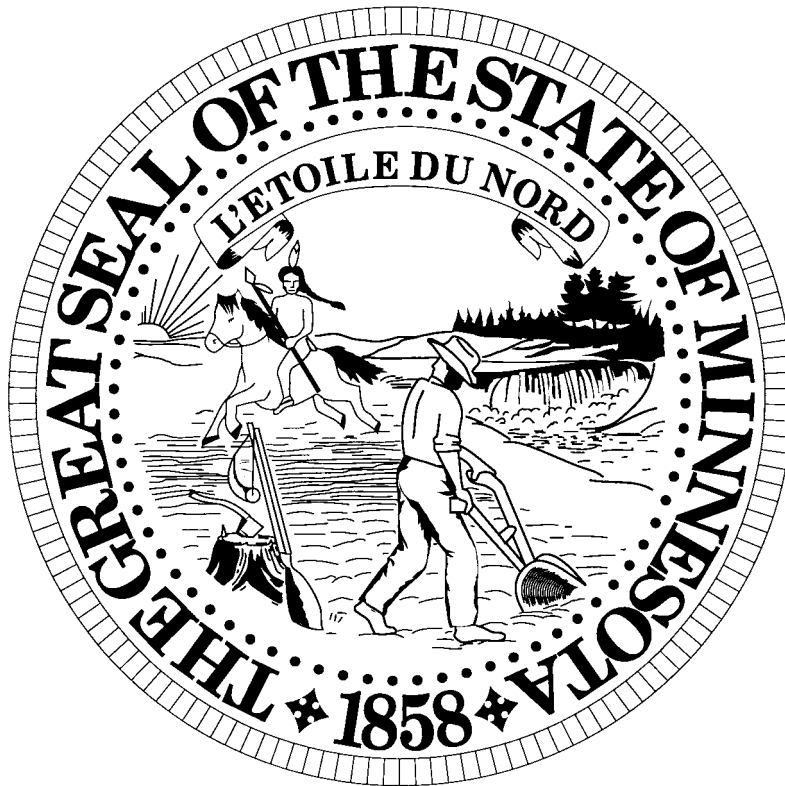


State of Minnesota

# State Register

Rules and Official Notices Edition



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Department of Administration – Communications Media Division

**Monday 24 March 2003**  
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# State Register

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- proclamations and commendations
- commissioners' orders
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#39	Monday 24 March	Noon Tuesday 18 March	Noon Wednesday 12 March
#40	Monday 31 March	Noon Tuesday 25 March	Noon Wednesday 19 March
#41	Monday 7 April	Noon Tuesday 1 April	Noon Wednesday 26 March
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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 80 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. The current 1999 set is a 13-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or a 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 most current edition of 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 issues #1-39; issues #40-51 inclusive; and issues #1-52 (or 53 in some years), cumulative for issues #1-52 (or 53). An annual subject matter index for rules was separately printed usually in August, but starting with Volume 19 now appears in the final issue of each volume. For copies or subscriptions to the *State Register*, contact Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000, or toll-free 1-800-657-3757.

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## Proposed Rules

### Comments on Planned Rules or Amendments

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rules Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* § § 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

### Rules to be Adopted After a Hearing

After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rules. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record is then closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

### Rules to be Adopted Without a Hearing

Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rules Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. 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*.

## Pollution Control Agency

### Policy and Planning Division

#### Proposed Permanent Rules Relating to Procedural Rules

#### NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

#### Proposed Amendments to the Minnesota Pollution Control Agency's Procedural Rules, *Minnesota Rules*, Parts 7000.0050 to 7000.9100

**Introduction:** The Minnesota Pollution Control Agency (MPCA) intends to adopt rules without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments on the proposed rule amendments and may also submit a written request that a hearing be held on the rules until 4:30 p.m. April 24, 2003

# Proposed Rules

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**Agency Contact Person.** Comments or questions on the proposed rule amendments and written requests for a public hearing on the rules must be submitted to the MPCA contact person. The MPCA contact person is:

Norma Coleman  
Minnesota Pollution Control Agency  
520 Lafayette Road  
St. Paul, Minnesota, 55155-4194  
**Phone:** (651) 296-7712  
**Fax:** (651) 297-8676  
**Email:** [norma.coleman@pca.state.mn.us](mailto:norma.coleman@pca.state.mn.us)  
TTY users may call the MPCA at (651) 292-5332 or 800-657-3867

**Subject of Rules and Statutory Authority.** The MPCA is proposing to amend its procedural rules, *Minnesota Rules*, parts 7000.0050 to 7000.9100. The procedural rules contain the procedures and standards of conduct the MPCA must follow in making decisions. The MPCA's statutory authority to adopt these rules is found in *Minnesota Statutes*, section 116.07, subdivision 3. A copy of the proposed rule amendments is published in the *State Register* and attached to this notice as mailed.

The overall goal of this rulemaking is to clarify the role of the board and the role of commissioner in light of the 1996 legislative changes to *Minnesota Statutes*, section 116.02. The changes to the statute narrowed the board's final decision-making authority to seven specific areas. However, the statute allows the board to exercise authority in certain situations, pursuant to *Minnesota Statutes*, section 116.02, subdivision 8. In identifying clarifications needed as a result of the most recent legislative changes to the statutes governing the MPCA several other updates were identified to reflect changes in Minnesota's Government Data Practices Act and Minnesota's Contested Case Hearing rules. In addition, the MPCA is mindful of the Governor's and Legislature's mission to have all state agencies continually review and repeal obsolete and unnecessary rule parts, therefore parts of these rules currently unnecessary are proposed for repeal. This rule revision process is an opportunity to respond to changes such as those listed above and to seek public input on the proposed amendments.

**Comments.** You have until 4:30 p.m. on April 24, 2003 to submit written comment in support of or in opposition to the proposed rule amendments and any part or subpart of the rules. Comment is encouraged. Your comment should identify the portion of the proposed rules addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rules must also be made during the comment period.

**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 MPCA contact person by 4:30 p.m. on April 24, 2003. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rule amendments to which you object or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and cannot be counted by the MPCA when determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the MPCA must give written notice of this to all persons who requested a hearing, explain the actions the MPCA took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the MPCA will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Alternative Format.** Upon request, this Notice can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the MPCA contact person at the address or telephone number listed above.

**Modifications.** The proposed rule amendments may be modified as a result of public comment. The modifications must be supported by comments and information submitted to the MPCA, and the adopted rules may not be substantially different than these proposed rules. If the proposed rule amendments 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 (SONAR) is now available from the MPCA contact person. This SONAR contains a summary of the justification for the proposed rule amendments, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. Copies of the SONAR may be obtained at the cost of reproduction from the MPCA. In addition, the MPCA has placed a copy of the SONAR on its **Web site** at: [www.pca.state.mn.us](http://www.pca.state.mn.us). Click on the News/Notices selection item to access the public notice that also contains the proposed rule amendments and SONAR.

**Consideration of Economic Factors.** *Minnesota Statutes*, section 116.07, subdivision 6 requires the MPCA to consider the impact that economic factors have on the feasibility and practicability of the proposed rules or amendments. In proposing these rules, the MPCA has given due consideration to economic impacts of implementing the proposed rule amendments. The MPCA has determined that the proposed rule amendments do not cause any additional economic impact to the public and regulated com-

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munity that was not already in place. These rule amendments govern how the board and the commissioner make decisions and how members of the public can involve themselves in agency decision-making. Additional information regarding the MPCA's consideration of economic factors is discussed in Sections V and VI of the SONAR.

**Impact on Farming Operations.** *Minnesota Statutes*, section 14.111 requires that if an agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rules to the Commissioner of Agriculture, no later than 30 days prior to publication of the proposed rules in the *State Register*. The requirements of *Minnesota Statutes*, section 14.111 are not applicable because the proposed rule amendments do not affect farming operations.

**Notification of the Commissioner of Transportation.** *Minnesota Statutes*, section 174.05 requires the MPCA to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules. The requirements of *Minnesota Statutes*, section 174.05 are inapplicable because the proposed rule amendments do not impact the Department of Transportation.

**State Regulatory Policy.** *Minnesota Statutes*, section 14.131 requires an agency to consider, in developing rules, the legislative policy supporting performance-based regulatory systems set forth in *Minnesota Statutes*, section 14.002. In developing the proposed rule amendments, the MPCA tried to be conscientious about including in the rules only that information that was needed in order to enable the MPCA to carry out its responsibilities in an effective and efficient manner. Information that the MPCA felt was not necessary for this purpose was not included in the rule amendments. The MPCA will consider all comments received as a result of the publication of this notice. These steps in the rulemaking process were and will be done in an effort to achieve the policy outline in *Minnesota Statutes*, section 14.002, namely that the proposed rules maximized flexibility for regulated parties while also meeting the MPCA's objectives.

**Request to Have MPCA Board Make Decision on Rule if No Hearing is Required.** If a hearing is required, the MPCA board will make the final decision on whether to adopt the proposed rules. However, even if no hearing is required, you may submit a request to the MPCA commissioner or an MPCA board member to have the MPCA board make the decision on whether to adopt the proposed rule amendments. Your request must be in writing, must state to whom it is directed and must be received by the MPCA contact person by 4:30 p.m. on April 24, 2003. Under *Minnesota Statutes*, section 116.02 where a hearing is not required the MPCA board will only make the decision on the rule if the MPCA commissioner grants your request or if an MPCA board member makes a timely request that the decision be made by the MPCA board.

**Adoption and Review of Rules.** If no hearing is required, the MPCA may adopt the rules after the end of the 30-day comment period. The rules and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may request the MPCA contact person to notify you of the date the rules are submitted to the Office of Administrative Hearings. In addition, if you want to receive a copy of the adopted rules, or want to register with the MPCA to receive notice of future rule proceedings, submit your request to the MPCA contact person listed above.

Sheryl Corrigan  
Commissioner

## 7000.0050 PURPOSE.

This chapter describes how the ~~agency~~ board or commissioner makes decisions and clarifies the authority of both the commissioner and the board as established under *Minnesota Statutes*, sections 116.02 and 116.03, and how members of the public may involve themselves in ~~agency~~ board or commissioner decision making. The procedures and standards of conduct established in this chapter are intended to ensure an orderly and fair decision-making process, to preserve the integrity and independence of ~~agency~~ board or commissioner decisions, and to promote public confidence in those decisions.

## 7000.0075 DIVISION OF AUTHORITY.

The specific authority of the board is found in *Minnesota Statutes*, section 116.02, subdivision 6. All other responsibilities regarding the agency are within the commissioner's authority, pursuant to *Minnesota Statutes*, section 116.03, unless the board exercises its authority pursuant to the procedures specified in *Minnesota Statutes*, section 116.02, subdivision 8.

## 7000.0100 DEFINITIONS.

[For text of subs 1 and 1a, see M.R.]

Subp. 2. **Agency or agency members.** "Agency" or "agency members" means the ~~commissioner and the eight persons appointed to the~~ Minnesota Pollution Control Agency, pursuant to *Minnesota Statutes*, section 116.02, subdivision 1 in general and is used to refer to actions or functions of the Pollution Control Agency that are not necessarily those of the commissioner or board members as individuals.

Subp. 2a. **Board.** "Board" means the commissioner and eight members appointed by the governor, by and with the advice and consent of the senate as prescribed in *Minnesota Statutes*, section 116.02, subdivision 1.

Subp. 2b. **Commissioner.** "Commissioner" means the executive secretary and chief executive officer of the Minnesota Pollution Control Agency as prescribed in *Minnesota Statutes*, section 116.04.

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Subp. ~~2b.~~ 2c. **Contested case.** “Contested case” has the meaning given in *Minnesota Statutes*, section 14.02, subdivision 3.

[For text of subs 3 and 5, see M.R.]

Subp. 5a. **Interested person.** “Interested person” means persons who have submitted their names and addresses to the ~~agency board or the commissioner~~ for inclusion on ~~an agency a board or commissioner~~ list of persons to receive notice concerning a specific ~~agency board or commissioner~~ matter. Persons can place their names and addresses on ~~an agency a board or commissioner~~ list for a specific matter by:

A. making an oral presentation on the specific ~~agency board~~ matter at ~~an agency a board~~ meeting and registering their names and addresses with the ~~agency board or commissioner~~ at that time;

B. submitting to the commissioner a written statement in which they request to be treated as an interested person and in which they provide their names and addresses and identify the specific ~~agency board or commissioner~~ matter in which they are interested;

C. registering their names and addresses for the purpose of receiving notice of all agency rulemakings pursuant to *Minnesota Statutes*, section 14.14, subdivision 1a; or

D. being named as a party to a contested case hearing for a specific ~~agency board or commissioner~~ matter.

In addition, for any matter regarding a permit, the permittee is an interested person.

Subp. 5b. **Material issue of fact.** A “material issue of fact” means a fact question, as distinguished from a policy question, whose resolution could have direct bearing on a final ~~agency board or commissioner~~ decision.

Subp. 7. **Order.** “Order” means any written command or direction made by the ~~agency board~~ or the commissioner, as provided by law.

Subp. 8. **Permit.** “Permit” means every discharge, emission, and disposal authorization, every construction, installation, or operation authorization, and every other ~~agency board or commissioner~~ authorization designated “permit” in *Minnesota Statutes*, chapters 115 and 116, as now in force or hereafter amended, including *Minnesota Statutes*, sections 115.03, subdivision 1; 115.07; 116.07, subdivision 4, clause (a); 116.081; and 116.091. “Permit” does not include an “order,” “variance,” or “stipulation agreement” as defined in this part, and does not include a “certification.”

Subp. 9. **Person.** “Person” means any human being, any municipality or other governmental or political subdivision or other public department or agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agency, legal entity, other than a court of law, or any legal representative of any of the foregoing, but does not include the ~~agency board or the commissioner~~.

Subp. 10. **Public informational meeting.** “Public informational meeting” means a meeting called by the ~~agency board or the commissioner~~ to solicit public comment and statements on a matter before the ~~agency board or commissioner~~.

[For text of subp 11, see M.R.]

Subp. 12. **Service; serve; submittal; submit.** “Service,” ~~or~~ “serve,” “submittal,” or “submit” means personal service, service by mail, or service by facsimile as described in items A to C.

A. Personal service upon the ~~agency board or commissioner~~ is made by handing an item to the commissioner or by delivering the item to the office of the commissioner and leaving it with a person assigned to that office. Personal service upon an interested person or ~~agency board~~ member is made by handing an item to that person or by delivering the item to the person’s last known home or business address and leaving it with a competent person residing or working at that address.

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

C. Service by facsimile is made by telefaxing a document to a person known to have a facsimile machine. Service by facsimile is complete upon receipt of the facsimile. Service by facsimile must be followed by personal service or service by mail within one day after a facsimile service.

Upon request, the commissioner will make available the names and service addresses of ~~agency board~~ members.

Subp. 13. **Stipulation agreement.** “Stipulation agreement” means any agreement entered into between the ~~agency commissioner~~ and any person or persons establishing a schedule for compliance with applicable statutes, rules, or standards by designated dates, or otherwise providing for settlement for noncompliance with applicable statutes, rules, or standards.

Subp. 14. **Variance.** “Variance” means an authorization from the ~~agency board or commissioner~~ that grants an exemption from the requirements of any rule or standard of the agency and which does not require compliance with the rule or standard for the duration of the authorization. “Variance” does not include permits, stipulation agreements, schedules of compliance, or any modifications thereto, or any order of the ~~agency board or commissioner~~ which allows interim operation during completion of a compliance program, nor does variance include a time extension of an existing variance.

## 7000.0200 COMPUTATION OF TIME.

In computing any period of time prescribed by this chapter, the day of the last act, event, or default from which the designated



period of time begins to run is not included. The last day of the period so computed is 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 this chapter requires service within a certain number of days, the term "day" includes weekdays, weekend days, and holidays.

## **7000.0300 DUTY OF CANDOR.**

In all formal or informal negotiations, communications, proceedings, and other dealings between any person and any member, employee, or agent of the agency board, it shall be the duty of each person and each member, employee, or agent of the agency board to act in good faith and with complete truthfulness, accuracy, disclosure, and candor.

## **7000.0400 OFFICERS, COMMITTEES, AND DUTIES.**

Subpart 1. **Officers.** The officers of the agency board are the commissioner, who serves as the agency board chair as prescribed in *Minnesota Statutes*, section 116.02, subdivision 4, and vice-chair.

Subp. 3. **Electing and term of the vice-chair.** Each year, at its annual meeting, the agency board shall elect a vice-chair to serve a one-year term. The vice-chair must be elected by a majority of all agency board members. No member elected to the office of vice-chair may serve in that capacity more than two full terms consecutively.

Subp. 4. **Duties.** The commissioner shall preside at all agency board meetings. The vice-chair shall discharge the duties of the commissioner as chair during the absence or disability of the commissioner in carrying out the duties of the chair. The commissioner shall also have the duties prescribed by statute or by rule or delegation of the agency board.

Subp. 5. **Vacancies.** If a vacancy occurs in the office of commissioner of the agency and no successor is appointed or no temporary commissioner is available or designated as prescribed in *Minnesota Statutes*, section 15.06, the vice-chair shall preside and carry out the duties as chair at agency board meetings. If a permanent vacancy occurs in the office of vice-chair, the agency board shall, as soon as possible after the permanent vacancy, elect a new vice-chair to fill out the term of the vacated office of vice-chair.

Subp. 6. **Removal.** The vice-chair may be removed from office by an affirmative vote of two-thirds of all agency board members. The vote to remove a vice-chair shall be made at the next regular meeting of the agency board following the meeting at which the removal motion is made.

Subp. 7. **Committees.** The agency board may from time to time establish committees of agency board members as it may deem necessary and desirable to facilitate its work. All committee recommendations shall be duly submitted to the agency board for appropriate action.

Subp. 8. **Execution of documents.** Contracts, stipulation agreements, and other documents approved by the agency board pursuant to law shall be executed on the agency's board's behalf by the commissioner and the vice-chair unless the agency board authorizes some other form of signing.

## **7000.0500 AGENCY BOARD MEETINGS.**

Subpart 1. **Regular and annual meetings.** Twelve regular monthly meetings of the agency board shall be held each calendar year. The annual meeting, also conducted as a regular meeting, shall be held during the month of July of each year. The date, time, and place of each regular meeting, including the annual meeting, shall be designated by the commissioner. The commissioner may direct that a regular meeting be postponed or advanced to accommodate a state holiday, weather emergency, or scheduling conflicts of agency board members.

Subp. 2. **Special meetings.** Upon concluding that a special meeting would assist the agency board in accomplishing its work or upon receiving a request for a special meeting from three agency board members, the commissioner shall call a special meeting of the agency board. The date, time, and place of the special meeting shall be designated by the commissioner. In setting the time and place of a special meeting, the commissioner shall consider the extent to which time is of the essence and whether it would be unreasonable or unfair to interested persons for the agency board to postpone consideration of the agenda for the special meeting to allow as much notice as would be required for a regular meeting of the agency board.

Subp. 3a. **Committee meetings.** The committee chair or the commissioner shall call a committee meeting when either concludes that a committee meeting would assist the agency board in accomplishing its work or upon receiving a request for a committee meeting from a member of the agency board committee. The date, time, and place of the committee meeting shall be designated by the commissioner after consultation with the committee chair.

Subp. 3b. **Informational meetings.** Part 7001.0120 addresses informational meetings on permits. For all other matters, the agency board or commissioner shall call a public informational meeting upon concluding that a public informational meeting would provide the agency board or commissioner with information that would assist it in accomplishing its work or would otherwise be in the public interest. The date, time, and place of the informational meeting shall be designated by the commissioner.

Subp. 8. **Quorum necessary for regular and special meetings.** A majority of the members of the entire agency board constitutes a quorum, and a quorum must be present for the transaction of business. A committee meeting or an informational meeting may be held with less than a quorum of the agency board.

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Subp. 9. **Presiding officer.** The commissioner shall preside at all regular and special meetings of the agency board. The vice-chair shall preside in the commissioner's absence. If the commissioner and vice-chair are both absent, the remaining members shall designate one of the agency board members present to preside over the meeting until the commissioner or vice-chair arrives.

Subp. 10. **Adoption of and consideration of matters on agency board agenda.** As the first order of business at a regular, special, or committee meeting, the agency board or committee shall review its proposed agenda, amend or modify it if appropriate, and then adopt it. Thereafter, the agency board shall act on agency board matters at the approximate times shown on its adopted agenda. However, by consensus of all agency board members present, the agency board may group noncontroversial agenda items or agenda items ministerial in nature for approval by a single agency board vote.

Subp. 13. **Open meetings.** Except as provided by law, all meetings of the agency board must be open to the public.

Subp. 16. **Record of meetings.** The agency board shall keep full and accurate minutes of all meetings, including a record of all votes of individual board members.

Subp. 17. **Parliamentary procedure.** Except as specifically provided in this chapter, Robert's Rules of Order, as amended, shall govern any question of parliamentary procedure that may arise at any meeting of the agency board.

Subp. 18. **Continuation or recess of agency board meetings.** The agency board may continue or recess ~~an agency a board~~ meeting to a later time or date if necessary to allow for the drafting of findings of fact as directed by agency board members or further discussion or deliberation concerning a matter on a meeting agenda. If ~~an agency a board~~ meeting is continued or recessed and the time, date, and place for reconvening is announced and recorded at the time the meeting is recessed or continued, no further notice of the reconvening is necessary. If the agency board provided an opportunity for public comments on a specific matter before a meeting is recessed or continued, the commissioner may rule that no further comments will be heard when the meeting is reconvened. However, agency board members may ask questions of agency staff and interested persons even when no further public comment is to be taken.

## **7000.0550 AGENDA FOR AGENCY BOARD MEETINGS.**

Subpart 1. **Agenda items and related written materials.** No matter may be considered at a board meeting ~~of the agency~~ unless it is on the agenda and related written materials have been made available as provided in part 7000.0650.

Subp. 2. **Agenda preparation.**

A. The commissioner shall prepare an agenda for each regular, special, and committee meeting of the agency board. The agenda shall identify the date and place of the meeting, and the approximate times for considering each item on the agenda. Each agenda must be prepared in sufficient time to allow for notice as specified in this chapter. Each agenda must identify all matters to be considered by the agency board. ~~Agency members may place items on the regular meeting agenda by notifying the commissioner at least 14 days prior to the meeting. Agency members may place items on the agenda of a special or committee meeting by notifying the commissioner at least ten days prior to a scheduled special or committee meeting.~~

B. A board member may request, pursuant to Minnesota Statutes, section 116.02, subdivision 8, that the commissioner place an item on the agenda. Unless the request is withdrawn, the commissioner shall place the item on the agenda within 45 days of the date the request is made by the board member.

Subp. 3. **Agency Board member notice of meetings.** The commissioner shall serve on each agency board member a copy of the proposed agenda for each agency board meeting, together with the related written materials for the items on the agenda. However, if the related written materials are so voluminous as to make it impractical to serve them on all agency board members, the commissioner may provide a notice stating that there are additional related written materials for review at the offices of the agency. Service shall be made as described in items A and B.

A. For a regular meeting of the agency board, service shall be made at least ten days before the meeting.

B. For a special meeting or committee meeting of the agency board, service by mail shall be made at least six days before the meeting. Personal service or service by facsimile shall be made at least three days before the meeting. However, the notice provisions of this part do not apply to emergencies which are addressed by the agency board or commissioner under part 7000.5000.

## **7000.0650 PUBLIC PARTICIPATION IN AGENCY BOARD MEETINGS.**

Subpart 1. **Public inspection of agency board meeting agenda and related written materials.** The agenda and related written materials for board meetings ~~of the agency~~ shall be available for public inspection at the central office of the agency as described in items A and B.

A. For regularly scheduled meetings, the agenda and related written materials shall be available at least ten days prior to the regular agency board meeting.

B. For special or committee meetings, the agenda and related written materials shall be available as soon as possible and, in any event, no later than three days prior to the special or committee meeting. However, the inspection provisions of this part do not apply to emergencies which are addressed by the agency board or commissioner under part 7000.5000.

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Subp. 2. **Service on interested persons.** The commissioner shall serve on each interested person a copy of the proposed agenda for each agency board meeting together with a copy of the agenda item prepared by agency staff. If the related written materials for the agenda item are not voluminous, the commissioner shall serve these materials, too. However, if the commissioner finds that the related written materials are so voluminous as to make it impractical for the commissioner to serve them on all interested persons, the commissioner shall serve on interested persons a notice stating that there are additional related written materials for the item in which the person is interested and that these additional related written materials can be viewed at the offices of the agency or can be requested from the agency board. Service shall be made as described in items A and B.

A. For a regular meeting of the agency board, service shall be made at least ten days before the meeting.

B. For a special meeting or committee meeting of the agency board, service by mail shall be made at least six days before the meeting. Personal service or service by facsimile shall be made at least three days before the meeting. However, the notice provisions of this part do not apply to emergencies which are addressed by the agency board or commissioner under part 7000.5000.

The agency does not intend the notice and service requirements of this chapter or any other requirements of this chapter to prevent it from seeking to recover reasonable copying and preparation costs as authorized under *Minnesota Statutes*, section 13.03, subdivision 3. This subpart does not limit the agency staff from presenting written materials at agency board meetings as described in subpart 7.

Subp. 3. **Petitions to place matters on an agency a board agenda.** Any person who wishes to place a matter on the agenda for an agency a board meeting may submit a petition identifying the matter that person would like placed on the agenda and the reasons for placing it on the agenda. The petition must be served on the commissioner by mail at least 24 days before the meeting during which a petitioner would like the matter to be considered or by personal service or facsimile at least 21 days before the meeting. The commissioner shall grant or deny the petition. If the commissioner decides not to place a matter on the agenda, the commissioner shall advise the agency board and the petitioner of the reasons for the denial.

Subp. 4. **Petition for informational meeting.**

A. Any person may petition the agency board or commissioner to hold a public informational meeting described in part 7000.0500, subpart 3b. The petition must identify the matter of concern and the reasons the agency board or commissioner should hold the informational meeting.

B. If the matter involves a permit for which a public notice has been issued under part 7001.0100, subpart 4, or 7007.0850, subpart 2, the petition must be submitted to the commissioner within the comment period established in the public notice and must conform to the requirements of parts 7001.0110 and 7001.0120.

C. If item B does not apply and the matter is not on the agenda for an agency a board meeting, the petition must be submitted to the commissioner. The commissioner shall grant or deny the petition. If the commissioner decides not to hold the meeting, the commissioner shall advise the agency board and the petitioner of the reasons for the denial.

D. If item B does not apply and the matter is on the agenda for an agency a board meeting, the petition must be submitted to the agency board in accordance with the time frames for submitting written materials set out in subpart 6. The agency board shall grant or deny the petition.

Subp. 5. **Oral presentations at agency board meetings.** Consistent with the provisions of part 7000.0500, subpart 18, the agency board shall afford interested persons a reasonable opportunity to make oral statements concerning matters on an agency a board meeting agenda. To ensure an opportunity for full and fair consideration of all views, the commissioner may limit the time and scope of each speaker's presentation and may require speakers with similar views to select a spokesperson. Oral statements must be relevant to the matter before the agency board. Oral presentations following a rulemaking or contested case hearing must be limited to the record for the matter.

Subp. 6. **Written materials.** The agency board shall consider timely, relevant written materials that interested persons submit concerning a matter on an agenda for an agency a board meeting. Recessing or continuing a meeting as provided under part 7000.0500, subpart 18, does not create a new opportunity to submit written comments, unless the commissioner states otherwise and establishes a schedule for submittal of additional written materials. Written statements will be considered timely and relevant only if they meet the following conditions:

A. for matters for which a contested case hearing has been held, written comments must conform to the requirements and time limits of part 7000.2000;

B. for matters for which a rulemaking hearing has been held, written comments must be limited to the record of the rulemaking hearing and must be served on the agency board at least five days before the agency board meeting during which the agency board is scheduled to act on the proposed rules;

C. for matters for which a contested case hearing has not been held but a permit comment period has been established under chapter 7001 or 7007, any additional written permit comments must be served on the agency board at least five days before the agency board meeting, and must be limited to permit procedural mistakes or irregularities, errors of law, or newly discovered mate-

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rial issues of fact that could not have been discovered prior to the close of the permit comment period;

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

E. for all matters except those under items A to D, service is timely as follows:

(1) for regular meetings of the agency board and special meetings noticed ten or more days before the meeting, service is timely if all agency board members and the commissioner are served at least five days before the meeting; and

(2) for special meetings of the agency board noticed less than ten days before the meeting, service is timely if all agency board members and the commissioner are served personally or by facsimile before the agenda item is scheduled to be heard.

Subp. 7. **Written presentations at agency board meetings.** Notwithstanding the restrictions of subparts 2 and 6, the agency board shall consider relevant written materials presented by an interested person or by agency staff at an agency a board meeting if such consideration does not prejudice other interested persons and there is reasonable time for the agency board to consider the materials during the course of the meeting. These materials may include, but are not limited to, materials responsive to relevant information that was not available prior to the established deadlines of subpart 6, written versions or summaries of oral presentations, letters, visual aids, and clarifications or corrections of written materials.

## **7000.0750 AGENCY BOARD RECORDS AND FINAL DECISION MAKING.**

Subpart 1. **Final decisions of agency board.** Final decisions of the agency board shall be made at agency regular and special board meetings. No final decisions shall be made on any agency board matter unless it is on the adopted agency board agenda at a regular or special meeting.

Subp. 2. **Rulemaking records upon which agency board makes its decision.** The record upon which the agency board shall make a final decision concerning the adoption, amendment, or repeal of a rule consists of the following:

A. the agenda and related materials for an agency a board meeting during which the proposed rule was considered and the minutes, transcripts, and recordings of the meeting;

B. for rules adopted without a public hearing where the board exercises authority pursuant to Minnesota Statutes, section 116.02, subdivision 8, the documents listed in part ~~2010.0300 or, for emergency rules, part 2010.0400~~, 1400.2310 and the ~~attorney general's administrative law judge's~~ written statement of required modifications or disapproval, if any;

C. for rules adopted with a public hearing, the documents listed in ~~part 1400.0900~~ parts 1400.2220, 1400.2230, and 1400.2240, including the report of the administrative law judge and the report of the chief administrative law judge, if any; and

D. written comments submitted to the agency as allowed by part 7000.0650, subpart 6, and recordings or transcripts of oral statements as allowed by part 7000.0650, subpart 5.

Subp. 3. **Contested case record upon which agency board makes its decision.** The record upon which the agency board shall make a final decision after a contested case hearing consists of the record as described in part 1400.7400.

Subp. 4. **Record upon which the agency board makes other decisions.** The record upon which the agency board shall make a final decision in all matters other than rulemaking and contested case hearings consists of the following:

A. the agenda and related materials for an agency a board meeting during which the matter was considered and the minutes, transcripts, and recordings of the meeting;

B. relevant written materials submitted to the agency board within an established comment period, including requests for an informational meeting and petitions for contested case hearings;

C. written materials submitted to the agency board as allowed by part 7000.0650, subpart 6, and recordings or transcripts of oral statements as allowed by part 7000.0650, subpart 5;

D. written documents containing relevant information, data, or materials referenced and relied upon by agency staff in recommending a proposed action or decision; and

E. all other relevant information or material received into the record and considered by the agency board at an agency a board meeting.

Subp. 5. **Decisions and voting.** Except as otherwise specifically provided, a majority vote of the entire agency board is necessary to make any decision. All board members present shall vote or abstain on every matter presented for decision. If the final vote taken on an agenda item does not result in a decision, but half or more of the voting members vote affirmatively, the matter must be placed on the agenda of the next regular monthly meeting or considered at a special meeting, unless the agenda item concerns rescission of a decision as provided in subpart 8. No final decisions of the agency board shall be made at agency board committee meetings even if a quorum of the agency board is present.

Subp. 6. **Agency Board deliberations.** During agency board deliberation and consideration of a specific agenda matter, agency board members may ask questions of agency staff, counsel, or interested persons, and may discuss and amend proposed findings, conclusions, and resolutions or propose alternative findings, conclusions, or resolutions based on the record before the agency

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board. As provided in part 7000.0500, subpart 18, the agency board may decide to continue or recess a meeting with instructions to counsel, agency staff, or interested persons to draft findings consistent with the agency's board's directions. Upon reconvening to consider the findings, the agency board need not provide an opportunity for additional oral or written comments.

Subp. 7. **Reconsideration of decision.** Any decision of the agency board may be reconsidered during the course of the same meeting at which the original decision was made if ~~an agency a board~~ member who voted on the prevailing side makes a motion for reconsideration before the agency board moves on to its next agenda item or if all interested persons are present and given an opportunity to comment.

Subp. 8. **Rescission of decision.** Upon placement on the agenda by ~~an agency a board~~ member as provided in part 7000.0550 and upon the affirmative vote of two-thirds of the entire agency board, any decision of the agency or commissioner board or a decision by the commissioner exercised under Minnesota Statutes, section 116.03, may be rescinded as permitted by applicable law.

Subp. 9. **Stay of decision.** A person may petition for a stay of ~~an agency a board~~ decision. Petitions must comply with the requirements of part 7000.2100 relating to timing, serving of a petition, and petition contents. The agency's board's grounds for granting or denying a petition and the agency's board's consideration of the petition are the same as the requirements of part 7000.2100.

## **7000.0755 COMMISSIONER'S RECORDS AND FINAL DECISION MAKING.**

Subpart 1. **General.** The commissioner shall make a final decision in all matters on behalf of the agency, except for those matters that are within the board's specific authority pursuant to Minnesota Statutes, section 116.02, subdivision 6, or those matters where the board has exercised its authority pursuant to Minnesota Statutes, section 116.02, subdivision 8. The record relating to the commissioner's final decisions shall consist of the records described in subparts 2 to 4.

Subp. 2. **Rulemaking records upon which commissioner makes a decision.** The record upon which the commissioner shall make a final decision concerning the adoption or amendment of a rule where there is no public hearing consists of the documents listed in part 1400.2310 and the administrative law judge's written statement of required modifications or disapproval, if any.

Subp. 3. **Contested case record upon which the commissioner makes a decision.** The record upon which the commissioner shall make a final decision after a contested case hearing consists of the record as described in part 1400.7400.

Subp. 4. **Record upon which the commissioner makes other decisions.** The record upon which the commissioner shall make a final decision in all matters other than rulemaking and contested case hearings consists of the following:

- (1) relevant written materials submitted to the commissioner or agency staff within an established comment period, including requests for an informational meeting and petitions for contested case hearings;
- (2) written materials submitted to the commissioner or agency staff within a time period established by the commissioner; and
- (3) written documents containing relevant information, data, or materials referenced and relied upon by agency staff in recommending a proposed action or decision.

## **7000.0800 STIPULATION AGREEMENTS.**

Subpart 1. **Data or information.** Whenever any person or the agency commissioner proposes that a stipulation agreement be entered into, the person who is proposed as a signer of the stipulation agreement shall furnish such information or data as is deemed essential by ~~the agency or~~ the commissioner in making a determination regarding the proposed stipulation agreement.

Subp. 2. **Interim operation.** The agency commissioner may in its discretion discretionally provide under the terms of a stipulation agreement for the operation of existing systems pending completion of compliance under the schedule therefor, and under such further conditions as ~~the commissioner~~ may prescribe in the stipulation agreement. Completion of performance under the stipulation agreement shall not relieve any party thereto of any requirement of law or agency rules to apply for all necessary permits or variances.

## **7000.0850 DELEGATION PROCEDURE.**

~~The agency may delegate the exercise of specified authority or duties to the commissioner as follows: The commissioner may delegate any of the commissioner's powers, duties, and responsibilities as prescribed in Minnesota Statutes, section 116.03, subdivision 2.~~

- ~~A. at any time, the commissioner may request in writing that the agency delegate specified authority or duties. The request must be specific as to what authority or duty the agency is to delegate and why the delegation is appropriate;~~
- ~~B. the request must be placed on the agency meeting agenda in accordance with part 7000.0550;~~
- ~~C. the agency may grant, deny, or modify the request for the delegation as the agency deems reasonable and appropriate and shall state the conditions under which the delegated authority may be exercised;~~
- ~~D. the commissioner and the vice chair must sign and date the delegation once it is given;~~
- ~~E. all approved delegations must be filed with the Secretary of State;~~
- ~~F. the agency may review, modify, revoke, or approve a delegation at any time;~~
- ~~G. during the October meeting, the agency must review all delegations and must renew, amend, or revoke existing delegations~~

# Proposed Rules

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~~and consider new delegations; and~~

~~H. the commissioner shall maintain records of all delegations and these records must be made available for public inspection.~~

## **7000.1200 INSPECTION OF PUBLIC RECORDS.**

All records and data of the agency that are public within the meaning of *Minnesota Statutes*, ~~sections 13.01 to 13.86~~ chapter 13 and section 116.075, or copies, are available for inspection and copying by any person, Monday through Friday, excluding legal holidays, between the hours of 9:00 a.m. and 4:00 p.m. at the agency offices. No public records shall be removed from agency offices. Any inspection or copying of records or data must be made in the presence of an officer, employee, or agent of the agency. The agency may charge and collect a reasonable fee for the reproduction of any public records.

## **7000.1300 ~~CONFIDENTIAL~~ NOT PUBLIC INFORMATION.**

Subpart 1. ~~Certification Procedures to affirmatively request the agency maintain data as not public.~~ In order to ~~certify records, information, or objects~~ maintain data for the confidential use of the agency, ~~an owner, operator, or other person qualified by law, shall submit to the commissioner a written statement setting forth those statutory grounds that require the agency to keep the records, information, or objects confidential. Any certification of records or information that applies to water pollution sources must be approved by the commissioner. These records and information shall not be released unless the commissioner denies the certification request.~~ pursuant to *Minnesota Statutes*, section 116.075, or as nonpublic data not on individuals or private data as it relates to individuals, pursuant to *Minnesota Statutes*, section 13.37, a person must affirmatively request such recognition by providing to the commissioner a written request setting forth the statutory grounds and the reasons that justify the classification of the records or other information as not public. The commissioner must approve or deny in writing any request to keep records or information as not public. Whenever the commissioner denies a ~~certification~~ request, the commissioner shall notify the ~~certifier person submitting the request~~ of the denial at least three working days prior to making the records or information available to the public, and provide an opportunity for the person to seek clarification of the classification of the data as provided in *Minnesota Statutes*, chapter 13. The certifier person submitting the request may withdraw the records or information if such an option is available. The procedures in this subpart apply to any requests to recognize data as not public under statutory grounds not specifically identified in this subpart.

Subp. 2. **Filing.** All ~~certified records, information, or objects~~ not public data must be appropriately identified and segregated at the offices of the agency.

Subp. 3. **Agency use.** ~~Certified records, information, and objects, when approved by the commissioner if required, are only for the confidential use of the agency. However, confidential information~~ Not public data may be used by the agency or commissioner in accordance with the Minnesota Government Data Practices Act as prescribed in *Minnesota Statutes*, section 13.05. Not public data may be used by the agency and agency staff in compiling or publishing analysis or summaries relating to the general condition of the state's water, air, and land resources so long as these analysis or summaries do not identify any owner or operator who has so certified person requesting not public data classification.

Subp. 4. **Release authorization.** ~~Confidential information~~ Not public data may be released when the agency is specifically authorized to do so by statute.

Subp. 5. [See repealer.]

Subp. 6. **Federal law.** Regardless of whether records or information are ~~certified confidential~~ classified as not public data, the agency may disclose any information which it is obligated to disclose in order to comply with federal law and regulation, to the extent and for the purposes of such federally required disclosure. Whenever the agency is required to release ~~certified information~~ not public data pursuant to federal law, the commissioner shall notify the ~~certifier requester~~ of this requirement at least three working days prior to making the records or information available to the public. The ~~certifier requester~~ may withdraw this information if such an option is available.

Subp. 7. **Use in contested case hearings.** ~~Confidential information that is relevant to a matter for which a contested case hearing is being held and which has been made a part of the record, may be considered by the agency in reaching a decision on the matter, but must not be released to the public unless the agency is required by statute to release it. When the agency is required by statute to release the information at the public hearing, the person who certified the information may withdraw the information, but the information shall not be considered by the agency or the administrative law judge in reaching a decision or recommendation on the matter. Whenever confidential information is considered by the agency or an administrative law judge in reaching a decision or recommendation on a matter, that fact must be so stated on the record. Any evidence containing information classified as not public offered by the commissioner, agency, or a party to the contested case hearing shall be made a part of the hearing record of the case, and the administrative law judge may conduct a closed hearing to discuss the information, issue necessary protective orders, and seal all or part of the hearing record pursuant to *Minnesota Statutes*, section 14.60.~~

Subp. 8. **Use in open meetings.** Pursuant to *Minnesota Statutes*, section 13D.05, a board meeting may not be closed to discuss data that is classified as not public data, except as expressly authorized by *Minnesota Statutes*, section 13D.05, subdivisions 2 and 3.

## 7000.1750 CONTESTED CASE HEARINGS.

Subpart 1. **Objectives.** All contested case hearings required by statute or rule and all contested case hearings ordered by the agency board or commissioner shall be conducted in accordance with the procedures set forth in the rules of the Office of Administrative Hearings, parts 1400.5200 to 1400.8401, ~~and in accordance with parts 7000.1000 to 7000.1150~~, and in accordance with this part. No person's rights, privileges, or duties may be determined without regard for fundamental fairness. To that end, parts 7000.1750 to ~~7000.4000~~ 7000.2200 are intended to assure that all parties are provided a just and speedy contested case hearing.

Subp. 4. **Parties.** ~~Any person whose legal rights, duties, or privileges are to be determined in the matter for which the contested case hearing is to be held is a party. When a contested case hearing is held pursuant to a petition for a hearing, the person or persons petitioning for the hearing are parties to the matter. In any hearing on an application for a permit or variance, the applicant is a party. The deputy commissioner is a party in any hearing ordered by the agency. Any person who has properly intervened in the contested case under part 1400.6200 is a party. For the purpose of this part, "party" means each person named as a party by the board or commissioner in the notice of and order for hearing pursuant to part 1400.5100, subpart 7, or persons granted permission to intervene pursuant to part 1400.6200. The board or commissioner is a party pursuant to part 1400.5100, subpart 7. When a contested case hearing is held pursuant to a petition for a hearing, the persons petitioning for the hearing are parties to the matter. In any hearing on an application for a permit or variance, the applicant is a party. The deputy commissioner is a party in any hearing ordered by the agency. Any person who is properly intervened in the contested case under part 1400.6200, is a party. The board may designate any person whose legal rights are affected as a party.~~

Subp. 7. **Consolidation.** The agency board or commissioner may consolidate two or more matters for which contested case hearings are scheduled and hold a joint hearing if no party objects to the consolidation.

## 7000.1800 PETITION FOR CONTESTED CASE HEARING.

Subpart 1. **Petition for contested case hearing.** Any person may petition the agency board or commissioner to hold a contested case hearing. To be considered by the agency board or commissioner, a petition must be submitted in writing, must contain the information specified in subpart 2, and must be timely. Timeliness shall be determined as follows:

A. for permit matters, a petition for a contested case hearing must be submitted during the public comment period established under parts 7001.0100 and 7007.0850, ~~except for matters where there is no public comment period, the petition must be submitted according to the procedures in item B.~~ A petition for a contested case hearing shall be untimely if it is submitted after a permit is granted;

B. for matters other than those covered by item A, the commissioner may establish deadlines for persons to petition for a contested case hearing. If the commissioner establishes deadlines to petition for a contested case hearing, petitions for a contested case hearing will be considered timely if they are served on all agency board members, including the commissioner within the established deadlines; and

C. if item A does not apply and no deadlines are established as provided in item B, a petition for a contested case shall be considered timely as follows:

(1) for regular meetings of the agency board and special meetings noticed ten or more days before the meeting, service is timely if all agency board members, including the commissioner, are served five days before the meeting; and

(2) for special meetings of the agency board noticed less than ten days before the meeting, service is timely if all agency board members, including the commissioner, are served personally or by facsimile before the agenda item is scheduled to be heard.

### Subp. 2. Contested case petition contents.

A. A petition for a contested case hearing shall include the following information:

(1) a statement of reasons or proposed findings supporting ~~an agency~~ a board or commissioner decision to hold a contested case hearing pursuant to the criteria in part 7000.1900, subpart 1; and

(2) a statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested or resolution of the matter.

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

C. A petitioner is not bound or limited to the witnesses, materials, or the estimated time identified in the petition if the requested contested case is granted by the agency board or commissioner.

Subp. 3. **Written responses to petitions for contested case hearings.** Any person may serve timely responses to a petition for a contested case hearing. Timeliness shall be determined as described in items A and B.

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

B. If no schedule has been established, responses to a petition for a contested case hearing must be personally served on or ~~facsimiled~~ sent by facsimile to all agency board members, including the commissioner, at any time prior to the time at which the matter will be considered by the agency board or commissioner.

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Subp. 4. **Untimely petition for a contested case hearing.** The agency commissioner shall deny a petition for a contested case hearing if the petition is not timely served as provided in subpart 1. However, the agency board or commissioner may consider a petition that is not timely if the petition contains the information listed in subpart 2, and the petitioner demonstrates that the petition could not have been submitted to the agency board or commissioner any earlier because it relies on newly discovered material facts that could not have been discovered until after the petition period ended.

## **7000.1900 AGENCY CRITERIA TO HOLD CONTESTED CASE HEARING.**

Subpart 1. **Agency Board or commissioner decision to hold contested case hearing.** The agency board or commissioner must grant the petition to hold a contested case hearing or order upon its own motion that a contested case hearing be held if it finds that:

- A. there is a material issue of fact in dispute concerning the matter pending before the agency board or commissioner;
- B. the agency board or commissioner has the jurisdiction to make a determination on the disputed material issue of fact; and
- C. there is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of a contested case hearing would allow the introduction of information that would aid the agency board or commissioner in resolving the disputed facts in making a final decision on the matter.

Subp. 2. **Scope of contested case.** If the agency board or commissioner decides to hold a contested case hearing, the agency board or commissioner shall identify the issues to be resolved and limit the scope and conduct of the hearing in accordance with applicable law, due process, and fundamental fairness. Alternatively, the agency board or commissioner may request the administrative law judge to identify the issues and determine the appropriate scope and conduct of the hearing in accordance with applicable law, due process, and fundamental fairness.

Subp. 3. **Agency Board or commissioner decision not to hold contested case hearing.** If the agency board or commissioner decides not to hold a contested case hearing, the agency board or commissioner may hold a public informational meeting as provided in part 7000.0550, subpart 4.

## **7000.2000 FINAL DECISIONS AND ORDERS IN CONTESTED CASES.**

Subpart 1. **Time for filing comments and exceptions.** The agency board or commissioner shall take no final action with respect to a matter for which a contested case hearing has been held for at least ten days after the date of issuance of the administrative law judge's report. Any person may serve written comments on or exceptions to the findings of fact, conclusions, and recommendations of the administrative law judge at any time up to five days prior to the agency board meeting at which the matter will be considered for final decision by the board. ~~However, these~~ Where the commissioner is to make a final decision, any person may serve upon the commissioner written comments on or exceptions to the findings of fact, conclusions, and recommendations of the administrative law judge. The written comments or exceptions must be submitted to the commissioner within ten days after receipt of the administrative law judge's report. Any comments and exceptions must be based solely upon the record of the hearing.

Subp. 2. **Service of comments and exceptions.** Any person who serves written comments on or exceptions to the administrative law judge's report shall serve these comments or exceptions upon each agency board member, including the commissioner, and upon all parties.

Subp. 3. **Appearance at agency board meeting.** Any party may appear at the agency board meeting at which the matter will be considered for final decision and present oral comments and arguments, limited to evidence in the record, subject to time limitations and conditions that the commissioner prescribes in accordance with part 7000.0650, subpart 5.

Subp. 4. **Agency Board decision.** The agency board shall make all final decisions and orders in those matters within its authority for which a contested case hearing has been held. The agency's board's decision or order must be based solely on the record from the hearing. The decision or order must be accompanied by a concise statement of the findings and conclusions upon each contested issue of fact necessary to the decision.

Subp. 4a. Commissioner decision. The commissioner shall make all final decisions and orders in those matters within the authority of the commissioner for which a contested case hearing has been held. The commissioner's decision or order must be based solely on the record from the hearing. The decision or order must be accompanied by a concise statement of the findings and conclusions upon each contested issue of fact necessary to the decision.

Subp. 5. **Time.** The agency board or commissioner shall reach a final decision or order on the matter as expeditiously as possible after receipt of the administrative law judge's report and recommendation.

Subp. 6. **Manner.** The commissioner shall place the matter on the agenda for an agency a board meeting. The decision or order must be announced at the agency board meeting, and in all cases the decision or order must be entered in the minutes of the agency board meeting.

Subp. 7. **Alternatives.** The agency board or commissioner may accept, modify, or reject the recommendation of the administrative law judge, in whole or in part. The agency board or commissioner may remand the matter to the administrative law judge for further proceedings.

Subp. 7a. **Informal disposition.** Informal disposition by stipulation, agreed settlement, or consent order may be made of any



matter for which a contested case hearing is scheduled, or any contested issue, at any point in the proceeding, subject to agency board or commissioner approval of this informal disposition and its terms.

Subp. 8. **Notice.** The commissioner must serve a copy of every final decision or order in a matter for which a contested case hearing has been held on all parties to the matter and on all interested persons who have submitted to the agency board or commissioner a request to be notified of the decision.

## **7000.2100 PETITION FOR STAY AND REOPENING OF AGENCY'S FINAL DECISION FOLLOWING CONTESTED CASE HEARING.**

Subpart 1. **Petition for a stay and reopening.** At any time up to ten days after the agency's board's or commissioner's final decision, any party to a contested case hearing may petition in writing the agency board or commissioner for an order that the agency's board's or commissioner's final decision be stayed and that the matter be reopened and, if necessary, remanded to the administrative law judge. The petition must be served upon all agency board members, including the commissioner, and parties. Any response to the petition by other parties must be served any time up to seven days after receipt of the petition on all the agency board members, the commissioner, and parties to the matter.

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

Subp. 3. **Grounds for granting or denying petition.** The petition shall be granted upon a showing that there are irregularities in the hearing, errors of law, or newly discovered material issues of fact that could not have been discovered prior to the agency's board's or commissioner's final decision and of such importance as are likely to have altered the outcome of the decision.

Subp. 4. **Agency's Board's or commissioner's consideration of petition.** Within 30 days of the agency's board's or commissioner's final decision, the agency board must schedule a meeting to determine whether or not to deny or grant the petition submitted under subpart 1. Within 30 days of the commissioner's final decision, the commissioner must deny or grant the petition submitted under subpart 1.

## **7000.5000 DECLARATION OF EMERGENCY.**

Subpart 1. ~~**Delegation to Commissioner authority.**~~ The ~~agency herewith delegates to the~~ commissioner shall have the authority to exercise, in accordance with the limitations and procedures ~~hereinafter enumerated in this part,~~ emergency powers granted to the agency by *Minnesota Statutes*, section 116.11, unless the board exercises its authority under *Minnesota Statutes*, section 116.02, subdivision 8.

Subp. 2. **Notification to agency board.** ~~If the commissioner anticipates that emergency conditions may be approaching, the commissioner shall keep agency members informed of these conditions by any means practicable.~~ Upon declaration of an emergency by the commissioner, the commissioner shall immediately notify all agency board members as soon as practicable. Notification may be by telegram, telephone, or any other means practicable. The commissioner ~~shall~~ may decide to schedule a special meeting of the agency as soon as practicable, but no later than the next scheduled regular meeting of the agency after the declaration of an emergency. ~~At the special meeting the agency shall determine whether to continue the emergency declaration and, if continued, under what conditions board to discuss the emergency declaration prior to the next regularly scheduled meeting.~~

Subp. 3. **Duration.** Any action taken by the commissioner pursuant to the declaration of emergency or any emergency declaration taken by the board pursuant to an exercise of authority under *Minnesota Statutes*, section 116.02, subdivision 8, shall remain effective according to the following provisions:

A. until the date of the special meeting and thereafter; until the date determined ~~by the agency~~ at the meeting by the board pursuant to authority exercised under *Minnesota Statutes*, section 116.02, subdivision 8;

B. item A notwithstanding, until notice, hearing, and determination are effected pursuant to law; or

C. until discontinued by the declaration of the commissioner or by majority vote of the agency board.

Subp. 4. **Report.** Any action taken by the commissioner pursuant to a declaration of emergency must be included on the agenda of the next meeting of the agency board, at which time the commissioner shall report to the agency board on the status of the emergency.

Subp. 5. **Agency Board or commissioner action.** The ~~agency may~~ commissioner or board, by majority vote, may exercise ~~its~~ emergency powers. The action of the agency commissioner or board taken in an emergency situation shall remain effective until discontinued by the commissioner or majority vote of the agency board or until notice, hearing, and determination are effected pursuant to law.

Subp. 6. **Notice.** The notice requirements of parts 7000.0550 and 7000.0650 do not apply when the agency board or the commissioner is considering the exercise of emergency powers, but the agency board and the commissioner shall give such notice to the public as is possible under the circumstances.

Subp. 7. **Emergency powers.** Nothing contained in this chapter shall be construed to preempt, repeal, or conflict with this part or any other rule or statute that provides for acts to be taken or procedure to be followed by the agency board or the commissioner in an emergency.

# Proposed Rules

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## 7000.7000 VARIANCES.

Subpart 1. **Scope.** This part governs the procedure for issuance of all variances by the agency board or commissioner, except to the extent otherwise specifically provided by statute or rule.

Subp. 2. **Written application.** In no case shall the agency board or commissioner grant a variance unless a written application has been made to the agency board or commissioner. The application must be served upon the commissioner.

The written application must contain:

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

H. any other relevant data or information that the agency board or the commissioner deems essential to a determination on the application, including but not limited to the following:

[For text of subitems (1) and (2), see M.R.]

(3) a concise statement of the effect upon the air, water, and land resources of the state and upon the public and other persons affected, including those residing in the area where the variance will take effect, which will result from agency board or commissioner approval of the requested variance;

[For text of subitems (4) and (5), see M.R.]

[For text of subps 3 to 7, see M.R.]

Subp. 8. **Agency Board decision.** The agency board shall make all final decisions on variance applications pursuant to *Minnesota Statutes, section 116.02, subdivision 6, clause (6), or subdivision 8*. The agency board shall approve or deny each application. The agency board may grant a variance upon such conditions as the agency board may prescribe.

If a contested case hearing has been held, the agency board shall act on each variance application as expeditiously as possible after receipt of the administrative law judge's report and recommendation, or after submission of the application if no hearing is held. Any person may submit to the agency board an oral or written statement or recommendation regarding a variance application in accordance with part ~~7007.1800~~ 7000.1800.

Subp. 8a. Commissioner decision. The commissioner shall make final decisions on variance applications for those matters where the board does not have authority pursuant to Minnesota Statutes, section 116.02, subdivision 6, clause (6), or where the board does not exercise authority pursuant to Minnesota Statutes, section 116.02, subdivision 8. The commissioner shall approve or deny each application. The commissioner may grant a variance upon conditions the commissioner may prescribe, in accordance with Minnesota Statutes, chapter 14. If a contested case hearing has been held, the commissioner shall act on each variance application as expeditiously as possible after receipt of the administrative law judge's report and recommendation, or after submission of the application if no hearing is held, but no later than 60 days after receipt of the report or submission of the application. Any person may submit to the commissioner a written statement or recommendation regarding a variance application in accordance with part 7000.1800. Any such submission shall be made within ten days following the receipt of the administrative law judge's report, or within ten days of submission of an application where no hearing is held.

Subp. 9. **Notification.** The commissioner must serve every decision of the agency board or commissioner on a variance application on the applicant and upon all interested persons who have submitted to the agency a request to receive a copy of the decision.

Subp. 10. **Agency Remedies preserved.** During the pendency of a variance application, the agency board or commissioner may, in its discretion, avail itself of any legal, equitable, or administrative remedy provided by law for violation of Minnesota Statutes or rules.

Subp. 11. **Amendment or modification.** In the event a variance has been granted by the agency board or commissioner, the person holding the variance may file with the agency board or commissioner at any time a written application for modification or amendment of the variance. The application for modification or amendment, and the agency's board's or commissioner's consideration of the application, shall comply with the requirements of this chapter. This provision shall not apply to a time extension of an existing variance.

Subp. 12. **Assignment.** No variance may be assigned or transferred by the holder without the approval of the agency board or commissioner.

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

## 7000.9000 CONFLICT OF INTEREST.

Subpart 1. **Conflict of interest.** Any member of the agency board who has a direct and substantial financial or employment interest relating to any matter before the agency board, which interest is reasonably likely to affect the impartiality or judgment of the agency board member in the matter, shall make known this interest and shall refrain from participating in or voting upon the matter.

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

Subp. 3. **Postagency Postboard representation.** For one year after leaving the agency board, an agency board member must not represent an interested person or party before the agency board on behalf of an interested person or party regarding a matter that previously was identified as an item on any agency board meeting agenda.

## 7000.9100 PROHIBITED EX PARTE COMMUNICATIONS.

Subpart 1. **Ex parte communication.** “Ex parte communication” means an oral or written, off-the-record communication made between ~~an agency a board~~ member or the commissioner and a person or party, without notice to other interested persons or parties, that is directed to the merits or outcome of a contested case proceeding or rulemaking proceeding after public hearing. This term does not include procedural, scheduling, and status inquiries or other inquiries or for information that have no bearing on the merits or outcome of the proceeding. Notwithstanding the general prohibition on ex parte communications, the commissioner may undertake communications relating to contested case hearings and rulemaking activities that are necessary to carry out the commissioner’s duties and responsibilities. This includes communications with members of the legislative or executive body. The commissioner shall report all ex parte communications to the board in accordance with subpart 3.

Subp. 2. **Communication with agency board members.** An oral or written ex parte communication must not be made or attempted to be made either directly or indirectly between ~~an agency a board~~ member and a person or party concerning a material issue of fact during a pending contested case proceeding or rulemaking public hearing, from the date the agency board decides to hold the contested case hearing or the date the rulemaking public hearing is ordered, until the agency board issues its final order or makes a final decision.

Subp. 3. **Disclosure of ex parte communication.** If a person or party makes a prohibited oral ex parte communication to ~~an agency a board~~ member, the agency board member must advise the person or party who makes the communication that the communication is prohibited and shall immediately terminate the communication. If a prohibited written or oral ex parte communication is received by ~~an agency a board~~ member, that agency board member must promptly disclose the following information to the commissioner or vice-chair prior to any decision regarding the contested case or rulemaking proceeding that is the subject of the ex parte communication:

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

[For text of subp 4, see M.R.]

Subp. 5. **Agency Board member abstention.** Any agency board member not disclosing information regarding a prohibited ex parte communication may voluntarily abstain or may be required to abstain from voting on the matter that is the subject of the prohibited communication. A determination of an abstention must be made by a majority of agency board members, based on a finding that a prohibited ex parte communication with ~~an agency a board~~ member occurred and was not disclosed in accordance with subpart 3.

**REPEALER.** Minnesota Rules, part 7000.1300, subpart 5, is repealed.

## Adopted Rules

A rule becomes effective after the requirements of *Minnesota Statutes* §§ 14.05-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

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

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

### Expedited and Emergency Rules

Provisions for the Commissioner of Natural Resources to adopt emergency expedited Game and Fish Rules are specified in *Minnesota Statutes* §§ 84.027. The commissioner may adopt emergency expedited rules when conditions exist that do not allow the Commissioner to comply with requirements for emergency rules. The Commissioner must submit the rule to the attorney general for review and must publish a notice of adoption that includes a copy of the rule and emergency conditions. Emergency expedited rules are effective upon publication in the *State Register*, and may be effective up to seven days before publication under certain emergency conditions. Emergency expedited rules are effective for the period stated or up to 18 months.

## Department of Administration

### Adopted Permanent Rules Relating to Building Code

The rules proposed and published at *State Register*, Volume 27, Number 17, pages 567-569, October 21, 2002 (27 SR 567), are adopted with the following modifications:

#### 1300.0090 DEPARTMENT OF BUILDING SAFETY.

Subpart 1. **Creation of enforcement agency.** ~~The Department of Building Safety is hereby created and the official in charge is the building official. There is hereby established in the municipality a code enforcement agency and the official in charge is the designated building official. The agency is referred to in the code as the “Department of Building Safety.”~~

# Adopted Rules

## 1300.0110 DUTIES AND POWERS OF BUILDING OFFICIAL.

Subp. 13. **Alternative materials, design, and methods of construction and equipment.** The code is not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by the code, provided that any alternative has been approved. An alternative material, design, or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the code, and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the code in quality, strength, effectiveness, fire resistance, durability, and safety. The details of any action granting approval of an alternate shall be recorded and entered in the files of the code enforcement agency.

## 1300.0120 PERMITS.

Subp. 4. **Work exempt from permit.** Exemptions from permit requirements of the code do not authorize work to be done in any manner in violation of the code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

### A. Building:

(10) prefabricated swimming pools accessory to ~~a Group R-3 occupancy dwelling units constructed to the provisions of the International Residential Code or R-3 occupancies constructed to the provisions of the International Building Code, which are less than 24 inches (610 mm) deep or less in depth,~~ do not exceed 5,000 gallons (19,000 L) and are installed entirely above ground;

E. Electrical: an electrical permit is not required if work is inspected by the State Board of Electricity or is exempt from inspection under *Minnesota Statutes*, section 326.244. Obtaining a permit from the Board of Electricity does not exempt the work from other Minnesota State Building Code requirements relating to electrical equipment, its location, or its performance.

## 1300.0130 CONSTRUCTION DOCUMENTS.

Subpart 1. **Submittal documents.** Construction documents, special inspection and structural observation programs, and other data shall be submitted in one or more sets with each application for a permit. ~~The building official may require that the plans or other data be prepared according to the rules of the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design, chapter 1800, and Minnesota Statutes, sections 326.02 to 326.15, and other state laws relating to plan and specification preparation by occupational licenses. If special conditions exist, the building official may require additional construction documents to be prepared by a licensed design professional.~~

Exception: The building official may waive the submission of construction documents and other data ~~not required to be prepared by a licensed design professional~~ if the nature of the work applied for is such that reviewing of construction documents is not necessary to obtain compliance with the code.

The building officer may require plans or other data be prepared according to the rules of the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design, chapter 1800, and Minnesota Statutes, sections 326.02 to 326.15, and other state laws relating to plan and specification preparation by occupational licenses. If special conditions exist, the building official may require additional construction documents to be prepared by a licensed design professional.

### Subp. 9. **Design professional in responsible charge.**

~~A. If it is required that documents be prepared by a licensed design professional,~~ The building official may require the owner to engage and designate on the building permit application a licensed design professional who shall act as the licensed design professional in responsible charge. If the circumstances require, the owner shall designate a substitute licensed design professional in responsible charge who shall perform the duties required of the original licensed design professional in responsible charge. The building official shall be notified in writing by the owner if the licensed design professional in responsible charge is changed or is unable to continue to perform the duties.

The licensed design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building.

When structural observation is required by the code, the inspection program shall name the individual or firms who are to perform structural observation and describe the stages of construction at which structural observation is to occur.

## 1300.0160 FEES.

Subp. 2. **Fees commensurate with service.** Fees established by the municipality must be by ordinance and must be fair, reasonable, and proportionate to the actual cost of the service for which the fee is imposed. ~~A municipality shall adopt management and accounting procedures to ensure that fees are maintained and used only for the purpose for which they are collected.~~

### Subp. 6. **Plan review of similar plans.**

A. Any number of similar buildings may be built from a master plan if:

(3) the similar building has the same physical dimensions and structural design as the master plan;

~~Exceptions: For dwelling units built to the International Residential Code (IRC)~~ Exception: The following modifications to

the master plan are not considered to be significant modifications, according to *Minnesota Statutes*, section 16B.61, subdivision 1, and are permitted for “U” occupancies, and dwelling units built to the International Residential Code, and residential occupancies built to the International Building Code that are three stories and less in height:

(4) occupancy groups other than R-3 and U must be the same type of construction those identified in the exceptions listed in part 1300.0160, subpart 6, item A, subitem (3), must be the same type of construction and occupancy classification and must have the same exit system;

Exception: Minor changes to the exit access; and

B. Plan review fees for similar building plans must be based on the costs commensurate with the direct and indirect cost of the service. ~~Plan review fees for similar building plans shall, but must not exceed 25 percent of the normal building permit fee established and charged by the municipality for the same structure.~~

### **1300.0190 TEMPORARY STRUCTURES AND USES.**

Subp. 3. **Termination of approval.** The building official may terminate the permit for a temporary structure or use and order the temporary structure or use to be discontinued if the conditions required in this part have not been complied with.

### **1300.0210 INSPECTIONS.**

Subp. 6. **Required inspections.** The building official, upon notification, shall make the inspections in this part. In addition to the inspections identified in this subpart, see applicable rule chapters in part 1300.0050 for specific inspection and testing requirements.

K. Special inspections shall be as required by the code.

~~K. L.~~ In addition to the inspections in items A to J, the building official is authorized to make or require other inspections of any construction work to ascertain compliance with the code and other laws that are enforced by the Department of Building Safety.

~~L. Special inspections shall be as required by the code.~~

Subp. 7. **Inspection agencies.** The building official is authorized to accept inspection reports of by approved agencies, provided the agencies satisfy the requirements as to qualifications and reliability.

### **1300.0230 BOARD OF APPEALS.**

Subpart 1. **Local board of appeals.** ~~The board of appeals shall hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of the code. The building official shall be an ex officio member of the board but shall have no vote on any matter before the board. The board of appeals shall be designated by the governing body and shall hold a hearing within ten business days of receipt of an application for appeal. The board shall adopt rules of procedures for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official and to the state building official within 15 days of the decision.~~

Subp. 2. ~~State board of appeals.~~ For jurisdictions without boards of appeal, the appellant may appeal to an appeals board assembled by the state Building Codes and Standards Division.

The state Building Codes and Standards Division shall create bylaws for operation of the appeals board and a process for those requesting the appeals process.

Subp. 3. ~~Limitations on authority.~~ An application for appeal shall be based on a claim that the true intent of the code or rules adopted under the code have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The board may not waive requirements of the code. In order to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The building official shall be an ex officio member of said board but shall have no vote on any matter before the board. The board of appeals shall be designated by the governing body. Appeals hearings for one- and two-family buildings requested up to the time of permit issuance must occur within 15 working days of the application for appeal. Appeals hearings for one- and two-family buildings requested from the time of permit issuance through the issuance of the certificate of occupancy must occur within ten working days of the application for appeal.

Appeals hearings for other buildings or structures requested up to the time of permit issuance must occur within 30 working days of the application for appeal. Appeals hearings for other buildings or structures requested from the time of permit issuance through the issuance of the certificate of occupancy must occur within 20 working days of the application for appeal. The board shall adopt rules of procedures for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official and to the state building official within 15 days of the decision. For jurisdictions without a board of appeals, the appellant may appeal to an appeals board assembled by the state of Minnesota, Department of Administration's Building Codes and Standards Division.

Subp. 4 2. **Qualifications.** The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the affected jurisdiction.

# Adopted Rules

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Subp. 3. Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

Subp. 4. Final interpretive authority. Under ~~Minnesota Statutes, section 16B.63~~, The state building official has final interpretive authority for all codes adopted as part of the code except for the plumbing code when enforced by the Commissioner of Health and the electrical code when enforced by the State Board of Electricity. A request for final interpretation must come from a local or state level building code board of appeals. The procedures for final interpretations by the state building official are as established in *Minnesota Statutes, section 16B.63*.

## Department of Administration

### Adopted Permanent Rules Relating to Building Official Certification

The rules proposed and published at *State Register*, Volume 27, Number 17, pages 569-571, October 21, 2002 (27 SR 569), are adopted with the following modifications:

#### **1301.0300 CERTIFICATION PREREQUISITES.**

Prior to making application for certification as a certified building official, a person shall accumulate a minimum of 100 points from the categories in items A to C.

Prior to making application for certification as a certified building official-limited, a person shall accumulate a minimum of 30 points from categories in items A to C. Prior to taking the examination for certification as a certified building official-limited, a person shall attend a course specified by the state building official.

Prior to taking the examination for certification as an accessibility specialist, a person shall attend a course specified by the state building official.

C. Experience: Points shall be awarded for experience obtained as follows:

(1) municipal building code inspection or plan review experience under the supervision of a currently certified building official. Twenty points must be awarded for each 12-month period of employment ~~or fraction of a 12-month period~~, with a maximum accumulation of 80 points;

(2) experience in the design of buildings or in the construction of buildings with specific skilled participation in the construction of foundations, superstructures, or installation of the building's mechanical, plumbing, electrical, or fire suppression systems. Ten points must be awarded for each 12-month period of employment ~~or fraction of a 12-month period~~, with a maximum accumulation of 30 points.

#### **1301.1000 CONTINUING EDUCATION CREDIT.**

Subpart 1. **Approved education programs.** The following programs are approved for the number of continuing education units indicated:

J. postsecondary ~~technical~~ training courses in construction, management, or supervision, one unit for every three hours of instruction received or related shop work completed;

Subp. 3. **Mandatory continuing education.** The state building official ~~may~~ shall require that specific courses be taken, if necessary, to insure continuing education in relevant code application, administration, or enforcement practices. The requirements may include training courses when new codes or legislative mandates are adopted.

## Department of Administration

### Adopted Permanent Rules Relating to Adoption of the International Building Code

The rules proposed and published at *State Register*, Volume 27, Number 17, pages 573-575, October 21, 2002 (27 SR 573), are adopted with the following modifications:

#### **1305.0707 SECTION 707, SHAFT AND VERTICAL EXIT ENCLOSURES.**

Subpart 1. Section 707.7. IBC Section 707.7 is amended to read as follows:

**707.7 Openings.** Openings in a shaft enclosure shall be protected in accordance with Section 714 as required for fire barriers and listed in Table 714.2. Such openings shall restrict the movement of smoke through openings using smoke-control or draft-control assemblies in accordance with Section 714.2.3.2 and shall be self-closing or automatic closing by smoke detection.

Subp. 2. Section 707.14.1. IBC Section 707.14.1 is amended to read as follows:

**707.14.1 Elevator lobby.** Elevators opening into fire resistance-rated corridor as required by Section 1004.3.2.1 shall be provided

with an elevator lobby at each floor containing such a corridor. The lobby shall completely separate the elevators from the corridor by fire barriers and the required opening protection. Elevator lobbies shall have at least one means of egress complying with Chapter 10 and other provisions within this code.

**Exceptions:**

1. In office buildings, separations are not required from a street floor elevator lobby provided the entire street floor is equipped with an automatic sprinkler system in accordance with Section 903.3.1.1.
2. Elevators not required to be located in a shaft in accordance with Section 707.2.
3. Where additional fire or smoke rated doors are provided in accordance with Section 3002.6.
4. In other than Groups I-2 and I-3, and buildings more than four stories above the lowest level of fire department vehicle access, lobby separation is not required where the building, including the lobby and corridors leading to the lobby, is protected by an automatic sprinkler system installed throughout in accordance with Section 903.3.1.1 or 903.3.1.2.

**1305.0714 SECTION 714, OPENING PROTECTIVES.**

IBC Section 714.2.3 is amended to read as follows:

**714.2.3 Doors in corridors and smoke barriers.** Fire doors in fire or smoke barrier walls having a fire resistance rating in accordance with Table 714.2 shall be tested in accordance with NFPA 252 or UL 10C.

**714.2.3.1 Minimum fire-protection rating.** Fire doors required to have a minimum fire-protection rating of 20 minutes where located in corridor walls or smoke barrier walls having a fire-resistance rating in accordance with Table 714.2 shall be tested in accordance with NFPA 252 or UL 10C without the hose stream test. If a 20-minute fire door or fire door assembly contains glazing material, the glazing material in the door itself shall have a minimum fire-protection rating of 20 minutes and be exempt from the hose stream test. Glazing material in any other part of the door assembly, including transom lites and sidelites, shall be tested in accordance with NFPA 257, including the hose stream test, in accordance with Section 714.3.

**714.2.3.2 Smoke and draft control door assemblies.** Fire doors shall also meet the requirements for smoke and draft control door assembly tested in accordance with UL 1784 with an artificial bottom seal installed across the full width of the bottom of the door assembly. The air leakage rate of the door assembly shall not exceed 3.0 cfm per square foot (0.01524 m<sup>3</sup>/s•m<sup>2</sup>) of door opening at 0.10 inch (24.9 Pa) of water for both the ambient temperature and elevated temperature tests. Louvers shall be prohibited.

**Exceptions:**

1. Viewports that require a hole not larger than one inch (25.4 mm) in diameter through the door, have at least a 0.25-inch-thick (6.4 mm) glass disc and the holder is of metal that will not melt out where subject to temperatures of 1,700°F (927°C).
2. Corridor doors in occupancies of Group I-2 shall be in accordance with Section 407.3.1.
3. Unprotected openings shall be permitted for corridors in multitheater complexes where each motion picture auditorium has at least one-half of its required exit or exit access doorways opening directly to the exterior or into an exit passageway.

**1305.0903 F SECTION 903, AUTOMATIC SPRINKLER SYSTEMS.**

IBC [F] Section 903 is amended to read as follows:

Subpart 1. [F] **Section 903.2.8.** IBC [F] Section 903.2.8 is amended by adding a section to read as follows:

**903.2.8.1 Area separation walls.** For the purposes of Section 903.2.8, area separation walls or fire walls shall not define separate buildings ~~or fire areas.~~

## Department of Administration

### Adopted Permanent Rules Relating to the International Residential Code

The rules proposed and published at *State Register*, Volume 27, Number 17, pages 577-579, October 21, 2002 (27 SR 577), are adopted with the following modifications:

**1309.0310 SECTION R310, EMERGENCY ESCAPE AND RESCUE OPENINGS.**

IRC Section R310.1 is amended to read as follows:

**R310.1 Emergency escape and rescue required.** Basements with habitable space and every sleeping room shall have at least one openable emergency escape and rescue window or exterior door opening for emergency escape and rescue. Where openings are provided as a means of escape and rescue, they shall have a sill height of not more than 44 inches (1118 mm) above the floor. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure shall comply with Section R310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the window or door opening from the inside. Escape and rescue window openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with Section R310.2. A

# Adopted Rules

minimum ceiling height of 48 inches (1210 mm) shall be maintained above the exterior grade from the exterior wall to a public way.

**1309.0317 SECTION R317, SMOKE ALARMS.**

**1309.0318 SECTION R318, FOAM PLASTIC.**

IRC Section R318.2 is amended by adding a subsection as follows:

**R318.2.7 Sill plate and headers.** Foam plastic shall be permitted to be spray-applied to a sill plate and header (rim joist) without thermal barrier if all of the following conditions exist:

**1309.0404 SECTION R404, FOUNDATION WALLS.**

Subp. 6. **IRC Table R404.4(4).** IRC Table R404.4(4) is amended by modifying footnote [a] as follows:

[a] N/R denotes “design required.”

**1309.0703 SECTION R703, EXTERIOR COVERING.**

Subpart 1. **Section R703.2.** IRC section R703.2 is amended to read as follows:

Subp. 2. **Table R703.4.** IRC Table R703.4 is amended to read as follows:

The table in the proposed rule is deleted and replaced by the following as all new material.

TABLE R703.4  
WEATHER-RESISTANT SIDING ATTACHMENT  
AND MINIMUM THICKNESS<sup>abcdeghijklmnopq</sup>

Siding material	Nominal Thickness <sup>a</sup> (inches)	Joint Treatment	Sheathing Paper Required
Horizontal aluminum <sup>c</sup>			
Without insulation	0.019 <sup>f</sup>	Lap	Yes
	0.024	Lap	Yes
With insulation	0.019	Lap	Yes
Brick veneer	2	Section	Yes
Concrete masonry veneer	2	R703	
Hardboard <sup>l</sup>	7/16	Note q	Yes Note q
Panel siding-vertical			
Sliding vertical			Yes
Hardboard <sup>l</sup>	7/16	Note q	Note q
Lap-siding-horizontal			
Steel <sup>i</sup>	29 ga.	Lap	Yes
Stone veneer	2	Section R703	Yes
Particleboard panels	3/8 - 1/2	Note g	Yes Note g
	5/8	Note g	Yes Note g
Plywood panel <sup>l</sup> (exterior grade)	3/8	Note g	Yes Note g
Vinyl Siding <sup>n</sup>	0.035	Lap	Yes
Wood <sup>k</sup> Rustic, drop	3/8 Min	Lap	Yes
Shiplap	19/32 Average	Lap	Yes
Bevel	7/16	Lap	Yes
Butt tip	3/16	Lap	Yes



## TYPE OF SUPPORTS FOR THE SIDING MATERIAL AND FASTENERS<sup>bcd</sup>

<b>Siding material</b>	<b>Wood or wood structural panel sheathing</b>	<b>Fiberboard sheathing into stud</b>	<b>Gypsum sheathing into stud</b>
Horizontal aluminum <sup>c</sup> Without insulation	0.120 nail 1 1/2" long	0.120 nail 2" long	0.120 nail 2" long
	0.120 nail 1 1/2" long	0.120 nail 2" long	0.120 nail 2" long
With insulation	0.120 nail 1 1/2" long	0.120 nail 2 1/2" long	0.120 nail 2 1/2" long
Brick veneer	See Section R703 and		
Concrete masonry veneer	Figure R703.7 <sup>h</sup>		
Hardboard <sup>l</sup>	Note n	Note n	Note n
Panel siding-vertical			
Sliding vertical			
Hardboard <sup>l</sup>	Note p	Note p	Note p
Lap-siding-horizontal			
Steel <sup>i</sup>	0.113 nail 1 3/4" Staple 1 3/4"	0.113 nail 2 3/4" Staple 2 1/2"	0.113 nail 2 1/2" Staple 2 1/4"
Stone veneer	See Section R703 and Figure R703.7		
	6d box nail	6d box nail	6d box nail
Particleboard panels	6d box nail	8d box nail	8d box nail
Plywood panel <sup>l</sup> (exterior grade)	0.099 nail 2"	0.113 nail 2 1/2"	0.099 nail 2"
Vinyl Siding <sup>n</sup>	0.113 nail 1 1/2" Staple 1 3/4"	0.113 nail 2" Staple 2 1/2"	0.113 nail 2" Staple 2 1/2"
Wood <sup>k</sup> Rustic, drop	Fastener penetration into stud 1"		
Shiplap	Fastener penetration into stud 1"		
Bevel	Fastener penetration into stud 1"		
Butt tip	Fastener penetration into stud 1"		
<b>Siding material</b>	<b>Direct to studs</b>	<b>Number or spacing of fasteners</b>	
Horizontal aluminum <sup>c</sup> Without insulation	Not allowed	Same as stud spacing	
	Not allowed	Same as stud spacing	
With insulation	0.120 nail 1 1/2" long	Same as stud spacing	

# Adopted Rules

Brick veneer	See Section R703	
Concrete masonry veneer	and Figure R703.7 <sup>h</sup>	
Hardboard <sup>l</sup>	Note n	6" panel edges 12" inter. sup. <sup>o</sup>
Panel siding-vertical		
Sliding vertical		Same as stud
Hardboard <sup>l</sup>	Note p	spacing
Lap-siding-horizontal		2 per bearing
Steel <sup>l</sup>	Not allowed	Same as stud spacing
Stone veneer	See Section R703 and Figure R703.7	
Particleboard panels	6d box nail, 3/8 not allowed	6" panel edges 12" inter.
	6d box nail	sup.
Plywood panel <sup>l</sup> (exterior grade)	0.099 nail 2"	6" on edges
Vinyl Siding <sup>n</sup>	Not allowed	Same as stud spacing
	0.113 nail	Face nailing up to
Wood <sup>k</sup> Rustic, drop	2 1/2" Staple 2"	6" widths, 1 nail per bearing; 8" widths and over, 2 nails per bearing
	0.113 nail	Face nailing up to
Shiplap	2 1/2" Staple 2"	6" widths, 1 nail per bearing; 8" widths and over, 2 nails per bearing
	0.113 nail	Face nailing up to
Bevel	2 1/2" Staple 2"	6" widths, 1 nail per bearing; 8" widths and over, 2 nails per bearing
	0.113 nail	Face nailing up to
Butt tip	2 1/2" Staple 2"	6" widths, 1 nail per bearing; 8" widths and over, 2 nails per bearing

Subp. 3. **Section R703.6.** IRC Section R703.6 is amended to read as follows:

Subp. 4. **Section R703.7.1.** IRC Section R703.7.1 is amended to read as follows:

## Department of Administration

### Adopted Permanent Rules Relating to Minnesota Provisions of State Building Code

The rules proposed and published at *State Register*, Volume 27, Number 17, pages 571-573, October 21, 2002 (27 SR 571), are adopted as proposed.

## Department of Administration

### Adopted Permanent Rules Relating to Rehabilitation of Existing Buildings

The rules proposed and published at *State Register*, Volume 27, Number 17, pages 579-581, October 21, 2002 (27 SR 579), are adopted with the following modifications:

#### 1311.0201 SECTION 201, ADMINISTRATION.

GREB section 201 is amended to read as follows:

#### SECTION 201 ADMINISTRATION

The building official is hereby authorized to enforce the provisions of these guidelines. The building official shall have the power to render interpretations of these guidelines ~~and to adopt and enforce rules and regulations supplemental to these guidelines~~ as deemed necessary to clarify the application of the provisions of these guidelines. These interpretations, ~~rules, and regulations~~ shall be in conformity with the intent and purpose of these guidelines and the Minnesota State Fire Code. In order to effectively perform this duty and gain conformity with the Minnesota State Fire Code, the building official shall consult with the fire official.

#### 1311.0301 SECTION 301, DEFINITIONS.

Subpart 1. **Section 301, amending definitions.** GREB Section 301 is amended by modifying definitions as follows:

B. The definition of "BUILDING OFFICIAL" is amended to read as follows:

**BUILDING OFFICIAL.** The municipal building code administrative authority ~~or code official~~ certified under *Minnesota Statutes*, section 16B.65, subdivisions 2 and 3.

#### 1311.0408 SECTION 408, FIRE ALARMS.

Subp. 2. **Section 408.1.2.** GREB Section 408.1.2 is modified to read as follows:

**408.1.2** Where the work area is in Use ~~Groups~~ ~~Group~~ R-3 ~~and~~ or R-4, smoke detectors complying with Section 907.2.10.1.2 of the International Building Code adopted according to *Minnesota Rules*, chapter 1305, shall be provided. When the work area is in any attached dwelling unit in Use Group R-3 or R-4, the requirement is only applicable to a dwelling unit that is part of the work area.

#### 1311.0503 SECTION 503, ENCLOSURE OF VERTICAL SHAFTS.

Subpart 1. **Section 503.2.** GREB Section 503.2, Exception 2, is amended as follows:

2. In other than Group I occupancies, unenclosed existing stairways need not be enclosed in a continuous vertical shaft when the entire building is provided with an approved automatic sprinkler system and the number of open floors do not exceed three.

#### 1311.0505 SECTION 505, STRUCTURAL SAFETY.

Subp. 2. **Section 505.4.** GREB Section 505.4 is amended by renumbering it as Section 505.3.

#### 1311.0603 SECTION 603, FIRE-SAFETY.

Subp. 3. **Section 603.11.** GREB Sections 603.11, 603.11.1 and Exception, and ~~603.12~~ 603.11.2 are deleted in their entirety and replaced with the following:

**603.11 Doors.** Historic wood panel doors in interior walls that are required to have a one-hour fire rated assembly may be permitted if a sprinkler is installed on each side of the door.

#### 1311.0604 SECTION 604, CHANGE OF OCCUPANCY.

Subp. 2. **Section 604.16.** GREB Section 604.16 is deleted in its entirety and replaced with the following:

**604.16 Accessibility requirements.** Alterations to a certified historic structure shall comply with Section 403.1.1 unless it is determined ~~to be~~, in accordance with the Minnesota Accessibility Code, *Minnesota Rules*, part 1341.0413, subpart 2, that compliance with the requirements for exterior and interior accessible routes, ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility, in which case the alternative requirements in *Minnesota Rules*, part 1341.0413, subpart 3, may be used for the feature.

## Department of Administration

### Adopted Permanent Rules Relating to State Building Code

The rules proposed and published at *State Register*, Volume 27, Number 17, pages 575-577, October 21, 2002 (27 SR 575), are adopted with the following modifications:

# Adopted Rules

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## 1306.0020 MUNICIPAL OPTION.

Subp. 2. **Existing and new buildings.** Automatic sprinkler systems for new buildings, buildings increased in total floor area (including the existing building), or buildings in which the occupancy classification has changed, must be installed and maintained in operational condition within the structure. The requirements of this subpart apply to structures that fall within the occupancy classifications established in part 1306.0030, items A to E.

### Exceptions:

1. The floor area of minor additions that do not increase the occupant load ~~do~~ **does** not have to be figured into the square footage for occupancy classifications established in part 1306.0030, items A to E.
2. The existing portion of R-2 apartment occupancies, attached R-3 occupancies, and attached townhomes ~~are~~ **is** not required to be sprinklered under this chapter.

Subp. 3. **New buildings.** Automatic sprinkler systems for new buildings, additions to existing buildings, or buildings in which the occupancy classification has changed must be installed and maintained in operational condition within the structure. The requirements of this subpart apply to structures that fall within the occupancy classifications established in part 1306.0030, items A to E.

**Exception:** The floor area of minor additions that do not increase the occupant load ~~do~~ **does** not have to be figured into the square footage for occupancy classifications established in part 1306.0030, items A to E.

## 1306.0040 STANDARD.

Automatic sprinkler systems must comply with the applicable standard referenced in the State Building Code. If a public water supply is not available, ~~an alternate on-site source of water may be used if it meets the approval of the building official and fire chief the building official and fire chief shall approve the use of an alternate on-site source of water if the alternate source provides protection that is comparable to that provided by a public water supply.~~ If an adequate alternate water supply sufficient for hose stream requirements is provided or available, the building official and fire chief may permit the water supply requirements for the hose stream demands to be modified.

## 1306.0050 SUBSTITUTE CONSTRUCTION.

The installation of an automatic sprinkler system, as required by this chapter, ~~does not preclude~~ would still allow the substitution of one-hour fire-resistive construction as permitted by the International Building Code, Table 601, footnote d.

## Department of Public Safety

### Adopted Permanent Rules Relating to the Minnesota State Fire Code

The rules proposed and published at *State Register*, Volume 27, Number 15, pages 491-528, October 7, 2002 (27 SR 491), and Volume 27, Number 18, page 639, October 28, 2002 (27 SR 639), are adopted with the following modifications:

#### 7510.3560 CHAPTER 9 - FIRE PROTECTION SYSTEMS.

Subp. 2. **Sec. 903.2.8.1.** Section 903.2.8 of the International Fire Code is amended by adding a new Section 903.2.8.1 to read:

**903.2.8.1 Area separation walls.** For the purposes of Section 903.2.8, area separation walls or fire walls shall not define separate buildings ~~or fire areas~~.

**Exception:** Buildings not exceeding three stories in height and having area separation walls or fire walls of a four-hour fire-resistance rating in conformance with the Building Code without openings, doors or penetrations.

#### 7510.3580 CHAPTER 10 - MEANS OF EGRESS.

Subp. 2. **Sec. 1009.1.** Section 1009.1 of the International Fire Code is amended, and a new Section 1009.1.1 is added, to read:

**1009.1 Escape windows.** In Group R and Group I-1 Occupancies, escape windows shall be provided, installed and maintained in sleeping rooms and rooms used for family day care, group family day care and foster care in conformance with the Building Code.

### Exceptions:

1. An escape window is not required if the room has a door that leads directly to the exterior of the building.
2. Escape windows installed prior to April 11, 1983 and having a clear opening not less than 20 inches (508 mm) in width, 24 inches (610 mm) in height and 5 square feet (0.46 m<sup>2</sup>) in area with a finished sill height not more than 48 inches (1219 mm) above the floor may be allowed to continue.
3. An escape window is not required if the building is protected throughout by an approved, automatic sprinkler system.
4. Escape windows need not be installed from rooms of existing buildings having two separate means of escape, provided that the means of escape are independent of each other and they pass through only one adjacent nonlockable room

or area.

5. Existing escape windows at single-story resort buildings installed prior to October 3, 1975, and having a clear opening not less than 20 inches (508 mm) in width, 20 inches (508 mm) in height and 4.5 square feet (0.41 m<sup>2</sup>) in area with a finished sill height not more than 36 inches (914 mm) above the floor may be allowed to continue.

6. Escape windows are not required in Group R hotels or motels constructed prior to April 11, 1983.

**1009.1.1 Maintenance.** Emergency escape or rescue windows, doors or window wells required by the Building Code for sleeping rooms of Group R and Group I-1 Occupancies shall be maintained free of any obstruction, including bars, grates or similar devices which would impair egress.

**Exception:** Bars, grills, grates or similar devices installed in accordance with Section 1009.4 are allowed, provided that the release mechanisms are maintained operable.

**7510.3675 CHAPTER 46 - ADULT DAY CARE CENTERS, RESIDENTIAL HOSPICE FACILITIES AND SUPERVISED LIVING FACILITIES.**

The International Fire Code is amended by adding Chapter 46 to read:

**CHAPTER 46  
ADULT DAY CARE CENTERS, RESIDENTIAL HOSPICE FACILITIES  
AND SUPERVISED LIVING FACILITIES  
SECTION 4601  
GENERAL**

**4601.1 Requirements.** Adult day care centers, residential hospice facilities and supervised living facilities shall meet the requirements of this chapter.

**SECTION 4602  
ADULT DAY CARE CENTERS**

**4602.1 Classification of adult day care centers.** Adult day care centers are classified in accordance with the following and must meet the fire safety requirements for the designated occupancy classification.

**4602.1.1 Serving only participants capable of self-preservation.** Centers serving only participants who are capable of taking appropriate action for self-preservation under emergency conditions shall meet all applicable requirements for Group E Occupancies.

**4602.1.2 Serving only participants not capable of self-preservation.** Centers serving only participants who are not capable of taking appropriate action for self-preservation under emergency conditions shall meet all applicable requirements for Group I-4 Occupancies.

**4602.1.3 Serving both participants capable and participants not capable of self-preservation.** Centers serving a population that includes both participants who are capable and participants who are not capable of taking appropriate action for self-preservation under emergency conditions shall meet the occupancy requirements for Group ~~I-2~~ I-4 or Group E Occupancies. In addition to the requirements for Group E Occupancies, the center shall meet the requirements set forth in Sections 4602.1.3.1 through 4602.1.3.4.

## Executive Orders

The governor has the authority to issue written statements of orders, called Executive Orders, as well as Emergency Executive Orders. The governor's authority is specified in the *Constitution of the State of Minnesota*, Article V, and in *Minnesota Statutes* 4.035. Emergency Executive Orders, for protection from an imminent threat to health and safety, become effective immediately, are filed with the secretary of state, and published in the *State Register* as soon as possible after they are issued. Other Executive Orders become effective 15 days after publication in the *State Register* and filing with the secretary of state. Unless otherwise specified, an executive order expires 90 days after the date the governor who issued the order vacates office.

### Office of the Governor

#### Emergency Executive Order #03-01: Providing for Relief from Regulations to Motor Carriers and Drivers Operating in Minnesota

I, **TIM PAWLENTY, GOVERNOR OF THE STATE OF MINNESOTA**, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this Emergency Executive Order.

**WHEREAS**, extreme weather conditions and lack of snow cover have created freezing septic systems over much of Minnesota; and

**WHEREAS**, it is urgent that immediate action be taken to prevent danger to public health and to avoid further damage to septic systems; and

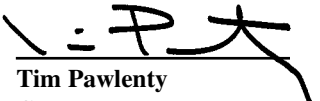
**WHEREAS**, seasonal load restrictions as described in *Minnesota Statutes* § 169.87 are scheduled to go into effect imminently;

**WHEREAS**, these seasonal load restrictions will impair the removal of sewage from septic systems and will increase the harm caused by leakage and rupture of septic systems;

**NOW, THEREFORE**, I hereby order that a State of Emergency exists and order that vehicles used to pump sewage from septic systems or used to transport sewage from septic systems be exempted from the seasonal load restrictions on local and state highways and streets imposed in *Minnesota Statutes*, Section 169.87 (2002).

Pursuant to *Minnesota Statutes*, Section 4.035, subd. 2, this Executive Order is effective immediately and shall remain in effect until June 13, 2003.

IN TESTIMONY WHEREOF, I have set my hand this 14<sup>th</sup> day of March,

  
**Tim Pawlenty**  
Governor

Filed According to Law:

  
**Mary Kiffmeyer**  
Secretary of State

# Commissioner's Orders

Various agency commissioners are authorized to issue "commissioner's orders" on specified activities governed by their agency's enabling laws. See the *Minnesota Statutes* governing each agency to determine the specific applicable statutes. Commissioners' orders are approved by assistant attorneys general as to form and execution and published in the *State Register*. These commissioners' orders are compiled in the year-end subject matter index for each volume of the *State Register*.

## Department of Natural Resources

### Findings of Fact, Conclusions and Order: In the Matter of the Public Hearing on Iona's Beach and Wabu Woods Scientific and Natural Areas

#### Public Hearing on Iona's Beach and Wabu Woods Scientific and Natural Areas

In the matter of the public hearing conducted on March 3, 2003, regarding opening the subject selected Scientific and Natural Areas to hunting, swimming and/or fishing by the public and granting an easement for road purposes, I have reviewed the Hearing Examiners Findings of Fact, Conclusion and Recommendations.

I concur with and adopt the findings, conclusions and the recommendations of the Hearing Examiner and hereby order 1) the opening of Wabu Woods Scientific and Natural Area to public hunting including the use of dogs for game birds, 2) granting an easement to Itasca County for a road easement and 3) the opening of Iona's Beach Scientific and Natural Area to shore fishing and swimming.

Gene Merriam  
Commissioner

## Department of Transportation

### ORDER NO. 86931: Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under *Minnesota Statutes* § 169.825

**Whereas**, the Commissioner of Transportation has made his Order No. 80000, dated March 10, 1994, which order has been amended by Orders No's. 80212, 80246, 80580, 80861, 80881, 81000, 81092, 81371, 81511, 81557, 81641, 82955, 83138, 83536, 83616, 83720, 84056, 84222, 84232, 84256, 84353, 84354, 84439, 84532, 84902, 85225, 85246, 85668, 85784, 85922, 85932, 86170, 86468, and 86483 designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under *Minnesota Statutes* § 169.825, and

**Whereas**, the Commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under *Minnesota Statutes* § 169.825.

**IT IS HEREBY ORDERED** that Commissioner of Transportation Order No. 80000 is further amended this date by adding the following designated streets and highway routes, or segment of routes, as follows:

#### COUNTY ROADS

##### HUBBARD COUNTY

- C.S.A.H. 6 - FROM T.H. MN87 TO T.H. MN34 IN PARK RAPIDS (12 MONTH)
- C.S.A.H. 15 - FROM T.H. US71 TO C.S.A.H. 6 IN PARK RAPIDS (12 MONTH)

##### COTTONWOOD COUNTY

- C.S.A.H. 1 - FROM THE SOUTH COUNTY LINE TO THE NORTH COUNTY LINE (12 MONTH)
- C.S.A.H. 2 - FROM T.H. MN30 TO THE NORTH COUNTY LINE (12 MONTH)
- C.S.A.H. 2 - FROM T.H. MN60 TO T.H. MN60 (THRU BINGHAM LAKE) (12 MONTH)
- C.S.A.H. 5 - FROM THE SOUTH COUNTY LINE TO THE NORTH COUNTY LINE (12 MONTH)
- C.S.A.H. 7 - FROM T.H. MN30 TO THE NORTH COUNTY LINE (12 MONTH)
- C.S.A.H. 13 - FROM C.S.A.H. 5 TO C.S.A.H. 15 (12 MONTH)
- C.S.A.H. 15 - FROM C.S.A.H. 13 TO T.H. US71 (12 MONTH)
- C.S.A.H. 20 - FROM THE WEST COUNTY LINE TO C.S.A.H. 7 (12 MONTH)
- C.S.A.H. 22 - FROM C.S.A.H. 13 TO T.H. US71 (12 MONTH)
- C.S.A.H. 27 - FROM T.H. MN60 TO T.H. MN60 (THRU MOUNTAIN LAKE) (12 MONTH)

Dated this 13<sup>th</sup> day of March, 2003

Carol Molnau  
Commissioner

## Revenue Notices

The Department of Revenue began issuing revenue notices in July of 1991. Revenue notices are statements of policy made by the department that provide interpretation, detail, or supplementary information concerning a particular statute, rule, or departmental practice. The authority to issue revenue notices is found in *Minnesota Statutes* § 270.0604

## Department of Revenue

### Revenue Notice # 03-01: Sales and Use Tax - Prepared Food

This revenue notice amends Revenue Notice # 01-12. It explains the new provisions added to the definition of "prepared food" in *Minnesota Statutes*, section 297A.61, subdivision 31 that were passed into law after Revenue Notice # 01-12 was published.

Under *Minnesota Statutes*, section 297A.61, subdivision 31, food sold with eating utensils provided by the seller, or food sold in a heated state or heated by the seller, or two or more food ingredients mixed or combined by the seller for sale as a single item is taxable as "prepared food." Food that is only sliced, repackaged, or pasteurized by the seller is exempt unless sold with eating utensils provided by the seller.

The definition of "prepared food" was amended to exempt the following items unless they are sold with eating utensils that are provided by the seller:

- Bakery items such as bread, rolls, pastries, cookies, and tortillas are exempt effective July 1, 2002.
- Ready to eat meat and seafood in an unheated state sold by weight are exempt beginning July 1, 2002 through December 31, 2005.
- Eggs, fish, meat, and poultry when they are raw, and other foods containing these raw animal foods requiring cooking by the consumer so as to prevent food borne illnesses are exempt effective July 1, 2002.

Following are examples of food that is not taxable under the amended law unless sold with eating utensils:

- Bakery items: a bag of bagels, a loaf of bread baked by the seller; a pre-packaged slice of pie sold at a grocery store, or a bag of donuts baked by a bakery. Refer to the section on "eating utensils" in Revenue Notice # 01-12 for information on when bakery items are taxable.
- Ready to eat meat and seafood that is sold by weight and in an unheated state: honey glazed ham; sliced turkey, or cooked shrimp. Sushi that contains fish is exempt if it is sold by weight.
- Food that contains raw eggs, raw fish, raw meat, or raw poultry and requires cooking: uncooked meatloaf; marinated raw chicken; or cookie dough.
- Meat that is provided by the customer and processed by a meat processor is exempt even if it is combined with other meats that are provided by the meat processor if it is sold to the customer either (1) by weight, in an unheated state, and ready to eat (*e.g.*, beef sticks); or (2) raw meat that requires cooking (*e.g.*, ground meat).

Raymond R. Krause  
Assistant Commissioner

## Official Notices

*Pursuant to Minnesota Statutes* § 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking. The *State Register* also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

## Department of Agriculture

### Agronomy and Plant Protection Division

### Notice of Proposed Determinations Regarding the Occurrence of Pesticides in Waters of Minnesota

**NOTICE IS HEREBY GIVEN** that the Commissioner (Commissioner) of the Minnesota Department of Agriculture (MDA) is seeking comment on a proposed action by the Commissioner to develop recommended Best Management Practices (BMPs) to protect groundwater and surface water from leaching or runoff of specific pesticides. The Commissioner proposes to develop BMPs to protect groundwater, for pesticides containing alachlor and acetochlor, and BMPs to protect surface water, for pesticides con-



taining acetochlor and atrazine. These BMPs are in addition to the BMPs to protect groundwater currently under development for pesticides containing atrazine, metolachlor and metribuzin. Where practicable, the Commissioner will combine BMPs developed for surface water and groundwater into a single BMP.

The Commissioner has responsibility and authority, under state statutes, to: "determine the impact of pesticides on the environment, including the impacts on surface water and groundwater" (*Minnesota Statutes* § 18B.04 subd. 1); to "develop best management practices involving pesticide...use" (*Minnesota Statutes* § 18B.04 subd. 2); to "take action necessary to prevent the contamination of groundwater resulting from leaching of pesticides through the soil" (*Minnesota Statutes* § 18B.10); to ensure that pesticide use "will not cause unreasonable adverse effects on the environment" (*Minnesota Statutes* § 18B.07 subds. 1 & 2); and to "evaluate the detection of pollutants in groundwater of the state" (*Minnesota Statutes* § 103H.251 subd. 1(a)).

In fulfillment of these requirements, the Commissioner has reviewed surface water and groundwater monitoring data for the occurrences of pesticides and pesticide degradates in Minnesota, and proposes to develop and promote BMPs to prevent and minimize the potential for water resource degradation based on the following:

### **Groundwater**

The Commissioner, under *Minnesota Statutes* § 103H.251, has evaluated the detection of the pesticides acetochlor and alachlor in groundwater of the state to determine if they are "common detection." Common detection "means detection of a pollutant that is not due to misuse or unusual circumstances, but is likely to be the result of normal use of a product or practice" (*Minnesota Statutes* § 103H.005 subd. 5).

The determination of common detection includes the consideration of chemical, physical or microbial degradates (breakdown products) in groundwater. This is in accordance with *Minnesota Statutes* § 103H.251 subd. 1(b), wherein detection of pollutant breakdown products is linked to the common detection of pollutants.

The MDA's groundwater monitoring results, and groundwater survey results obtained by cooperating state and local agencies, indicate frequent detections of degradates of the pesticides alachlor and acetochlor. These results and reports come from areas of the state where groundwater is known to be vulnerable to contamination due to land use, and where no known misuse or unusual circumstance explains the occurrence of these chemicals. Based on this information, the Commissioner proposes to determine alachlor a common detection, and to direct MDA staff to develop and promote chemical-specific BMPs for alachlor. Acetochlor currently lacks a Minnesota Department of Health (MDH) Health Risk Limit (HRL) for drinking water, a statutory requirement for a contaminant in groundwater to be determined as a common detection under *Minnesota Statutes* 103H. However, under authority granted in *Minnesota Statutes* Chapter 18B, the Commissioner proposes to direct MDA staff to develop BMPs for acetochlor. Results from MDA's groundwater monitoring program have been shared with the MDH, and development of HRLs, when absent, has been requested.

The Commissioner has previously determined that atrazine, metolachlor and metribuzin are commonly detected in groundwater and has initiated the development of voluntary, pesticide-specific BMPs to protect groundwater for these pesticides.

### **Surface Water**

Following consultation with Minnesota Pollution Control Agency (MPCA) staff and an analysis using an approach recommended by the MPCA, the Commissioner has determined that BMPs are required to address acetochlor and atrazine in surface water. The MPCA is the agency responsible for surface water standards.

These actions are proposed in response to surface water monitoring results, particularly in high-volume storm events in 2001 and 2002, which show several water bodies in southern Minnesota having concentrations of pesticides approaching or exceeding a surface water standard or surface water advisory values. A surface water standard is an enforceable number in *Minnesota Rules* Chapter 7050. Advisory values, however, have not been adopted into the rules and are non-enforceable. The Commissioner's proposed actions do not imply that actual surface water standard violations or water body impairments have occurred, and such determinations are the responsibility of the MPCA and the U.S. Environmental Protection Agency. Results from MDA's monitoring program have been shared with the MPCA, and development of standards, when absent, has been requested.

The Commissioner also considered developing BMPs to protect surface water, for metolachlor. However, 10% of the advisory value was exceeded at only one monitoring station in 2003 compared to three in 2001 and 2002. The concentration of metolachlor relative to the surface water advisory value was considerably lower than concentrations of acetochlor and atrazine, and at the seasonal maximum was less than one third of the advisory value and well below the state's applicable human health standard. Therefore, the Commissioner is proposing to focus staff resources on developing BMPs for higher priority pesticides and continue monitoring for metolachlor in surface water.

Voluntary BMP development, promotion and adoption are designed to precede and, if successful, prevent regulatory actions. Regulatory actions, if required, may be taken to reduce pesticide concentrations in surface water under the Pesticide Control Law (*Minnesota Statutes* Chapter 18B) and under *Minnesota Rules* Chapter 7050 and the federal Clean Water Act. If pesticide concentrations exceed a regulatory surface water standard, the water body may be listed as impaired by the MPCA under Section 303 of

# Official Notices

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the Clean Water Act. If a water body were designated impaired for a pesticide, further actions would be taken to determine an allowable amount (or load) of pesticide that could be generated from all sources within the watershed while still maintaining the applicable water quality standard in the water body. This analysis, called the Total Maximum Daily Load (TMDL), would include a plan to reduce pesticide loading to the allocated amount so water quality standards are met.

The Commissioner proposes to take action under *Minnesota Statutes* Chapter 18B to reduce elevated levels of acetochlor and atrazine observed in surface water in Minnesota watersheds of concern. The proposal directs MDA staff to develop and promote voluntary pesticide BMPs to address this concern and to reduce pesticide losses to surface waters statewide.

Determinations in this notice remain in effect until such time as the Commissioner determines differently.

Additional information related to these proposals can be accessed through the MDA **website** at <http://www.mda.state.mn.us/waterland.htm> under "Environment."

The MDA will consider public comment prior to making final decisions on these proposals, and will accept comments for 30 days, until April 22, 2003. Interested parties or groups may direct inquiries or comments about these proposals by fax, e-mail or letter to the MDA at the following address:

Daniel Stoddard  
Agronomy and Plant Protection Division  
Minnesota Department of Agriculture  
90 West Plato Boulevard  
St. Paul, MN 55107-2094  
**Phone:** (651) 297-8293  
**Fax:** (651) 297-2271  
**Email:** [dan.stoddard@state.mn.us](mailto:dan.stoddard@state.mn.us)

## Minnesota Comprehensive Health Association

### Notice of Meeting of the Ad Hoc Negotiations Committee for Disease Management

**NOTICE IS HEREBY GIVEN** that a meeting of the Minnesota Comprehensive Health Association's (MCHA) Ad Hoc Negotiations Committee for Disease Management will be held at 1:30 p.m. on Wednesday, March 26, 2003, at the MCHA office, 5775 Wayzata Blvd., Suite 910, St. Louis Park, MN.

## Minnesota Comprehensive Health Association

### Notice of Meeting of the Board of Directors

**NOTICE IS HEREBY GIVEN** that a meeting of the Minnesota Comprehensive Health Association's (MCHA) Board of Directors will be held at 9:00 a.m. on Friday, April 4, 2003, at the Radisson Hotel South, 7800 Normandale Blvd., Bloomington, MN

For additional information, please call Lynn Gruber at (952) 593-9609.

## Minnesota Comprehensive Health Association

### Notice of Meeting of the Finance Committee

**NOTICE IS HEREBY GIVEN** that a meeting of the Minnesota Comprehensive Health Association's (MCHA), Finance Committee will be held at 10:00 a.m. on Friday March 28, 2003. The meeting will take place at the MCHA executive office located at 5775 Wayzata Blvd., Suite 910, St. Louis Park, MN.

For additional information, please call Lynn Gruber at (952) 593-9609.

## State Rehabilitation Council

### Meeting Notice

The State Rehabilitation Council will meet on April 23 at the Kelly Inn. Meeting time is 9:00 to 3:00. For more information on locations and dates please contact the Minnesota Department of Economic Security at: **phone:** (800) 328-9095; (651) 296-5616. **TTY:** (800) 657-3973; (651) 296-3900.

April 23, 2003  
Kelly Inn  
161 St. Anthony Avenue  
Saint Paul, MN 55103  
(651) 227-8711

## State Grants & Loans

In addition to requests by state agencies for technical/professional services (published in the State Contracts Section), the *State Register* also publishes notices about grants and loans available through any agency or branch of state government. Although some grant and loan 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 and loan notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

## Department of Children, Families and Learning

### Office of Lifework Development

### Request for Proposal for a Grant Contract - English Language and Civics Education Grant Program

The Minnesota Department of Children, Families and Learning is seeking proposals from eligible applicants to provide English Language and Civics Education (EL/Civics) instruction for adults. Civics is defined by the *Federal Register* as content relating to the rights and responsibilities of citizenship, naturalization, civic participation, and U.S. history and government. Proposals must simultaneously address English literacy and civics education. Eligible applicants include adult basic education programs, school districts, community action agencies, libraries and nonprofit or community based organizations. Applicants must have documented experience in providing literacy and/or civics programs designed for immigrant and refugee populations. **Application deadline is May 7, 2003.**

For further information or to request a copy of the Request for Proposal, please contact:

Laurie Rheault, Grant Specialist  
Minnesota Department of Children, Families and Learning  
Adult Basic Education Unit  
1500 Highway 36 W.  
Roseville, MN 55113  
**Phone:** (651) 582-8432  
**Email:** [laurie.rheault@state.mn.us](mailto:laurie.rheault@state.mn.us)

## Department of Human Services

### Notice of Availability of Grant Contract for HIV/AIDS Awareness and Education, Access to Care Services for People Living with HIV/AIDS and Referral to Specific Programs for East African Communities

The Minnesota Department of Human Services is requesting proposals for the purpose of providing culturally and linguistically appropriate services to East African refugees from Ethiopian, Oromo, and Somali communities. This RFP is intended to create HIV/AIDS awareness and education, access to care for people living with HIV/AIDS, and referral to specific programs to contain the spread of HIV/AIDS in these communities.

Work is proposed to start after June 2, 2003.

# State Grants & Loans

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A Request for Proposals will be available by mail from this office through April 7, 2003. **A written request (by direct mail or fax) is required to receive the Request for Proposal.** After April 7, 2003 the Request for Proposal must be picked up in person.

The Request for Proposal can be obtained from:

Redwan Hamza  
2284 Highcrest Road  
Roseville, MN 55113-2510  
**Phone:** (651) 582-1974  
**Fax:** (651) 582-1989

Proposals submitted in response to the Request for Proposals in this advertisement must be received at the address above no later than April 25, 2003. **Late proposals will not be considered.** Faxed or e-mailed proposals will **NOT** be considered.

This request does not obligate the State to complete the work contemplated in this notice. The State reserves the right to cancel this solicitation. All expenses incurred in responding to this notice are solely the responsibility of the responder.

## Department of Human Services

### Adult Supports Division

### Language Programs Office

### Request for Proposals to Provide Multilingual Referral Services to Department of Human Services Clients with Limited English Proficiency (LEP)

**NOTICE IS HEREBY GIVEN** that the Language Programs Office, Limited English Proficiency (LEP) Program, Adult Supports Division, Minnesota Department of Human Services, is seeking proposals from qualified and competent vendors to provide multilingual referral telephone line services in ten languages to people with limited English proficiency to help them access services. The languages include Russian, Spanish, Somali, Lao, Arabic, Khmer/Cambodian, Hmong, Serbo-Croatian, Oromo and Vietnamese.

We are seeking proposals for two-year projects that begin July 7, 2003 and can be renewed for additional years contingent on contract performance and availability of funds.

Funding for this Request for Proposals is from the LEP grant appropriated by the Minnesota State Legislature.

To be considered for funding, proposals must be post- marked or hand-delivered to the Language Programs Office by 4:00 P.M., CDT, April 18, 2003. We reserve the right not to act on this Request for Proposals.

Please direct all requests for copies of the full Request for Proposals to:

Sherry Lobinsky  
Minnesota Department of Human Services  
Adult Supports Division  
Human Services Building  
444 Lafayette Road  
Saint Paul, Minnesota 55155-3837  
**Phone:** (651) 297-8765

# State Contracts

**Informal Solicitations:** Effective March 1, 2002, informal solicitations for all contracting opportunities for professional/technical (consultant) contracts with values estimated to be over \$5,000 and under \$50,000 must be posted on the Department of Administration, Materials Management Division web page ([www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us)) and access P/T Contracts.

**Formal Requests for Proposals:** Department of Administration procedures require that formal notice of any professional/technical (consultant service) contract which has an estimated value over \$50,000 must be printed in the *State Register*. Certain quasi-state agencies and Minnesota State Colleges and Universities institutions are by law exempt from these requirements.

## Department of Administration

### Division of State Building Construction

#### Notice of Extension of Time to Submit Proposals for Industrial Hygiene Services for Asbestos and Other Hazardous Materials Abatement Project Management, Testing, and Surveys

The Department of Administration, Division of State Building Construction (State) wishes to review the minimum requirements published in its RFP for the above services; therefore, the State has issued Addendum 2 extending the deadline for submission and mailing of proposals to April 4, 2003. A complete copy of the RFP and Addendums 1 and 2 are available on State's **Web Site** [www.dsbcb.admin.state.mn.us](http://www.dsbcb.admin.state.mn.us), click on "Solicitation Announcements", click on item 2 "Requests for Proposals for Industrial Hygiene Services".

If changes are made to the RFP, the changes will be made by addendum to the RFP and posted on State's Web Site referenced above. The State anticipates posting changes, if any, on its Web Site by March 21, 2003.

## Department of Administration

### State Designer Selection Board

#### Request for Proposals for The Department of Military Affairs, for Design Services for Upgrades at Minnesota Army National Guard Facilities Located in Albert Lea, Owatonna, and Northfield, MN (Project 03-10)

##### To Minnesota Registered Design Professionals:

The State of Minnesota (State) through its State Designer Selection Board has been requested to select a design team for the above project. Proposals from interested firms must be received by, 1:00 p.m. Monday, April 7, 2003 to:

Terry Lewko, Executive Secretary  
State Designer Selection Board  
Department of Administration  
c/o Materials Management Division  
50 Sherburne Avenue, Room 112  
St. Paul, Minnesota 55155  
(651) 297-1545

#### **PROPOSALS RECEIVED AFTER THE SUBMISSION DEADLINE WILL NOT BE CONSIDERED.**

Questions concerning procedures, or schedule are to be referred to the Executive Secretary at (651) 297-1545. Questions relating to the project are to be referred to the project contact(s) in Item 1.j.

#### **1. PROJECT 03-10**

##### **a. PROJECT DESCRIPTION:**

Life Safety, ADA, electrical and code upgrades; roof and window replacements; exterior repair; remodeling and upgrading of spaces for Minnesota Army National Training and Community Centers (Armories). Locations: Albert Lea, Owatonna, and Northfield, Minnesota.

##### **Project Scope:**

##### **1. Albert Lea:**

Replace roof: approximately 26,000 square feet.

# State Contracts

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- Replace approximately 4,000 square feet of damaged ceiling tiles.
- Revise heating water circulating pumps.
- Fire sprinkle approximately 16,000 square feet of the facility and upgrade existing alarm system if necessary.
- Repair exit / panic door hardware.
- Replace approximately 1,500 square feet of carpet.
- Replace approximately 6,700 square yards of bituminous parking.

## 2. Owatonna:

- Replace roof: approximately 17,000 square feet.
- Replace damaged ceiling tiles in various locations throughout the building.
- Install fire sprinkler/alarm system throughout the building. (Verify size of incoming existing water line to accommodate sprinkling system.)
- Install egress windows/exiting to comply with code for classrooms / sleeping rooms.

## 3. Northfield:

- Tuckpoint various brick walls.
- Repair the concrete windowsills.
- Replace concrete entrance steps and walls.
- Install approximately 1,600 square feet of concrete drive.
- Rehab approximately 600 square feet of restrooms in the lower level.
- Rehab the lower level of the building.
- Rehab the building lobby.
- Resurface the wood assembly hall floor.
- Install an ansul system in the kitchen range hood.
- Install fire sprinkler/alarm system throughout the building. (Verify size of incoming existing water line to accommodate sprinkling system.)
- Install new ceilings in various locations in the building.
- Upgrade / replace the electrical service / wiring / fixtures throughout the building.
- Install exit/emergency lighting throughout the building.

## b. REQUIRED CONSULTANT SERVICES:

**The consultant will:** The work includes investigating the sites; provide certified property survey of each site, which shall include research of legal description and placement of property boundary markers and identification of building corners; obtaining **ALL** code reviews by the State/cities, preparation of schematic, preliminary and final drawings and specifications to include issuing the bidding documents; and fielding questions during the bidding phase. General observation of the work for the owner, assisting in the preparation of supplemental agreements (change orders), approving payment requests, review shop drawings, etc. during the construction phase. The architect may use his standard document format normally associated with commercial work, tailored to the project. Bid documents shall be electronic format (AutoCAD 2000). The fees will include any site surveys, investigative / correction services required to prepare the facilities to comply with regulations for construction and subsequent occupancy.

The owner has complete documents for the Albert Lea and Owatonna facilities so it is anticipated the investigative visits may be reasonably simple.

The existing drawing and specification documents for the Northfield facility, however, are not complete and an exhaustive investigative visit(s) is required. The architect will need to verify **ALL** existing conditions including but not limited to, finishes, sizes, room configuration, mechanical, electrical and exterior conditions to allow for design work.

## c. SERVICES PROVIDED BY OTHERS:

In addition to the licensed architects, mechanical and electrical engineers, the design team must include the following: Certified Building Code Official, Fire Protection Engineer, Fire Alarm System Engineer, and a registered Land Surveyor.

**d. SPECIAL CONSIDERATIONS: None****e. PROJECT BUDGET/FEES:** Construction Budget: \$1,700,000.00.

The fee for all services will be a negotiated lump sum fee. This lump sum fee will be divided into three parts: Type A services (investigative), Type B Services (design/bidding) and Type C Services (construction administration). According to Federal funding rules, the Type B Services portion cannot exceed 6% of the project budget. The total lump sum fee (Types A, B & C) will include all costs for travel and other typical reimbursable expenses.

**f. PROJECT SCHEDULE:**

Because this project is being funded with a combination of state and Federal funds from different fiscal years, a bid opening date is expected around November 13, 2003. It is expected that construction will start early in 2004 and be complete by September 2004.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion  
Lower Tier Covered Transactions**

## Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion  
Lower Tier Covered Transactions**

# State Contracts

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- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**g. PROJECT PRE-DESIGN INFORMATION:** None

**h. PROJECT INFORMATIONAL MEETING (S)/SITE VISIT (S):** None

**i. STATE DESIGNER SELECTION BOARD SCHEDULE:**

<i>Project Information Meeting and/or Site Visit:</i>	<b>None</b>
<i>Project Proposals Due:</i>	<b>Monday, April 7, 2003, by 1:00 p.m.</b>
<i>Project Shortlist:</i>	<b>Tuesday, April 22, 2003</b>
<i>Project Information Meeting for Shortlisted firms:</i>	<i>To be set by user agency if needed</i>
<i>Project Interviews and Award:</i>	<b>Tuesday, May 6, 2003</b>

**j. PROJECT CONTACT(S):**

Questions concerning the project should be referred to the Project Manager:

Wade Scepurek, Department of Military Affairs  
Camp Ripley  
15000 Highway 115  
Little Falls, MN 56345  
**Phone#:** (320) 632-7332 **Fax#:** (320) 632-7473  
**E-mail address:** *Wade.Scepurek@mn.ngb.army.mil*

**k. SAMPLE CONTRACT**

The successful responder will be required to execute the Department of Military Affairs' Basic Services Agreement which contains standard contract terms and conditions and includes insurance requirements. A copy is available by contacting Ms. Carol Prozinski at **telephone** (320) 632-7303 or *Carol.Prozinski@mn.ngb.army.mil*.

No terms and conditions in the contract may be changed. You must respond in your proposal that you accept the Department's contract as written.

***NOTE TO RESPONDERS: CHANGES MAY HAVE BEEN MADE IN THE FOLLOWING AS OF 11 JUNE 2002.***

## **2. PROPOSAL REQUIREMENTS**

- a. 9 copies
- b. 8 ½ X 11, soft bound, portrait format
- c. Maximum 20 faces (excluding front and back covers and blank dividers)
- d. All pages numbered

## **3. PROPOSAL CONTENTS**

### **a. COVER**

- Project name and number
- Prime firm name, address, telephone number, fax number
- Contact person, telephone number, fax number, and email address

### **b. COVER LETTER**

Single face letter with original signature (on at least one copy) of principal of prime firm, including:

- Brief overview of proposal



- Statement that proposal contents are accurate to the best knowledge of signatory

**c. INFORMATION ON FIRM(S)**

For prime firm and each consultant firm provide brief description including:

- Name and location
- Year established
- Legal status
- Ownership
- Staffing by discipline
- For firms with multiple offices briefly summarize for each office

**d. PROJECT TEAM**

- Brief statement of team's past or present working relationships

For each team member provide:

- Name and position in firm, include name of firm
- Home base (if in multi-office firm)
- Responsibility on this project
- Years of experience
- Relevant recent experience (if in another firm, so note)
- Registration (including specialty if engineer)

**e. TEAM ORGANIZATION**

If planning or design consultants are a part of the team explain how they will be utilized (e.g. major role during design, absent during construction, etc). Matrix or chart *may* be used.

**f. PROJECT EXPERIENCE**

For architectural, planning, and/or landscape architecture firms, provide examples of relevant projects recently completed or in progress including:

- Photographs, sketches and/or plans
- Name and location
- Brief description (e.g. size, cost, relevance)
- Firm of record
- Involvement of proposed project team members (*may* be separate matrix; if in another firm so note)
- Completion date or current status

For engineering or technical firms provide examples of relevant projects recently completed or in progress including the above except that photographs, sketches and/or plans are to be for only that portion of the work for which firm was responsible.

**g. APPROACH/METHODOLOGY**

Describe your understanding of the project, significant issues to be addressed and your *specific* approach to the planning, design and construction process for *this* project.

**h. UNIQUE QUALIFICATIONS**

Briefly summarize your team's unique qualifications for this project.

**i. OTHER REQUIREMENTS**

- A statement of acceptance of the Department's contract as written.
- A statement of commitment to enter into the work promptly, if selected, by engaging the consultants and assigning the persons named in the proposal along with adequate staff to meet requirements of the work.

# State Contracts

- A statement indicating that consultants listed have been contacted and have agreed to be a part of the team.
- A complete Affidavit of Non-collusion
- If appropriate, provide a list of all entities that create a conflict of interest (see 5.b.)
- A completed Affirmative Action Data Page regarding compliance with Minnesota Human Rights Requirements. A copy of the form is available on **Web Site** <http://www.dsb.admin.state.mn.us>, click on forms.
- A list of all State and University of Minnesota current and past projects and studies awarded to the prime firm(s) responding to this request for proposal during the four years immediately preceding the date of this request for proposal.

Projects and studies shall mean those projects and studies (1) funded by the state legislature, by state/user agencies or University of Minnesota operating funds, or by funding raised from the private sector or individuals by state/user agencies or the University of Minnesota; (2) awarded as a result of the State Designer Selection Board process or awarded directly by state/user agencies or the University of Minnesota without employing the State Designer Selection Board process; or (3) related to design-bid-build or design/build project delivery systems.

The prime firm(s) shall list and total all gross fees associated with the above projects and studies, whether the fees have been received or are anticipated. In addition, the prime firm(s) shall indicate the amount of fees listed which were paid, or are anticipated to be paid, to engineering or other specialty consultants employed, or anticipated to be employed, on the projects and studies listed pursuant to the above. The prime firm(s) shall subtract consultant fees from gross fees to determine total net fees using the format below.

PROJECT	(A) GROSS FEES	(B) SUBDESIGNERS PORTION	(C) NET TOTAL PROJECT FEE
TOTAL			

(The total shown in column (A) shall equal the sum of those shown in columns (B) and (C).

## 4. SELECTION CRITERIA

Criteria for selection shall be as stated in the project description. Technical and aesthetic experience and capabilities are paramount. In addition, the Board seeks equitable distribution of fees among qualified firms in the selection evaluation and gives consideration to geographical location of firms with respect to project site.

## 5. CONTRACT REQUIREMENTS

### a. AFFIDAVIT OF NONCOLLUSION:

Each responder must attach a completed Affidavit of Non-collusion. A copy of the form is available on **Web Site** <http://www.dsb.admin.state.mn.us>, click on forms.

### b. CONFLICTS OF INTEREST:

Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

### c. DISPOSITION OF RESPONSES:

All materials submitted in response to this RFP will become property of the State and will become public record in accordance with *Minnesota Statutes* 13.591 after the evaluation process is completed. If the responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, *Minnesota Statutes* § 13.37, the responder must:

- Clearly mark all trade secret materials in its response at the time the response is submitted,
- Include a statement with its response justifying the trade secret designation for each item, and
- Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the

State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State.

The State will not consider the prices submitted by the responder to be proprietary or trade secret materials.

Responses to this RFP will not be open for public review until the State decides to pursue a contract and that contract is awarded.

**d. CONTINGENCY FEES PROHIBITED:**

Pursuant to *Minnesota Statutes* Section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

**e. ORGANIZATIONAL CONFLICTS OF INTEREST**

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances that could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, the responder is unable or potentially unable to render impartial assistance or advice to the State, or the responder's objectivity in performing the contract work is or might be otherwise impaired, or the responder has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division, 112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155, which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to the contracting officer, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor (consultant), and the terms "contract," "contractor (consultant)," and "contracting officer" modified appropriately to preserve the State's rights.

**f. STATE EMPLOYEES:**

In compliance with *Minnesota Statutes* § 16C.07, the availability of this work is being offered to State employees. The State will evaluate the responses of any State employee, along with other responses to this Request for Proposals.

**g. PREFERENCE TO TARGETED GROUP AND ECONOMICALLY DISADVANTAGED BUSINESS AND INDIVIDUALS:**

In accordance with *Minnesota Rules* 1230.1810, subpart B and *Minnesota Rules* 1230.1830, certified Targeted Group Businesses or individuals and certified Economically Disadvantaged Businesses or individuals submitting proposals as prime contractors (consultants) will receive up to six percent preference in the evaluation of their proposals. For information regarding certification, contact the Department of Administration, Materials Management **Helpline** at (651) 296-2600, **TTY** (651) 282-5799.

**h. HUMAN RIGHTS REQUIREMENTS**

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached Affirmative Action Data page and return it with the response. As required by *Minnesota Rules* 5000.3600, "It is hereby agreed between the parties that *Minnesota Statutes* § 363.073 and *Minnesota Rules* 5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it". A copy of *Minnesota Statutes* § 363.073 and *Minnesota Rules* 5000.3400 - 5000.3600 are available on **Web Site** <http://www.dsbc.admin.state.mn.us>.

i. Any changes in team members for the project requires approval by the State.

j. All costs incurred in responding to this RFP will be borne by the responder. This RFP does not obligate the State to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

# State Contracts

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## Department of Administration

### State Designer Selection Board

#### Request for Proposals for Designer Selection for Minnesota State Colleges and Universities - Center for Advanced and Emerging Technologies, Phase 1R, Bridgeman Hall Addition Bemidji State University, Bemidji, Minnesota (Project 03-12)

##### To Minnesota Registered Design Professionals:

The State of Minnesota (State) through its State Designer Selection Board has been requested to select a design team for the above project. Proposals from interested firms must be received by, 1:00 p.m. Monday, April 7, 2003 to:

Terry Lewko, Executive Secretary  
State Designer Selection Board  
Department of Administration  
c/o Materials Management Division  
50 Sherburne Avenue, Room 112  
St. Paul, Minnesota 55155  
(651) 297-1545

##### **PROPOSALS RECEIVED AFTER THE SUBMISSION DEADLINE WILL NOT BE CONSIDERED.**

Questions concerning procedures, or schedule are to be referred to the Executive Secretary at (651) 297-1545. Questions relating to the project are to be referred to the project contact(s) in Item 1.j.

### 1. PROJECT 03-12

**a. PROJECT DESCRIPTION:** Minnesota State Colleges and Universities (MnSCU) intends to retain architectural and engineering consulting services for the design and construction of an addition to the existing campus facility, Bridgeman Hall, on the campus of Bemidji State University.

**PROJECT SCOPE:** The scope of this project is based in part upon an approved Predesign that includes expansion of the existing building with an addition of approximately 25,000 gross square feet (gsf) and associated site improvements. This project has a predesign is available. The new construction will provide space for new laboratories plus associated spaces for the academic programs of the Industrial Technology Department, along with the common support areas and mechanical / electrical equipment space, and related needs. Specifically the following areas are to be included:

<u>First Floor</u>	<u>Second Floor</u>	<u>Third Floor</u>
General Bench Space	Model Studio Bench Space	Classroom(s)
Dry Processing Lab	Flexible Demo Area	Offices
Wet Processing Lab	Integrated Manufacturing Labs	
Low Temperature Processing Lab	a. Flexible Technology Lab	
Finishing Lab	b. CAD/CAM Lab	
	c. Rapid Prototyping Lab	
Space and budget allowing:		
High Temperature Processing Lab		

The summary of the architectural program from the Predesign defining the above spaces, the space requirements and the Owner's design principles will be handed out at the project Informational Meeting/Site Visit.

The existing building is a two-story structure. The original building was constructed in 1965. The structure consists of a brick exterior, concrete structural system with concrete pan floor slabs, an insulated built-up roof and punched opening windows.

**b. REQUIRED CONSULTANT SERVICES:** The selected design team shall:

1. Provide a comprehensive scope of services including Schematic Design (SD), Design Development (DD), Construction Documents (CD), Bidding and Construction Administration (CA).

2. Prepare all SD, DD, and CD documents using computer aided design and drafting technology in an electronic data exchange file format acceptable to MnSCU (AutoCad R14 or later version).
3. Demonstrate experience in the design and construction of institutional collegiate spaces, including college lab facilities, lab support, classrooms and similar spaces that are part of the program requirements.
4. Integrate the new spaces of the Project with the existing facility.
5. Complete all design, drawings and specifications in accordance with, as minimums:
  - a. Current MnSCU Design Standards
  - b. All applicable building, life safety and energy codes
  - c. ADA regulations, and
  - d. Program requirements.
6. Design building spaces for:
  - a. Efficient space utilization
  - b. Flexibility
  - c. Energy efficiency
  - d. High indoor air quality and ventilation exhaust systems
  - e. Complete fire suppression systems, and
  - f. A contemporary data and telecommunications environment.
7. Provide full architectural services, including interiors and furniture, fixtures and equipment design, cost estimating, project scheduling, and engineering services including civil, structural, mechanical, fire protection, electrical, and telecommunications systems design and construction administration services, all in accordance with the MnSCU standard A/E contract. MnSCU may retain other specialty consultants to assist in the Project work.

NOTE: A roof design consultant designated by MnSCU will be assigned to and become an integral part of the consultant's design team. The consultant's fee shall include the fee and reimbursables of the roof design consultant.

- c. SERVICES PROVIDED BY OTHERS:** The Owner will contract for or arrange to provide:
1. Site property survey
  2. Geotechnical investigations and recommendations, and
  3. Asbestos survey, design and abatement to the existing building if required.

**d. SPECIAL CONSIDERATIONS:** Design Team Requirement: The design team shall have applicable prior experience in the design and construction of similar projects, in a college setting. The firm shall provide examples of current and recent higher education academic and laboratory design experience. A history of constructability, meeting schedule deadlines, accurate cost estimating and designing within a project budget are critical criteria for selection of a designer. Quality control and complete, accurate and fully coordinated contract documents are an important element of the selected design team's services. A change order history of recent past projects and how the team proposes to address this issue should be provided as part of their submittal.

The design team shall have proven experience in working with and directing the efforts of a college building committee. The design team shall demonstrate their use of life cycle costing during the design process. Life cycle items important to MnSCU include, but are not limited to energy efficiency, indoor air quality and ventilation systems, sustainability, and the maintainability of design, materials, and equipment.

The design team shall provide examples of recently completed projects, including innovative solutions, for review by the selection committee. The design team shall provide a list of clients and involved contractors for similar projects worked on within

# State Contracts

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the last five years including the names, addresses and phone numbers of contact persons.

The design team shall also:

1. Demonstrate prior experience with similar projects
  2. Include the field verification of existing conditions and systems in their scope of services
  3. Evaluate existing building structural, mechanical and electrical systems to determine capabilities and capacities to support the proposed new addition
  4. Review and confirm the functional space program requirements of all affected areas, and
  5. Provide an inventory of all existing FF&E and plan, layout, design and procure all necessary new FF&E.
- e. **PROJECT BUDGET/FEES:** The estimated total project cost is approximately \$5,000,000. This cost includes: all professional fees and reimbursables, site investigations and surveys, hazardous materials removals design and abatement, building and site construction, project management, construction inspection and testing, furniture, fixtures and equipment, contingencies, data/telcom, art and inflation factors. The maximum design team fees are anticipated to not be in excess of 8.0% of the budgeted construction cost plus reimbursable expenses. Final total fees will be negotiated with the selected design team.

- f. **PROJECT SCHEDULE:** It is the desire of the owner to bid this project for a late September bid opening with a fall construction start and occupancy of January 2005. The following preliminary schedule is suggested:

<i>Schematic Design Phase:</i>	<b>Begin May 2003, complete in four to six weeks</b>
<i>Design Development Phase:</i>	<b>Five weeks</b>
<i>Construction Documentation Phase:</i>	<b>Six weeks</b>
<i>Bidding Period:</i>	<b>Four weeks</b>
<i>Construction Phase:</i>	<b>Fifteen months, including occupancy</b>

- g. **PROJECT PRE-DESIGN INFORMATION:** A Predesign Report dated March 27, 2001, has been prepared. Since the predesign was finished the site location has changed. The programmed spaces indicated in the predesign are still valid at the new site. A copy of this document is available for review at Bemidji State University, with the Director of Facilities and Planning, Thomas H. Koehnlein and at the Department of Administration in the Division of State Building Construction office. For review, contact Thomas H. Koehnlein at (218) 347-6211 or cell (218) 849-4788 or Terry Lewko at (651) 297-1545.

Copies of the Predesign Report document will be made available only to firms that are short-listed.

- h. **PROJECT INFORMATIONAL MEETING (S)/SITE VISIT (S):** An informational meeting is tentatively scheduled for **Friday, March 28, 2003, at 1:00 pm** at the University, in the Student Union. All firms interested in this meeting should contact Jeff Sande, BSU Physical Plant Director at (218) 775-3988 or **e-mail** at [jsande@bemidjistate.edu](mailto:jsande@bemidjistate.edu) to sign up for the meeting.

i **STATE DESIGNER SELECTION BOARD SCHEDULE:**

<i>Project Information Meeting and/or Site Visit:</i>	<b>Friday, March 28, 2003, 1:00 p.m.</b>
<i>Project Proposals Due:</i>	<b>Monday, April 7, 2003, by 1:00 p.m.</b>
<i>Project Shortlist:</i>	<b>Tuesday, April 22, 2003</b>
<i>Project Information Meeting for Shortlisted firms:</i>	<b>None</b>
<i>Project Interviews and Award:</i>	<b>Tuesday, May 6, 2003</b>

## **j. PROJECT CONTACT (S)**

Questions concerning the project should be referred to the Project Manager:

Thomas H. Koehnlein  
Director of Facilities and Institutional Planning  
Bemidji State University & Northwest Technical College  
*tom.koehnlein@mail.ntc.mnscu.edu*  
150 Second Street SW ~ Suite B,  
PO Box 309, Perham, MN 56573  
**Phone:** (218) 347-6211  
**Cell:** (218) 849-4788, **Fax:** (218) 347-6210

- k. SAMPLE CONTRACT:** The successful responder will be required to execute the MnSCU Standard Form of Agreement Between Owner and Architect which contains contract terms and conditions, including insurance requirements and compliance with Designer Procedures Manual, Design Guidelines and Computer Aided Drafting (CAD) Guidelines. A copy is available from the above Project Manager.

*NOTE TO RESPONDERS: CHANGES MAY HAVE BEEN MADE IN THE FOLLOWING AS OF 11 JUNE 2002.*

## **2. PROPOSAL REQUIREMENTS**

- a. 11 copies
- b. 8 ½ X 11, soft bound, portrait format
- c. Maximum 20 faces (excluding front and back covers, blank dividers, affidavit of non-collusion, and affirmative action data page)
- d. All pages numbered

## **3. PROPOSAL CONTENTS**

### **a. COVER**

- Project name and number
- Prime firm name, address, telephone number, fax number
- Contact person, telephone number, fax number, and email address

### **b. COVER LETTER**

Single face letter with original signature (on at least one copy) of principal of prime firm, including:

- Brief overview of proposal
- Statement that proposal contents are accurate to the best knowledge of signatory

### **c. INFORMATION ON FIRM (S)**

For prime firm and each consultant firm provide brief description including:

- Name and location
- Year established
- Legal status
- Ownership
- Staffing by discipline
- For firms with multiple offices briefly summarize for each office

### **d. PROJECT TEAM**

- Brief statement of team's past or present working relationships

For each team member provide:

- Name and position in firm, include name of firm
- Home base (if in multi-office firm)
- Responsibility on this project
- Years of experience
- Relevant recent experience (if in another firm, so note)
- Registration (including specialty if engineer)

# State Contracts

**e. TEAM ORGANIZATION**

If planning or design consultants are a part of the team explain how they will be utilized (e.g. major role during design, absent during construction, etc). Matrix or chart *may* be used.

**f. PROJECT EXPERIENCE**

For architectural, planning, and/or landscape architecture firms, provide examples of relevant projects recently completed or in progress including:

- Photographs, sketches and/or plans
- Name and location
- Brief description (e.g. size, cost, relevance)
- Firm of record
- Involvement of proposed project team members (*may* be separate matrix; if in another firm so note)
- Completion date or current status

For engineering or technical firms provide examples of relevant projects recently completed or in progress including the above except that photographs, sketches and/or plans are to be for only that portion of the work for which firm was responsible.

**g. APPROACH/METHODOLOGY**

Describe your understanding of the project, significant issues to be addressed and your *specific* approach to the planning, design and construction process for *this* project.

**h. UNIQUE QUALIFICATIONS**

Briefly summarize your team's unique qualifications for this project.

**i. OTHER REQUIREMENTS**

- A statement of commitment to enter into the work promptly, if selected, by engaging the consultants and assigning the persons named in the proposal along with adequate staff to meet requirements of the work.
- A statement indicating that consultants listed have been contacted and have agreed to be a part of the team.
- A complete Affidavit of Non-collusion. (Not counted as part of the 20 faces)
- If appropriate, provide a list of all entities that create a conflict of interest (see 5.b.)
- A completed Affirmative Action Data Page regarding compliance with Minnesota Human Rights Requirements. A copy of the form is available on **Web Site** <http://www.dsb.admin.state.mn.us>, click on forms. (Not counted as part of the 20 faces)
- A list of all State and Minnesota State Colleges and Universities current and past projects and studies awarded to the prime firm(s) responding to this request for proposal during the four years immediately preceding the date of this request for proposal.

Projects and studies shall mean those projects and studies (1) funded by the state legislature, by state/user agencies or Minnesota State Colleges and Universities operating funds, or by funding raised from the private sector or individuals by state/user agencies or the Minnesota State Colleges and Universities; (2) awarded as a result of the State Designer Selection Board process or awarded directly by state/user agencies or the Minnesota State Colleges and Universities without employing the State Designer Selection Board process; or (3) related to design-bid-build or design/build project delivery systems.

The prime firm(s) shall list and total all gross fees associated with the above projects and studies, whether the fees have been received or are anticipated. In addition, the prime firm(s) shall indicate the amount of fees listed which were paid, or are anticipated to be paid, to engineering or other specialty consultants employed, or anticipated to be employed, on the projects and studies listed pursuant to the above. The prime firm(s) shall subtract consultant fees from gross fees to determine total net fees using the format below.

PROJECT	(A) GROSS FEES	(B) SUBDESIGNERS PORTION	(C) NET TOTAL PROJECT FEE
TOTAL			

(The total shown in column (A) shall equal the sum of those shown in columns (B) and (C).



## 4. SELECTION CRITERIA

Criteria for selection shall be as stated in the project description. Technical and aesthetic experience and capabilities are paramount. In addition, the Board seeks equitable distribution of fees among qualified firms and gives consideration to geographical location of firms with respect to project site.

## 5. CONTRACT REQUIREMENTS

### a. AFFIDAVIT OF NONCOLLUSION

Each responder must attach a completed Affidavit of Noncollusion. A copy of the form is available on **Web Site** <http://www.dsb.admin.state.mn.us>, click on forms.

### b. CONFLICTS OF INTEREST

Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

### c. DISPOSITION OF RESPONSES

All materials submitted in response to this RFP will become property of the State and will become public record in accordance with *Minnesota Statutes* 13.591 after the evaluation process is completed. If the responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, *Minnesota Statutes*, § 13.37, the responder must:

- clearly mark all trade secret materials in its response at the time the response is submitted,
- include a statement with its response justifying the trade secret designation for each item, and
- defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State.

The State will not consider the prices submitted by the responder to be proprietary or trade secret materials.

Responses to this RFP will not be open for public review until the State decides to pursue a contract and that contract is awarded.

### d. CONTINGENCY FEES PROHIBITED

Pursuant to *Minnesota Statutes* Section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

### e. ORGANIZATIONAL CONFLICTS OF INTEREST

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances that could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, the responder is unable or potentially unable to render impartial assistance or advice to the State, or the responder's objectivity in performing the contract work is or might be otherwise impaired, or the responder has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division, 112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155, which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to the contracting officer, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor (consultant), and the terms "contract," "contractor (consultant)," and "contracting officer" modified appropriately to preserve the State's rights.

# State Contracts

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## f. STATE EMPLOYEES

In compliance with *Minnesota Statutes* § 16C.07, the availability of this work is being offered to State employees. The State will evaluate the responses of any State employee, along with other responses to this Request for Proposals.

## g. HUMAN RIGHTS REQUIREMENTS

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached Affirmative Action Data page and return it with the response. As required by *Minnesota Rules* 5000.3600, "It is hereby agreed between the parties that *Minnesota Statutes* § 363.073 and *Minnesota Rules* 5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it". A copy of *Minnesota Statutes* § 363.073 and *Minnesota Rules* 5000.3400 - 5000.3600 are available on **Web Site** <http://www.dsb.admin.state.mn.us>.

h. Any changes in team members for the project requires approval by the State.

i. All costs incurred in responding to this RFP will be borne by the responder. This RFP does not obligate the State to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

## Colleges and Universities, Minnesota State (MnSCU)

### St. Cloud Technical College

#### Advertisement for Bids for CNC Plasma Cutting System

**NOTICE IS HEREBY GIVEN** that bids will be received by the Director of Purchasing, St. Cloud Technical College, until 2:00 p.m. on 4/08/2003 for the purpose of a new or late model used CNC Plasma Cutting system according to the specifications listed below:

1. 3/8" cutting capacity plasma with Servo Drive Motors.
2. Motorized lifter station for an oxy-fuel torch-optional
3. Air scribe or air punch marker.
4. 4' x 8' minimum plate size.
5. Cutting table water or downdraft. - optional
6. Software compatible with AutoCAD or Master Cam, automatic and manual nesting.
7. Ability to down load from PC or Laptop.
8. Color monitor.
9. Must meet all Electrical Code installation requirements.
10. 8 copies of licensed software.
11. Training for 7 instructors at SCTC.
12. All Bids must include freight.
13. All bids must include trade in value of C&G Optical Tracer, 3' x 3' cutting area, includes cutting table.

**The final date for submitting proposals is April 8, 2003 by 2:00 p.m. Central Daylight Time. Late proposals will not be considered. Faxed or emailed proposal will not be considered. Please submit all proposals in a sealed envelope to:**

St. Cloud technical College  
Business Office  
1540 Northway Drive  
St. Cloud, Minnesota 56303  
Attention: Jeff John  
Bid for CNC Plasma Cutting System

St. Cloud Technical College reserves the right to reject any and all Offers and to waive any informalities contained in such Offers. This solicitation does not obligate the St. Cloud Technical College to complete this project. The St. Cloud Technical College reserves the right to cancel this solicitation. All expenses incurred in responding to this notice are solely the responsibility of the responder.

## **Colleges and Universities, Minnesota State (MnSCU)**

### **Southwest State University**

#### **Request for Proposals for Telephone (PBX), Voice Mail System and Local/Cellular Service**

**NOTICE IS HEREBY GIVEN** that Offers will be received by the Director of Purchasing, Southwest State University, until 2:00 p.m. on 4/15/03 for the purpose of a Telephone (PBX), Voice Mail System and Local/Cellular Service according to the specifications on file at:

Southwest State University  
Director of Purchasing  
1501 State Street  
Marshall, MN 56258

Specifications and Request for Proposal forms may be obtained from the Director of Purchasing at the address shown above.

Offers are to be submitted in a sealed envelope addressed to the Director of Purchasing at the above address and clearly marked.

**“RESPONSE TO SOUTHWEST STATE UNIVERSITY PBX, VOICE MAIL SYSTEM AND LOCAL/CELLULAR SERVICE RFP”**

Southwest State University reserves the right to reject any and all Offers and to waive any informalities contained in such Offers.

Dated at Marshall, Minnesota, this 3/21/03

Jeff Kuiper  
Director of Purchasing

## **Public Employees Retirement Association**

### **Request for Proposals (RFP) for Actuarial Consultant Services**

Public Employees Retirement Association of Minnesota (PERA) is soliciting proposals from qualified actuarial firms interested in serving as consulting actuary for the period beginning July 1, 2003 and ending June 30, 2005. The resulting contract may be extended beyond the initial two-year term in one-year increments at a price mutually agreed upon by both parties; however, the number of one-year extensions may not exceed three. Primary duties will include providing various consultation and advisory services to the PERA Board of Trustees and Executive Director, conducting reviews of actuarial valuations prepared by the actuary retained by the Legislative Commission on Pensions and Retirement, and preparing quadrennial experience studies, demographic studies, and projection valuations of the PERA-administered retirement plans.

Qualified actuaries must be regularly engaged in the business of providing actuarial services and have at least 15 years experience with major public employee pension funds or designation as a fellow in the society of actuaries.

Details are contained in a Request for Proposal which may be obtained by calling or writing:

Mary Daly, Executive Assistant  
PERA  
60 Empire Drive Suite 200  
St. Paul, MN 55103  
**Telephone:** (651) 296-7489  
**Fax:** (651) 297-2547

The total estimated contract cost including compensation for all services rendered for the first two years of the contract, travel, communications, computer charges and other costs, should not exceed \$200,000. The deadline for proposal submission is 4:00 p.m. on Monday, April 21, 2003.

## **Department of Transportation**

### **Program Management Division**

#### **Office of Aeronautics**

#### **Notice of Availability of Contract for Navigation Systems Technicians**

The Minnesota Department of Transportation is requesting proposals for the purpose of maintaining its aviation navigation systems located at airports throughout the State. FAA certification on at least one of the following is required: Wilcox Mark 10 ILS, ASI 2100 ILS, ASI 1150 VOR, ASI 1138 DME, Wilcox 476 VOR, Cardion 9467 VOR, Aerocom 5351A DME, Aerocom 5321

# State Contracts

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NDB, Aerocom 5401B NDB, Viasala AWOS, SMI NEXWOS, Viasala runway surface sensor, or remote communications outlet  
Work is proposed to start after July 1, 2003 through June 30, 2005.

A Request for Proposals will be available by mail from this office through April 22, 2003. **A written request (by direct mail or fax) is required to receive the Request for Proposal.** After April 22, 2003 the Request for Proposal must be picked up in person.

The Request for Proposal can be obtained from:

Robert Milton  
Office of Aeronautics  
222 East Plato Blvd., MS 410  
St. Paul, MN 55107  
(651) 296-9250  
**fax:** (651) 297-5643

Proposals submitted in response to the Request for Proposals in this advertisement must be received at the address above no later than 12:00 P.M., Central Time, April 25, 2003. **Late proposals will not be considered.** Fax or e-mailed proposals will **NOT** be considered.

This request does not obligate the State to complete the work contemplated in this notice. The State reserves the right to cancel this solicitation. All expenses incurred in responding to this notice are solely the responsibility of the responder.

## Department of Transportation

### Engineering Services Division

#### Notice of Potential Availability of Contracting Opportunities for a Variety of Highway Related Technical Activities (the "Consultant Pre-Qualification Program")

This document is available in alternative formats for persons with disabilities by calling Robin Valento at (651) 284-3622 for persons who are hearing or speech impaired by calling the Minnesota Relay Service at (800) 627-3529.

Mn/DOT, working in conjunction with the Consultant Reform Committee, the Minnesota Consulting Engineers Council, and the Department of Administration, has developed the Consultant Pre-Qualification Program as a new method of consultant selection. The ultimate goal of the Pre-Qualification Program is to streamline the process of contracting for highway related professional/technical services. Mn/DOT anticipates that most consultant contracts for highway related technical activities will be awarded using this method, however, Mn/DOT also reserves the right to use RFP or other selection processes for particular projects. Nothing in this solicitation requires Mn/DOT to complete or use the Consultant Pre-qualification Program.

Mn/DOT is currently requesting application from consultants in the following service areas: preliminary design, highway design, bridge inspection and environmental studies. Technical and administrative qualification requirements are located on the web site indicated below. In the future, Mn/DOT will be requesting applications for additional highway related consulting services as those services become available. Following advertisement of a particular category of services, applications will be accepted on a continual basis.

All expenses incurred in responding to this notice will be borne by the responder. Response to this notice becomes public information under the Minnesota Government Data Practices.

Consultant Pre-Qualification Program Information, application requirements and application forms are available on Mn/DOT's web site at <http://www.dot.state.mn.us/consult>

Send completed application material to:

Robin Valento  
Pre-Qualification Administrator  
Minnesota Department of Transportation  
Consultant Services  
395 John Ireland Boulevard, Seventh Floor, Mail Stop 680  
St. Paul, MN 55155

**NOTE: Due Date: APPLICATION MATERIAL WILL BE ACCEPTED ON A CONTINUAL BASIS.**

## Department of Transportation Engineering Services Division

### Notice Concerning Professional/Technical Contract Opportunities

**NOTICE TO ALL:** The Minnesota Department of Transportation (Mn/DOT) is now placing additional public notices for professional/technical contract opportunities on M/DOT's Consultant Services **website** at: [www.dot.state.mn.us/consult](http://www.dot.state.mn.us/consult).

New public notices may be added to the website on a daily basis and be available for the time period indicated within the public notice.

## Non-State Contracts & Grants

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *State 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 editor for further details.

## Minnesota Comprehensive Health Association

### Notice of Request for Information (RFI) for Writing Carrier Contract

The Minnesota Comprehensive Health Association (MCHA) is a non-profit Minnesota corporation, established by the Legislature in 1976 to offer individual policies of health coverage to Minnesota residents who have been turned down for health insurance due to pre-existing conditions. Currently, MCHA has over 31,000 members who reside throughout the State of Minnesota.

MCHA has developed this Request for Information (RFI) to seek out and identify organizations that would desire to partner with MCHA to deliver a comprehensive managed package of services to MCHA members.

Under Minnesota law, MCHA is required to select a "Writing Carrier" to perform, at a minimum, administrative and claims payment functions. In addition, state law directs MCHA to endeavor to reduce health care costs by using methods consistent with effective patient care. At a minimum, such attempts should focus on: chronic disease management and case management programs, a comprehensive approach to preventative care, and implementation of a drug formulary for prescription drug use.

**This RFI is a preliminary step in MCHA's attempt to identify organizations that would be interested in partnering with MCHA and would be prepared to submit a formal response to a complete Request for Proposal (RFP) for the Writing Carrier contract, which may be released in June 2003. Should a formal RFP be issued, the Writing Carrier contract period would commence January 1, 2004 and end on December 31, 2006.**

**ORGANIZATIONS THAT MAY DESIRE TO RESPOND TO THE FORMAL RFP FOR WRITING CARRIER CONTRACT MUST RESPOND TO THIS PRELIMINARY RFI.**

MCHA is seeking Respondents to the RFI that have Proven, exceptional experience with:

- General administration of traditional health insurance or health plans,
- Cost effective care management
- Familiarity and knowledge of Minnesota's health care market and regulatory environment, including laws governing the MCHA (Chapter 62E) and Health plans,
- Commitment to consumer satisfaction and quality of care

Of particular importance, MCHA seeks Respondents who have proven experience managing the health care of persons with chronic illnesses such as: diabetes, behavioral health, AIDs, hemophilia, heart disease, cancer, and musculoskeletal system and connective tissue disease. MCHA seeks Respondents who are familiar with performance standards and who can be held accountable for certain administrative (e.g. membership processing, customer service levels, claims payment accuracy) and clinical outcomes related to disease management.

### Four Essential Areas of Work

MCHA seeks to identify Respondents who have proven experience in administering the following four key functions. Respondents need to address all four areas.

1. **Network Management.** Provide MCHA with a provider network or multiple provider networks sufficient to cover MCHA members in all 87 counties of Minnesota

## Non-State Contracts & Grants

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2. **Pharmacy Benefit Management.** Systems designed to assure cost effective strategies and management of pharmaceutical benefits through guaranteed discounts and managed pharmacy initiatives. Service network must include local retail pharmacies as well as mail order capabilities. Responders must have the ability to provide and administer a drug formulary.

3. **Comprehensive Care Management - Including Case and Disease Specific Management Services.** Systems designed to actively identify patients at risk for exacerbation of chronic illness and intervention in a manner that has a positive effect on the outcome of the care received. Respondents need to be able to offer services to manage behavioral health issues and need to be able to offer a 24/7 nurse triage telephone line.

4. **Administrative Ability.** General Administration of: membership applications, customer service needs, premium billing and collection, payment of claims, medical necessity and appropriateness review, and production of management reports, printing and distribution of member contracts (policies), provider directories, applications, member meeting notices and a variety of annual member notifications.

### Fulfillment of the Four Areas of Work

MCHA will entertain responses from single organizations (Minnesota based or national) that desire to be responsible for all four areas of work. In addition, MCHA will entertain responses that propose a collaborative effort among multiple entities to achieve the most cost effective and highest quality results. The main Respondent will be held totally responsible for managing the work and costs of any and all collaborators and/or subcontractors it intends to use in the full performance of all contractual duties assigned to the Writing Carrier.

### Contract Period

This RFI seeks limited information from the Respondent regarding its ability to fulfill a Writing Carrier contract covering the period - January 1, 2004 through December 31, 2006.

### Due Date

- Responses to the RFI are due at MCHA Executive Office (listed below), before 5 p.m. (CDT) on Friday, April 25, 2003

### Who to Contact for Copy of the RFI

Organizations desiring a copy of the RFI should contact:

Lynn R. Gruber  
Minnesota Comprehensive Health Association  
5775 Wayzata Boulevard - Suite 910  
St. Louis Park, MN 55416  
(952) 593-9609  
(952) 593-9673 (fax)  
e-mail: [mchaminn@aol.com](mailto:mchaminn@aol.com)

## Metropolitan Council - Metro Transit

### Sealed Bids Sought for Bus Batteries

The Metropolitan Council is soliciting sealed bids for Bus Batteries. Bids are due at 2:00 p.m. on April 15, 2003. Bids must be submitted in accordance with the Invitation for Bids document available from:

Metropolitan Council  
Metro Transit Purchasing Department  
515 N. Cleveland Avenue  
St. Paul, MN 55114  
(612) 349-5070

## University of Minnesota

### Notice of Bid Information Service (BIS) Available for All Potential Vendors

The University of Minnesota offers 24 hour/day, 7 day/week access to all Request for Bids Bids/Proposals through its web based Bid Information Services (BIS). Subscriptions to BIS are \$75/year. Visit our web site at [bidinfo.umn.edu](http://bidinfo.umn.edu) or call BIS Coordinator at (612) 625-5534.

Requests for Bids/Proposals are available to the public at no charge each business day from 8:00 a.m. to 4:30 p.m. in Purchasing Services lobby, Suite 560, 1300 S. 2nd Street, Mpls., MN 55454.

## MN Guidebook to State Agency Services

This 2001-2003 reference provides information on each state agency and their services, as well as the legislative and judicial branches of government. You'll find information about:

- \* access to state officials and offices, including key contact people, phone numbers, e-mail and Internet addresses for each agency
- \* solid business connections, how to bid on state contracts, apply for grants
- \* business development resources
- \* print and media guides and resources
- \* information on grants, contracts, scholarships
- \* license and permit information, recreational opportunities and more. Spiral-bound, 550pp. **Stock No. 1-6 \$19.95**

## State of Minnesota Telephone Directory

**2001-2002 edition** Please note: This directory will no longer be available in print once the current supply of directories is exhausted. The North Star web site now provides phone numbers via an electronic white and yellow pages database. Alphabetical listings of all employees plus department listings (both metro area and greater MN), fax numbers, e-mail, web sites and TTY. Softcover, 477pp. **Stock No. 1-87 \$15.95**

## U.S. Government Manual

This comprehensive 2001-2002 overview of the U.S. government outlines and describes functions of the legislative, judicial and executive branches, provides a "who's who" listing of federal officials and agencies. Softcover, 693pp. **Stock No. 16-46 \$41.00**

## Minnesota Constitution

The complete constitution as adopted on Oct. 13, 1857 and subsequent amendments. Softcover, 25pp. **Stock No. 7-12 \$7.00**

## A Citizen's Guide to State Finance:

### *An Overview of Minnesota Government Revenue & Expenditures*

This volume reviews the state budget process, the "big picture," expenditures, property and income tax, etc. Softcover, 60pp. **Stock No. 7-7 \$7.00**

## Annual Compilation Report of Multi-Member Agencies

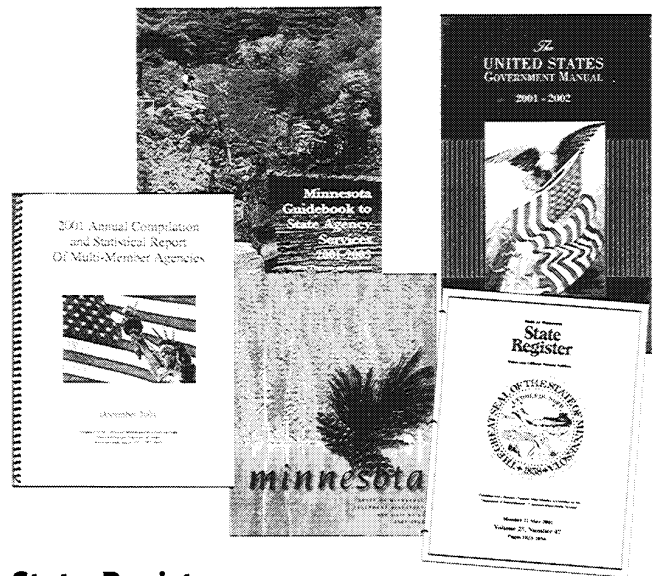
Get involved in government! This 2001 report from the Secretary of State documents openings and current membership in state agency committees and councils, including appointing authority, address/phone for members, term length, and compensation. Perhaps you can contribute in policy making! Spiral-bound, 119pp. **Stock No. 10-43 \$16.00**

## Revisors Manual

Organized as both a ready reference and an instruction manual, this book teaches general methods of drafting Minnesota legislative bills, offers practical help, style suggestions, etc. Looseleaf, 343pp. (*This 1997 edition is still current.*) **Stock No. 7-1 \$10.00**

## MN Legal Compliance Audit Guide for Local Government 2001

Prepared in a handy checklist format, this guide outlines minimum legal compliance for auditors. Guides you through depositories of public funds, investments, conflicts of interest, public indebtedness, bid laws, claims and disbursements, etc. Softcover, 130pp. **Stock No. 10-30 \$30.00**



## State Register

The *State Register* is the official magazine of the State of Minnesota. Published every Monday, it is your source for:

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