Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Racing Commission proposes to adopt the above captioned rules without a public hearing unless 25 or more persons submit written requests for a public hearing. The Racing Commission has determined that the proposed rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.22 to 14.28 (1984), as amended.

Interested persons shall have 30 days from the date this notice is published in the *State Register* to submit comments in support of or in opposition to the proposed rules. The 30 days will expire on March 12, 1986. Comment is encouraged. Each comment should identify the portion of the proposed rules being addressed, the reason for the comment, and any suggested changes to the rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Racing Commission and do not result in a substantial change in the proposed language.

In addition to submitting comments, interested persons may request in writing during the 30-day comment period that a hearing be held on the proposed rules. Any person requesting a hearing should state his or her name, address, and telephone number, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any changes they want made to the proposed rules.

If a person desires that a hearing be held on only a portion of the proposed rules, it is requested that the Racing Commission be informed of the specific proposed rule on which a hearing is being requested at the time that the hearing request is made. This will enable the Racing Commission to limit the hearing, if one is held, to the specific issues of concern. A public hearing will be held only if 25 or more persons submit in writing requests for a hearing on the proposed rules or a portion thereof by March 12, 1986. If a hearing is required, it will be held in accordance with the provisions of Minn. Stat. §§ 14.131 to 14.20 (1984), as amended, and the hearing notice provided below.

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

Dave Freeman
Executive Director
Minnesota Racing Commission
11000 West 78th Street, Suite 201
Eden Prairie, Minnesota 55344
Telephone: (612) 341-7555

The statutory authority of the Racing Commission to promulgate the proposed rules is contained in Minn. Stat. § 240.24 (1984), as amended by Minn. Laws 1985, ch. 211, §§ 2 and 4.

If adopted, the proposed rules would amend certain sections of the rules of racing adopted in April of 1985, and would provide for the administration of the Standardbred and Quarter Horse Breeders' Funds.

The proposed rules will be published in the *State Register* issue of February 10, 1986 and a free copy of them may be obtained from the Racing Commission by writing or telephoning Dave Freeman at the address or telephone number listed above.

A Statement of Need and Reasonableness that describes the need for and the reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and may be obtained from the Racing Commission by writing or telephoning Dave Freeman at the address or telephone number listed above.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have an impact on agricultural land; therefore no further information need be provided under Minn. Stat. § 14.11 (1984).

The proposed rules may affect small businesses. The actual effect, if any, is discussed in the Statement of Need and Reasonableness.

Upon adoption of the proposed rules without a public hearing, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, the rules as adopted, and statement explaining any differences between the rules as proposed and as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. 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 rules as adopted, should submit a written request to Dave Freeman at the address listed above.

Rules as Proposed

7869.0100 DEFINITIONS.

Subpart 1. to 15. [Unchanged.]

Subp. 16. **Condition book.** "Condition book" means the publication issued by the association and approved by the commission advertising races for upcoming racing days.

Subp. 17: to 23. [Unchanged.]

Subp. 24. **Entry.** "Entry" means, according to its context, either:

A. the act of entering a horse to race;

B. a horse eligible and entered in a race; or

C. two or more horses that are entered in a race and are owned in whole or in part by the same owner, or are trained by a trainer who owns any interest in any of the other horses in the race, and which are coupled for wagering purposes.

Subp. 25. to 40. [Unchanged.]

Subp. 41. **Official.** "Official" means the act of the stewards declaring the results of the race final and authorizing pari-mutuel winnings to be paid out.

Subp. 42. to 50. [Unchanged.]

Subp. 51. **Race.** "Race" means a contest among horses for purse, stakes, premium, or wager for money, run in the presence of racing officials of the association and the commission. The following are categories of races:

A. to I. [Unchanged.]

J. "Qualifying race" means a non pari-mutuel wagering race in which a standardbred horse must compete to establish or reestablish its eligibility to enter a race on which pari-mutuel wagering will be conducted.

K. "Quarter horse race" means a race on the flat at 870 yards or less.

~~K.~~ L. "Race on the flat" means a race over a course in which no jumps or other obstacles are placed.

~~L.~~ M. "Restricted race" means a race required pursuant to Minnesota Statutes, section 240.29.

~~M.~~ N. "Stakes race" or "sweepstakes race" means a race to which nominators of the engaged entries contribute to a purse, and to which money or any other award may be added. No overnight race, regardless of its conditions, may be deemed a stakes race.

O. "Time trial" means a race against time for the purpose of establishing a performance record.

Subp. 52. [Unchanged.]

Subp. 53. **Recognized racetrack.** "Recognized racetrack" means a racetrack where pari-mutuel wagering is authorized by law, or which is recognized by the American Quarter Horse Association or the United States Trotting Association.

Subp. 54. to 69. [Unchanged.]

7873.0127 PARI-MUTUEL POOLS DEPENDENT ON ENTRIES.

Unless the commission approves a prior written request from an association to alter wagering opportunities for a specific race, each association must offer:

A. win, place, and show wagering on all scheduled races involving six or more betting interests;

B. if horses representing five betting interests are scheduled to start in a race, then the association may prohibit show wagering on that race; and

C. if horses representing four or fewer betting interests are scheduled to start in a race, then the association may prohibit place wagering, show wagering, or both on that race.

Where possible, the official program must contain a notice indicating races on which place wagering, show wagering, or both are not offered.

7873.0130 PREVENTION TO START.

In a thoroughbred or quarter horse race, if the doors in front of a stall in a mechanically or electronically operated starting gate should fail to open simultaneously with the other stall doors, thereby preventing a horse from obtaining a fair start when the starter dispatches the field, the following shall apply:

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

PROPOSED RULES

A. and B. [Unchanged.]

C. If any horse or horses are so prevented from starting so that it would reduce the total number of starters below six, the following shall apply:

(1) if five starters of different betting interests leave the stalls, the association may refund the entire amount wagered in the show pool;

(2) if four or fewer horses of different betting interests leave the stalls, the association may refund the entire amount wagered in the show pool, the place pool, or both; and

(3) if fewer than two horses of different betting interests leave the stalls, the race must be canceled and the entire amount wagered in the win, place, and show pools must be promptly refunded.

7873.0140 FAILURE TO START.

~~In the event of horses failing to start~~ After wagering has commenced on a race and prior to the race being run, should a horse or horses be scratched resulting in a field of less than six different betting interests, the following shall apply:

A. ~~if fewer than five horses in~~ if fewer than five horses in ~~of different betting interests will leave the stalls, the association may refund the entire amount wagered in the show pool shall be promptly refunded;~~

B. ~~if fewer than four or fewer horses in~~ if four or fewer horses in ~~of different betting interests will leave the stalls, the association may refund the entire amount wagered in the show pool, the place and show pools shall be promptly refunded. pool, or both; and~~

C. ~~if fewer than two horses leave the stalls, the race shall~~ if fewer than two horses leave the stalls, the race must be canceled and the entire amount wagered in the win, place, and show pools shall ~~must be promptly refunded.~~

In all cases, the association must, prior to the race being run, announce to the public its decision to cancel any pools.

7875.0200 EQUIPMENT.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **External communications.** An association may have telephone or telegraph systems on the premises during a race meeting for the benefit of the public press or for transacting ordinary business, but no information regarding the results of any race shall be transmitted out of the racetrack until 15 minutes after the results are official, nor shall any message be sent over said wires transmitting money, or other things of value, or directing the placing of any wager on the result of a race except as permitted by part 7873.0400.

No telephone calls, telegrams, or messages of any kind for any person attending or participating in the conduct of a race meeting shall be accepted, nor shall any notice be given pertaining to such message or telephone call during the hours indicated unless permission is first given by the stewards or the authorized representative of the commission.

A telephone on a private line shall be provided in the offices of the commission. All costs of the telephone service shall be borne by the association and the service shall not be interrupted at any time.

All telephones or other instruments of communication, other than those designated for the sole use of the commission or those approved by the commission for use during racing, must be rendered inoperable between the hours starting 30 minutes before post time for the first race and the flashing of the "official" sign following the last race.

All portable telephones, transmitters, or any other instrument of communication that can be used for transmitting messages off the grounds of an association is subject to confiscation by security personnel or by the racing commission and its employees.

7876.0110 OFF-TRACK STABLING.

Subpart 1. [Unchanged.]

Subp. 2. **Requirements of commission must be met at racetrack.** All workout, tattooing, approval from the starting gate, and eligibility requirements of the commission or stewards must be secured at a licensed racetrack at which racing is being conducted. However, workouts may be obtained at sites approved by the commission and which are staffed by a clocker or clockers licensed by the commission.

Subp. 3. [Unchanged.]

7877.0110 PROCEDURE FOR OBTAINING CLASS C LICENSE.

Subpart 1. [Unchanged.]

Subp. 2. **Application content.** An application for a Class C license shall include the following information with respect to the applicant:

A. to F. [Unchanged.]

G. ~~two~~ a completed FBI fingerprint ~~cards~~ card.

Subp. 3. [Unchanged.]

Subp. 4. **Racing officials.** Each association shall submit to the commission for its approval or disapproval the names of all persons whom the association has selected as racing officials, and other employees whose duties relate to the actual running of races. The list shall include, where applicable, the following racing officials:

A. to V. [Unchanged.]

The list of racing officials' names shall be submitted to the commission in writing at least 30 days prior to the opening of each race meeting.

The association shall be responsible for filing a complete application for a Class C license with respect to each nominee who has not been previously licensed by the commission as a racing official.

The commission may request any person whose name is proposed as a racing official to submit to a physical examination and to forward the results of said examination to the commission. The request shall be made only where there is a reasonable basis for suggesting that the applicant's physical condition would hinder or prevent him or her from performing the duties of a racing official.

The commission shall act on the association's list of officials at a meeting of the commission. If commission staff recommends disapproval of an official, the association shall be notified of that recommendation in advance of the commission's meeting.

Under no circumstances shall an identifier, placing judge, or patrol judge be approved by the commission unless he or she has satisfactorily passed an optical examination within 90 days prior to approval evidencing 20-20 vision (corrected) and the ability to distinguish colors.

7877.0120 FEES.

Subpart 1. **License fees.** Each application for a Class C license, or its renewal, shall be accompanied by the payment of an annual fee according to the following schedule:

~~A. authorized agent, \$25;~~

B. to Z. [Reletter as A. to Y.]

Subp. 2. **Fingerprint charge.** In addition to the license fee in subpart 1, each initial application for a Class C license, and each renewal application every third year thereafter, shall be accompanied by ~~two~~ a completed FBI fingerprint ~~cards~~ card taken by the commission and a ~~properly executed certified check,~~ cashier's check, or money order in the amount of ~~\$12~~ \$14 payable to "Federal Bureau of Investigation." Any horse owner who does not make application in person must meet all requirements of this subpart, except that the owner may file ~~two~~ a completed fingerprint ~~cards~~ card taken by a law enforcement agency.

Subp. 3. and 4. [Unchanged.]

7877.0130 STANDARDS REQUIRED OF APPLICANTS FOR SPECIFIC LICENSES.

Subpart 1. **Individual owners.** An applicant for an individual owner's license must own or lease a horse eligible to race in Minnesota which is registered with the racing secretary and under the care of a trainer licensed by the commission.

If younger than 18 years of age, an applicant for an individual owner's license must submit a notarized affidavit from his or her parent or legal guardian stating that the parent or legal guardian assumes responsibility for the applicant's financial, contractual, and other obligations relating to the applicant's participation in racing. A parent or legal guardian submitting such an affidavit also shall submit information required in part 7877.0110, subpart 2. If the commission has reason to doubt the financial responsibility of an applicant for an individual owner's license, the applicant shall complete a verified financial statement.

Subp. 2. **Multiple owners.** Applicants for a multiple owner's license must comply with the following requirements.

A. A corporation, general partnership, limited partnership, trust, or any combination of two or more individuals, except spouses, which owns or leases a horse eligible to race in Minnesota (hereinafter referred to as "multiple owner") must obtain a Class C license issued by the commission.

B. to G. [Unchanged.]

Subp. 3. to 13. [Unchanged.]

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

PROPOSED RULES

Subp. 14. **Authorized agents.** ~~An applicant for To be appointed an authorized agent's license must submit with his or her license application agent, the appointee must be licensed as either an individual owner or as a trainer.~~ A written agency appointment authorizing him or her to act on behalf of a licensed owner or licensed trainer in racing matters not directly related to the care and training of horses must accompany the appointment. The authorization shall be on a form provided by the commission and shall define the powers, limits, and terms of the agency agreement. The authorization must be signed by the principals and notarized.

A separate notarized agency appointment is required for each principal an authorized agent intends to represent. All such agencies shall remain in effect for the duration of the ~~licensing year~~ current race meeting unless written notice of revocation is submitted to the stewards at the meeting where the principal is racing.

Subp. 15. [Unchanged.]

7877.0140 TEMPORARY LICENSE.

Subpart 1. [Unchanged.]

Subp. 2. **Termination.** A temporary license shall carry no presumption of qualifications or fitness and may be terminated summarily by the commission for cause.

A temporary license shall terminate upon a decision of the commission to issue or deny a Class C license, or ~~60~~ 120 days after the grant of the temporary license, whichever occurs first.

7877.0145 EMERGENCY LICENSE.

Subpart 1. [Unchanged.]

Subp. 2. **Owners.** If an owner is unable to complete an application for an owner's license because of absence or illness, the licensed trainer desiring to enter a horse in a race shall be permitted to apply for an emergency owner's license on behalf of the absent owner.

The trainer applying for an emergency owner's license on behalf of an absent owner must submit a notarized affidavit with the license application specifying the reasons the owner is unable to complete the application.

The trainer must, at the time of submission for an emergency owner's license, provide at least the following information: the owner's full name, home or business address, telephone number, and social security number. At the time of application, the appropriate licensing fee must be paid to the commission. Failure to provide all of the foregoing information is grounds for denial of an emergency owner's license.

Any emergency owner's license shall be valid for a maximum of 21 days from the date issued.

7877.0170 DUTIES AND RESPONSIBILITIES OF CLASS C LICENSEES.

Subpart 1. **Owners.** Horse owners shall have the following responsibilities:

A. to C. [Unchanged.]

D. ~~Racing colors must be registered with the commission when filing an application for an owner's license. A \$10 annual fee must accompany the registration. Authority for the use of racing colors must be sanctioned by the commission. Racing colors may not bear any advertising. Any difference between owners to the rights of particular colors shall be decided by the stewards. The registered colors of an owner may not be registered by another, except after five years of nonuse or abandonment by the original owner. Any temporary change from the registered colors of the owner must receive the prior approval of the stewards.~~

(1) ~~The An owner of a thoroughbred or quarter horse is responsible for the registration of colors and for their availability to, and use by, the jockey/driver jockey engaged to ride the owner's horse.~~

(2) ~~The colors to be worn by each jockey/driver in a race shall be described in the official racing program, and any change in colors from those described in the program shall be announced to the public prior to commencement of the race.~~

E. [Unchanged.]

Subp. 2. **Trainers.** Trainers shall have the following responsibilities.

A. to G. [Unchanged.]

H. A trainer may use only veterinarians licensed by the commission to tend horses in his or her care that are entered to race or at any time that the horses are on the grounds of an association.

I. to N. [Unchanged.]

O. A trainer is responsible for having each horse in his or her charge that is racing in Minnesota or stabled on the grounds of an association tested for equine infectious anemia (EIA) once every 12 months. The tests shall be performed by a laboratory approved by the United States Department of Agriculture. ~~Trainers must maintain in their possession a written certificate of the~~

EIA test A copy of each horse's negative EIA test results (Coggins Certificate) must be attached to the horse's foal registration certificate on or before the time of entry into a race or the entry must not be accepted. The Coggins Certificates must be dated within a 12-month period prior to the date of entry, and must be renewed or replaced on foal registration certificate no later than ten days following the date of expiration.

P. A trainer must ensure that at the time of arrival at a licensed racetrack, each horse in his or her care that will be entered and remain in the stable area for more than 24 hours is accompanied by a health certificate issued not more than ten days prior to the arrival. The health certificate must be completed by an accredited veterinarian and must contain complete Equine Infectious Anemia (EIA) test results, including the date of the most recent negative EIA test. The health certificates must be surrendered to stable gate personnel for immediate transmittal to the commission veterinarian.

Q. A trainer must promptly report the death of any horse in his or her care on the grounds of an association to the commission veterinarian and must comply with part 7891.0110 governing post-mortem examinations.

R. If a trainer must be absent because of illness or any other cause, the trainer shall appoint another licensed trainer to fulfill his or her duties, and promptly report the appointment to the stewards. The absent trainer and substitute trainer will have joint responsibility for the condition of the horses normally trained by the absent trainer.

S. Trainers licensed as owners must train all horses owned wholly or in part by them.

Subp. 2a. Assistant trainers. An assistant trainer shall be charged with the same responsibilities as a trainer. The assistant trainer shall be held equally culpable with the trainer by whom he or she is employed for any acts to which the assistant trainer has prior knowledge or involvement.

Subp. 3. Jockeys and apprentice jockeys. Jockeys and apprentice jockeys shall have the following responsibilities.

A. An apprentice jockey must ride with a five-pound weight allowance except stakes races and handicap races beginning with his or her first mount and for one full year thereafter. If after one full year from the date of his or her fifth winning mount the apprentice jockey has failed to ride 40 winners, he or she shall continue to ride with a five-pound weight allowance for up to two more years from the date of his or her fifth winning mount or until he or she has ridden a total of 40 winners, whichever comes first. In no event shall an apprenticeship extend more than four years from date of initial licensure as an apprentice jockey.

B. to K. [Unchanged.]

L. A jockey must wear the racing colors registered provided by the owner of the horse he or she is to ride, plus white riding pants, top boots, and a number on the right shoulder corresponding to the mount's number as shown on the saddle cloth and in the daily program.

M. to W. [Unchanged.]

Subp. 4. to 10. [Unchanged.]

7877.0175 DUTIES AND RESPONSIBILITIES OF RACING OFFICIALS.

Subpart 1. Racing secretary. The racing secretary shall have the following responsibilities.

A. to G. [Unchanged.]

H. The racing secretary must post, in a location accessible to all trainers, a list of all horses registered as "nerved," pursuant to part 7877.0100, subpart 11.

I. The racing secretary shall establish a preference system for horses which have been excluded from races due to overfilling and shall maintain the system for the duration of a meeting. The racing secretary shall be allowed broad discretion with regard to the preference system but shall act in the best interest of racing and the meeting.

J. In the event that a race is declared off due to an insufficient number of entries, the racing secretary must post in a conspicuous place the names of all trainers that entered horses in each race that was declared off.

Subp. 2. and 3. [Unchanged.]

Subp. 4. Paddock judge. The paddock judge shall have the following responsibilities.

A. to F. [Unchanged.]

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

PROPOSED RULES

G. The paddock judge shall inspect the bandages worn by all horses arriving in the paddock and may order the bandages removed or replaced if he or she has reason to believe that a violation of statute or rule has occurred, is occurring, or will occur.

(1) The paddock judge shall not allow a horse in the paddock if it is wearing bandages at knee level or higher.

(2) Paddock boots and all bandages, except those bandages that will be worn during a race, must be removed immediately ~~upon arrival~~ after saddling in the paddock so that a satisfactory examination may be assured.

H. to L. [Unchanged.]

Subp. 5. to 7. [Unchanged.]

Subp. 8. **Commission veterinarian.** The commission veterinarian shall maintain a list of the following:

A. and B. [Unchanged.]

The commission veterinarian's list shall be posted in the racing secretary's office, and any horse whose name is on the list shall be ineligible to enter a race for five calendar days, or until the commission veterinarian removes it from the list, whichever is later.

The commission veterinarian or his or her designee shall conduct racing-soundness examinations pursuant to part 7891.0100. If the veterinarian finds that any horse is unfit to race he or she shall notify the stewards immediately.

The commission veterinarian shall supervise the operation of a barn for the detention and testing of horses after each race pursuant to chapter 7890.

The commission veterinarian shall have the authority to draw blood from any horse or pony on the grounds of an association for the purpose of conducting an Agar-Gel immunodiffusion (Coggins) test, and shall supervise the removal from the racetrack of any horse or pony having positive Coggins test results.

Subp. 9. to 15. [Unchanged.]

7877.0180 CONFLICTS.

Subpart 1. **Racing officials.** No racing official, other than a general manager, shall own any interest in a Minnesota racetrack at which he or she is serving as an official, and no racing official shall own any interest in a horse eligible to race at a meeting at which he or she serves as an official.

No racing official shall buy or sell for himself or herself, or as an agent for anyone else, any horse eligible to race at a meeting at which he or she serves as an official.

No racing official shall hold any interest in the contract of a jockey or apprentice jockey riding at a meeting at which the official serves.

No racing official shall buy or sell for another person any right to a contract of any jockey or apprentice jockey riding at a meeting at which the racing official serves.

No racing official shall wager money or anything of value on any race in Minnesota during his or her term of employment.

No racing official, detention barn employee, commission staff, assistant starter, claims clerk, outrider, association veterinarian, or track superintendent shall request or accept any remuneration or honorarium in payment or kind from any owner, trainer, or other person licensed by the commission.

Subp. 2. [Unchanged.]

7878.0130 BASIC COURSE.

Subpart 1. **Applicant shall successfully complete basic course.** No security officer may be licensed unless the officer or his or her appointing authority furnishes proof to the commission that the prospective licensee has successfully completed a basic course which includes at least 40 hours of instruction in the following subject areas:

A. to G. [Unchanged.]

H. ~~firearms~~ cardio pulmonary resuscitation (CPR);

I. to K. [Unchanged.]

Subp. 2. and 3. [Unchanged.]

7878.0140 CONTINUING EDUCATION.

Subpart 1. **Licensee shall successfully complete refresher training.** No security officer's license may be renewed unless the licensee or his or her appointing authority furnishes the commission proof that the licensee has successfully completed, on an annual basis, at least ~~20~~ 16 hours of refresher training in the areas of:

A. to D. [Unchanged.]

E. ~~firearms training security plan, policy, and procedure of the racing association;~~ and

F. [Unchanged.]

Subp. 2. [Unchanged.]

7878.0150 STANDARDS OF CONDUCT FOR SECURITY OFFICERS.

Subpart 1. [Unchanged.]

Subp. 2. **Restrictions on security officers.** No security officer may:

A. use ~~deadly force unless authorized,~~ or use unreasonable force;

B. to D. [Unchanged.]

7878.0160 SECURITY COOPERATION.

Subpart 1. Security officers must cooperate with law enforcement agencies. Class A, Class B, and Class D licensees and all security officers must cooperate fully with federal, state, and local law enforcement agencies with jurisdiction to enforce criminal laws at horse racing facilities, and must report promptly all crimes suspected, investigated, or prevented at a licensed racetrack to the BCA.

Subp. 2. Notification of searches. Within 24 hours of any searches conducted by an association or its security personnel, the racing commission director of racing security or his or her designee must be notified of the searches and any relative circumstances involved. A copy of the inventory sheet of all items confiscated during the searches must accompany the notification. All illegal contraband seized as a result of a search must be immediately delivered to the local law enforcement agency. Under no circumstances shall the association or its security personnel destroy or otherwise dispose of any illegal contraband.

7883.0100 ENTRIES AND SUBSCRIPTIONS.

Subpart 1. to 6. [Unchanged.]

Subp. 7. **Coupled entries.** Except in stakes races and races which are conditioned for horses eligible for specified stakes, not more than two horses of the same licensed ownership or interest shall be entered and started in a race.

~~A. No trainer shall enter more than two horses in an overnight event; and in no case shall two horses start to the exclusion of a single entry.~~

~~B. Not more than two horses trained by the same trainer shall be drawn into any overnight race or placed on the also eligible list to the exclusion of another horse; except in split races.~~

~~C. B. Horses trained by a public stable trainer shall not be coupled with horses trained by another public stable trainer unless the horses in question are owned by the same person or are coupled as a field for wagering purposes.~~

~~D. C. All horses owned wholly or in part by the same person, or his or her spouse, or trained by the same trainer, shall be coupled and run as an entry.~~

~~E. D. Notwithstanding items A to D, where two or more horses are coupled as an entry only for the reason that the horses are trained by the same trainer, the association may run those horses as separate interests.~~

Subp. 8. to 16. [Unchanged.]

7883.0140 CLAIMING RACES.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Prohibition on claims.** No person or racing interest shall:

A. to I. [Unchanged.]

J. enter, or allow to be entered, any horse against which any claim is held, either by mortgage or lien of any kind without, prior to entering, having filed the written consent of the holder of the mortgage or lien with the racing secretary and horsepersons' bookkeeper. Notification of the mortgage or lien must be posted in a conspicuous place in both the racing secretary's and horsepersons' bookkeeper's offices; or

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

PROPOSED RULES

K. claim a horse if he or she only leases a horse for racing purposes, unless the claim is executed pursuant to subpart 1, item C.

Subp. 10. to 19. [Unchanged.]

Subp. 20. **Excused horse eligible to be claimed for same claiming price in next start; harness racing.** If, in a claiming race, a horse is excused by the stewards, any claim or claims for the horse will be void. However, such a horse, in its next start, must race in a claiming race for a claiming price not greater than the amount for which it could have been claimed in the race from which it was excused. Should the horse be entered in an allowance or stakes race in its next start, said horse shall be subject to claim for the claiming price from the previous race from which it was excused. The provisions of this subpart shall apply for a period of 90 days from the date of the claiming race in which the horse was excused.

Subp. 21. to 29. [Unchanged.]

7883.0150 PADDOCK TO POST.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Bandages and blankets.** Immediately ~~upon arrival~~ after saddling in the paddock, all blankets and bandages, except those bandages that will be worn during a race, must be removed. Should weather conditions so dictate, blankets may be worn after saddling with permission of the paddock judge. After saddling, all horses must be walked to allow a satisfactory examination.

Subp. 4. to 12. [Unchanged.]

7891.0100 RACING SOUNDNESS EXAMINATION.

Subpart 1. **Horses subject to examination.** Every horse entered to race at a licensed racetrack under the jurisdiction of the commission shall be subjected to a veterinary examination for racing soundness and health on race day conducted by the commission veterinarian or a veterinarian designated by the commission veterinarian in or near the stall to which the horse is assigned.

Subp. 2. [Unchanged.]

7892.0150 PURSES.

Subpart 1. Purse may be redistributed. Upon receipt of a positive laboratory report, the stewards shall direct that no undistributed purse money won by the horse tested may be awarded pending final determination of the matter. The stewards shall order distributed purse money returned, and it must be returned. If it is determined finally that a violation of chapter 7890 has occurred, the purse money won by the horse involved ~~shall~~ may be forfeited and redistributed among the other horses in the race according to their order of finish. No forfeiture and redistribution shall affect the distribution of pari-mutuel pools. Distribution of purse money prior to issuance of a laboratory report shall not be deemed a determination that chapter 7890 has not been violated.

Subp. 2. Determination of purse redistribution. In determining whether or not to redistribute a purse for a violation of chapter 7890, the commission or stewards shall consider the following factors:

A. inherent severity of the conduct as indicated by the potential harm to person, property, or the integrity of racing;

B. culpability of the violator;

C. frequency of the violator's failure to comply with law or rule;

D. actual harm caused to person, property, or the integrity of racing; and

E. any other factors related to the seriousness of violations which the commission or stewards deem crucial to the determination as long as the same factors are considered with regard to all violators. The commission or stewards, in making a determination, shall consider both the number of factors applicable to a violation and the degree to which each applies.

Rules as Proposed (all new material)

7895.0125 THOROUGHBRED REGISTRATION.

Subpart 1. **Broodmare registration.** To be eligible to receive any breeders' award payments, the following requirements must be met:

A. Prior to foaling, a broodmare must be in Minnesota and registered or the registration renewed with the racing commission or official registering agency on or before January 31 of the year in which the broodmare will foal. The broodmare's original jockey club certificate must accompany the registration application.

B. In the event an unregistered broodmare should foal in Minnesota before January 31, the owner must submit a sworn affidavit to the racing commission or the official registering agency attesting that the foal was born in Minnesota. The affidavit will be considered evidence that the foal is a Minnesota-bred or Minnesota-foaled horse and the owner of the broodmare or his or her

agent must register the broodmare in accordance with item A. The attending veterinarian, licensed by the state of Minnesota, must certify on information and belief that the information provided from the owner or agent is true and correct.

C. Failure to submit broodmare registration forms on or before the January 31 cutoff date (excluding Saturday and Sunday) will disqualify any subsequent claims for breeders' award payments or for the foal to be registered as Minnesota-bred.

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

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

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

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

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

Subp. 3. Foal registration and certification. For a horse foaled in Minnesota to be registered and subsequently certified as a Minnesota-bred, the following requirements must be met:

A. Within 30 days of the date a horse is foaled in Minnesota, the foal must be registered with the racing commission or official registering agency. The registration form must contain the following information: the date, the name of the owner of the foaling dam, the date that the foal was born, an owner's statement that the foal was born in Minnesota, and the signature and veterinary license number of the veterinarian submitting the report. Failure to submit the veterinarian's report will disqualify any subsequent claim to register the foal as Minnesota-bred.

B. The original foal certificate must be embossed by the racing commission or official registering agency prior to entry into any restricted race.

C. Failure to have foal certificate embossed shall disqualify any claim to enter the horse in a restricted race or to earn any breeders' fund payments.

Subp. 4. Protests. When a person has reason to believe that a horse not owned by a Minnesota resident, as defined in part 7895.0100, subpart 1, item A, will participate or has participated in a restricted race for Minnesota-owned horses, the person may protest the eligibility of the horse in the manner prescribed in this part. Within seven days of the day in which the race was run, a written protest must be submitted to the board of stewards. The protest must include the following information: the date of the protest, the date and race number of the race in question, the name of the horse, the name of the horse's owner(s), the reasons that the owner(s) is believed to be ineligible, and a statement of the relief sought by the filing party or parties.

Subp. 5. Disposition of protest. Within three days of receipt of a protest, the stewards shall notify in writing the owner(s) of the horse in question of the protest. The owner(s) shall have seven days to respond to the allegations.

Subp. 6. Findings of stewards. Should the stewards determine that an ineligible horse participated in a restricted race for Minnesota-owned horses, the following action must be taken:

A. the horse in question must be disqualified from any placing it earned;

B. the purse must be redistributed among the other horses in the race according to their order of finish;

C. disciplinary action must be taken against the owner(s) of the horse found to be ineligible; and

D. where appropriate, disciplinary action may be taken against the trainer of the horse found if it is determined that the trainer had prior knowledge of the owners' ineligibility.

7895.0250 STANDARD BRED BREEDERS' FUND.

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

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

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

PROPOSED RULES

B. "Minnesota-bred" means:

(1) in the case of a horse foaled prior to 1987, either:

- (a) the United States Trotting Association (USTA) foal certificate reflects the breeder to be a Minnesota resident;
- (b) the horse was sired by a stallion standing in the state of Minnesota as reflected on the USTA stallion report;
- (c) at the time the horse was foaled in Minnesota the owner of the foal was a Minnesota resident; or

(2) Foals born on or after January 1, 1987, must have been sired by a stallion registered with the racing commission or official registering agency that stood in the state of Minnesota for the entire breeding season.

C. "Minnesota-foaled" means:

(1) In the case of a horse foaled prior to 1987, either:

- (a) the USTA foal certificate reflects the breeder to be a Minnesota resident;
- (b) the horse was sired by a stallion standing in the state of Minnesota as reflected on the USTA stallion report; or
- (c) at the time the horse was foaled in Minnesota the owner of the foal was a Minnesota resident.

(2) Foals born on or after January 1, 1987, must have been sired by a stallion registered with the racing commission or official registering agency that stood in the state of Minnesota for the entire breeding season.

D. "Minnesota-owned" means:

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

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

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

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

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

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

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

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

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

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

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

Subp. 3. **Distribution of money.** The money available from the standardbred breeders' fund shall be distributed as breeders' awards and paid to the breeder, as reflected on the USTA foal certificate, of a Minnesota-bred or Minnesota-foaled horse that finishes fifth or better in any pari-mutuel race in Minnesota.

Subp. 4. **Methods of payment.** The amount of money distributed for breeders' awards or purse supplements pursuant to subpart 3, shall be paid out in the same percentage as the purse money in the race.

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

breeders' award disbursements. The racing commission shall consider the following criteria in determining the applicable percentages:

- A. the number of potential breeders' award recipients;
- B. the total amount of breeders' awards and purse supplements to be distributed;

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

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

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

Subp. 7. **Maximum awards permitted.** The maximum amount of a breeders' award, exclusive of any purse supplements, paid to an individual or entity under this part must not exceed 50 percent of the total available breeders' award funds during calendar year 1986.

Subp. 8. **Residual funds.** After complying with subparts 4 to 7, any remaining funds in the breeders' awards account, and all unearned purse supplements, shall be retained and carried forward to be included as net distributable funds in the succeeding standardbred race meeting.

7895.0275 STANDARDBRED REGISTRATION.

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

A. Stallions must be in Minnesota and registered or the registration renewed with the racing commission or official registering agency by January 1 of the current breeding year. The stallion's original United States Trotting Association (USTA) certificate must accompany the initial registration application. If the stallion is leased, a copy of the lease must accompany the registration application or renewal. The lease agreement must contain a statement that the lessee is authorized to sign the breeding certificate.

B. Stallions must remain in Minnesota for the entire breeding season from January 1 to September 1.

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

Subp. 2. **Foal certification.** In order for a horse bred or foaled in Minnesota to be registered and subsequently certified as Minnesota-bred or Minnesota-foaled, the following requirements must be met:

A. The original foal certificate must be embossed by the racing commission or official registering agency prior to entry into any restricted race.

B. Failure to have the foal certificate embossed shall disqualify any claim to enter the horse in a restricted race or to earn any breeders' fund payments.

Subp. 3. **Protests.** When a person has reason to believe that a horse not owned by a Minnesota resident, as defined in part 7895.0110, subpart 1, item A, will participate or has participated in a restricted race for Minnesota-owned horses, such person may protest the eligibility of the horse in the manner prescribed hereinafter. Within seven days of the day in which the race was run, a written protest must be submitted to the board of stewards. The protest must include the following information: the date of the protest, the date and race number of the race in question, the name of the horse, the name of the horse's owner(s), the reasons that the owner(s) is believed to be ineligible, and a statement of the relief sought by the filing party or parties.

Subp. 4. **Disposition of protest.** Within three days of receipt of a protest, the stewards shall notify in writing the owner(s) of the horse in question of the protest. The owner(s) shall have seven days to respond to the allegations.

Subp. 5. **Findings of stewards.** Should the stewards determine that an ineligible horse participated in a restricted race for Minnesota-owned horses, the following action must be taken:

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

PROPOSED RULES

- A. the horse in question must be disqualified from any placing it earned;
- B. the purse must be redistributed among the other horses in the race according to their order of finish;
- C. disciplinary action must be taken against the owner(s) of the horse found to be ineligible; and
- D. where appropriate, disciplinary action may be taken against a trainer of the horse if it is determined that the trainer had prior knowledge of the horse's eligibility.

7895.0300 QUARTER HORSE BREEDERS' FUND.

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

- A. "Breeder" means the owner or lessee of the dam at time of conception in Minnesota.
- B. "Minnesota-foaled" means a horse foaled in Minnesota.
- C. "Minnesota-bred" means:
 - (1) a horse sired by a registered stallion who stood his entire breeding season in Minnesota; and
 - (2) a horse born in Minnesota.
- D. "Minnesota-owned" means:
 - (1) in the case of a horse owned by an individual, the owner must reside in Minnesota, declare himself or herself to be a resident of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that he or she is not a resident of any other state.
 - (2) in the case of a horse owned by a corporation, the corporation must:
 - (a) be legally incorporated in the state of Minnesota;
 - (b) have its principal place of business in Minnesota;
 - (c) have at least 51 percent of all outstanding shares of stock owned by shareholders who are residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and who declare that they are not residents of any other state.
 - (3) in the case of a horse owned by a limited partnership, the general partners and at least 51 percent of the limited partners must be residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that they are not residents of any other state.
 - (4) in the case of a horse owned by a partnership, all partners must be residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that they are not residents of any other state.

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

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

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

- A. 35 percent shall be set aside and paid as breeders' awards to:
 - (1) until December 31, 1988, breeders of Minnesota-bred or Minnesota-foaled horses; and
 - (2) January 1, 1989, and thereafter breeders of a Minnesota-bred horse or a horse born in Minnesota prior to 1987;
- B. 35 percent shall be set aside and paid as owners' awards to:
 - (1) until December 31, 1988, owners of Minnesota-bred or Minnesota-foaled horses; and
 - (2) January 1, 1989, and thereafter owners of a Minnesota-bred horse or a horse born in Minnesota prior to 1987;
- C. 20 percent shall be paid to supplement purses in races which are restricted to Minnesota-bred, Minnesota-foaled, or Minnesota-owned horses. In all such races Minnesota-bred or Minnesota-foaled horses shall be preferred, and the purse supplements shall be apportioned in accordance with the quality of the race as determined by the commission.
- D. 10 percent shall be set aside and paid as stallion awards to the owners of the Minnesota-sire at the time of breeding.

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

A. "Breeders' awards" shall be paid to the breeder of a Minnesota-bred or Minnesota-foaled horse, as reflected on the American Quarter Horse Association (AQHA) certificate that finishes fifth or better in any race.

B. "Owners' awards" shall be paid to the owners of a Minnesota-bred or Minnesota-foaled horse that finishes fifth or better in any race.

C. "Stallion awards" shall be paid to the stallion owner of a Minnesota-bred or Minnesota-foaled horse that finishes fifth or better in any race.

Subp. 4. **Methods of payment.** The amount of money distributed by the commission for awards or purse supplements pursuant to subpart 3 shall be paid out in the same percentage as the purse money in the race. The amount of money to be distributed shall be in accordance with subpart 5.

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

A. the number of potential award recipients;

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

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

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

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

7895.0350 QUARTER HORSE REGISTRATION.

Subpart 1. **Broodmare registration.** To be eligible to receive any breeders' award payments, the following requirements must be met:

A. Prior to foaling, a broodmare must in Minnesota and registered or the registration renewed with the racing commission or official registering agency on or before January 31 of the year in which the broodmare will foal. The broodmare's original American Quarter Horse Association (AQHA) certificate must accompany the initial registration application.

B. In the event an unregistered broodmare should foal in Minnesota before January 31, the owner or lessee must submit a sworn affidavit to the racing commission or the official registering agency attesting that the foal was born in Minnesota. The affidavit will be considered evidence that the foal is a Minnesota-bred or Minnesota-foaled horse and the owner of the broodmare or his or her agent must register the broodmare in accordance with item A. The attending veterinarian, licensed by the state of Minnesota, must certify on information and belief that the information provided by the owner, lessee, or agent is true and correct.

C. Failure to submit broodmare registration forms on or before the January 31 cutoff date (excluding Saturday and Sunday) will disqualify any subsequent claims for breeders' award payments or for the foal to be registered as a Minnesota-bred or Minnesota-foaled horse.

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

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

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

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

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

PROPOSED RULES

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

Subp. 3. **Foal registration and certification.** For a horse foaled in Minnesota to be registered and subsequently certified as a Minnesota-bred or Minnesota-foaled horse, the following requirements must be met:

A. Within 30 days of the date a horse is foaled in Minnesota, the foal must be registered with the racing commission or official registering agency. The registration must include the following information: the date, the name of the owner or lessee of the dam at time of conception, the date that the foal was born, an owner's or lessee's statement that the foal was born in Minnesota, and the signature and veterinary license number of the attending veterinarian. Failure to submit the veterinarian's report will disqualify any subsequent claim to register the foal as a Minnesota-bred or Minnesota-foaled horse.

B. The original foal certificate must be embossed by the racing commission or official registering agency prior to entry into any restricted race.

C. Failure to have foal certificate embossed shall disqualify any claim to enter the horse in a restricted race or to earn breeders' fund payments.

Subp. 4. **Protests.** When a person has reason to believe that a horse not owned by a Minnesota resident, as defined in part 7895.0110, subpart 1, item A, will participate or has participated in a restricted race for Minnesota-owned horses, such person may protest the eligibility of the horse in the manner prescribed hereinafter. Within seven days of the day in which the race was run, a written protest must be submitted to the board of stewards. The protest must include the following information: the date of the protest, the date and race number of the race in question, the name of the horse, the name of the horse's owner(s), the reasons that the owner(s) is believed to be ineligible, and a statement of the relief sought by the filing party or parties.

Subp. 5. **Disposition of protest.** Within three days of receipt of a protest, the stewards shall notify in writing the owner(s) of the horse in question of the protest. The owner(s) shall have seven days to respond to the allegations.

Subp. 6. **Findings of stewards.** Should the stewards determine that an ineligible horse participated in a restricted race for Minnesota-owned horses, the following action must be taken:

A. the horse in question must be disqualified from any placing it earned;

B. the purse must be redistributed among the other horses in the race according to their order of finish;

C. disciplinary action must be taken against the owner(s) of the horse found to be ineligible; and

D. where appropriate, disciplinary action may be taken against the trainer of the horse found if it is determined that the trainer had prior knowledge of the owners' ineligibility.

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 Energy and Economic Development Energy Division

Adopted Rules Revising the Minnesota Energy Code

The rules proposed and published at *State Register*, Volume 9, Number 47, pages 2523-2526, May 20, 1985 (9 S.R. 2523) are adopted with the following modifications:

Rules as Adopted

4215.1400 AMENDMENT TO SECTION 201: VAPOR BARRIER.

On page 10 of the code, section 201 is amended by adding a new definition to read:

VAPOR BARRIER. A material to retard air and water vapor passage designed to meet a maximum perm rating of ~~4-0~~ 0.1 grain per hour per ft² per inch Hg pressure differential. Polyethylene material that is not cross-laminated which is used to meet the requirements of this paragraph must be designed to have a minimum thickness of four mills.

4215.2100 AMENDMENT TO 502.2.1: FOUNDATION WALLS.

On page 19 of the code, 502.2.1 is amended by adding a paragraph to read:

502.2.1.6 Foundation walls. Foundation walls enclosing heated or conditioned spaces must be insulated. ~~For walls enclosing heated spaces, the opaque foundation wall must have a maximum thermal transmittance (U_w) value of 0.25 from the top of the wall to 24 inches below finished grade.~~

~~For walls enclosing conditioned spaces,~~ Either the thermal transmittance (U_w) resistance (R) of the insulation on the entire opaque foundation wall must be not ~~greater less~~ than ~~0.158~~ R-5, or the thermal ~~transmittance (U_w)~~ resistance (R) of the insulation on the opaque foundation wall must be not ~~greater less~~ than ~~0.088~~ R-10 from the top of the wall down to the design frost line. If the top of the footing is at or above the design frost line, the thermal ~~transmittance~~ resistance (R) of the ~~opaque foundation~~ insulation on the wall must be not ~~greater less~~ than ~~0.158~~ R-5 from the top of the wall to the top of the footing.

All insulation used in or on foundation walls must be approved for the intended use. The insulation must be installed in accordance with the approved manufacturer's specifications.

Department of Health Division of Environmental Health

Adopted Rules Relating to Licensing Fees

The rules proposed and published at *State Register*, Volume 10, Number 19, pages 1028-1032, November 4, 1985 (10 S.R. 1028) and Volume 10, Number 23, pages 1239-1240, December 2, 1985 (10 S.R. 1239) are adopted with the following modifications:

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

ADOPTED RULES

Rules as Adopted

4720.0015 FEES FOR REVIEW OF PLANS.

All plans for water supply system construction, alteration, or extension submitted for review and approval to the Department of Health as required in part 4720.0010 shall be accompanied by the appropriate fees, as prescribed below:

- A. Watermains, \$150;
- B. Wells, \$250;
- C. Pumphouses, \$150;
- D. Chemical feed, \$150;
- E. Treatment plants (new), \$1,000;
- F. Treatment plants (renovation), \$250;
- G. Storage (installation), \$300;
- H. Storage (coating), \$100; and
- I. Booster stations, \$150.

The appropriate fees shall be paid by check made payable to ~~''Treasurer, State of Minnesota~~ Department of Health.''

Department of Human Services

Extension of Emergency Rules Governing General Assistance

Notice is hereby given that the above-entitled emergency rules which were effective on September 5, 1985 and published in the *State Register* on September 23, 1985 (10 S.R. 695) are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled emergency rules will be in effect until August 31, 1986 unless they are superseded by permanent rules or legislative action.

Department of Human Services

Extension of Emergency Rules Relating to Work Readiness Program

Notice is hereby given that the above-entitled emergency rules which were effective on September 27, 1985 and published in the *State Register* on October 14, 1986 (10 S.R. 923R) are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled emergency rules will be in effect until September 22, 1986 unless they are superseded by permanent rules or legislative action.

Pollution Control Agency

Adopted Rules Relating to Hazardous Waste; Interim Status

The rules proposed and published at *State Register*, Volume 10, Number 15, pages 824-827, October 7, 1985 (10 S.R. 824) are adopted as proposed.

Pollution Control Agency

Adopted Rules Relating to Hazardous Waste Recycling and Reuse

The rules proposed and published at *State Register*, Volume 10, Number 15, pages 827-837, October 7, 1985 (10 S.R. 827) are adopted with the following modifications:

Rules as Adopted**7045.0020 DEFINITIONS.**

Subp. 15. **Designated facility.** "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

A. (1) has received interim status;

(4) if located outside Minnesota, has been exempted from the requirements to obtain a permit by the United States Environmental Protection Agency; ~~has~~ either received an Environmental Protection Agency permit or a permit from an authorized state, or has interim status; and

Subp. 43a. **Industrial furnace.** "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy: cement kilns; lime kilns; aggregate kilns; phosphate kilns; coke ovens; blast furnaces; smelting, melting, and refining furnaces, including pyrometallurgical devices, such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces; titanium dioxide chloride process oxidation reactors; methane reforming furnaces; pulping liquor recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and such other devices as the director determines qualify for inclusion based on one or more of the following factors:

7045.0075 PETITIONS.

Subp. 3. **Petition for reduced regulation of hazardous waste being speculatively accumulated or reclaimed prior to use.** The agency may, upon presentation of a petition for those purposes, reduce any of the requirements of chapter 7045 applicable to reclamation, reuse, or recycling. The agency shall apply the standards and criteria set forth below in determining whether to grant a petition to reduce the regulatory requirements for the following recycled hazardous wastes.

A. Any person seeking a reduction in regulation of hazardous wastes that are accumulated speculatively as defined in part 7045.0020 without sufficient amounts being recycled as defined in part 7045.0020 may petition under this subpart. The petitioner must demonstrate to the satisfaction of the agency that sufficient amounts will be recycled or transferred for recycling in the following year. Such a reduction in regulation is valid only for the following year, but may be renewed on an annual basis by filing a new petition. The agency's decision to grant the petition shall be based on the following standards and criteria:

(1) the manner in which the hazardous waste is to be recycled, ~~where~~ when the waste is expected to be recycled, and whether the expected disposition is likely to be affected by past practice, market factors, the nature of the hazardous waste, or contractual arrangements for recycling;

7045.0125 MANAGEMENT OF WASTE BY USE, REUSE, RECYCLING, AND RECLAMATION.

Subpart 1. **Scope.** This part regulates hazardous waste that is to be recycled except for use constituting disposal as provided in ~~parts~~ part 7045.0665, hazardous waste utilized for precious metals recovery as provided in part 7045.0675, and; or spent lead-acid batteries being reclaimed as provided in part 7045.0685.

7045.0450 FACILITIES GOVERNED BY FACILITY STANDARDS.

Subp. 3. **Exemptions.** Parts 7045.0450 to 7045.0544 do not apply to the following:

A. the owner or operator of a facility managing recyclable hazardous wastes subject to regulation under part 7045.0125, 7045.0665, 7045.0675, or 7045.0685; ~~except to the extent that; however, this exemption does not apply where~~ part 7045.0125, 7045.0665, 7045.0675, or 7045.0685 ~~apply and make~~ makes the requirements of parts 7045.0450 to 7045.0544 applicable; by cross-reference.

7045.0552 FACILITIES GOVERNED BY INTERIM STATUS.

Subp. 3. **Exemptions.** The requirements of parts 7045.0522 to 7045.0642 do not apply to:

B. The owner or operator of a facility managing recyclable hazardous wastes subject to regulation under part 7045.0125, 7045.0665, 7045.0675, or 7045.0685; ~~except to the extent that; however, this exemption does not apply where~~ part 7045.0125, 7045.0665, 7045.0675, or 7045.0685 ~~apply, and make~~ makes the requirements of parts ~~7045.0450~~ 7045.0522 to ~~7045.0544~~ 7045.0642 applicable by cross-reference.

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

ADOPTED RULES

7045.0665 USE CONSTITUTING DISPOSAL.

Subpart 1. **Scope.** This part applies to hazardous wastes that are used in a manner constituting disposal. For the purposes of this part, use constituting disposal means the application or placement of recyclable wastes in or on the land:

C. after combination with any other substances if the resulting material is not produced for the general public's use. Products produced for the general public's use that are used in a manner constituting disposal and that contain recyclable wastes that have undergone a chemical reaction in the course of producing a product so as to become inseparable by physical means are exempt from regulation under this part. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not subject to regulation under this chapter.

7045.0675 RECYCLABLE HAZARDOUS WASTE UTILIZED FOR PRECIOUS METAL RECOVERY.

Subp. 4. **Requirements for persons who store.** Persons who store recyclable hazardous waste that is regulated under this part are subject to the following requirements:

A. If the hazardous waste is not being accumulated speculatively as defined in part 7045.0020, the following apply:

(2) the generator and facility owner or operator must keep records showing: the volume of the hazardous wastes stored at the beginning of the calendar year; the amount of the hazardous wastes generated or received during the calendar year; and the amount of hazardous wastes remaining at the end of the calendar year.

Secretary of State

Adopted Rules Relating to Voter Registration, Absentee Voting, Recounts, Ballots, Certification and Testing of Lever Voting Machines; and Certification, Testing, and Use of Electronic Voting Systems

The rules proposed and published at *State Register*, Volume 10, Number 21, pages 1158-1179, November 18, 1985 (10 S.R. 1158) are adopted with the following modifications:

Rules as Adopted

8235.1000 ELECTRONIC VOTING SYSTEMS.

In precincts in an election jurisdiction where an electronic voting system is used, the recount official shall determine if the ballots are to be recounted on the automated equipment or manually. If the recount official is the secretary of state or the secretary's designee, the duplicate counting program certified to the secretary of state by the person preparing the program may be used to recount the ballots. If the ballots are recounted on the automated equipment, a test of the program and counting equipment as provided in part 8230.5100 must be made immediately prior to the recount, and a test sample of the ballots must also be counted manually. The recount official shall determine if the test sample is to be of one precinct selected by each candidate or a sample agreed upon by the candidates of three percent of the ballots cast but in no event less than 100 ballots. Unless the jurisdiction has only one precinct, the test sample shall be from two precincts, one selected by each candidate. In each of the precincts selected, the sample shall be at least three percent of the ballots cast or 50 ballots, whichever is greater. The test sample must also be counted on the automatic tabulating equipment. Access to the immediate area of the automatic counter or computer is limited to the recount official and legal advisor, officials of the election jurisdiction, the candidates and their representatives, and the technical persons necessary to the operation of the counting equipment. An observation area must be provided for the public. Ballots must be recounted by precinct. Paper absentee ballots must be counted in accordance with part 8235.0800. A ~~machine-produced~~ report of recount results must be provided for each precinct. After the count of ballots for a precinct has been determined, all ballot cards and paper absentee ballots must be resealed in the ballot container and returned with the other materials to the custodian of the ballots.

8220.0250 DEFINITIONS.

Subp. 26. **Self-contained voting station.** "Self-contained voting station" means a unit that contains a voting device ~~having all four sides~~ enclosed beneath and on three sides and lighted; when assembled the unit creates one individual voting station.

8220.0650 APPROVAL OF MACHINES OR SYSTEMS.

Subp. 2. **Decertification.** If a voting machine or system no longer meets the standards of Minnesota statutes or parts 8220.0050 to 8230.4250, the secretary of state may withdraw approval of the voting machine or system after a hearing.

8220.1550 PUBLIC ACCURACY TEST.

A public accuracy test must be held within five days prior to the election for the purpose of demonstrating the accuracy of the computer programs and computers to be used at the election. The public accuracy test must be conducted according to Minnesota Statutes, section 206.73.

The time and place of the public accuracy test must be designated by the election jurisdiction providing the computer program, which must give at least 48 hours' public notice of the time and place of the test by publication in official newspapers, by posting a notice, and by notification to the county or legislative district chair of each major political party.

The test must be open to the public. The chief election official of the election jurisdiction shall explain the methods and test procedures used to determine the accuracy of the computer programs. This will include submitting as public record the certificate prepared in accordance with part 8220.1450 that all precincts have been tested using the test deck or ballot image prepared under the direction of the election jurisdiction.

The sealed container containing the computer programs, test deck, predetermined results, and header cards must be opened and the computer programs and computers tested to determine their accuracy on the computer on which they are to be used on election night. The initial testing of the computers and programs must be with the test deck or ballot image prepared under the direction of the election jurisdiction. The number of precincts to be tested is at the discretion of the election jurisdiction.

The backup computer program prepared and delivered according to part 8220.0850 must be tested on the computer on which it would be used on election night. The test decks used in these procedures must be the ones prepared in accordance with parts 8220.0750 to 8220.1950. Any test cards made under parts 8220.0750 to 8220.1950 must be marked "TEST."

If an error is detected in any part of the testing, the cause must be ascertained, the error corrected, and an errorless count must be made on all precincts. At the discretion of the election jurisdiction, the meeting may be adjourned to a time and date certain.

8220.1850 SECURING COMPUTER PROGRAMS.

Immediately after certifying the results of the public accuracy test, the election jurisdiction must secure all computer programs, including the object code, software utilized, test decks, certified computer results of the test, and the predetermined results in a metal container which must be sealed with a metal seal in a manner so that the container cannot be opened without breaking the seal. If a precinct ballot counter is used to count ballots, it must be sealed with the memory pack containing the election programs inside. Attached to or inside the container must be a certificate describing its contents and on which the number of the seal has been recorded. The certificate must be signed by at least two witnesses as specified in Minnesota Statutes, section 206.17, and if attached to the container in a plastic envelope it must be attached so that it cannot be removed without breaking the seal.

All computer programs, test decks, and other related materials must be clearly identified as to the computer on which they were tested and must be used on no other computer until tested in accordance with parts 8220.1550 to 8220.1850.

The election jurisdiction must immediately deliver to the county auditor or the auditor's designee the metal case containing the computer programs and test decks which are to be used to tabulate the results of the election. The county auditor shall retain and secure the programs and deliver them to the counting center on election night no earlier than 6:00 p.m. The container containing backup or duplicate computer programs and related material must be delivered to and secured by the county auditor. It must be the responsibility of the county auditor to store the original and duplicate or backup computer program in separate locations.

8220.1950 DUPLICATE PROGRAM TO SECRETARY OF STATE.

When state offices and questions are to be voted on, the person preparing the computer program shall deliver an exact duplicate of the program to the secretary of state at least three days prior to the election. The program must be sealed so that it cannot be opened without breaking the seal. ~~The~~ Attached to the exterior of the sealed program must be ~~accompanied by~~ a certificate signed by the person who prepared the program naming the election jurisdiction for which the program was prepared and stating that the program is an exact duplicate of the program provided to the election jurisdiction and that the program was prepared in accordance with Minnesota statutes and parts 8220.0050 to 8230.4250 and the instructions of the election jurisdiction requesting the program.

8220.2950 PREPARATION OF PUNCH-CARD SUPPLIES AND VOTING DEVICES APPLICABILITY.

Parts 8220.3050 to 8220.4250 apply to punch-card or other electronic voting systems where ballot cards are used with a punch instrument or where the ballot card must be inserted into a marking or voting device.

8230.2450 RETENTION OF BALLOT CARDS AND BALLOT ENVELOPES.

Ballot cards and ballot envelopes which are not issued to voters must be returned to the election official in charge of the election jurisdiction who shall issue a receipt for them and retain them by precinct until the time for contest has expired.

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

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, 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, February, 1986

Pursuant to Minnesota Statutes, Section 475.55, Subdivision 4, Commissioner of Finance, Jay Kiedrowski, announced today that the maximum interest rate for municipal obligations in the month of February will be ten (10) 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 eleven (11) percent per annum.

For further information, contact:

Peter Sausen, Assistant Commissioner
Cash and Debt Management
State of Minnesota
Department of Finance
(612) 296-8372

Department of Health Office of Health Systems Development

Outside Opinion Sought Concerning Requests for Waiver of HMO Statutes and Rules by Physicians' Health Plan, MedCenters Health Plan and Primary Care Network

Notice is hereby given that the Department of Health is seeking opinions and comments pertaining to requests by Physicians' Health Plan, MedCenters Health Plan and Primary Care Network for waiver of HMO statutes and rules for its Medicare related contracts. Such waivers are authorized for demonstration projects by Minn. Stat. § 62D.30.

The requests submitted are available for inspection during normal business hours at the following location:

Office of Health Systems Development
Minnesota Department of Health
Room 216
717 S.E. Delaware Street
Minneapolis, Minnesota 55440

Comments on the requests must be received at the Department of Health by February 14, 1986.

Department of Human Services Mental Retardation Division

Outside Opinion Sought Concerning Proposed Rules Governing Use of Aversive or Deprivation Procedures

Notice is hereby given that the Minnesota Department of Human Services is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing use of aversive or deprivation procedures in all licensed facilities serving persons with mental retardation or a related condition.

Draft rule parts discussed or proposed in previous efforts to promulgate permanent rules governing use of aversive or deprivation procedures have been referred to as Rule 40 and have circulated in draft form only as proposed rule parts 9520.1000 to 9520.1016. The rule parts currently under development specify the conditions under which permitted procedures may be used and specify the standards that must be met in implementing permitted procedures. The promulgation of permanent rules is authorized by Minnesota Statutes, section 245.825.

The Minnesota Department of Human Services requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing.

Written statements should be addressed to:

Alice Weck
Rules Unit
Department of Human Services
Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received over the telephone at 612/297-1461 between the hours of 9:00 a.m. and 4:00 p.m. on working days.

All statements of information and comment will be accepted until further notice. Any written material received by the Department of Human Services shall become part of the hearing record.

Department of Transportation; and Transportation Regulation Board

Outside Opinion Sought Concerning Proposed Rules Governing Operations of Motor Carriers and Motor Carrier Tariff, Accounting and Insurance Rules

Notice of Intent to Solicit Outside Opinion—Draft of Rules Available

Notice is hereby given that the Minnesota Department of Transportation and the Transportation Regulation Board are seeking information or opinions from sources outside of the Department and Board in preparing to amend rules governing the operation of motor carriers including their facilities, accounts, service, safety devices, insurance, recordkeeping, form and manner of filing rates and tariffs and the transportation of hazardous materials by any person.

The adoption and amendment of these rules is authorized by Minnesota Statutes §§ 221.031, subd. 1, 221.141 and 221.161, subds. 1 and 2 which require the Department to adopt the rules described above and by the following sections which authorize the Board to adopt rules: section 221.031, subd. 1, related to rates or tariffs or the granting, limiting or modifying of certificates of convenience and necessity and permits; sections 221.061 and 221.121 related to petitions for certificates; 221.151, subd. 1 and 221.296, subd. 8 related to the sale, assignment, pledge, or other transfer of a stock interest in a corporation holding authority to operate as a permit carrier or local cartage carrier; sections 221.041 and 221.161, related to rates, charges and practices; and sections 221.051 and 221.251. The rules now in effect were originally adopted by the Railroad and Warehouse Commission, and the Minnesota Public Service Commission between 1947 and 1977. Those rules are now published in Minnesota Rules, Chapters 7800 and 7805.

The Minnesota Department of Transportation and Transportation Regulation Board have a preliminary draft of proposed amended motor carrier rules available for public review. The draft is about 130 pages long, is accompanied by a table of contents and will be mailed to you free of charge at your request. The draft contains many definitions, and sections on applications for, and transfer of, all types of permits and certificates authorized in Minn. Stat. Chapter 221. It also addresses leasing of vehicles and drivers to motor carriers and private carriers, tariff requirements for motor carriers, and safety regulations including driver qualifications, maximum hours of service, and equipment requirements applicable to all carriers.

On July 18, 1983, the Minnesota Department of Transportation and the Public Utilities Commission, the predecessor of the Transportation Regulation Board, published a joint Notice of Intent to Solicit Public Opinion in the *State Register*. The Notice requested that any interested person offer suggestions to the Department and Commission regarding amendment of rules governing the operation of motor carriers including their facilities, accounts, service, safety, equipment, insurance, record keeping, form and manner of filing rates and tariffs, and the transportation of hazardous material. Please note that Minnesota Statutes, § 221.031 also makes certain safety rules applicable to some private and exempt carriers.

The largest section of the draft, 60 pages, prescribes specific rules for filing tariffs. The rules are based on the ICC tariff rules but have been modified to reflect different local circumstances.

The safety rules specifically adopt, section number by section number, most of the Federal Motor Carrier Safety Regulations, Code of Federal Regulations, title 49, parts 390-397.

This is not a notice of proposed adoption of rules. This is an opportunity for you to review the proposed rules in advance of that notice and to comment on them. After the Department and Board publish the rules and the notice of proposed adoption in the *State Register* this summer, it will become difficult to make changes in the draft. Therefore, if you are interested in these rules, please call or write and request a copy of the rules.

OFFICIAL NOTICES

For a free copy of the proposed rules and further information, please call:

1. Gordon Boldt, Director
Office of Motor Carrier Safety and Compliance
416 Transportation Building
St. Paul, Minnesota 55155
(612) 296-0331

or

2. Connie Geisenhoff
Office of Motor Carrier Safety and Compliance
416 Transportation Building
St. Paul, Minnesota 55155
(612) 296-7109

or

3. Betsy Parker
Room 815 Transportation Building
Minnesota Department of Transportation
St. Paul, Minnesota 55155
(612) 297-2913

The Minnesota Department of Transportation and the Transportation Regulation Board request information and comments from interested or affected persons or groups. Comments may be made orally over the telephone, or in person, or in writing. Written statements should be addressed to:

Betsy Parker
Room 815 Transportation Building
Minnesota Department of Transportation
St. Paul, Minnesota 55155
(612) 297-2913

Oral statements will be received during regular business hours over the telephone at (612) 297-2913 or (612) 296-0331 and in person at the above address.

All statements of information and comment shall be accepted until March 17, 1986. Any written material received by the Department of Transportation and Transportation Regulation Board shall become part of the record in the event that the rules are promulgated.

Comments and statements will be considered by both the Department and the Board.

If you are not on our official agency mailing list, you may also wish to ask that your name and address be added to the Department or Board mailing list so that you will receive notice of future hearings on this subject.

February 2, 1986

Roger A. Laufenburger
Chairman
Transportation Regulation Board

February 3, 1986

Richard P. Braun
Commissioner
Department of Transportation

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant 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 \$5,000 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 by calling 296-2513. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
27-145-48980	Compugraphic Typesetting System	Willmar Community College	Willmar	Contact buyer
79-250-00385	Neoprene Drain Troughs & Deck Expansion Joints	Transportation	Crookston	Contact buyer
78-620-25803	Trays & Food Storage Boxes	MN Correctional Facility	Stillwater	Contact buyer
Various	Meat & Meat Products for the Month of March 1986	Various	Various	Contact buyer
29-000-43246	Purchase of Geophysical Equipment & Accessories	Natural Resources—Minerals	Hibbing	Contact buyer
02-310-14295; 02-310-14294	Lounge & Dining Room Furnishings	Human Services—Cambridge State Hospital	Cambridge	Contact buyer
26-073-18646	Broadcast Equipment	St. Cloud State University	St. Cloud	Contact buyer
21-200-12138	Telephone System	Jobs & Training	Crystal	Contact buyer
26-175-06402- Rebid	Furnish Chemical Feed Equipment	Southwest State University	Marshall	Contact buyer
27-000-48929	Environmental Controls Service Contract	Fergus Falls Community College	Fergus Falls	Contact buyer
29-000-43395- 5878	Bear Hunt Application	Natural Resources	St. Paul	Contact buyer
29-000-43245	Automated Power File	Natural Resources	St. Paul	Contact buyer
29-000-43353- 5833	Woody Cover Plantings for Wildlife	Natural Resources	St. Paul	Contact buyer
26-074-10742	Purchase of Printers	Winona State University	Winona	Contact buyer
79-382-01030	Crash Attenuator	Transportation	St. Cloud	Contact buyer
02-410-48158- Rebid	EDP Printer Accessories	Administration—Information Management Bureau	St. Paul	Contact buyer
29-002-11718	Mowers, Flail	Natural Resources	Grand Rapids	Contact buyer
Sch. 113-B	Addendum #1—Buses	Various	Various	Contact buyer
27-140-43337- 5640	BCC Catalog Reprint w/Estimated 1/3 Pages Changed	Brainerd Community College	Brainerd	Contact buyer
26-073-18602	Biomechanics Camera	St. Cloud State University	St. Cloud	Contact buyer

STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
79-382-01031, 01032	Bituminous Equipment	Transportation	Various	Contact buyer
80-300-03327-Rebid	Weight Dollies	Public Service	St. Paul	Contact buyer
Contract 29-003-09600-Rebid	Hydraulic Hose & Fittings Lease Ind. Tractor	Transportation Natural Resources	Various Little Falls	\$15,000-25,000 Contact buyer
12-500-90267	Purchase of Portable Computers	Health	Minneapolis	Contact buyer
79-100-03497, etc. Rebid	Traffic Marking Paint	Transportation	Various	Contact buyer
79-000-51761	Magnetic Locators	Transportation	St. Paul	Contact buyer
79-600-B	Plant Mix Bituminous	Transportation	Rochester	Contact buyer
79-900-B	Hot Mix Bituminous	Transportation	N. St. Paul	Contact buyer
79-700-B	Hot Plant Mix Bituminous	Transportation	Mankato	Contact buyer
79-000-51991	Vertical Milling Machine	Transportation	St. Paul	Contact buyer
27-147-48372	Wood Chips	Vermillion Community College	Ely	Contact buyer
79-350-B	Plant Mix Bituminous—St. Cloud	Transportation	St. Cloud	Contact buyer
29-000-43212	Fiberglass Fish Tanks	Natural Resources	St. Paul	Contact buyer
55-304-06894	Resin Replacement in Water Softener Tanks	Human Services— Brainerd Regional Human Services Center	Brainerd	Contact buyer
79-250-B	Hot Mix Bituminous	Transportation	Crookston	Contact buyer
55-100-03500, etc.	Food Equipment	Human Services— Anoka Metro Regional Treatment Center	Anoka	Contact buyer
Contract 55-520-03504	Wiping Rags Dealkalizer	Various Human Services— Oak Terrace Nursing Home	Various Minnetonka	65,000-70,000 Contact buyer
21-200-11946 Rebid	Blanket Insurance Coverage for Fire, Extended Coverage, Vandalism & Malicious Mischief	Jobs & Training	St. Paul	Contact buyer
12-600-88348-5596	If you Don't Know Beans about Beans Cookbook	Health	Minneapolis	Contact buyer
29-000-43351-5770	Water Safety Coloring Book	Natural Resources	St. Paul	Contact buyer
07-700-37656-5725	Traffic Accident Report	Public Safety	St. Paul	Contact buyer
26-070-11500-5558	Diploma Covers, Inserts	Bemidji State University	Bemidji	Contact buyer
29-000-43442-5957	1986 MN Fishing Regulations	Natural Resources	St. Paul	Contact buyer

Contact 296-6152 for referral to specific buyers.

Metropolitan Council

Request for Proposals to Perform Audits of 54 Parks and Open Space Grants

The Metropolitan Council solicits a proposal for entering into a contract to perform audits of 54 Metropolitan Council Parks and Open Space grants. Four copies of the proposal should be submitted to the Metropolitan Council, Suite 300, Seventh and Robert Streets, St. Paul, MN 55101. Attention: Ron Scherman. All proposals received by the contract manager on or before 4:00 p.m., March 3, 1986 will be considered by the Council.

The Council, by this RFP, does not promise to accept the lowest, or any other proposal and specifically reserves the right to reject any or all proposals, to waive any formal requirements, to reject any provision in any proposal, to obtain new proposals, or to proceed to do the work otherwise.

The Metropolitan Council hereby notifies all proposers that businesses owned and controlled by minorities or women will be afforded maximum feasible opportunity to submit proposals, and no proposer will be subject to discrimination on the basis of race, color, sex, age, religion, ancestry, handicap, public assistance status, marital status, national origin or political affiliation.

Questions and requests for copies of the RFP should be directed to Ron Scherman (612) 291-6569.

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.

Supreme Court Lawyer Trust Account Board

Notice of Grant Cycle, July 1, 1986 to June 30, 1987

The Minnesota Supreme Court has established a program to use the interest on lawyer trust accounts to improve the delivery of legal services to the poor, to promote the development of law-related education for the public, and to develop programs to enhance the administration of justice.

The Lawyer Trust Account Board has announced a grant program to distribute funds to projects in any of three program areas. The Board will support not only traditional approaches, but will encourage projects which show innovative approaches to recognized needs throughout the state. The Board is soliciting proposals. For application information, contact the Executive Director, 318A State Capitol, St. Paul, MN 55155. The application deadline is April 15, 1986.

January 27, 1986

SUPREME COURT DECISIONS

Decisions Filed Friday, January 31, 1986

Compiled by Wayne O. Tschimperle, clerk

C9-84-2015 Diane M. Ruud, n.k.a. Diane M. Coppens, Petitioner, Appellant v. Charles A. Ruud. Court of Appeals.

Without regard to the parties' designation of post-decree payments as spousal maintenance, where the payments are in fact a portion of the property distribution, Minn. Stat. § 518.64, subd. 3(1984) is inapplicable to relieve the party of the obligation to continue payment after the remarriage of his former spouse.

Reversed in part and remanded. Amdahl, C. J.

C0-84-2128 State of Minnesota v. Marshall Donald Murphy, Appellant. Hennepin County District Court.

Defendant's confession to his probation officer of a prior crime was admissible under Article I, section 7, of the Minnesota Constitution where defendant was not "in custody" at the time of the confession.

Evidence of rape or attempted rape was sufficient on which to base a conviction for first degree felony murder.

Evidence was sufficient to sustain a felony-murder conviction where there was abundant proof that the killing occurred immediately after commission of a felony and it was clear that the killing and felony were parts of one continuous criminal act.

Trial court did not err in refusing to submit third degree murder as a lesser included offense.

Trial court's response to a question from the jury was a correct statement of the law and was not prejudicial error.

Affirmed. Amdahl, C. J.

Dissenting, Wahl, J.

SUPREME COURT DECISIONS

C1-84-2204 State of Minnesota, Petitioner, Appellant v. Myles A. Koop. Court of Appeals.

Trial court did not err in refusing to submit lesser-included offense of attempted first-degree heat-of-passion manslaughter in attempted murder prosecution, where record was devoid of evidence showing any words or acts sufficient to provoke a person of ordinary self-control into acting as defendant acted.

Reversed; convictions reinstated. Amdahl, C. J.

C8-85-1187 American Family Mutual Insurance Company, Appellant v. Stephen O'Dean Peterson and Lana L. Kelsey. Court of Appeals.

Reversed and remanded to the Court of Appeals for reinstatement of the appeal. Amdahl, C. J.

CX-85-249 State of Minnesota v. Leonard Ray Daniels, Appellant. Ramsey County.

The evidence was sufficient to sustain the conviction of the defendant of first degree murder.

Statements of two small children, previously ruled incompetent to testify, were properly admitted under the "excited utterance" exception to the hearsay rule.

The trial court correctly found evidence establishing a prima facie conspiracy, after which statements made by witnesses were admissible under the coconspirator exclusion from the hearsay rule.

Admission of the out-of-court statements of the children and the coconspirator did not violate appellant's sixth amendment right to confront witnesses against him.

Even if the admission of statements of the coconspirator be deemed constitutional error, in the light of the overwhelming evidence of guilt, the error, if any, was harmless beyond a reasonable doubt.

Affirmed. Kelley, J.

C8-85-1495 Stephen Edquist, Relator v. Browning-Ferris and CNA Insurance Company and Commissioner of Department of Economic Security, Intervenor. Workers' Compensation Court of Appeals.

When all of the compensation sought by the employee was in dispute, Minn. Stat. § 176.081, subd. 1(a) (1984) allowed by the employee's attorney to receive a fee based on the total compensation awarded. That statute also imposed a lien for the fee against the total award, including the amount ordered reimbursed to the Department of Economic Security for unemployment compensation benefits paid the employee during a period in which he was also entitled to receive workers' compensation disability benefits.

Reversed. Yetka, J.

Took no part, Coyne, J.

C7-84-1915 Novus Equities Corporation, Petitioner, Appellant v. EM-TY Partnership, etc., et al. Court of Appeals.

The trial court did not abuse its discretion in certifying, pursuant to Rule 54.02, its partial summary judgment for immediate appeal.

In this case, it is a question of fact whether a promissory note given by the vendee under a contract for deed as part of the purchase price is a downpayment that survives cancellation of the contract.

Reversed and remanded. Simonett, J.

CX-85-946 Mary Kramer, Spouse of Gordon Kramer, Jr., Deceased v. State of Minnesota, Peace Officers Benefit Fund, Relator and City of St. Paul. Workers' Compensation Court of Appeals.

The Workers' Compensation Court of Appeals has subject matter jurisdiction to hear and claim petitions for peace officer death benefits under Minnesota Statutes chapter 352E.

The standard for claims liability under chapter 352E is whether a peace officer was "killed in the line of duty," not the standard for workers' compensation liability under chapter 176; *i.e.*, whether death resulted from the performance of those duties peculiar to a peace officer that expose the officer to the hazard of being killed.

A police officer who sustained a heart attack while performing the ordinary activities of his administrative office routine was not killed in the line of duty.

Reversed. Simonett, J.

Dissenting, Scott, J.

Orders

CX-85-2308 In the Matter of the Application for the Discipline of Aurelio P. Nardi, an Attorney at Law of the State of Minnesota. Supreme Court.

Amended Order. Suspended. Amdahl, C. J.

ORDER FORM

State Register. Minnesota's official weekly publication for agency rules and notices, executive orders of the Governor, state contracts, Supreme Court and Tax Court decisions.

- _____ Annual subscription \$130.00
- _____ Trial subscription (13 weeks) \$40.00
- _____ Single copies \$3.25 each

Minnesota Guidebook to State Agency Services 1984-85. A 623-page guide to services provided by Minnesota agencies.

- _____ Single copy: \$12.50 + \$.75 tax = \$13.25* each

Minnesota Rules 1985. 10-volume set.

- _____ Set: \$125.00 + \$7.50 = \$132.50.*
 - _____ Each volume: \$13.00 + \$.78 = \$13.78.
- No handling charge.

Minnesota Laws 1985. All laws passed in the Regular and Special Sessions.

- _____ \$37.00 + \$2.22 = \$39.22.*
- No handling charge.

State Register Binder. Durable 3½ inches, forest green binders imprinted with the *State Register* logo.

- _____ *State Register Binder* \$6.50 + \$.39 tax = \$6.89* each

State Register Index. Contains cumulative findings aids to Volume 8 of the *State Register*, including Minnesota Rules Amendments and Additions, Executive Orders List, Executive Orders Index, Agency Index, Subject Matter Index.

- _____ Single copy \$5.00

Worker's Compensation Decisions. Volume 38. Selected landmark decisions of the Worker's Compensation Court of Appeals. Annual subscription, quarterly updates.

- _____ Annual subscription \$89.50

Minnesota Statutes 1985 Supplement. Pocket part supplement to Minnesota Statutes 1984.

- _____ \$25.00 + \$1.50 = \$26.50.*
- No handling charge.

*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Department of Revenue. No Mastercard/VISA accepted on Rules and Laws.

Please enclose full amount for items ordered: prepaid orders only. Make check/money order payable to "State of Minnesota." (Phone orders are taken only with a Mastercard/VISA charge number.)

EACH ORDER MUST INCLUDE \$1.50 POSTAGE AND HANDLING FEE.

Name _____

Attn of: _____

Street _____

City/State/Zip _____

Telephone # _____

CHANGE OF ADDRESS NOTICE

Please notify us as soon as your address changes so that we can continue to serve you.

OLD ADDRESS

NEW ADDRESS

Publication(s) you are receiving from us: _____

FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate 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.

Contact: Senate Public Information Office
 B29 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.

Contact: House Information Office
 Room 8 State Capitol, St. Paul, MN 55155
 (612) 296-2146

Legislative Reference Library
Attn: Zona DeWitt
645 State Office Bldg.
Interoffice
