

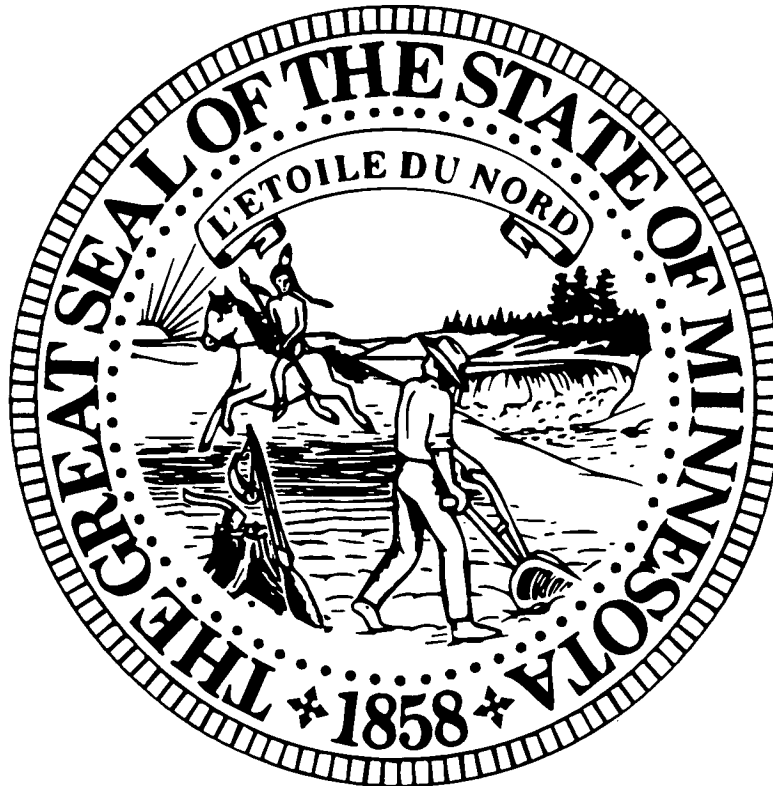
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**Rules and Official Notices Edition**

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**Pages 957-1006**

# 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-consulting contracts, non-state bids and public contracts and grants.

A *Contracts Supplement* is published Tuesday, Wednesday and Friday and contains bids and proposals for commodities, including printing bids.

### Printing Schedule and Submission Deadlines

Vol. 20 Issue Number	PUBLISH DATE	Deadline for both Adopted and Proposed RULES	Deadline for: Emergency Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical-Consulting Contracts, Non-State Bids and Public Contracts
# 18	Monday 30 October	Monday 16 October	Monday 23 October
# 19	Monday 6 November	Monday 23 October	Monday 30 October
# 20	Monday 13 November	Monday 30 October	Monday 6 November
# 21	Monday 20 November	Monday 6 November	Monday 13 November

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Contact: Senate Public Information Office (612) 296-0504  
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**Session Weekly**—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions.

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Contact: House Information Office (612) 296-2146  
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# 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.

## Department of Children, Families, and Learning

### Proposed Permanent Rules Relating to Graduation Standards

#### Notice of Hearing

**Introduction.** The State Board of Education intends to adopt rules after a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, section 14.131 to 14.20. The Agency will hold a public hearing on the above-entitled rules at: the Minneapolis Convention Center, 1301 Second Avenue South, Room: 102-B,C,D,E, Minneapolis, Minnesota, on December 12 and 13, 1995 commencing on each date at 9:00 a.m. and reconvening for an evening session at 7:00 p.m. on December 12. The Agency witnesses will testify the morning of December 12. The hearing will continue until all interested persons have had an opportunity to be heard; 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 may be submitted without appearing at the hearing.

**Administrative Law Judge.** The hearing will be conducted by:

George A. Beck, Administrative Law Judge  
Office of Administrative Hearings  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138  
Telephone: 612-341-7600  
FAX 612-349-2665  
TDD 612-341-7346

The rule hearing procedure is governed by *Minnesota Statutes* sections 14.131 to 14.20 and by the rules of the Office of Administrative Hearings, *Minnesota Rules* 1400.0200 to 1400.1200. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge.

**Subject of Rule, and Statutory Authority, and Fiscal Note.** The subject of the hearing will be the proposed rules relating to Graduation Standards, proposed *Minnesota Rule* Parts 3501.0010 to 3501.0180, which would require students entering 9th grade in 1996 and thereafter to demonstrate competency in the basic requirements of reading and mathematics in order to be eligible for a high school diploma. The proposed rules are authorized by *Minnesota Statutes* section 121.11 Subd. 7.c. A copy of the proposed rules is published in the *State Register* and attached to this Notice as mailed. Additional copies will be available at the door on the date of the hearing. If you have any questions on the content of the proposed rules, the Agency contact persons are: Iris McGinnis, Director of Graduation Standards, 612-282-6279 or Mary Lynne McAlonie, Rulemaking Coordinator, 612-282-6480, Department of Children, Families and Learning, 732 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101.

The agency estimates that for the two years immediately following adoption of this rule the estimated cost of implementing the rule for local public bodies will exceed \$100,000 in either of those first two years. The agency estimates that the cost to local school

**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

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districts on a per pupil basis is \$10.96 in school year 1996-97 and \$16.05 in 1997-98. The total estimated cost to all school districts in the state is \$10.2 million in 1996-97 and \$15.2 million in 1997-98. The estimate is based on "Projected Costs to School Districts in Minnesota Associated with Implementing Phase I of the Graduation Rule", a study conducted for the Minnesota Department of Education by Augenblick, Van de Water and Myers, a copy of which is available for viewing at the Department of Children, Families and Learning.

**Statement of Need and Reasonableness.** A Statement of Need and Reasonableness is now available for review at the Department of Children, Families and Learning and at the Office of Administrative Hearings. This statement contains the justification for the proposed rules. The Department of Children, Families and Learning will provide one copy per request at no charge. Additional copies will be available at the hearing. The statement may be viewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

**Public Comment.** 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 before the close of the hearing record. All evidence presented should relate to the proposed rule. You may also submit 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. Following the comment period, there is a five working day response period during which the agency and any interested persons may respond in writing to any new information submitted. No additional evidence may be submitted during the five-day response period. All comments 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. All comments or responses received will be available for review at the Office of Administrative Hearings.

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 views or written data to the Agency contact person at the address stated above.

**Accommodations.** If you need an accommodation to make this hearing accessible, please contact one of the contact persons at the address or telephone number listed above.

**Modifications.** The proposed rules may be modified as a result of the rule hearing process. Modifications must be supported by data and views presented during the rule hearing process, and the adopted rules may not be substantially different than the proposed rules. If the proposed rules affect 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 ask to be notified of the date when the judge's report will become available, after which date the Agency may not take any final action on the rules for a period of five working days. You can make this request at the hearing or in writing to the administrative law judge. You may also ask to be notified of the date on which the agency adopts the rule and files it with the secretary of state, and can make this request at the hearing or in writing to the agency contact person stated above.

**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 South, Centennial Building, 658 Cedar Street, St. Paul, Minnesota, 55155, telephone: 612-296-5148.

Dated: 16 October 1995

Executive Director  
State Board of Education

### Rules as Proposed (all new material)

#### 3501.0010 PURPOSE.

The purpose of parts 3501.0010 to 3501.0180 is to establish statewide standards that define what a Minnesota public high school graduate should know and be able to do to function effectively as a purposeful thinker, effective communicator, self-directed learner, productive group participant, and responsible citizen.

#### 3501.0020 SCOPE.

Parts 3501.0010 to 3501.0180 govern the graduation standards that Minnesota public schools must require for a high school diploma for all students who enter ninth grade in 1996 or a subsequent year.

#### 3501.0030 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 3501.0010 to 3501.0180 have the meanings given them in this part.

Subp. 2. **Accommodation.** "Accommodation" means an adjustment in a testing condition, such as the setting for or scheduling of the test, or a change in the method of administering a test. An accommodation does not compromise the security or the confidentiality of the test, does not alter the meaning of the score, or render the student's score incomparable to the scores of those stu-

dents who took the test under standard conditions. Among accommodations is providing a student with the same test in a large-print version.

Subp. 3. **Degrees of Reading Power Index of Readability or DRP.** The "Degrees of Reading Power Index of Readability" or "DRP" means the Degrees of Reading Power Index of Readability described in the DRP Teacher's Manual: Primary and Standard Test Forms issued by Touchstone Applied Science Associates (TASA), Inc. (Brewster, New York, 1989). This document is incorporated by reference and is available through the Minitex interlibrary loan system. This index is not subject to frequent change.

Subp. 4. **Department.** "Department" means the Department of Children, Families, and Learning.

Subp. 5. **District.** "District" means a school district.

Subp. 6. **Exemption.** "Exemption" means a temporary or permanent waiver of the requirement that a student take a test in the basic requirements.

Subp. 7. **Individualized education plan or IEP.** "Individualized education plan" or "IEP" means a written statement developed for a student eligible for special education and services pursuant to *Minnesota Statutes*, section 120.17 and Public Law Number 101-476, the Individuals with Disabilities Education Act.

Subp. 8. **Locally adopted tests.** "Locally adopted tests" means a test of a basic requirement that is written according to the specifications for the state test and adopted by a school district as the local test of the basic requirement.

Subp. 9. **Modification.** "Modification" means an adjustment of a test that results in changing the standard for a particular student. Among adjustments are: a modification of only part of a test, a change in test questions, and a change in the performance standard.

Subp. 10. **Parent.** "Parent" means the person or persons having legal custody of a child.

Subp. 11. **Public schools.** "Public schools" means all public schools as defined in *Minnesota Statutes*, section 120.05, and includes, but is not limited to, public school districts, charter schools, the state academies for the deaf and the blind, and the Center for Arts Education.

Subp. 12. **Section 504 accommodation plan.** "Section 504 accommodation plan" means the defined appropriate accommodations or modifications that must be made in the school environment to address the needs of an individual student with disabilities. This section of the federal Rehabilitation Act of 1973, Public Law Number 91-230 as amended in Public Law Number 101-476, extends protection to a much broader student population than just those students with IEPs.

Subp. 13. **State test.** "State test" means a test of a basic requirement that has been developed using the specifications created for a statewide standard in reading or mathematics. The test shall be designated by the department as the official state test which serves as the basis for validating all other testing options.

Subp. 14. **Statewide standards.** "Statewide standards" means statements of what a student should know and be able to do. Statewide standards are concerned with the knowledge that a student should acquire, the concepts and processes a student should master, and the minimum level of competency a student should develop in the course of the student's prekindergarten through grade 12 experience.

Subp. 15. **Test specifications.** "Test specifications" means statements of the basic requirements that tests must include and how tests are designed. The specifications define the required content, format, level of difficulty, types of items, and length of the tests.

#### **3501.0040 STATEWIDE GRADUATION STANDARDS.**

Subpart 1. **Basic requirements.** The basic requirements for mathematics and reading are established in this chapter. The statewide standards for mathematics are specified in subpart 2 and the statewide standards for reading are specified in subpart 3.

To qualify for a high school diploma, a student shall demonstrate competency in the statewide standards for mathematics and reading through one of the testing options in this chapter except for decisions consistent with parts 3501.0090 and 3501.0100. School districts may require higher standards in mathematics and reading than the statewide standards.

Subp. 2. **Statewide standard in mathematics.** To meet the basic requirement in mathematics, a student shall demonstrate the ability to solve mathematical problems derived from situations commonly encountered in adult life. Among common situations is the estimation of distance traveled when the elapsed time and average rate are known.

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## Proposed Rules

Subp. 3. **Statewide standard in reading.** To meet the basic requirement in reading, a student shall demonstrate the ability to read and comprehend English passages representative of widely circulated material commonly encountered in adult life. Among widely circulated material is a newspaper feature article.

### 3501.0050 TESTING FOR STATEWIDE STANDARDS IN BASIC REQUIREMENTS.

Subpart 1. **School district testing options.** A school district shall test for competency in the statewide standards in basic requirements by using:

- A. a state test;
- B. one of the state-approved nationally normed, commercially published tests; or
- C. a local test.

The district shall use one particular form of a test no more frequently than once in three school years for the same group of students.

Subp. 2. **Offering tests in basic requirements.** A district shall not offer the test of a basic requirement before grade 8 but shall offer it no later than grade 10. Once a test has first been offered to a group of students, the district shall continue to offer a test of that basic requirement to that group of students at least once a year.

Subp. 3. **Additional testing opportunities.** A district shall establish a process for additional testing of students, who by April 1 of their anticipated graduation year have not passed one or more of the basic requirement tests.

The process shall include:

- A. how a parent, student, or both can request:
  - (1) an additional opportunity to take basic requirement tests; and
  - (2) testing accommodations;
- B. the procedure that a district shall use to act on a request in item A; and
- C. how a parent, student, or both can appeal the district's action under item B.

In addition to the regularly scheduled annual availability of the state tests, the state tests shall also be made available by the department at a district's request for one additional retesting of seniors.

Subp. 4. **Transfer students.** A student transferring into a district shall not be required to take a test of a basic requirement if the student's former school record verifies that the student has already passed a test of that basic requirement consistent with this part. This subpart applies even if the student transfers into a district that has higher standards than the statewide standard in the basic requirement.

### 3501.0060 STATE TEST OPTION.

Subpart 1. **District use of state test.**

- A. The department shall establish and maintain state tests in the basic requirements.
- B. When a district uses a state test, it shall:
  - (1) accept as final and conclusive the department's determination on the content of the test, the scoring of the answers, and the determination of the minimum passing score; a district may use other test options on subsequent testing occasions;
  - (2) administer the state test according to the standard conditions for administration that shall be provided to the district with each state test of basic requirements;
  - (3) return the administered state test to the state for scoring; and
  - (4) adopt a passing score no lower than the passing score given in part 3501.0170 for that basic requirement test.

Subp. 2. **Specifications for state test of mathematics.** The state test of mathematics shall assess the statewide standard in mathematics by including the topics described in items A to H:

- A. problems involving whole numbers, fractions, decimals, and integers; for example, finding the change from a \$20 bill after purchasing two items of known cost;
- B. problems involving percents, rate, ratios, and proportions; for example, determining which size of a grocery item represents the best buy;
- C. problems using concepts of number sense, place value, and number relationships to compare, order, and determine equivalence of whole numbers, fractions, decimals, percents, and integers; for example, determining which of two numbers is larger if one is in fraction form and one in decimal form;



D. problems using estimation; for example, estimating the approximate distance traveled when the elapsed time and average rate are known;

E. problems applying measurement concepts; for example, using a ruler to determine the length of the side of a figure;

F. problems in reading, interpreting, and using one- and two-dimensional graphic forms to analyze data, identify patterns, and make predictions; for example, using a table to determine in which month a show had the highest attendance;

G. problems using elementary concepts of probability and statistics; for example, finding the average of five bowling scores; and

H. problems applying geometric and spatial relationships; for example, finding the total number of boxes stacked in a display.

A student shall be permitted to use a calculator on the state test of mathematics.

Subp. 3. **Specifications for state test of reading.** The state test shall assess the statewide standard in reading. The test shall be written according to items A to D.

A. Test questions shall test reading comprehension as an integrated skill, with no testing of subskills or strategies.

B. The test shall be composed of passages of English nonfiction prose that are either narrative or expository.

C. Passages shall be selected from published readings commonly used by adults as sources of information.

D. Passages shall have a level of difficulty measured by the Degrees of Reading Power Index of Readability. The total test shall have an average difficulty of at least 64 DRP units.

**3501.0070 NATIONALLY NORMED, COMMERCIALY PUBLISHED TEST OPTION.**

A. A district may choose a test from the nationally normed, commercially published tests that have been reviewed and approved by the department according to the criteria in item D. The department shall publish the list of approved tests annually by August 1.

B. A district shall set the passing score on the selected nationally normed, commercially published test to be comparable to the state set passing score on the state test in the same basic requirement as follows:

(1) the first time the commercially published test is given to students, the state test in the same basic requirement shall also be given within the same school year to the same students;

(2) the state test shall be scored by the state;

(3) the statistical correlation of scores of students in that district who have taken both tests shall be no less than .70;

(4) the passing score of the commercially published test shall be set at the point at which the percent of the students who pass the commercially published test is the same as or less than the percent of students who have passed the state test;

(5) if the state or the commercially published test changes, a district shall repeat the steps in subitems (1) to (4) the next time the commercially published test is administered to a new group of students; and

(6) at a district's request, the department shall assist a district with less than 200 scores at a grade level with the statistical analysis required in subitem (3) by combining those scores with similar sets of scores from other districts to create a large enough number of scores to analyze.

C. A district may choose to recognize as passing a score at or above the 75th national percentile on any of the nationally normed, commercially published tests on the state-approved list.

D. The following criteria shall be used by the state to review and approve nationally normed, commercially published tests in mathematics or reading:

(1) 75 percent of the specifications for the state test in mathematics under part 3501.0060, subpart 2, are met by the commercially published mathematics test or 75 percent of the test items on the commercially published reading test meet the specifications for the state test in reading under part 3501.0060, subpart 3, items A and B;

(2) the publisher's stated intention for the instrument conforms with the district's use of the instrument;

(3) there is published evidence of instrument reliability of at least .80 or higher;

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## Proposed Rules

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(4) there is published evidence for the commercially published test of instrument validity that cites research and development processes that support or contribute to construct validity;

(5) there is published evidence of norming data and procedures to show that the norming population was appropriate for the type of students taking the test; and

(6) there is a current technical report or manual on development of the testing instrument, the uses of the instrument and analyses of instrument data.

### 3501.0080 LOCAL TEST OPTION.

Subpart 1. **Adoption of local test.** A district may adopt its own test for the statewide standards in the basic requirements providing that the conditions in subpart 2 are met.

Subp. 2. **Local test.** The local test must measure the standards for mathematics and reading as specified in part 3501.0040, subparts 2 and 3, respectively.

A. The test must be written according to state test specifications for the content and level of difficulty of the test items in mathematics and reading specified in part 3501.0060, subparts 2 and 3, respectively.

(1) The state test specifications for local tests of mathematics shall include those specified in part 3501.0060, subpart 2, and the following:

(a) the total test shall contain at least 40 items;

(b) test items shall represent applications to realistic situations;

(c) tests may be multiple choice or may require students to supply answers;

(d) incorrect options on multiple choice items shall reflect plausible errors in concept or procedures, represented by the problem; and

(e) the use of a calculator by the student may be permitted.

(2) The state test specifications for local tests of reading include those specified in part 3501.0060, subpart 3, and the following:

(a) each passage shall contain at least 500 words;

(b) each passage shall represent a difficulty level of at least 60 DRP units;

(c) each test shall contain at least four reading passages and no fewer than 40 questions;

(d) narrative passages shall not compose more than 25 percent of the passages in each test;

(e) at least 60 percent of the test questions shall require a student to show knowledge of material that is explicitly stated in the test. This category shall include questions on main ideas, supporting ideas, and may include meanings of words from context. At least 30 percent of the test questions shall require students to draw understanding that is not explicitly stated in the text, but must be inferred by the reader. This category may include identifying the author's perspective, drawing conclusions, or distinguishing between facts and opinions; and

(f) the questions and answers options must be phrased in words different from those of the reading passage.

B. The passing score on the local test is determined through the process established in subitems (1) to (4) for determining a score comparable to the passing score on the state test in the same basic requirement. The district shall set the passing score on the local test as follows:

(1) the first time the local test is given to students, the state test in the same basic requirement shall also be given in the same school year to the same students;

(2) the state test shall be scored by the state;

(3) the statistical correlation of scores of students in that district who have taken both tests shall be no less than .70;

(4) the passing score of the local test shall be set at the point at which the percent of students who pass the local test is the same as or less than the percent of students who have passed the state test; and

(5) if the state test changes or if a district changes its local test, a district shall repeat the steps in subitems (1) to (4), at the next time the local test is administered to a new group of students.

Subp. 3. **Level of knowledge.** The district may require more knowledge, a higher level of difficulty, or both, than the state test specifications if the district has established graduation standards that are higher than the statewide graduation standards.

**3501.0090 STUDENTS WITH INDIVIDUALIZED EDUCATION PLANS OR SECTION 504 ACCOMMODATION PLANS.****Subpart 1. Considerations for students with IEPs or section 504 accommodation plans.**

A. The IEP or section 504 accommodation plan for a student with a disability shall identify one of the following decisions for each of the basic requirements:

- (1) the student is expected to achieve the statewide standard with or without testing accommodations;
- (2) the student is expected to achieve the statewide standard at an individually modified level of difficulty; or
- (3) the student is exempt from the statewide standard.

An exemption from the statewide standard shall be granted to a special needs student when the student cannot demonstrate the required degree of learning with appropriate accommodations or modifications if:

(a) the student's IEP or section 504 accommodation plan does not and never has included the requirements on which the tests are based; or

(b) the student is enrolled in special education classes for the subject matter included in the test, but the student's IEP or section 504 accommodation plan does not include a majority of concepts tested.

B. Adoption of modifications or exemptions for a student as stated in item A, shall occur concurrently with the adoption of transition goals and objectives as required in *Minnesota Statutes*, section 120.17, subdivision 3a, clause (1).

**Subp. 2. Testing students with IEPs or section 504 accommodation plans.**

A. All students shall be tested under standard conditions as specified by the developer of the test except those students whose IEPs specify other decisions consistent with subpart 1, item A.

B. Decisions regarding appropriate testing conditions including a decision to provide accommodations for a student with special needs shall be made by the local school district through the IEP process or the section 504 accommodation plan process and shall be reviewed annually.

C. Where subpart 1, item A, subitem (2), applies, the student's IEP or section 504 accommodation plan shall define an appropriate assessment of the statewide standard at a modified level of difficulty. Achievement of the individually modified standard shall be certified only through documented student performance of the defined assessment.

**3501.0100 TESTING CONSIDERATIONS FOR LIMITED ENGLISH PROFICIENT (LEP) STUDENTS.**

Subpart 1. **Scope.** This part applies to individuals whose first language is not English and whose test performance may be negatively impacted by lack of English language proficiency.

Subp. 2. **District process.** Each district shall establish a process for determining whether individual students whose first language is not English shall take basic requirements tests under standard test conditions, with language accommodations, with language translation of the mathematics test, or be temporarily exempted from testing. Parents of LEP students, teachers of LEP students, and district personnel responsible for testing shall be involved in establishing this process.

Subp. 3. **Temporary exemption.** A student may be temporarily exempted from participation in testing if the student has been enrolled for three or fewer years in a school in which the primary language of instruction is English. If the student is temporarily exempted, the exemption shall be reviewed annually according to the process in subpart 2.

Subp. 4. **Test of reading.** Language accommodations and language translations to basic requirements tests shall not be applied to the testing of reading. Students shall demonstrate English language competence in the testing of reading.

Subp. 5. **Language translations.** A district may translate the mathematics test into a language other than English.

Subp. 6. **Learning opportunities.** Part 3501.0110 applies to students granted considerations under this part.

**3501.0110 OPPORTUNITIES TO LEARN AND REMEDIATION.**

A school district's curriculum shall include opportunities for all students to learn the basic requirements. At least two years before the anticipated date of the student's graduation, the district shall develop a plan for remediation for students who have not passed one or more basic requirements tests except for exempt students under part 3501.0090, subpart 1, item A, subitem (3).

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### 3501.0120 REQUIRED NOTIFICATION TO PARENTS AND STUDENTS.

Subpart 1. **Written notice.** A school district shall establish and maintain a system to provide written notice to parents and students about graduation requirements.

Subp. 2. **Notice of graduation requirements.** No later than 30 working days after the date of the entrance or transfer of a student into the district during or after 9th grade, the school district shall provide to the parents and the student written notice of:

- A. the graduation requirements; and
- B. the grade in which the student shall have the first opportunity to take a test in basic requirements.

Subp. 3. **Notice of test results and remediation opportunities.** The school district shall provide no later than 90 days after a student takes a test of basic requirements, written notice to parents and the student of:

- A. basic requirement test results; and
- B. consistent with part 3501.0050, subpart 3, if the student is in the graduating year:
  - (1) the process by which a parent or student can request additional testing and testing accommodations after April 1; and
  - (2) how a parent or student can appeal the district's decision in subitem (1).

### 3501.0130 STUDENT RECORDKEEPING.

Subpart 1. **Test results.** The district shall keep a record on each student that includes:

- A. the basic requirement tests taken; and
- B. the results of the most recent basic requirement tests given.

Subp. 2. **Student progress.** Individual student progress shall be reported on a student record as described in items A to D.

A. "Pass-state level" shall be noted on the record of a student who passes a basic requirement test under standard conditions or with an accommodation. The records for students passing with an accommodation shall not be different from the records of students passing the test under standard conditions.

B. "Pass-individual level" shall be noted on the record of a student who passes a basic requirement test with a modification established in the IEP or section 504 accommodation plan in accordance with part 3501.0090.

C. "Pass-translation" shall be noted on the record of a student who passes a basic requirement test that has been translated into a language other than English and has not been validated by the state as a state test with a set passing score.

D. "Exempt" shall be noted on the record of a student who has been exempted from a basic requirement test.

### 3501.0140 TEST ADMINISTRATION.

Subpart 1. **Testing conditions.** The school district shall administer the test that the district chooses from the options given in part 3501.0060 for testing a basic requirement under standard testing conditions defined by the developer of the particular test using the directions provided with the test. Test administration with accommodations or modifications to standard testing conditions shall occur only in accordance with part 3501.0090 or 3501.0050, subpart 3.

Subp. 2. **District testing plan.** The district board shall annually adopt and publish a basic requirement test administration plan. The plan shall be filed with the department and delivered to all households in the district by October 15 of each year. At a minimum, the plan shall include:

- A. the graduation requirements;
- B. the test options that the district chooses to use to test the basic requirements;
- C. in what grade the test of a basic requirement shall first be offered;
- D. how many opportunities a student shall have to retake tests of basic requirements during each year;
- E. the opportunities for remediation for a student who has not passed tests of the basic requirements;
- F. the process used by the district for reviewing the test items of a local test in a basic requirement to determine that the material does not offend or disadvantage any particular group;
- G. the process for requesting an additional testing opportunity and accommodations for a senior who has met all other graduation requirements but has not passed one or more basic requirements;
- H. the process for appealing the district's response to requests in item G; and
- I. how to report breaches in test security procedures to the district and the department.

**3501.0150 TEST SECURITY.**

Subpart 1. **Security requirements.** When administering tests for the basic requirements, the district shall observe the following test security measures:

- A. all test booklets, answer sheets, and test materials shall be placed in locked storage before and after the test administration;
- B. the tests, testing materials, and answer sheets are nonpublic data under *Minnesota Statutes*, section 13.34;
- C. no copies of test booklets or answer sheets shall be made; and
- D. school districts shall report any known violations of test security to the department. The department shall receive reports of violations of test security from anyone with knowledge of such an incident.

Subp. 2. **Security violations.** The department shall investigate any reported incidents of breaches in test security. The consequences of a violation in test security may include:

- A. the invalidation of test scores if a violation is found to justify serious questions about the integrity of the results of the test administration; or
- B. other reasonable sanctions that are necessary to preserve the security and confidentiality of future tests and test administrations.

**3501.0160 DISTRICT REPORTING REQUIREMENTS.**

A. The district shall report the information in item C to the department annually by October 15 in a format to be determined by the department.

B. The district shall prepare and disseminate annually by October 15 a public report of the information in item C, through the newspaper officially designated for school district notices or through publication sent to all households in the district.

C. The reports required in items A and B shall include:

(1) the number of students enrolled at each grade level 9 through 12 according to the end of the year Minnesota Automated Reporting Student System (MARSS) report;

(2) the number of students at each grade level 9 through 12 passing each basic requirement at the state standard level;

(3) the number of students at each grade level 9 through 12 passing each basic requirement at an individualized level under an IEP and a section 504 accommodation plan;

(4) the number of students at each grade level 9 through 12 passing tests in each basic requirement that has been translated into a language other than English;

(5) the number of students at each grade level 9 through 12 exempt from testing in each basic requirement; and

(6) for grade 12 of the previous year only, the number of students currently denied a high school diploma because of not passing the state standard for a basic requirement when all other graduation requirements have been met.

**3501.0170 REQUIRED DOCUMENTATION FOR PROGRAM AUDIT.**

The school district shall maintain records necessary for program audits conducted by the department. The records must include documentation that:

- A. tests used for the basic requirements comply with parts 3501.0060 to 3501.0080;
- B. the process that the district used to set the passing scores on approved commercially published tests or local tests meets the requirements of parts 3501.0070 and 3501.0080, respectively;
- C. required notifications to parents and students meet the requirements of part 3501.0120;
- D. required student records meet the requirements of part 3501.0130;
- E. the district's process for additional testing of students meets the requirements of part 3501.0050;
- F. test security procedures comply with part 3501.0150;

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## Proposed Rules

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G. local district decisions regarding testing accommodations, modifications, and granting exemptions are in compliance with parts 3501.0090 and 3501.0100;

H. the school district's curriculum and instruction provides appropriate learning opportunities in the basic requirements in compliance with part 3501.0110;

I. remediation plans for students are on file consistent with part 3501.0110;

J. the basic requirement test administration plan complies with part 3501.0140, subpart 2;

K. the documentation for students granted accommodations or exempted from testing complies with part 3501.0090;

L. the assessments and documentation of performance for students granted modifications of statewide standards comply with part 3501.0090, subpart 2, item C; and

M. the district's process for testing considerations for LEP students complies with part 3501.0100.

### 3501.0180 PASSING SCORES FOR STATE TESTS OF BASIC REQUIREMENTS.

Subpart 1. **Setting scores.** The scores in this part are established for each grade 9 class beginning with the class entering in 1996. Once set, the basic requirements passing scores shall not change for a particular group of entering grade 9 students.

Subp. 2. **Mathematics.** The passing score for the state test of mathematics is 70 percent for students entering grade 9 in 1996; is 75 percent for students entering grade 9 in 1997; and is 80 percent for students entering grade 9 in 1998 and thereafter.

Subp. 3. **Reading.** The passing score for the state test of reading is 70 percent for students entering grade 9 in 1996; is 75 percent for students entering grade 9 in 1997; is 80 percent for students entering grade 9 in 1998 and thereafter.

## Department of Labor and Industry

### Proposed Permanent Rules Relating to OSHA; General Revision

#### Notice of Intent to Adopt Rule Amendments Without a Public Hearing

The Department of Labor and Industry intends to adopt amendments to permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, §§ 14.22 to 14.28. You have 30 days to submit written comments on the proposed rules and you may also submit a written request for a hearing to be held on the rules.

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

Patricia Lorentz  
OSHA Division  
Department of Labor and Industry  
443 Lafayette Road  
St. Paul, Minnesota, 55155  
(612) 297-3254 FAX: (612) 297-2527

**Subject of Rules and Statutory Authority.** The proposed rules are amendments to the Occupational Safety and Health administrative rules, *Minnesota Rules* Chapter 5210, governing adoption of standards; discrimination against employees; contestations; inspections, citations, and proposed penalties; and variances. The proposed amendments incorporate the 1991 legislative changes to the citation contestation process, clarify some currently effective provisions, and remove duplicative statutory language. The statutory authority to adopt these rules is *Minnesota Statutes*, section 182.657. A copy of the proposed rules is printed immediately following this notice in the *State Register*. A free copy of the rules, for those who receive this notice in the mail and others, is also available upon request from the agency contact person listed above.

**Comments.** You have until 4:30 p.m., November 29, 1995, to submit written comments in support of or in opposition to the proposed rules and any part or subpart of the rules. Your comments must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules 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 rules. 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 29, 1995. 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 rules 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 rules. If the proposed rules affect 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 rules and identifies the data and information relied upon to support the proposed rules.

**Small Business Considerations.** The proposed rules will have only minimal impact on small businesses. Primarily the rules implement statutory changes, simplify the contestation process, and clarify rights and responsibilities of employers and employees with respect to OSHA inspections, citations and contestations. No new major requirements are proposed for adoption.

**Expenditure of Public Money by Local Public Bodies.** Adoption of the proposed rules will not affect the expenditure of public monies by local bodies, and places no additional financial burdens on local public bodies.

**Adoption and Review of Rules.** If no hearing is required, after the end of the comment period the agency may adopt the rules. The rules 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 rules are submitted to the Attorney General or to be notified of the Attorney General's decision on the rules. If you wish to be so notified, or wish to receive a copy of the adopted rules, submit your request to the agency contact person listed above.

Dated: 16 October 95

Gary W. Bastian  
Commissioner

## Rules as Proposed

### 5210.0005 DEFINITIONS.

Subpart 1. Scope. For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. Act. "Act" means the Minnesota Occupational Safety and Health Act of 1973, Minnesota Statutes, chapter 182.

Subp. 3. Administrative law judge. "Administrative law judge" means a person assigned by the chief administrative law judge under Minnesota Statutes, section 14.50, to hear a contested case.

Subp. 4. Affected employee. "Affected employee" has the meaning given it in Minnesota Statutes, section 182.651.

Subp. 5. Authorized employee representative. "Authorized employee representative" has the meaning given it in Minnesota Statutes, section 182.651.

Subp. 6. Board. "Board" means the occupational safety and health review board established pursuant to Minnesota Statutes, section 182.664.

Subp. 7. Citation and notification of penalty. "Citation and notification of penalty" means the citation and notification of penalty form prescribed by the commissioner and issued to the employer under Minnesota Statutes, sections 182.66 and 182.661, subdivision 1.

Subp. 8. Commissioner. "Commissioner" has the meaning given it in Minnesota Statutes, section 182.651.

Subp. 9. Days. "Days" means calendar days unless otherwise provided.

Subp. 10. Employee. "Employee" has the meaning given it in Minnesota Statutes, section 182.651.

Subp. 11. Employer. "Employer" has the meaning given it in Minnesota Statutes, section 182.651.

Subp. 12. Investigation or inspection. "Investigation" or "inspection" means the actions taken by the commissioner, including examination, observation, inquiry, and analysis, to determine whether violations of the act or of standards, rules, or orders adopted by the commissioner under the authority of the act, exist at a place of employment and includes, but is not limited to, the physical inspection of the place of employment.

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## Proposed Rules

**Subp. 13. Investigator.** "Investigator" means an occupational safety and health investigator or investigators authorized by the commissioner of labor and industry to conduct occupational safety and health investigations under *Minnesota Statutes*, chapter 182.

**Subp. 14. Letter of contest.** "Letter of contest" means a written communication filed with the commissioner by an employee or authorized employee representative contesting the citation and notification of penalty or the notification of failure to abate.

**Subp. 15. Notice of contest.** "Notice of contest" means the notice of contest and service to affected employees form prescribed by the commissioner under part 5210.0533.

**Subp. 16. Notification of failure to abate.** "Notification of failure to abate" means the notification of failure to abate and proposed additional penalty form prescribed by the commissioner and issued to the employer under *Minnesota Statutes*, section 182.661, subdivision 2.

**Subp. 17. Person.** "Person" has the meaning given it in *Minnesota Statutes*, section 182.651.

**Subp. 18. Proceeding.** "Proceeding" means any proceeding before the board or before an administrative law judge.

**Subp. 19. Respondent.** "Respondent" has the meaning given it in *Minnesota Statutes*, section 182.651.

### PROMULGATION ADOPTION OF STANDARDS

#### 5210.0020 SCOPE.

Parts ~~5210.0010~~ 5210.0020 to 5210.0100 set forth procedures for promulgating adopting, modifying, or revoking occupational safety and health standards under *Minnesota Statutes*, section 182.655. The purpose of parts 5210.0010 to 5210.0100 is to provide a procedure for standards promulgation.

#### 5210.0040 PETITION FOR PROMULGATION ADOPTION, MODIFICATION, OR REVOCATION OF A STANDARD.

Any interested person may file with the commissioner of the Department of Labor and Industry, a written petition for the promulgation adoption, modification, or revocation of a standard. The petition should include, or be accompanied by, the proposed standard, a statement of the intended effect, and the reasons for the standard.

#### 5210.0050 INITIATION.

The commissioner shall initiate promulgation adoption of a standard in the following manner:

A. the commissioner may request the recommendations of the governor's Occupational Safety and Health Advisory Council appointed under *Minnesota Statutes*, section 182.656. In such event, the commissioner shall submit to the council any proposal of the commissioner's own or of the Department of Health, together with all pertinent factual information available to the commissioner, including the results of research, demonstration, and experiments. The council shall submit to the commissioner a report with its recommendations regarding the rule to be promulgated within the period prescribed by the commissioner; or

B. the commissioner may publish by publishing in the *State Register* a notice of proposed rulemaking. The notice shall include:

(1) A. the terms of the proposed rule;

(2) B. a reference to the act and to the appropriate section of any particular statute applicable to the employments affected by the rule;

(3) C. notification to interested persons of their right to submit, within 30 days after publication of the notice, written data, comments, or objections, which shall be available for public inspection and copying, except as to matters information, the disclosure of which is prohibited by law;

(4) D. notification to interested persons that they may request a public hearing on their objections within 30 days after publication of the notice; and

(5) E. any other appropriate provisions with regard to the proceeding.

Initiation of standards promulgation under item B may occur whether or not the governor's Occupational Safety and Health Advisory Council recommends proposals submitted by the commissioner and shall be followed by the commissioner if promulgation is desired after receipt of the advisory council's report.

#### 5210.0060 OBJECTIONS.

Subpart 1. **Conditions.** Objections submitted pursuant to part 5210.0050, item B, subitem (3) shall must comply with the following conditions:

A. the objections must include the name and address of the objector objecting party;

B. the objections must be postmarked on or before the 30th day after the publication of the notice of proposed rulemaking;



C. the objections must specify ~~with particularity~~ the provision of the proposed rule to which objection is ~~taken made~~, and must state the ~~grounds therefor~~ reasons for the objections; and

D. each objection must be separately stated and numbered.

Subp. 2. **Notice of public hearing.** Within 30 days after the last day for filing objections, if ~~objections are filed in substantial compliance with subpart 1 and the objecting party requests 25 or more persons request~~ a public hearing, the commissioner shall, and in any other case may, publish in the *State Register* a notice of a public hearing. The notice shall ~~shall~~ must contain:

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

D. a specification of the issues ~~on which to be discussed at the hearing is to be had, which shall include at least all the issues raised by any objections properly filed, on which a hearing has been requested;~~

E. the requirement for ~~the filing of an interested persons to file a notice of intention to appear at the hearing together with a statement of the position to be taken with regard to the issues specified and of the evidence to be adduced~~ presented in support of the position;

[For text of items F and G, see M.R.]

Subp. 3. **Participants.** Any objecting party requesting a hearing on a proposed standard, and any interested person who files a proper intention to appear, shall be entitled to ~~participate~~ testify at a hearing.

#### **5210.0070 CONDUCT OF HEARING.**

The hearing shall be legislative in type. However, fairness may require an opportunity for cross-examination on crucial issues. The presiding officer, who shall be an administrative law judge, is empowered to permit cross-examination under such circumstances. The essential intent of the hearing is to provide an opportunity for effective oral presentation by interested persons participants which can be carried out with expedition and in the absence of rigid procedures which might unduly impede or protract the rulemaking process expeditiously.

~~The presiding officer shall be an administrative law judge from the Office of Administrative Hearings.~~

The hearing shall be reported verbatim, and a transcript shall be available to any interested person on such terms as the presiding officer may provide.

#### **5210.0080 POWERS OF PRESIDING OFFICER.**

The officer presiding at a hearing shall have all the powers necessary or appropriate to conduct a fair and full hearing, including the powers:

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

E. ~~in the officer's discretion,~~ to permit cross-examination of any witness;

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

G. ~~in the officer's discretion,~~ to keep the record open for a reasonable stated time, to receive written recommendations, and supporting reasons, and additional data, views, and arguments from any person who has participated in the oral proceeding.

#### **5210.0090 CERTIFICATION OF THE HEARING RECORD.**

Upon completion of the oral presentations, ~~the a certified transcript thereof of the hearing,~~ together with written submissions on the proposed rule, exhibits filed during the hearing, and all posthearing comments, recommendations, and supporting reasons shall be certified by the presiding officer transmitted to the commissioner.

#### **5210.0100 DECISION.**

Subpart 1. **Publication of determination.** Within 60 days after the expiration of the period provided for the submission of written data, views, and arguments on a proposed rule on which no hearing is held, or within 60 days after the certification of the record of a hearing, the commissioner shall publish in the *State Register* either an appropriate rule ~~promulgating~~ adopting, modifying, or revoking a standard, or a determination that ~~such a~~ the rule should not be issued. The action of the commissioner shall be taken after consideration of all relevant matter presented in written submissions and in any hearings held under parts ~~5210.0010~~ 5210.0020 to 5210.0100.

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Subp. 2. **Additional comments.** A determination that a rule should not be issued on the basis of existing relevant matter may be accompanied by an invitation for the submission of additional data, views, or arguments from interested persons on the issue or issues involved. ~~In which event,~~ An appropriate rule or other determination shall be made within 60 days following the end of the period allowed for the submission of the additional comments.

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

Subp. 4. [See repealer.]

### DISCRIMINATION AGAINST EMPLOYEES

#### 5210.0210 PURPOSE AND SCOPE.

Parts ~~5210.0200~~ 5210.0210 to 5210.0340 ~~implement establish general policies for enforcement of Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 and set forth general policies for enforcement of the discrimination provisions of the act, which prohibit the discharge of or discrimination against an employee who exercises any rights granted under the act on the employee's behalf or on behalf of others.~~

#### 5210.0300 PARTICIPATION IN PROTECTED AND UNPROTECTED ACTIVITIES COMBINED.

If ~~the participation by an employee in an activity protected by the act or the exercise by an employee on behalf of the employee or others of any right granted under the act~~ was a substantial ~~reason for~~ causative factor entering into a person's decision to discharge an employee or take other adverse action by an employer against an employee, ~~the employee's rights under the act have been violated person has committed a discriminatory action in violation of the act. Whether a discharge or other adverse action was because of protected activity will be determined on the facts in each particular case.~~

#### 5210.0310 CLAIM PROCEDURES.

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

Subp. 2. **Time for Manner of filing.** The complaint ~~must~~ may be filed, either orally or in writing, with the commissioner of the Minnesota Department of Labor and Industry within 30 days after the alleged discriminatory act occurred. Written complaints must be filed in accordance with part 5210.0554.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

#### 5210.0320 DEFERRAL OF ACTION ON DISCRIMINATION COMPLAINT.

The commissioner may defer action on a discrimination complaint filed concurrently with the Department of Labor and Industry and another agency until a determination by the other agency has been made if the rights asserted in ~~the other proceedings proceeding~~ are substantially the same as rights given granted under the act and the other ~~proceedings proceeding~~ will not violate the rights guaranteed by the act.

#### 5210.0330 ACCEPTING OTHER DECISIONS AS FINAL DETERMINATION.

The commissioner may accept the results of other proceedings as a final determination of a discrimination complaint if those proceedings dealt adequately with substantially all of the factual and legal issues; were fair, impartial, and valid; and the outcome of the proceedings is not contradictory to the purpose of the act. ~~If the other action is dismissed without proper hearing, the dismissal is not a final determination of the complaint filed with the commissioner.~~

#### 5210.0340 ENFORCEMENT PROCEEDINGS.

Subpart 1. [See repealer.]

Subp. 2. **Settlement.** ~~Upon completion of an investigation If the commissioner determines that a discriminatory act has been committed against an employee,~~ the commissioner may ~~decide upon enter into~~ a settlement ~~acceptable to all concerned parties~~ rather than proceeding with ~~court action~~ an administrative hearing.

[For text of subps 3 and 4, see M.R.]

### INSPECTIONS, CITATIONS, AND PROPOSED PENALTIES

#### 5210.0410 PURPOSE.

The purpose of parts ~~5210.0400~~ 5210.0410 to ~~5210.0560~~ 5210.0542 is to prescribe rules and set forth general policies for enforcement of the ~~inspection, citation, and proposed penalty provisions~~ of the act.

#### 5210.0420 POSTING OF NOTICES.

Each employer shall post and keep posted ~~a notice or notices~~ the "Safety and Health Protection on the Job" poster issued by the Department of Labor and Industry, informing employees of the protections and obligations provided for in the act; ~~and that. The~~

poster must direct employees to contact the employer or the Department of Labor and Industry for assistance and information, including copies of the act and of specific safety and health standards; ~~employees should contact the employer or the Department of Labor and Industry.~~ The poster shall be posted by the employer in each establishment place of employment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that ~~such notices~~ the posters are not altered, defaced, or covered by other material.

#### **5210.0450 OBJECTION TO INSPECTION INVESTIGATION.**

Upon a refusal to permit an occupational safety and health investigator (~~OSHI~~), in the exercise of official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect and investigate, to review ~~records documents~~, or to question privately any employer, owner, operator, agent, or employee, or to permit a representative of employees to accompany the ~~OSHI investigator~~ during the physical inspection of any ~~workplace~~ place of employment, the ~~OSHI investigator~~ shall terminate the ~~inspection investigation~~ or confine the ~~inspection investigation~~ to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, ~~records documents~~, or interviews concerning which no objection is raised. The ~~OSHI investigator~~ shall endeavor to ascertain the reason for ~~such the~~ refusal, and shall immediately report the refusal and the reason ~~therefor~~ for the refusal to the commissioner.

#### **5210.0460 WAIVER NOT IMPLIED.**

Any Permission to enter, inspect and investigate, review ~~records documents~~, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the act. ~~OSHI Investigators~~ are not authorized to grant ~~any such waiver~~ waivers.

#### **5210.0470 INSPECTIONS INVESTIGATIONS.**

Subpart 1. Opening conference; investigator's conduct. ~~Inspections shall take place at such times and in such places of employment as the commissioner or the OSHI may direct.~~ At the beginning of an inspection, OSHI ~~The investigators~~ shall present their credentials to the owner, operator, or agent in charge at the establishment place of employment at the earliest opportunity upon entering the place of employment; and conduct an opening conference during which the investigator shall explain the nature and purpose of the ~~inspection investigation~~; and indicate generally the scope of the physical inspection and the ~~records documents~~ which they wish to review. However, such designation of ~~records documents~~ shall not preclude ~~access to~~ review of additional ~~records documents~~.

Subp. 2. Investigator's authority. ~~OSHI~~ The investigator shall have the authority to take ~~environmental~~ samples, conduct tests, and ~~to take or obtain photographs and videotapes, make or obtain copies of documents, and employ other investigative techniques~~ related to the purpose of the ~~inspection~~, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent, or employee of an establishment investigation.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. Closing conference with employer. At the conclusion of an ~~inspection investigation~~, the ~~OSHI investigator~~ shall confer with the employer or the employer's representative and ~~informally advise the person of any describe~~ apparent safety or health violations disclosed by the inspection investigation. During ~~such this~~ conference, the employer shall be afforded an opportunity to bring to the attention of the ~~OSHI any investigator~~ pertinent information regarding conditions in the workplace.

Subp. 6. [See repealer.]

#### **5210.0480 REPRESENTATIVES OF EMPLOYERS AND EMPLOYEES TO ACCOMPANY INVESTIGATORS.**

Subpart 1. Accompanying the investigator. ~~OSHI~~ The investigator shall be in charge of ~~inspections and questioning of persons~~ all aspects of an investigation. A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the ~~OSHI investigator~~ during the physical inspection of ~~any the~~ workplace for the purpose of aiding ~~such inspection the investigation~~. An ~~OSHI investigator~~ may permit additional employer representatives and additional representatives authorized by employees to accompany the investigator where the investigator determines that ~~such~~ additional representatives will further aid the ~~inspection investigation~~. A different employer and employee representative may accompany the ~~OSHI investigator~~ during ~~each different phase phases of an a physical~~ inspection if the investigator determines that this will not interfere with the conduct of the ~~inspection investigation~~.

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The representative authorized by employees shall be an employee of the employer.

Subp. 2. **Denial of right to accompany.** ~~OSHH are~~ The investigator is authorized to deny the right of accompaniment under this part to any person whose conduct interferes with a fair and orderly ~~inspection investigation~~. The right of accompaniment in areas containing trade secrets shall be subject to the ~~provisions of Minnesota Statutes, section 182.668.~~

~~A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the OSHH during the physical inspection of any workplace under Minnesota Statutes, section 182.659 for the purpose of aiding such inspection.~~

Subp. 3. **Disputes as to who the representative is** Identification of representatives. ~~OSHH shall have~~ The investigator has authority to resolve all disputes as to who is ~~are~~ the representative representatives authorized by the employer and employee employees for the purpose of this section part. If there is no authorized representative of authorized by employees, or if the ~~OSHH investigator~~ is unable to determine with reasonable certainty who is ~~such the employee representative, the investigator shall consult~~ with a reasonable number of employees shall be consulted by the investigator concerning matters of safety and health in the workplace. ~~Where there are no authorized employee representatives, the OSHH shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.~~

### 5210.0490 CONSULTATION WITH EMPLOYERS EMPLOYER AND EMPLOYEES.

~~OSHH~~ The investigator may consult with employees concerning matters of occupational safety and health to the extent the investigator deems necessary for the conduct of an effective and thorough inspection investigation. During the course of an inspection investigation, any employee employees shall be afforded an opportunity to bring any violation of the act which the ~~investigator has~~ employees have reason to believe exists in the workplace to the attention of the ~~OSHH investigator~~.

The ~~authorized~~ representative ~~of authorized by employees~~ shall ~~also~~ be given the opportunity to participate in ~~any conference or discussion held prior to or during any such inspection the opening and closing conferences~~. The investigator ~~will, however, shall~~ hold a private conference with either the employee representative or the employer at either's request.

### 5210.0500 EMPLOYEE RIGHTS DURING INSPECTION INVESTIGATION.

No employee as a consequence of aiding ~~such inspection under this section in an investigation~~ shall lose any privilege or payment that the employee would otherwise earn, ~~such the loss being a discriminatory act subject to the sanctions contained in Minnesota Statutes, section 182.669.~~ Any An employee taking part in the physical inspection is entitled to the employee's regular pay for the time spent in ~~such the physical inspection and the opening and closing conferences.~~

### 5210.0510 TRADE SECRETS.

At the commencement of ~~an a~~ physical inspection, the employer may identify areas in the establishment place of employment which contain or which might reveal a trade secret. If the ~~OSHH investigator~~ has no ~~clear~~ reason to question such identification, information obtained in ~~such these~~ areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "Confidential - Trade Secret" and shall not be disclosed except in accordance with the ~~provisions of Minnesota Statutes, section 182.668.~~

Upon the request of an employer, ~~any a representative~~ authorized representative of by employees in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no ~~such~~ representative authorized by employees working in that area or an employee authorized by the employer to enter the area, the ~~OSHH investigator~~ shall consult with a reasonable number of employees ~~who work working~~ in that area concerning matters of safety and health.

### 5210.0520 INSPECTION INVESTIGATION NOT WARRANTED; INFORMAL REVIEW.

If the commissioner determines that a citation will not be issued or that an inspection investigation is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under this part, filed under Minnesota Statutes, section 182.659, subdivisions 4 and 5, the commissioner shall notify the complaining party in writing of ~~such that~~ determination. The complaining party may ~~obtain request an informal review of such the~~ determination by submitting a written statement of position with to the commissioner and, at the same time, providing the employer with a copy of ~~such the~~ statement by certified mail unless the complaining party has requested anonymity when filing the complaint. If the complaining party has requested anonymity when filing the complaint, the commissioner shall summarize the complaining party's written statement leaving out the complaining party's identity and provide the employer with a copy of the summary by certified mail. The employer may submit an opposing written statement of position with to the commissioner and, at the same time, provide the complaining party with a copy of ~~such the~~ statement by certified mail unless the employer has received a summary of the complaining party's written statement of position. If the employer has received the summary, the commissioner shall provide the complaining party with a copy of the employer's opposing statement by certified mail. Upon the request of the employee or the employer, the commissioner, ~~at the commissioner's discretion,~~ may hold an informal conference or conferences in which the complaining party and

the employer may orally present their views together or separately. After considering all written and oral views presented, the commissioner shall affirm, modify, or reverse the determination and furnish the complaining party and the employer a written notification of the decision and the reasons ~~therefor~~ for the decision.

#### **5210.0530 CITATIONS; NOTICES OF DE MINIMIS VIOLATIONS POSTING.**

Subpart 1. **Issuance.** The commissioner shall review the ~~inspection~~ investigation report of the OSH investigator. If on the basis of the report the commissioner believes that the employer has violated a requirement of *Minnesota Statutes*, section 182.653, ~~subdivision 2, 3, or 4, or any standard or rule promulgated pursuant to, or order adopted under~~ the act, the commissioner shall issue to the employer either a citation and notification of penalty or a ~~notice of de minimis violations which have no direct or immediate relationship to safety or health~~ notification of failure to abate. A copy of the citation and the ~~proposed assessment~~ notification of penalty or notification of failure to abate shall also be ~~issued by certified mail mailed~~ to the authorized ~~employee~~ representative of affected employees and, in the case of the death of an employee, to the next of kin if requested by the next of kin. ~~An appropriate~~ A citation and notification of penalty or ~~notice of de minimis violations~~ notification of failure to abate shall be issued even though, after being informed of an alleged violation by the OSH investigator, the employer immediately abates or initiates steps to abate ~~each such~~ the alleged violation. ~~Any~~ A citation and notification of penalty or ~~notice of de minimis violations~~ notification of failure to abate shall be issued with reasonable promptness ~~after termination of the inspection~~. ~~No citation may be issued under this part after the expiration of six months following the occurrence of any alleged violation and in no event later than six months following the completion of the investigation of the alleged violation.~~

#### Subp. 2. Contents.

A. Any A citation and notification of penalty shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the act, standard, rule, or order alleged to have been violated. ~~Any~~ A citation and notification of penalty shall also fix a reasonable time or times for the abatement of the alleged violation.

~~Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the act has occurred unless there is a failure to contest as provided for in the act or, if contested, unless the citation is affirmed by the review board.~~

B. A notification of failure to abate shall reference the original citation and standard which the employer has allegedly failed to abate, the date by which the original citation was to have been abated, and the amount of the additional penalty issued by the commissioner under Minnesota Statutes, section 182.661, subdivision 2.

Subp. 3. Employer's duty to post. Upon receipt of a citation and notification of penalty or notification of failure to abate, the employer shall immediately post the citation and notification of penalty or notification of failure to abate, or an unedited copy, at or near each place an alleged violation referred to in the citation occurred, except as provided in this subpart. If, because of the nature of the employer's operations, it is not practicable to post the citation and notification of penalty or notification of failure to abate at or near each place of alleged violation, the unedited citation and notification of penalty or notification of failure to abate shall be posted in a prominent place where it will be readily observable by all affected employees. If the employer is engaged in activities that are physically dispersed, the citation and notification of penalty or notification of failure to abate shall be posted at the location to which affected employees report each day. Where affected employees do not primarily work at or report to a single location, the citation and notification of penalty or notification of failure to abate shall be posted at the locations from which the affected employees operate to carry out their activities. The employer shall take steps to ensure that the citation and notification of penalty or notification of failure to abate are not altered, defaced, or covered by other material.

Subp. 4. Posting time. Each uncontested citation and notification of penalty or uncontested notification of failure to abate, or an unedited copy, shall remain posted until the violation has been abated, or for 15 days, whichever is later. The filing by the employer, an employee, or an authorized employee representative of a notice of contest or letter of contest extends the employer's posting responsibility under this part until the date of the hearing or earlier final disposition of the contest.

Subp. 5. Noncompliance. An employer that fails to comply with subparts 3 and 4 shall be subject to citation and penalty according to Minnesota Statutes, section 182.666, subdivision 5.

#### **5210.0533 NOTICE OF CONTEST AND CERTIFICATION OF SERVICE.**

A contest of a citation and notification of penalty or of a notification of failure to abate shall be filed with the commissioner on the notice of contest form provided by the commissioner. The commissioner shall accept as filed only a fully completed notice of contest form. A fully completed notice of contest form must provide the following information:

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A. the employer's name and address;

B. the inspection number for the citation and notification of penalty or the reinspection number for the notification of failure to abate;

C. identification of each citation and item contested and for each citation and item contested, identification of each part of the citation and item contested. Those citations and items not contested and those parts of citations and items not contested shall become a final order of the commissioner not reviewable by any court or agency.

(1) For a citation and notification of penalty, the contesting party must indicate for each citation and item contested the following part or parts it is contesting:

(a) the finding of a violation;

(b) the type of violation;

(c) the abatement date; or

(d) the penalty.

(2) For a notification of failure to abate, the contesting party must indicate for each citation and item contested the following part or parts it is contesting:

(a) the finding of the failure to abate a violation; or

(b) the penalty;

D. a statement of the contesting party's reasons for contesting each citation and item;

E. certification that the notice was served upon the authorized employee representatives, if any, and the employer, if it is an employee or authorized employee representative contest, and that it was posted where the citations and notifications of penalty are required by part 5210.0530, subpart 3, to be posted; and

F. a notarized sworn statement by the contesting party that the information provided is accurate and truthful to the best of the contesting party's knowledge.

### **5210.0536 EMPLOYER CONTEST.**

#### **Subpart 1. Posting and service.**

A. The employer shall, on or before the date a notice of contest is required to be filed with the commissioner, post a copy of the notice of contest where the citation and notification of penalty or notification of failure to abate is required to be posted. The notice of contest must remain posted until the date of the hearing or earlier final disposition of the contest.

B. If there are any affected employees who are represented by an authorized employee representative, the employer shall, on or before the date a notice of contest is required to be filed with the commissioner, serve a copy of the notice of contest upon the representative.

C. Certification of the service and posting required by this subpart must be notarized and filed with the commissioner as provided on the notice of contest form.

**Subp. 2. Filing.** For purposes of this part, a notice of contest is filed only upon its receipt by the commissioner. The notice of contest must be filed within 20 calendar days of the date the employer receives the citation and notification of penalty or notification of failure to abate. The day the notice of contest is received shall not be included in calculating the 20 calendar days. The last day of the 20-day period shall be included, unless it is a Saturday, Sunday, or state holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or state holiday. A notice of contest may be filed with the commissioner by postage prepaid first class mail, personal delivery, or facsimile transmission according to part 5210.0554, subpart 2. If the notice of contest form is not posted, served, and filed within 20 days of the date the employer receives the citation and notification of penalty or notification of failure to abate, the citation and notification of penalty or notification of failure to abate become a final order of the commissioner and is not subject to review by any court or agency.

### **5210.0539 EMPLOYEE AND AUTHORIZED EMPLOYEE REPRESENTATIVE CONTESTS.**

#### **Subpart 1. Posting and service.**

A. The employee or authorized employee representative shall, on or before the date the employee notice of contest form is filed with the commissioner, serve the fully completed employee notice of contest form upon the cited employer. Immediately upon receipt, the employer shall post a copy of the employee notice of contest form where the citation and notification of penalty or notification of failure to abate is required to be posted by part 5210.0530, subpart 3. The notice of contest must remain posted until the date of the hearing or earlier final disposition of the contest.

B. If there are any other affected employees who are represented by another authorized employee representative, the contesting employee or authorized employee representative shall, on or before the date the employee notice of contest form is required to be filed with the commissioner, serve a copy of the notice of contest upon that authorized employee representative.

C. The certification of posting and service required by this subpart must be notarized and filed with the commissioner as provided on the employee notice of contest form.

**Subp. 2. Filing.**

A. An employee or authorized employee representative shall file a letter of contest with the commissioner within 20 days of the date the employer receives the citation and notification of penalty or notification of failure to abate. If an employee or authorized employee representative files a letter of contest with the commissioner within 20 days of the date the employer receives the citation and notification of penalty or the notification of failure to abate, the commissioner shall promptly send the employee or authorized employee representative a notice of contest form by certified mail.

B. Within seven days of the employee's or authorized employee representative's receipt of the employee notice of contest form, the employee or authorized employee representative shall file the fully completed form with the commissioner. For purposes of this part, an employee notice of contest is filed only upon its receipt by the commissioner. The day the notice of contest is received shall not be included in calculating the 20 calendar days. The last day of the 20-day period shall be included, unless it is a Saturday, Sunday, or state holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or state holiday. An employee notice of contest form may be filed with the commissioner by postage prepaid first class mail, personal delivery, or facsimile transmission according to part 5210.0554, subpart 2.

C. If the letter of contest is not filed within 20 days of the date the employer receives the citation and notification of penalty or notification of failure to abate, or if the employee notice of contest form is not filed within seven days of the date the form is received, the citation and notification of penalty or notification of failure to abate becomes a final order of the commissioner and is not subject to review by any court or agency.

**5210.0542 PETITIONS FOR MODIFICATION OF ABATEMENT DATE.**

Subpart 1. Right to file. An employer seeking to extend the date by which a violation must be abated may file a petition for modification of abatement date.

Subp. 2. Contents. A petition for modification of abatement date must be in writing and include the following information:

A. all action taken by the employer, and the dates of the action, in an effort to achieve compliance during the prescribed abatement period;

B. the specific additional abatement time necessary in order to achieve compliance;

C. the reasons additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date;

D. all available interim steps being taken to safeguard the employees against the cited hazard during the abatement period; and

E. a certification that a copy of the petition and the notice to affected employees and authorized employee representatives informing them of their right to object to the petition as set out in subpart 5 have been posted and served upon the authorized employee representative according to subpart 4 and the date the posting and service was completed.

Subp. 3. Time to file. A petition for modification of abatement date must be filed with the commissioner no later than the next working day following the date on which abatement was originally required. For purposes of this part, a petition is considered filed upon its receipt by the commissioner.

Subp. 4. Posting. A copy of the petition and notice to employees and authorized employee representatives must be posted on or before the filing date in the location where the citation and notification of penalty is required to be posted. If employees are represented by an authorized employee representative, the representative shall be served with a copy of the petition and notice. The petition must remain posted for ten days.

Subp. 5. Objections. Employees or their authorized employee representatives who file an objection in writing with the commissioner must serve a copy of the objection on the employer. Failure to serve and file an objection within ten days of the date of

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posting of the petition or of service upon an authorized employee representative shall constitute a waiver of any further right to object to the petition. The objection must state the reasons for opposing the petition.

**Subp. 6. Approval or denial of petition.** The commissioner shall not approve a petition by the employer until the expiration of ten days from the date the petition was served upon affected employees or their authorized employee representatives. The commissioner may deny a petition at any time after its receipt. When approving or denying a petition, the commissioner shall consider the actions taken by the employer to achieve compliance during the prescribed abatement period, the additional abatement time requested by the employer, whether abatement has not been completed because of factors beyond the employer's control, what interim steps the employer has taken to safeguard employees against the cited hazard, and any other relevant information obtained by the department or provided by affected employees and authorized employee representatives regarding the employer's petition. A copy of the approval or denial shall be posted with the petition and the citation.

### CONTESTED CASE HEARINGS

#### 5210.0548 RECORD ADDRESS.

All pleadings filed by a person must contain the person's name, address, and telephone number. Any change in the information must be communicated promptly in writing to the administrative law judge or the commissioner and to all other parties. A party who fails to furnish the information waives the right to service and notice under part 5210.0551.

#### 5210.0551 SERVICE AND NOTICE.

**Subpart 1. Parties and intervenors.** At the time of filing pleadings or other documents, a copy must be served by the filing party on every other party.

**Subp. 2. Representatives.** Service on a party who has appeared through a representative need only be made on the representative.

**Subp. 3. Methods of service.** Unless otherwise ordered, service may be made by postage prepaid first class mail or personal delivery. Service is made at the time of mailing or personal delivery.

**Subp. 4. Proof of service; filing.** Service must be certified by a written statement that states the date and manner of service. The statement must be signed by the person accomplishing service, and it must be filed with the pleading or document.

#### 5210.0554 FILING; FACSIMILE.

**Subpart 1. Filing by mail and personal delivery.** All pleadings and other documents must be filed with the commissioner before a case is assigned to an administrative law judge. After the case has been assigned to an administrative law judge, all pleadings or other documents must be filed with the administrative law judge at the address given in the notice informing the parties of the assignment. All pleadings and documents may be filed by postage prepaid first class mail or personal delivery. Except for the notice of contest, letter of contest, and petition for modification of abatement date, filing of pleadings and documents is effective on the postmark date or date of personal delivery.

**Subp. 2. Filing by facsimile.** Any pleading or document, including a notice of contest, letter of contest, or petition for modification of abatement date may be filed with the commissioner by facsimile transmission. Filing is completed at the time that the facsimile transmission is received by the commissioner, and the filed facsimile has the same force and effect as the original. The commissioner is not responsible for unsuccessful facsimile transmissions. Documents received by facsimile after 4:30 p.m. Central Standard Time (CST) are deemed filed on the next day.

Within five days after the commissioner has received the transmission, the party filing the document must file with the commissioner the original signed document.

**Subp. 3. Time computation.** In computing any period of time prescribed or allowed by parts 5210.0410 to 5210.0595 or *Minnesota Statutes*, chapter 182, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

#### 5210.0557 FORM OF PLEADINGS.

Except as provided in parts 5210.0533 to 5210.0542 and 5210.0557 to 5210.0570, pleadings and other documents must comply with parts 1400.5100 to 1400.8401. The pleadings and other documents must include the commissioner's and the administrative law judge's docket number.

Pleadings and other documents, other than exhibits, must be typewritten or otherwise be legible on 8-1/2 by 11 inch paper.



**5210.0561 SIGNATURE ON PLEADINGS.**

Pleadings must be signed by the party filing or by the party's representative. Signing constitutes a representation by the signer that the signer has read the document or pleading, that to the best of the signer's knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay.

**5210.0564 REFUSAL OF PLEADING.**

The commissioner or administrative law judge may refuse to accept for filing any pleading or document that does not comply with the requirements of parts 1400.5100 to 1400.8401, 5210.0557, and 5210.0567.

**5210.0567 CAPTION; CASE TITLE.**

Subpart 1. Notice of contest. Pleadings after receipt of a notice of contest must be titled:

Commissioner of the Minnesota  
Department of Labor and Industry.

Complainant

v.

(Name of contestant).

Respondent

Subp. 2. Third party interests. Cases in which a third party interest has been exercised must be titled:

Commissioner of the Minnesota  
Department of Labor and Industry.

Complainant

v.

(Name of employer).

Respondent

(Name of employee or authorized  
employee representative).

Employee or  
authorized  
employee  
representative

Subp. 3. Placement of titles. The titles listed in subparts 1 and 2 must appear at the left upper portion of the first page of any pleading or document filed, other than an exhibit.

The first page of any pleading or document, other than an exhibit, must show, at the upper right of the page, opposite the title, the docket numbers assigned by the commissioner and the Office of Administrative Hearings, if any.

**5210.0570 COMPLAINT; NOTICE; ANSWER.**

Subpart 1. Complaint. The commissioner shall serve the contesting party and every other party with a complaint no later than 90 days after receiving the notice of contest.

The complaint must set forth alleged violations and proposed penalties that are contested, by stating or referring to the contested citation and notification of penalty or notification of failure to abate:

- A. the basis for jurisdiction;
- B. the date, location, place, and circumstances of alleged violations; and
- C. the abatement date and the proposed penalty for the alleged violation.

The commissioner may amend the complaint at any time before the close of the hearing without filing a motion with the adminis-

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## Proposed Rules

trative law judge, provided that, should the amended complaint raise new issues or allegations, if requested by a party, a reasonable time to prepare to respond to the new issues or allegations must be provided.

**Subp. 2. Withdrawal of contest.** A person who filed a notice of contest may withdraw the notice at any time in the proceedings.

**Subp. 3. Summons and notice to respondent.** The commissioner shall serve on all parties a notice with the complaint that states the following:

A. that the respondent has 20 days within which to file an answer;

B. that the parties have a right to be represented by legal counsel in all proceedings;

C. that the rules of the commissioner and the rules of the Office of Administrative Hearings apply to the proceedings and where a copy of those rules may be obtained; and

D. the name of the agency official or member of the attorney general's staff to be contacted to discuss informal disposition under part 1400.5900 or discovery under part 1400.6700, subparts 2 and 3.

**Subp. 4. Answer.** Within 20 days after service of the complaint, the party or parties against whom the complaint was issued shall file with the commissioner an answer and serve the answer on every other party.

The answer must contain a short and plain statement denying those allegations in the complaint that the party intends to contest and assert any and all affirmative defenses. Any allegation not denied is deemed admitted and any affirmative defense not asserted is deemed waived.

**Subp. 5. Failure to serve or file.** If the complaint is not served or the answer is not filed and served within the time prescribed by this part, the administrative law judge, upon a motion by a party, may enter an order affirming or vacating the contested citation and notification of penalty or notification of failure to abate.

### **5210.0573 PARTY STATUS.**

**Subpart 1. Affected employees and authorized representatives.** If a notice of contest is timely filed by an employer, affected employees or authorized employee representatives may participate as parties in the contested case proceeding by filing a notice of intent to participate as a party at least 45 days before the starting date of the hearing. The notice of intent to participate as a party must contain the name, address, and representative, if any, of the affected employee or authorized employee representative requesting party status and a statement that the person identified is an affected employee or authorized employee representative of affected employees of the cited employer. The notice shall be filed with the commissioner or the administrative law judge if one has been assigned to the proceeding and served upon all parties at the time of filing.

**Subp. 2. Employers.** If a notice of contest is timely filed by an employee or by an authorized employee representative, the cited employer may participate as a party in the contested case proceeding by filing a notice of intent to participate as a party at least 45 days before the starting date of the hearing. The notice of intent to participate as a party must contain the employer's name, address, and representative, if any. The notice must be filed with the commissioner or the administrative law judge, if one has been assigned to the proceeding, and served upon all parties at the time of filing.

**Subp. 3. Objection to notice of intent to participate as party.** A party to the contested case proceeding may file a written objection to a notice of intent to participate as a party on the grounds that the person requesting party status is not an affected employee, an authorized employee representative of affected employees, or the cited employer, or that the notice does not comply with the requirements of this subpart. The objecting party shall file the written objection with the commissioner or with the administrative law judge, if one has been assigned to the proceeding, and serve the written objection upon all other parties and upon the person requesting party status. The written objection must be filed and served within ten days after the date the notice of intent to participate as a party was filed and served upon the parties. If no written objection to the notice of intent to participate as a party is filed and served within ten days after the date the notice was filed and served upon the parties, the person requesting party status shall become a party to the proceeding. If a written objection is filed by a party with the commissioner, the commissioner shall immediately request that an administrative law judge be assigned to the proceeding and refer the notice and the objection to the assigned administrative law judge for a determination of party status.

**Subp. 4. Intervention by other persons.** Intervention by other persons may be granted by the administrative law judge according to part 1400.6200.

### **5210.0576 REPRESENTATIVES OF PARTIES AND INTERVENORS.**

Parties and intervenors may be represented by an attorney, by themselves, or by a person of their choice throughout the proceedings in a contested case if not otherwise prohibited as the unauthorized practice of law.

If the authorized employee representative is a party, affected employees who are represented by an authorized employee representative may appear only through the authorized employee representative.

The withdrawal of appearance of a representative may be accomplished by filing a written notice of withdrawal and by serving a copy of the notice on all parties and intervenors.

**5210.0579 MOTIONS.**

All motions must be made according to part 1400.6600.

**5210.0583 CONSOLIDATION AND SEVERANCE OF CASES.**

Consolidation and severance of cases must be done according to part 1400.6350.

**5210.0589 PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION.**

On application by a person in a proceeding where trade secrets or other matters may be divulged, the administrative law judge shall issue orders as appropriate to protect the confidentiality of these matters.

**5210.0595 HEARING.**

Subpart 1. Notice of hearing and order. When the matter is scheduled for hearing before an administrative law judge, the commissioner shall serve on all parties, and the employer if the employer is not a party, a written notice and order of hearing under part 1400.5600, and all further proceedings must be conducted under chapter 1400 and Minnesota Statutes, chapter 14.

**Subp. 2. Notice of hearing.**

A. A copy of the notice of hearing to be held before an administrative law judge must be posted by the employer within five days of receipt in the same place where the citation and notification of penalty is required to be posted. The notice of hearing must remain posted until the date of the hearing or earlier final disposition of the contest.

B. If there are any affected employees who are represented by an authorized employee representative, the employer shall, within five days of receipt, serve a copy of the notice of hearing on the representative.

C. Certification of the service and posting required by this subpart must be filed with the commissioner and served on the administrative law judge within five days of receipt of the notice of hearing. If the employer fails to certify service and posting, the administrative law judge may, on a motion by one of the parties or on the judge's own motion, render a default judgment in favor of the commissioner.

**5210.0596 SETTLEMENT; MISCELLANEOUS PROVISIONS.**

Subpart 1. Service and notice. A settlement agreement must be posted where the citation and notification of penalty or notification of failure to abate is required to be posted and must be served on authorized employee representatives by the employer.

**Subp. 2. Contents of settlement agreements. Settlement agreements must contain:**

A. a provision that states the date the employer posted and served the agreement under subpart 1;

B. an affirmative statement that the contesting party withdraws the notice of contest; and

C. a statement that describes how the settlement agreement affects the status of the contested citation, type of violation, abatement date, and proposed penalty.

Subp. 3. Objection to settlement agreement. If there is no timely objection to the agreement by affected employees or authorized employee representatives, a settlement agreement becomes a final order ten days after it has been posted and served upon the authorized employee representatives.

An affected employee or authorized employee representative may file an objection to a proposed settlement with the commissioner within ten days after posting and service of the settlement agreement on the authorized employee representative. On receipt of a timely objection, the commissioner may renegotiate the settlement, refer the agreement and objection to an administrative law judge for approval despite the objection, or withdraw the settlement agreement and continue proceedings on the contested citation.

**5210.0597 EXPEDITED PROCEEDING.**

On the application of a party, or on the commissioner's own motion, the commissioner may order an expedited proceeding. When an expedited proceeding is ordered, the commissioner shall notify all parties. The administrative law judge assigned in an expedited proceeding shall make necessary rulings concerning the time for filing pleadings and all other matters, without reference

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## Proposed Rules

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to the times in parts 5210.0410 to 5210.0595. The administrative law judge shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

### 5210.0650 ANNUAL SUMMARY.

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

Subp. 4. **Posting.** Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under ~~parts part~~ 5210.0420 ~~to 5210.0440~~. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary during the month of February of the following year to each such employee who receives pay during that month. For multiestablishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

[For text of subp 5, see M.R.]

### VARIANCES

#### 5210.0800 PURPOSE AND SCOPE.

Parts 5210.0800 to 5210.0870 ~~contain rules of practice for administrative proceedings to grant variances and other reliefs under establish general policies to implement the provisions of Minnesota Statutes, section 182.655, subdivisions 5 to 9, governing variances.~~

#### 5210.0810 EFFECT ~~ON~~ OF VARIANCES.

All variances granted pursuant to ~~this part~~ Minnesota Statutes, section 182.655, subdivisions 5 to 9, shall have only future effect. ~~In his or her discretion, The commissioner may decline to entertain an application for a variance on a subject or issue concerning which a citation that has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Occupational Safety and Health Review Board until the completion of such proceeding seeking the variance if the citation has been contested.~~

#### 5210.0820 TEMPORARY VARIANCES.

Subpart 1. **Application.** ~~Any An~~ employer, or class of employers, desiring a temporary variance from a standard or provision thereof, ~~authorized by Minnesota Statutes, section 182.655, subdivisions 5, 6, and 7 may~~ must file with the commissioner a written application containing the information specified in ~~subpart 2 with the commissioner~~ Minnesota Statutes, section 182.655, subdivisions 5 and 7.

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

Subp. 4. **Hearing.** The commissioner may ~~at the commissioner's discretion provide for~~ hold a hearing on the variance application. Affected employees and authorized employee representatives of the affected employees shall be given notice of ~~any such the~~ hearing and allowed to participate.

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. **Temporary variance order.** The commissioner shall, ~~by rule or order, may~~ grant a temporary variance from a ~~promulgated an adopted~~ standard when the commissioner finds by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment which are as safe and healthful as those provided for by the standard in accordance with Minnesota Statutes, section 182.655, subdivision 6.

The rule or order granting the variance shall prescribe the conditions the employer must maintain, the practices, means, methods, operations, and processes which the employer must adopt and utilize.

#### 5210.0830 PERMANENT VARIANCES.

Subpart 1. **Application for variance.** ~~Any An~~ employer, or class of employers, desiring a permanent variance ~~authorized by Minnesota Statutes, section 182.655, subdivision 8 or 9 may~~ from a standard must file a written application with the commissioner containing the information specified in ~~subpart 2, with the commissioner of labor and industry~~ Minnesota Statutes, section 182.655, subdivision 8.

Subp. 2. [See repealer.]

Subp. 3. **Hearing.** The commissioner may ~~at the commissioner's discretion provide for~~ hold a hearing on the variance application.

tion. Affected employees and authorized employee representatives of the affected employees shall be given notice of any such the hearing and allowed to participate.

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. **Permanent variance order.** The commissioner ~~shall, by rule or order, may~~ grant a permanent variance from a promulgated an adopted standard when the commissioner finds by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment which are as safe and healthful as those provided for by the standard in accordance with Minnesota Statutes, section 182.655, subdivision 8.

The rule or order granting variance shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which the employer must adopt and utilize.

#### **5210.0835 INTERIM ORDERS.**

An employer may request an interim order to be effective until a decision is made on the application for variance. Affected employees and authorized employee representatives of affected employees shall be notified of the interim order request by the same means used to notify them of the application for variance. No interim order may remain in effect for longer than 180 days. If the commissioner denies the request for an interim order, the applicant shall be given a written notice of the denial including an explanation of the reasons for denying the request.

#### **5210.0850 ORDER DENYING VARIANCE.**

~~In the event~~ If the commissioner denies an application for a temporary or a permanent variance, the commissioner shall prepare an order setting forth denying the variance must include:

- A. the name and address of the person or organization requesting the variance;
- B. the rule, or ~~particular~~ provisions thereof of the rule, from which the application requested a variance;
- C. the extent and duration of the variance requested; and
- D. a concise statement of the reasons for ~~denial of~~ denying the application for variance request.

#### **5210.0860 CONTEST OF OBJECTION TO VARIANCE DENIAL BEFORE REVIEW BOARD.**

~~Any~~ An employer who has been denied a variance ~~may~~ under *Minnesota Statutes, section 182.664 182.655, subdivision 2 subdivisions 5 to 9, may notify the commissioner in writing that the employer intends to ~~contest such a~~ object to the variance denial before the review board. Such notice of intention to contest The objection shall be postmarked within 15 days of receipt by the employer of the variance denial. The commissioner shall, within seven days of receipt of ~~notice of contest the objection,~~ transmit the original notice objection to the review board an administrative law judge together with copies of all relevant documents ~~in accordance with the rules of procedure prescribed by the board.~~*

~~Any~~ Affected employee employees shall be given notice of ~~such the~~ the application according to Minnesota Statutes, section 182.655, subdivision 7, paragraph (e), and an opportunity to participate in ~~such a the~~ the hearing as required under *Minnesota Statutes, section 182.654, subdivision 5.*

#### **5210.0870 MULTISTATE VARIANCES.**

~~Where~~ If a federal variance has been is granted with multistate applicability, ~~including the state of Minnesota, from a standard or portion thereof; identical to a Minnesota Occupational Safety and Health Standard or a portion thereof; without filing the information required in and the employer has not filed a separate application in accordance with part 5210.0820 or 5210.0830; such variance shall likewise be deemed an authoritative interpretation of the employer's compliance obligations with regard to a Minnesota Department of Labor and Industry standard or portion thereof; provided no objections of substance are found to be imposed by the Minnesota Department of Labor and Industry.~~ with the commissioner, the granted variance shall be considered to be applicable in Minnesota under the following conditions:

- A. the multistate application included Minnesota;
- B. the standard from which the variance is granted is identical to a Minnesota occupational safety and health standard; and
- C. no objections are received.

**REPEALER.** *Minnesota Rules*, parts 5210.0010; 5210.0030; 5210.0100, subpart 4; 5210.0200; 5210.0220; 5210.0230; 5210.0240; 5210.0250; 5210.0260; 5210.0270; 5210.0280; 5210.0290; 5210.0310, subparts 3 and 4; 5210.0340, subpart 1; 5210.0400; 5210.0430; 5210.0440; 5210.0470, subparts 3, 4, and 6; 5210.0540; 5210.0550; 5210.0560; 5210.0820, subparts 2, 3, 5, and 6; 5210.0830, subparts 2, 4, and 5; and 5210.0840, are repealed.

## Proposed Rules

# Department of Labor and Industry

## Proposed Permanent Rules Relating to Occupational Safety and Health Review Board

### Notice of Intent to Adopt Rule Amendments Without a Public Hearing

The Occupational Safety and Health Review Board intends to adopt amendments to 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 you 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:

Beth Hargarten  
Acting Executive Secretary  
Minnesota Occupational Safety and Health Review Board  
443 Lafayette Road  
St. Paul, Minnesota, 55155  
(612) 297-7350

**Subject of Rule and Statutory Authority.** The proposed amendments regard procedures for the Occupational Safety and Health Review Board. The Legislature has changed the procedure for contestation of Occupational Safety and Health citations. Previously, most contestation procedures up to the point of hearing were conducted by the Board and now these pre-hearing procedures will be handled by the Commissioner. Because all of the pre-hearing filings now will be through the Commissioner, a number of the Board's old procedural rules are repealed. New provisions are added to implement the statutory change which allows the Board to vacate final orders of the Commissioner and the procedures for appeal are clarified. Contested Occupational Safety and Health hearings are still conducted by the Office of Administrative Hearings and appealed to the Board. The statutory authority to adopt this rule is *Minnesota Statutes*, Sections 14.06, 175.171(2), 182.651, 182.661, subd. 3 and 182.664, subds. 3 and 5. A copy of the proposed rule is printed in the *State Register* and immediately following this notice. A free copy of the rule, for those who receive this notice in the mail and others, is also available upon request from the agency contact person listed above.

**Comments.** You have until 4:30 p.m., November 29, 1995, 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 29, 1995. 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 14.13 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 data and information relied upon to support the proposed rule.

**Small Business Considerations.** The adoption of the proposed rule has no substantial or specific impact on small business.

**Expenditure of Public Money by Local Public Bodies.** No additional financial burdens are placed on local public bodies by the proposed rule.

**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 rules. 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: 20 October 1995

Kenneth Sovereign, Chair  
Minnesota Occupational Safety  
and Health Review Board

**Rules as Proposed****5215.0100 SCOPE OF RULES.**

This chapter governs all proceedings before the Occupational Safety and Health Review Board. ~~Additionally, all contested case and rule hearing proceedings are governed by chapter 1400.~~

In the absence of a specific provision, procedures and standards of review shall be in accordance with chapter 1400 and the Minnesota Administrative Procedure Act, Minnesota Statutes, chapter 14.

**5215.0200 DEFINITIONS.**

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

Subp. 2. **Act.** "Act" means the ~~Minnesota~~ Occupational Safety and Health Act of 1973, Minnesota Statutes, sections 182.65 to 182.674 chapter 182.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. **Chairperson Chair.** "Chairperson Chair" means the chairperson chair of the Occupational Safety and Health Review Board as designated by the governor.

[For text of subp 6, see M.R.]

Subp. 7. [See repealer.]

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

Subp. 11. **Intervenor.** "Intervenor" means any person ~~who has submitted a~~ whose petition to intervene ~~with~~ has been granted by the administrative law judge ~~in accordance with~~ pursuant to part 1400.6200.

[For text of subp 12, see M.R.]

Subp. 13. **Party.** "Party" means each person named as a party ~~by the board~~ in the notice of and order for hearing, ~~or~~ and persons granted permission to intervene pursuant to part 1400.6200 party status by the commissioner.

Subp. 14. [See repealer.]

Subp. 15. **Proceeding.** "Proceeding" means any ~~proceeding case~~ before the board ~~or before~~ on appeal from the decision of an administrative law judge.

Subp. 16. **Representative.** "Representative" means any person, including an authorized employee representative ~~or~~ and legal counsel ~~for an authorized employee representative~~, authorized by a party or intervenor to represent that person in a proceeding.

[For text of subp 17, see M.R.]

**5215.0500 EXTENSIONS OF TIME.**

Requests for extensions of time for the filing of any pleading or document must be in writing and must be received by the board ~~three days by 4:30 p.m. on the fourth working day~~ in advance of the date on which the pleading or document is due to be filed and be accompanied by an affidavit or affidavits explaining the need for an extension.

**5215.0600 RECORD ADDRESS.**

The initial pleading document filed with the board by a person party or intervenor must contain the person's party or intervenor's name, address, and telephone number. Any change in the information party or intervenor's name, address, or telephone number must be communicated promptly in writing to the administrative law judge or the board, as the case may be, and to all other parties, and intervenors. A party or intervenor who fails to furnish the information required by this part waives the right to notice and service under ~~parts 5215.0700 to 5215.0750~~ this chapter.

**5215.0700 FILING; SERVICE AND NOTICE.**

Subpart 1. **Parties and intervenors Service.** At the time of filing ~~pleadings or other documents~~, a copy shall be served by the filing party or intervenor any document with the board, the party or intervenor filing the document must serve a signed copy of the document on every ~~other party or~~ and intervenor.

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

## Proposed Rules

Subp. 2. **Representatives.** Service upon a party or intervenor who has appeared through a representative must be made ~~only upon such~~ the representative only.

Subp. 3. **Methods of service.** Unless otherwise ordered by the board, service may be made by postage-prepaid first class mail, ~~or personal delivery, or by posting.~~ Service is ~~made~~ completed at the time of mailing, ~~or personal delivery, or posting.~~

Subp. 4. **Proof of service; filing.** Service must be certified by a written statement that sets forth the date and manner of service. The statement must be signed by the person accomplishing service, and it must be filed with the ~~pleading or~~ document.

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

**Subp. 8. Filing.** Documents filed with the board must be accomplished by postage-prepaid first class mail or personal delivery upon the executive secretary. Filing accomplished by postage-prepaid first class mail is considered filed on the postmark date.

### **5215.0900 CONSOLIDATION.**

Cases may be consolidated on the motion of any party; ~~on the administrative law judge's own motion~~; or on the board's own motion; where there exist common parties or intervenors, or common questions of law or fact, or both; ~~or in other circumstances as justice and the administration of the act require.~~

### **5215.1000 SEVERANCE.**

Upon its own motion; or ~~upon~~ the motion of any party, the board ~~or the administrative law judge~~ may, ~~for good cause~~, order any proceeding severed with respect to some or all issues or parties when severance is necessary to protect the legal interests of one or more parties or intervenors.

### **5215.1100 PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION.**

Upon application by any person in a proceeding where trade secrets or other matters may be divulged, the administrative law judge shall ~~board may~~ issue orders as may be appropriate to protect the confidentiality of these matters information that may be presented in a proceeding before it.

### **5215.1400 REPRESENTATIVES OF PARTIES AND INTERVENORS.**

Any party or intervenor may appear in person or through a representative. ~~A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.~~

~~Affected employees who are represented by an authorized employee representative may appear only through the authorized employee representative.~~

Nothing contained herein requires any representative to be an attorney at law unless otherwise prohibited as the unauthorized practice of law.

Withdrawal of appearance of any representative may be ~~affected~~ effected by filing a written notice of withdrawal with the board and by serving a copy thereof on all parties and intervenors.

### **5215.1500 FORM OF PLEADINGS, CAPTION.**

~~Except as provided in parts 5215.1500 to 5215.2500, there are no specific requirements on the form of any pleading. A pleading is simply required to~~ Subpart 1. Form. All documents filed with the board must contain a caption sufficient to identify the parties in accordance with part 5215.1800 subpart 2. It ~~The caption must include the board's commissioner's and the office of administrative law judge's hearings' docket number, if any, and a clear and plain statement of the relief that is sought, together with the ground for the relief.~~

~~Pleadings and other Documents, other than exhibits, must be typewritten or otherwise be legible, double spaced with one-inch margins on white paper, approximately 8-1/2 inches by 11 inches.~~



Subp. 2. Caption. Cases before the board must be captioned:

Commissioner  
Department of Labor and Industry  
State of Minnesota

Complainant

v.

(Name of contesting party)

Respondent

(Name of third party)

Authorized  
employee  
representative,  
affected  
employee,  
employer, etc.

Subp. 3. Placement of caption, docket numbers. The caption must appear at the left upper portion of the initial page of any document, other than exhibits, filed with the board.

The initial page of any document, other than exhibits, must set out at the upper right portion of the page, opposite the caption, the commissioner's and the office of administrative hearings docket numbers, if any.

**5215.1600 SIGNATURE ON PLEADINGS.**

Pleadings Documents filed with the board must be signed by the party or intervenor filing the document or by the party's or intervenor's representative. Signing constitutes a representation by the signer that the signer has read the document or pleading, that to the best of the signer's knowledge, information, and belief the statements made in it are true, and that it is not interposed for purposes of delay or harassment.

**5215.2100 PETITIONS FOR MODIFICATION OF ABATEMENT DATE.**

When a petition for modification of abatement date filed under part 5210.0540 5210.0542, as proposed at .. State Register .... and as subsequently adopted, is objected to by the commissioner, affected employees, or an authorized employee representative, the petition must be processed as follows:

A. The petition, citation, and objections received by the Department of Labor and Industry must be forwarded to the board within three days after the expiration of the 15-day period set out in part 5210.0540 5210.0542, subpart 7, as proposed at .. State Register .... and as subsequently adopted.

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

**5215.5000 NOTICE OF APPEAL.**

Subpart 1. **Appellant.** Any party or intervenor may file a notice of appeal of the findings and decision of an the administrative law judge with the board.

Subp. 2. **Contents.** A notice of appeal must contain a concise statement of each portion of the findings and decision to which exception is taken. It may be accomplished by a statement of reasons relied upon or order which is sought to be reviewed and the errors which the appellant claims. The notice of appeal must include the legal or factual issues that are also state the name of the administrative law judge who presided over the administrative hearing, any statutes or rules at issue, the claims, defenses, and issues litigated and the result below, and the issues to be raised on appeal. The decision of the administrative law judge must be attached to the notice of appeal. The original notice of appeal and four five copies shall must be filed with the board.

Subp. 3. **Receipt.** The notice of appeal must be received by decisions and orders of the administrative law judge may be appealed to the board at its offices in Saint Paul, Minnesota, on or before the 30th day by any party within 30 days following issuance service by mail of the administrative law judge's findings and decision and order.

**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. 4. **Other parties may file.** Within ten days after the filing service of a the notice of appeal, any other party may file a notice of appeal of the administrative law judge's findings and decision regardless of the 30-day period stated in subpart 3.

Subp. 5. [See repealer.]

Subp. 6. **Filing and service.** Filing and service of the notice of appeal must be made according to part 5215.0700.

Subp. 7. **Transcript.** If a transcript has not already been ordered, the appellant must, within ten days after filing the notice of appeal, order a copy of the transcript at the appellant's own expense.

### 5215.5050 BRIEFS.

The board may order the Subpart 1. Form of brief. Parties to must file any briefs or memoranda it deems necessary. Each brief or memorandum must state the facts relevant to the issues appealed, making citation to the transcript, concisely identify the legal issue or factual issues involved in the appeal and each, contain an argument explaining the party's stance position on these issues each issue, and a conclusion which states the relief sought by the party. Filing and service of the brief must be made according to part 5215.0700.

Subp. 2. **Briefing schedule.** The board shall set a briefing schedule. The appellant shall file a brief within 30 days after filing of the first notice of appeal or receipt of the transcript by the board, whichever is later. All other parties and intervenors shall file briefs within 30 days of service of the appellants' briefs. Appellants may file reply briefs within ten days of service of the respondents' briefs.

### 5215.5200 ORAL ARGUMENT BEFORE BOARD.

Subpart 1. **Oral argument heard.** The board shall order oral argument before the board will where the factual or legal issues are sufficiently complex or unclear as to require oral argument. If ordered by the board, oral argument must be heard from each party or party's representative unless it is waived by that party.

Subp. 1a. **Procedure.** Each party shall be limited to ten minutes, or additional time as the board orders where the factual or legal issues are sufficiently complex or unclear as to require additional time. The appellant shall appear first, followed by each party in order of appearance in the caption. The appellant may reserve a portion of the time allotted for rebuttal. When reserving time for rebuttal, the appellant must notify the board prior to the start of argument.

Subp. 2. **Notice.** The executive secretary shall, at least ten days before prior to the date set for oral argument, the executive secretary will advise notify in writing all parties to the proceedings and the employer if the employer is not a party, of the date, hour, place, and time allotted; and scope of the argument to each party.

Subp. 3. [See repealer.]

### 5215.5210 REVIEW BY BOARD.

Subpart 1. **Limited review.** The board is limited in its review of an administrative law judge's decision and order to the matters preserved in the record. The board may affirm, in whole or part, or reverse, in whole or in part, the decision and order or remand it to the administrative law judge for further proceedings.

Subp. 2. **Standard of review.** The board may revise or reverse the administrative law judge's decisions and orders if substantial rights of the petitioner or petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- A. in violation of constitutional provisions;
- B. in excess of the statutory authority or jurisdiction of the agency;
- C. made upon unlawful procedure;
- D. affected by other error of law;
- E. unsupported by substantial evidence in view of the entire record as submitted; or
- F. arbitrary or capricious.

### 5215.5350 PETITION TO VACATE A FINAL ORDER OF COMMISSIONER.

Subpart 1. **Filing.** A petition to vacate a final order of the commissioner must be filed with the board and a signed copy of the petition must be served on every party and intervenor within 30 days after service by mail of the order.

Subp. 2. **Response.** Within 20 days after being served with a copy of the petition, any party other than the petitioning party may file a response to the petition with the board. The response may include supporting affidavits.

Subp. 3. **Contents of the petition.** A petition filed under this part must set out the basis for the requested action consistent with

Minnesota Statutes, section 182.664, subdivision 5. The showing of good cause as defined by Minnesota Statutes, section 182.664, subdivision 5, must be supported by affidavits.

Subp. 4. Disposition. The board may deny the petition or vacate the commissioner's order. The decision of the board must include findings of fact, conclusions of law, and an order. The board must sign and date the decision and serve the decision on all parties and intervenors.

Subp. 5. Filing and service. Filing and service of the petition must be made according to part 5215.0700.

#### **5215.5500 STANDARDS OF CONDUCT.**

All persons appearing in any ~~proceeding~~ proceedings before the board shall conform to the standards of ethical conduct required in the courts of the state of Minnesota.

#### **5215.5600 EX PARTE COMMUNICATION.**

With respect to the merits of any case not concluded, there shall be no ex parte communication between the board, including any member, officer, employee, or agent of the board who is employed in the ~~decisional~~ decision-making process, and any of the ~~parties party or intervenors~~ intervenor.

If ex parte communication occurs, the board may ~~make orders or~~ take whatever action fairness requires. ~~Upon notice and hearing, the board may take any disciplinary action appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited to remedy the effect of the~~ ex parte communication consistent with this chapter and the statutory authority of the board.

#### **5215.5700 RESTRICTIONS ON INVESTIGATIVE OR PROSECUTING OFFICERS COMMISSIONER.**

In any proceeding ~~noticed pursuant to before the rules in this chapter board,~~ the commissioner of labor and industry or designees of the commissioner shall not participate ~~in or advise with respect to the report of the administrative law judge or the board decision in its decision-making process.~~

#### **5215.5800 INSPECTION AND REPRODUCTION OF DOCUMENTS.**

Subject to the provisions of law and any order of the commissioner, an administrative law judge, or the board restricting public disclosure of information, any person may, at the offices of the board, inspect and copy any document filed in any proceeding. All costs are must be borne by the person.

#### **5215.5900 RESTRICTIONS ON FORMER EMPLOYEE OR MEMBER.**

No former employee ~~or,~~ member of the board, or employee of the Department of Labor and Industry may appear before the board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which the person participated personally and substantially during the period of employment or tenure.

No former employee ~~or,~~ member of the board, or employee of the Department of Labor and Industry may appear before the board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which the person was involved during the period of employment or tenure, unless one year has elapsed since the termination of the employment or tenure.

#### **5215.6100 PENALTIES.**

The board has no jurisdiction under *Minnesota Statutes, section 182.667* ~~and must conduct no proceeding under it, to impose penalties.~~

**REPEALER.** Minnesota Rules, parts 5215.0200, subparts 3, 4, 7, and 14; 5215.0700, subparts 5, 6, and 7; 5215.0711; 5215.0721; 5215.0730; 5215.0800; 5215.1200; 5215.1700; 5215.1800; 5215.1900; 5215.2000; 5215.2011; 5215.2200; 5215.2300; 5215.2400; 5215.2500; 5215.2560; 5215.4900; 5215.5000, subpart 5; 5215.5200, subpart 3; 5215.5250; 5215.5300; 5215.5400; and 5215.6000, are repealed.

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

# Official Notices

Pursuant to the provisions of Minnesota Statutes §14.101, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

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

## Minnesota Department of Agriculture

### Agronomy Services Division

## ACRRA Board

### Notice of Reduction of ACRRA Surcharges and Minnesota Agricultural Chemical Response and Reimbursement Account (ACRRA)

#### Notice of Future ACRRA Surcharges

Annually, and pursuant to *Minnesota Statute* 18E.03, Subd. 3 (1994), the Commissioner of Agriculture determines the amount of ACRRA surcharges to be paid by various persons to adequately fund the ACRRA Response & Reimbursement Program.

- For pesticides registered under *Minnesota Statute* 18B.26 (1994): a surcharge equal to ~~0.2~~ 0.1 percent of sales of the pesticide in the state and sales of pesticides for use in the state during the period January 1, 1996 through December 31, 1996.
- For fertilizers, soil amendments, and plant amendments inspection fees, under *Minnesota Statute* 18C.425 (1994): ~~twenty (20)~~ ten (10) cents per ton.
- For sites licensed under *Minnesota Statute* 18B.31 (1994) - Pesticide Dealers; and for sites licensed under *Minnesota Statute* 18C.415 and 18C.425 (1994) — Agricultural Fertilizer Dealers and Fertilizer Lawn Services: ~~\$150~~ \$75 per license.
- For Structural Pest Control Applicator business license, under *Minnesota Statute* 18B.32 (1994): ~~\$100~~ \$50 per license.
- For Commercial Pesticide Applicator license, under *Minnesota Statute* 18B.33 (1994): ~~\$40~~ \$20 per license.
- For Non-Commercial Pesticide Applicator license, under *Minnesota Statute* 18B.34 (1994): ~~\$40~~ \$20 per license.
- For each site where pesticides are stored and sold for use outside the state: ~~\$2000~~ \$1000; unless,
  - (1) the distributor properly documents that it has less than \$2,000,000 per year in wholesale value of pesticides stored and transferred through the site; or
  - (2) the registrant pays the registration surcharge (see above) and the registration fee under section 18B.26, subdivision 3, for all of the pesticides stored at the site and sold for use outside of the state.

The MDA determined that reducing the amount of surcharge required to be paid to the statutory base levels is reasonable and necessary for the following reasons:

1. The ACRRA, by statute, must maintain an unencumbered balance of \$1,000,000.
2. The ACRRA balance, after the addition of 1995 surcharges collected from November, 1995, to March, 1996 is projected to be more than \$1,000,000 and less than \$5,000,000.
3. Reimbursements or payments expected to be ordered by the ACRRA Board during the next year are estimated to be \$1,200,000.
4. The majority of ACRRA surcharges for 1996, as detailed above, will not be collected until the period November 1996, to March 1997.
5. The Commissioner of the MDA, and the ACRRA Board, have been informed by persons required by statute to pay ACRRA surcharges that notification of determination of surcharge amounts is best managed, most acceptable and least objectionable to those affected if such determination and disclosure is made as soon as possible and no later than the end of any respective calendar year.

Persons desiring further information may contact the Minnesota Department of Agriculture at (612) 297-4872.

Dated: 20 October 1995

Gene Hugoson  
Commissioner, Department of Agriculture  
Paul Liemandt  
Executive Director, ACRRA Board

Pursuant to *Minnesota Statutes* § 18E.03, Subd. 3 (1994), the Commissioner of the Minnesota Department of Agriculture (MDA), will reduce the amount of the annual response and reimbursement fees (surcharges) for the Agricultural Chemical Response and Reimbursement Account (ACRRA) to the statutory base levels for the calendar year 1996. The reduction will effectively make the surcharges 50% less than the annual surcharges imposed for each of the last four calendar years.

A public hearing to take testimony on the Commissioner of Agriculture's intention to reduce the amount of the ACRRA surcharges was held in Conference Room 1 at 8:30 a.m. on September 20, 1995, at the MDA offices at 90 West Plato Boulevard, Saint Paul, Minnesota. Written comments were solicited to be sent by September 20, 1995 to:

William L. Oemichen  
Deputy Commissioner  
Minnesota Department of Agriculture  
90 West Plato Boulevard  
Saint Paul, Minnesota 55107

One person testified in support of the reduction in surcharges at the public hearing; no one testified against the proposed reduction. No written comments were received.

## State Board of Education

### Notice of Intent to Solicit Outside Information Regarding Proposed Rule Governing Education Diversity

**NOTICE IS HEREBY GIVEN** that the Minnesota State Board of Education (Board) is seeking information or opinions from outside sources in preparing to propose the adoption of rules governing Education Diversity. The adoption of the rule is authorized by *Minnesota Statute* 121.11 Subd. 7d which authorizes the Board to adopt rules relating to inclusive education.

Issues that may be considered by the Board when the rule is proposed include but are not limited to: the plan required of school districts, implementation of the plan, staff development and compliance procedures. The groups or individuals that are likely to be affected by the rule are: students, teachers, administrators, school board members and community members including parents of students.

Draft copies of the rule may be obtained from: Carol Joselyn at the MN Department of Children, Families and Learning, Room 519A, Telephone # (612) 296-7628.

The Board anticipates the rulemaking process for this rule to be completed by September 1996.

The Board requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views in writing or orally. Written statements should be directed to:

Lorie Schulstad or Barbara Stilwell  
528 Capitol Square Building  
550 Cedar Street  
St. Paul, MN 55101  
Telephone: (612) 297-7820 (24 hours a day)  
FAX: (612) 282-9812 (24 hours a day)  
TDD/TTY: (612) 297-2094

Statements will be received 24 hours a day by phone and FAX. The TDD/TTY number will be answered during regular business hours, 8:00 a.m. to 4:30 p.m.

All statements of information and opinion will be accepted until November 30, 1995. Any written materials received by the Board shall become part of the rulemaking record in the event that the rule is adopted.

## Environmental Quality Board

### Power Plant Siting Program

#### Notice of Annual Hearing

The Minnesota Environmental Quality Board will hold the annual public hearing on the Power Plant Siting and Transmission Line Routing Program, as required by the Power Plant Siting Act, *Minnesota Statutes* 116C.58 and *Minnesota Rules*, part 4400.4300, at 9:00 a.m., Saturday, November 18, 1995, in Conference Room 302 of the Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota. Parking is available in the ramp east of the building and the building may only be entered on the east side.

The annual hearing is intended to afford interested persons an opportunity to be heard regarding any aspects of the Board's activities, duties, or policies pursuant to the Power Plant Siting Act. All persons will be afforded an opportunity to be heard through the presentation of oral or written statements. Written statements marked for the annual hearing record may also be submitted for inclusion in the annual hearing by delivery to the Board's office by the close of business December 1, 1995.

Direct all inquiries to: Bob Cupit, Power Plant Siting Program, Minnesota Environmental Quality Board, 300 Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155, Phone 612-296-2096.

## Higher Education Services Office

### Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Work Study

**NOTICE IS HEREBY GIVEN** that the Minnesota Higher Education Services Office is seeking comments outside the agency in preparing to propose the amendment of the rule governing state work study grants to post-secondary students. The adoption and amendment of the rule is authorized by *Minnesota Statutes*, section 136A.01, Subd. 2(8) which requires the agency to prescribe policies, procedures, and rules necessary to administer the programs under its supervision.

**How to obtain a draft of the rule.** Persons who wish to receive a draft of the proposed amendments should send a written request to the agency contact person indicated below. Requesters will be sent a copy of the first draft prepared by the Office of the Revisor of Statutes as soon as it becomes available.

**Persons that might be affected.** Groups and individuals expected to be affected by the proposed amendments include Minnesota post-secondary institutions receiving state work study funds for student awards and eligible students attending Minnesota post-secondary institutions participating in the state work study program.

**Subject matter of the rulemaking.** The amendments to the rule address the issue of good standing and satisfactory academic progress as it relates to student eligibility for work study awards.

**How to comment.** Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. No advisory committee will be formed. Written comments should be addressed to:

Mary Lou Dresbach  
Minnesota Higher Education Services Office  
400 Capitol Square Building  
550 Cedar Street  
St. Paul, MN 55101  
Telephone: (612) 296-3974 (ext. 3036)  
Fax: (612) 297-8880

Oral comments will be received during regular business hours at (612) 296-3974 (ext. 3036) and in person at the address indicated above. Any written material received by the Minnesota Higher Education Services Office shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted. Comments will be accepted until December 15, 1995.

Dated: 23 October 1995

Joseph P. Graba  
Interim Director

## Higher Education Facilities Authority

### Notice of Public Hearing on Revenue Obligations

**NOTICE IS HEREBY GIVEN** that a public hearing will be held by the Minnesota Higher Education Facilities Authority (the "Authority") with respect to a proposal to issue revenue bonds or other obligations on behalf of the University of St. Thomas (the "University"), a Minnesota nonprofit corporation and institution of higher education, at the Authority's offices at Suite 450 Galtier Plaza, 175 East Fifth Street, St. Paul, Minnesota on November 15, 1995 at 2:00 p.m. Under the proposal, the Authority would issue its revenue bonds or other obligations in an original aggregate principal amount of up to approximately \$20,225,000 to finance a project generally described as the acquisition construction and equipping of an approximately 200,000 square foot science and technology building (the "Project"), owned or to be owned and operated by the University and located on its main St. Paul campus, the principal street address of which is 2115 Summit Avenue, St. Paul, Minnesota 55105.

At said time and place the Authority shall give all parties who appear or have submitted written comments an opportunity to express their views with respect to the proposal to undertake and finance the Project.

Dated: 30 October 1995

By Order Of The Minnesota Higher  
Education Facilities Authority  
J. Luther Anderson  
Executive Director

## Department of Labor and Industry

### Workplace Services Division, Code Administration and Inspection Services Unit

### Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing High Pressure Piping Business Licenses

**NOTICE IS HEREBY GIVEN** that the Commissioner of the Department of Labor and Industry is seeking information or opinions from sources outside the agency in preparing to propose rules relating to the procedures for application for and issuance of high pressure piping business licenses and the fee for the licenses.

**Subject of Rules and Statutory Authority.** The proposed rules will provide procedures for the application for and issuance of the new high pressure piping business licenses created by the 1995 session of the Legislature. Additionally the proposed rules will set the fee for the high pressure piping business licenses. The purpose of these proposed rules is to implement the legislation; to establish the application procedures for business licenses; to define the manner in which the business licenses will be issued; and, to set the fee for the licenses as required by law.

The adoption of the proposed rules is authorized by *Laws of Minnesota* for 1995, Chapter 123, Section 2, to be coded as *Minnesota Statutes*, section 326.48, subdivision 2, which requires the agency to adopt rules providing for the procedures for application for and the issuance of high pressure piping business licenses and fees, and *Minnesota Statutes* section 175.171.

**Parties Affected by the Rules.** The primary parties affected by the rules are pipefitters and pipefitting contractors engaged in high pressure piping. Additional affected parties include those persons and entities owning, operating, improving or constructing high pressure piping systems.

**Comments and Agency Contact Person.** The Minnesota Department of Labor and Industry, Workplace Services Division, Code Administration and Inspection Services Unit requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be mailed or faxed to:

Ruben Besonen  
Chief Inspector, High Pressure Piping  
Code Administration and Inspection Services  
Minnesota Department of Labor and Industry  
443 Lafayette Road North  
St. Paul, Minnesota 55155  
PHONE: (612) 296-4529  
FAX: (612) 296-1140

## Official Notices

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Oral statements will be received during regular business hours over the telephone at (612) 296-4529 and in person at the above address.

All statements or information will be accepted until further notice is published in the *State Register*. However, parties are encouraged to submit written comments before December 29, 1995.

The Department of Labor and Industry does not currently have a draft of the rules prepared. If you wish to receive a draft when it is prepared, or if you wish to be placed on the agency's rule mailing list in this regard, please contact the person listed above.

All written material shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rules are adopted.

Dated: 23 October 1995

Gary W. Bastian  
Commissioner

## Department of Labor and Industry

### Workers' Compensation Division

#### Notice of Adjusted Workers' Compensation Independent Medical Examination Fees

**NOTICE IS HEREBY GIVEN** of adjustment of workers' compensation independent medical examination maximum fees according to *Minnesota Rules*, part 5221.0500, subpart 4, which states as follows: "On October 1, 1994 and on October 1 of each succeeding year, the fees in this part must be adjusted by the percentage determined under *Minnesota Statutes*, section 176.645, in the same manner as the conversion factor of the relative value fee schedule is adjusted under *Minnesota Statutes*, section 176.136. This provision does not apply to expenses under subpart 3, item E, subitem (1)."

Adjustment for services on or after October 1, 1994: 1.65% increase

Adjustment for services on or after October 1, 1995: 2.64% increase

Dated: 23 October 1995

Gary W. Bastian  
Commissioner

## Department of Labor and Industry

### Labor Standards Division

#### Notice of Prevailing Wage Determinations for Highway/Heavy Projects

On October 16, 1995 the commissioner determined and certified prevailing wage rate for Highway/Heavy construction projects in each county statewide.

Certifications will be made for specific projects by request of letting entities advertising for bids. Copies may be obtained by writing the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road, St. Paul, Minnesota 55155-4306, or calling (612) 296-6452. The charges for the cost of copying and mailing are \$1.00 for the first copy and \$.50 for any additional copies. Please note that the cost for one county varies according to the number of pages per count.

Gary W. Bastian  
Commissioner



**Department of Labor and Industry****Labor Standards Division****Notice of Prevailing Wage Certifications for Commercial Construction Projects**

Effective October 30, 1995 prevailing wage rates were determined and certified for commercial construction projects in the following counties:

**Anoka:** Renovate Kitchen Facilities-Anoka; Upgrade of National Guard Armory for ADA Compliance Anoka National Guard Armory-Anoka; Renovate Kitchen Facilities-Detroit Lakes; Upgrade of National Guard Armory for ADA Compliance Bemidji NGA-Bemidji.

**Blue Earth:** Mankato District Headquarters (Office Ventilation Upgrade)-Mankato.

**Carlton:** Renovate Kitchen Facilities-Cloquet.

**Dakota:** Outdoor Event Sign Rosemount National Guard Armory-Rosemount; Upgrade National Guard Armory for ADA Compliance West St Paul NGA-West St Paul.

**Hennepin:** Hyperbaric Gas Powered Compressor-Minneapolis; Upgrade of National Guard Armory for ADA Compliance Bloomington NGA-Bloomington.

**Itasca:** Renovate Kitchen Facilities-Grand Rapids.

**Lyon:** Renovate Kitchen Facilities-Marshall.

**Martin:** Well and Water Plant Construction-Welcome.

**Meeker:** Renovate Kitchen Facilities-Litchfield.

**Morrison:** Renovate Kitchen Facilities-Little Falls.

**Polk:** Upgrade of National Guard Armory for ADA Compliance Crookston NGA-Crookston. University of MN Crookston Bede Hall Crawlspace-Crookston.

**Ramsey:** Upgrade of National Guard Armory for ADA Compliance East St Paul NGA-East St Paul; Sound Reinforcement Systems-Rm 118, Rm 316 Capitol Bldg-St Paul; Installation of Brass Light Fixtures at Judicial Bldg-St Paul; Upgrade National Guard Armory for ADA Compliance St Paul NGA-St Paul.

**Renville:** Upgrade National Guard Armory for ADA Compliance Olivia NGA-Olivia.

**St Louis:** Wood Floor Replacement for Univ of MN Duluth Rm 21 Marshall Performing Arts Center-Duluth; Renovate Kitchen Facilities-Chisholm; Renovate Kitchen Facilities-Hibbing.

**Stearns:** Upgrade National Guard Armory for ADA Compliance St Cloud NGA-St Cloud.

**Steele:** Upgrade National Guard Armory for ADA Compliance Owatonna NGA-Owatonna.

**Wadena:** Upgrade National Guard Armory for ADA Compliance Wadena NGA-Wadena.

**Washington:** Upgrade of National Guard Armory for Compliance with ADA Cottage Grove NGA-Cottage Grove.

**Watsonwan:** Upgrade National Guard Armory for ADA Compliance St James NGA-St James; Renovate Kitchen Facilities-St James.

Copies of the certified wage rate 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.

Gary W. Bastian, Commissioner

## Minnesota Historical Society

### State Review Board Regular Meeting

A meeting of the State Review Board of the Minnesota Historical Society to consider nominations to the National Register of Historic Places will be held on Thursday, November 16, 1995, in the Minnesota Historical Society History Center, Cargill Commons, MacMillan Education Wing, St. Paul, Minnesota. The State Review Board will meet at 7:00 p.m. for an informational presentation on program activities made by the Preservation Office staff. The meeting will be called to order and consideration of the meeting's agenda will begin at 7:30 p.m. A sign language interpreter is available with one weeks notice, and auxiliary aids are available with two weeks notice. Call 612/296-5434, or TTY 612/282-6073. For further information contact the State Historic Preservation Office, Minnesota Historical Society, 345 Kellogg Boulevard West, St. Paul, MN 55102, (612) 296-5434.

## Department of Natural Resources

### Division of Forestry

#### Lake States Forestry Alliance Meeting Notice

**NOTICE IS HEREBY GIVEN** that a Lake States Forestry Alliance Board of Trustees teleconference meeting is being held Wednesday, November 1, 1995, from 8:00 a.m. to 9:00 a.m.

The meeting agenda will include discussion of the organization's Lake States Assessment final report, upcoming Governor's Conference, and sustainable forestry paper.

To reserve a phone line contact the Lake States Forestry Alliance office at (715) 634-2006 by October 27, 1995.

Dated: 20 October 1995

Gerald A. Rose, director  
Division of Forestry  
Department of Natural Resources

## Department of Natural Resources

### Notice of Availability of State Metallic Minerals Leases Through Preference Rights Leasing

**NOTICE IS HEREBY GIVEN** that a preference rights lease availability list will be established on December 1, 1995. Leases to explore for, mine and remove metallic minerals may be obtained by application for all lands included on the preference rights lease availability list. Included in the list may be trust fund lands, lands and minerals forfeited for non-payment of taxes, lands and minerals otherwise acquired, and other state-owned land under the jurisdiction of the Commissioner of Natural Resources, and located in portions of Aitkin, Beltrami, Carlton, Crow Wing, Itasca, Koochiching, Lake of the Woods, Marshall, Morrison, Norman, Roseau, Saint Louis, and Todd Counties. No land or water areas within the Boundary Waters Canoe Area Wilderness or Voyageurs National Park are included in the preference rights lease availability list.

The preference rights leasing system being established is in addition to the public lease sale process. All lands included in the preference rights lease availability list were also offered for lease in the August 2, 1995, public lease sale.

State lands in designated mining units may not be included in the preference rights lease availability list if they have not been offered at a public lease sale within the last four years, contain an identified mineral resource, or if the area is being explored by multiple parties.

The preference rights availability list will be maintained in the office of the Division of Minerals, Department of Natural Resources, 500 Lafayette Road, Saint Paul, Minnesota 55155-4045. The list will be available for inspection by the public and interested parties during regular business hours. Those interested in obtaining a copy of the preference rights availability list may obtain one by submitting a request to the Commissioner. The Commissioner shall charge a fee for each copy of the list based on copying and mailing costs.

Information on procedures and applications for a preference rights lease may be obtained from the Commissioner of Natural Resources, c/o Division of Minerals, 500 Lafayette Road, Saint Paul, Minnesota 55155-4045 (telephone 612-296-4807). Each

application must be accompanied by a certified check, cashier's check, or bank money order, payable to the Department of Natural Resources in the sum of the following amounts: a) an application fee of \$100.00 for each mining unit for which a preference rights lease is requested; and b) rental for one full calendar year for each mining unit for which a preference rights lease is requested.

Applications may be submitted in person or by mail to the office of the Division of Minerals, Fourth Floor, DNR Building, 500 Lafayette Road, Saint Paul, Minnesota 55155-4045. Applications will only be accepted during the hours of 8:30 a.m. to 4:00 p.m. on regularly scheduled business days. Applications received at any other time will not be officially accepted until the next regularly scheduled business day, and the Commissioner assumes no responsibility for applications submitted in person at any time other than the time specified.

Evidence of qualification to hold a state mineral lease, as specified in *Minnesota Rules*, part 6125.0410, must be submitted with the application. The rules state that a lease will only be issued to an applicant qualified to do business in Minnesota and qualified to conduct exploratory borings in Minnesota. Within ten days after receipt of an application, the Commissioner will send written acknowledgment that the application was received. The Commissioner may request evidence that the lease applicant is technically and financially capable of performing under the terms of a state mineral lease. The requested evidence must be provided within 45 days of the request from the Commissioner or the application will be rejected.

A lease shall be awarded by the Commissioner, with the approval of the State Executive Council, to the first qualified applicant who files an application that is not rejected. The right is reserved to the State, through the Executive Council, to reject any and all applications for preference rights leases. Preference rights leases shall be in the form set out in *Minnesota Rules*, part 6125.0700. The rental and royalty rates shall not be less than prescribed in *Minnesota Rules*, part 6125.0700. Upon the award of a lease, the application fee submitted with the application will be deposited with the State Treasurer as a fee for the lease. If the application for a preference rights lease is rejected, the rental payment accompanying the application will be returned to the applicant. The application fee will not be refunded under any circumstances.

The purpose of Minnesota's metallic minerals rules is to promote and regulate the prospecting for, mining and removal of metallic minerals on state-owned and state-administered lands. These rules, and the leases issued under the rules, authorize exploration and development of these minerals and impose certain requirements on the lessee. The requirements include: the payment of minimum rentals which increase with the passage of time, the payment of royalty for all ore mined and removed, the submission of data and other reports, and the submission of exploration plans. In addition, the state lessee must comply with all applicable regulatory laws.

Dated: 30 October 1995

Rodney W. Sando, Commissioner  
Department of Natural Resources  
Saint Paul, Minnesota

William C. Brice, Director  
Division of Minerals

## Department of Transportation

### Petition of Steele County for a Variance from State Aid Requirements for DESIGN SPEED

**NOTICE IS HEREBY GIVEN** that the Steele County Board has made written request to the Commissioner of Transportation pursuant to *Minnesota Rules* 8820.3300 for a variance from rules as they apply to a proposed resurfacing project on County State Aid Highway No. 45, between Medford, Minnesota and the North County Line.

The request is for a variance from Minnesota Rules for State Aid Operations 8820.9925, adopted pursuant to *Minnesota Statutes* Chapter 161 and 162, so as to permit a 35 mph sag vertical curve, in lieu of the required 40 mph minimum design speed on the proposed resurfacing project on County State Aid Highway No. 19, between Medford, Minnesota and the North County Line.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated: 17 October 1995

Patrick B. Murphy, Division Director  
State Aid for Local Transportation

# State Grants

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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.

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## Department of Human Services

### Mental Health and State Operated Services Division

#### Request for Proposals for the Statewide Toll-Free Compulsive Gambling Hotline and Public Awareness Campaign

The Mental Health and State Operated Services Division of the Minnesota Department of Human Services is soliciting proposals for provision of a statewide toll-free telephone number to provide a compulsive gambling Hotline as one component of a comprehensive program for persons who are compulsive gamblers, their families and others affected by gambling problems. Proposals are also being solicited for a public awareness program to promote recognition of compulsive gambling behavior and treatment throughout Minnesota.

The time period for both program components is eighteen months, January 1, 1996 through June 30, 1997. Funding is provided through a legislative appropriation. The Department has designated \$187,500 for the Hotline program and \$160,500 for the Public Awareness Campaign. **Applicants may choose to submit a proposal for just one program, a separate proposal for each or, a combined proposal.** There will not be a bidder's conference. Applicants must meet Human Rights Compliance requirements of *Minnesota Statutes*, section 363.073 and *Minnesota Rules*, parts 5000.3400 to 5000.3600.

The request for Proposals does not obligate the State to complete the project, enter into a contract or to accept the lowest cost proposals. The State also reserves the right to cancel the solicitation if it is considered to be in the best interest of the State.

A copy of the complete RFP material and the Human Rights Compliance information is available by contacting Jay Bamberg by phone at 612-296-3923, or the address below.

All applicants must provide five (5) copies of their completed proposal(s) to the Mental Health and State Operated Services Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3828, no later than the close of business (4:00 p.m.) on November 22, 1995.

## Office of Environmental Assistance

### Notice of Grant Funds Available

The Solid Waste Management Processing Facilities Capital Assistance Program (CAP) was established by the Minnesota Legislature to provide financial and technical assistance to local governments to encourage the proper management of solid waste.

The objective of the CAP program is to minimize land disposal of solid waste through the promotion of waste reduction, recycling, and resource recovery. The CAP Program is intended to encourage and assist the development and implementation of solid waste processing facilities, and to transfer the knowledge and experience gained from those projects to other communities in the state.

This notice is issued by the OEA Director under authority provided in *Minnesota Rules* Parts 9210.0100 to 9210.0180. The purpose of this notice is to solicit preliminary applications for projects that meet the CAP Program objectives.

Cities, counties, solid waste management districts, and sanitary districts are eligible to apply for CAP grant assistance. Projects eligible for CAP grants are solid waste processing facilities that include resource recovery. Examples of eligible facilities are waste-to-energy facilities, composting facilities, recycling facilities, projects to improve control of or reduce air emissions, and transfer stations that will serve waste processing facilities.

Depending on the project type, a project may receive funding of 25 or 50% of the eligible capital cost, up to a maximum of \$2 million. However, multi-county projects with an intercounty cooperative agreement may receive 25 or 50% of the eligible capital costs, or up to \$2 million times the number of participating counties, whichever is less. A project to construct a new mixed municipal solid waste transfer station that has an enforceable commitment of at least 10 years, or of sufficient length to retire bonds sold for the facility, to serve an existing resource recovery facility may receive grant assistance up to 75% of the capital cost of the project if addition of the transfer station will increase substantially the geographical area served by the resource recovery facility.

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## Professional, Technical & Consulting Contracts

Copies of the CAP Procedures Manual, including the statutes and rules applicable to the program, and application forms are available by contacting:

Mary James  
Office of Environmental Assistance  
520 Lafayette Road No., Second Floor  
St. Paul, Minnesota 55155-4100  
(612) 215-0194 or 1-800-657-3843 (toll-free in Minnesota)

The OEA CAP Grant staff will meet with interested applicants to discuss the proposed project, the CAP program and the grant process, prior to applicant's submission of the preliminary grant application. All submissions should be unbound, single-sided, page numbered, and on 8 1/2" by 11" paper.

Preliminary applications meeting the requirements of *Minnesota Statutes* 115A.51, 115A.54, and *Minnesota Rules* Parts 9210.0100 to 9210.0180 must be received by the OEA at the above address by 4:30 p.m., CST, Friday, **January 26, 1996**.

Preliminary applications should be mailed or hand delivered to the OEA. Faxed submittals will not be accepted.

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## 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].

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## Department of Health

### Division of Family Health, Maternal and Child Health Section

#### Request for Proposals for Program Evaluation Services to State-Funded Adolescent Pregnancy Prevention MN ENABL (Education Now And Babies Later) Program

The Minnesota Department of Health (MDH), Family Health Division, is seeking proposals from qualified agencies or individuals to provide evaluation services to state funded MN ENABL program. These services include but are not limited to: 1) evaluation of state level MN ENABL support, 2) evaluation of approximately 10 community-based MN ENABL programs, and 3) technical/evaluation assistance to community-based MN ENABL programs. Products of the evaluation services include but are not limited to: 1) formal evaluation plans for community and state level MN ENABL program, and 2) preliminary and final reports with program recommendations.

A Request for Proposal may be obtained by contacting:

Laurie Jensen  
Minnesota Department of Health  
Division of Family Health  
Maternal and Child Health Section  
717 Delaware Street SE  
Minneapolis, MN 55440-9441  
(612) 623-5446

Proposals are due to the Minnesota Department of Health no later than 4:00 pm on Monday, November 27, 1995.

## Professional, Technical & Consulting Contracts

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### Department of Health

#### Division of Family Health, Maternal and Child Health Section

#### Request for Proposals for Training Services to State-Funded Adolescent Pregnancy Prevention MN ENABL (Education Now And Babies Later) Program

The Minnesota Department of Health (MDH), Family Health Division, is seeking proposals from qualified agencies or individuals to provide training services to state funded MN ENABL program. Training services include but are not limited to: 1) conducting a training needs assessment among community-based MN ENABL programs, 2) developing and conducting MN ENABL training that includes "tracks" for the "Postponing Sexual Involvement" curriculum and community organization strategies, and 3) coordinating training logistics. Products of the training services include but are not limited to: 1) MN ENABL training manual, and 2) final report on training activities.

A Request for Proposal may be obtained by contacting:

Laurie Jensen  
Minnesota Department of Health  
Division of Family Health  
717 Delaware Street SE  
Minneapolis, MN 55440-9441  
(612) 623-5446

Proposals are due to the Minnesota Department of Health no later than 4:00 pm on Monday, November 27, 1995.

### Higher Education Services Office

#### Notice of Availability of Request for Proposal for Prepress Services for the Agency's Publications

The Higher Education Services Office is requesting proposals from qualified vendors to provide prepress services for Fiscal Years 1996 and 1997. The Services Office produces a number of printed publications, ranging from eight-page, two-color bimonthly newsletters to 24-page, four-color annual magazines.

Proposals must be submitted no later than November 21, 1995.

Copies of the RFP are available from:

Communications  
Higher Education Services Office  
550 Cedar Street, Suite 400  
St. Paul, MN 55101  
(612) 296-9678

### House of Representatives

#### Request for Bid for Financial Audits for Fiscal Years 1995 and 1996

The Minnesota House of Representatives is requesting proposals to audit the financial statements of the House for the fiscal years ending June 30, 1995 and June 30, 1996. The audits are to be performed by an independent certified public accounting firm licensed to do business in the State of Minnesota.

The deadline for receipt of proposals is 4:30 p.m., November 8, 1995. Copies of the RFB are available from:

Minnesota House of Representatives  
Room 198 State Office Building  
100 Constitution Avenue  
St. Paul, MN 55155-1298  
(612) 296-3572  
Attention: Helen Arend

## Housing Finance Agency

### Request for Proposal for Arbitrage Rebate Services

The Minnesota Housing Finance Agency expects to have available a Request for Proposal for Arbitrage Rebate Services on October 27, 1995. The services to be provided by a qualified firm include, but are not limited to, the following: for each bond issue, calculate the bond yield; identify and separately account for all "Gross Proceeds"; calculate the issue's excess investment earnings (cumulative rebate liability); provide updated calculations and annual calculations thereafter; deliver appropriate documentation and an executive summary for each calculation; obtain a legal opinion from Agency's Bond Counsel. Proposals are to be submitted to Minnesota Housing Finance Agency, Patricia Hippe, Finance Director, 400 Sibley Street, Suite 300, St. Paul, Minnesota 55101-1998, no later than 12:00 p.m., noon, November 17, 1995. A copy of the request for proposal can be obtained by calling the Agency at 612/296-9426.

## Department of Human Services

### Mental Health Division and State Operated Services

### Request for Proposals to Conduct Evaluation Research for Compulsive Gambling Treatment

The Minnesota Department of Human Services is soliciting proposals from qualified evaluation consultants to design and conduct treatment evaluation research relating to treatment programs for compulsive gamblers in Minnesota. The evaluation research will also determine and examine the core components of the State's six treatment programs and the impact of each component on treatment outcomes and cost effectiveness. In addition the research will determine the similarities and differences in program components, client characteristics, outcomes and cost effectiveness between state funded and non-state funded programs.

The Department has estimated that the cost of this contract will not exceed \$200,000. The project is expected to begin by February 1, 1996 and end June 30, 1997. There will be a non-mandatory proposer's conference on Monday, November 6, 1995.

The Request for Proposals does not obligate the State to complete the project, enter into a contract or to accept the lowest cost proposal. The State also reserves the right to cancel the solicitation if it is considered to be in the best interest of the State. Applicants must meet Human Rights Compliance requirements of *Minnesota Statutes*, section 363.073 and *Minnesota Rules*, parts 5000.3400 to 5000.3600.

In compliance with *Minnesota Statutes* 16B.167, the availability of this contracting opportunity is being offered to state employees. We will evaluate the responses of any state employee along with other responses to this Request for Proposal.

For a copy of a more detailed explanation of this request for proposals and the Human Rights Compliance information contact: Jay Bamberg, 612-296-3923 or the address below.

All applicants must provide eight (8) copies of their completed proposal to the Mental Health and State Operated Services Division, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3828 no later than the close of business (4:00 p.m.) on November 27, 1995.

# Non-State Public Bids, Contracts & Grants

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.

## Metropolitan Council

### Environmental Services

#### Public Notice for Letters of Interest for Professional Services: MCES Project Number 910200

NOTICE IS HEREBY GIVEN that the Metropolitan Council Environmental Services is soliciting qualifications from Solids Processing Technology Vendors (SPTV's) for the Blue Lake and Seneca WWTP's Solids Handling Services project. This project is being viewed for delivery as design/build/operate or build/own/operate approaches. The final contract awarded will encompass the processing of all of Blue Lake WWTP solids, currently 25 dry tons/day, and a portion of Seneca WWTP solids currently producing a total of 25 dry tons/day.

SPTV's will be pre-qualified on providing evidence of proven, commercial operation of the technology and services for raw municipal wastewater sludge that produce a Class "A" Beneficial Re-Use Product consistent with EPA Regulations Part 503 for agricultural and/or horticultural applications.

After shortlisting SPTV's, an RFQ will be requested for Project Delivery Teams (PDT's). PDT's will be pre-qualified for preparation of proposals in response to an RFP.

Selection of a solids processing proposal will be completed through a multi-step procedure, over an approximate 12 month period; the tentative schedule for this multi-step procurement is as follows:

ACTIVITY	DATES
Request Letters Of Interest from SPTV's	October 1995
Issue Request For Qualifications (RFQ) to SPTV's	November 1995
Receive Statement Of Qualifications (SOQ) from SPTV's	December 1995
Shortlist & Pre-Qualify SPTV's	January 1996
Request Letters of Interest from PDT's	January 1996
Issue RFQ to PDT's	February 1996
Receive SOQ from PDT's	March 1996
Shortlist & Pre-Qualify PDT's	April 1996
Issue Request For Proposal (RFP) to prequalified PDT's	May 1996
Receive Proposals from prequalified PDT's	August 1996
Evaluate and rank Proposals received	September 1996
Metropolitan Council authorization	October 1996
Contract(s) negotiated & awarded	December 1996

All Solids Processing Technology Vendors interested in being considered for this project are invited to send a Letter of Interest for the RFQ package to:

Administrative Assistant, Contracts and Documents  
Metropolitan Council Environmental Services  
230 East Fifth Street, Mears Park Centre  
St. Paul, MN 55101

All other inquiries are to be addressed to Rick Biddle at (612) 229-5012.



# Wild About Birds

## The DNR Bird Feeding Guide

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**Carrol L. Henderson**, Supervisor of the Non-Game Wildlife Program at Minnesota's Department of Natural Resources, shares his knowledge and appreciation for the natural habitats and traits of the wild birds who, with a little help from us, can thrive in spite of a rapidly changing landscape. Written in the same instructive manner as his popular books "Woodworking for Wildlife" and "Landscaping for Wildlife," "Wild About Birds: The DNR Bird Feeding Guide" provides techniques used by the author to double the number of species using his feeders. Includes woodshop basics for construction of 26 different feeders and tips on 44 types of food, plus detailed descriptions and photos of almost all the feeder-using species east of the Rocky Mountains - 69 in all. There's even a section on some of the unusual and unexpected wild visitors that may show up for a free meal. Over 425 color photographs, illustrations and diagrams make "Wild About Birds" a great reference manual, display book or gift. Ideal for the ornithologist, woodworker, or backyard birdwatcher. Spiral bound, 288 pages. **Stock Number 9-24 \$19.95**

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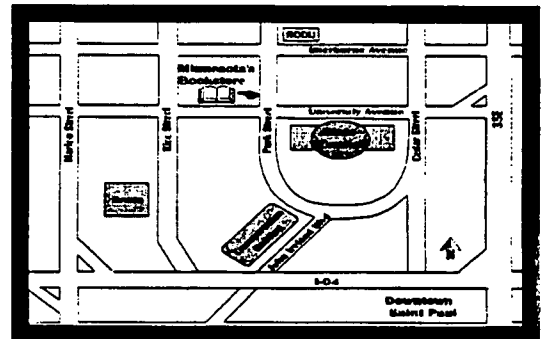
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