

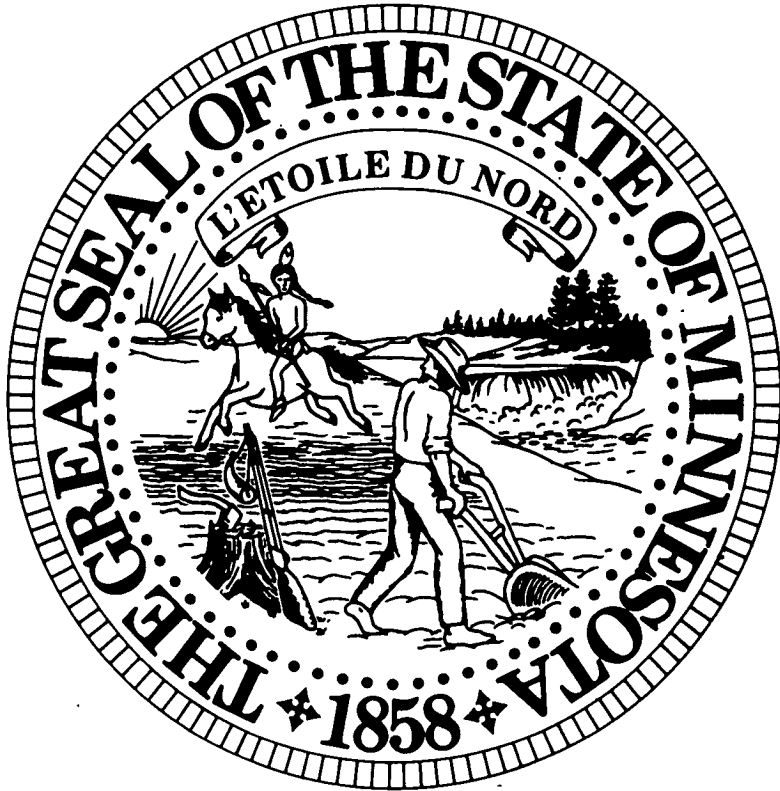
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The Minnesota
State Register

Department of Administration—Print Communications Division

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State Register

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

The *State Register* is the official publication of the State of Minnesota, containing executive and commissioners' orders, proposed and adopted rules, official and revenue notices, professional, technical and consulting contracts, non-state bids and public contracts, and grants.

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Printing Schedule and Submission Deadlines

Vol. 18 Issue Number	PUBLISH DATE	Submission deadline for Adopted and Proposed Rules	*Submission deadline for: Emergency Rules, Executive Orders, Commissioner's Orders, Revenue Notices, Official Notices, State Grants, Professional, Technical and Consulting Contracts, Non-State Bids and Public Contracts
15	Monday 11 October	Monday 27 September	Monday 4 October
16	Monday 18 October	Monday 4 October	Monday 11 October
17	Monday 25 October	Monday 11 October	Monday 18 October
18	Monday 1 November	Monday 18 October	Monday 25 October

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Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
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Room 175 State Office Building, St. Paul, MN 55155
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Commodity award results are available through the **Materials Management Helpline** 612/296-2600.

Minnesota Rules: Amendments and Additions

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

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

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

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the *State Register*, a subscription, the annual index, the *Minnesota Rules* or the *Minnesota Guidebook to State Agency Services*, contact the Print Communications Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-657-3757.

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Proposed Rules

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

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

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

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

Board of Dentistry

Proposed Permanent Rules Relating to Dentists, Hygienists, and Assistants

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Board of Dentistry (hereinafter "Board") intends to adopt the above entitled rules without a public hearing following the procedures set forth in the Administration Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* 14.22 to 14.28 (1992). The statutory authority to adopt the rules is *Minnesota Statutes* 150A.04, subd. 5; 150A.06, subds. 1, 2, 2a, 2b and 4; 150A.08, subds. 1(6) and 3; 150A.10, subds. 1 and 2, and 214.06 (1992).

All persons have until November 12, 1993, in which to submit comment in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any changes proposed.

Any person may make a written request for a public hearing on the rules within the comment period which will close on November 12, 1993. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Board will proceed pursuant to *Minnesota Statutes* 14.131 to 14.20 (1992). Comments or written requests for a public hearing must be submitted to:

Richard W. Diercks, Executive Director
Minnesota Board of Dentistry
2700 University Avenue West, Suite 70
St. Paul, Minnesota 55114
Minnesota Relay Service for Hearing and Speech Impaired:
Metro Area: (612) 297-5353
Outside Metro Area: (800) 627-3529

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

The rules proposed for adoption eliminate the special provisions for licensing graduates of nonaccredited schools, provide additional detail about the requirements for licensure by credentials, add a new requirement to licensure by credentials that requires candidates to have earned at least five hours in infection control continuing dental education in the preceding five years, allow dental hygienists and registered dental assistants to remove and place arch wires on orthodontic appliances and revise the provisions on limited registration for dental assistants with equivalent education by adding requirements on fees and continuing dental education. A free copy of the rules is available upon request from Karen L. Ramsey at the Board office.

A Statement of Need and Reasonableness has been prepared and is available from Karen L. Ramsey upon request. The statement

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

describes the need for and reasonableness of the proposed rules, identifies the data and information relied upon to support the proposed rules, and addresses the Board's position regarding the applicability of the small business rulemaking provisions and the impact of the proposed amendments on small businesses.

Minnesota Statutes 14.115 specifies certain actions which an agency must take if any agency engages in rulemaking which may affect small businesses. It is the Board's position that the Board's rules are not subject to section 14.115 pursuant to subdivision 7 (b) or (c). Nevertheless, should the rule amendments covered by the Statement of Need and Reasonableness be considered subject to section 14.115 and that they will impact on small businesses, the Board makes the following description of the probable quantitative and qualitative small business impact of the proposed rules. The impact will be negligible. *Minnesota Rules*, part 3100.2000 amendments increases fees but only by a small amount. The impact on individuals will be minimal.

Pursuant to *Minnesota Statutes* 16A.128, subd. 2a (1992), a copy of this notice and the proposed rules were sent to the chairs of the House Appropriations Committee and Senate Finance Committee prior to their submission to the *State Register*.

Upon adoption of the rules by the Board, the rules, 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 rules must submit a written request to Karen L. Ramsey at the board office.

Dated: 28 September 1993

Richard W. Diercks
Executive Director

Rules as Proposed

3100.0100 DEFINITIONS.

[For text of subps 1 to 3, see M.R.]

Subp. 4. **Assistant.** "Assistant" means a person who assists the a dentist in carrying out the basic duties of a dental office.

[For text of subps 5 to 7, see M.R.]

Subp. 8. **Commission on Accreditation.** "Commission on Accreditation" means the Commission on Dental Accreditation of the American Dental and Dental Auxiliary Education Programs Association.

[For text of subps 8a to 21, see M.R.]

3100.1100 APPLICATIONS FOR LICENSE TO PRACTICE DENTISTRY.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Graduates of nonaccredited schools.** Graduates of dental schools not accredited by the Commission on Accreditation shall furnish the following information specified in items A to E to the board: by July 1, 1996. After the effective date of this part, persons may not submit applications for licensure under this subpart.

[For text of items A to E, see M.R.]

[For text of subps 4 to 6, see M.R.]

3100.1400 APPLICATION FOR LICENSURE BY CREDENTIALS.

Any person who is already a licensed dentist or dental hygienist in another state or Canadian province desiring to be licensed to practice dentistry or dental hygiene in Minnesota shall ~~present to the board an application and credentials as prescribed by the act.~~ The applicant shall conform to the following rules of the board: in order to demonstrate the person's knowledge of dental subjects and ability to practice dentistry or dental hygiene in Minnesota, comply with the requirements in items A to M.

A. The applicant shall complete an application on forms furnished by the board.

[For text of item B, see M.R.]

C. An applicant for licensure as a dentist must have been in active practice in another state or Canadian province, or United States government service for at least three of the four years prior to the ~~receipt of board receiving~~ a completed application by the board (United States governmental service may be included) and must submit at least three references from other practicing dentists.

[For text of items D to H, see M.R.]

I. An applicant for licensure by credentials as a dentist shall submit complete records on a sample of patients treated by the applicant during the five years preceding the date of application. The number of records requested of applicants shall be established by resolution of the board. The records submitted shall be reasonably representative of the treatment typically provided by the applicant.

J. An applicant must appear before the board ~~for a personal interview and~~ satisfactorily respond to questions designed to determine the applicant's fitness knowledge of dental subjects and ability to practice dentistry or dental hygiene pursuant to Minnesota Statutes, section 150A.06, subdivision 4.

~~J. K.~~ An applicant shall successfully complete an examination designed to test knowledge of Minnesota laws relating to the practice of dentistry and the rules of the board.

L. If the board adopts simulated dental patient examinations as part of the application process, applicants shall successfully complete simulated dental patient examinations designed to test their knowledge of dental subjects.

M. An applicant shall provide satisfactory evidence that during the five years preceding the date of application, the applicant has completed a minimum of five clinical hours of continuing dental education in the subject of infection control, including blood borne diseases.

3100.2000 FEES.

Subpart 1. **Application fees.** Each applicant for licensure as a dentist or dental hygienist or for registration as a registered dental assistant ~~or for a limited registration as a dental assistant under part 3100.8500, subpart 3,~~ shall submit with a license or registration application a fee in the following amounts:

- A. dentist application, \$125;
- B. dental hygienist application, \$55; ~~and~~
- C. dental assistant application, \$30; ~~and~~
- D. limited registration application, \$15.

Subp. 2. **Annual license or registration fees.** Each dentist, dental hygienist, ~~and~~ registered dental assistant, ~~and~~ dental assistant with a limited registration under part 3100.8500, subpart 3, shall submit with an annual license or registration renewal application a fee as established by the board not to exceed the following amounts:

- A. dentist, \$120;
- B. dental hygienist, \$45; ~~and~~
- C. registered dental assistant, \$30; ~~and~~
- D. dental assistant with a limited registration, \$12.

[For text of subps 3 to 6, see M.R.]

Subp. 7. [See repealer.]

[For text of subps 8 to 10, see M.R.]

3100.4100 CONTINUING DENTAL EDUCATION.

[For text of subpart 1, see M.R.]

Subp. 2. **Required credit hours.** The minimum number of required hours of CDE for each five-year cycle shall be: for dentists, 75 hours; for dental hygienists, 40 hours; ~~and~~ for registered dental assistants, 25 hours; ~~and~~ for dental assistants with a limited registration under part 3100.8500, subpart 3, ten hours. Of these hours, dentists must complete a minimum of 60 hours, dental hygienists a minimum of 32 hours, ~~and~~ registered dental assistants a minimum of 20 hours, ~~and~~ dental assistants with a limited registration a minimum of ten hours on clinical subjects relating to the practice of dentistry.

Clinical subjects are those subjects directly related to the provision of dental care and treatment to patients.

Nonclinical subjects relating to the practice of dentistry are those subjects which are not directly related to, but are supportive of, the provision of clinical services to patients. Examples of nonclinical subjects are patient management, the legal and ethical responsibilities of the dental profession, and stress management.

Examples of subjects that are not eligible for CDE credit are estate planning, financial planning, marketing, investments, personal health, and personal growth.

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Proposed Rules

Subp. 2a. **Required credit hours on infection control.** During each five-year cycle, licensees and registrants, including dental assistants with a limited registration under part 3100.8500, subpart 3, must complete a minimum of five clinical hours of CDE in the subject of infection control, including blood borne diseases. The requirement for CDE clinical credits on infection control is effective beginning September 1, 1993. For licensees and registrants with less than five years remaining in their current CDE cycle, one clinical infection control CDE credit per full remaining year is required.

[For text of subps 3 to 5, see M.R.]

3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL OFFICES.

Subpart 1. **Minimum conditions.** Subparts 2 to ~~43~~ 15 are minimum safety and sanitary conditions.

[For text of subps 2 to 11, see M.R.]

Subp. 12. **Sharps and ~~contaminated~~ infectious waste.** Sharp items and ~~contaminated~~ infectious wastes must be disposed of in accordance with *Minnesota Statutes*, sections 116.76 to 116.83, and rules adopted under them, and requirements established by local government agencies.

[For text of subp 13, see M.R.]

Subp. 14. Hazardous waste. Dentists, dental hygienists, and registered dental assistants shall comply with the requirements on hazardous waste in chapter 7045.

Subp. 15. Ionizing radiation. Dentists, dental hygienists, and registered dental assistants shall comply with the requirements on ionizing radiation in chapter 4730.

3100.8500 REGISTERED DENTAL ASSISTANTS.

Subpart 1. **Duties under indirect supervision.** A registered dental assistant, in addition to the services performed by the assistant, may perform the following services if ~~the~~ a dentist is in the office, authorizes the procedures, and remains in the office while the procedures are being performed:

[For text of items A to E, see M.R.]

F. perform mechanical polishing to clinical crowns not including instrumentation. Removal of calculus by instrumentation must be done by ~~the~~ a dentist or dental hygienist before mechanical polishing;

[For text of item G, see M.R.]

H. place and remove periodontal ~~packs~~ dressings;

[For text of items I to K, see M.R.]

L. remove and ~~replace~~ place ligature ties and arch wires on orthodontic appliances. A dentist must select and, if necessary, adjust arch wires prior to placement.

Subp. 1a. **Duties under direct supervision.** A registered dental assistant may perform the following services if ~~the~~ a dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the auxiliary before dismissing the patient:

[For text of items A to D, see M.R.]

[For text of subp 2, see M.R.]

Subp. 3. **Limited registration.** A dental assistant, who by virtue of academic achievement which is equal to or greater than that of a registered dental assistant, and is currently qualified in Minnesota in an allied health profession may take dental radiographs under the indirect supervision of a dentist if the person complies with the requirements of this subpart. The person shall file with the board a completed application ~~on a form~~ furnished by the board and the fee prescribed in part 3100.2000, subpart 7 1. In addition, the person shall submit evidence of the successful completion of a course on dental radiographs and of passing an examination. The course must be board-approved. The course shall be equivalent to the dental radiograph courses offered by dental assisting courses approved by the board under part 3100.1300, item B. The examination must be the radiograph part of the examination which is required of registered dental assistant applicants.

3100.8700 DENTAL HYGIENISTS.

Subpart 1. **Duties under general supervision.** A dental hygienist may perform the following services if ~~the~~ a dentist has authorized them and the hygienist carries them out in accordance with the dentist's diagnosis and treatment plan:

[For text of items A to F, see M.R.]

Subp. 2. **Duties under indirect supervision.** A dental hygienist may remove marginal overhangs if ~~the~~ a dentist is in the office, authorizes the procedures, and remains in the office while the procedures are being performed.

Subp. 2a. **Duties under direct supervision.** A dental hygienist may perform the following procedures if ~~the~~ a dentist is in the office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the dental hygienist before dismissing the patient:

[For text of items A and B, see M.R.]

[For text of subp 3, see M.R.]

REPEALER. Minnesota Rules, part 3100.2000, subpart 7, is repealed. Minnesota Rules, part 3100.1100, subpart 3, is repealed July 1, 1996.

Department of Jobs and Training

Proposed Permanent Rules Relating to Vocational Rehabilitation Services: Order of Selection, Consumer Financial Participation, and Purchase of Services

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for a Hearing are Received

Introduction. The Department of Jobs and Training intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedures Act, *Minnesota Statutes*, §§ 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule by **November 12, 1993**, a public hearing will be held on **November 30, 1993**. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after **November 12, 1993**, and before **November 30, 1993**.

Agency Contact Person. Comments or questions on the proposed rule and written requests for a public hearing on the rule must be submitted to:

Andrew Beisner
390 North Robert Street
St. Paul, Minnesota 55101
Telephone Number 612/296-5616
Fax Number (612) 297-5159
TDD Number (612) 296-9152

If you wish to discuss these rules directly with the agency contact person you need to use either the TDD number above or the Minnesota Relay Service to connect you with the above TDD. Minnesota Relay Service can be accessed in Greater Minnesota at 800/627-3529; in the Twin Cities Metro area at 297-5353. You will need to provide your area code and telephone number and the TDD number listed above. In addition, you may leave a message for the agency contact person by calling 612/296-5616.

Alternative Format. The proposed rules, this notice of intent to adopt rules, and the statement of need and reasonableness are available in braille, large print and audio tape upon request from the agency contact.

Subject of Rule and Statutory Authority. The proposed rule relates to the order of selection of consumers to be served by the vocational rehabilitation program if funds are inadequate to serve all persons with disabilities who are eligible for services. It also relates to setting criteria requiring the financial participation of consumers in the cost of vocational rehabilitation services, and establishes criteria that benefits offered by entities other than the division of rehabilitation services must be applied for and accepted, if available, before the division purchase vocational rehabilitation services. The proposed rule also establishes the general conditions under which the division provides vocational rehabilitation services, and sets limits on the purchase of goods and services, including vocational school and college tuition.

The Statutory Authority for these rules is *Minnesota Statutes*, §§ 268.021 and 268A.03(m). A copy of the proposed rule is published in the *State Register* and attached to this notice as mailed. You may also request one free copy of the rule by contacting the agency contact person.

Comments. You have until 3:30 p.m. on **November 12, 1993** to submit written comments in support of, or in opposition to, the proposed rule or any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the

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due date. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and be received by the agency contact person by 3:30 p.m. on **November 12, 1993**. Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their request in writing.

Modifications. The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in substantial change in the proposed rule as printed in the *State Register* and must be supported by data and views submitted to the agency or presented at the hearing. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of Hearing. The hearing scheduled for **November 30, 1993** will be cancelled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also leave a message for Andrew Beisner at 612/296-5636 or call him at his TDD number using the Minnesota Relay Service as instructed above after **November 12, 1993** to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit written requests for a public hearing on the proposed rule, a hearing will be held following the procedures in *Minnesota Statutes*, §§ 14.14 to 14.20. The hearing will be held on **November 30, 1993**, in Room 503, IRS Training Center, Fifth Floor, Galtier Plaza, 175 E. Fifth Street, St. Paul, Minnesota beginning at 9:00 a.m. and will continue until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the administrative law judge. The administrative law judge assigned to conduct the hearing is Barbara L. Neilson. Judge Neilson can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2136, Telephone Number 612/341-7604.

Hearing Procedure: If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the agency may respond in writing within five business days after the submission period ends to any new information submitted. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200 and *Minnesota Statutes* §§ 14.14 to 14.20. Questions about procedure may be directed to the administrative law judge.

Statement of Need and Reasonableness: A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held. The statement may also be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

Small Business Considerations: The department has determined that these proposed rules do not affect small businesses as defined by *Minnesota Statutes* § 14.115. The department acknowledges references to business or small businesses in the proposed rule part 3300.5010, subpart 20; part 3300.5060, subparts 3C and 11. These references are to vocational rehabilitation services provided under an individualized written rehabilitation program in order to assist an eligible consumer establish a small business. The proposed rules do not establish compliance or reporting requirements, design or operational standards, or other requirements that impact small businesses as described in *Minnesota Statutes* § 14.115.

If you disagree with the department's determination, you may write the agency contact with your concerns or make a presentation to the administrative law judge in person or in writing should a hearing be required.

Lobbyist Registration: *Minnesota Statutes* § 10A requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at First Floor, Centennial Officer Building, 658 Cedar Street, St. Paul, MN 55155, Telephone number 612/296-5148.

Adoption Procedure if No Hearing: If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney

general's decision on the rule. If you want to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.

Adoption Procedure After a Hearing: If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You may request to be notified 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 rule for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. You may also request notification of the date on which the rule is adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day that the rule is filed. If you want to be notified of the adoption, you may so indicate at the hearing or send a request in writing to the agency contact person at any time prior to the filing of the rule with the Secretary of State.

R. Jane Brown, Commissioner
Department of Jobs and Training

Rules as Proposed (all new material)

VOCATIONAL REHABILITATION SERVICES

3300.5000 PURPOSE AND SCOPE.

Subpart 1. **Purpose.** The purpose of parts 3300.5000 to 3300.5060 is to establish procedures and standards for the provision of vocational rehabilitation services to persons with disabilities in Minnesota.

Subp. 2. **Scope.** Parts 3300.5000 to 3300.5060 apply to the division, vendors of services under agreement with the division, and all persons applying for or receiving vocational rehabilitation services from the division. Parts 3300.5000 to 3300.5060 do not require expenditures for a person if funds are not available to the division from federal and state appropriations for the provision of vocational rehabilitation services.

Subp. 3. **Exclusion.** Parts 3300.5000 to 3300.5060 do not apply to the provision of vocational rehabilitation services to persons who are blind by State Services for Blind and Visually Impaired Persons under parts 3325.0100 to 3325.0490.

3300.5010 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 3300.5000 to 3300.5060, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who has submitted an application for vocational rehabilitation services to the division, or whose parent, guardian, or legal representative has submitted an application.

Subp. 3. **Assessment for determining eligibility and vocational rehabilitation needs.** "Assessment for determining eligibility and vocational rehabilitation needs" means the acquisition and use of information from applicants or eligible consumers and their families, medical and psychological service providers, programs serving persons with disabilities, and other sources in order to determine eligibility, establish an employment goal, and identify the specific vocational rehabilitation services an eligible consumer will need to achieve the eligible consumer's employment goal.

Subp. 4. **Books and supplies for postsecondary training.** "Books and supplies for postsecondary training" means required textbooks, paper, pencils, pens, small calculators, and similar items that are usually required for participation in a training program at a postsecondary training institution.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Department of Jobs and Training or an individual designated by the commissioner to act on the commissioner's behalf.

Subp. 6. **Comparable benefits.** "Comparable benefits" means services or financial assistance available to an eligible consumer, from sources other than the division or the eligible consumer, to meet, in whole or in part, the cost of vocational rehabilitation services. Examples of comparable benefits are: Medicare, Medicaid, individual and group insurance, workers' compensation benefits, community social service agencies, state agencies other than the division, and public or private educational and training grants and scholarships.

Subp. 7. **Division.** "Division" means the Division of Rehabilitation Services in the Department of Jobs and Training.

Subp. 8. **Durable medical equipment.** "Durable medical equipment" means wheelchairs; three-wheel self-propelled devices; canes, crutches, and other mobility aids; and other commercially available nonconsumable equipment whose primary purpose is to enable an individual to perform life functions that, due to the individual's physical or mental impairment, the individual cannot adequately perform without the equipment.

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Subp. 9. **Eligible consumer.** "Eligible consumer" means a person who is eligible for vocational rehabilitation services as provided by the Rehabilitation Act of 1973, *United States Code*, title 29, section 722, subsection (a), as amended.

Subp. 10. **Employment goal.** "Employment goal" means full-time or part-time gainful employment that:

- A. is consistent with the strengths, resources, priorities, concerns, abilities, and capabilities of an eligible consumer;
- B. provides the eligible consumer with access to an appropriate occupational field in which there is opportunity for the eligible consumer to develop and be productive, consistent with the eligible consumer's abilities and informed choice;
- C. is available in the labor market area where the eligible consumer is willing to seek and accept employment; and
- D. is in the competitive labor market, including supported employment, or any other vocational outcome determined by the secretary of the federal Department of Education to be consistent with the Rehabilitation Act of 1973, as provided by *United States Code*, title 29, chapter 16, as amended.

Subp. 11. **Extreme medical risk.** "Extreme medical risk" means a determination, based on medical evidence provided by a licensed medical professional, that there is a risk of increasing functional impairment or risk of death if medical services are not provided expeditiously.

Subp. 12. **Family.** "Family" means:

- A. the spouse of the eligible consumer;
- B. the child or children of the eligible consumer if:
 - (1) the child or children are under 18 years of age and living with the eligible consumer; or
 - (2) the eligible consumer claimed the child or children as dependents for federal income tax purposes in the most recent calendar year; and
- C. the parent or parents of the eligible consumer if:
 - (1) the eligible consumer is under 18 years of age and living with the parent or parents; or
 - (2) the parent or parents claimed the eligible consumer as a dependent for federal income tax purposes in the most recent calendar year.

Subp. 13. **Functional area.** "Functional area" means mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

Subp. 14. **Gift aid.** "Gift aid" means grants, scholarships, and other financial assistance from federal, state, or other sources that are used to pay for the costs of postsecondary training and that do not have to be repaid.

Subp. 15. **Gross family income.** "Gross family income" means cash payments or benefits, other than gifts or loans, received by or actually available to an eligible consumer or an eligible consumer's family from public or private sources. These payments or benefits include:

- A. cash earnings from wage or salaried positions before payroll deductions;
- B. cash income receipts from a business, farm, or profession after deduction of operating expenses;
- C. unearned payments from government assistance programs or other public sources such as unemployment insurance, workers' compensation, veteran's benefits, social security, and government pensions; and
- D. unearned payments from private sources such as private pensions, annuities, net rental income, dividends, and interest.

Subp. 16. **Independent living skills training.** "Independent living skills training" means training services that improve the ability of an individual with a severe disability to live and function more independently.

Subp. 17. **Individual with a most severe disability.** "Individual with a most severe disability" means an eligible consumer:

- A. who has a severe physical or mental impairment that results in a serious functional limitation in terms of employment in three or more functional areas;
- B. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- C. who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders including stroke and epilepsy, paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable serious functional limitation.

Subp. 18. **Individual with a severe disability.** "Individual with a severe disability" means an eligible consumer:

A. who has a severe physical or mental impairment that results in a serious functional limitation in terms of employment in one or two functional areas;

B. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

C. who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders including stroke and epilepsy, paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable serious functional limitation.

Subp. 19. **Individualized written rehabilitation program.** "Individualized written rehabilitation program" means a written document specifying the eligible consumer's employment goal and the services and objectives by which barriers to employment resulting from the eligible consumer's disability will be reduced. An individualized written rehabilitation program is developed for each eligible consumer by the eligible consumer and the eligible consumer's rehabilitation counselor and amended as necessary, as provided by *United States Code*, title 29, section 722, subsection (b), as amended.

Subp. 20. **Initial stocks, supplies, and equipment.** "Initial stocks, supplies, and equipment" means the initial inventory of goods for direct resale to customers by an eligible consumer entering into a self-employment enterprise, a start-up supply of expendable items that are necessary for the day-to-day operation of a business, and nonexpendable goods and tools that are necessary for the operation of a business, excluding the ongoing replacement of inventory and supplies and repair and replacement of equipment.

Subp. 21. **Interpreter services.** "Interpreter services" means interpreting of oral, manual, or written communication for persons who are deaf or hard of hearing.

Subp. 22. **Job coaching.** "Job coaching" means services provided to assist an eligible consumer to perform work duties and retain employment in a competitive employment setting, such as:

A. job skills training;

B. training and assistance with work behaviors; and

C. assistance to employers and coworkers when necessary to assist the eligible consumer to retain employment.

Subp. 23. **Job placement.** "Job placement" means services that assist eligible consumers in seeking and obtaining gainful employment. These services include one or more of the following:

A. providing eligible consumers with information on employment opportunities and trends;

B. communicating and negotiating with community resources and employers to increase employment opportunities for eligible consumers;

C. assessing the characteristics and tasks of an eligible consumer's job choice to determine the skills, knowledge, and abilities needed to perform the tasks involved in the job;

D. assisting employers in restructuring job tasks and removing architectural and transportation barriers to accommodate eligible consumers;

E. counseling eligible consumers on job seeking skills and assisting consumers with the development of job seeking plans;

F. counseling eligible consumers on job retention skills;

G. assisting eligible consumers in preparing resumes and job applications and in developing job interviewing skills;

H. advising eligible consumers and employers of alternative means of carrying out essential work tasks, and assisting in the resolution of consumer-employer conflicts;

I. assisting employers with affirmative action programs and projects on behalf of eligible consumers;

J. collaborating with organizations involved in employment assistance on behalf of eligible consumers;

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K. assisting employers in determining appropriate equipment and systems needs on behalf of eligible consumers; and

L. informing eligible consumers and employers of federal and state antidiscrimination laws.

Subp. 24. **Maintenance.** "Maintenance" means the financial assistance provided to an eligible consumer to pay for added costs incurred by the eligible consumer as a result of participation in other planned vocational rehabilitation services.

Subp. 25. **Notetaker services.** "Notetaker services" means the recording in writing of oral or written communication for later use by an eligible consumer.

Subp. 26. **Order of selection.** "Order of selection" means the priority system under which the division provides vocational rehabilitation services to eligible consumers when all eligible consumers cannot be served.

Subp. 27. **Paratransit.** "Paratransit" means door-to-door or demand-responsive transportation for persons who are unable to use conventional public transportation. Paratransit may be provided by a public transit agency or contracted out to a private company.

Subp. 28. **Personal assistance services.** "Personal assistance services" means a range of services, provided by one or more persons, to assist an eligible consumer to perform daily living activities, on or off the job, that the eligible consumer would typically perform if the eligible consumer did not have a disability.

Subp. 29. **Postemployment services.** "Postemployment services" means vocational rehabilitation services provided to assist an eligible consumer to maintain, regain, or advance in employment after the consumer has been determined to be rehabilitated according to *Code of Federal Regulations*, title 34, section 361.43, as amended. Postemployment services are provided only to the extent necessary to overcome barriers to maintaining, regaining, or advancing in employment that result from the consumer's disability.

Subp. 30. **Postsecondary training.** "Postsecondary training" means training provided by a postsecondary training institution.

Subp. 31. **Postsecondary training institution.** "Postsecondary training institution" means a public or private university, college, community college, junior college, vocational school, business school, technical college, technical institute, or hospital school of nursing.

Subp. 32. **Public safety officer.** "Public safety officer" means a person serving the United States or a state or unit of local government, with or without compensation, in any activity involving:

A. the enforcement of criminal laws, or maintenance of civil peace by the National Guard or armed forces;

B. a correctional program, facility, or institution where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees;

C. a court having criminal or juvenile jurisdiction where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees; or

D. firefighting, fire prevention, or emergency rescue missions.

Subp. 33. **Reader services.** "Reader services" means the oral reading of written material for an eligible consumer.

Subp. 34. **Referral.** "Referral" means counseling or research on behalf of an applicant or eligible consumer for the purpose of directing the applicant or eligible consumer to other agencies and organizations that provide financial assistance, rehabilitation services, or other services needed by the applicant or eligible consumer.

Subp. 35. **Rehabilitation counseling and guidance.** "Rehabilitation counseling and guidance" means the process by which a rehabilitation counselor assists an eligible consumer to:

A. understand the eligible consumer's abilities and potential and develop self-confidence;

B. identify and establish an employment goal and intermediate objectives to reach that goal; and

C. complete a program of services leading to the achievement of the intermediate objectives and employment goal established in the eligible consumer's individualized written rehabilitation program.

Subp. 36. **Rehabilitation counselor.** "Rehabilitation counselor" means a person classified by the Minnesota Department of Employee Relations as a rehabilitation counselor and employed by the division to determine eligibility for and provide and coordinate the provision of vocational rehabilitation services.

Subp. 37. **Rehabilitation technology.** "Rehabilitation technology" means services that apply technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by an eligible consumer. These services include:

A. any piece of equipment, or product system, including taped books and text, and alternative format books accessible by computer, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities; and

B. any service that directly assists an eligible consumer in the selection, acquisition, or use of a piece of equipment or product system described in item A.

Subp. 38. **Restoration services.** "Restoration services" means the medical or medically related services provided to correct or modify, within a reasonable period of time, a physical or mental condition that is stable or slowly progressive. These services consist of durable medical equipment and the services listed under the definition of physical and mental restoration services in *Code of Federal Regulations*, title 34, subtitle B, chapter III, section 361.1, subsection (c), paragraph (2), as amended.

Subp. 39. **Self-help aid.** "Self-help aid" means forms of student financial assistance, such as loans and work-study, offered to a student by a postsecondary institution and that the student must repay or work to earn.

Subp. 40. **Serious functional limitation.** "Serious functional limitation" means a reduction, due to a severe physical or mental impairment, in one or more of an individual's functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills, to the degree that the individual requires services or accommodations not typically made for other individuals in order to prepare for, enter, engage in, or retain employment.

Subp. 41. **State Rehabilitation Advisory Council.** "State Rehabilitation Advisory Council" means the council established under *United States Code*, title 29, section 725, as amended, to advise the division on the services and outcomes of the vocational rehabilitation program.

Subp. 42. **Tools and equipment.** "Tools and equipment" means hammers, clamps, cutlery, screwdrivers, tool belts, brushes, safety goggles, ladders, scissors, and similar implements required for participation in an individualized written rehabilitation program.

Subp. 43. **Transportation services.** "Transportation services" means payments for gasoline and parking, public transportation, paratransit, the purchase of vehicle adaptations, or the purchase of vehicle repairs.

Subp. 44. **Tuition cap.** "Tuition cap" means:

A. for postsecondary training programs leading to a bachelor's or higher degree, the dollar amount equal to the average annual cost of tuition and mandatory fees needed for a student to complete 45 credits in three quarters at the University of Minnesota, Morris. This amount is available annually from the financial aid office at the University of Minnesota, Morris; or

B. for all other undergraduate programs, the dollar amount equal to the average annual cost of tuition and mandatory fees needed for a student to complete 45 credits in three quarters at a state community college. This amount is available annually from the financial aid office at any state community college.

Subp. 45. **Vehicle adaptations.** "Vehicle adaptations" means changes made to the structure or control devices of a motor vehicle for a person with a disability to operate the vehicle safely and legally.

Subp. 46. **Vocational evaluation.** "Vocational evaluation" means an assessment of a person's performance in a simulated or real work situation to determine the person's abilities, skills, attitudes toward work, and work behaviors.

Subp. 47. **Vocational rehabilitation program.** "Vocational rehabilitation program" means the organizational unit in the division that determines eligibility for, and provides vocational rehabilitation services to, individuals.

Subp. 48. **Vocational rehabilitation services.** "Vocational rehabilitation services" means the services provided or arranged for individuals by the division's vocational rehabilitation program to determine and achieve an employment goal.

Subp. 49. **Vocational training services.** "Vocational training services" means instruction and supplies provided to an eligible consumer to assist the eligible consumer in acquiring the knowledge, skills, attitudes, and educational qualifications necessary to obtain and retain gainful employment. These services include:

A. tuition and materials usually required for training in an educational program at a postsecondary training institution; and

B. fees and materials usually required for vocational skills training in settings other than postsecondary training institutions, such as competitive employment settings and community rehabilitation programs.

Subp. 50. **Work adjustment training.** "Work adjustment training" means using real or simulated work situations to assist persons to:

A. understand the meaning, value, and demands of work;

B. learn or reestablish skills, attitudes, and work behaviors; and

C. develop physical or mental capacities necessary for work.

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3300.5020 CONDITIONS FOR IMPLEMENTING AN ORDER OF SELECTION.

Subpart 1. **Determination of open priority categories.** At least annually, the commissioner shall determine the need for an order of selection. The commissioner's determination shall be made after consulting with and obtaining advice from the State Rehabilitation Advisory Council. The commissioner's determination shall be based on the anticipated need of individuals for services from the vocational rehabilitation program and the resources anticipated to be available to the vocational rehabilitation program. The commissioner shall open as many priority categories as it is projected that the division can serve, starting with the first priority category listed in part 3300.5030. The division retains the discretion to open and close established priority categories based on an assessment of need and resources, but the division must not change the established order of categories.

Subp. 2. **Discontinuation of order of selection.** The division shall discontinue an order of selection when it determines that it can provide vocational rehabilitation services to all eligible individuals who have applied for services from the vocational rehabilitation program.

Subp. 3. **Continuation of services.** When there is a change in the priority categories open under an order of selection, the division must continue to provide vocational rehabilitation services in accordance with an individualized written rehabilitation program developed before the change occurred.

3300.5030 PRIORITY CATEGORIES FOR ORDER OF SELECTION.

Subpart 1. **First priority category.** The first priority category includes all individuals with a most severe disability.

Subp. 2. **Second priority category.** The second priority category includes all individuals with a severe disability that results in serious functional limitations in two functional areas.

Subp. 3. **Third priority category.** The third priority category includes all individuals with a severe disability that results in a serious functional limitation in one functional area.

Subp. 4. **Fourth priority category.** The fourth priority category includes all other eligible consumers.

Subp. 5. **Priority for public safety officers.** If all eligible consumers in a priority category cannot be served, the division shall first serve those eligible consumers whose disability was sustained in the line of duty while performing as a public safety officer, and whose disability was caused by a criminal act, apparent criminal act, or hazardous condition resulting directly from the public safety officer's performance of duties in direct connection with the enforcement, execution, and administration of law, fire prevention, firefighting, or related public safety activities.

3300.5040 CONSUMER FINANCIAL PARTICIPATION IN COST OF VOCATIONAL REHABILITATION SERVICES.

Subpart 1. **Financial participation required.** An eligible consumer whose gross family income is more than the state median income as adjusted for family size shall pay for vocational rehabilitation services an amount equal to the percentage by which the eligible consumer's gross family income exceeds the adjusted median income. For example, if an eligible consumer's gross family income exceeds the state median income adjusted for the eligible consumer's family size by ten percent, the eligible consumer shall pay ten percent of the cost of vocational rehabilitation services provided and the division would pay 90 percent.

Subp. 2. **No required financial participation.** An eligible consumer whose gross family income is equal to or less than the state median income as adjusted for family size is not required to pay any portion of the cost of the vocational rehabilitation services that the eligible consumer receives. However, regardless of consumer financial participation requirements under this part, all eligible consumers are required to participate in the search for and utilization of comparable benefits as provided in part 3300.5050, and the division's payments for any vocational rehabilitation services will not exceed the amounts described in part 3300.5060.

Subp. 3. **Basis for determining degree of financial participation required.** The division shall determine the degree of financial participation required for eligible consumers who are not exempt from determination of the degree of financial participation under subpart 4. The degree of financial participation required is determined on the basis of the eligible consumer's gross family income in relation to the most recent estimate of Minnesota median income levels as adjusted for family size using the adjustment methodology specified in *Code of Federal Regulations*, title 45, section 96.85, as amended.

Subp. 4. **Exemption from determination of degree of financial participation.** An eligible consumer is not required to pay any portion of the cost of the vocational rehabilitation services that the eligible consumer receives if:

A. the eligible consumer receives payments from Aid to Families with Dependent Children, general assistance, or Supplemental Security Income; or

B. the eligible consumer has been determined eligible for medical assistance.

Subp. 5. **Services subject to financial participation.** An eligible consumer may be required to participate in paying the cost of all vocational rehabilitation services not exempted from financial participation under subpart 6.

Subp. 6. **Services exempted from financial participation.** The division must not require eligible consumer financial participation for the following services:

- A. assessment for determining eligibility and vocational rehabilitation needs, except those services provided under an extended evaluation that are not diagnostic in nature;
- B. vocational evaluation;
- C. work adjustment training;
- D. rehabilitation counseling and guidance;
- E. job placement services;
- F. referral services;
- G. interpreter services;
- H. notetaker services;
- I. reader services;
- J. job coaching;
- K. on-the-job training;
- L. independent living skills training that supports an employment goal;
- M. single-time nonrecurring purchases of goods and services costing \$300 or less; and
- N. postemployment services consisting of the services identified in this subpart.

Subp. 7. **Income verification.** If an eligible consumer's individualized written rehabilitation program includes or is expected to include vocational rehabilitation services other than those identified in subpart 6, the eligible consumer shall provide the division with written verification of the eligible consumer's gross family income and sources of income, unless the eligible consumer provides the division with written verification that the eligible consumer is exempt from the determination of the degree of financial participation under subpart 4.

Subp. 8. **Consumer financial participation.** The amount of consumer financial participation in the costs of services and the amount of division payments for services must be determined as follows:

- A. determine the actual cost of the service;
- B. subtract the amount of available comparable benefits from the amount determined in item A;
- C. if the result obtained under item B is greater than zero, determine the dollar amount of consumer financial participation based on the lesser of:
 - (1) the amount determined in item B; or
 - (2) the maximum amount the division is permitted to pay for the service under part 3300.5060;
- D. subtract the amount of consumer financial participation determined under item C from the amount determined under item B;
- E. if the result obtained under item D is greater than zero, division payments must be the lesser of:
 - (1) the amount determined under item D; or
 - (2) the maximum amount the division is permitted to pay for the service under part 3300.5060, minus the amount of consumer financial participation determined under item C.

Subp. 9. **Variance.** An eligible consumer who cannot pay for vocational rehabilitation services to the extent required in subpart 1 may apply to the commissioner for a variance in the determination of financial need as follows:

- A. A request for a variance must be submitted in writing by the eligible consumer or the eligible consumer's legal representative. The request must provide the commissioner with evidence describing the unusual financial situation. If the commissioner requires additional information to determine eligibility for a variance, the division must, within 15 days after receiving the written request, inform the eligible consumer in writing of the specific additional information required.
- B. The commissioner must determine whether the eligible consumer is eligible for a variance and notify the eligible consumer

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of the determination in writing 30 days after the commissioner receives all the information required under item A. The written notification must:

- (1) specify whether the eligible consumer is eligible for a variance;
- (2) indicate the reasons for the determination;
- (3) specify the amount of the variance, if any;
- (4) inform the eligible consumer of review and appeal rights under *Code of Federal Regulations*, title 34, subtitle B, chapter III, section 361.48, as amended; and
- (5) be signed and dated by the commissioner.

C. The commissioner shall grant a variance only if the eligible consumer demonstrates that it is impossible for the eligible consumer to make the cost contributions required under subpart 1 because of extraordinary costs resulting from illness or disability in areas such as mobility, communication, self care, medical care, shelter, food, and clothing.

D. The commissioner shall determine the amount of a variance by:

- (1) calculating the sum of the eligible consumer's extraordinary expenditures identified under item C that make it impossible for the eligible consumer to make the cost contributions required under subpart 1; and
- (2) subtracting the sum in subitem (1) from the financial participation amount the eligible consumer would have to pay without the variance.

E. An eligible consumer who receives a variance must immediately notify the commissioner in writing if the eligible consumer's financial situation improves.

F. The commissioner may review the financial situation of an eligible consumer who receives a variance at any time to determine whether the individual's financial situation continues to justify the variance.

3300.5050 COMPARABLE BENEFITS AND SERVICES.

Subpart 1. **Use of comparable benefits.** Comparable benefits must be used if available to an eligible consumer or a member of an eligible consumer's family for all vocational rehabilitation services identified in the eligible consumer's individualized written rehabilitation program except:

- A. assessment for determining eligibility and vocational rehabilitation needs;
- B. rehabilitation counseling and guidance;
- C. job placement services;
- D. referral services;
- E. vocational and other training services, such as personal and vocational adjustment training, that are not provided as part of a postsecondary training program;
- F. rehabilitation technology services;
- G. medical services for an individual at extreme medical risk;
- H. the services listed in items A to G when provided as postemployment services necessary to assist consumers to maintain, regain, or advance in employment; or
- I. when a search for comparable benefits would cause an immediate job placement to be lost.

Subp. 2. **Consumer responsibilities.** Except in the circumstances described in subpart 1, an eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits as follows:

A. Before receiving training services in a postsecondary institution, an eligible consumer must apply for educational grants and scholarships to pay all or part of the costs of tuition, fees, books, supplies, tools and equipment, and living expenses; and

- (1) provide evidence to the rehabilitation counselor of the amount of the educational grants and scholarships that are available to the eligible consumer; or
- (2) provide evidence to the rehabilitation counselor that the eligible consumer is not eligible for educational grants and scholarships.

B. If grants or scholarships are not available to the eligible consumer because the eligible consumer is in default on repayment of a student loan, the division must not participate financially in the purchase of postsecondary training services until the division determines that a responsible repayment effort has been made. This determination shall be made by the rehabilitation counselor in consultation with the eligible consumer and the lending institution, after considering such factors as the financial resources available to the eligible consumer and the attempts that have been made to work out a satisfactory repayment agreement with the lending

institution.

C. Before receiving restoration services, an eligible consumer must file a claim or application with the consumer's health insurer, if any. If the eligible consumer has no health insurance, or if the restoration services provided are not covered by the eligible consumer's health insurance, the eligible consumer must apply to a local human services agency for medical assistance under *Minnesota Statutes*, chapter 256B.

D. Before receiving any vocational rehabilitation service other than those listed in subpart 1, an eligible consumer shall apply or provide evidence of having already applied for any comparable benefit that the division determines may be available to the eligible consumer. The division must not purchase a service when the eligible consumer refuses to make formal application for a comparable benefit to pay all or part of the cost of the service, or when the eligible consumer refuses to accept a comparable benefit that is available to the eligible consumer.

3300.5060 TERMS AND CONDITIONS FOR PROVISION OF VOCATIONAL REHABILITATION SERVICES.

Subpart 1. General conditions for provision of vocational rehabilitation services.

A. The division must provide vocational rehabilitation services only for the following purposes:

(1) to determine whether an individual is eligible for vocational rehabilitation services and the nature and scope of vocational rehabilitation services needed by the individual, as provided by *Code of Federal Regulations*, title 34, subtitle B, chapter III, sections 361.31, 361.32, 361.33, and 361.34; and

(2) to assist an eligible consumer to achieve an employment goal in accordance with the consumer's individualized written rehabilitation program.

B. The division must follow applicable state, Department of Jobs and Training, and division purchasing policies and procedures when purchasing goods or services for consumers.

C. The division must not make payments to reduce legal financial obligations incurred by the consumer.

Subp. 2. Child care.

A. Before the division provides child care, the amount of consumer financial participation in the cost of child care must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D, except that a search for comparable benefits is not required if the search would cause the eligible consumer to lose an immediate job placement.

C. The division must not provide child care unless there is an emergency where an eligible consumer's individualized written rehabilitation program would be interrupted if child care is not provided. The division must:

(1) purchase child care services only from providers who are licensed by the Department of Human Services, under chapter 9502 or 9503, or who are exempt from the licensure requirements under part 9502.0325, subpart 3; and

(2) pay for no more than one period of child care of up to three months in duration in any 12-month period.

D. Division payments for child care must not exceed the rate established by the Department of Human Services under part 9565.5100.

Subp. 3. Computer hardware and software.

A. Before the division purchases computer hardware, software, or modems, printers, and other peripherals, the amount of consumer financial participation in the cost of the items must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D, except that a search for comparable benefits is not required if the search would cause the eligible consumer to lose an immediate job placement.

C. The division must purchase computer hardware, software, or modems, printers, and other peripherals, only for disability-related reasons, except for computers purchased as equipment necessary for an eligible consumer to achieve an employment goal of self-employment or operation of a small business.

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D. The division must not purchase computer hardware, software, or modems, printers, and other peripherals, if an eligible consumer's needs can be met through alternative means of accessing computers, such as the use of computer laboratories at postsecondary institutions.

E. Before the division purchases computer hardware, software, or modems, printers, and other peripherals, if either the counselor or the eligible consumer is uncertain regarding the eligible consumer's needs, an assessment to determine the eligible consumer's needs for computer hardware, software, or modems, printers, and other peripherals must be conducted by a knowledgeable person who is not a vendor of computer equipment.

F. Any division purchases of computer hardware, software, or modems, printers, and other peripherals, must be made using the information obtained from the assessment under item E.

G. The division expenditures for the purchase of computer hardware, software, or modems, printers, and other peripherals for an eligible consumer must not exceed \$3,000, excluding costs for adaptations to hardware or for specialized software required because of the eligible consumer's disability.

Subp. 4. Interpreter services for postsecondary training.

A. Before interpreter services are provided, the eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D.

B. Division payments for interpreter services must be made to the postsecondary training institution based on the number of credits for which the eligible consumer is registered.

C. The division must not pay for interpreter services to assist an eligible consumer to participate in extracurricular activities. Interpreters must be provided only for actual class attendance, tutoring requiring interpreter services, or out-of-class assignments requiring interpreter services.

Subp. 5. Maintenance.

A. Before the division provides maintenance, the amount of consumer financial participation must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D, except that a search for comparable benefits is not required if the search would cause the eligible consumer to lose an immediate job placement.

C. The division must not provide maintenance to pay for expenses that the eligible consumer would incur whether or not the eligible consumer was receiving vocational rehabilitation services.

D. The division must not pay for maintenance if the provision of maintenance would result in a reduction of payments to the eligible consumer by other government assistance programs.

E. Eligible consumers must meet the following criteria before receiving maintenance:

(1) participation in one or more other vocational rehabilitation services being provided results in added costs; and

(2) when added costs are the result of relocation:

(a) the eligible consumer cannot receive vocational rehabilitation services without relocation;

(b) a primary residence must be maintained by the eligible consumer or the eligible consumer's family; and

(c) when the relocation is necessary to participate in postsecondary training, the eligible consumer must be unable to work while participating in postsecondary training because of the eligible consumer's disability, and the eligible consumer's inability to work must be determined by a rehabilitation counselor, in consultation with the eligible consumer, based on available medical, psychological, and other diagnostic information; or

(d) when the relocation is necessary to participate in job placement services, the need to relocate must be determined by a rehabilitation counselor, in consultation with the eligible consumer, based on available employment and labor market information.

F. Except as provided in item G, division maintenance payments must not exceed the lesser of:

(1) the amount necessary to pay for the added costs resulting from the provision of one or more other vocational rehabilitation services; or

(2) a monthly amount equal to the average, rounded to the nearest \$10, of the monthly payment for the Minnesota general assistance program as provided by *Minnesota Statutes*, chapter 256D, and the monthly federal benefit amount for the Social Security Supplemental Security Income program as provided by *Code of Federal Regulations*, title 20, chapter III, subpart D, section 416.410.

G. For eligible consumers receiving maintenance under item E, subitem (2), unit (d), division maintenance payments in any 12-month period must not exceed the lesser of:

(1) the amount necessary to pay for the added costs resulting from the provision of one or more other vocational rehabilitation services; or

(2) 12 times the amount determined under item F, subitem (2).

Subp. 6. Notetaker services for postsecondary training.

A. Before notetaker services are provided, the eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D.

B. Any division payments for notetaker services must be based on the number of credits for which the eligible consumer is registered.

C. The division must not pay for notetaker services to assist an eligible consumer to participate in extracurricular activities. Notetaker services must be provided only for actual class attendance, tutoring requiring notetaker services, and out-of-class assignment requiring notetaker services.

Subp. 7. Personal assistance services.

A. The division must not provide personal assistance services unless an eligible consumer is receiving one or more other vocational rehabilitation services.

B. Before the division provides personal assistance services, the amount of consumer financial participation in the cost of personal assistance services must be determined under part 3300.5040.

C. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D, except that a search for comparable benefits is not required for personal assistance services that are necessary for job placement.

D. The division must purchase personal assistance services only from:

(1) a personal care attendant who is employed by or under contract to a personal care provider organization; or

(2) a personal care attendant who is authorized by the Department of Human Services Personal Care Services Division to be independently enrolled for the purpose of providing personal care.

E. After an eligible consumer is hired for a job that meets the eligible consumer's employment goal, the division must not provide personal assistance services for a period exceeding 90 consecutive calendar days from the eligible consumer's first day of employment.

F. Division payments for personal assistance services must be made at the lesser of the provider's submitted charges or the maximum rate established by part 9505.0335, subpart 11, as adjusted by the consumer price index for urban consumers as published by the Bureau of Labor Statistics, United States Department of Labor and is incorporated by reference. It is subject to frequent change and is available from the Minitex interlibrary loan system.

G. The division must not provide personal assistance services if the provision of the services would result in a reduction in benefits or services from other government or private programs.

H. The division must provide eligible consumers with training in the management of personal care attendants when the eligible consumer and a rehabilitation counselor jointly determine that the training is necessary.

(1) Before the division provides training in the management of personal care attendants, the amount of consumer financial participation in the cost of training in the management of personal care attendants must be determined under part 3300.5040.

(2) A search for comparable benefits for training in the management of personal care attendants is not required.

Subp. 8. Reader services for postsecondary training.

A. Before reader services are provided, the eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D.

B. Any division payments for reader services must be based on the number of credits for which the eligible consumer is registered.

C. The division must not pay for reader services to assist an eligible consumer to participate in extracurricular activities. Reader

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services must be provided only for actual class attendance, tutoring requiring reader services, and out-of-class assignments requiring reader services.

Subp. 9. Rehabilitation technology.

A. Before the division provides rehabilitation technology, the amount of consumer financial participation in the cost of rehabilitation technology must be determined under part 3300.5040.

B. Before the division purchases rehabilitation technology, if either a rehabilitation counselor or the eligible consumer is uncertain regarding the eligible consumer's needs, an assessment to determine the eligible consumer's needs for rehabilitation technology must be conducted by a knowledgeable person.

Subp. 10. Restoration services.

A. Before the division provides restoration services, the amount of consumer financial participation in the cost of restoration services must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, items C and D, except that a search for comparable benefits is not required if the search would delay the provision of medical services to an eligible consumer at extreme medical risk, or if the search would cause the eligible consumer to lose an immediate job placement.

C. The division must not pay for recurring, ongoing restoration services that an eligible consumer would require regardless of participation in an individualized written rehabilitation program, such as group or individual psychotherapy, prescription drugs, or physical therapy.

D. Eligible consumers may select:

- (1) any licensed physician to perform medical restoration services;
- (2) any licensed dentist to perform dental restoration services; and
- (3) any vendor to provide braces or artificial limbs.

Subp. 11. Small business enterprises.

A. Before the division purchases goods and services to establish a small business enterprise, the amount of consumer financial participation in the cost of the goods or services must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D.

C. Before the division provides goods and services for the establishment of a small business enterprise, the eligible consumer must:

(1) develop and submit to the eligible consumer's rehabilitation counselor a business plan that includes a market analysis, an estimation of the viability of the business, and an evaluation of the business plan and recommendation by the Small Business Administration, a business development center, or a comparable program; and

(2) comply with the loan application procedures of the Small Business Administration in order to obtain advice and consultation on possible sources of funding for the proposed business and whether the proposed business is likely to be successful.

D. The division must not require an eligible consumer to accept a loan, but an eligible consumer may choose to accept a loan to supplement the division's purchases of goods or services to establish a small business.

E. The division's purchases of goods and services for the establishment of a small business enterprise must be made only after the eligible consumer and the rehabilitation counselor take into consideration the information obtained in item C.

F. Total division expenditures for an eligible consumer's self-employment enterprise must not exceed \$5,000 for the life of the business, excluding costs for rehabilitation technology.

G. The division must not purchase stocks, supplies, or equipment for the ongoing operation of a business after initial stocks, supplies, and equipment are provided.

H. The division must not pay any costs of bankruptcy proceedings or costs due to the bankruptcy of an eligible consumer's small business.

Subp. 12. Transportation services.

A. Before the division provides transportation services, the amount of consumer financial participation in the cost of transportation services must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D, except that:

(1) a search for comparable benefits is not required if the search would cause the eligible consumer to lose an immediate job placement; and

(2) a search for comparable benefits is not required for vehicle adaptations under item H.

C. The division must not provide transportation services unless an eligible consumer is receiving one or more other vocational rehabilitation services.

D. The division must not purchase vehicles for applicants or eligible consumers.

E. If public transportation or paratransit is available and used by the eligible consumer, division payments for transportation must not exceed the actual cost of public transportation or paratransit.

F. If public transportation or paratransit is available, but the eligible consumer chooses transportation by private vehicle, division payments for transportation must not exceed the equivalent cost of public transportation or paratransit.

G. If public transportation or paratransit is not available, the division's payments must not exceed the costs of gasoline and parking. The division must not pay costs to obtain, maintain, and insure the vehicle used by the eligible consumer. The division's payments for gasoline costs must be determined by using the rate established by the Internal Revenue Service for personal income tax deductions for mileage for charitable contributions under the *Internal Revenue Code of 1986*, section 170i, as amended through December 31, 1992.

H. Division purchases of vehicle adaptations must be made as follows:

(1) before the division purchases vehicle adaptations, an evaluation of the vehicle and the consumer's needs must be conducted by a person knowledgeable in adapting vehicles for persons with disabilities;

(2) any vehicle adaptations purchased by the division must be consistent with the findings of the evaluation in subitem (1); and

(3) the division must not consider the availability of public transportation, paratransit, or carpooling in determining whether to provide vehicle adaptations.

I. Division purchases of vehicle repairs must be made as follows:

(1) repair to a vehicle owned or used by an eligible consumer must not be provided unless there is an emergency where an eligible consumer's ability to participate in an individualized written rehabilitation program would be interrupted if vehicle repair is not provided. The division may provide vehicle repair only if no other means of transportation, such as public transportation, paratransit, or carpooling, is available and the repair is necessary for the safe and legal operation of the vehicle; and

(2) division payments for vehicle repairs must not exceed \$1,500 for an eligible consumer in a 12-month period.

Subp. 13. Tuition, fees, books, supplies, and tools and equipment for postsecondary training.

A. Before the division provides tuition, fees, books, supplies, and tools and equipment for postsecondary training, the amount of consumer financial participation in the cost of those services must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, items A, B, and D.

C. The estimated cost of tuition, fees, books, supplies, and tools and equipment for the eligible consumer's postsecondary training program must be determined annually, based on information from the postsecondary training institution.

D. The tuition cap for an eligible consumer who will attend fewer than three quarters or two semesters must be prorated based on the number of quarters or semesters which the eligible consumer will attend.

E. The tuition cap for an eligible consumer enrolled for fewer than 12 credits per term must be prorated as follows:

(1) for an eligible consumer who is enrolled for nine to 11 credits per term, the tuition cap is three-quarters of the dollar amount under part 3300.5010, subpart 44, item A or B;

(2) for an eligible consumer who is enrolled for six to eight credits per term, the tuition cap is one-half the dollar amount under part 3300.5010, subpart 44, item A or B; and

(3) for an eligible consumer who is enrolled for one to five credits per term, the tuition cap is one-fourth of the dollar amount under part 3300.5010, subpart 44, item A or B.

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F. For specialized postsecondary training programs for persons who are deaf or hard of hearing, where the provision of interpreters is included in the cost of tuition and fees for all students, the tuition cap must be increased by an amount determined according to subpart 4, items B and C.

G. If the field of study required by the eligible consumer's individualized written rehabilitation program is not available at a Minnesota public postsecondary institution, the division shall not apply the tuition cap in determining the amount of division payments for tuition, fees, books, supplies, and tools and equipment for postsecondary training.

H. The amount of gift aid available to the eligible consumer to pay for the costs of postsecondary training must be determined annually, based on information obtained from the postsecondary training institution.

I. When the amount of gift aid equals or exceeds the cost of tuition, fees, books, supplies, and tools and equipment:

(1) the division shall not pay any of the costs of tuition, fees, books, supplies, or tools and equipment; and

(2) the amount by which gift aid equals or exceeds the cost of tuition, fees, books, supplies, and tools and equipment must be used as a comparable benefit to assist in paying the costs of other services necessary for the eligible consumer's participation in the postsecondary training program.

J. When the amount of gift aid is less than the cost of tuition, fees, books, supplies, and tools and equipment, the amount, if any, to be paid by the eligible consumer must be determined by applying the consumer financial participation requirements under part 3300.5040 to the lesser of:

(1) the difference between the amount of gift aid and the total cost of tuition, fees, books, supplies, and tools and equipment;

or

(2) the total of the tuition cap and the cost of books, supplies, and tools and equipment.

K. When the cost of tuition, fees, books, supplies, and tools and equipment exceeds the total of gift aid and eligible consumer financial participation, the division shall pay the lesser of:

(1) the difference between the cost of tuition, fees, books, supplies, and tools and equipment, and the total of gift aid and eligible consumer financial participation; or

(2) the total of the division tuition cap, plus the cost of books, supplies, and tools and equipment, minus the amount of any required consumer financial participation.

L. Regardless of the provisions in items A to K, the division must make payments for tuition, fees, books, supplies, and tools and equipment for postsecondary training only to the extent that the division payments do not reduce the amount of gift aid available to the eligible consumer.

M. The division does not require an eligible consumer to accept self-help aid. The eligible consumer has the right to accept or reject a postsecondary training institution's offer of self-help aid. When the division assistance results in a reduction of eligibility for self-help aid from a postsecondary training institution, the eligible consumer may choose whether to accept the division assistance in full or in part, or to accept the self-help aid.

N. The division must report to the postsecondary training institution, with the eligible consumer's release, the amount of planned division purchases of services for postsecondary training for an eligible consumer. If the eligible consumer does not provide a release for the division to report planned division purchases of services for postsecondary training, the division must not make the purchases.

EFFECTIVE DATE. *Minnesota Rules*, parts 3300.5000; 3300.5010; 3300.5020; 3300.5030; and 3300.5050 are effective October 1, 1993. Part 3300.5040 is effective April 1, 1994. Part 3300.5060 is effective October 1, 1993, except for the following items, that are effective April 1, 1994:

A. subpart 2, item A;

B. subpart 3, item A;

C. subpart 4, items B and C;

D. subpart 5, items A; E, subitem (2); F; and G;

E. subpart 6, items B and C;

F. subpart 7, item B;

G. subpart 8, items B and C;

H. subpart 9, item A;

I. subpart 10, items A and C;

- J. subpart 11, item A;
- K. subpart 12, items A, E, F, and G; and
- L. subpart 13, items A, C, H, I, J, K, and M.

Pollution Control Agency

Proposed Permanent Rules Relating to Fees for Hazardous Waste

Notice of Hearing

Introduction. The Minnesota Pollution Control Agency (Agency) intends to adopt a rule after a public hearing following the procedures set forth in the Minnesota Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20. The Agency will hold a public hearing on the above-entitled rule at the Agency Board Room, 520 Lafayette Road North, St. Paul, Minnesota, commencing at 9:00 a.m. on Monday, November 15, 1993, and continuing until the hearing is completed. Additional days of hearing will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

Administrative Law Judge. The matter will be heard before:

Bruce D. Campbell
Administrative Law Judge
Office of Administrative Hearings
5th Floor, Flour Exchange Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415
(612) 341-7600

The rule hearing procedure is governed by *Minnesota Statutes* section 14.131 to 14.20 and by the rules of the Office of Administrative Hearings, *Minnesota Rules* Parts 1400.0200 to 1400.1200. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge at the address and telephone number stated above.

Subject of Rule and Statutory Authority. The subject of the hearing will be the proposed rules governing hazardous waste facility and generator fees, *Minnesota Rules* Ch. 7046. The proposed rules are authorized by *Minnesota Statutes* section 116.12. The proposed rules are published immediately after this notice. One free copy of the rules is available on request by contacting the Agency contact person:

Jeanne Eggleston
Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194
Telephone: (612) 297-8371
Facsimile: (612) 297-8676

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available for review at the Agency offices and at the Office of Administrative Hearings. This statement includes a summary of all the evidence and argument which the Agency anticipates presenting at the hearing to justify both the need for and reasonableness of the proposed rules. The statement may be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

Small Business Considerations. *Minnesota Statutes*, section 14.115, subdivision 4 requires that the notice of rulemaking include a statement of the impact of this proposed rule on small business. Hazardous waste fees are based on the quantity of waste generated as directed by statute. Considerations have been given to generators who produce very small quantities of hazardous waste. In many cases, such small quantity generators are also small businesses. Nevertheless, it is possible for a small business to generate large quantities of hazardous waste. Fees based on quantity of waste rather than business size is a more precise indicator of the Agency's program expenditures.

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The fee rule provides an exemption for generators who produce less than 100 pounds of hazardous waste in a year. In addition, generators of less than 2640 pounds of hazardous waste per year will be assessed a flat minimum fee of \$100. This greatly simplifies the annual reporting and the fee calculations for very small quantity generators of hazardous waste.

Expenditures of Public Money by Local Public Bodies. *Minnesota Statutes*, section 14.11, subdivision 1, requires the Agency to include a statement of the rule's estimated costs to local public bodies in this notice if the rule would have a total cost of over \$100,000 to all local public bodies in the state in either of the two years following adoption of the rule. Increased fee collection for local public bodies will be less than \$100,000. Hazardous waste facility and generator fees are primarily collected from private businesses. In addition, revenues for fiscal year 1994 are nearly equal to the revenue target; therefore, the proposed fee increases are limited.

Economic Factors. *Minnesota Statutes*, section 116.07, subdivision 6, requires the Agency to give due consideration to economic factors in exercising its powers. The fee rules, originally effective in 1984, continue to proportionally distribute the hazardous waste fees among all business within the requirements established by *Minnesota Statutes* section 116.12. The statute is specific in its mandate to recover program costs by assessing generator fees.

Hearing Procedure: You and all interested or affected persons including representatives of associations and other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the Agency may respond in writing within five working days after the submission period ends to any new information submitted. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. No additional evidence may be submitted during the five-day period.

The Agency requests that any person submitting written views or data to the administrative law judge prior to the hearing or during the comment period also submit a copy of the written data to the Agency contact person at the address stated above.

Modifications. The proposed rule may be modified as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rule as printed immediately after this notice, and must be supported by data and views presented during the rule hearing process. If the proposed rule affects you in any way, you are encouraged to participate.

Adoption Procedure After Hearing: After the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You may request to be notified 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 (5) working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. You may also request notification of the date on which the rule is adopted and filed with the Secretary of State. The Agency's notice of filing must be mailed on the same day that the rule is filed. If you want to be notified of the date the rule is filed, you may so indicate at the hearing or send a request in writing to the Agency contact person at any time prior to the filing of the rule with the Secretary of State.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A requires each lobbyist to register with the State Ethical Practices Board. Questions regarding this requirement may be directed to the:

Ethical Practices Board
First Floor, Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155
Telephone: (612) 296-5148

Charles W. Williams
Commissioner

Rules as Proposed

7046.0010 DEFINITIONS.

[For text of subps 1 to 5, see M.R.]

Subp. 6. **Hazardous waste.** "Hazardous waste" has the meaning given in *Minnesota Statutes*, section 116.06, subdivision ~~13~~ 11.

[For text of subps 7 to 17a, see M.R.]

Subp. 18. **Sewered liquid wastes.** "Sewered liquid wastes" means wastes that are discharged to a sewer system which is tributary to a publicly owned treatment works or to a facility holding a National Pollutant Discharge Elimination System (NPDES) permit or State Disposal System (SDS) permit, and that are hazardous wastes at the point of generation before treatment or commingling with other wastewater which may or may not render them nonhazardous.

[For text of subs 19 to 23, see M.R.]

Subp. 24. [See repealer.]

[For text of subs 24a and 25, see M.R.]

7046.0020 HAZARDOUS WASTE FACILITY FEES.

Subpart 1. **Fee schedule for five-year permits.** A person applying for issuance, reissuance, or major modification under part 7001.0190, subpart 1, of a five-year permit for a hazardous waste facility shall remit the applicable fee given in ~~item~~ items A or B to D. A person applying for a major modification concurrent with a permit reissuance application shall not be assessed a major modification fee.

A person who owns or operates a hazardous waste facility shall remit an annual facility fee for the fiscal year beginning on July 1 and ending on June 30, if during that year the facility was treating, storing, or disposing of hazardous waste, had not obtained closure approval, or had closed as a land disposal facility with hazardous waste remaining in place. A facility that meets the annual facility fee payment criteria for less than a full year shall be assessed a prorated facility fee.

A facility in which hazardous waste remains after closure continues to be subject to the annual facility fee until the owner or operator is exempted under subpart 8.

Facility fees for fiscal year 1994 are as provided in items A to D. Beginning July 1, 1994, fees will be examined annually and adjusted, as necessary, under part 7046.0060, steps 1 to 6.

	Permit Application Fee	Annual Facility Fee	Permit Reissuance Fee	Major Modification Fee
A. Storage				
<u>Tanks and containers indoors</u>				
<u>Total capacity</u>	\$ 2,140 <u>\$ 2,410</u>	\$ 3,150 <u>\$ 3,540</u>	\$ 1,070	\$ 710
greater than 550 gallons				
Total capacity	1,430 <u>1,610</u>	1,390 <u>1,560</u>	720	470
550 gallons or less				
<u>Tanks and containers outdoors</u>				
Total capacity	4,290 <u>4,820</u>	6,300 <u>7,080</u>	2,150	1,420
greater than 550 gallons				
Total capacity	2,860 <u>3,220</u>	2,510 <u>2,820</u>	1,430	940
550 gallons or less				
Piles	12,880	18,040 <u>14,480</u>	6,440 <u>20,280</u>	4,250
Surface impoundment	21,460 <u>24,120</u>	18,040 <u>20,280</u>	10,730	7,080

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	Permit Application Fee	Annual Facility Fee	Permit Reissuance Fee	Major Modification Fee
B. Disposal and treatment.				
Surface impoundment	25,760 <u>28,950</u>	24,900 <u>27,990</u>	12,880	8,500
Treatment (not otherwise specified including open burning)	25,760 <u>28,950</u>	12,590 <u>14,150</u>	12,880	8,500
Thermal treatment (not including open burning)	64,400 <u>72,390</u>	43,800 <u>49,230</u>	32,200	21,250
Land treatment	64,400 <u>72,390</u>	43,800 <u>49,230</u>	32,200	21,250
Land disposal				
Active facilities	64,400 <u>72,390</u>	43,800 <u>49,230</u>	32,200	21,250
Closed facilities (includes all facilities in which waste remains after closure)	32,200 <u>36,190</u>	29,200 <u>32,820</u>	16,100	10,630

C. Permit reissuance fee. The permit reissuance fee is 50 percent of the facility's permit application fee in item A or B rounded to the nearest ten-dollar increment.

D. Major modification fee. The major modification fee is 33 percent of the facility's permit application fee in item A or B rounded to the nearest ten-dollar increment. A person applying for a major modification concurrent with a permit reissuance application will not be assessed a major modification fee.

[For text of subs 2 to 4, see M.R.]

Subp. 5. **Payment schedule.** Fees must be made payable to the state treasurer and submitted to the commissioner as follows:

[For text of item A, see M.R.]

B. The owner or operator shall submit the annual facility fee postmarked or hand-delivered not later than June 30 15 of each year.

[For text of item C, see M.R.]

Subp. 6. **Failure to submit fees.** Failure to submit fees by the required date results in the following penalties:

[For text of item A, see M.R.]

B. The facility owner or operator shall pay a late fee of 20 percent of the annual facility fee for failure to submit the appropriate fees within 30 days of the required date. An additional ten percent of the annual fee must be paid for each 30-day period or fraction thereof that the fee remains unpaid will be assessed a late fee for each 30-day period or fraction of that period that the fee remains unpaid. The late fee is calculated as a percentage of the annual fee as follows: ten percent of the annual facility fee for each of the first two 30-day periods, and 15 percent of the annual facility fee for each 30-day period or fraction of a 30-day period thereafter.

[For text of item C, see M.R.]

[For text of subs 7 and 8, see M.R.]

7046.0031 NONMETROPOLITAN AREA GENERATOR FEES.

Subpart 1. **Basis of fees.** Nonmetropolitan area generators must pay a hazardous waste generator fee that consists of an annual fee under subpart 4 and a statewide program fee under part 7045.0040. The agency shall charge nonmetropolitan area generator fees based on the license application and licensing reports submitted by generators or other appropriate information available to the agency. Beginning July 1, 1994, fees will be examined annually and adjusted, as necessary, under part 7046.0060.

For the purposes of this part, one gallon of hazardous waste equals ten pounds of hazardous waste.

Subp. 2. [See repealer.]

Subp. 2a. [See repealer.]

Subp. 4. **Annual fees.** An ~~The~~ annual fee is the sum of minimum fee in item A or the waste generation volume fees and the base fee quantity fee in item B, whichever is greater. Nonmetropolitan area generators shall submit annual fees as described in items A and B. Very small quantity generators pay the minimum fee and are exempt from quantity fees.

A. A volume fee must be paid by all nonmetropolitan generators based on the amount of unsewered hazardous waste generated and method of waste management or disposal used in the calendar year. A volume fee is not assessed for sewer liquid waste. Very small quantity generators are exempt from volume fees. The volume fee is assessed on a per gallon basis or a per pound basis for each waste stream. The volume fee is \$0.18 per gallon and \$0.018 per pound for each gallon and pound produced under 2,640 gallons or 26,400 pounds. The volume fee for each gallon and pound equal to or exceeding 2,640 gallons or 26,400 pounds is \$0.05 per gallon and \$0.005 per pound. The volume fee shall be multiplied by the following factors for waste streams managed by the following methods:

Management Method	Factor
Recycle, feedstock, or by-product on-site	0
Recycle, feedstock, or by-product off-site	0.67
Burned for fuel	0.67
Neutralization	0.67
Incineration	0.67
Disposal and other methods	1.00

Any sludges or residues of recycling, burning for fuel, neutralization, or incineration are subject to the volume fee.

B. A base fee must be paid by all nonmetropolitan area generators based on generator size as follows:

- (1) a large quantity generator must pay a base fee of \$350;
- (2) a small quantity generator must pay a base fee of \$130; and

(3) a very small quantity generator must pay a base fee of \$62. A. Minimum fee. The minimum fee for fiscal year 1994 is \$66. Beginning July 1, 1994, the minimum fee will be examined annually and adjusted, if necessary, under part 7046.0060, step 16.

B. Quantity fee. The quantity fee is assessed for each waste stream according to the quantity rate table and management method factors. To determine the quantity fee, the applicable rate from the table in subitem (1) is applied to each waste stream quantity, and the result multiplied by the applicable management factor in subitem (2) for that waste stream.

(1) Quantity rate table. A generator may report quantities in pounds or gallons. For the purposes of this part, one gallon of hazardous waste equals ten pounds of hazardous waste.

	<u>POUNDS/GALLONS</u>	<u>POUNDS</u>	<u>GALLONS</u>
<u>STEP 1</u>	<u>\$0.052 / \$0.52</u>	<u>0 - 4,000</u>	<u>0 - 400</u>
<u>STEP 2</u>	<u>One-fourth of</u> <u>step 1 rate</u>	<u>4,001 - 26,400</u>	<u>401 - 2,640</u>
<u>STEP 3</u>	<u>One-half of</u> <u>step 2 rate</u>	<u>26,401 - 100,000</u>	<u>2,641 - 10,000</u>
<u>STEP 4</u>	<u>One-tenth of</u> <u>step 3 rate</u>	<u>100,001 - 500,000</u>	<u>10,001 - 50,000</u>
<u>STEP 5</u>	<u>\$0.00 / \$0.00</u>	<u>>than 500,000</u>	<u>>than 50,000</u>

Beginning July 1, 1994, the quantity rate table will be examined annually and step 1 will be adjusted, if necessary, under part 7045.0060, step 18.

(2) Management method factors. The commissioner will reduce fees for generators who use hazardous waste management methods that are environmentally beneficial by the following factors:

- (a) hazardous waste managed in the following ways has a management method factor of 0.5: recycled, neutralized and

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is not hazardous for any other reason, burned for fuel under part 7045.0692, or sewerage waste that is pretreated to a nonhazardous state;

(b) hazardous waste managed in the following ways has a management method factor of 0.7: items containing hazardous waste laundered by a commercial service or sewerage waste that is pretreated and remains hazardous; and

(c) all other management methods have a management factor of 1.0.

Subp. 6. **Payment schedule.** A nonmetropolitan area generator shall Large and small quantity generators must submit fees within 30 50 days after receipt of the postmark date of the notice from the commissioner that the fees are due or by the first day of the following calendar quarter, whichever occurs later. Very small quantity generators must submit fees within 35 days of the postmark date of the notice from the commissioner that fees are due.

A nonmetropolitan area generator shall must submit a check for the required amount to the commissioner, made payable to the Minnesota Pollution Control Agency. The fee submittal must be postmarked or hand-delivered not later than the due date in this subpart.

Subp. 7. **Penalty for late payment of fees.** If a nonmetropolitan area generator fails to submit the required fees by the due date provided in subpart 6, the generator shall pay the fees plus a late fee as provided in item A or B and item C.

[For text of items A to C, see M.R.]

Subp. 8. Penalty for late submittal of license renewal. If a large or small quantity nonmetropolitan area generator fails to submit the license renewal required under part 7045.0248, subpart 1, by the date specified by the commissioner, the generator must pay a nonrefundable late fee of \$25. The late fee will be assessed at the time annual fees under this part are assessed.

7046.0040 GENERATOR STATEWIDE PROGRAM FEE.

Subpart 1. **In general.** All generators in Minnesota are subject to an annual statewide program fee equal to 52 percent a percentage of the hazardous waste fee paid annually to the agency under part 7046.0031 or to the metropolitan counties under their respective hazardous waste ordinances. Payment must be made as provided in subparts 2 and 3. The statewide program fee for fiscal year 1994 is 51 percent. Beginning July 1, 1994, the statewide program fee will be examined annually and adjusted, if necessary, under part 7046.0060, step 10.

[For text of subs 2 and 3, see M.R.]

7046.0045 RETROACTIVE FEE.

Subpart 1. **Applicability.** For large quantity and small quantity generators, the commissioner shall assess annual and statewide program fees retroactively for each calendar year, up to a maximum of three calendar years, prior to the most recent calendar year subject to fees to which item A, B, or C applies. Retroactive fees for waste produced for less than the maximum retroactive period may be prorated based on actual months of production if documented by the generator under the appeal procedure provided in part 7045.0070. Retroactive fees apply according to items A to C.

[For text of items A and B, see M.R.]

C. A licensed very small quantity generator produced a hazardous waste that was not identified and approved as part of the license and license renewal process under parts 7045.0225 to 7045.0250 and the total ~~volume~~ quantity generated exceeded the maximum ~~volume~~ quantity amounts for a very small quantity generator.

Subp. 2. [See repealer.]

Subp. 3. **Fee calculation.** Retroactive fees shall be calculated as described in item A, B, or C.

A. For persons subject to fees under subpart 1, item A, the fee is calculated by multiplying the sum of the most recent annual fee and the statewide program fee that would be required under the license by the number of retroactive calendar years established under subpart 2 1.

B. For persons subject to fees under subpart 1, item B, the fee is calculated by multiplying the sum of the most recent ~~volume~~ quantity fee and statewide program fee that would be required for the waste omitted from the license by the number of retroactive calendar years established under subpart 2 1. If the additional volume changes the generator's size category used in determining the base fee under part 7046.0031, subpart 4, item B, an additional retroactive fee shall be assessed for the difference between the higher base fee and the lower base fee. The statewide program fee shall be applied to the difference in the base fee. The base fee revision and the statewide program fee shall be multiplied by the number of retroactive calendar years established under subpart 2.

C. For persons subject to fees under subpart 1, item C, the fee is calculated by determining subtracting the minimum fee from the difference between the higher base fee and the lower base fee quantity fee under part 7046.0031, subpart 4, item B. If the result is less than zero, no retroactive fee is due. If the result is greater than zero, the statewide program fee shall be applied to the resulting difference in the base fee. The base fee revision sum of the resulting difference and the applicable statewide program fee shall be multiplied by the number of retroactive calendar years established under subpart 2 1.

7046.0050 GENERATOR FEE EXEMPTIONS.

Subp. 1a. Exemption for 100 pounds or less. Nonmetropolitan area generators that generate less than or equal to 100 pounds or ten gallons of hazardous waste per year are exempt from the fees under this chapter.

Subp. 2a. Special waste. For nonmetropolitan generators, the following waste is exempt from fees under this chapter:

- A. fluorescent lamps and high intensity density lamps;
- B. batteries;
- C. wastes containing elemental mercury, which means waste electrical relays or switches, thermostats, thermometers, thermocouples, manometers, and gauges containing elemental mercury;
- D. elemental mercury;
- E. antifreeze;
- F. circuit boards, printed circuit boards, and circuit board trimmings;
- G. photographic negatives;
- H. fluorescent light ballasts;
- I. capacitors from white goods;
- J. waste that is exempt from regulation under part 7045.0120, subpart 1; and
- K. waste that is exempt from regulation under part 7045.0125, subparts 3a, items A and C, and 4.

[For text of subs 3 to 6, see M.R.]

7046.0060 FEE FORMULA.

Beginning July 1, 1994, the commissioner shall follow the steps in this part to determine the fee assessment under this chapter for facilities and generators.

Step 1. The total amount appropriated by the legislature to the agency for the hazardous waste program for facilities and generators for the new fiscal year (fiscal year target) is obtained. If the agency determines that projected program expenditures will be less than the legislative appropriation, the commissioner will use the lesser expenditure amount as the new fiscal year target.

Step 2. The carryover from the previous fiscal year is determined and the carryover out of the new fiscal year is estimated. Both carryovers are applied to the step 1 amount. This amount is the adjusted fiscal year target for the hazardous waste program.

Step 3. (a) The total hazardous waste program staff time in terms of full-time employees for the new fiscal year is estimated and the percentage of staff time allocated between facilities and generators is determined.

(b) The percentage of staff time within the generator category allocated between metropolitan and nonmetropolitan generators is determined.

(c) Under the nonmetropolitan generator category, the percentage of time allocated among large, small, and very small quantity generators is determined.

Step 4. The amount of revenue that would be generated by existing facilities using baseline facility fees in part 7046.0020 is estimated.

Step 5. The new fiscal year target for facilities is calculated by multiplying the adjusted fiscal year target (step 2) by the percentage of staff time estimated for facilities under step 3(a).

Step 6. The fee assessment for facilities for the new fiscal year is calculated by dividing the new fiscal year target for facilities (step 5) by the estimated amount of revenue for facilities (step 4). The resulting ratio is multiplied by each of the baseline fee amounts in part 7046.0020 to determine the new fee amounts. Each fee amount is rounded to the nearest ten-dollar increment.

Step 7. The new year target for all generators is calculated by multiplying the adjusted fiscal year target (step 2) by the percentage of staff time estimated for generators under step 3(a).

Step 8. The total annual fees that metropolitan counties will collect from their generators in the new fiscal year is estimated.

Step 9. The new fiscal year target for metropolitan county generators is calculated by multiplying the new fiscal year target for all

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generators (step 7) by the percentage for metropolitan generators estimated under step 3(b).

Step 10. The statewide program fee rate is calculated by dividing the metropolitan county generators' new fiscal year target (step 9) by the estimated metropolitan counties' annual fee revenues (step 8). This figure is rounded to the next highest whole percentage point.

Step 11. The new fiscal year target for nonmetropolitan county generators is calculated by multiplying the new fiscal year target for all generators (step 7) by the percentage for nonmetropolitan generators estimated under step 3(b).

Step 12. The new fiscal year target for nonmetropolitan county generators' annual fees is calculated by dividing the new fiscal year target for nonmetropolitan county generators (step 11) by a factor of 1 plus the statewide program fee rate (step 10).

Step 13. The new fiscal year target for small and large quantity nonmetropolitan county generators is calculated by multiplying the new fiscal year target for all sizes of nonmetropolitan county generators (step 11) by the percentage for small and large quantity nonmetropolitan generators estimated under step 3(c).

Step 14. The new fiscal year target for very small quantity nonmetropolitan county generators is calculated by multiplying the new fiscal year target for all sizes of nonmetropolitan county generators (step 11) by the percentage for very small quantity nonmetropolitan generators estimated under step 3(c).

Step 15. The number of nonexempt nonmetropolitan area very small quantity generators is estimated for the new fiscal year.

Step 16. The minimum fee is calculated by dividing the new fiscal year target for very small quantity generators (step 14) by the estimated number of nonexempt nonmetropolitan area very small quantity generators (step 15). The result is divided by a factor of 1 plus the statewide program fee rate (step 11), then rounded to the nearest whole dollar.

Step 17. New fiscal year revenue from small and large quantity generators is estimated under part 7046.0031, subpart 4, using the baseline quantity rates from part 7046.0031, subpart 4.

Step 18. Determine quantity rates for small and large quantity generators by dividing the new fiscal year target for small and large quantity generators (step 13) by the estimated fiscal year revenue from small and large quantity generators in (step 17). This ratio is then multiplied by the step 1 quantity rate under part 7046.0031, subpart 4, item B, subitem (1), and rounded to two significant digits.

Step 19. The total fee for very small quantity generators is determined by multiplying the minimum fee for very small quantity generators (step 16) by a factor of 1 plus the statewide program fee (step 10). This figure is rounded to the nearest whole dollar.

7046.0065 ADOPTION OF FEE MODIFICATION SCHEDULE.

The agency must approve and adopt fee adjustments under part 7046.0060. Beginning July 1, 1994, the commissioner will annually apply the fee formula in part 7046.0060 to determine if the fee revenues will equal or nearly equal the legislative appropriation for the new fiscal year. The fees must be adjusted if the fee revenues will not equal or nearly equal the legislative appropriation. If an adjustment to fees is necessary, the commissioner will prepare a fee modification schedule. The fee modification proposal will include the proposed new rates for facilities and generators and will be published in the *State Register* at least 20 days before the proposal is presented to the agency board for approval. Procedural rules for agency meetings are in chapter 7000.

7046.0070 APPEAL PROCEDURE.

If a generator believes that the fee requested by the commissioner is in error or exceeds the hazardous waste generator fees assessed by the metropolitan area county with the highest fee structure, then the generator may appeal the fee levy. Within ten days of receipt of the fee statement from the commissioner, the generator shall provide a written appeal which includes the fee the generator has calculated and the method used by the generator in calculating the fee. After review of the appeal, the commissioner shall send the generator a decision letter regarding the appeal. In the decision letter, the commissioner shall specify the fee to be remitted by the generator. The generator shall submit the specified fee within 30 days of receipt of the commissioner's decision letter or by the original due date, whichever is later. A generator who fails to submit the specified fee by the required date is delinquent and must pay the late fee, specified in part 7046.0031, subpart 7.

REPEALER. Minnesota Rules, parts 7046.0010, subpart 24; 7046.0031, subparts 2 and 2a; and 7046.0045, subpart 2, are repealed.

Department of Revenue

Proposed Permanent Rules Relating to Penalty for Repeated Failures to Pay Taxes

Notice of Intent to Adopt a Rule Without a Public Hearing

The Department of Revenue intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rule and may also submit a written request that a hearing be held on the rule.

Agency Contact Person: Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to:

Richard L. Walzer, Attorney
Minnesota Department of Revenue
Appeals, Legal Services, and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, Minnesota 55146-2220
(612) 296-1902, ext. 134

Subject of Rule and Statutory Authority. The proposed rule is about the penalty for repeated failures to pay taxes. The statutory authority to adopt this rule is *Laws* 1993, Chapter 375, Article 10, Section 51. A copy of the proposed rule is published in the *State Register* and attached to this notice as mailed.

Comments. You have until 4:30 p.m., November 10, 1993, to submit written comment in support of or in opposition to the proposed rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on November 10, 1993. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, section 14.131 to 14.20.

Modifications. The proposed rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed rule as attached and printed in the *State Register*. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule and identifies the date and information relied upon to support the proposed rule.

Adoption and Review of the Rule. If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.

Dated: 22 September 1993

Morris J. Anderson
Commissioner of Revenue

Rules as Proposed (all new material)

8175.0100 REPEATED FAILURES TO PAY TAXES.

Subpart 1. Definition of pattern of repeated failures.

A. Taxpayers who have demonstrated a pattern of repeated failures to pay taxes by the due date are subject to a penalty under *Minnesota Statutes*, sections 60A.15, subdivision 9e; 60A.199, subdivision 6a; 289A.60, subdivision 5a; 294.03, subdivision 4; 297.43, subdivision 4a; 297C.14, subdivision 9; 299F.23, subdivision 5; and 349.217, subdivision 5a. For purposes of imposing this penalty, a "pattern of repeated failures" means that during the previous 25 months the taxpayer has not paid tax by the due date for the same tax type on at least three occasions. If one or more of the occasions is a failure to pay as defined in item D, subitem (1), then the pattern must be at least four occasions.

B. If there are separate taxes imposed under the same chapter of *Minnesota Statutes* or separate taxes that are required to be

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reported on one return and paid at the same time, "same tax type" means all taxes imposed under that chapter, or all taxes, fees, or other payments required to be reported on that return and paid at the same time.

C. For purposes of withholding tax, "failure to pay" means failure to make all deposits due during the quarterly reporting period by the due date of the quarterly return.

D. Failure to pay includes:

(1) failure to make an estimated payment by the due date that results in the imposition of an additional charge for underpayment of estimated tax; or

(2) failure to make a June estimated payment or electronic funds transfer payment by the due date that results in imposition of a late payment penalty.

E. Instances of making a late payment, where the late payment penalty has been abated because the taxpayer established reasonable cause for the lateness, are not included in the definition of pattern of repeated failures under this subpart.

F. For purposes of measuring the 25-month period, if the time in which to pay tax has been extended and the tax is not paid within the extended time period, the late payment violation is considered to have occurred on the original due date of the tax.

Subp. 2. **Notice.** If a taxpayer meets the criteria under subpart 1, a penalty for repeated failures to pay taxes cannot be imposed unless the commissioner gives the taxpayer written notice. The notice must be sent to the taxpayer's last known address ten days before the next tax payment after the notice is due. The ten days commence on the day following the date of the notice. The notice must contain a description of the previous late payment violations, including the tax type and tax period, and a warning that the penalty will be imposed upon future violations. The notice remains in effect for any late payment violations for the same tax type or types occurring after the date of the notice. If a length of time passes after the notice so that there are two or less violations in the preceding 25-month period, including violations upon which a penalty for repeated failures to pay taxes has been imposed, the notice expires. If penalties are subsequently imposed under subpart 3, the correctness of the notice may be appealed as indicated in subpart 4.

Subp. 3. **Amount of penalty.** After a taxpayer establishes a pattern of delinquencies that meets the criteria under subpart 1, and the notice required by subpart 2 has been given, the penalty for future late payment violations is 25 percent of the amount of tax, as finally determined by the commissioner to be owing, that is not paid by the due date. The penalty is in addition to other applicable penalties or charges imposed by law.

Subp. 4. **Appeal rights.** If a 25 percent penalty is imposed, the taxpayer may file a request for an abatement of the penalty on the ground that there is reasonable cause for the late payment upon which the penalty is imposed. Also, in the same time and manner as making a request for an abatement, the taxpayer may appeal the imposition of the penalty on the ground that the notice under subpart 2 is incorrect. The right to contest the notice does not include claiming that there was reasonable cause for the lateness of a late payment violation listed in the notice, if the time in which to request an abatement of the late payment penalty for that violation has expired. The procedure under this subpart is governed by *Minnesota Statutes*, section 270.07, subdivision 6.

Subp. 5. **Effective date.** For purposes of determining whether a taxpayer meets the criteria under subpart 1, violations for late payment of taxes can occur before or after the effective date of this part.

Office of Secretary of State

Proposed Permanent Rules Relating to International Student Exchange Visitor Programs

Notice of Intent to Adopt a Rule Without a Public Hearing

The Office of the Secretary of State intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, section 14.22 to 14.28. You have 30 days to submit written comments on the proposed rule and may also request that a hearing be held on the rule.

Agency Contact Person. Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to:

Bert Black
Director, Business Services Division
Office of the Secretary of State
180 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1299
Phone: 612/296-9215
Fax: 612/296-9073

Subject of Rule and Statutory Authority. The proposed rule is about the registration of international student exchange visitor placement organizations. The statutory authority to adopt this rule is *Minnesota Statutes*, sections 5A.04 and 14.06. A copy of the proposed rule is published in the *State Register* and specifies the manner in which the registry for international student exchange organizations will be operated by the Office of the Secretary of State. A free copy of the rule is available on request from the agency contact person listed above.

Comments. You have until 4:30 p.m., Friday, November 12, 1993 to submit written comments in support of or in opposition to the proposed rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on Friday, November 12, 1993. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Modifications. The proposed rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed rule as printed in the *State Register*. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement 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.

Small Business Considerations. There are no small businesses who will use the registration process for international student exchange organizations and so the provisions of *Minnesota Statutes*, section 14.115, subdivision 2 do not apply.

Expenditure of Public Money by Local Public Bodies. The adoption of this rule will not require the expenditure of public monies by local bodies. Therefore, *Minnesota Statutes* section 14.11, subdivision 1 is not applicable.

Impact on Agricultural Lands. The adoption of this rule will not have any impact on agricultural land and so *Minnesota Statutes* section 14.11, subdivision 2 is not applicable.

Adoption and Review of Rule. If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to agency contact person listed above.

Dated: 27 September 1993

Joan Anderson Growe
Secretary of State

Rules as Proposed (all new material)

3650.0010 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 3650.0010 to 3650.0040, the following terms have the meanings given them.

Subp. 2. **CSIET.** "CSIET" means the Council on Standards for International Educational Travel.

Subp. 3. **CSIET approval for listing letter.** "CSIET approval for listing letter" means the letter from CSIET showing that the international student exchange visitor placement organization meets the standards set by CSIET and has been accepted for the current listing.

Subp. 4. **CSIET standards.** "CSIET standards" means standards published by CSIET and used by CSIET to evaluate the operations of international student exchange visitor placement organizations.

Subp. 5. **Host family.** "Host family" means the family residing in Minnesota that the international student exchange visitor lives with during the student's period of academic study.

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. 6. **Immediate family.** "Immediate family" means the parents or legal guardians of an international student exchange visitor.

Subp. 7. **International student exchange visitor or student.** "International student exchange visitor" or "student" means a foreign national who:

- A. is up to 21 years of age;
- B. is engaged in a course of study at a school;
- C. has been selected to participate in an exchange visitor program by an international student exchange visitor placement organization; and
- D. enters Minnesota on a nonimmigrant visa.

Subp. 8. **International student exchange visitor placement organization.** "International student exchange visitor placement organization" means an organization which arranges for the placement of international student exchange visitors in Minnesota.

Subp. 9. **Nonimmigrant visa.** "Nonimmigrant visa" means a visa category assigned by the United States government and used by nonresident aliens whose primary purpose for visiting the United States is to study at a school approved by the Immigration and Naturalization Service.

Subp. 10. **Organization.** "Organization" means an international student exchange visitor placement organization.

Subp. 11. **Responsible officer.** "Responsible officer" means the officer or employee of the international student exchange visitor placement organization located in the United States who has primary authority for supervising placements in Minnesota.

Subp. 12. **Responsible officer address.** "Responsible officer address" means the description of the physical location of the responsible officer in the United States. This description must be a street address, rural route and rural route box or fire number, or directions how to reach the location from a landmark. The address must include a city, state, and zip code. The address must not be a post office box.

Subp. 13. **School.** "School" means a public or private elementary or secondary institution of learning in Minnesota.

Subp. 14. **Secretary.** "Secretary" means the secretary of state or an authorized employee of the secretary.

Subp. 15. **USIA.** "USIA" means the United States Information Agency.

Subp. 16. **USIA designation letter.** "USIA designation letter" means the letter from the USIA to an international student exchange visitor placement organization showing acceptance into USIA's Exchange Visitor Program.

Subp. 17. **USIA regulations.** "USIA regulations" means rules and regulations promulgated by the USIA for the Exchange Visitor Program which governs international student visitor placement organizations.

3650.0020 REGISTRATION STANDARDS.

Subpart 1. **Selection of student.** The organization must be responsible for the selection of suitable students for participation in its international student exchange visitor program. Selection must be limited to students who have a command of the English language that enables them to participate in an English-speaking academic and community environment. Students shall also be screened for demonstrated maturity, good character, and ability to receive maximum benefit from the program experience.

Subp. 2. **Orientation of students and host families.** The organization must provide:

A. each student and the immediate family of each student with orientation before departure from the student's home to acquaint the student with information about Minnesota and the United States. Detailed information about the school and academic program in which the student will be participating and the host family must also be provided;

B. each student with orientation upon arrival in Minnesota regarding customs and the educational experience; and

C. each host family with orientation in advance of the student's arrival. Information to be provided includes: information on the student, the student's immediate family, school, and native land and information about the academic program in which the student will be enrolled.

Each organization must maintain records proving proper notification of the student, immediate family, and host family of the orientation sessions.

Subp. 3. **Insurance.**

A. Each organization must ensure that each student participating in the exchange program has health and accident insurance from the time of departure from home to the time the student returns home. Coverage may be provided by the student or the organization. Minimum acceptable insurance is:

(1) medical and accident coverage of \$50,000 per illness or accident; and

(2) at least \$5,000 in coverage for preparation and transportation of remains to the student's home country in the event of death.

B. The organization must provide each student and the student's immediate family and the host family with detailed printed information regarding the terms and limits of insurance coverage and procedures for filing a claim. Forms for filing claims shall be included whenever possible.

C. The organization must maintain in its files proof of health and accident insurance coverage for each student.

Subp. 4. **Acceptance of students.** No student shall be brought into Minnesota by an organization unless the student has been accepted in writing as a student by a legally authorized person at the admitting school. The organization must maintain copies of documents authorizing enrollment for each student in its files.

Subp. 5. **Selection of host family.**

A. The organization is responsible for making all arrangements for the placement of each student with a host family whose home is located in a place convenient to the school in which the student is to be enrolled.

B. The organization must make every effort to ensure the maximum degree of compatibility between the host family and the student.

C. An employee, officer, or volunteer of the organization must visit the home of, and personally interview, each host family before a student is assigned to the family.

D. The organization must ensure that each member of the host family age 18 or older who will reside in the same house as the student signs a document authorizing a felony background check on that person according to *Minnesota Statutes*, section 299C.62, subdivision 2.

E. A written record must be made of the interview of a visit to the host family by the representative. A copy of the record must be maintained by the organization.

F. Selection of host families and assignment of students must be made as far in advance of the student's arrival as possible, and must be made before the student's departure from the student's home.

G. An organization must not bring a student into the United States without written acceptance from the host family.

H. The host family must be advised in writing of the name, age, educational status, anticipated arrival time, and other background information about the assigned student.

I. At the earliest possible time, the student's immediate family must be advised in writing of the name, address, family composition, and other background information concerning the host family to permit the exchange of correspondence between the respective families in advance of the student's arrival in the United States.

J. Copies of these notifications must be maintained by the organization in its file.

Subp. 6. **Host family housing requirements for students.**

A. Each organization must place the student with a host family that can provide housing that:

- (1) furnishes separate private sleeping quarters for each sex; and
- (2) furnishes the student with a bed of the student's own.

B. The host family's home and household equipment must be maintained in a clean and sanitary condition, free of hazards and in good repair. The home must be accessible to other resources, such as the telephone and ambulance services, in the event of an emergency.

Subp. 7. **Change in host family assignment.** If it is in the best interest of the student or host family, the organization may make a change in the host family assignment of the student. Reports of any changes and the reasons for the changes must be maintained by the organization. Notification of any change must be sent within 24 hours to the immediate family, host families, and school of placement.

Subp. 8. **Employment of students.**

A. Each organization must advise its students that they may not accept or undertake regular employment while enrolled in the program.

B. Students may engage in occasional intermittent jobs such as tutoring, babysitting, or cutting grass.

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Proposed Rules

C. Students may not perform the duties of a household domestic for compensation.

D. Students may be asked to assist in normal daily chores in the host family household that other members of the family perform.

Subp. 9. **Supervision by organization.** The organization must maintain continuous personal contact with each student, the host family, and the school in which the student is enrolled. The organization must initiate action to attempt to resolve any problems that may arise with respect to the student's participation in the student's academic program or with respect to the student's relationship with the student's host family.

Subp. 10. **Travel responsibility of organization.**

A. Transportation must be provided both to and from the student's home to the student's destination by air or surface modes of commercial transportation.

B. Travel arrangements must be carried out by the purchase of a round trip ticket or tickets to the final destination for each student before entry of each student into Minnesota. These travel arrangements may be made either by the organization or by the student.

C. A copy of the travel itinerary and a copy of the prepaid round trip ticket must be maintained by the organization in its files.

Subp. 11. **Information to be provided.**

A. An organization must provide each student, the student's immediate family, and the host family with an informational document regarding the organization's services. The organization must also disclose all money paid to the organization that is to be paid to the host family, student, or to be used for special or additional activities during the program period. The timing and method of payment must be specified.

B. Each student and host family must receive a document that states the amount of the fee, if any, to be charged to the student.

Subp. 12. **Agency record requirements.**

A. Each organization must keep records at the responsible officer's address of services rendered to host families and students. The record for each student must include:

(1) the name, home address, and telephone number of the student in the student's home country to whom services are provided or promised;

(2) the name, address, and telephone number of the host family with whom the student is placed. This information must be on file at least seven days before the student's arrival in Minnesota;

(3) proof that the student entered Minnesota on a nonimmigrant visa;

(4) proof that the student is enrolled in a school;

(5) a copy of the records that show the organization's interview of the host family;

(6) a copy of the correspondence to the student's immediate family giving them information about the host family including the name, address, family composition, and other background information;

(7) a copy of the correspondence to the host family giving them information about the student including the student's name, home address, age, educational status, anticipated arrival time, and other background information;

(8) the amount of the fee received by the organization and used to support the student in Minnesota and an itemization of the services and charges covered by the fee;

(9) a complete copy of any written agreements entered into between the organization, student, and host family;

(10) a copy of the health and accident insurance policy covering the student;

(11) a copy of the student's travel itinerary and a copy of the prepaid round trip ticket for the student; and

(12) a copy of the orientation information provided to the student, immediate family, and host family.

B. The records must be maintained for a period of one year from the date on which the student departs from Minnesota. If a complaint is received, the records must be open for inspection by the secretary of state or designee on request.

3650.0030 REGISTRATION ELEMENTS.

Subpart 1. **Appointment of responsible officer.**

A. Each organization must appoint and continuously maintain a responsible officer in the United States who has primary responsibility for supervising placements in Minnesota.

B. The responsible officer must be an employee or officer of the organization.

C. An individual's signature on an application form as responsible officer indicates acceptance by that person of the duties and responsibilities of the position of responsible officer.

Subp. 2. **Change of responsible officer or responsible officer address.** If an organization changes its responsible officer or the address of the responsible officer, it must change its registration by delivering to the secretary of state a statement that includes:

- A. the name of the organization;
- B. the new responsible officer address, if the address is to be changed; and
- C. the name of the new responsible officer and a written statement from the new officer accepting the duties of responsible officer, if the officer is to be changed.

The statement must be signed by someone who has authority to sign documents on behalf of the organization and must be filed with the secretary within 30 days of the date of the change.

Subp. 3. **Resignation of responsible officer.** If a responsible officer resigns, a statement of resignation must be sent to the organization. The organization shall then use the procedure outlined in subpart 2 to change the information on file with the secretary.

Subp. 4. **Duties of responsible officer.** The person who signs the application form as responsible officer must:

- A. accept all official communications and inquiries from the secretary on behalf of the organization;
- B. maintain copies of documentation as required by part 3650.0020, subpart 12, for each student placed in Minnesota; and
- C. furnish all documentation, information, reports, books, files, and other records requested by the secretary on all matters relating to students placed in Minnesota by the organization.

Subp. 5. **In-state telephone number.**

A. The organization must maintain an in-state telephone number as required by *Minnesota Statutes*, section 5A.05. To be considered an in-state telephone number, the telephone number must either be registered to an employee, officer, or volunteer of the organization living in Minnesota or must be a toll-free telephone number for the organization which is answered seven days a week, 24 hours a day.

B. The organization must ensure that the person answering the in-state telephone number has:

- (1) a listing of all students placed by the organization in Minnesota and the location of each student;
- (2) knowledge of emergency procedures;
- (3) 24-hour-a-day contact with the organization for emergencies; and
- (4) the knowledge and capability to assist and advise students in resolving the situation which has prompted the telephone call.

Subp. 6. **Application for registration.**

A. An organization meeting the requirements in this chapter and *Minnesota Statutes*, chapter 5A, must register with the secretary. The registration must be made on a form prescribed by the secretary and filed with the secretary's office. The fee must accompany the filing before the filing will be accepted by the secretary.

B. The organization must supply the following:

- (1) a copy of the USIA designation letter showing current registration;
- (2) a copy of the CSIET's approval for listing letters showing current registration; or
- (3) a notarized statement, on a form prescribed by the secretary, declaring that the organization has met all the standards and obligations as required by this chapter and *Minnesota Statutes*, chapter 5A.

C. Registration is effective for a period of one year from the date of filing by the secretary.

D. Any changes in information must be sent to the secretary of state within 30 days of the change.

Subp. 7. **Registration renewal.**

A. Before the expiration of an organization's current registration period, the organization must renew its registration for a one year term by completing the registration form if the organization wishes to maintain its registration in Minnesota.

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Proposed Rules

B. The secretary must mail a renewal form to the responsible officer at the responsible officer's address 45 days before the expiration of the registration.

C. The failure of an organization to receive a renewal form does not relieve the organization of its obligation to file its renewal documents in a timely fashion.

D. An application for renewal must be filed by the end of the organization's current registration period. The secretary shall not grant an extension to file a registration renewal to an organization. An organization is considered to be registering for the first time if the previous registration expired before a valid renewal was filed.

Subp. 8. Fees.

A. Organizations registering for the first time in Minnesota must pay an initial registration fee of \$150.

B. Organizations renewing their registration in Minnesota must pay a fee of \$50 per year.

C. Notification by an organization of a change in information will be accepted without charge by the secretary.

3650.0040 TERMINATION AND REVOCATION.

Subpart 1. **Termination.** The registration of an organization terminates when any of the conditions in items A to C occur.

A. The organization requests that its registration be terminated. The request must be made in writing and is effective when filed by the secretary.

B. If the organization does not renew its registration before the previous registration expires, the registration automatically terminates in which case the organization must apply for a new registration, and pay the initial registration fee established in part 3650.0030, subpart 8, item A.

C. An organization's registration automatically terminates if the organization fails to remain in compliance with local, state, and federal statutes and regulations.

Subp. 2. **Responsibilities after termination.** The termination of an organization's registration does not relieve the organization's obligation to all students it has placed in Minnesota. The terminated organization must immediately cancel any student's visit before the student's arrival in Minnesota unless a transfer to another registered program can be obtained. If the student has already arrived in Minnesota, the organization must make arrangements to support the student's experience in a manner consistent with the requirements of this chapter and *Minnesota Statutes*, chapter 5A.

State Board of Technical Colleges

Proposed Amendments to Proposed Permanent Rules Relating to Teacher Licenses; General Studies

3700.1200 General Studies

3700.1210 General Studies, Applied Math

3700.1220 General Studies, Applied Communications

3700.1230 General Studies, Applied Physics

3700.1240 General Studies, Applied Chemistry

3700.1250 General Studies, Applied Anatomy/Physiology

3700.1260 General Studies, First Aid Instructor

3700.1265 General Studies, Cardio-Pulmonary Resuscitation

3700.1270 General Studies, Developmental Math

3700.1275 General Studies, Developmental Reading

3700.1280 General Studies, Occupational English as a Second Language

REPEALER

AND

3700.1205 General Education

NOTICE OF HEARING

Introduction. The State Board of Technical Colleges intends to adopt rules after a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20. The Board will hold a public hearing on the above entitled rules at the Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota, 5th Floor Conference Room—VETS D, commencing at 9:00 a.m. on November 30, 1993, and continuing until the hearing is completed. Additional days of hearing will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing.

Administrative Law Judge. The matter will be heard before:

Jon L. Lunde
Administrative Law Judge
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401
(612) 341-7645

The rule hearing is governed by *Minnesota Statutes*, section 14.131 to 14.20 and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.0200 to 1400.1200. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge at the address and telephone number stated above.

Subject of Rule and Statutory Authority. The subject of the hearing will be the proposed rules governing General Education as published in the *State Register*, Volume 17, Number 49, pages 3045 to 3047, on June 7, 1993, and General Studies as published in the *State Register*, Volume 17, Number 48, pages 2966-2970, Tuesday, June 1, 1993. Amendments to the proposed rules appear at the end of this notice. The proposed rules are authorized by *Minnesota Statutes*, Section 136C.04, subd. 9.

The proposed rules in General Studies 3700.1200 to 3700.1280 are revisions and renumbering of existing rules currently in Chapter 3515. These revisions will have no effect on current licensed staff in General Studies. The proposed changes will pertain to individuals seeking initial licensure in the General Studies area described. The proposed rules in General Education 3700.1205 are new licensure rules to the Technical College System. These rules were developed for General Education instructors at the two technical colleges authorized to deliver General Education. There are no current technical college licenses available in this area. The criteria and fields of assignment were developed to meet the recommended standards of other higher education institutions to allow for the transfer of these credits.

A copy of the rules is now available. One free copy of the rules can be obtained on request by contacting the Board Office contact person.

Georgia Pomroy
State Board of Technical Colleges
Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Telephone: (612) 296-0680
Fax: (612) 296-4217

Need and Reasonableness and Supplement. A Statement of Need and Reasonableness and Supplement is now available for review at the Board Office and at the Office of Administrative Hearings. This Statement of Need and Reasonableness and Supplement 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 and Supplement may be reviewed at the Board Office or at the Office of Administrative Hearings, and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Small Business Considerations. These proposed rules will not have a direct effect on small business within the meaning of *Minnesota Statutes*, Section 14.115.

Expenditures of Public Money by Local Bodies. The board estimates that there will be no costs to local bodies in the state to implement the rules following their adoption, within the meaning of *Minnesota Statutes*, Section 14.11.

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

Impact on Agricultural Lands. The proposed rules do not have an effect on agricultural land as defined in *Minnesota Statutes*, Section 17.81, Subdivisions 2 and 3.

Hearing Procedure. You and all interested or affected persons including representatives of associations and other interested groups, will have an opportunity to participate. You may present your views orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written materials to the Administrative Law Judge to be recorded in the hearing record for five (5) working days after the public hearing ends. The five (5) day comment period may be extended for a longer period not to exceed twenty (20) calendar days if ordered by the Administrative Law Judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the Board may respond in writing within the five (5) working days after the submission period ends to any new information submitted. All written materials and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. No additional evidence may be submitted during the five (5) day period.

The Board requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment period also submit a copy of the written data to the Board Office contact person at the address stated above.

Modifications. The proposed rules may be modified as a result of the rule hearing process. Modifications may result in substantial change in the proposed rule and must be supported by data and views presented during the rule hearing process. If the proposed rule affects you in anyway you are encouraged to participate.

Adoptive Procedure After Hearing. After the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rule. You may request to be notified of the date on which the Administrative Law Judge's report will be available, after which the Board may not take final action on the rules for a period of five (5) working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. You may also request notification of the date on which the rule is adopted and filed with the Secretary of State. The Board's notice of filing must be mailed on the same day that the rule is filed. If you want to be notified of the date the rule is filed, you may so indicate at the hearing or send a request in writing to the Board Office contact person at any time prior to the filing of the rule with the Secretary of State.

Lobbyists Registration. *Minnesota Statutes*, Chapter 10A, requires each lobbyist to register with the State Ethical Practices Board. Questions regarding the requirements should be directed to:

Ethical Practices Board
First Floor—Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155
Telephone (612) 296-5148

Helen Henrie
Deputy Chancellor

Rules as Amended

3700.1200 to 3700.1280 [See *State Register*, Volume 17, Number 48, pages 2966-2970.]

APPLICATION. Conversion of Existing Instructors Licenses.

Individuals licensed according to part 3515.9941, bilingual, bicultural remedial-related reading instructor will convert to part 3700.1275, general studies/developmental reading. Individuals licensed according to part 3515.9941, bilingual, bicultural postsecondary remedial-related math instructor ~~will~~ may convert to part 3700.1270, general studies/developmental math. An applicant may retain and renew either preconversion license ~~as long as the applicant functions in that capacity in the hiring district.~~

On the effective date of parts 3700.1200 to 3700.1280, the state board shall convert the existing license issued under part 3515.6005, 3515.9921, 3515.9941, or 3515.9942 listed in column A to the license listed in column B. At the licensee's next renewal date the renewed license must show the new license title.

COLUMN A

Related math
Related communications
Related chemistry
Related physics
Related anatomy
First aid
Cardio-pulmonary resuscitation (CPR)
Remedial related math

COLUMN B

Applied math
Applied communications
Applied chemistry
Applied physics
Applied anatomy/physiology
First aid instructor
Cardio-pulmonary resuscitation (CPR)
Developmental math

COLUMN A

Remedial related reading
Occupational English as a second language
Bilingual-bicultural remedial related math
Bilingual-bicultural remedial related reading

COLUMN B

Developmental reading
Occupational English as a second language
Bilingual-bicultural remedial related math or developmental math
Bilingual-bicultural remedial related reading or developmental reading

REPEALER. *Minnesota Rules*, parts 3515.5500, subparts 4, 5, 6, 7, and 11; and 3515.6005, subparts 2 and 3; and 3515.9942, are repealed. Part 3515.9942 no longer applies to part 3700.1280.

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.

Pollution Control Agency

Hazardous Waste Division

Adopted Permanent Rules Relating to Storage Tank Service Providers

The rules proposed and published at *State Register*, Volume 17, Number 42, pages 2501-2506, April 19, 1993 (17 SR 2501), are adopted as proposed.

Pollution Control Agency

Adopted Permanent Rules Relating to Air Emission Permits

The rules proposed and published at *State Register*, Volume 17, Number 49, pages 3008-3045, June 7, 1993 (17 SR 3008), are adopted with the following modifications:

Rules as Adopted

7007.0100 DEFINITIONS.

Subp. 9. **Draft permit.** "Draft permit" means the version of the permit which the agency offers for public participation under part 7007.0850 and, in the case of a state permit, to the administrator for review in compliance with part 7007.0950.

Subp. 18. **Proposed permit.** "Proposed permit" means the version of ~~the~~ a part 70 permit that the agency proposes to issue and forwards to the administrator for review in compliance with part 7007.0950.

7007.0150 PERMIT REQUIRED.

Subpart 1. **Prohibition.** No person may construct, modify, reconstruct, or operate an emissions unit, emission facility, or stationary source except in compliance with an air emission permit from the agency. Exceptions to the requirement to obtain a permit are located in part 7007.0300. Exceptions to the requirement to obtain a permit amendment are located in parts 7007.1250 and 7007.1350. No person required to obtain a permit under this subpart may begin A person violates this subpart when the person begins actual

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construction on a new source, reconstruction, or modification prior to obtaining the permit or amendment, except as allowed in parts 7007.0750, subparts 6 and 7, and 7007.1450, subpart 7.

Subp. 5. Variances from federal requirements. The agency shall not issue variances from any federal requirement to obtain an air quality permit, unless explicitly authorized to do so in writing by the administrator.

7007.0250 SOURCES REQUIRED TO OBTAIN A STATE PERMIT.

Subp. 3. **SIP required state permit.** A stationary source must obtain a permit under this ~~subpart~~ part if the agency notifies the source that such a permit is needed as part of a state implementation plan to be submitted to the EPA to demonstrate attainment with a national ambient air quality standard.

7007.0350 EXISTING SOURCE APPLICATION DEADLINES AND SOURCE OPERATION DURING TRANSITION.

Subpart 1. **Transition applications under this part; deadline based on SIC code.** Initial permit applications under parts 7007.0100 to 7007.1850 for an emission unit, emission facility, or stationary source in operation on the effective date of parts 7007.0100 to 7007.1850 shall be considered timely if they meet the requirements of this part.

A. An owner or operator of an existing stationary source with a Standard Industrial Classification (SIC) Code number ~~from 0000 to 2999 or 4953, excluding sources with the SIC Codes 2041, 2048, 2951, and 2952, that is required to obtain a permit by part 7007.0200 or 7007.0250 shall submit a permit application by July 15, 1994.~~ in the left column of the following table shall submit a permit application by the corresponding date in the right column:

<u>Category</u>	<u>SIC Code Range</u>	<u>Application Deadline</u>
<u>A</u>	<u>0000 to 2399, excluding 2041 and 2048</u>	<u>October 15, 1994</u>
<u>B</u>	<u>2400 to 2999 and 4953, excluding 2951 and 2952</u>	<u>January 15, 1995</u>
<u>C</u>	<u>3000 to 4499</u>	<u>March 15, 1995</u>
<u>D</u>	<u>4500 to 5099, excluding 4953</u>	<u>June 15, 1995</u>
<u>E</u>	<u>5100 to 8199</u>	<u>September 15, 1995</u>
<u>F</u>	<u>8200 to 9999, including 2041, 2048, 2951, and 2952</u>	<u>November 15, 1995</u>

~~B. An owner or operator of an existing stationary source with a Standard Industrial Classification (SIC) Code number from 3000 to 5099, excluding SIC code 4953, that is required to obtain a permit by part 7007.0200 or 7007.0250 shall submit a permit application by February 15, 1995.~~

~~C. An owner or operator of an existing stationary source with a Standard Industrial Classification (SIC) Code number with the SIC codes 2041, 2048, 2951, and 2952, or from 5100 to 9999, and that is required to obtain a permit by part 7007.0200 or 7007.0250 shall submit a permit application by September 15, 1995.~~

~~D. If more than one SIC code describes activities at the stationary source, the SIC code that represents the primary type of activity of the stationary source shall be used. If no single SIC code represents the primary type of activity of the stationary source, the lowest SIC code that describes activities at the stationary source shall be used.~~

~~E. C. If a single owner or operator is responsible for filing applications for three or more stationary sources under this subpart, the owner or operator may request the agency to allow it to submit one or more of its applications according to a subsequent deadline of this subpart. Such a request shall be made by the owner or operator in writing no later than 60 days before the application deadline which the applicant is seeking to postpone. The agency shall approve in writing such requests if they more evenly distribute the owner's or operator's stationary sources among the application deadlines in item A, ~~B,~~ or ~~C.~~~~

~~F. D. The owner or operator of a stationary source must comply with the applicable deadline in this part, even though the stationary source may be operating under a permit issued by the agency under parts 7001.1200 to 7001.1220 (the permit rules in effect before the effective date of parts 7007.0100 to 7007.1850), and the permit is not due to expire until after the applicable deadline in this part. If a stationary source is operating under a permit issued by the agency under parts 7001.1200 to 7001.1220, and the permit expires after the effective date of parts 7007.0100 to 7007.1850 but before the applicable deadline, the owner or operator need not reapply before expiration of the permit, but shall comply with the applicable deadline in this part.~~

~~G. E. Except as provided in subitems (1) and (2), the agency waives its authority to take enforcement action against the owner or operator of a stationary source for failure to obtain a permit authorizing operation under parts 7001.1200 to 7001.1220, if the owner or operator files a timely and complete permit application under this part. This waiver does not apply to:~~

Subp. 2. **Compliance with permit or applicable requirements during transition.**

A. If a stationary source is operating under an air emission permit issued by the agency under parts 7001.1200 to 7001.1220 which has not expired as of the effective date of parts 7007.0100 to 7007.1850, and if the permittee ~~has submitted~~ submits a timely and complete application for reissuance under subpart 1, that permit shall be considered not to expire until a new permit is issued

under parts 7007.0100 to 7007.1850. The preceding sentence also applies to stationary sources which have been operating under an air emission permit which was continued under part 7001.0160. The permittee shall continue to operate the stationary source in compliance with the terms of the existing permit and all applicable requirements.

7007.0450 PERMIT REISSUANCE APPLICATIONS AND CONTINUATION OF EXPIRING PERMITS.

Subp. 2. **Inclusion of certain terms in a reissued permit Title I conditions.** ~~The agency shall include in a reissued permit Any title I condition of a previous~~ shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit.

7007.0500 CONTENT OF PERMIT APPLICATION.

Subpart 1. Standard application form and required information.

C. In addition to the requirements of this part, applicants for permits subject to a new source review program under part C (Prevention of Significant Deterioration of Air Quality) or part D (Plan Requirements for Nonattainment Areas) of the act shall also comply with the application requirements of part 7007.3000 or parts 7007.4000 to 7007.4030, respectively.

D. An applicant is not required to show that its emissions do not cause a violation of ambient air quality standards, unless the agency notifies the applicant that such information is required, or unless the source is required to make such a showing under the preconstruction review requirements of part 7007.3000 or parts 7007.4000 to 7007.4030.

Subp. 2. **Information included.** Applicants shall submit the following information as required by the standard application form:

C. The following emissions-related information:

(3) A permit application shall identify and describe all emission points in sufficient detail to determine the applicability of all applicable requirements. This shall include the location of emissions units, flow rates, and stack parameters (including, if required by the agency, height, diameter, and plume temperature) for all regulated air pollutants.

Subp. 5. **Environmental review.** ~~If a stationary source is required to complete an environmental impact statement or The applicant shall state in the application whether an environmental assessment worksheet or an environmental impact statement is required for the activity for which the permit is sought under Minnesota Statutes, chapter 116D, or implementing regulations, or under United States Code, title 42, sections 4331 et seq., as amended; the statement or worksheet shall be included in the permit application. A stationary source may request the agency to begin processing a permit application prior to receiving these documents, but the application will not be considered complete for purposes of part 7007.0700 until the statement or worksheet is submitted.~~

7007.0550 CONFIDENTIAL INFORMATION.

A person may request the agency to treat information submitted under parts 7007.0100 to 7007.1850 as confidential by following the procedures established by part ~~7000.1000~~ 7000.1300. Where the agency is required to submit information to the EPA, the confidentiality of that information will be governed by *Code of Federal Regulations*, title 40, part 2, as amended.

7007.0700 COMPLETENESS REVIEW.

B. Within 60 days of receipt of an application other than a minor amendment application, the agency shall notify the applicant in writing of whether the application is complete. If the agency fails to make the completeness determination required above within the 60-day period, the application shall be deemed complete. A completeness determination under this subpart triggers timelines for permit issuance under part 7007.0750, retroactive to the date the complete application was received by the agency, but does not limit the agency's ability to request additional information.

D. If, during processing of a permit application that has been deemed complete, a minor permit amendment application, or of a written request for an administrative amendment, the agency determines that additional information is necessary to evaluate or take final action on that application or request, it may request such information in writing, and, after consultation with the applicant, set a deadline for a response. In the request for additional information, the agency shall briefly explain why the additional information is needed. If an applicant fails to respond to requests for additional information within the time period requested, the application or request shall be deemed incomplete. Applicants who have already made a change or commenced a modification at a permitted facility under part 7007.1450, shall provide the additional information within the time period specified by the agency.

7007.0750 APPLICATION PRIORITY AND ISSUANCE TIMELINES.

Subp. 2. **Application processing and issuance deadlines.**

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C. The agency shall take final action on applications for permits or permit amendments not governed by items A and B within the period specified in this item. The agency shall take final action on such an application for a permit, permit reissuance, or major permit amendment within 18 months of receiving a complete application. The agency shall take final action on such an application for a minor or moderate permit amendment within six months of receiving a complete application, but not before the end of the administrator's 45-day review period in the case of part 70 permits. The agency shall take final action on a written request for an administrative amendment within 60 days of receiving the complete request.

D. If the applicant is required to submit additional information under part 7007.0700, ~~subpart 2~~, item D, and if the applicant takes more than 30 days to provide the information, the agency may extend a deadline under item A, B, or C by the amount of time it takes to provide the information. The agency may also extend the deadlines under items A, B, and C upon written request of the applicant.

E. Deadlines for agency action under this part may be extended as described in this item for permitting actions subject to environmental review under Minnesota Statutes, chapter 116D, and implementing regulations. If the prohibition on final governmental decisions under part 4410.3100 is in effect at any time 90 days prior to the deadline or later, the agency shall extend the deadline until 90 days after the prohibition ends.

F. The deadlines in this subpart do not apply to the extent they deviate from the requirements of federal regulations at *Code of Federal Regulations*, title 40, section 72.73, as amended (Acid Rain Permits Regulation).

Subp. 3. **Final action.** For purposes of this part and triggering judicial review, final agency action on a request or an application includes issuing the permit or amendment, denying the request or application, ~~or~~ issuing a revised permit or amendment, or failing to take any of these actions by the deadline applicable under this part. However, the previous sentence shall not prevent the agency from issuing a permit or amendment or denying a request or application after a deadline has passed. If the agency denies the request or application it shall explain why. If the agency revises a proposed permit or amendment which has been subject to EPA review, it shall resubmit the amendment to the administrator. ~~Failure to issue a permit or amendment in any form by the deadlines applicable under this part shall be considered a denial of the request or application.~~

Subp. 4. **Transition period.** The timelines in subpart 2, item C, do not apply to applications received prior to the date three years after EPA grants full program approval.

Subp. 5. **Modification of installation and operation permits.** The agency may issue permits authorizing a modification to a stationary source (an installation and operation permit) prior to issuance of an operating permit covering the entire stationary source (a total facility permit) if the agency finds:

7007.0800 PERMIT CONTENT.

Subp. 6. **Reporting.** The permit shall require the permittee to submit to the agency the reports described in this subpart. The permit shall require that all reports be certified by a responsible official consistent with part 7007.0500, subpart 3.

D. All progress reports and compliance documents described in this subpart are available for public inspection and copying at the agency upon request, subject to the provisions of part 7000.1200 and Minnesota Statutes, chapter 13, and section 116.075.

Subp. 10. Emissions trading.

A. If requested by a permit applicant, the agency shall include provisions allowing the permittee to trade emissions increases and decreases that occur within the permitted facility. No title I modification may be made using this provision, and the trade may not result in the exceedance of any emission limit in the permit. The agency shall make such trading available to the permittee only if it determines that all of the following are true:

(1) the unit-specific limits above which the permittee wishes to increase emissions were established solely to keep the stationary source as a whole from being subject to an applicable requirement described in part 7007.0100, subpart 7, items A to K, and are independent of otherwise applicable requirements;

7007.0850 PERMIT APPLICATION NOTICE AND COMMENT.

Subp. 2. Public notice and comment.

A. The agency shall comply with the following procedures before issuing, reissuing, or making a major amendment to any part 70 permit.

(1) The agency shall give notice:

(b) in a list provided to the public upon request by the agency upon request;

(2) The notice shall identify the name and location of the facility to be permitted; the name and address of the permittee; the name and address of the agency; the activity or activities involved in the permit action; the emissions change involved in any permit amendment; whether the facility has filed a pollution prevention progress report to the commissioner as required by Minnesota Statutes, section 115D.08; the name, address, and telephone number of a person from whom interested persons may obtain additional

information, including copies of the permit draft, the application, all relevant supporting materials, and all other materials available to the agency that are relevant to the permit decision; a brief description of the comment procedures required by this part; and the time and place of any meeting or hearing that may be held, including a statement of procedures to request a meeting or hearing under subpart 3, unless a meeting or hearing has already been scheduled.

Subp. 4. **Additional procedures for permits containing title I conditions.** In addition to the requirements of this part, the agency shall also comply with all other federal requirements for public participation applicable to permits and permit amendments which include title I conditions, including requirements in Code of Federal Regulations, title 40, sections 51.102, 51.161, and 51.166(Q), as amended, to the extent applicable.

7007.0950 EPA REVIEW AND OBJECTION.

Subpart 1. **Review by EPA.** The agency shall provide to the administrator a copy of ~~each proposed permit and each final permit~~ the following documents, unless the administrator agrees to accept a summary of the ~~permit issuance information~~ documents:

A. for part 70 permits, each application for a permit or permit amendment, each proposed permit or permit amendment, and each final permit or permit amendment; and

B. for state permits, each application for a permit, each draft permit, each final permit, each application for a major permit amendment described in part 7007.1500, subpart 1, item C or D, and the draft and final versions of each such major permit amendment.

In the case of a part 70 permit, the proposed permit or permit amendment shall be provided to the administrator after the draft permit or permit amendment has been subject to public comment. In the case of a state permit, the draft permit or permit amendment may be provided to the administrator at the same time the draft permit or permit amendment is offered for public comment.

Subp. 2. **EPA objection.** In the case of a part 70 permit, the agency shall not issue a permit or an amendment if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit or amendment and any necessary supporting information. In the case of a state permit, the agency shall not issue a permit, or an amendment for which EPA review is provided under subpart 1, if the administrator objects to its issuance in writing within 30 days of receipt of the draft permit or amendment and any necessary supporting information.

7007.1000 PERMIT ISSUANCE AND DENIAL.

Subpart 1. **Preconditions for issuance.** The agency shall issue a permit or permit amendment, or reissue a permit only if it determines that all of the following conditions have been met:

G. The agency anticipates that the applicant will, with respect to the stationary source and activity to be permitted, comply with all conditions of the permit.

7007.1050 DURATION OF PERMITS.

Subp. 6. Effect of permit expiration. Except as provided in part 7007.0450, subpart 3, permits issued under parts 7007.0100 to 7007.1850 shall expire at the expiration date stated in the permit. Permit expiration terminates the stationary source's right to operate, even if the permit contains title I conditions which do not expire.

Subp. 7. Voiding an existing permit. The agency shall void a permit issued under parts 7001.1200 to 7001.1220 or 7007.0050 to 7007.1850, if it determines that the stationary source no longer requires the permit under existing law. A permittee may request the agency to void a permit. An agency determination to void a permit under this subpart must be in writing and shall explicitly identify the permit in question and state why the permit is no longer required. The agency shall send any such determination to the permittee.

7007.1100 GENERAL PERMITS.

Subp. 7. **Permit shield.** Notwithstanding the permit shield provisions of part ~~7007.1750~~ 7007.1800, a stationary source that obtains a general permit shall be subject to enforcement action for operation without a permit if the stationary source is later determined not to qualify for the conditions and terms of the general permit.

7007.1150 WHEN A PERMIT AMENDMENT IS REQUIRED.

~~Subpart 1. Scope; requirement to get a permit amendment.~~

D. Nothing in part ~~7007.1250~~ parts 7007.1150 to 7007.1500 shall be read to allow a modification to a stationary source that would violate an applicable requirement or, except as provided in part 7007.1350 or 7007.1450, subpart 8, to allow any activity that

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would violate any permit condition. The agency shall not issue any permit amendments which would result in the violation of an applicable requirement.

F. The owner or operator of a stationary source that is required to have a permit under parts 7007.0050 to 7007.1850, but which does not yet have a permit, may make changes and modifications at the stationary source in compliance with parts 7007.1150 to 7007.1500, notwithstanding any reference to a permit in those parts. Any requirement for a permittee to obtain an amendment under parts 7007.1150 to 7007.1500 shall be read as a requirement for an owner or operator to obtain a permit from the agency under part 7007.0750, subpart 5.

7007.1200 CALCULATING EMISSION CHANGES FOR PERMIT AMENDMENTS.

~~Subpart 1. How to calculate emission changes.~~ When this method is required to be used, emission changes will be calculated by comparing the hourly emission rate of the stationary source, at maximum physical capacity, before and after the proposed physical or operational change. The emission rate shall be expressed as pounds per hour of any regulated air pollutant. When calculating emissions before and after the physical and operational change, physical and operational limitations on emissions will be considered only if they are or will be automatically required by applicable requirements or existing permit terms, or if they are integral to the process. The agency shall use the following to determine emission rate:

7007.1250 INSIGNIFICANT MODIFICATIONS.

Subp. 2. **Insignificant modification exclusions.** A modification may not be made under this part if the modification:

D. is part of a ~~larger single~~ project, as described in subpart 5, which taken as a whole, would not be authorized under this part.

Subp. 4. **Agency notification required.** If a modification authorized under subpart 1, item B, together with other modifications made under subpart 1, item B, during the course of the permit term (or within a five-year period for a nonexpiring permit), have resulted in total increases of a pollutant in excess of four times the amount listed in subpart 1, item B, subitem (2), for that pollutant, the permittee shall notify the agency by seven working days after beginning actual construction of the last modification. The notice shall provide the information required to be kept in subpart 3 for each modification made under subpart 1, item B, during the period in question. The notice shall also include a certification by a responsible official, consistent with part 7007.0500, subpart 3, that the modifications listed were not part of a ~~larger single~~ project, as described in subpart 5, which taken as a whole, would not be authorized under subpart 1, item B. After any such notice has been sent, the permittee shall continue to keep track of modifications made under subpart 1, item B, and the permittee shall notify the agency again if emissions increases from these additional modifications total more than four times the amount listed in subpart 1, item B, subitem (2).

7007.1300 INSIGNIFICANT ACTIVITIES LIST.

Subp. 2. **Insignificant activities not required to be listed.** The activities described in this subpart are not required to be listed in a permit application under part 7007.0500, subpart 2, item C, subitem (2).

K. Miscellaneous:

(3) fugitive ~~dust~~ emissions from operation of a passenger automobile, station wagon, pickup truck, or van, as defined in *Minnesota Statutes*, section 168.011, at a stationary source.

7007.1350 CHANGES WHICH CONTRAVENE CERTAIN PERMIT TERMS.

Subpart 1. **Applicability.** A permittee may make changes allowed under parts 7007.0100 to 7007.1850 at a permitted facility without obtaining a permit amendment, even though the change contravenes a permit term, if the change:

E. is not a title I modification; ~~and~~

F. is not required to be authorized by a permit amendment under title IV of the act (Acid Deposition Control) or *Code of Federal Regulations*, title 40, part 72, as amended; ~~and~~

G. is not an administrative amendment described in part 7007.1400.

Subp. 2. **Modification Procedure.** ~~Modifications~~ Changes authorized under this part may not be made until seven working days after the air quality division of the agency receives written notice of the ~~modification change~~. The notice shall include a certification by a responsible official describing the ~~modification change~~ to be made, identifying the term of the permit which is being contravened, stating that the ~~modification change~~ is authorized under this part, and briefly describing how it qualifies under this part. The permittee and the agency shall attach the notice to the stationary source's permit. If the agency finds that the proposed ~~modification change~~ is not authorized under this part, the agency shall notify the permittee of that finding and, if the proposed change could be made using other ~~modification~~ procedures, direct the permittee to those procedures.

Subp. 3. **Enforcement action.** If the permittee implements a ~~modification change~~ that the permittee believes qualifies under this part and the agency subsequently determines that the ~~modification change~~ does not qualify under this part, the agency may take an enforcement action against the permittee.

7007.1500 MAJOR PERMIT AMENDMENTS.

Subp. 3. **Agency processing procedures.** The agency shall process an application for a major permit amendment to a part 70 permit following the same procedures applicable to an application for a new or reissued part 70 permit, including procedures for public participation, administrator review, and affected states review. The agency shall process an application for a major amendment to a state permit following the same procedures applicable to an application for a new or reissued state permit, except that:

A. the agency shall not provide for public notice and comment under part 7007.0850 unless the major amendment is described in subpart 1, item C or D, and the administrator requires such notice, or the agency makes a determination to provide for public notice and comment under part 7007.0850, subpart 2, item C; and

B. the agency shall not submit the major amendment to EPA for review under part 7007.0950 unless the major amendment is described in subpart 1, item C or D, and the administrator requires such notice.

7007.1600 PERMIT REOPENING AND AMENDMENT BY AGENCY.

Subp. 3. **Reopening procedure.** To reopen and amend a permit, the agency shall follow the procedures that apply to major permit amendments under parts 7007.0100 to 7007.1850, unless the amendment can be made as an administrative amendment under part 7007.1400. During the reopening, the agency may only make those amendments to the permit which are related to the grounds for the reopening under subparts 1 and 2. Mandatory reopenings under subpart 1 shall be made as expeditiously as practicable. In lieu of an application, the major permit amendment process will commence when the agency gives the permittee written notice of its intent to amend the permit. The agency shall not issue the amendment, or make public notice of the amendment where public notice is required, until at least 30 days after the agency has given the permittee notice of its intent to amend the permit, unless the permittee consents to less notice, or in the case of an emergency. In cases where public participation is required, only those portions of the permit which the agency proposes to amend shall be open for public comment or consideration at a meeting or hearing.

7007.1750 FEDERAL ENFORCEABILITY.

~~Subpart 1. Federally enforceable requirements.~~

7007.1800 PERMIT SHIELD.

~~Subpart 1. Description of permit shield.~~

E. The permit shield shall not be provided for a permit condition if the permittee knowingly submitted false or misleading information to the agency and the permit condition was based on that information.

7007.1850 EMERGENCY PROVISION.

~~Subpart 1. Actions required in emergencies.~~

Department of Labor and Industry

OSHA Division

Adopted Permanent Rules Relating to OSHA; Federal Standards

The rules proposed and published at *State Register*, Volume 18, Number 7, pages 572-575, August 16, 1993 (18 SR 572), are adopted as proposed.

Focus on
Rulemaking



An overview and discussion of
state administrative rulemaking
for agency staff.

November 9, 1993
12 noon to 4:30 p.m.
Room 5 State Office Building

Sponsored by the Office of the Revisor of Statutes.
Space is limited. For information, call Paul Marinac, (612) 296-0948.
For registration materials, call the Revisor's Office, (612) 296-2868.

Executive Orders

Executive Department

Emergency Executive Order 93-25: Declaring a State of Emergency in the State of Minnesota

I, ARNE H. CARLSON, 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 Emergency Executive Order:

WHEREAS, heavy and continuous rains, flooding, and storms have occurred from late April through August, 1993; and

WHEREAS, the heavy rainfall has resulted in widespread road and bridge closings and damage, crop destruction, building damage, potential dam and levee failures, and other threats to public safety; and

WHEREAS, the resources of local government and private relief agencies are being fully utilized to respond to the crisis; and

WHEREAS, local government and private relief agency resources are being exhausted; and

WHEREAS, in addition to the counties already declared in Executive Orders 93-7, 93-12, 93-15, 93-16, 93-18, 93-19, 93-23, and 93-24, there is a threat to public safety in Kandiyohi county; and

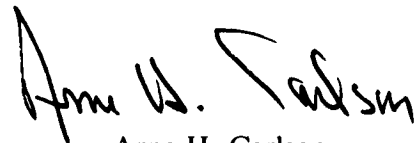
WHEREAS, severe storms continue to cause damage, and additional counties may be requesting assistance as flood waters recede;

NOW, THEREFORE, I hereby order that:

A State of Emergency exists in the State of Minnesota and do direct the Division of Emergency Management, in conjunction with the Federal Emergency Management Agency and other state and federal agencies, to determine the need for supplementary disaster aid and to coordinate the provision of any such assistance as necessary under existing state and federal authority.

Pursuant to *Minnesota Statutes* 1992, Section 4.035, subd. 2, this Order is effective immediately and shall remain in effect until rescinded by proper authority or it expires in accordance with *Minnesota Statutes* 1992, Section 4.035, subd. 3.

IN TESTIMONY WHEREOF, I have set my hand this twenty-ninth day of September 1993.



Arne H. Carlson
Governor

Official Notices

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

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

Department of Administration

Building Codes and Standards Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing the Adoption of the Interstate Compact for Industrialized/Modular Buildings Uniform Administrative Procedures and the Model Rules and Regulations

NOTICE IS HEREBY GIVEN that the State Department of Administration, Building Codes and Standards Division is seeking information or opinions from sources outside the agency in preparing to propose the adoption of the rule governing industrialized/modular buildings. The adoption of the rule is authorized by *Minnesota Statutes* section 16B.61 and 16B.64, which permits the agency to amend the Minnesota State Building Code.

The State Building Codes and Standards Division requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing. Written statements should be addressed to:

Peggi White
Building Codes and Standards Division
408 Metro Square Building
7th and Robert Streets
St. Paul, Minnesota 55101

All statements of information and opinions shall be accepted until November 15, 1993 at 4:30 p.m. Any written material received by the State Building Codes and Standards Division shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event the rule is adopted.

Dated: 4 October 1993

Thomas R. Joachim
State Building Inspector

Department of Health

Notice Regarding Quarterly Change in Regional and National Consumer Price Index

Pursuant to *Minnesota Laws 1993*, Chapter 345, Article 3, Section 2, subdivision 1, the commissioner of health is required to publish the quarterly change in the regional consumer price index for urban consumers. This publication is intended to monitor change in the general inflation as measured by the quarterly change in the north-central CPI-U index. The quarterly change in U.S. city average CPI-U index and the seasonally adjusted annualized rate of this quarterly change are also published for comparative purposes.

The change in the average, unadjusted regional urban-consumer price index for all items for the North Central Region, from 1st quarter 1993 to 2nd quarter 1993 is 0.79 percent.

The change in the average, unadjusted national urban-consumer price index for all items, from 1st quarter 1993 to 2nd quarter 1993 is 0.76 percent.

The seasonally adjusted annualized rate of the change in average national urban-consumer price index from 1st quarter 1993 to 2nd quarter 1993, is 2.8 percent.

Department of Human Services

Notice of Disproportionate Population Adjustment for State Regional Treatment Centers

The purpose of this notice is to provide information concerning the Disproportionate Population Adjustment (DPA) under the Medical Assistance (MA) Program. The following DPA factors are effective for admissions occurring from July 1, 1993 through June 30, 1994. The inpatient cost of care rate of each hospital is increased by the indicated percentage.

Official Notices

<u>PID</u>	<u>HOSPITAL</u>	<u>DPA %</u>
1700012	Anoka Regional Treatment Center	57.80
1700023	Brainerd Regional Treatment Center	57.92
1700056	Fergus Falls Regional Treatment Center	50.06
1700078	Moose Lake Regional Treatment Center	46.23
170009X	St. Peter Regional Treatment Center	58.33
1700103	Willmar Regional Treatment Center	52.18

Questions and comments may be directed to:

Allen N. Rasmussen
Department of Human Services
Reimbursement Division
444 Lafayette Road
St. Paul, MN 55155-3824
(612) 297-4184

Labor & Industry Department

Labor Standards Division

Notice of Prevailing Wage Certifications for Commercial Construction Projects

Effective October 11, 1993 prevailing wage rates are certified for commercial construction projects in: Anoka county: Truck Station HVAC Modification-Anoka. Chisago county: CCC Campground Toilet Building Remodel Interstate State Park-Taylor's Falls. Clay county: Classroom & Office Building-Moorhead State University. Crow Wing county: Brainerd Regional Human Services Center Remodeling Buildings 20 & 21-Brainerd. Hennepin county: U of M Pioneer Hall Fire Alarm Renovation-Minneapolis. Polk county: Head Start Community Center-East Grand Forks. Ramsey county: Phalen Lake School Computer Room Modifications-St. Paul. St. Louis county: Arena & Kennedy School Fire Alarm Early Detection-Ely. Scott county MN/DNR Contact Station/Office Remodel-Jordan. Stearns county: SCSU/Halenbeck Hall Pool Dehumidification-St. Cloud.

Copies of the certified wage rates for these projects may be obtained by writing the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road, St. Paul, Minnesota 55155-4306. The charge for the cost of copying and mailing are \$1.36 per project. Make check or money order payable to the State of Minnesota.

John B. Lennes, Jr.
Commissioner

Public Employees Retirement Association

Board of Trustees, Notice of Meetings

The next regular monthly meeting of the Board of Trustees of the Public Employees Retirement Association (PERA) will be held on Thursday, October 14, 1993, at 9:30 a.m. in the PERA offices, 514 St. Peter Street, St. Paul, Minnesota.

An Information Forum of the Public Safety Officers will be held on Wednesday, October 20, 1993, at 1:00 p.m. in the offices of the Association.

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.

Department of Corrections

Community Services Division

Notice of Availability of Funds to Establish American Indian Community-Based Corrections Programs to Serve Supervised Releasees

Funds totalling \$425,000.00 are available for contract programs to provide community-based corrections programs for American Indian supervised release male and female offenders who are released from state correctional institutions under the authority of the Office of Adult Release (OAR). The funds will be available to fund programs for approximately 18 months, January 1994 through June 30, 1995.

There is no assurance of continued funding for future fiscal years. The deadline for proposals submission is November 22, 1993, 4:30 p.m. Proposals received after this date and time will not be given consideration. To receive a Request for Proposal which describes in detail how to apply for this funding, contact:

Nancy Montemurro, Minnesota Department of Corrections
300 Bigelow Building
450 North Syndicate
St. Paul, MN 55104
Telephone: (612) 642-0235

Housing Finance Agency

Request for Proposals for the Neighborhood Land Trust Program

The Minnesota Housing Finance Agency (MHFA) announces the availability of \$65,500 in capacity-building grant funds from the Neighborhood Land Trust Program. The Legislature authorized this program to assist in providing affordable housing and housing-related services using a land trust model.

Form of Awards: The awards are to be in the form of grants. The maximum grant amount is \$10,000. An eligible applicant selected for an award will execute an agreement with MHFA which will explain the performance requirements necessary to receive the grant.

Eligible Applicants: An eligible applicant proposing to create a new neighborhood land trust may include individuals, groups, for-profit entities, nonprofit entities, and Minnesota cities (as defined in *Minnesota Statute*, section 462C.02, subdivision 6).

An eligible applicant proposing to operate an existing neighborhood land trust must either be a City, or be a nonprofit corporation organized under chapter 317A which qualifies for tax exempt status under the *United States Code*, title 26, section 501 (c) (3). All applicants operating an existing land trust must meet the requirements of *Minnesota Statute*, sections 462A.30 and 462A.31.

Eligible Uses of Grant Funds: Funds may be used to create a new neighborhood land trust or to fund activities related to a specific land trust project.

Application Process: Applicants should request an application from MHFA staff at:

Minnesota Housing Finance Agency
400 Sibley Street, Suite 300
St. Paul, MN 55101
Attn: Greg Baron

Any questions concerning the Program or its application process should be directed to Greg Baron at MHFA at (612) 297-3123, or toll-free 1-800-657-3960, ext. 7-3123. The MHFA TDD service is available at 612-297-2361.

APPLICATIONS MUST BE RECEIVED AT THE MINNESOTA HOUSING FINANCE AGENCY BY 5:00 P.M. ON FRIDAY, DECEMBER 3, 1993. The MHFA staff will review the applications and make recommendations to the MHFA Board of Directors. MHFA reserves all rights in the selection of eligible applications.

This Request for Proposals (RFP) is subject to all applicable federal, state, and municipal laws, rules, and regulations. MHFA

State Grants

reserves the right to modify or withdraw the RFP at any time and is not able to reimburse any applicant for costs incurred in the preparation or submittal of applications.

The Minnesota Housing Finance Agency does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

Department of Trade and Economic Development

Request for Applications: Community Development Corporation Certification 1993-1994

Introduction

The Minnesota Legislature, during the 1993 session, amended the statutes governing community development corporations. *Minnesota Statutes* 116J.982 now includes specific standards and procedures for a CDC to become "certified" and therefore eligible to receive grants and enter into contracts with the state.

To become certified, a CDC must fulfill all basic eligibility standards and provide the documentation indicated on an application form which is available by contacting the Department of Trade and Economic Development (DTED) at the address and phone number indicated below.

Benefits of Certification

Only certified CDCs will be able to apply for grant funds provided by the legislature and available through DTED. During FY 94, a total of \$50,000 is available to CDCs; the same amount will be available during FY 95.

Grant funds will be available for several purposes: (1) specific economic development projects within the designated area, (2) dissemination of information about, or taking applications for, programs operated by the Commissioner, or (3) developing the internal organizational capacity to engage in economic development activities. Whichever the purpose for which funds are sought, the organization would be required to show how the proposed activity meets or could meet the goals of the state's "Economic Blueprint," published in November, 1992 (copies available on request), and in each region's "Regional Blueprint" which is being prepared during the fall of 1993 by citizens, businesses, and organizations.

Organizations designated as certified CDCs will receive regular updates of information from DTED on departmental programs and initiatives, so that the CDC can be an effective intermediary for providing information in its service area.

At the discretion of the Commissioner of the Minnesota Housing Finance Agency, certified CDCs may enter into contracts with the MHFA for purposes of housing activities associated with the economic development activities of the corporation.

A certified CDC is also exempt from the real estate licensure requirements of *Minnesota Statutes* 82.20. (Call DTED to receive a copy of this section of the statutes.)

Deadline for Certification Applications

To be eligible for the FY 94 grant funds, applications for certification must be received by the Department of Trade and Economic Development by 4:30 p.m., November 15, 1993. CDCs whom the Commissioner determines meet the certification criteria will be notified that they are certified, and will be provided with information about the grant program for FY 94. Applications for grant funds will then be due January 28, 1994.

Summary of the Amended Legislation

Minnesota Statutes 116J.982 sets forth a number of requirements and qualifications for certification. These are summarized below.

Incorporation

A community development corporation must be a non profit corporation under *Minnesota Statutes* 317A, the "Minnesota Nonprofit Corporation Act." It stipulates the requirements of a incorporation as a nonprofit organization; evidence from the Secretary of State's office that the CDC has met those requirements will be required as part of the new state certification process. The CDC must also be tax exempt under section 501(c)(3) of the *Internal Revenue Service Code*, and be able to document that status.

If a corporation is a non profit but has not yet received its notification from the I.R.S. that it is a 501(c)(3), it may still apply to become a state certified CDC; on the application the corporation will be asked to explain whether it has applied to the I.R.S. and when it expects to attain that status.

Purpose of the corporation

The major purpose of the corporation must be economic development, redevelopment, or housing in its designated area. Articles of incorporation or bylaws will be required to document the organization's purpose.

Designated Area

The CDC must designate a low-income area as the geographic community in which it will operate. Within cities of the first class (Minneapolis, St. Paul, Duluth), a designated community must be an identifiable neighborhood or combination of neighborhoods, but it may not be the entire city. In other parts of Minnesota, a designated community may be one of the following: an identifiable neighborhood or neighborhoods; or a home rule charter or statutory cities, townships, unincorporated areas, or combination of areas. A designated community cannot include an entire economic development region or cross regional boundaries. Those regions are the twelve regions established under *Minnesota Statutes* 462; contact DTED if you have questions about the geographic areas covered by those regions.

Low Income Determination

For purposes of the Community Development Corporation certification and grants program, "low income" means gross annual income below the federal poverty level. "Low income area" means an area in which 10% of the population have low incomes, or there are one or more recognized areas such as a census tract, city, township, or county in which 15% of the population have low incomes.

Federal poverty guidelines applicable in 1993 are as follows, according to gross annual income and the size of family: 1 person, \$6,970; 2 persons, \$9,430; 3 persons, \$11,890; 4 persons, \$14,350; 5 persons, \$16,810; 6 persons, \$19,270; 7 persons, \$21,730; 8 persons, \$24,190; 9 persons and over, an additional \$2,460 for each additional family member. These guidelines will be helpful in determining whether the non profit corporation's board of directors meets the low income requirement (see "board membership," below.)

To determine whether an area served by the non profit corporation is a low income area, the corporation should consult census information, which can be obtained from several sources:

- 1) Minnesota State Demographer Census Hot Line: 612/296-2557. Census information is available on the entire state.
- 2) The Census Project: 612/647-4606 or 348-8550. A joint project of the Wilder Research Center and the Urban Coalition, this source can provide information on neighborhoods in Minneapolis and St. Paul.
- 3) Metropolitan Council Data Center: 612/291-8141. Twin Cities area information can be obtained from this source.

Contact Gerald Wenner at the DTED if you have additional questions on where to find information to document the presence of qualified low income areas.

Board Membership

A CDC's board membership can fulfill the requirements of certification in either of two ways:

(1) The corporation's membership and board of directors must be representative of the designated area. At least 20% of the directors must have low income, or reside in a low income area. At least 60% of the directors must be residents of the designated area. Other directors must be business, financial, or civic leaders or representatives-at-large of the designated area.

(2) A corporation which meets board structure requirements for a community housing development organization (CHDO) under the United States 24 CFR part 92.2, can meet the board membership requirements for CDC certification under the Minnesota statute. (The CHDO certification was developed to establish organizations eligible to receive funds under the HOME program.) Information on the community development housing corporation requirements can be obtained by calling Denise Rogers at the Minnesota Housing Finance Agency, 612/296-8206.

Whichever route it chooses, the CDC will be required to provide documentation of how it meets these criteria.

In addition, the corporation is advised that it must not discriminate against any persons on the basis of a status protected under *Minnesota Statutes* 363, the Minnesota Human Rights Act. For more information on the provisions of that act, contact the Department of Human Rights, 612/296-5663.

Technical Qualifications

The corporation must be skilled in the analysis and packaging of economic development, redevelopment, or housing projects, and that it is familiar with available public and private funding sources. During the past three years, the corporation must have completed two or more economic development, redevelopment, or housing projects within its designated area. For these projects to qualify, the organization must have had primary responsibility for coordinating the execution and completion of the activity.

If the corporation does not presently have these skills within its organization, it must be able to describe how it will obtain these skills during the certification period, with its precise plan and schedule for acquiring the training or skills.

Certification Period

Certification is for two years from the date of certification, and can be renewed. DTED will provide re-certification materials to those organizations seeking renewal of their status.

State Grants

A CDC can be certified for a non-renewable period of three years, if it meets all other qualifications, but is lacking two qualifications at time of certification: (1) IRS 501(c)(3) tax exempt status, and (2) completion of two or more economic development, redevelopment, or housing projects within its designated area. In this instance, certification will only be provided if the corporation includes a specific plan and timeframe by which it can reasonably be expected to obtain these qualifications within the three year certification period.

If a CDC meets all the certification requirements during the three-year term, it would be eligible to apply for a two-year renewable certificate.

For More Information:

Please contact Gerald Wenner, Business and Community Development Division, Minnesota Department of Trade and Economic Development, 612/297-1844.

Submit Certification Applications, by November 15, 1993, to:

Gerald Wenner
Business and Community Development Division
Minnesota Department of Trade and Economic Development
500 Metro Square
121 E. 7th Place
St. Paul, MN 55101-2146

Professional, Technical & Consulting Contracts

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.

In accordance with *Minnesota Rules* Part 1230.1910, certified Targeted Group Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of a 6% preference in the evaluation of their proposal. For information regarding certification, call the Materials Management Helpline (612) 296-2600 or [TDD (612) 297-5353 and ask for 296-2600].

Department of Finance

Request for Proposal Regarding: The Selection of a Vendor to Provide a Master Equipment Lease Purchase Financing Program ("Responder") for the State of Minnesota (the "State"). This Request for Proposal does not Obligate the State to Complete this Financing and the State Reserves the Right to Cancel the Solicitation if it is Considered to be in its Best Interest

I. INTRODUCTION

The State of Minnesota, acting by and through the Commissioner of Finance and Administration, wishes to purchase on a lease purchase basis certain items of equipment. This financing has been requested by the Commissioner of Administration to provide for the equipment needs of the various Internal Service Funds operated by the Department of Administration. On the basis of an equipment needs survey conducted by the Department of Administration (copy attached) the State expects to finance the purchase of \$11,357,000 of equipment during the fiscal year ending June 30, 1994 and \$11,223,000 of equipment during the fiscal year ending June 30, 1995. Pursuant to *Minnesota Statutes*, Section 16A.85, (copy attached), the State is seeking proposals from qualified firms to provide lease purchase financing pursuant to a Master Equipment Lease Purchase Agreement (copy attached) for the fiscal year 1994 purchases, with an option to the State to extend for the 1995 purchases.

II. THE EQUIPMENT

The Department of Administration will be purchasing equipment for several of its Internal Service Fund Agencies. These Agencies are:

InterTechnologies (Data Processing)
InterTechnologies (Micrographics)
InterTechnologies (Telecommunications)
Travel Management (Motor Pool)
Plant Management

Professional, Technical & Consulting Contracts

The specific equipment will be identified at each takedown. Prior Master Lease programs have provided lease purchase financing for the Department of Administration to purchase the following type of equipment:

Computers
Automobiles
Trucks
Office Equipment
Shop Equipment

III. THE LEASE

The Master Equipment Lease Purchase Agreement (the Lease) will be in substantially the form attached hereto.

IV. TERMS

The State expects to take down funds not more than twice each month as equipment is purchased. Each takedown will be accompanied by an Addendum to the Lease setting forth a description of the equipment, its useful life expectancy and an interest and amortization schedule. The State will make semi-annual rental payments in December and June of each year commencing June 1, 1994. Interest is to be calculated on a simple interest basis. For each addendum, the maximum term will be set as a period of years consistent with the useful life of the equipment.

V. SECURITY

The Master Lease Financing will be secured by the State's obligation to pay rent which is expressly subject to annual appropriations. See Section 5.4 of the Lease.

VI. THE RFP PROCESS AND EVALUATION

QUESTIONS AND INQUIRIES:

It is the State's policy to accept questions and inquiries from any and all Responders. Questions regarding the objectives of the RFP should be directed to:

Susan Gurrola
(612) 296-8373

Please note: Other departmental personnel are not allowed to discuss the project before submittal of the proposal.

REVISIONS TO THE REQUESTS FOR PROPOSALS:

In the event it becomes necessary to revise any part of the RFP, revisions will be provided to all vendors who received the RFP.

SUBMISSION OF PROPOSALS:

1. All Proposals must be submitted to:

Peter G. Sausen
Assistant Commissioner
Minnesota Department of Finance
4th Floor Centennial Office Building
658 Cedar Street
Saint Paul, Minnesota 55155

2. Seven (7) copies of the proposals are requested.

3. All packets (mailing envelopes or packages) must be clearly identified as a response to this Request for Proposal on the outside with the Responder's name and return address and the date and time when proposals are due.

4. Each copy of the proposal must be signed by an authorized member of the firm.

RESPONSE DATE:

In order to be considered for selection, proposals must arrive at the Department of Finance on or before 4 p.m. CT, Friday, October 15, 1993. Responders mailing proposals should allow for normal mail delivery time to ensure timely receipt. Late proposals will be returned unopened to the Responder. Machine facsimile proposals will not be accepted.

RESPONSES:

In order to be considered for selection, Responders must submit a complete response to this RFP. All conditions printed on the RFP form are hereby made a part of the conditions under which the proposal is submitted.

RESPONSE FORMAT AND CONTENT:

1. The following information should be attached and made a part of the proposal. Failure to do so may result in disqualification.

Professional, Technical & Consulting Contracts

a. A detailed statement outlining the proposal for meeting the State's lease financing needs including a specific discussion of any restrictions on types of equipment Responder will finance under the program, and a discussion of procedures for setting interest rates.

b. Names, background and qualification for project personnel.

c. A list of similar projects successfully completed in the past three (3) years.

d. A sample payment schedule. Using the interest rate scale from October 1, 1993, assume \$100,000 piece of equipment to be financed over four years.

e. Affirmative Action Certificate of Compliance (see below).

Proposals should be prepared simply and economically, providing a straightforward, concise description of Responder's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

The proposal may not exceed fifteen (15) pages including the cover letter and any appendices.

AFFIRMATIVE ACTION CERTIFICATE OF COMPLIANCE:

Each Responder must submit a copy of its Affirmative Action Certificate of Compliance issued by the State of Minnesota Department of Human Rights, pursuant to *Minnesota Statutes*, Section 363.073, or provide a signed and notarized statement in writing that the Responder has not had more than 20 full time employees at any time during the twelve month period immediately preceding the date of the bid. A copy of its Certificate of Compliance or the notarized statement must be included with the bid or submitted to the office of the Commissioner of Finance prior to the submission deadline. Questions or further information regarding this certificate may be directed to Christie B. Eller, Assistant Attorney General, at (612) 296-9421.

VII. PROPOSAL SELECTION:

A. Nature of Procurement

This procurement is undertaken by the State pursuant to the provisions of *Minnesota Statutes* 16B.17. As such, it is not governed by strict competitive bidding requirements frequently associated with the purchase of supplies and materials by the state.

B. Selection Criteria

The Department of Finance will select the firm whose proposal demonstrates clear capability to best fulfill the purposes of the RFP, consistent with the conditions stated herein and in a cost effective manner.

The selection criteria are: (not necessarily listed in priority order)

a. Adequacy and completeness of proposal;

b. Responder's understanding of and approach to the project;

c. Compliance with the provisions of the RFP;

d. Responder's qualifications, including financial capacity to perform;

e. Previous experience;

f. Cost;

g. Interest rate and method of determining it; and

h. How this lease purchase will be sold by the Responder. As stated in this RFP, the State does not want this lease purchase financing to be sold by the winning Responder in a public offering of certificates of participation.

Any or all Responders may be requested to appear in person at the Department of Finance offices to explain their understanding and approach to the project and/or respond to the questions from representatives of the State.

After reviewing the responses to the RFP, an award will be made by the Department of Finance. The successful Responder will be notified by October 22, 1993, of the Department's decision.

The State reserves the right to reject any or all proposals or to award in whole or in part, and to negotiate separately, if deemed to be in the best interest of the State to do so.

VIII. ADDITIONAL PROPOSAL AND CONTRACT REQUIREMENTS

A. Duration of Offer

All proposals must indicate that they are valid for a minimum of ninety (90) calendar.

B. Public Status of Proposals Submitted

Pursuant to Minnesota law, all proposals submitted in response to this RFP shall become the property of the State. Such proposals shall also constitute public records and shall be available for viewing and reproduction by any person.

IX. SCOPE OF SERVICES

The State has acquired, from time to time, various items of equipment through the use of lease-purchase transactions. In 1985, and again in 1987, the State elected to consolidate the equipment financing needs of certain of the Internal Service Funds within the Department of Administration by establishing a Master Lease program involving the issuance of publicly offered Certificates of Participation. Each issue was designed to fund the expected needs of the affected agencies for the remainder of the then current biennium.

In the administration of the Master Lease program, the State has recognized that projections relating to the timing and cost of anticipated future equipment purchases are often based on best estimates rather than from procurement contracts. This, in turn, may result in either over or under funding the actual costs of a particular item of equipment and/or repayment schedules commencing prior to the delivery of delayed purchases. In 1989, and again in 1991, in order to avoid these types of situations, the State initiated a Master Lease program which funded equipment purchases at the time of delivery. It is our intent to enter into a similar agreement for the current 1994-1995, Master Lease program.

The State will enter into a Master Equipment Lease Purchase Agreement (the "Lease") with a Responder which will specify the terms and conditions of the transaction and will essentially be a "Net Lease", except that rental payments will be subject to annual appropriations. Takedowns under the agreement will be limited to no more than two per month and the funds drawn will be used to pay the cost of equipment to vendors directly or, in limited circumstances, to reimburse the State for payments it has made to vendors. In addition, a portion of each takedown may cover reasonable transaction costs incurred either by the Responder or by the State and agreed to at the outset of the transaction. Each such takedown will constitute an addendum to the Lease and such addendum will describe the leased equipment, the lease term, and will contain a separate schedule of rental payments. The term for each addendum will commence on takedown and continue for a period of time agreed to by the State and the Responder and consistent with the useful life of the assets financed.

The State is seeking a rental structure which provides for equal semi-annual payments over a term commensurate with the useful life of the equipment. Because all semi-annual payments will have a common due date in December and June of each year, the State intends to pay an initial payment of interest only for those items of equipment purchased less than 3 months in advance of a scheduled payment date, with equal semi-annual payments commencing on the subsequent payment date. Accordingly, the actual financing term for an item of equipment with a 4 year useful life, for example, might be as short as 45 months, or as long as 51 months, depending upon when, during the period between payment due dates, it is actually purchased. Responders are free to suggest any method for dealing with these variances in their rate setting mechanism, such as an adjustment for terms exceeding, or less than, the useful life of the equipment.

The State expects, however, that each Responder will quote rates that will be fixed at the time of takedown for equipment having useful lives of 3, 3½, 4 and 5 years. The rates quoted may be either firm or expressed as a percentage of, or adjustment to, any clearly identifiable published index (e.g. Delphis Hanover, Prime Rate, similar term Treasury securities, etc.). The rates thus established will then be fixed for the remaining term of each takedown.

SPECIFIC TERMS

LESSEE: The State of Minnesota, acting by and through the Commissioner of Finance and the Commissioner of Administration.

LESSOR: The provider of the Master Lease Financing or a mutually acceptable nominal lessor.

AMOUNT: \$11,357,000*, to be available in monthly takedowns over 12 months.

\$11,223,000*, to be available as an option over an additional 12 months.

***Actual use may vary, but in no event shall exceed by more than 110 percent of this amount.**

INITIAL TERM: 12 months, with an option to extend for an additional 12 months on mutually agreeable terms.

PREPAYMENT: The State wishes to be able to pre-pay at any time. If any pre-payment penalty is suggested it must be clearly stated as to the conditions under which it would apply.

ASSIGNMENT: Neither the Master Equipment Lease Purchase Agreement, nor the obligations of Lessee to make payments, may be assigned without the written consent of the Lessee. (See Article VII of the attached Master Equipment Lease Purchase Agreement.)

PROPOSALS REQUESTED

Each party responding to this Request for Proposal is asked to indicate agreement with this outline or clearly stipulate any desired changes or additions to the terms mentioned herein. Furthermore, each Responder must stipulate the method for determining the rentals for the term of the transaction.

Each Responder must also indicate in an itemized list, all costs associated with the transaction that are expected to be paid by the State either as a direct (upfront) payment or as an addition to the equipment cost for purpose of determining ongoing rentals. These costs should include commitment fees, legal counsel, trustee fees and all similar items of cost, if any.

Professional, Technical & Consulting Contracts

Responders are also permitted to submit alternative proposals reflecting methods of meeting the State goals as generally outlined herein. Any alternative proposal must contain sufficient detail to enable the State to readily compare such alternatives to the proposal sought by this request.

The State will expect the successful respondent to enter into a Master Equipment Lease Purchase Agreement in substantially the form attached hereto. Modifications, if any, should therefore be limited to those necessary to effect the terms of each proposal and should be clearly identified and articulated as part of each proposal. Particular attention should be paid to Articles III, IV, V and VII in this regard.

In order to comply with *Minnesota Statutes*, the amount of financing sought by this RFP must conform to the needs determined by the Equipment Demand Survey conducted by the Department of Administration (copy attached). Because actual purchase requirements may vary from expectations in terms of timing and actual cost, and types of specific equipment, the Master Equipment Lease Purchase Agreement provides that the State may draw in excess of the committed amounts for each term by up to 110% of the stated commitment (see Section 3.1). Because all responses will be evaluated on the basis of the stated commitment amount, additional costs, fees or other restrictions, if any, associated with draws in excess of the stated commitment amount must be separately and clearly stated in the response to this RFP for inclusion in Section 3.1.

Section 3.1 will also be modified to the extent necessary to set out the conditions precedent, including additional fees or costs, if any, for exercise by the State of its renewal and extension option. The State intends to takedown funds twice each month.

Formulas for establishing interest rates should be clearly articulated for inclusion in Section 3.5. Commitment fees, refundable deposits or other consideration, if any, to be paid to the Lessor as consideration for providing the commitment should be clearly identified as such and will be included in Section 4.1.

Although it is not the intention of the State to pre-pay the financing contemplated herein, the State nevertheless wishes to retain the option to pre-pay at any time. Prepayment restrictions, including penalties, if any, should therefore be clearly discussed in each proposal for inclusion in Section 5.15 (e) and Section 7.3. Specifically exempt from penalty are pre-payment as provided for in Sections 5.19, 5.20 and 5.21.

Any respondent contemplating a subsequent sale or transfer of the Lessor's interest, including the right to receive payments, should pay particular attention to Sections 7.1 and 2.2. Any proposal anticipating such an assignment should contain details as to the method of effecting the transfer, the expected role of the State, if any, the costs associated therewith and a request for the specific approvals to be required of the State pursuant to Section 7.1. **However, all Responders should be aware that the State will reject as non-responsive, any proposal which contemplates the issuance, and/or subsequent reoffering of publicly offered certificates of participation. The State will not accept any changes to the Lease Purchase Agreement to allow or facilitate the public sale of certificates of participation nor will the State comply with SEC rule 15 (c) 2-12.**

At the time of closing the State will furnish to the Responder the customary closing documents, including a Certificate of Lessee, Opinion of Counsel and an Arbitrage and Tax Certificate. The forms of these closing documents will be substantially in the form in the attached lease. The form of opinion of the Counsel is included as Exhibit E to the attached Lease Purchase Agreement. The opinion of the Counsel will address the authorization, validity and enforceability of the Agreement but will not express an opinion as to whether or not the rental payments are includable in gross income for federal income tax purposes, or in taxable net income of individuals, estates or trusts for Minnesota income tax purposes.

Department of Health

Maternal and Child Health Division

Minnesota Children with Special Health Needs Section

Request for Proposals for Diabetes in Youth Continuing Education

Purpose: Minnesota Children with Special Health Needs [MCSHN] requests proposals for the health care management of children with diabetes from organizations which engage in the provision of both health care and education related to the clinical management of diabetes in children. Such continuing education programs are to be held in six designated regions of the state for two consecutive years, for physicians and other health professionals as well as families of children with diabetes.

The contractor's duties shall include the establishing of objectives for a continuing education program focused on management issues related to diabetes in children; assembling a team to include a pediatric endocrinologist, family counselor/psychologist, diabetes nurse specialist, and diabetes nutrition specialist; developing a continuing education programs for health professionals and families around the issues of management of diabetes in children; scheduling the program in six designated areas of the state, and arranging

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for the assembled team to provide such programs; publicizing availability of the six programs; providing the continuing education programs in the six sites; conducting evaluations of the program in each of the six sites; and, preparing a summary report.

Duration: December 1, 1993 to September 30, 1995.

Amount: The total obligation of the state for all compensation and reimbursements to contractor shall not exceed from eighteen thousand dollars to twenty two thousand dollars per contract year.

Applications: The complete Request for Proposals packet, including the more detailed request for proposals and the criteria for review of applications is available upon request from Nancy Vanderburg at the address and phone number below.

Deadline: Three copies of the completed proposal must be submitted by **4:30 p.m. Friday, October 29, 1993**, to:

Nancy Vanderburg, Nurse Consultant
Minnesota Department of Health
Minnesota Children with Special Health Needs
717 Delaware Street S.E., P.O. Box 9441
Minneapolis, Minnesota 55440
621/623-5156

Department of Human Services

Family and Children's Services Division

Notice of Request for Proposals for Child Care Service Development Grant Funding

The Department of Human Services is soliciting proposals from public and private nonprofit agencies and for-profit child care services organizations to develop, create, expand and improve child care services in Minnesota through funding from the State's Child Care Services Grant Funds.

The purpose of this Request for Proposals is to solicit licensed providers of child care, resource and referral programs, corporations or public agencies or any combination thereof, to submit child care service development proposals in the following areas:

- a. facility improvements including, but not limited to, improvements to meet licensing requirements and expand licensed capacity;
- b. start-up costs and interim financing; and
- c. staff training and development costs.

The distribution of funds to programs applying for this service development grant fund is determined strictly in accordance with the formula set forth in *Minnesota Statutes*, chapter 256H.22, subdivision 2. The total amount available statewide is \$600,000. Proposals will be reviewed and recommended for funding by a regional advisory committees appointed by the Commissioner and representing the following constituent groups: family child care providers, child care centers, parent users, health services, social services, public schools, and other citizens with demonstrated interest in child care issues.

Selection of proposals for facility improvement, program expansion, and start-up or interim financing will each be made based on the following criteria:

1. 30%—The extent to which new licensed child care facilities are created, existing facilities are expanded, or child care programs are improved, and the extent to which regional priorities for service development grants are met.
2. 20%—Documentation of organizational capability.
3. 20%—The extent to which the budget is reasonable and well documented.
4. 10%—Degree of demonstrated need: i.e. child population, availability of licensed providers, availability of specialized care, unique local needs not identified by the regional priorities, etc.
5. 10%—Evidence of commitment to continue to provide child care services after expiration of the grant.
6. 10%—The extent to which *quality* child care development services are supported: i.e. program is accredited or is in the process of receiving accreditation; other supportive child development services are offered; adequate child care worker salaries and good working conditions are a demonstrated priority.

Proposals for Child Care Staff Training and Development Grants will be reviewed and recommended for funding based on the following criteria:

1. 20%—Upgrading staff qualifications to meet licensure requirements.

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2. 20%—Recruitment or retention of providers.
3. 20%—Documentation of organizational capability.
4. 15%—Extent to which the line item budget is reasonable and well documented.
5. 10%—Documentation of need.
6. 10%—Evidence of applicant's cooperation with the county social services agency and the child care resource and referral agency in the area in which training will take place.

For complete information regarding the Request for Proposals, contact Jennette Hanson, Child Care Grants Administrator, at (612) 296-5590, Department of Human Services, Family and Children's Services Division, 444 Lafayette Road, St. Paul, MN 55155-3832.

Proposals are due no later than December 15, 1993.

Department of Human Services

Notice of Request for Proposal for Implementation of Minnesota Chore Corps Statewide Operations

NOTICE IS HEREBY GIVEN that the Interagency Long Term Care Planning Committee, through the Department of Human Services, is seeking proposals concerning implementation of statewide functions of Minnesota Chore Corps. Specifically, contractors will be asked to:

- A. Implement the statewide Minnesota Chore Corps functions.
- B. Provide support to local Chore Corps demonstration projects.
- C. Evaluate the effectiveness of the Chore Corps operations through market research.
- D. Prepare a strategy for statewide implementation of Chore Corps.

The estimated amount of the contract will not exceed one hundred fifty thousand dollars (\$150,000) for an eighteen month period beginning approximately January 1, 1994 through June 30, 1995. A copy of the full Request for Proposal may be obtained by contacting the person listed below. A bidder's conference is scheduled for Monday, October 18, 1:30-3:30 p.m., in Rooms 1-A&B, Department of Human Services Building, 444 Lafayette Road, St. Paul. Responses must be received by November 5, 1993.

Direct inquiries to:

Pamela Byers, SAIL Coordinator
444 Lafayette Road
St. Paul, Minnesota 55155-3844
(612) 297-7510

Non-State Public Bids and Contracts

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

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

Minnesota Power

Notice of Acid Rain Program Designated Representative

Pursuant to *Code of Federal Regulations* Title 40, Part 72, notice is hereby given that I am the Designated Representative for the following Acid Rain Program affected sources at Minnesota Power; Clay Boswell Energy Center Units 1, 2, 3 and 4 (unit 4 is owned by Minnesota Power and Wisconsin Public Power, Inc., SYSTEM), Syl Laskin Energy Center, and Hibbard Steam Generating Plant. If there are questions, call Deborah A. Amberg at (218) 723-3930.

Warren L. Candy
Director
Clay Boswell Energy Center
Minnesota Power



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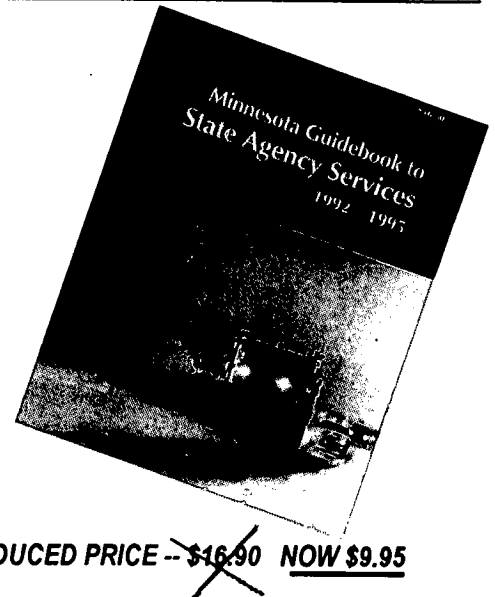
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Minnesota Manufacturer's Directory 1993

Lists companies alphabetically, by community, and by type of product manufactured. Includes name, address, phone number, sales volume, market products, area sales, marketing and purchasing. Also FAX numbers, data processing managers and chief engineers, when available. 742 pp. **Stock No. 40-2-SR \$95.00**

Healing Arts (Physician's) Directory 1991

Names and addresses in alphabetical order for licensed chiropractors, osteopaths, optometrists, podiatrists and registered physical therapists. 426 pp. **Stock No. 1-1-SR \$19.95**

State Agency Telephone Directory 1992

This directory lists all state of Minnesota government agencies. Features a greatly expanded FAX section with over 250 numbers, alphabetical employee listings, a classified section, organized by department, and "yellow pages" listing state offices in greater Minnesota. 296pp. **Stock No. 1-87-SR \$12.95**
(Next edition not due until early '94.)

Airport Directory 1993

List of airports throughout the state. Approaches, rivers, all detailed markings, and much more. 178 pp. (pocket-size) **Stock No. 1-8-SR \$5.95**

Law Enforcement Directory 1993

Directory of state law enforcement agencies, sheriffs and municipal law enforcement agencies. 51pp. **Stock No. 1-6-SR \$7.00**

Directory of Chemical Dependency Programs '92-93

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