

179 Apr. 9



# STATE REGISTER

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## STATE OF MINNESOTA

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VOLUME 3, NUMBER 40

APRIL 9, 1979

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# STATE REGISTER

## Printing Schedule for Agencies

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42	Monday Apr 9	Monday Apr 16	Monday Apr 23
43	Monday Apr 16	Monday Apr 23	Monday Apr 30
44	Monday Apr 23	Monday Apr 30	Monday May 7

\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

\*\*Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

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# MCAR AMENDMENTS CALENDAR AND ADDITIONS

## Public Hearings on Proposed Agency Rules

April 16-20, 1979

The following is a listing of all proposed and adopted rules published in Volume 3, Numbers 1-39 of the State Register. The listing is arranged in the same order as the table of contents of the *Minnesota Code of Agency Rules* (MCAR). All adopted rules published in the *State Register* and listed below amend the rules contained in the MCAR set. Both proposed temporary and adopted temporary rules are listed here although they are not printed in the MCAR due to the short term nature of their legal effectiveness. During the term of their legal effectiveness, however, adopted temporary rules do amend the MCAR. A cumulative listing of all proposed and adopted rules in Volume 3 of the *State Register* is published each quarter and at the end of the volume year.

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Apr 17	Pollution Control Agency Air Pollution Control Requirements During Air Pollution Episodes	1:00 p.m. and 7:00 p.m., Bd. Rm., Pollution Control Agency, 1935 W. Co. Rd. B2, Roseville, MN
	Hearing Examiner: Myron Greenberg	
Apr 16	Pollution Control Agency Control of Pollution from Animal Feedlots	7:00 p.m., Basement Conference Rm., Mn/DOT, 1010 21st Ave. N.W., Industrial Park, Owatonna, MN
	Hearing Examiner: Howard Kaibel	
Apr 17	Pollution Control Agency Control of Pollution from Animal Feedlots	1:00 p.m. and 7:00 p.m., Rm. 234 C.A.B., Southwest State University, Marshall, MN
	Hearing Examiner: Howard Kaibel	
Apr 18	Pollution Control Agency Control of Pollution from Animal Feedlots	1:00 p.m. and 7:00 p.m., Commissioner's Rm., Becker Co. Courthouse, Lake St., Detroit Lakes, MN
	Hearing Examiner: Howard Kaibel	
Apr 19	Pollution Control Agency Control of Pollution from Animal Feedlots	1:00 p.m. and 7:00 p.m., Meeting Rm., Crow Wing Co. Courthouse Annex, E. Laurel St., Brainerd, MN
	Hearing Examiner: Howard Kaibel	



The mainstay of the voyageurs' diet was a soup made of dried peas or lyed corn, supplemented by berries, birds' eggs, fish, game, wild rice, and dried pemmican (pounded buffalo meat and berries preserved in grease). On this diet they paddled twelve hours a day and walked portages carrying heavy packs. A canoe party camping in the rain is shown in this oil painting by Mrs. Hopkins. (Courtesy Public Archives of Canada)



# RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, 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 as proposed 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 strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

## Board of Pharmacy Adopted Rules Relating to Unit Dose Distribution, Supportive Personnel, Drug Returns, Nursing Home Practice and Hospital Practice

The rules proposed and published at *State Register*, Volume 2, Number 50, pp. 2251-2266, June 19, 1978 (2 S.R. 2251) are now adopted, with the following amendments:

### Amendments as Adopted

7 MCAR § 8.021 **Pharmacist-in-charge, requirements, definitions and duties.** No person shall conduct a pharmacy without a pharmacist-in-charge who shall be a pharmacist regularly employed in the pharmacy department and shall be designated in the application for license, each renewal thereof or pursuant to 7 MCAR § 8.023 ~~Pharm 23~~. The term "pharmacist-in-charge" means a duly licensed pharmacist in the State of Minnesota who has been so designated, and it shall be his duty and responsibility consistent with the accepted standards of professional conduct and practice and in compliance with all applicable laws and regulations:

A. to establish for the employees of the pharmacy, policies and procedures for the procurement, storage, compounding and dispensing of drugs, and the communication of information to the public in relation to drug therapy;

B. to supervise all of the professional employees of the pharmacy;

C. to supervise all of the nonprofessional employees of the pharmacy insofar as their duties relate to the procurement, sale and/or storage of drugs;

D. to develop appropriate detailed written procedures directing activities of supportive personnel and to submit

these procedures to the Board in accordance with Pharm 477 MCAR 8.047;

E. to establish and supervise the method and manner for the storing and safekeeping of drugs;

F. to establish and supervise the recordkeeping system for the purchase, sale, possession, storage, safekeeping and return of drugs;

G. to notify the board immediately upon his knowledge that his services as pharmacist-in-charge have been or will be terminated;

H. to respond to deficiency reports. The pharmacist-in-charge of any pharmacy wherein deficiencies are noted upon inspection by the board or its staff shall, within 30 days of receiving notice of such deficiency, submit in writing to the board the steps taken or proposed to eliminate the deficiency. Failure to submit such report or to eliminate such deficiency shall be grounds for the institution of disciplinary action by the board.

### 7 MCAR § 8.032 ~~Pharm 32~~ **Return of drugs and devices.** ~~prohibited.~~

A. Pharmacists and pharmacies are prohibited from accepting from patients or their agents for reuse, reissue or resale any drugs, prescribed medications, chemicals, poisons or medical devices; except that in a hospital with a licensed pharmacy, drugs, devices or other items dispensed for hospital in-patient use may be returned to the pharmacy for disposition by a pharmacist in accordance with good professional practice.

B. Drugs and prescribed medications from nursing homes may be returned to the dispensing pharmacy provided that: proper storage conditions in the home can be assured; provided that the drugs and prescribed medications are received by the pharmacy in the original manufacturer's packaging or pharmacist packager's single Unit Dose, single Unit of Use or strip packaging indicating the drug name and

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## RULES

strength, the manufacturer's or packager's name and the manufacturer's or packager's lot or batch number; and provided that the integrity of such packaging remains intact. No reconstituted drugs, drugs requiring refrigeration or controlled substances may be so returned.

1. the consultant pharmacist can assure proper storage conditions for the drug in the facility as specified in the United States Pharmacopeia,

2. the drugs and prescribed medicines are returned to the pharmacy which dispensed the drug or prescribed medicine,

3. the drugs and prescribed medications are received by the pharmacy in the original manufacturer's packaging or pharmacist packager's single Unit-Dose, single Unit-of-Use or strip packaging indicating the drug name and strength, the manufacturer's or packager's name and the manufacturer's or packager's lot or batch number,

4. the integrity of such packaging remains intact, and

5. no reconstituted drugs, drugs requiring refrigeration or controlled substances may be so returned.

C. Commingling of returned medication or mixing of lot numbers of returned medication, upon or prior to repackaging, shall result in such medication being deemed misbranded and subject to embargo under Minn. Stat. § 151.38. This prohibition shall not apply to the return of medical devices provided that proper sanitary procedures are used prior to the reuse, resale or ~~re-ferent~~ re-ferent thereof.

**7 MCAR § 8.036 Pharm 36 Compounding and dispensing.** The practice of compounding and dispensing a prescription includes, but is not limited to, the following acts, which shall be performed only by a pharmacist, assistant pharmacist, or pharmacist-intern under the immediate and personal supervision of a pharmacist.

A. Determination of brands and suppliers.

B. Receipt of verbal prescriptions.

C. Verifying the prescription order. Verification of validity and propriety must be of the original prescription order. A copy, rewritten or verbal, is not acceptable.

D. Selecting the drug to be used in filling the prescription.

E. Extemporaneous compounding on an individual basis.

F. Certifying the completed prescription. In certifying

and documenting the completed prescription order, the pharmacist shall include:

1. checking of the original labeled container from which the medication was withdrawn;

2. checking of the labeling on the prescription medication container;

3. checking the contents of the prescription medication container and the appearance of the total product;

4. checking the patient's medication ~~record~~ profile, when utilized, for possible therapeutic incompatibilities and the accuracy of the addition to the ~~record~~ profile of the medication dispensed;

5. initialing of the prescription by the pharmacist performing the certification.

G. Issuing the prescription to the patient in order to assure that the patient understands the use of the medication, the cautions and the proper storage of the drug when in the professional judgment of the pharmacist such counsel is necessary.

H. G. Obtaining. Assuring that, when required by law or by the best professional practice, permission to refill is obtained from authorized prescribers or their agents, and then noting on the reverse side of the prescription the following data:

1. date refilled;

2. name of practitioner authorizing refill (if different from original prescriber);

3. quantity of drug dispensed (if different from the original prescription);

4. initials of the pharmacist refilling the prescription.

H. Supervising nonpharmacist clerical personnel in limited nonprofessional duties such as looking up prescription refills, filing prescriptions, record keeping, nonprofessional aspects of presenting completed medications to patients and completing the transaction.

I. Supervising nonpharmacist supportive personnel utilized in the performance of certain pharmacy tasks. The use of such supportive personnel shall be in accordance with the provisions of Pharm 47 7 MCAR § 8.047.

The provisions of this rule shall apply to all pharmacies provided, however, that nothing in this rule shall prevent pharmacists in hospitals from dispensing to hospital in-patients according to the provisions of 7 MCAR §§ 8.081-8.100.

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## 7 MCAR § 8.038 ~~Pharm 38~~ Prepackaging.

A. Pharmacies may prepackage and label drugs in convenient quantities for subsequent complete labeling and dispensing. Such drugs shall be prepackaged by or under the direct supervision of a pharmacist. The supervising pharmacist shall cause to be prepared and kept a packaging control record containing the following information.

1. Date.
2. Identification of drug.
  - a. Name.
  - b. Dosage form.
  - c. Manufacturer.
  - d. Manufacturer's lot number.
  - e. Strength.
  - f. Manufacturer's expiration date (if any).
3. Container specification.
4. Copy of the label.
5. Initials of the packager.
6. Initials of the supervising pharmacist.
7. Quantity per container.
8. Internal control number or date.

B. Each prepackaged container shall bear a label containing the following information:

1. Name of drug.
2. Strength.
3. ~~Dosage form.~~
3. Name of the manufacturer of the finished dosage form of the drug.
4. Manufacturer's expiration date (if any), or any earlier date which, in the pharmacist's professional judgment, is preferable.

4. Internal control number or date.

5. ~~Manufacturer's expiration date (if any).~~

6. ~~Auxiliary labels, as needed.~~

**7 MCAR § 8.047 ~~Pharm 47~~ Supportive personnel.** Supportive personnel may be used in performing pharmacy tasks not specifically reserved in these rules to a licensed pharmacist, assistant pharmacist or pharmacist-intern under the immediate and personal supervision of a pharmacist.

A. Supportive personnel may perform functions which do not involve professional pharmaceutical judgment.

B. Pharmaceutical products prepared by supportive personnel must be certified for accuracy by a licensed pharmacist (as provided for in ~~Pharm 36~~ 7 MCAR § 8.036 F.) prior to release for patient use.

C. Written procedures for the use of supportive personnel shall be prepared by the pharmacist-in-charge, shall be submitted to the board, and a copy shall be kept on file in the pharmacy. These procedures must be approved by the board prior to implementation of the procedure, comply with the standards set forth in this rule and will be approved on that basis. Approval must be obtained prior to implementation of the procedures.

1. These procedures shall indicate in detail the tasks performed by the supportive person and the certification steps performed by the licensed pharmacist.

2. New procedures or changes in procedures shall be submitted to the board for approval as specified above.

3. The submitted procedures shall be automatically approved 90 days after receipt by the board unless the pharmacist-in-charge is notified by the board of the specific reasons the procedures are unacceptable. (This paragraph shall become effective one year after final promulgation of this rule.)

D. Supportive personnel shall be supervised by a licensed pharmacist ~~physically present~~ stationed within the same work area who has the ability to control and is responsible for the action of the supportive person.

1. The basic ratio of supportive personnel allowed by this rule to work with one pharmacist shall be 1:1. Specific functions shall be excepted from the 1:1 ratio as follows:

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a. intravenous admixture preparation (~~Pharm 84~~ 7 MCAR § 8.084), 3:1;

b. Unit Dose dispensing (~~Pharm 42~~ 7 MCAR § 8.048), 3:1;

c. prepackaging (~~Pharm 38~~ 7 MCAR § 8.038), 3:1;

d. bulk compounding (~~Pharm 39~~ 7 MCAR § 8.039), 3:1.

2. Personnel used solely for clerical duties such as typing, looking up refills, filing prescriptions, recordkeeping, etc. need not be included in the ratios of the functions performed by supportive personnel.

3. A pharmacist-intern submitting hours toward completion of the 1500-hour requirement is not considered a supportive person for the purpose of determining the number of supportive persons supervised by a licensed pharmacist.

4. A pharmacist-in-charge of any pharmacy may petition the board for use of supportive personnel in ratios in excess of those allowed under these rules or for functions not specified in these rules. This petition for the use of additional personnel must be based on evidence that patient care and safety is maintained. The burden of persuasion is on the pharmacist-in-charge. Such a petition shall be automatically approved 90 days after receipt by the board unless the board shall send to the pharmacist-in-charge notification of the specific reasons why the petition is unacceptable.

E. The use of supportive personnel in the performance of delegated tasks not included in approved written procedures may be considered to be unprofessional conduct on the part of the pharmacist supervising the supportive personnel and the pharmacist-in-charge.

**7 MCAR § 8.048 ~~Pharm 48~~ Unit Dose dispensing.** A Unit Dose system shall be under the control of the pharmacist-in-charge. The act of drug dispensing is reserved for licensed pharmacists and registered pharmacist-interns acting under the supervision of licensed pharmacists, as set forth in ~~Pharm 36~~ 7 MCAR § 8.036. A Unit Dose system may be used as an alternative to ~~Pharm 36~~ 7 MCAR § 8.036 D., G., and H., F., and G., according to the following paragraphs.

### A. Definitions.

1. Unit Dose packaging. Unit Dose packaging is the packaging of individual doses of medication in containers which will preserve the identity and integrity of the drug from the point of packaging to the point of administration to the patient. Packaging may be accomplished by a manufacturer or by a pharmacy in accordance with ~~Pharm 38~~ 7

MCAR § 8.038. Packaging procedures and packaging materials must conform to existing state and federal laws including those found in The Code of Federal Regulations and known as the "Good Manufacturing Procedures."

a. Individual doses of medication shall be properly labeled from the manufacturer with the name of the drug, dosage form and strength, manufacturer's name and lot number and expiration date of all time dated drugs or labeled in accordance with ~~Pharm 38~~ 7 MCAR § 8.038 if prepackaged by the pharmacy.

b. Unit Dose packaging may provide individual doses of medication attached to each other by placement in a card or other container. Such packaging shall be labeled in accordance with ~~Pharm 38~~ 7 MCAR § 8.038 in such a manner as to provide continuous identification of the contents and, when dispensed, the name and location of the patient, name of the prescribing practitioner, prescription number, date, the directions for use and identification of the pharmacy.

2. Unit Dose system. The Unit Dose system is that drug distribution system which is pharmacy based and which uses Unit Dose packaging in a manner which removes traditional drug stocks from patient care areas and enables the selection and distribution of unit dose packaging to be pharmacy based and controlled.

The system must provide and the pharmacist must utilize:

a. a means of separating medications by patient name and bed number;

b. a means of separating medications by day of administration;

c. a means of identifying individual doses dispensed, doses administered and doses returned;

d. a means of identifying the dosage regimen of each drug, including the date of the original order and the date of changes, if any, in the prescriber's drug order;

e. a means of identifying the total dosage regimen of each patient;

f. a means of identifying the time of administration of each drug;

g. a means for the pharmacist to verify the original prescriber's order;

h. a means for the pharmacist to certify the accuracy of the selected medication before the dose is delivered for administration to the patient.

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B. Each pharmacy utilizing a Unit Dose dispensing system shall establish written policies specifying the categories of drugs which will or categories of drugs which will not be dispensed under the Unit Dose distribution system. Such policies shall be available in the pharmacy for inspection by the board.

1. Proper utilization of the Unit Dose system requires that in as far as is practicable all medications be in Unit Dose packaging when dispensed.

2. Schedule II, III, and IV controlled substances may be included in the Unit Dose system if the methods of including such drugs in the system are in compliance with applicable federal and state laws and rules.

3. ~~Drugs not dispensed under the Unit Dose dispensing system must be dispensed in accordance with Pharm 36. Legend drugs not dispensed under the Unit Dose dispensing system must be dispensed in accordance with 7 MCAR § 8.036 and labeled in accordance with 7 MCAR §§ 8.040 and 8.041.~~

C. Selection of individual Unit Dose packaging for placement in individual patient containers, bins, compartments or drawers is not dispensing under ~~Pharm 36~~ 7 MCAR § 8.036 and may be performed by supportive personnel. Dispensing occurs upon the certification of the accuracy of the selected Unit Dose packages which shall be done by the pharmacist before the dose is delivered for administration to the patient.

D. All medication shall be stored in a locked area or locked cart.

E. Unit Dose system shall comply with existing law with respect to provisions of pharmaceutical services to hospitals and nursing homes and as set forth in ~~Pharm 74-100~~ 7 MCAR § 8.071-8100.

~~7 MCAR §§ 8.049-.050 Pharm 49-50 Reserved for future use.~~

## Chapter Five: Internship

~~7 MCAR § 8.061 Pharm 61~~ **7 MCAR § 8.061 Internship.** A regulation for the purpose of defining and regulating the internship experience of prospective pharmacists as required by Minn. Stat. §§ 151.10 and 151.101.

This regulation shall take effect immediately but the provisions contained herein shall not nullify any period of in-

ternship service by any individual previous to its adoption provided such period of internship is filed in a proper manner with the secretary of the Board of Pharmacy.

### A. Definitions.

1. "Pharmacist intern" and "intern" means:

a. a natural person satisfactorily progressing toward the degree in pharmacy required for licensure; or

b. a graduate of the University of Minnesota College of Pharmacy, or other pharmacy college approved by the board, who is registered by the Board of Pharmacy for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

c. a qualified applicant awaiting examination for licensure.

2. "Preceptor" means a natural person licensed as a pharmacist by the Board of Pharmacy, and who participates in instructional programs approved by the board.

3. "Hour" means the standard 60 minute division of time.

4. "Supervision," as used in connection with this regulation, means that in the pharmacy where the intern is being trained, a registered pharmacist designated as preceptor, or another registered pharmacist, shall be in continuous personal contact with and actually giving instructions to the intern during all professional activities of the entire period of his internship.

5. "Concurrent time" means internship experience gained during the fourth and fifth academic years only, while a person is a full-time student carrying, in any given school term, at least 75% of the average number of credit hours per term needed to graduate within five years.

6. "Approved clinical program" means a clinical program approved by the Internship Advisory Committee and the Board of Pharmacy, which is a patient oriented instructional program involving actual patient contact activities, including, but not limited to, patient rounds, medication histories, patient drug education and clinical conferences.

7. "Approved externship program" means an undergraduate program of practical experience administered by a college of pharmacy approved by the board.

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## RULES

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8. "Quarter" means that amount of internship time gained during a three month period of time, but not to exceed 700 hours.

### B. Registration and reporting.

1. Every person shall register with the board before beginning his internship in this state. Applications for the registration of a pharmacist-intern shall be on such form or forms as the Board of Pharmacy may from time to time prescribe and shall be accompanied by a fee of \$20. Registration shall remain in effect during successive quarters of internship training if progress reports, examinations, and affidavits of experience as required by the board are submitted promptly upon beginning or terminating employment, and if the board is satisfied that the registrant is in good faith and with reasonable diligence pursuing a degree in pharmacy. Credit for internship time will not be granted unless registration, progress reports and affidavits of experience for preceding time are completed and received.

2. The pharmacist-intern shall be so designated in his professional relationships, and shall in no manner falsely assume, directly or by inference, to be a pharmacist. The board shall upon proper registration issue to the intern a pocket registration card for purposes of identification and verification of his role as an intern, which card shall be surrendered to the secretary of the board upon termination of the internship program.

3. All registered interns shall notify the board immediately upon change of employment or residence address.

4. The intern may be required to maintain additional records of his professional activities. Such records, which shall be submitted after the completion of each quarter of internship, are to be prescribed by the board for the purpose of recording details of the scope of internship experience and may include examinations to test the competency of interns. Such examinations shall be administered approximately quarterly at such times and locations as the board may designate. These examinations shall be of a pre-test and post-test nature bracketing such segments of the intern's experience as the board deems appropriate. Interns completing the first quarter of their internship experience will be required to show attainment of a score of 65% on the post test examination before credit will be granted by the board for that experience. Interns participating in subsequent quarters will be required to attain a score of 75% on the post-test examination before credit will be granted by the board for that experience.

5. No person who terminates his efforts towards the completion of the educational prerequisites of licensure is entitled to the continued privileges of internship registration.

6. No person not properly registered with the board as a pharmacist-intern shall take, use, or exhibit the title of pharmacist-intern, pharmacist-apprentice, pharmacist-extern, or any other term of similar or like import.

C. Training requirements. The intent of this regulation is to provide a proper preceptor-intern (teacher-student) relationship within the context of the employer-employee relationship; provide a broad base of internship experience and to supplement didactic academic training in a manner which prepares the intern for all aspects of the practice of pharmacy.

1. Nothing in this regulation shall imply that the standards described herein are acceptable to other states on a reciprocal basis.

2. When an intern desires to obtain credit for training received in a state other than Minnesota, he shall abide by all the provisions of the internship regulations in that state, and shall provide evidence from that state's board of pharmacy that his internship training has been completed in compliance with the internship standards of the National Association of Boards of Pharmacy and with the standards herein provided. Where a possible conflict may exist between the provisions of this regulation and the requirements of the state in which the intern is training the intern shall contact the secretary of the State Board of Pharmacy in his state and outline any possible problem.

3. No more than one intern shall be trained by a preceptor at one time.

4. Upon registration, interns and preceptors will be furnished guides and objectives for internship training. The guides are furnished to suggest appropriate types and order of training experience and shall be used to insure that the intern's practical experiences are commensurate with his educational level, and broad in scope.

5. Applicants for licensure as pharmacists who are examined and licensed after September 17, 1973, shall submit evidence that they have successfully completed not less than 1,500 hours of internship under the instruction and supervision of a preceptor. Credit for internship shall be granted only to registered interns who have begun the fourth year of the five-year pharmacy curriculum, provided, however, that:

a. 400 hours of internship credit may be acquired by any combination of the following: internship experience gained concurrent with attendance at a college of pharmacy during the fourth and fifth year, or participation in approved clinical pharmacy programs or approved internship demonstration projects.

b. At least 520 hours of the required internship time

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shall be completed after graduation from a college of pharmacy approved by the board and shall consist of advanced internship training involving the compounding and dispensing of drugs and drug consultation with patients.

c. Not more than 700 hours of internship credit may be given during any internship quarter.

D. Reciprocity standards. The board may accept internship credit from applicants for licensure by reciprocity who have submitted evidence of completion of internship training in another state, provided that the training is, in the opinion of the board, substantially equivalent to the standards herein provided, and is in compliance with the internship standards of the National Association of Boards of Pharmacy, and provided, further, that the applicant has practiced pharmacy for one year prior to being examined for licensure in this state pursuant to the requirements of ~~Pharm~~ 7 MCAR § 8.028.

E. Advisory committee. The board shall appoint an Advisory Committee on Internship to advise the board on the administration of this regulation. The committee shall include practicing pharmacists, pharmacist-educators, pharmacy-interns and representatives of the board.

## Chapter Six: Pharmaceutical Services to Patients in Nursing Homes and Residents of Boarding Care Homes

The provisions of ~~Regulations 71~~ 7 MCAR §§ 8.071 through 80 8.080 are applicable to pharmaceutical services provided to patients in long term care facilities, provided, however, that ~~Regulations 71~~ 7 MCAR §§ 8.001 through 70 8.070 shall also be applicable to such pharmaceutical services, unless specifically exempted by ~~Regulations 71~~ 7 MCAR §§ 8.071 through 80 8.080 or are in direct conflict therein, in which case ~~Regulations 71~~ 7 MCAR §§ 8.071 through 80 8.080 shall apply.

### 7 MCAR § 8.071 ~~Pharm 71~~ Prescription order communication.

A. Pharmacists and pharmacies shall accept orders for dispensing and refilling only if such orders are communicated directly from the prescriber or transmitted through his designated agent, ~~a nurse employed by the facility and designated in writing by the prescriber to act as his agent for the sole and exclusive purpose of communicating, either orally or in writing, said physicians's medication orders to any pharmacy.~~ Such an agent shall be an employee of the physician or a nurse employed by the facility and designated in writing by the prescriber as authorized to communicate,

either orally or in writing, the prescriber's medication orders to a pharmacy.

B. Such orders may be in writing or, except for Schedule II controlled substances, an oral order reduced to writing by the pharmacist and may include authorization for multiple refills consistent with good practice and legal limitations. A facsimile copy of the prescriber's medication order may be accepted and filed as a prescription by the pharmacy.

C. Schedule II controlled substances shall be dispensed only upon receipt of an original written order signed by the prescribing individual practitioner ~~or orally in emergency situations as allowed by Federal Regulations.~~ or upon an oral order reduced to writing given in emergency situations as allowed by these criteria:

1. Immediate administration of the controlled substance is necessary for the proper treatment of the intended ultimate user; and,

2. No appropriate alternative treatment is available, including administration of a drug which is not a controlled substance under Schedule II of Minn. Stat. § 152 and Pharmacy Rule 7 MCAR § 8.051; and,

3. It is not reasonably possible for the prescribing practitioner to provide a written prescription order to be presented to the person dispensing the substance, prior to dispensing.

7 MCAR § 8.072 ~~Pharm 72~~ Prescription labeling. All prescription containers, other than those dispensed pursuant to ~~Pharm 48~~ 7 MCAR § 8.048, shall be properly labeled in accordance with ~~Regulation 40~~ 7 MCAR § 8.040 and shall also contain at least the following information:

A. ~~Name of drug.~~ Quantity of drug dispensed.

B. ~~Potency of drug.~~ Date of original issue, or in the case of a refill, the most recent date thereof.

C. ~~Quantity of drug dispensed.~~ Expiration date of all time dated drugs.

D. ~~The name of the manufacturer of the finished dosage form of the drug.~~

E. ~~Specific directions for use.~~

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F. Date of original issue, or in the case of a refill, the most recent date thereof.

G. Expiration date of all time dated drugs.

H. Auxiliary labels as needed.

Directions for use on labels of medications shall be changed only by a pharmacist acting on the instructions of the prescriber or his agent. Such medications shall be returned to the pharmacist provider to be so relabeled; or a pharmacist shall relabel such medications at the facility.

7 MCAR § 8073 Pharm 73 Labeling of insulin. Insulin shall be dispensed with a label affixed to the vial showing at least the patient's full name and location.

7 MCAR § 8.074 Pharm 74 Drugs for use in emergency kits. Pharmacists may ~~dispense, provide,~~ upon a written or oral order from a licensed practitioner, limited supplies of drugs for use in an emergency kit.

A. Only emergency drug supplies, as determined by the patient care policy committee or pharmaceutical service committee only necessary for patient care in life threatening emergencies, may be made available. The drugs in the emergency kit are the ~~property responsibility of the pharmacy pharmacist and,~~ therefore, shall not be used or altered in any way except as outlined herein. ~~Long term care facilities shall store a supply of emergency drugs on at least one nursing station and:~~ Such emergency drug supplies shall comply with the following:

1. A. such drugs shall be limited to a maximum of six single doses, in either sealed ampuls, vials or prefilled syringes to the extent possible, of any one emergency drug. If an emergency drug is not available in parenteral form, a supply of the drug in inhalation or sublingual form may be obtained in the smallest sealed manufacturer's package. Inclusion of other oral legend drugs is to be discouraged. All drugs in this supply shall be properly labeled;

2. B. the emergency drug supply shall be stored in a portable container which is sealed in such a manner that a tamper-proof seal must be broken to gain access to the drugs, and shall be placed in a locked area;

3. C. the pharmacist shall be notified by the ~~director of nursing services~~ facility when drugs have been used from the emergency kit or when the seal has been broken;

4. D. drugs used from the kit shall be replaced within 72 hours and the supply resealed;

5. E. the pharmacist shall see that the contents of the kit are accurately listed outside of the container;

6. F. the supply shall be checked monthly by the pharmacist who is responsible for control of the kit.

### 7 MCAR § 8.075 Pharm 75 Pharmacist consultative services to long term care facilities.

A. The nursing home facility shall retain a pharmacist other than the vendor pharmacist, whenever possible, who devotes a sufficient number of hours during a regularly scheduled visit, for the purpose of coordinating, supervising, and reviewing the pharmaceutical services within the facility. There shall be a formal arrangement for such qualified pharmaceutical services between the facility and the pharmacist, including an arrangement for remuneration separate and apart from that provided to vendor pharmacists.

B. The responsibilities of the pharmacist shall include, but are not limited to the following:

1. 1. serving on the pharmaceutical services committee and/or patient care policy committee and assisting in the preparation and revision of policies and procedures governing the pharmaceutical services;

2. 2. developing, coordinating and directing or supervising all pharmaceutical services provided in the facility;

3. 3. reviewing the drug regimen of each patient and resident at least monthly and preparing appropriate reports and recommendations. This review shall include at least:

a. a review of all drugs currently ordered;

b. information concerning the patient's condition as it relates to drug therapy;

c. medication administration records and, where appropriate, physician progress notes, nurses' notes, and laboratory test results;

A. A pharmacist providing pharmacy consultative services to a long term care facility shall devote a sufficient number of hours during regularly scheduled visits to the long term care facility for the purpose of reviewing the quality of the pharmaceutical services provided to the long term care facility residents. There shall be a written agreement, separate and apart from that provided to pharmacists supplying prescription drug services to residents, for such pharmaceutical consultative services between the facility and the pharmacist which shall be available for review by the Board.

B. The pharmacist shall be responsible for but not limited to the following:



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1. preparation and revision of policies and procedures governing the pharmaceutical services;

2. development, coordination and direction or supervision of all pharmaceutical services provided in the facility;

3. review of the drug regimen of each resident and preparation of appropriate reports and recommendations. This shall include at least a review of:

a. all drugs currently ordered;

b. information concerning the patient's condition as it relates to drug therapy;

c. medication administration records and, where appropriate, physician progress notes, nurses' notes, and laboratory test results.

4. reporting, in writing, irregularities in the storage, dispensing and administration of drugs and other matters relating to the review of the drug regimen, to the administrator, ~~appropriate attending physician, and vendor pharmacist~~, and other appropriate health professionals as may be determined by the administrator and consultant pharmacist;

5. preparing, at least quarterly, a written report on the status of the pharmaceutical service and staff performance and submitting this report to the administrator and patient care policy committee and/or the pharmaceutical services committee;

6. developing policies for destroying, in the prescribed manner, any unused portion of prescription drugs remaining in the facility after the death or discharge of the patient or resident for whom they were prescribed or any prescriptions permanently discontinued;

a. unused portions of controlled substances shall be handled by contacting the Minnesota Board of Pharmacy who shall furnish the necessary instructions and forms, a copy of which shall be kept on file in the facility for two years;

b. any other unused portion of prescription drugs remaining in the facility after the death or discharge of the patient or resident for whom they were prescribed or any prescriptions permanently discontinued shall be destroyed by the facility in the presence of a pharmacist or registered nurse who shall witness such destruction or shall be handled in accordance with ~~Pharm 32~~, 7 MCAR § 8.023;

c. the drugs shall be destroyed by flushing them into the sewer system or by incineration;

7. providing in-service training to nursing personnel ~~on pharmacologic action or use of drugs, scope of pharmacy services, and drug interactions.~~

**7 MCAR § 8.076 ~~Pharm 76~~ Freedom of choice.** No pharmacist shall participate in any agreement or plan which infringes on any patient's right to freedom of choice as to the provider of prescription services.

**7 MCAR §§ 8.077-8.080 ~~Pharm 77-80~~ Reserved for future use.**

## Chapter Seven: Pharmaceutical Services to Patients in Hospitals

The provisions of ~~Rules 8+~~ 7 MCAR §§ 8.081 through ~~400~~ 8.100 are applicable to pharmaceutical services provided to patients in hospitals, including state hospitals, provided, however, that ~~Rules +~~ 7 MCAR §§ 8.001 through ~~70~~ 8.070 and ~~400~~ 8.100 through ~~420~~ 8.120 shall also be applicable to such pharmaceutical services, unless specifically exempted by ~~Rules 8+~~ 7 MCAR §§ 8.081 through ~~400~~ 8.100 or unless in direct conflict therewith, in which case ~~Rules 8+~~ 7 MCAR §§ 8.081 through ~~400~~ 8.100 shall apply.

**7 MCAR § 8.081 ~~Pharm 81~~ Pharmaceutical service definitions.**

A. Pharmaceutical service. "Pharmaceutical service" means the control of the utilization of drugs, biologicals and chemicals including procuring, manufacturing, compounding, dispensing, distributing and storing of drugs, biologicals and chemicals under the conditions prescribed by this section. The provisions of drug information to patients and to other health professionals is included within the meaning of pharmaceutical services.

B. "Credentialed" means registered with, certified by, or similarly recognized by a health-related agency or department of the State of Minnesota.

C. "Supervision," as used in connection with this rule, means ~~physical presence~~ stationed within the same work area, coupled with the ability to control and responsibility for an action.

D. "Drug administration" means to deliver by or pursuant to the lawful order of a licensed practitioner a single dose of a drug to a patient by injection, inhalation, ingestion or by any other immediate means and shall include:

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1. preparing the individual dose from a previously dispensed, properly labeled container;
2. verifying the dose as prescribed;
3. giving the individual dose by the proper route to the correct patient at the proper time;
4. assuring that the dose is taken; and,
5. promptly recording the time and dose given.

E. "Drug dispensing" means to deliver one or more doses of a drug prepared in compliance with Pharm 36 A-I or A-E; in a suitable container, properly labeled, for subsequent administration to, or use by a patient or human research subject. "Drug dispensing" means to deliver one or more doses of a drug for subsequent administration to, or use by a patient or human research subject. Such drug dispensing shall be performed by the pharmacist in compliance with 7 MCAR §§ 8.036 A.-I. or 8.048 A.-E. with delivery being made in a suitable container properly labeled.

**7 MCAR § 8.082 Pharm 82 Pharmaceutical service general requirements.** The hospital shall maintain an organized pharmaceutical service under the direction of a qualified pharmacist.

A. On-site pharmacy. A hospital with a licensed capacity of 40 beds or more shall maintain an on-site pharmacy, licensed by the board which shall provide at least five day per week service.

B. Drug room. A hospital not maintaining an on-site pharmacy shall provide a drug room and obtain service from a licensed pharmacy. A written agreement between such parties shall specify the duties and responsibilities of the contracting parties and be available for Board of Pharmacy inspection. Pharmaceutical service general requirements. Pharmaceutical services in hospitals shall be organized and directed by a pharmacist.

**7 MCAR § 8.083 Pharm 83 Pharmaceutical service staff.**

A. Director. Pharmacist-in-charge.

1. Qualifications. The director of the pharmaceutical service, pharmacist-in-charge, regardless of his title or designation, shall be a pharmacist licensed in this state.

2. Availability.

a. On-site pharmacies. A pharmacist providing pharmaceutical services to a hospital maintaining an on-site pharmacy shall have its pharmaceutical service under the direction of a pharmacist be engaged by the hospital full-

time or part-time, and shall provide at least part-time, 5 day/week services.

b. Drug room. A pharmacist providing pharmaceutical services from off-site to a hospital maintaining a drug room shall have its pharmaceutical services under the direction of a pharmacist who is on premises on at least a weekly scheduled basis. schedule on-premises visits on at least a weekly basis.

3. Responsibilities. The responsibilities and duties of the director of the pharmaceutical service or hospital pharmacist-in-charge include at least the following specific duties in addition to the duties of the pharmacist-in-charge found in Pharm 24: 7 MCAR § 8.021:

a. the procurement, identification, security, storage and distribution of all drugs, as well as the disposition of drugs whose effectiveness has expired or which, for other reasons, are deemed no longer usable;

b. the development, implementation, coordination, supervision and review of pharmaceutical services in the hospital and policies related thereto;

e. the implementation of recommendations of the pharmacy and therapeutics committee, or its equivalent;

d. c. the supervision of the preparation and sterilization of parenteral drugs in the hospital;

e. d. the supervision of bulk compounding of pharmaceuticals;

f. e. the establishment of specifications for procurement of drugs and chemicals for direct patient use;

g. f. the development of a hospital formulary system;

h. g. the dispensing of drugs and chemicals for direct patient use;

i. h. the maintaining of a stock of antidotes and emergency drugs in the hospital;

j. i. the maintaining of pharmaceutical service records; and

k. j. cooperating in the teaching and research programs of the hospital.

4. Span of control. The pharmacist's span of supervision shall extend to all areas of the hospital where drugs are stored. No less than bi-monthly every two months inspections of these areas shall be conducted and substantiated by

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records so as to verify at least proper drug storage, documentation of distribution and administration of controlled substances, ~~presence~~ absence of outdated drug, and the integrity of the required emergency drug supply.

5. Director's absence. In the absence of the director of the pharmaceutical service, pharmaceutical services shall be directed by a pharmacist designee.

## B. Other staff.

1. Generally. Pharmaceutical services shall be provided only by pharmacists and other personnel under a pharmacist's supervision.

### 7 MCAR § 8.084 Pharm-84 ~~Pharm-84~~ Pharmaceutical service policies.

A. Patient care. Pharmaceutical service policies shall cover at least the following:

1. the providing of drug information to patients and health professionals;

2. the limiting of drug administration; ~~to individuals licensed or credentialed to do so;~~

3. the immediate reporting of drug related errors; ~~to the responsible practitioner, to the director of nursing and to the pharmacy. Drug errors shall be recorded in the patient's record and reported to the pharmacy and therapeutics committee, or its equivalent;~~

4. the immediate reporting of adverse drug reactions; ~~to the responsible practitioner, to the director of nursing and to the pharmacy. Adverse drug reactions shall be recorded in the patient's record and reported to the pharmacy and therapeutics committee, or its equivalent;~~

5. the permitting of self administration of drugs by patients; ~~only when specifically ordered by licensed practitioners under standards set by the pharmacy and therapeutics committee or its equivalent;~~

6. the permitting use of drugs brought into the hospital by or with the patient, to be administered only when so ordered by a licensed practitioner, who shall specify in the patient's record the identity, strength and dosage schedule of such medication. If such drugs are not to be used while the patient is hospitalized, they shall be packaged, sealed, stored and returned to the patient at the time of discharge, with instructions as to use written by the discharging physician. If

such drugs are not to be used while the patient is hospitalized, they shall be packaged, sealed, stored and returned to the patient at the time of discharge.

B. Administration. Pharmaceutical service policies shall cover at least:

1. the following measures related to the control, accessibility, dispensing and administration of drugs:

~~a. requiring the existence of a pharmacy and therapeutics committee, or an equivalent body, which shall have the responsibility of meeting at least quarterly to consider the issues raised in the delivery of pharmaceutical services;~~

~~b. a. developing, implementing and maintaining a system assuring the availability of prescribed drugs at all times;~~

~~b. b. prohibiting the dispensing of legend drugs; by persons other than pharmacists and licensed practitioner;~~

~~c. c. permitting the changing of labels or the transfer of drugs from one container to another; only by pharmacists or licensed practitioners;~~

~~d. d. maintaining security and emergency access in accordance with the following:~~

(1) Only a pharmacist may have access to the pharmacy except in the following situations and under the following conditions set forth below:

(a) In the case of disaster the hospital administrator may allow access for purposes of emergency maintenance, disaster prevention and control, and patient safety.

(b) For purposes of withdrawing limited doses of drugs for administration in emergencies when the pharmacy is closed, a designated registered nurse may make emergency withdrawal of a dose required by a patient. Only a designated registered nurse in any given shift may have emergency access.

The person withdrawing from a bulk stock container the limited doses for administration shall leave in the pharmacy, on a form developed by the pharmacy, a record of the drugs withdrawn showing:

(i) the patient's name;

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- (ii) the name of the drug and dose prescribed;
- (iii) drug strength;
- (iv) the amount taken;
- (v) the time and date;
- (vi) the signature of nurse or physician withdrawing drug.

The person withdrawing the drug from a bulk stock container or unit dose packaging bin shall place upon the record of withdrawal the container from which the limited doses were taken so that the withdrawal may be verified by the pharmacist.

(2) The ~~director~~ pharmacist-in-charge shall develop an emergency access procedure and may make provision for pre-packaged drugs for emergency withdrawal provided the number of doses does not exceed the number usually required by a patient during the time the pharmacy is closed.

~~f. e.~~ if a supplying of pre-packaged legend drugs which ~~is~~ are accessible for use without entering either the pharmacy or drug room ~~is~~ maintained for use when a pharmacist is not available. Such supply ~~shall~~ may be located in nursing units, with access limited to designated registered nurses. No hospital pharmacy shall utilize a floor stock drug distribution system of this or any other type as its primary system of drug delivery;

~~g. f.~~ maintaining a supply of drugs for use in medical emergencies;

~~h. g.~~ specifying the maintenance of permissible supplies of non-prescription drugs in nursing service units;

~~i. h.~~ assuring that unused patient drugs, discontinued and outdated drugs, and containers with worn, illegible or missing labels be returned to a pharmacist for disposition;

~~j. i.~~ maintaining a drug recall procedure which can be implemented no more than 24 hours after recall notification by the manufacturer;

~~k.~~ assuring that drugs be administered only upon the order of a licensed practitioner;

~~l. j.~~ permitting the dispensing of drugs only pursuant to orders to be written initiated only by a licensed practitioner. Abbreviations and chemical symbols used in drug orders must be approved individually or as part of a standard list, by the pharmacy and therapeutics committee

or its equivalent. Verbal orders for drugs shall be communicated only to pharmacists or registered nurses by licensed practitioners. Only pharmacists may act as an intermediary in communicating a verbal order from a licensed practitioner to a registered nurse. Verbal orders must be reduced to writing immediately and countersigned by the licensed practitioner;

~~m. k.~~ assuring that all orders for drugs be are transmitted to the pharmacy by the prescriber or by means of an order format which produces a direct copy or an electronically reproduced facsimile;

~~n. l.~~ requiring authorization for a standing order to be noted on the patient's medical record, and countersigned by a licensed practitioner. Such orders shall specify the circumstances under which the drug is to be administered, the drug, dosage, route, frequency of administration and duration;

~~o.~~ assuring that when drug therapy is not renewed on at least a weekly basis such therapy is limited either by the prescriber's specific indication or by automatic stop orders. Such stop orders shall include at least schedule II controlled substances and such other drugs as established by the P & T Committee or its equivalent;

~~m.~~ assuring that when drug therapy is not renewed on an established regular basis such therapy is limited either by the prescriber's specific indication or by automatic stop orders.

~~p. n.~~ assuring that precautionary measures for the safe admixture of parenteral products be developed in writing. Admixture preparation shall be limited to pharmacists, supportive personnel under the supervision of a pharmacist, licensed practitioners and licensed nurses. Furthermore, admixtures shall be labeled as in ~~Pharm 88 D-;~~ 7 MCAR § 8.088 D.;

~~q. o.~~ assuring that investigational drug use is in accordance with state and federal law. ~~Such drugs shall be administered only on the order of a member of the organized medical staff. The prescribing by the staff member shall be under the direction of the principal investigator.~~ Basic information concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions and symptoms of toxicity of such drugs shall be available in the pharmacy, and at any nursing service unit where such drugs are administered. Investigational drugs shall be distributed only from the pharmacy;

~~r. p.~~ assuring that the practice of drug reconstitution be performed only by pharmacists, licensed practitioners, licensed nurses, or hospital-authorized personnel under the supervision of licensed pharmacists, licensed practitioners or licensed nurses.

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2. The following measures related to the maintenance of documents:

a. ~~pharmaceutical service director and pharmacist-in-charge's responsibility in addition to those in Pharm 24. The director of the pharmaceutical service and pharmacist-in-charge shall maintain at least the following written documents: The pharmacist-in-charge shall maintain at least the following written documents:~~

(1) a statement of service philosophy and objectives;

(2) a job description for each classification of personnel;

(3) a list of pharmaceutical service committees; and other hospital committees on which the pharmaceutical service is represented, with minutes of proceedings and attendance records;

(4) procurement records for controlled substances for two years or as required by law;

(5) prescriptions or other forms initiated by the prescriber, for two years or as required by law;

(6) records of packaging, bulk compounding or manufacturing for two years or as required by law;

(7) records of action taken pursuant to drug recalls for two years or as required by law;

(8) special reports concerning narcotics and other drugs for two years or as required by law;

(9) records of pharmacist's inspections of drug supplies maintained outside the pharmacy or drug room as permitted under ~~Pharm 84 B. 1. f. and g.~~ 7 MCAR § 8.084 B.1.e. and f. for two years;

(10) records of withdrawals by nonpharmacists of prepackaged drugs from the pharmacy or drug room as permitted under ~~Pharm 84 B.1.e.~~ 7 MCAR § 8.084 B.1.d. for one month;

b. other necessary documents. The following documents relative to pharmaceutical services shall also be maintained:

(1) a current organization chart delineating intra-

service structure and lines of authority, and describing the pharmaceutical service's relationship to the administration, organized medical staff and other relevant hospital services;

(2) a list of all licensed and/or credentialed personnel, with verification of the present validity of those licenses or credentials;

(3) a record of the number of persons, by job description, employed full time and part time in the pharmaceutical services;

(4) copies of current staffing patterns and weekly work schedules;

(5) receipted invoices for all drugs, chemicals and pharmaceutical service supplies purchased and received over the immediately preceding two years; and

(6) any agreement between an off-premises pharmacy and the hospital.

**7 MCAR § 8.085 Pharm-85 Pharmaceutical service equipment and supplies.** In addition to the requirements of ~~Pharm 40 7 MCAR § 8.010~~, equipment and supplies shall be maintained by the pharmacy as necessary to fulfill the further needs of patients and the scope of services offered.

**7 MCAR § 8.086 Pharm-86 Drug handling and storage.** At least the following provisions for the safe handling and secure storing of drugs shall be observed:

A. storage areas shall be safeguarded by an effective security system, with the pharmacist responsible for maintaining security;

B. drugs shall be protected from contamination; and

C. drugs shall be stored at temperatures recommended by the U.S.P./N.F. or by the individual drug label or package insert.

**7 MCAR § 8.087 Pharm-87 Pharmaceutical service space.**

A. The pharmacy or drug room shall be surrounded by a continuous partition or wall extending from floor to ceiling. All doors and windows shall be securely locked when the pharmacy or drug room is closed, so as to prevent entry by unauthorized persons.

B. Space shall be available at each nursing service unit

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for storage, safeguarding and preparation of medication doses, to include provisions of at least the following: When drugs are stored on nursing service units space shall be available at each unit for the storage, safeguarding and preparation of medication doses, and shall include provision of at least the following:

1. A well-illuminated, locked drug cabinet or room shall be equipped with clearly labeled cubicles to ensure physical separation of individual patient prescribed medications. Medications may be stored in secured individual patient storage areas or secured portable storage carts providing separate compartments for individual patients.

2. A container or compartment which is capable of securing controlled substances with a lock or other safeguard system shall be permanently attached to storage carts or medication rooms.

## 7 MCAR § 8.088 Pharm 88 Labeling.

A. Out-patient prescriptions. Labels for out-patient prescriptions shall comply with Regulation 40 and 41 7 MCAR §§ 8.040 and 8.041. Labels for out-patient nonprescription drugs shall comply with the federal regulations. Drugs originally dispensed to an in-patient shall be returned to the pharmacy for proper labeling before leaving the hospital premises.

B. In-patient prescriptions. All prescriptions dispensed to in-patients, other than those dispensed pursuant to Pharm 48 7 MCAR § 8.048, shall be labeled with the following information:

1. identification of pharmacy;
2. name of patient;
3. name of drug;
4. route of administration of drug when necessary for clarification;
5. strength of drug;
6. the name of the manufacturer of the finished dosage form of the drug;
7. 6. auxiliary labels as needed;

8. 7. expiration date, if applicable;

9. 8. date dispensed.

C. Drugs prepackaged for emergency use. All drugs dispensed under Pharm 84 B- + f. 7 MCAR § 8.084 B.1.e. shall be labeled with the following information:

1. identification of pharmacy or other source;
2. name of drug or list of ingredients;
3. strength of drug or amount of ingredients;
4. auxiliary labels as needed;
5. expiration date, if any;
6. usual dose;
7. control number or date of issue;

8. the name of the manufacturer of the finished dosage form of the drug.

D. Whenever a drug is added to a parenteral solution a distinctive supplementary label shall be firmly affixed to the container. The label shall indicate the name and amount of drug added, the date and time of the addition, and expiration of the drug; the date and time of the expiration of the admixture, and the identify of the person preparing or certifying the integrity of the admixture.

7 MCAR § 8.089 Pharm 89 Extension of pharmacy services under license. A licensed pharmacy in a hospital may utilize additional locations within the hospital without the necessity of securing additional licenses, provided however, that the director of pharmaceutical services pharmacist-in-charge of any such hospital pharmacy shall designate another licensed pharmacist to assume professional responsibility, in accordance with Regulation 24-23 7 MCAR §§ 8.021-8.023, for the practice of pharmacy in each such additional location.

7 MCAR § 8.090 Pharm 90 Use of supportive personnel. The use of supportive personnel shall be in accordance with the provisions of Pharm 47 7 MCAR § 8.047.

7 MCAR §§ 8.091-8.100 Pharm 91-100 Reserved for future use.

# PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Department of Agriculture

### Proposed Rules Governing the Disposal of Refuse from Transport Involved in Foreign Commerce

#### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Conference Room, District Transportation Building, 1123 Mesaba Avenue, Duluth, Minnesota on May 15, 1979 at 1:00 p.m. and in the Hearing Room, Office of Hearing Examiners, 1745 University Avenue, Saint Paul, Minnesota on May 16, 1979 at 1:00 p.m., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Howard Kaibel, Jr., Office of Hearing Examiners, 1745 University Avenue, Room 300, Saint Paul, Minnesota 55104, phone (612) 296-6910 either before the hearing or after the hearing until the record is closed. The record will remain open for five working days after the public hearings end or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may

be obtained from the Office of Hearing Examiners at a minimal charge.

The proposed rules, if adopted, would allow for additional methods of acceptable disposal of refuse and dunage. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Agriculture, 420 State Office Building, Saint Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing. The department's authority to promulgate the proposed rules is contained in Minn. Stat. §§ 18.44-18.61. A Statement of Need explaining why the department feels the proposed rules are necessary and a Statement of Evidence outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communication or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250.00 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be di-

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

# PROPOSED RULES

rected to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

March 21, 1979

Rollin M. Dennistoun  
Deputy Commissioner of Agriculture

for Mark W. Seetin  
Commissioner of Agriculture

## Rules as Proposed

### Chapter 10: Disposal of Refuse from Transport Involved in Foreign Commerce Disposal of Refuse from Vessels at Minnesota Ports on Lake Superior Waters

#### 3 MCAR § 1.190 General.

A. Purpose and authority. It is the purpose of these rules contained herein to carry out and enforce the provisions of the Plant Pest Act, Minn. Stat §§ 18.44 to 18.61. These rules relate to the disposal of refuse and dunnage of foreign origin at Minnesota ports of entry in a prescribed manner to prevent the entry and dissemination of plant pests.

B. Definitions. For purposes of these rules, the following definitions and those in Minn. Stat. § 18.46 shall apply:

1. "Approved sewage system" means any sewage system approved by the commissioner upon his determination that the system is designed and operated in such a manner as to prevent the dissemination of plant pest.

2. "Dunnage" means structural wood products in any form used to secure cargo in any manner.

3. "Refuse" means all waste material derived in whole or in part from the fruits, vegetables, meats, or other plant or animal (including poultry) material which is carried aboard any vehicle involved in foreign commerce.

4. "Transport involved in foreign commerce" means any ship or aircraft transporting or any container carrying cargo and/or passengers into Minnesota from any point of origin outside the borders of the United States and Canada.

5. "Vehicle" means any conveyance used to transport refuse and/or dunnage from any vehicle involved in foreign commerce in Minnesota.

6. "Vermin" means any animal life, except plant pests as defined in Minn. Stat. § 18.46, subd. 13.

#### 3 MCAR § 1.191 Agri-190 Registration.

A. (a) Every person who engages in the business of removing or disposing of refuse and/or dunnage from vessels transport involved in foreign commerce shall register annually with the commissioner of agriculture, and shall furnish such information as may be required to demonstrate compliance with the certification requirements set forth in these rules.

B. (b) In conjunction with the registration an annual inspection will shall be made of the incinerator, incinerator site and refuse collection equipment utilized in the removal, transportation and disposal of refuse and/or dunnage by a member of the Minnesota Department of Agriculture the commissioner before certificate is granted. ; and, if all the requirements are satisfied a certificate of approval will shall be issued by the commissioner. This certificate must be incinerator site and retained by the certificate holder.

C. If at any time during the year the requirements of these rules regulations are not met, after notice and hearing pursuant to Minn. Stat. ch. 15, the certificate may shall be revoked. The commissioner may, when it is deemed that the continued operation of certificate holder poses an imminent threat of plant pest dissemination, suspend the certificate until the commissioner has issued an order on the certificate revocation.

(e) This section shall not apply to municipalities or any subdivisions of the state.

#### Agri 191 Disposal facilities and procedures.

##### 3 MCAR § 1.192 Operating Standards.

###### A. Refuse handling.

1. Refuse shall be delivered at least daily to the disposal facility. In no case shall refuse be held in a vehicle for longer than 12 hours or overnight.

2. Refuse collected in or transported into the State of Minnesota shall not be removed from the confines of the State's borders until the refuse has been reduced to ash or sterilized in accordance with these rules.

3. Refuse shall be handled at all times in a manner which prevents spillage. Any refuse spilled shall be picked up and placed within the vehicle and/or disposal facility immediately. The site of the spillage shall be cleaned so as to assure that the site is pest free.

4. (a) Containers used for unloading and transporting



## PROPOSED RULES

refuse from transport involved in foreign commerce shall be leakproof and shall have adequate vermin proof covers.

5. (b) Vehicles used for transporting refuse shall be leakproof and the bed or body the refuse shall be enclosed or completely covered with a tarpaulin or other covering tightly secured when it is used to prevent spillage and prevent vermin entry. Covering is not required when the refuse is contained in tight containers with vermin proof covers or in closed plastic bags so as to contain the materials in the vehicle until ultimate disposal.

### B. Approved refuse disposal.

(e) Refuse disposal shall be by means of incineration only. Incinerators shall be equipped with a power type burner of at least 150,000 BTU capacity and shall be so constructed and operated as to completely reduce refuse to ash.

The following method shall be used for refuse disposal: Incineration, providing the incinerator is capable of reducing its contents completely to ash in a 24 hour period. No refuse residue shall be removed from an incinerator for disposal unless it has been reduced to ash or slag.

### c. Dunnage disposal.

1. No pest risk. If dunnage involved in foreign commerce arriving within the boards of Minnesota is inspected and found apparently free from plant pests, it shall be released by the commissioner and need not be disposed of pursuant to these rules.

2. Pest risk. If evidence of plant pests is found, all of the dunnage material involved shall be treated in a manner prescribed.

a. Complete incineration or open burning in compliance with Minnesota Air Pollution Control rules.

b. Fumigation by chemicals and treatment schedules deemed necessary by the commissioner to eliminate the pest risk.

c. Spraying or dusting with proper chemical concentrations deemed necessary by the commissioner to eliminate the pest risk and in conformance with 3 MCAR § 1.0338.

d. Steam Sterilization in a manner approved by the commissioner to eliminate the pest risk.

e. Disposal by any other manner approved by the commissioner to eliminate the plant pest risk.

D. If the commissioner determines that the preceding methods of disposal are not available, the refuse and/or dunnage shall be required to remain on the transport involved in foreign commerce until an alternative means of disposal has been approved by the commissioner as complying with the purpose of these rules.

E. Any financial responsibility to accomplish any treatment of dunnage and/or refuse shall belong to those responsible for delivering the dunnage and/or refuse to Minnesota.

### ~~Agr 192 Definitions.~~

(a) "Refuse" means any waste material containing any plant or animal material which is carried aboard any vessel.

(b) "Vessel" means any water carrier used for transporting cargo or passengers in commerce on public waters comprising all that part of Lake Superior and the waters extending therefrom up to the point where T. H. #23 crosses the St. Louis River which are situated within the territorial boundary of the State of Minnesota.

(c) "Dunnage" includes lumber in any form and any other material used aboard a vessel to secure cargo in any manner.

## Department of Commerce Insurance Division

### Proposed Rules Governing Minimum Anticipated Loss Ratios for Accident and Health Insurance Policies

#### Order for Hearing

It is hereby ordered that a public hearing on the above-captioned rules be held in the hearing room at 500 Metro Square Building, Seventh and Robert Streets, Saint Paul, Minnesota, on May 16, 1979, commencing at 9:30 a.m.,

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

## PROPOSED RULES

and continuing until all persons have had an opportunity to be heard.

It is further ordered that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who registered their names with the Secretary of State for that purpose.

It is further ordered that the Notice of Hearing be published in the *State Register*.

Michael D. Markman  
Commissioner of Insurance

### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Large Hearing Room, Department of Commerce, 500 Metro Square Building, Seventh and Robert Streets, Saint Paul, Minnesota, on May 16, 1979, at 9:30 a.m. and continuing until all representatives of associations or interested groups or persons have had an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Ms. Natalie Gaull, Office of Hearing Examiners, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104 (612) 296-8114, the Hearing Examiner appointed to hear this matter, either before the hearing or within five (5) working days after the close of the hearing. The Hearing Examiner may extend the time for receipt of written comments for a period not to exceed twenty (20) calendar days from the close of the hearing.

The proposed rules designate certain classifications applicable to accident and health insurance policies and prescribe the minimum anticipated loss ratio standards applicable to the approval of such policy forms for sale and use in Minnesota. "Anticipated loss ratio" means the ratio of the present value of all expected future benefits, excluding dividends, to the present value of all expected future premiums. All new accident and health policy form filings, and all existing accident and health policy form filings submitted for rate revisions, are subject to the standards and filing procedures set forth in the proposed rules.

One free copy of the proposed rules in their entirety may be obtained by writing to John T. Ingrassia, Supervisor of the Life and Health Section, Insurance Division, 500 Metro Square Building, St. Paul, Minnesota 55101. Additional copies of the rules will be available at the door on the day of the hearing.

These rules are proposed pursuant to the authority vested

in the Commissioner of Insurance by the provisions of Minn. Stat. § 62A.02, subd. 3 (1978). Temporary rules relating to the subject matter of these proposed rules were promulgated and published in the *State Register* at 3 S.R. 1078, *et seq.* (amended by 3 S.R. 1204 and 3 S.R. 1430, *et seq.*) and were adopted on December 27, 1978.

Notice is hereby given that the proposed rules are subject to change as a result of the rule hearing process. The Insurance Division therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the rule hearing process.

Any person may request notification of the date on which the Hearing Examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiner at a minimal charge.

It is anticipated that adoption of the proposed rules will result in the expenditure of public monies by local public bodies.

Minn. Stat. §§ 10A.01-10A.34 require each lobbyist to register with the Ethical Practices Board within five (5) days after commencing lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

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

## PROPOSED RULES

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, phone number (612) 296-5615.

Michael D. Markman  
Commissioner of Insurance

## Department of Commerce Insurance Division

### Proposed Rules Governing Minimum Anticipated Loss Ratios

#### 4 MCAR § 1.3275 Scope and authority.

Rules 4 MCAR §§ 1.3275 through 1.3284 are promulgated pursuant to Minn. Stat. § 62A.02, subd. 3, and apply to all policies or contracts of accident and health insurance written pursuant to Minn. Stat. § 60A.06, subd. 1, clause 5a.

#### 4 MCAR § 1.3276 Definitions.

A. "Non-cancellable policy" means any individual policy or contract under which there is no unilateral right of the insurer to cancel, nonrenew, amend or change the terms, conditions, or premium rate of the policy or contract in any way.

B. "Guaranteed renewable policy" means any individual policy or contract under which there is no unilateral right of the insurer to cancel, nonrenew, amend or change the terms or conditions of the policy or contract in any way other than by changes in premium rates applicable to all policies of the same class.

C. "Nonrenewable for stated reasons only" means any individual policy or contract which expressly limits the insurer's right of cancellation or nonrenewal of all policies of the same class to stated reasons other than deterioration of health.

D. "Optionally renewable policy" means any individual policy or contract which allows the insurer the unrestricted right of cancellation or nonrenewal.

E. "Medicare Supplement policy" means any individual policy or contract which provides benefits for the costs of medical, surgical, hospital or nursing home care, and which is marketed as providing benefits which complement or supplement the benefits provided by Medicare, or which is primarily designed or marketed for sale to persons aged 65 or over.

F. "Medical Expense policy" means any policy or contract which provides benefits for the costs of medical, surgical, hospital or nursing home care. Medical expense policy does not include Medicare Supplement policies or per diem or hospital indemnity policies.

G. "Per Diem or Hospital Indemnity policy" means any policy or contract which provides benefits upon the occurrence or existence of a condition precedent, without reference to expenses incurred or services provided for hospital, surgical or medical care.

H. "Loss of Income policy" means any policy or contract which provides benefits to replace earnings lost during periods of incapacity due to injury or illness.

#### 4 MCAR § 1.3277 Filing requirements.

A. Each new policy form and each rate revision filing applicable to previously approved policy forms shall include an actuarial certification that the benefits provided are reasonable in relation to the premium charged and shall clearly indicate the anticipated loss ratio.

B. The actuarial certification shall include:

1. A description of the basis on which the ratio was determined;
2. A description of the calculation of the anticipated loss ratio;
3. A description of gross premiums, including the specific formula and assumptions or actuarial method used in calculating gross premiums;
4. The source of expected claim costs;
5. Identification of morbidity and mortality tables or experience studies used, sufficient explanation for evalua-

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# PROPOSED RULES

tion of their validity, including copies of such tables if they are not currently published;

6. The experience of the insurer on similar coverages, if requested by the Commissioner;

7. First and renewal year commissions as a percent.

C. Filings for rate revisions for a previously approved policy, rider or endorsement shall also include the following:

1. A statement of the scope and reason for the revision, and an estimate of the expected average effect on premiums for the form;

2. A statement as to whether the filing applies only to new business, only to in-force business, or to both, and the reasons therefor;

3. A history of the earned premium and incurred claims experience under the form for the most recently completed five years of experience. If requested by the Commissioner, the history of experience for each form shall also include:

- a. Written premiums;
- b. Unearned premium reserves;
- c. Earned premiums;
- d. Claim payments;
- e. Claim reserves;
- f. Incurred losses;
- g. The additional reserves;

h. Total investment income on funds available for investment less that required to maintain policy reserves;

- i. General expenses;
- j. Commission expense;
- k. Any dividends to policyholders;

l. The present number of policyholders and the number expected to lapse because of the rate increase;

m. The amount of reserve expected to be released due to any lapses;

n. Loss ratio data presented by both policy year or year of issue data as shown on a calendar year basis.

4. The dates and magnitude of each previous rate change for that form, if any.

D. Insurers shall maintain records necessary to comply with § 1.3277, C.3., above.

E. In determining the credibility and appropriateness of experience data, due consideration shall be given to the following factors:

1. Statistical credibility of premiums and benefits; e.g., low exposure, low loss frequency;

2. Experienced and projected trends relative to the kind of coverage; e.g., inflation in medical expenses, economic cycles affecting disability income experience;

3. The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations;

4. The mix of business by risk classification.

#### 4 MCAR § 1.3278 Reasonableness of premiums in relation to benefits: individual policies.

A. With respect to a new policy form relating to an individual insurance policy or contract, the benefits are presumed unreasonable in relation to the premiums charged if the anticipated loss ratio does not equal or exceed the standards shown in the following table:

Type of Coverage	Renewal Clause			
	OR	SR	GR	NC
Medicare Supplement	70%	65%	65%	55%
Medical Expense	60%	55%	55%	50%
Per Diem and Hospital Indemnity	60%	55%	55%	50%
Loss of Income	60%	55%	50%	45%
Other	60%	55%	50%	50%

1. Definition of renewal clauses:

- a. "OR" means optionally renewable;
- b. "SR" means nonrenewable for stated reasons only;
- c. "GR" means guaranteed renewable;
- d. "NC" means noncancellable.

B. With respect to rate revision filings for a previously approved policy form, premiums shall be presumed unreasonable in relation to benefits if the following standards are not met:

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1. With respect to policy forms issued on and after the effective date of the rate revision, the standards shall be the same as in § 1.3278 A.;

2. With respect to policy forms issued prior to the effective date of the rate revision, the ratios derived from the formula set forth at a. and b. below shall be equal to or greater than the standards set forth at § 1.3278 A.;

a. The anticipated loss ratio over the entire period for which the revised rates are computed to provide coverage;

b. The ratio of (1) to (2); where

(1) is the sum of the accumulated benefits, from the original effective date of the form to the effective date of the revision, and the present value of future benefits, and

(2) is the sum of the accumulated premiums from the original effective date of the form to the effective date of the revision and the present value of future premiums,

such present values to be taken over the entire period for which the revised rates are computed to provide coverage.

#### 4 MCAR § 1.3279 Reasonableness of premiums in relation to benefits: group policies.

A. The benefits of a group policy or contract are presumed unreasonable in relation to the premium charged if the anticipated loss ratio does not equal or exceed 65%.

B. The insurer shall be exempt from the filing requirements set forth at § 1.3277; provided that the insurer files with the Commissioner a certification that the anticipated loss ratio meets the applicable minimum standard, under either (1) the appropriate group form that constitutes a contract of group insurance, or (2) the appropriate contract of group insurance consisting of a variety of approved alternative forms.

#### 4 MCAR § 1.3280 Refiling approved policy forms.

A. All policy forms under which the anticipated loss ratio of such form does not meet the applicable standards set forth in § 1.3278 or § 1.3279, or under which the loss ratio experience indicates that the minimum standards set forth in § 1.3278 or § 1.3279 have not been achieved for the most recent five years of experience, shall be refiled for approval.

#### 4 MCAR § 1.3281 Disclosure.

Disclosure of the anticipated loss ratio of an individual policy shall be made in writing to the applicant at the time of application for coverage. Said written disclosure may be provided either on the application or in a separate writing which is left with the applicant.

#### 4 MCAR § 1.3282 Exemptions.

Policy forms which are nonrenewable and which do not provide coverage for a period greater than one year are exempt from the minimum standards, filing requirements and disclosure requirements set forth in §§ 1.3277 through 1.3281.

#### 4 MCAR §§ 1.3283-1.3284 Reserved for future use.

## Energy Agency

### Proposed Rule Governing Filing Fees for Applications for Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines

#### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room D of the Veterans Service Building, 20 West 12th Street and Columbus Avenue between Wabasha and Iglehart, St. Paul, Minnesota on May 11, 1979, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written material may be submitted by mail to Hearing Examiner Allan W. Klein, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-5938 either before the hearing, or within five working days after the close of the hearing unless the hearing examiner orders a longer period not to exceed 20 calendar days.

Notice: any person may request notification of the date on which the hearing examiner's report will be available, after which date the Agency may not take any final action on the

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## PROPOSED RULES

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rule for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the Agency (in the case of the Agency's submission or resubmission to the Attorney General).

The proposed amendment, if adopted, would simply delete from 6 MCAR § 2.0605 A. the following sentence: "In no event shall the total fee required of any applicant exceed \$50,000." As of this time, this sentence is unnecessary because this maximum is specified by Minn. Stat. § 116H.13, subd. 6. Furthermore, the Administrative Procedure Act discourages agencies from merely copying statutory language in their rules. However, if the statutory maximum is included in the rules, implementation of any change in the statutory maximum would have to await the outcome of a rules hearing. This would cause problems for the Agency in collecting sufficient fees to cover the costs of certificate of need applications.

Copies of the proposed amendment are now available and one free copy may be obtained by writing to the Minnesota Energy Agency, attention David L. Jacobson, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. Copies will also be available at the door on the date of the hearing.

Notice: The proposed amendment is subject to change as a result of the rules hearing process. The Agency therefore strongly urges those who may be affected in any manner by the substance of the proposed rule to participate in the rules hearing process.

The Agency's authority to promulgate the proposed amendment is contained in Minn. Stat. §§ 116H.08(a) and 116H.13, subd. 6.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the Agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the Agency at the hearing justifying both the need for and the reasonableness of the proposed amendment. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than

\$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

March 28, 1979

Algernon H. Johnson  
Director

### Rules As Proposed

#### 6 MCAR § 2.0605 Filing fees and payment schedule.

A. The fee for processing an application shall be:

1. \$10,000 plus \$50 for each megawatt of plant capacity for LEGF's; or
2. \$10,000 plus \$40 per kilovolt of design voltage for LHVTL's;

plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility. ~~In no event shall the total fee required of any applicant exceed \$50,000.~~

B. Twenty-five percent of the fee set according to either item A.1. or A.2. of 6 MCAR § 2.0605 shall accompany the application, and the balance shall be paid in three equal installments within 45, 90, and 135 days after submission of the application. The applicant shall be notified prior to the time its application is acted upon by the director of any additional fees, which fees shall be paid within 30 days of notification. The billing of such additional fees shall be accompanied by an itemized document showing the necessity for the additional assessment.

C. No certificate of need shall be issued until all fees are paid in full.

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### Energy Agency Conservation Division

#### Proposed Rules Establishing Materials, Installation, and Labeling Standards for Thermal Insulation Products

##### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room D of the Veterans Service Building, 20 West 12th Street and Columbus Avenue between Wabasha and Iglehart, St. Paul, Minnesota on May 14, 1979, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written material may be submitted by mail to Hearing Examiner Allan W. Klein, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-5938 either before the hearing, or within five working days after the close of the hearing unless the hearing examiner orders a longer period not to exceed 20 calendar days.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

The proposed rules, if adopted, would establish standards for the product quality, safety, installation, and labeling of thermal insulation products and establish test and training programs requirements and procedures to ensure that standards established by the rules will be met. The rules apply to certain products and certain persons. The regulated thermal insulation materials include mineral fibrous, mineral cellular, organic fibrous, and organic and plastic cellu-

lar materials, whether in loose-fill, flexible, rigid, or semi-rigid form. The persons to which the rules apply include: persons engaged in the production and supply of materials from which insulation is made and who promote the sale or use of insulation; manufacturers of insulation materials or component materials; jobbers, wholesalers and retailers of insulation; installers and appliers who sell and install insulation in both new and retrofit applications; those engaged in the marketing of insulation who are, or who purport to be, agents of manufacturers, suppliers, or installers of insulation; and trade associations when engaged in the practices listed above. The rules establish standards for product quality and safety by imposing general requirements for the testing of insulation materials and the reporting of the testing, and by imposing specific materials standards and physical properties requirements on each type of insulation material regulated. The rules further impose general pre-installation inspection and preparation requirements regarding heat sources, structures, vapor barriers, ventilation and wall cavities, and specific installation standards by type of insulation material. Further, the rules impose general requirements for the existence, and general information contents, of labels and their substitutes and they impose specific label content requirements by type of insulation material. The rules have a variety of effective dates and include a sunset provision for cessation of effect on December 31, 1985.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Energy Agency, attention Fredrick D. Huebner, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. Copies will also be available at the door on the date of the hearing.

Many of the standards that would be imposed by the rules are federal, and other, standards incorporated by specific reference. The materials to be incorporated by reference are available for viewing at the Minnesota Energy Agency Library. The agency library can respond to inquiries about other places for convenient viewing and copying the referenced material, or for acquiring them.

Notice: The proposed rules are subject to change as a result of the rules hearing process, public input before or at the hearing, and changes in proposed or existing incorporated standards. The agency therefore strongly urges those who may be affected in any manner by the substance of the proposed rules to participate in the rules hearing process directly or by representative, e.g., trade association.

The agency's authority to promulgate the proposed rules

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is contained in Minn. Stat. §§ 116H.08(a), 325.984-.989 (1978), especially § 325.985, subd. 1.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

March 26, 1979

Algernon H. Johnson  
Director

### Rules as Proposed (All New Material)

#### Chapter 22: Proposed Rules for Thermal Insulation Products

**6 MCAR § 2.2201 Purpose of rules.** These rules are authorized by Minn. Stat. § 325.985, subd. 1, and § 325.986, subds. 1 and 3, to establish standards for the product quality, safety, installation, and labeling of thermal insulation products, and establishing test programs and procedures to ensure that standards established by these rules shall be met.

#### **6 MCAR § 2.2202 Applicability of rules.**

A. Products. These rules shall apply to regulated thermal insulation materials, as defined in 6 MCAR § 2.2203 Q.

B. Industry members. These rules shall apply to: those persons who engage in the production and supply of materials from which insulation is made and who promote the sale or use of insulation; manufacturers of insulation materials or component materials; jobbers, wholesalers and retailers of insulation; installers and applicators who sell and install insulation, inclusive of both new and retrofit applica-

tions; and those engaged in the marketing of insulation who are, or who purport to be, agents of manufacturers, suppliers, or installers of insulation. For the purposes of these rules, trade associations, when engaged in any of the above specified practices, are considered industry members and are covered by these rules.

**6 MCAR § 2.2203 Definitions.** For the purposes of these rules, the following definitions of terms shall apply. For technical, scientific, and engineering terms left undefined, reference may be made either to the ASHRAE Handbook or Fundamentals or to ASTM C 168-67, "Standard definitions of terms relating to thermal insulation materials."

A. "ASHRAE" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

B. "ASTM" means American Society for Testing and Materials or a specification or standard adopted by the American Society for Testing Materials.

C. "US CPSC" means the United States Consumer Product Safety Commission or a standard issued for thermal insulation materials by that Commission.

D. "Energy Agency" means the Minnesota Energy Agency as provided in Minn. Stat. ch. 116 H.

E. "Federal Specification" or "FS" means a procurement specification adopted or proposed by the United States General Services Administration.

F. "HUD" means the United States Department of Housing and Urban Development, or a specification adopted or proposed by that department.

G. "Installation" or "Application" means placing insulation materials into a building system or structure for the purpose of increasing the thermal resistance of the building. Installation methods include, but are not limited to, pouring, laying, affixing by chemical bonding or mechanical devices, pneumatic blowing, or in situ foaming.

H. "Installer" means an insulation installer, an industry member who sells insulation materials and installation services in conjunction.

I. "Insulation" means thermal insulation, a material or assembly of materials used primarily to provide resistance to heat flow in building structures, including but not limited to mineral fibrous, mineral cellular, organic fibrous, organic and plastic cellular, and reflective materials, whether in loose-fill, flexible, rigid, or semi-rigid form.

J. "Intermediate consumer" of insulation materials means a purchaser of insulation materials who resells or



## PROPOSED RULES

otherwise transfers possession of insulation materials to an ultimate consumer.

K. "Label" means written, printed, or graphic matter attached to or inscribed upon an article or its container.

L. "Label notice" means a written or printed statement accompanying the sale of an insulation product which contains information equivalent to that of a label; a label notice is used where no label is affixed to the insulation material or where such notice is otherwise required by these rules.

M. "Manufacturer of insulation" means an industry member who produces insulation materials in their final form for sale to intermediate and ultimate consumers or is a urea-based foam insulation manufacturer.

N. "Materials standard" means a standard or specification of product quality and safety for regulated thermal insulation materials adopted or proposed by the Energy Agency.

O. "R" or "R value" means the measure of resistance to heat flow through a material, or assembly of materials. It may be stated as the reciprocal of the heat flow through a material expressed in British thermal units per hour, per square foot, per degree fahrenheit, at mean temperature. R value may be calculated as follows:

$$R = \frac{1}{C} = \frac{T}{K} \quad \text{Where: } T = \text{thickness of insulation in inches.}$$

K = thermal conductivity value in BTU in./hr sq.ft.°F at 75°F mean temperature.

C = thermal conductance value in BTU/hr. sq. ft. °F.

P. "Reasonable substantiation of a claim" means successful completion (a) of tests prescribed for such claims by these rules, or (b) of the appropriate testing methods of the American Society for Testing and Materials.

Q. "Regulated thermal insulation material" means an insulation material for which the Minnesota Energy Agency has proposed or adopted a materials standard pursuant to Minn. Stat. § 325.985, subd. 1.

R. "Representative thickness" means a thickness of in-

sulation which is typical of an actual end use of the insulation material.

S. "Reseller" means an intermediate consumer of insulation who resells insulation for direct use by the ultimate consumer, without the sale of insulation installation services.

T. "Residential structure" means a low-rise residential building, including detached single-family and two-family dwellings, lodging houses, and multiple-family buildings not more than three stories in height.

U. "Testing laboratory" means a laboratory with the facilities, equipment, and personnel available, either directly or through subcontractors, to perform the test procedures specified by these rules.

V. "Ultimate consumer of insulation" means the final purchaser of insulation for installation within a residential structure.

W. "US DOE" means the United States Department of Energy, or a materials criterion or specification for thermal insulation materials adopted or proposed by the department.

X. "Urea-based foam insulation manufacturer" means the manufacturer of the component resins, catalysts, and surfactants from which urea-formaldehyde foam insulation is produced by in situ foaming or by foaming, curing and processing into a loose-fill material.

Y. "UBC" means the Uniform Building Code, authored by the International Conference of Building Officials.

Z. "Vapor barrier" means any material, including paint, which has a permeability rating ("perm") of one (1) or less when tested as specified by ASTM E 96-66 or ASTM C 355-64.

### 6 MCAR § 2.2204 Insulation materials standards.

A. Scope. This rule sets forth standards for the product quality and safety of thermal insulation materials specified herein, as well as minimum procedures for testing insulation materials under these standards. Regulated thermal insulation materials which do not demonstrate by tests conformance to these standards shall not be sold, used, distributed or installed in the State of Minnesota.

B. General testing and reporting requirements for regulated thermal insulation materials.

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1. All regulated thermal insulation materials shall be tested for compliance to the standards set forth in this rule within 120 days of the effective date of these rules. Testing procedures shall be as follows:

a. Testing shall be performed only at laboratories possessing equipment, facilities, and personnel specified to perform testing required by these rules.

b. The thermal insulation material chosen for testing shall be representative of material produced by the manufacturer during normal production runs.

(1) Manufacturers shall certify in writing to the Energy Agency that the material is representative of the normal production of the plant.

(2) Manufacturers shall submit material to the testing laboratory for testing in its original bag, package, or container; or have sampling of the insulation performed in the production facility by the testing laboratory.

c. Testing shall be performed in accordance with the methods specified under materials standards in 6 MCAR § 2.2204 B.7. and 6 MCAR §§ 2.2204 C-L., unless otherwise specified by 6 MCAR § 2.2204 B.6.

2. Reporting of test results. Test result reports shall disclose the following information:

a. The name and address of the testing laboratory.

b. The name and address of the manufacturer.

c. The nature of the business relationship between the manufacturer and the testing laboratory; i.e., contractual for the purpose of testing, subsidiary, or in-house.

d. The name, address, and telephone number of a designated contact person at the testing laboratory.

e. The specific test(s) performed by the laboratory.

f. The date of testing.

g. The results of the tests.

3. Availability of test reports. Test reports shall be made available to:

a. The Energy Agency. Upon the request of the Director, the manufacturer or his agent shall provide all available information pertaining to the testing program to the Energy Agency. Such information shall include, but shall not be limited to, test procedures and protocols, test equipment specifications and calibrations, the qualifications of

test laboratory personnel exclusive of personal identifiers, and full test data.

b. Upon the written request of intermediate and ultimate consumers of insulation, the manufacturer shall make available a summary of the test methods and the results of the tests required by this rule for the materials produced by the manufacturer.

4. Conjunctive compliance testing. Manufacturers of thermal insulation products shall have the option of testing for compliance with this rule as part of a testing program established by the manufacturer 1) to comply with insulation materials standards established by another federal, state, or local governing body, or 2) to verify and substantiate the manufacturer's compliance with these specifications provided that:

a. Test results transmitted to the Energy Agency are not more than 180 days old, unless otherwise specified by rule.

b. The manufacturer certifies to the Energy Agency in writing that the insulation material tested is representative of the insulation material produced on the date that the test results are transmitted to Energy Agency.

c. The test procedure, or the performance level of the material, does not differ in any substantive way from that specified in the appropriate section of this rule.

d. The requirements of 6 MCAR § 2.2204 B.2. are satisfied.

e. The test results demonstrate that the insulation material complies with the standards established by this rule.

5. Substantiation of claims by test. Proof of the claims "does not burn," "non-combustible," or "incombustible" may be obtained by successful completion of ASTM E 136-73, "Tests for non-combustibility of elementary materials." Laminations or other facings affixed to the insulation material shall be removed and separately tested. If the insulation material does not pass the test, or if the lamination does not pass the test, no such claims shall be made.

6. Department of Energy insulation standard notice. If a regulated thermal insulation material complies with a specification for that material established by the United States Department of Energy ("US DOE"), it shall be deemed to comply with the standards established by the Energy Agency, provided that:

a. The US DOE specification is in final form and has been adopted by the Secretary of the US DOE as a rule

## PROPOSED RULES

pursuant to Title II, Section 212 (b)(2)(A) of the National Energy Conservation Policy Act of 1978.

b. The specification of the US DOE applies to all the characteristics of the insulation material regulated by the appropriate Energy Agency Standard. If a characteristic or the product is not covered by a portion of the US DOE specification, then no exception for that characteristic shall be granted from this rule.

c. The quality or safety level of the US DOE specification governing the product is at least as rigorous as provided by the Energy Agency standard.

d. Compliance to the US DOE standard be verified by the test procedures incorporated into that specification.

e. The qualifications of the testing laboratory used by the manufacturer to test for compliance are equivalent to those required by Energy Agency rules.

f. The manufacturer submits documentation of compliance with the US DOE rule specification in the same or substantially similar fashion as is required by 6 MCAR § 2.2204 B.2.

7. Testing for thermal performance. All thermal performance tests required by a materials standard shall be conducted in accordance with this rule, unless additional requirements are imposed within the body of a materials standard.

a. The following ASTM test methods shall be used: ASTM C 177-76, ASTM C 236-66 (Rpd. 1971), and ASTM C 518-76. Manufacturers shall select the appropriate test method for the material unless a specific method or procedure is referenced within a materials specification.

b. Thicknesses. R value testing shall be performed at representative thicknesses of use, which shall be not less than:

- (1) Loose-fill materials, 3.5 inches.
- (2) Batt and blanket fibrous materials, 3.5 inches.
- (3) Cellular plastic board materials, 1 inch.
- (4) Urea-based foam materials, 3.5 inches.

c. One inch unit values. Unit R per inch shall be derived from R value testing performed as specified in

6 MCAR §§ 2.2204 B.7.b. (1)-(4), and shall reflect that effect of additional thicknesses upon unit R values.

d. Conditioning and testing temperatures. Unless otherwise provided within a materials standard, all thermal performance testing shall be performed on samples which have been conditioned at  $73.4^{\circ}\text{F} \pm 3.6^{\circ}\text{F}$  and a relative humidity of  $50\% \pm 5\%$  for 24 hours immediately preceding the tests. The average testing temperature shall be  $75^{\circ}\text{F} \pm 2^{\circ}\text{F}$  with at least a  $40^{\circ}\text{F}$  temperature difference between the hot side and the cold side of the testing apparatus.

e. Except as otherwise provided within a materials standard, the thermal performance test results shall be the average of the values obtained from at least three tests.

f. Tolerances. Thermal performance as measured by test shall not be more than 5% below the stated or claimed thermal performance of the insulation material.

C. Materials standard — organic cellulose thermal insulation, for pneumatic or poured application.

1. Incorporated standards. Specified portions of the following standards are incorporated by reference.

a. The interim Safety Standard for Cellulose Insulation of the US CPSC, 43 Federal Register pp. 35240-35258, August 8, 1978.

b. Proposed Amendment, Proposed Interim Safety Standard for Cellulose Insulation of the US CPSC, 44 Federal Register pp. 12889-12903, March 8, 1979.

c. ASTM C 739-77, Standard Specification for Cellulosic Fiber (wood base) Loose Fill Thermal Insulation.

d. ASTM D 591-67 (Rev. 1974) Test for starch in paper.

e. FS HH-I-515D.

2. Materials. The insulation material shall be clean chemically treated cellulosic fiber, virgin or recycled, suitable for pneumatic or poured application. Foreign or contaminated materials shall be excluded. Chemicals shall be introduced to improve flame and combustion resistance, and may be introduced to improve handling characteristics. The basic material shall be capable of proper adhesion to the additive chemicals. The particles of the finished product shall not be so fine as to create a dust hazard, and the added chemicals shall not pose a health hazard.

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### 3. Physical requirements.

a. Flame resistance, flame resistance permanency, and corrosion properties of the cellulose insulation material shall be determined in accordance with the US CPSC Interim Safety Standard for Cellulose Insulation, 43 Federal Register pp. 35240 to 35258 (August 8, 1978). Values achieved shall not exceed those established by the US CPSC.

b. Settled density. Settled density shall be determined in accordance with section 1209.4, Proposed Amendment, Interim Safety Standard for Cellulose Insulation, 44 Federal Register pp. 12889-12905 March 8, 1979.

c. Thermal performance. R value shall be determined in accordance with rule 6 MCAR § 2204 B.7. at the settled density of the material as determined above.

d. Moisture absorption. The percent moisture absorption of the material shall be no more than 15% by weight when tested in accordance with section 10.5 of ASTM C 739-77.

e. Odor. A detectable odor of an objectionable nature shall be cause for failure to comply with this standard. The material shall be tested in accordance with ASTM C 739-77, section 10.6. The odor must be observed by two of the three panel members.

f. Starch. Starch presence shall be tested for, using the qualitative test method of ASTM D 591-67. If starch is found to be present, the manufacturer shall chemically treat the material for vermin resistance.

g. Fungi resistance. The insulation material shall be tested for fungi resistance as specified in method 508 of Military Standard 810 referenced in section 4.6.6, FS HH-1-5150, except that spore suspensions shall be prepared using distilled water. The outside surface of gypsum wallboard untreated for fungi resistance shall be used for the control material. The insulation material shall show no more growth than the control material following exposure.

4. Notice of preemption. 6 MCAR §§ 2.2204 C.1.a. and 3.a. and b. shall be preempted by a final standard for cellulose insulation material adopted by the US CPSC. In the event of preemption, manufacturers of cellulose insulation materials whose products are used or installed in Minnesota shall submit documentation to demonstrate compliance to the final US CPSC standard.

D. Materials standard — spray on cellulose, water or adhesive mix.

1. Incorporated standards. Specified portions of the following standards are incorporated by reference.

a. The Interim Safety Standard for Cellulose Insulation of the US CPSC, 43 Federal Register pp. 35240-35258, August 8, 1978.

b. United States Department of Housing and Urban Development ("HUD") "Use of Materials Bulletin No. 80" (proposed), September 26, 1978.

c. ASTM D 591-67 (Rev. 1974) Test for starch in paper.

2. Materials. The basic material shall consist of virgin or recycled cellulose fiber, excluding contaminated materials and extraneous foreign matter. Suitable chemicals shall be introduced to improve flame resistance, cohesion, adhesion, and handling characteristics. The added chemicals shall not pose a health hazard. The basic material shall be processed into a form suitable for installation by pneumatic conveying equipment and simultaneous mixing with water and/or adhesive.

### 3. Physical requirements.

a. Flame resistance, flame resistance permanency and corrosion properties of the insulation material shall be determined in accordance with the US CPSC Interim Safety Standard for cellulose insulation. Values for these properties shall not exceed those established by the US CPSC. The material shall be tested in its finished form, at a minimum one (1) inch thickness, for flame testing.

b. Density. Density shall be determined in accordance with section 9.1 of the "HUD Use of Materials Bulletin No. 80." The density established by this test shall be used in the preparation of manufacturer's installation guidelines and in the determination of thermal performance.

c. Thermal performance. Thermal performance shall be determined in accordance with 6 MCAR § 2.2204 B.7., at the test-defined density of the material. R value testing shall be performed at a thickness of material of two (2) inches, unless the material is designed for use at a lesser maximum thickness and the material is so designated on the label or label notice by the manufacturer. It shall then be tested at the maximum thickness of suggested use.

d. Moisture absorption. Moisture absorption shall be determined in accordance with HUD Use of Materials Bulletin No. 80, section 9.5. Moisture absorption shall not exceed 15% by weight.

e. Odor emission and fungal resistance of the material shall be tested for and meet the performance levels required in 6 MCAR §§ 2.2204 C.3.e. and g.

f. Starch. The basic material shall be tested for starch, using the qualitative test method of ASTM D 591-

## PROPOSED RULES

67. If starch is found to be present, the manufacturer shall chemically treat the material for vermin resistance.

E. Materials standard — mineral fiber loose-fill thermal insulation, for ambient temperature application.

1. Incorporated standards. Specified portions of the following standards are incorporated by reference.

a. FS HH-I 1030 B (proposed), dated June 12, 1978.

b. ASTM C 553-70, Standard Specification for Mineral Fiber Blanket and Felt Insulation, (Industrial Type).

c. ASTM E 84-77a, Standard Test Method for Surface Burning Characteristics of Building Materials.

2. Materials. Mineral fiber insulation shall be made from rock, slag, or glass, processed into fibers from a molten state. The insulation shall be mechanically processed to produce fibers suitable for pneumatic or poured application. Chemical binders may be added. The finished product shall contain no more than 20 percent nonfibrous content by weight, retained on a U.S. No. 50 sieve.

3. Physical requirements.

a. Settled density. The settled density shall be determined in accordance with the method specified in Section 4.8.1, of FS HH-I 1030 B (proposed). Settled densities established by this test method shall be used in determining the thermal resistance (R value) of the material. The effective date of this section shall be October 15, 1979.

b. Resistance to combustion, flame. The manufacturer shall have the option of using the critical radiant flux testing method or the ASTM E 84-77a testing method. Test procedures and performance levels for each type of test shall be as specified.

(1) Critical radiant flux of the insulation material shall be equal to or greater than 0.12 watts/cm<sup>2</sup>. Testing shall be conducted in accordance with Section 4.8.8 of FS HH-I 1030 B (proposed).

(2) Flame spread shall not exceed a value of 25 when tested in accordance with ASTM E 84-77a. Screen connection factors shall be used.

c. Resistance to combustion, smoldering. Smolder-

ing combustion shall be tested for in accordance with the Standard Method of Test for Smoldering Combustion Characteristics of Materials Used for Thermal Insulation, as specified in section 4.8.9 of FS HH-I 1030 B (proposed). The insulation material shall show no more than a 15% weight loss on each of three specimens.

d. Moisture absorption. Moisture absorption shall not exceed 5% by weight when tested in accordance with section 4.8.3 of FS HH-I 1030 B (proposed).

e. Corrosion. Corrosiveness shall be tested for in accordance with Section 4.8.5 of FS HH-I 1030 B. The steel plate in contact with the insulation material shall show no more corrosion than a steel plate in contact with sterile cotton tested in the same manner.

f. Odor emission. Odor shall be tested for in accordance with section 4.8.4 of FS HH-I 1030 B (proposed). An objectionable odor shall be regarded as cause for failure of the insulation material to comply with this standard when observed by four or more of the panel members.

g. Fungi resistance. Fungi resistance shall be tested for in accordance with method 508 of Military Standard 810 as referenced in section 4.8.6 of FS HH-I 1030 B (proposed) except that spore suspensions shall be prepared using distilled water. The facings of commercial gypsum wallboard untreated for fungal resistance shall be used as the control material. The insulation shall show no more growth than the control material.

h. Thermal performance. R values shall be determined in accordance with 6 MCAR § 2.2204 B.7.

F. Materials standard — mineral fiber batt and blanket thermal insulation (ambient temperature application).

1. Incorporated standards. Specified portions of the following standards are incorporated by reference.

a. FS HH-I-521 F (proposed) dated June 13, 1978.

b. ASTM C 167-64, Rev. 1976, Method of Test for Thickness and Density of Blanket or Batt-type Thermal Insulation Materials.

c. ASTM E 84-77a, Standard Test Method for Surface Burning Characteristics of Building Materials.

d. ASTM E 96-66, Rev. 1972, Method of Test for Water Vapor Transmission of Materials in Sheet Form.

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2. Materials. The basic material shall be fibers made from mineral substances such as rock, slag, or glass processed from a molten state into a fibrous form. The insulation blankets shall be flexible units composed of felted mineral fibers in rolls or flat cut pieces (batts). Vapor barrier membranes may be added.

### 3. Physical requirements.

a. Density. Density shall be determined in accordance with ASTM C 167-64. The density as determined by test shall be used in the determination of thermal resistance.

b. Combustion resistance, flame. The manufacturer shall have the option of utilizing the ASTM E 84-77a test or the critical radiant flux testing method. Test procedures and performance levels for each type of test shall be as specified.

(1) Critical radiant flux of the insulation material shall be equal to or greater than 0.12 watts/cm<sup>2</sup>. Testing shall be conducted in accordance with section 4.6.6 of FS HH-I-521 F (proposed).

(2) Flame spread shall not exceed a value of 25 when tested in accordance with ASTM E 84-77a.

(3) Laminated facings and membranes attached to the insulation material and intended for exposed application shall be exposed to the flame or panel during testing. For the purposes of this section, "intended for exposed application" shall mean that the insulation batt or blanket is not clearly marked that it is intended for use only behind suitable ignition barriers. Values obtained shall not exceed the maximum values permitted for the insulation material.

c. Combustion resistance, smoldering. The insulation material shall be tested in accordance with section 4.6.7 of FS HH-I-521 F (proposed). The insulation material shall show no evidence of flaming combustion, and shall show no more than a 15% weight loss on each of three specimens.

### d. Moisture.

(1) Moisture absorption. Moisture absorption shall be tested for as specified in section 15 of ASTM C 553-70, and shall not exceed 5% by weight.

(2) Permeability of vapor barriers. Vapor barriers affixed to the insulation material shall be tested in accordance with ASTM E 96-66. Vapor permeability shall not exceed one (1) perm.

e. Corrosion. Corrosiveness of the insulation material shall be determined in accordance with section 4.6.4 of FS HH-I-521 F (proposed). The steel plate in contact with the insulation material shall show no greater corrosion

than a steel plate in contact with sterile cotton that has been tested in the same manner.

f. Odor. A detectable odor of an objectionable nature shall constitute failure of the insulation material to comply to this standard. Odor shall be tested for as specified in section 4.8.4 of FS HH-I-521 F (proposed). The odor must be observed by four or more of the panel members.

g. Fungi resistance. Fungi resistance shall be tested for in accordance with method 508 of Military Standard 810 as referenced in section 4.6.5 of FS HH-I-521 F (proposed), except that spore suspensions shall be prepared using distilled water. The facings of commercial gypsum wallboard untreated for fungal resistance shall be used as the control material.

h. Thermal performance. R values shall be determined in accordance with 6 MCAR § 2.2204 B.7.

G. Materials standard — urethane-based foam insulation materials (board type).

1. Incorporated standards. Specified portions of the following standards are incorporated by this reference.

a. ASTM C 209-73, Testing Insulation Board, Structural and Decorative.

b. ASTM C 355-64, Standard Methods of Test for Water Vapor Transmission of Thick Materials.

c. ASTM E 84-77a, Test for the Surface Burning Characteristics of Building Materials.

d. ASTM D 2126-75, Response of Rigid Cellular Plastics to Thermal and Humid Aging.

e. Section 1717, 1976 Uniform Building Code.

2. Materials. The insulation material shall be manufactured mainly by the reaction of an organic polyisocyanate with a polyol resin. The insulation board shall be of uniform texture, reasonably free of foreign matter, unexpanded material, broken edges and corners, holes, voids and depressions. The insulation board may have laminated membranes and facings affixed; such facings shall be reasonably free of slits and voids.

### 3. Physical requirements.

a. Combustion resistance. Surface burning characteristics of the insulation material shall be determined in accordance with ASTM E 84-77a, and shall not exceed values of:

Flame Spread Classification	75
Smoke Developed	450

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The provisions of this section shall not apply to a product recognized by the International Conference of Building Officials as of the effective date of these rules, as complying with the provisions of section 1717 of the 1976 Uniform Building Code based solely upon diversified testing. The manufacturer of any such product seeking compliance with these rules based solely upon diversified testing shall provide to the Energy Agency documentation of approval by the International Conference of Building Officials.

b. Thermal performance. R values shall be tested for in accordance with 6 MCAR § 2.2204 B.7. with the following additional requirements.

(1) Conditioning. All foam materials using any substance other than air or pentane as an expanding agent, or other than air as an insulating agent, shall be separately conditioned prior to testing at  $73.4^{\circ}\text{F} \pm 3.6^{\circ}\text{F}$  in a room well ventilated with free air for a minimum of 180 days; or by conditioning at  $73.4^{\circ}\text{F} \pm 3.6^{\circ}\text{F}$  and  $50\% \pm 5\%$  relative humidity and at  $140^{\circ}\text{F}$  dry heat soak and testing at 30, 60, and 90 day intervals. 6 MCAR § 2.2204 E.3.b.(1) shall become effective 180 days from the date of publication of these rules in the *State Register*. Test results up to one year old will be accepted.

(2) Testing of materials with laminated facings. Insulation board materials for which additional R value is claimed for facings and airspaces shall be tested for thermal performance as a material without airspaces and without additional value from the emittance of the facings. The manufacturer shall have the option to report additional R values for a given system or assembly of materials according to ASTM C 236-66 provided that (a) all details of assembly of system are disclosed on the label or label notice; (b) the limitations as to the attainment of that result are disclosed on the label or the label notice; and (c) the primary R value reported on the label or label notice is that of the material without facings or airspaces.

c. Water absorption. Water absorption of the material shall be determined in accordance with the 24 hour test of ASTM C 209-72. The water absorption shall be reported to the Energy Agency to comply with these rules.

d. Water vapor transmission.

(1) Materials with attached sheet-type vapor barriers. The vapor barrier shall be tested in accordance with ASTM E 96-66. Water vapor permeance shall not exceed 1 perm.

(2) Materials designated as vapor barriers without attached sheet-type vapor barriers. If the material has no attached facings but is designated a vapor barrier, the water vapor transmission shall not exceed 1 perm per ASTM C 355-64.

e. Dimensional stability. The insulation material shall be tested in accordance with ASTM D 2126-75, procedures C and X; procedure X temperatures shall be  $140^{\circ}\text{F}$ . Samples shall be 12 inches by 12 inches minimum size, and shall be tested with any laminated facings attached. The average percent change in length or width shall not exceed  $\pm 10\%$  in 7 days. Delamination of faced samples shall not exceed 25% of the surface area of the sample.

H. Materials standard — polystyrene expanded bead or chip loosefill thermal insulation, for pneumatic or poured applications.

1. Incorporated standards. Specified portions of the following standards are incorporated by this reference.

a. ASTM E 84-77a, Standard Method of Test for the Surface Burning Characteristics of Building Materials.

b. Method of Test for Critical Radiant Flux of Exposed Attic Floor Insulation, section 4.8.7 of FS HH-I-515 D.

c. 6 MCAR § 2.2204 I, Materials standard, polystyrene foam plastic thermal insulation (board type).

d. Section 1717, 1976 Uniform Building Code.

2. Materials, classification.

a. Basic material. The basic material shall be beads or chips of expanded polystyrene cellular plastic, manufactured by grinding or chipping of board stock and scrap material, or by the expansion of beads directly to form a loose-fill product. The material shall be reasonably free of unexpanded material and foreign matter.

b. Class I material. Class I insulation shall meet the following flammability standard, per ASTM E 84-77a, tested in loose-fill form with screen correction factors.

Flame Spread	25
Smoke Developed	450

The manufacturer shall have the option of using the Method of Test for Critical Radiant Flux of Exposed Attic Floor

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Insulation, in accordance with section 4.8.7 of FS HH-I-515 D. Class I materials shall have a critical radiant flux greater than or equal to 0.12 watts/cm<sup>2</sup>.

c. Class II material. Class II insulation shall meet the following combustion standards per ASTM E 84-77a, tested in loose-fill form.

Flame Spread	75
Smoke Developed	450

The classification of the material shall be clearly marked on the label or label notice accompanying the insulation.

### 3. Physical requirements.

a. The material shall be demonstrated by the manufacturer to be capable of compliance with 6 MCAR § 2.2204 I. Substandard or otherwise flawed materials shall not be used.

b. Thermal performance. The material shall be tested in accordance with 6 MCAR § 2.2204 B.7., and with 6 MCAR §§ 2.2204 I.3.b.(1)-(2), where applicable.

I. Materials standard — polystyrene foam plastic (board type) thermal insulation.

1. Incorporated standards. Specified portions of the following standards are incorporated by this reference.

a. ASTM C 272-53 (Rev. 1976) Water Absorption of Core Materials for Structural Sandwich Constructions.

b. ASTM D 2126-75, Response of Rigid Cellular Plastics to Thermal and Humid Aging.

c. ASTM E 84-77a, Test for Surface Burning Characteristics of Building Materials.

2. Materials. Polystyrene thermal insulation (board type) shall be made either by the expansion of polystyrene beads or granules in a mold, or by the expansion of polystyrene resin in an extrusion process. The insulation shall be uniformly fused or extruded, homogeneous and essentially unicellular. Insulation boards shall be reasonably free of foreign matter, unexpanded material, holes, voids, broken edges and corners, and depressions. The insulation board may have laminated facings and membranes affixed; such facings shall be reasonably free of slits and voids.

### 3. Physical requirements.

a. Combustion resistance. Surface burning characteristics of the insulation material shall be determined in accordance with ASTM E 84-77a, and shall not exceed the values of:

Flame Spread Classification	75
Smoke Generation	450

The provisions of 6 MCAR § 2.2204 I.3.a. shall not apply to any product recognized by the International Conference of Building Officials as complying with section 1717 of the 1976 Uniform Building Code as of the effective date of these rules, based solely upon diversified testing. The manufacturer of any product seeking to demonstrate compliance with these rules by diversified testing shall provide documentation to the Energy Agency to substantiate this requirement.

b. Thermal performance. Thermal performance shall be tested for in accordance with 6 MCAR § 2.2204 B.7. with the following additional requirements:

(1) Conditioning. All foam materials using any substance other than air or pentane as an expanding agent shall be separately conditioned prior to testing at 73.4°F ± 3.6°F in a room well ventilated with free air for 180 days or, by conditioning at 73.4°F ± 3.6°F and 50% ± 5% relative humidity and at 140° dry heat soak, testing at 30, 60, and 90 day intervals. 6 MCAR § 2.2204 I.3.b.(1) shall become effective 180 days from the date of publication of these rules in the *State Register*. Test results up to one year will be accepted.

(2) Testing of materials with laminated facings. Insulation board materials for which additional value is claimed for facings and air-spaces and without additional credit claimed for the emittance value of the facings. The manufacturer may at his option report additional R values for a given system or assembly of materials according to ASTM C 236-66 provided that; a) all details of assembly or system are disclosed on the label or label notice; b) the limitations as to the attainment of that result are disclosed on the label or the label notice; and c) the primary R value reported on the label or label notice be that of the material without facings or airspaces.

c. Water absorption. Water absorption of the material shall be tested in accordance with ASTM C 272-53. After immersion for 24 hours water absorption shall not exceed 4.0% by volume.

d. Water vapor transmission.

(1) Materials with attached sheet-type vapor barriers. The vapor barrier shall be tested in accordance with ASTM E 96-66. Water vapor permeance shall not exceed 1 perm.

(2) Materials designated as vapor barriers without attached sheet-type vapor barriers. If the material has no attached facings but is designated a vapor barrier, the water



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vapor transmission of the material shall not exceed 1 perm per ASTM C 355-64.

e. Dimensional stability. The thermal insulation board shall be tested for dimensional stability in accordance with Procedures B, E, and F of ASTM D 2126-75 with the exceptions that the specimens shall be 12 inches by 12 inches by 1 inch, and Procedure F temperatures shall be 140°F, and that samples shall be exposed to these conditions for 7 days. The maximum linear shrinkage shall be 4.0%.

J. Materials standard — perlite loose-fill thermal insulation.

1. Incorporated standards. Specified portions of the following standards are incorporated by this reference.

a. ASTM C 520-65 (Rev. 1975); Method of Test for Density of Granular Loose-fill Thermal Insulation.

b. ASTM E 84-77a, Surface Burning Characteristics of Building Materials.

c. FS HH-I-574 B.

2. Materials. Perlite loose-fill thermal insulation shall be produced by the expansion of natural perlite ore and may be treated to produce specific properties or characteristics. It shall not be damp or dirty following production.

3. Physical characteristics.

a. Density. Density shall be tested in accordance with ASTM C 520-65. The density determined by this test shall be used in determining thermal performance by test.

b. Flame resistance. If the insulation material has any additives introduced to the material for any reason, it shall be tested according to ASTM E 84-77a. Screen correction factors shall be used. The treated material shall not exceed the following value:

Flame Spread Classification	25
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c. Thermal performance. Thermal performance of the material shall be tested at its test-determined density according to 6 MCAR § 2.2204 B.7.

d. Water repellency. If the insulation material has been treated for water repellency, it shall be tested in accordance with section 4.4.3 of FS HH-I-574 B. Repellency shall not be less than 175 milliliters of water repelled.

4. Disclosures by the manufacturer. The manufacturer shall disclose to the Energy Agency any treatment of the perlite material and the purpose of the treatment, at the time of submission of materials for compliance. Failure to disclose treatments of the material shall result in a failure of the product to comply with these rules.

K. Materials standard — vermiculite loose fill thermal insulation material.

1. Incorporated standards. Specified portions of the following standards are incorporated by this reference.

a. FS HH-I-585 C.

b. ASTM C 520-65 (Rev. 1975) Method of Test for Density of Granular Loose-fill Thermal Insulation.

c. ASTM E 84-77a., Surface Burning Characteristics of Building Materials.

2. Materials. Vermiculite loose-fill thermal insulation shall be produced by the expanding or exfoliating of natural vermiculite or by grading and heating. It may be treated to produce specific properties or characteristics. It shall not be damp or dirty following production.

3. Physical characteristics.

a. Density. Density shall be tested in accordance with ASTM C 520-65. The density determined by this test shall be used in determining thermal performance by test.

b. Flame resistance. If the insulation material has any additives or treatments introduced to the material for any reason, it shall be tested according to ASTM E 84-77a. Screen correction factors shall be used. The treated material shall not exceed the following value:

Flame Spread Classification	25
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c. Thermal performance. Thermal performance of the material shall be tested at its test-determined density according to 6 MCAR § 2.2204 B.7.

d. Water repellency. If the insulation material has been treated for water repellency it shall be tested in accordance with section 4.4.5 of FS HH-I-585 C. Water repelled shall not be less than 175 milliliters.

4. Disclosures by the manufacturer. The manufacturer shall disclose to the Energy Agency treatment of the ver-

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miculite material and the purpose of the treatment at the time of submission of data for compliance. Failure to disclose treatments of the material shall constitute failure of the product to comply with these rules.

L. Materials standard — urea-based foam thermal insulation material.

1. Incorporated standards. The following standards are incorporated by this reference.

a. HUD "Use of Materials Bulletin No. 74."

b. ASTM D 1622-63, (Rev. 1975) Apparent Density of Rigid Cellular Plastics.

c. ASTM E 84-77a., Surface Burning Characteristics of Building Materials.

2. Materials. Acceptable materials shall be urea-based thermo-setting foam, suitable for filling closed cavities through small holes and suitable also for filling open cavities by trowelling during foaming prior to enclosure.

3. Uses. Uses shall be as specified above, with the stipulation that urea-based thermal insulation materials shall not be used in attics or ceiling, but only in enclosed building cavities such as walls and partitions. This provision shall also apply to pre-cured, loose-fill, urea-based products.

4. Physical requirements of urea-based thermal insulations.

a. Quality control. Manufacturers shall ship the resin in sealed containers to their distributors and applicators. If the resin is in a dry, or in a concentrated form, the manufacturer shall provide a system to test mixing water to assure product consistency.

b. Free aldehyde content shall not exceed 1.0% when tested in accordance with section 6.2.1. of HUD "Use of Materials Bulletin No. 74."

c. Curing properties.

(1) Setting time. When tested in accordance with section 6.2.2, HUD "Use of Materials Bulletin No. 74," the foam shall set in not less than 10 seconds and not more than 90 seconds in closed cavities, and not less than 10 seconds and not more than 90 seconds in open cavities. At the setting time, the surface of the foam at the fracture shall be smooth and homogeneous.

(2) Water drainage. When tested as specified in section 6.2.4 HUD "Use of Materials Bulletin No. 74", no water shall leak from the cavity.

(3) Shrinkage during curing. When tested in accordance with HUD "Use of Materials Bulletin No. 74", section 6.2.5, the lineal shrinkage in any direction shall not exceed 4.0%.

(4) Inhibition of fungal growth. Testing shall be as specified in HUD "Use of Materials Bulletin No. 74", section 6.2.6. The area of fungal growth in the test frame containing the foam specimen shall not be greater than 10% of that in the control test frame, and there shall be no growth on the foam itself.

d. Cured from properties.

(1) Density. When tested as specified in ASTM D 1622-63, the density of the dry foam shall be within the range of 0.7-0.9 lbs/ft<sup>3</sup> (10.4 - 15 kg/m<sup>3</sup>).

(2) Corrosiveness. The material shall be tested as specified in HUD "Use of Materials Bulletin No. 74", section 6.2.8 (all). For aluminum, copper, and steel there shall not be any perforations when the metal specimens are observed over a chrome reflected 40 W appliance light bulb. For galvanized steel there shall be no pitting of the metal specimen and the loss in mass shall not exceed 0.2g (0.01 oz.).

(3) Water absorption. Water absorption will be determined by means of the floating test. When tested as specified in section 6.2.9.1, HUD "Use of Materials Bulletin No. 74" the water absorption shall not exceed 15% by volume.

(4) Combustion resistance. When tested as specified in ASTM E 84-77a, the flame spread classification shall not exceed 25. Smoke generation shall not exceed 450.

e. Thermal performance. Thermal performance shall be determined in accordance with 6 MCAR § 2.2204 B.7.

### 6 MCAR § 2.2205 Installation standards.

A. Scope. This rule sets forth standards for the installation of thermal insulation materials, as defined in 6 MCAR § 2.2203 G.

1. Applicability.

a. To industry members. Industry members who offer insulation installation services shall comply with the installation standards set forth in this rule.

b. To non-residential construction or structures. Unless otherwise stated in the rule, the installation standards set forth shall not apply to non-residential structures or construction.

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c. To new residential construction. 6 MCAR §§ 2.2205 A., B. and D. shall apply to new residential construction.

d. To residential insulation retrofit. This rule shall apply to residential insulation retrofit installation.

2. Incorporated standards. The following portions of the 1976 Uniform Building Code, incorporated into the 1978 Minnesota State Building Code, are incorporated by reference into this rule.

- a. Table 37 B.
- b. Table 42 B.
- c. Rule 1717.
- d. Rule 2517 H.
- e. Rule 2517 C 6.

### 3. Prohibitions.

a. No industry member shall install any regulated thermal insulation material which is not in conformance with the product quality standards established by Energy Agency rules. This rule shall also apply to all non-residential construction and structures.

b. No industry member or other person shall engage in the mobile manufacture of cellulose insulation, that is, the simultaneous on-site production and installation of cellulose insulation as an integral mechanical and manufacturing process.

4. Manufacturer's installation instructions. Manufacturers shall provide written, complete instructions for the installation of insulation:

a. To ultimate consumers of insulation, where the sale is directly from the manufacturer or his agent to the ultimate consumer, within ten days of sale.

b. To resellers of insulation, who shall provide ultimate consumers of insulation with the manufacturer's written installation instructions at the point of sale, or within ten days of sale.

c. To installers, within ten days of sale.

### B. Pre-installation inspection and preparation.

1. Inspection for heat sources. In attic areas where insulation is to be installed, all flush and recessed light fixtures, and other heat producing appurtenances shall be identified by the installer. In new construction residential buildings, such appurtenances shall be identified by the contractor or the installer prior to insulation of the structure.

a. Flush and recessed light fixtures. Insulation shall not be installed closer than three inches to the sides of recessed light fixtures. Rigid blocking shall be installed to maintain a three inch minimum clearance from the sides of the fixture. This rule shall not apply if the fixture is approved for coverage with thermal insulation in accordance with section 410-66 of the National Electrical Code (1978).

b. Other heat-producing appliances. A three-inch minimum air space shall be maintained around other heat-producing appurtenances, such as motors, fans, and heaters, unless the fixture is specifically approved for coverage with thermal insulation materials. If the fixture is designated by the manufacturer to require a larger air space than three inches, such larger air space shall be maintained. Rigid blocking shall be installed to maintain the designated clearances.

### 2. Structure.

a. Siding, roof, walls, ceilings, and floors within the installation area shall be inspected by the installer to identify a previous moisture problem, indicated by such factors as peeling paint, warpage, stain, rotting, or structural damage. Insulation shall not be installed in these areas until such moisture problems have been identified by the contractor to the consumer or owner of the structure.

b. Walls and ceilings which the installer determines to be too weak to withstand the pressures created by the installation process shall not be insulated until corrections have been made in the building structure.

c. Openings in ceilings, attics, and floors which may expose or allow the insulation to escape shall be blocked.

d. Rigid or semi-rigid blocking shall be installed in attics to restrain thermal insulation from falling or slipping into attic doors and other access points, or from clogging eave or soffit vents. Sufficient blocking shall be installed to maintain full air flow from eave or soffit vents.

### 3. Vapor barriers.

a. Walls. Vapor barriers shall be applied to existing

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enclosed walls in the form of paint, wallpaper, wall sealant, or other appropriate means. A consumer shall have the option of not installing such vapor barriers and may exercise this option by signing a release on any contract with an industry member for insulation work performed. Vapor barriers shall be applied in new buildings under construction.

b. Crawl spaces. Insulation installed beneath floors but over crawl spaces shall require a vapor barrier covering the ground surface.

c. No vapor barrier shall be applied on the winter cold side of existing insulation. This shall not apply to the use of exterior sheathing insulation board materials.

4. Ventilation. Ventilation in areas to be insulated shall conform to one of the following requirements.

a. One ft.<sup>2</sup> minimum of free ventilation area per 150 ft.<sup>2</sup> of attic floor space, if no vapor barrier exists in the attic.

b. One ft.<sup>2</sup> minimum of free ventilation area per 300 ft.<sup>2</sup> of attic floor space if a vapor barrier does exist in the attic.

c. One ft.<sup>2</sup> minimum of free ventilation area per 300 ft.<sup>2</sup> of attic floor space if at least 50% of the required ventilation area is provided with fixed ventilation located in the upper portion of the space to be ventilated (at least three feet above eave or soffit vents) with the remainder of the ventilation provided by eave or soffit vents.

d. Crawl spaces shall have a minimum free ventilation area of 1.5 ft.<sup>2</sup> per each 25 linear feet of exterior wall or ground area, or by approved mechanical means.

### C. Wall cavity installations.

1. Wall cavities shall be completely filled in accordance with the manufacturer's coverage specifications. This rule shall not apply to insulation board-type materials.

2. Wall cavities which act as air ducts shall not be filled with insulation materials.

3. Entry holes for pneumatic equipment shall be located to permit complete filling of wall cavities. Entry holes shall be opened cleanly and permit refinishing with little or no change in the appearance or structural integrity of the wall.

4. Entry holes shall be used by the installer to examine the cavity for firestops, for any existing insulation, and other obstructions. If the examination of the cavity reveals obstructions to a complete cavity fill, additional entry holes shall be drilled. If the examination of the cavity reveals

that the cavity is filled with existing insulation, no further insulation shall be installed.

5. Entry holes shall be sealed in a manner compatible with the original materials and appearance of the structure, unless cavity vents are installed in the entry holes, or other refinishing is specified by the owner of the structure.

6. Wall cavity insulations shall not be in contact with the ground or other sources of water.

### D. Installation standards, by type of insulation material.

#### 1. Loose-fill fibrous or granular insulation.

a. The insulation shall be kept dry and free of extraneous materials.

b. Periodic inspections shall be made by the installer to ensure that the manufacturer's coverage and density requirements are being met. Such inspections shall be made at least once during, and at the completion of, the installation. The inspection method shall be as follows: measure length, width, and depth of the insulation coverage and multiply to determine volume, then divide the weight of the material by volume of the installation area taking into account the volume of structural members.

c. Pneumatic installation of the loose-fill insulation material shall be performed with the lowest air setting consistent with the coverage of the material and the nature of the space where insulation is being installed. Consistent density of the material shall be maintained; pockets and voids in the insulation shall be filled. Leveling of the insulation material in an attic area shall not damage wiring or other attic installed fixtures.

d. Insulation shall not be blown or poured into electrical devices, sockets, or other equipment. Electrical devices and sockets shall be examined by the installer after installation to ensure that they are free of the insulation material. The device or socket shall be disconnected or power shut off during completion of this task.

e. If the insulation material is to be hand-poured into an area, coverings or floorings shall be removed to facilitate proper installation and coverage. The material shall be poured slowly to allow materials to flow without creating restrictions.

#### 2. Spray-on cellulose insulation.

a. Application procedure. The application procedure for spray-on cellulosic insulation shall consist of:

(1) Preparation of the substrate surface;

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(2) Fluffing the compacted fiber and metering it through an application machine;

(3) Pneumatically conveying this processed fiber through a flexible hose to the fiber spray nozzle;

(4) Introducing an atomized liquid as it reaches the spray nozzle;

(5) Directing the wetted material to the substrate surface in an even, uninterrupted pattern.

b. Substrate surface preparation. The surface to be treated shall be clean and free of loose paint, rust, oil, grease of any other condition that would prevent good adhesion of the spray-on cellulosic fiber insulation. Pre-wetting of the substrate surface, where necessary, shall be performed.

c. Application temperatures. The insulation manufacturer's temperature range shall be followed. Applications shall not be made under conditions where freezing of adhesive, ice formation within the insulation prior to curing, or formation of ice on the substrate surface may be expected to occur.

### 3. Batt and blanket insulation.

a. All tears, punctures or flaws in any attached vapor barriers shall be sealed.

b. For wall cavity installation, insulation batts and blankets shall be correctly sized for the cavity, without gaps in any direction. If the insulation is too short for the space, a piece shall be cut to fit the void, and the ends tightly butt-jointed.

c. Insulation installed around cross-bridged or braced ceiling or floor joists shall be fitted tightly around the obstructions.

d. Insulation installed between floor joists shall fit tightly in the hoist areas and shall be held in place with wire fasteners, screens stapled or nailed to the floor joists, or by stapling to the joists if the insulation is provided with a reverse flange.

e. If additional insulation with an integral vapor barrier is applied on the exterior side of existing attic, or sidewall insulation, the vapor barrier shall first be removed or fully slashed to permit the escape of moisture.

4. Cellular plastic rigid board insulation (urethane, polystyrene, and polyisocyanurate types).

#### a. Additional safety precautions.

(1) The insulation board materials shall be protected at all times from sources of intense heat and open flame.

(2) Insulation board materials within the building envelope may be installed in the areas designated by UBC 1717, and shall be covered where required with the thermal barriers as designated by UBC 1717. Thermal barriers shall be so affixed as to remain in place for fifteen minutes minimum.

#### b. General practices.

(1) Surfaces to which rigid board will be applied using an adhesive shall be smooth and clean to permit proper bonding.

(2) The insulation boards shall be secured to the walls firmly either mechanically or with adhesives in accordance with the insulation board manufacturer's recommendations.

(3) If the insulation board is applied to the winter-warm side of a wall cavity, a vapor barrier shall be required. If the material has an integral vapor barrier, or is considered a vapor barrier, as defined in 6 MCAR § 2.2203, no further vapor barrier shall be required, provided that joints between boards are sealed.

#### c. Practice for installation as exterior sheathing.

(1) Insulation board materials which are acceptable for use as exterior sheathing may be applied to the new or existing building envelope and covered with suitable finish materials.

(2) If a vapor barrier is provided as an integral part of the insulation material, or if the insulation material acts substantially (3 perm or less) as a vapor barrier, a separate vapor barrier shall be provided on the winter-warm side of the wall cavity. Ventilation of the wall insulation system may be used in place of an interior side vapor barrier.

d. Practice of installation on slab-on-grade and foundation perimeter.

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(1) If the exterior perimeter and subgrade walls are to be insulated, the material selected for use shall be suitable for underground and outside applications, and be so designated by the manufacturer.

(2) The insulation board shall be secured to the wall in accordance with the manufacturer's recommendations. All insulation board above the ground line shall be covered with an exterior wall finish.

e. Practice for installation on concrete slab floors.

(1) The insulation board shall be installed as recommended by the manufacturer.

(2) A suitable sub-flooring material in conformance with section 2517 (h), 1976 Uniform Building Code, shall be secured on top of the insulation board before applying the final finish material.

5. Loose-fill cellular plastic insulation.

a. Safety precautions. The insulation material shall be installed in conformance with section 1717, 1976 Uniform Building Code.

b. Installation in enclosed cavity or block walls. The insulation material shall be poured or blown to completely fill the available cavity. Pouring shall be permitted only if sufficient open access is provided to assure complete fill of the cavity or block wall.

c. Installation in attic spaces. The insulation shall be installed in conformance with the practices listed in 6 MCAR § 2.2205 D.1., except that the provisions of section 1717, 1976 Uniform Building Code shall supersede in case of conflict between the two referenced sections. Only Class I material within the meaning of 6 MCAR § 2.2204 H.2.b. shall be installed in attic spaces.

6. Urea-based foam insulation.

a. Duties of the manufacturer of urea-based foam insulation.

(1) Manufacturers shall provide written instructions for the installation of urea-based foam materials to their distributors and installers of the insulation material. The requirements of 6 MCAR §§ 2.2205 A.4.a.-c. shall also apply.

(2) Manufacturers shall provide written statements detailing the suitable temperature ranges, setting times, and wet densities of the insulation product to the distributors and installers of urea-based foam insulation.

(3) Manufacturers shall train and certify the com-

petence of the installers of urea-based foam insulation on a continuing basis.

b. Nature of training programs.

(1) Installers of urea-based insulation shall be certified by the manufacturer within 120 days of the effective date of these rules.

(2) Installers shall be certified by the manufacturer at least once annually.

(3) Each installer shall receive a notice of certification from the manufacturer and shall produce such certification upon the request of the ultimate consumer of the insulation.

c. Contents of the training program. Training programs shall include, but shall not be limited to:

(1) Familiarization with the physical characteristics of the manufacturer's product;

(2) Familiarization with the structural features of building construction, moisture control and ventilation;

(3) Training to achieve proficiency with installation equipment; and

(4) Familiarization with the requirements of, and the procedures specified under, these rules and other applicable codes and standards.

d. Training program review. Within 60 days of the effective date of these rules, each manufacturer shall submit to the Energy Agency a training program proposal for compliance with 6 MCAR §§ 2.2205 D.6.a.-c. The Energy Agency shall review the proposal and determine compliance with 6 MCAR §§ 2.2205 D.6.a.-c.

e. Pre-installation testing and treatment.

(1) The installer shall insure that the manufacturers' expiration dates of urea-based foam are strictly adhered to. Expired materials shall not be installed.

(2) The resins, foaming agents, and other compounds used in foam generation shall be stored within the temperature range recommended by the manufacturer. The temperature of the foam leaving the installation equipment shall be within the range specified by the manufacturer. The ambient temperature of the wall cavity shall be within the range specified by the manufacturer.

(3) The setting time of the foam shall be determined prior to application. The setting time shall be no less than 10 seconds and no more than 90 seconds. Setting time

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shall be determined as follows: A conical foam specimen with a bottom diameter of approximately 12 inches and a height of approximately 12 inches shall be made by foaming from a hose. Start a stopwatch when foaming is begun and immediately commence slicing the cone with a spatula. Record the time when the foam no longer slices as if it were whipped cream but shears off leaving a smooth surface. This is the setting time.

(4) The wet density of the foam shall lie within the manufacturer's specified range. Wet density shall be measured by filling a container of known weight and volume with foam, weighing the container, and then subtracting the weight of the container. The weight of the foam divided by the volume of the foam is the density measure.

(5) Tests for setting time and wet density shall be performed at the following intervals: when starting each new lot of materials, when starting each new job, after every down time exceeding 45 minutes and after two hours of continuous foaming application.

### f. Installation.

(1) The wall cavity being foamed shall be completely filled. Disturbance of the integrity of any portion of the wall structure shall require that foaming cease and no additional foam be applied until the cause of the problem has been identified and corrected.

(2) The installer shall determine if the presence of any sheathing or other material significantly retarding the passage of moisture on the exterior side of the wall cavity will prevent the foam in the cavity from drying properly. If the foam will not dry and cure properly in the cavity, cavity vents shall be installed.

(3) Foam installed in open cavities shall be troweled to completely fill the cavity without gaps, cracks, or voids. Open cavities shall be covered with a permanent or temporary cover material upon setting of the foam.

(4) Foams inadvertently sprayed on aluminum building components shall be immediately rinsed and removed with water. When it is expected that an aluminum component will be sprayed during application, it shall be masked and the foam shall be removed following installation.

(5) Upon completion of the application of foam, the installer shall inspect air ducts, and wall cavities which act as air ducts for heating, cooking, or ventilation to ensure

that these areas are not blocked by application of the foam. No air duct or passage shall be filled with insulation.

(6) The interior of wall electrical outlet boxes and other electrical devices shall be inspected and, where necessary, cleared of any insulation materials. Electric power shall be turned off while performing these tasks.

### 6 MCAR § 2.2206 Labeling of thermal insulation products.

A. Scope. This rule sets forth requirements for the labeling of thermal insulation materials, for the provision of label information where no label is customarily applied to an insulation product, and for labeling of products installed by industry members.

B. Requirement of labels. All regulated thermal insulation products sold, used, or installed in Minnesota shall either bear a label or be accompanied by a label notice to consumers of insulation materials, setting forth the required information in type at least 1/8 inch high.

1. Use of label notices. Label notices shall be provided by the manufacturers of insulation products:

a. Intermediate and ultimate consumers of insulation shall be provided a label notice if the thermal insulation is customarily sold without label.

b. Ultimate consumers of insulation shall be provided a label notice when the insulation material is sold by a contractor or applicator in conjunction with the sale of insulation installation services.

c. Intermediate consumers of insulation who resell insulation to ultimate consumers shall provide at least one label notice to the ultimate consumer, if the insulation is sold without label.

d. No label notice need be supplied if the insulation material is transferred to the ultimate consumer through the purchase of a new or existing residential structure.

### C. Reporting of R value.

1. R values shall be reported for all regulated types of thermal insulation materials, on the label, or label notice.

2. R values shall be reported based on tests for thermal resistance identified in these rules.

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## PROPOSED RULES

3. Insulation materials for which additional value is claimed for facings, reflective surfaces, and adjacent air spaces shall report the thermal resistance of the material exclusive of such facings and surfaces as the primary R value of the material. Affirmative disclosures required by 6 MCAR §§ 2.2204 G.3.b.(2) and I.3.b.(2) shall be made for additional R value statements or labelings.

D. Required contents of label or label notice, by type of insulation material.

1. Loose-fill insulation material.

a. Type, such as pneumatic or pouring cellulose, mineral or glass fiber, perlite, vermiculite, or cellular plastic.

b. Recommended installation density, based on the settled density of the product as determined by test where required.

c. Required thickness in inches at the recommended density to achieve four or more commonly used R values, and the coverage area of the insulation in square feet for each thickness and R value.

d. Name and address of the manufacturer.

e. A notation of any specification of the United States General Services Administration, the United States Department of Energy, the United States Department of Housing and Urban Development, the United States Consumer Product Safety Commission, the Federal Trade Commission, and the Energy Agency with which the insulation material complies.

f. Net weight of the package or container, if the insulation is sold in that form.

2. Batt and blanket insulation.

a. Type, such as mineral, glass or cellulosic fiber.

b. R value of the batt or blanket.

c. Name and address of the manufacturer of the insulation.

d. A notation of any specifications of the United States General Services Administration, the United States Department of Energy, the United States Department of Housing and Urban Development, the United States Consumer Product Safety Commission, the Federal Trade Commission, and the Energy Agency with which the insulation material complies.

3. Foamed-in-place cellular plastic insulations.

a. The cannister, drum, container or package of all resins, catalysts, foaming agents, whether in powder, diluted, or partially diluted liquid form, shall carry a notice of the shelf life and expiration dates of the insulation component materials.

b. Label notices of urea-based foam plastic insulation materials shall contain the following information:

(1) Type.

(2) R value, at the recommended installation thickness. If no thickness is recommended, R value shall be reported at 3.5 inches thick.

(3) Name and address of the manufacturer of the components of the foam plastic insulation material.

(4) A notation of any specifications of the United States General Services Administration, the United States Department of Energy, the United States Department of Housing and Urban Development, the United States Consumer Product Safety Commission, the Federal Trade Commission, and the Energy Agency with which the insulation material complies.

(5) If the foam plastic insulation is urea-based, this or a substantially similar statement: "This insulation shrinks after it is installed. Gaps in the insulation caused by the shrinkage will reduce the R value of the material below the values reported by testing laboratories."

4. Cellular plastic board insulation materials.

a. Type, such as polystyrene or polyurethane.

b. R value of the insulation board, reported as required in 6 MCAR § 2.2204 B.7. and 6 MCAR § 2.2206 C.3., where required.

c. Name and address of the manufacturer of the insulation board.

d. A notation of any specifications of the United States General Services Administration, the United States Department of Energy, the United States Department of Housing and Urban Development, the United States Consumer Product Safety Commission, the Federal Trade Commission, and the Energy Agency with which the Insulation Material complies.

e. The following or a substantially similar disclosure: "Caution: If installed on the interior of the building envelope, this material must be sheathed by a thermal barrier fire-rated at 15 minutes minimum, or in such other applications as approved by the Uniform Building Code." This disclosure shall not be required on the label or the label



## PROPOSED RULES

notice provided that the manufacturer makes the above or substantially similar disclosure, clearly distinguished, in the installation instructions required by 6 MCAR § 2.2205 A.4.

E. Preemption of this rule. This rule shall be preempted by any uniform, comprehensive rule pertaining to the labeling of thermal insulation products intended for residential application established by the United States Federal Trade Commission. The provisions of this rule shall cease to be effective upon the effective date of any such Federal Trade Commission rule.

F. Effective date. The provisions of 6 MCAR § 2.2206 shall be effective 180 days following the publication of the adopted rules in the *State Register*.

**6 MCAR § 2.2207 Enforcement.** These rules shall have the force and effect of law as provided in Minn. Stat. § 15.0413, and shall be enforced by the Director of the Energy Agency, pursuant to Minn. Stat. § 325.986, subd. 4, and by the Attorney General and County and Municipal Attorneys, upon request of the Director, and by such other enforcement provisions as may be provided by law.

**6 MCAR § 2.2208 Severability.** If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end the provisions of these rules are declared to be severable.

**6 MCAR § 2.2209 Sunset provision.** Unless the Director of the Energy Agency shall make a finding that the continuation of these rules is necessary to implement the objectives of Minn. Stat. §§ 325.984-.989, these rules shall cease to be in effect on December 31, 1985.

**6 MCAR § 2.2210 Effective date of rules.** Except where otherwise provided in the rules, these rules shall be effective twenty days after publication in the *State Register* in final adopted form.

## Housing Finance Agency Proposed Rules Covering Income Limits, Residential Preference for Multi-Unit Developments and Home Improvement Grants for Mobile Homes

### Notice of Hearing

Notice is hereby given that a public hearing will be held in the above entitled matter in the Capitol Square Building, Conference Room A, 550 Cedar Street, St. Paul, Minnesota, 55101, on Thursday, May 10, 1979, commencing at 9:00 a.m. and continuing until all interested or affected persons have had an opportunity to participate.

All representatives of associations or other interested groups and all interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted by mail without personally appearing at the hearing to Mr. Harry Seymour Crump, Hearing Examiner, at Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, telephone (612) 296-8111. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested to save time and avoid duplication, that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement on behalf of such interests. All such statements will be entered into and become part of the record. The conduct of the hearing will be governed by the rules of the Office of Hearing Examiners.

Notice is hereby given that 25 days prior to the hearing a statement of need and reasonableness will be available for review at the Agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the Agency at the hearing, justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

After the public hearing, written material may be submitted to the Hearing Examiner and recorded in the hearing

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## PROPOSED RULES

record for five working days, or for a longer period not to exceed 20 calendar days if so ordered by the hearing examiner.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the Agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report) or to the Agency (in the case of the Agency's submission or resubmission to the Attorney General).

The Agency proposes to adopt rules of the Minnesota Housing Finance Agency Governing Income Limits, Residential Preference for Multi-Unit Developments and Home Improvement Grants for Mobile Homes. Notice: The proposed rules are subject to change as a result of the rule hearing process. The Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the rule hearing process.

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to the Executive Director, Minnesota Housing Finance Agency, 333 Sibley Street, St. Paul, Minnesota, 55101. Additional copies will be available at the door on the date of the hearing.

The Agency's statutory authority to promulgate the proposed rules is contained in Minn. Stat. §§ 462A.03, subd. 10, 462A.06, subd. 11 (1978).

Under Minn. Stat. § 10A.01, subd. 11, as amended by Laws of Minnesota 1978, ch. 463, § 11, a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute:

"Lobbyist" means any individual:

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

(b) Who spends more than \$250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or

administrative action by communicating or urging others to communicate with public officials.

"Lobbyist" does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over \$250, excluding his own travel expenses, in any year in communicating with public officials.

Questions regarding only lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155; telephone (612) 296-5615.

Minnesota Housing Finance Agency  
James J. Solem, Executive Director

### Rules as Proposed

**12 MCAR § 3.002 O. "Persons and Families of Low and Moderate Income" means:**

1. With respect to Limited-Unit Mortgage Loans pursuant to Chapter Four of these Rules, Development Cost Loans pursuant to Chapter Three of these Rules, Planning Grants pursuant to Chapter Five of these Rules, and American Indian Housing Loans pursuant to Chapter Eight of these Rules, which loans and grants are intended for a Limited-Unit Development, or a dwelling unit in a planned unit development or a condominium, those persons and families whose Adjusted Income does not exceed ~~\$16,000~~ \$19,000 in the metropolitan area as defined in Minn. Stat. §473.121, subd. 2 and \$17,500 in the remainder of the state; and

## PROPOSED RULES

**12 MCAR § 3.034 Occupancy.** Initial occupancy in Multi-Unit Developments financed by the Agency shall be limited to Persons and Families of Low and Moderate Income; provided however, that

A. to the extent necessary to avoid economic loss resulting from inability to achieve full occupancy, and

B. in order to encourage economic integration, a Housing Sponsor may, with the prior written approval of the Executive Director, permit initial occupancy of up to 25% of the units in the housing project by persons and families who are not Persons and Families of Low and Moderate Income Preference for occupancy in Multi-Unit Developments financed by the Agency may not be given to persons and families by virtue of their prior residence in the community in which the development is located; except that the Housing Sponsor may, with the prior written approval of the Executive Director allow preference for persons and families displaced by public action or natural disaster or for previous residents of a rehabilitated Multi-Unit Development financed by the Agency.

**12 MCAR § 3.062 Eligible recipients of rehabilitation grants.** In addition to all conditions imposed by the Act, an application for a rehabilitation grant shall satisfy the following requirements:

A. The recipient(s) must occupy the structure to be improved as the recipient's(s') principal place of residence and individually or in the aggregate have at least:

1. a life estate or

2. a one-third interest in the fee title or in the contract for deed with respect to such structure. The Agency may waive or modify the ownership and security requirement when necessary to permit rehabilitation grants for structures located on Indian Reservations. For mobile homes taxed as personal property or not permanently affixed to real property recipient(s) must: (1) have resided in the structure at the present location for a period of one year immediately preceding the date of application as the recipient(s)' principal place of residence, (2) be current in any loan payments on the structure, and (3) individually or in the aggregate have a 100% interest in the title to the mobile home.

B. For the purpose of complying with the ownership requirements, the recipient may aggregate his interest in such property with the ownership interests of other individuals also occupying the property as their principal place of resi-

dence. All individuals occupying the structure to be improved as their principal place of residence and having an ownership interest in such structure must join in the application.

C. Each recipient must be a Person or Family of Low or Moderate Income as defined in 12 MCAR § 3.002 O.3.

D. "Assets" for purposes of the Home Improvement Grant Program shall be the sum of the following, after deducting any outstanding indebtedness:

1. cash on hand or in checking or savings accounts;

2. securities or U. S. savings bonds;

3. market value of all interests in real estate (exclusive of the structure to be improved and a parcel of real property of not more than two acres on which such structure is located);

4. cash value of life insurance policies; and

5. all other property, exclusive of household furnishings, clothing, and one automobile.

**12 MCAR § 3.065 Eligible properties.** Grant funds shall be used only to improve properties which meet the following criteria:

A. The property shall be located within the State of Minnesota, be used primarily for residential purposes, and contain no more than two dwelling units, one of them owner-occupied.

B. The property to be improved shall conform to applicable zoning ordinances and possess all appropriate use permits.

C. The improvements shall be made upon or in connection with existing ~~permanent~~ structures, including ~~M~~mobile homes, ~~or~~ ~~†~~Trailers shall not be eligible.

D. No property shall be eligible for a Home Improvement Grant if it has been improved by such a grant within the five year period next preceding the date on which application for such grant is made, except in extraordinary circumstances relating to damage to the property as a result of events beyond the control of the applicant or to failure of plumbing, heating, or electrical systems, as determined by the Agency in its sole discretion.

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E. The property to be improved with grant funds shall be reasonably efficient with respect to energy consumption. Where the property is not reasonably efficient with respect to energy consumption, rehabilitation funds shall be used to the extent necessary to increase such efficiency. Energy saving features shall include, but not be limited to, installation or upgrading of ceiling, wall, floor, and duct installation, storm windows and doors, and caulking and weather stripping. Energy saving features shall be consistent with the energy standards promulgated as part of the State Building Code but such improvements need not bring the housing into full compliance with such energy standards.

**12 MCAR § 3.066 Eligible improvements.** Improvements made with Home Improvement Grant funds shall satisfy the following requirements:

A. Each improvement shall be a permanent general improvement. Permanent general improvements shall include additions, alterations, renovations, or repairs upon or in connection with existing structures, which correct defects or deficiencies in the property affecting directly the safety, habitability, or energy usage of the property. Permanent general improvements shall be economically viable in terms of a determination that

1. the structure will have a reasonable life expectancy after the improvement is made, and
2. the structure will be reasonably livable, safe, and habitable after the improvement is made.

Permanent general improvements shall not include materials, fixtures, or landscaping of a type of quality exceeding that customarily used in the locality for decent, safe, and sanitary properties of the same general type as the property to be improved.

B. Each improvement shall be made in compliance with all applicable health, fire prevention, building, and housing codes and standards; provided, however, that no application for a Home Improvement Grant shall be denied solely because the improvements will not bring such property into full compliance with all such codes and standards.

C. Home Improvement Grant funds shall not be used for the payment, wholly or in part, of assessments for public improvements; provided, however, that such funds may be used for that portion of improvements located on the property which will bring an individual water supply system or a sewage disposal system (including septic systems) into compliance with local, state, or federal environmental and sanitary standards.

D. All contracts covering all or any portion of an improvement shall contain an Agency approved warranty of workmanship and materials.

E. No grant funds shall be used for the purpose of refinancing or paying off existing indebtedness. All such funds shall be used to finance improvements begun after application for such funds has been approved.

F. For mobile homes taxed as personal property or not permanently affixed to real property eligible improvements shall be limited to the following:

1. Improvements which bring the property into compliance with current standards for energy efficiency, fire safety and anchoring systems.

2. Improvements to remedy imminent safety hazards, or accessibility modifications, but only upon prior written approval by the Agency.

3. Other permanent general improvements, but only upon prior written approval by the Agency and a determination that after completion of such improvements the mobile home will comply with the standards set forth in Paragraph 1.

## Department of Natural Resources

### Proposed Rules Containing Standards and Criteria for Establishment of Lake Improvement Districts by Counties and Cities

#### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Weyerhaeuser Room of the Minnesota Historical Building, 690 Cedar Street, St. Paul, Minnesota, on May 17, 1979, at 10:00 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted as provided by Minn. Stat. §§ 15.0411 through 15.051 and § 15.052 and as provided by the rules for rule-making of the Office of Hearing Examiners.

All representatives of associations or other interested groups and interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules. Statements may be made orally and written materials may be submitted at the hearing. Statements or briefs may be submitted without personally appearing at the

## PROPOSED RULES

hearing. In addition, written materials may be submitted by mail to:

Howard Kaibel  
1745 University Avenue  
St. Paul, Minnesota 55105  
Telephone: (612) 296-8107

either before the hearing or within 5 days after the close of the hearing, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The proposed rules, if adopted, would officially establish standards and criteria for establishment of lake improvement districts by counties and cities for lakes located within their boundaries. The proposed rules, if adopted, would officially establish minimum guidelines, criteria, and requirements relating to procedures by which proposed lake improvement districts shall be reviewed prior to establishment, and standards and criteria which all proposed lake improvement districts shall meet before establishment, modification, or termination.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Natural Resources, Division of Waters, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The department's authority to promulgate the proposed rules is contained in Laws of Minnesota, 1978, ch. 378, § 41, subd. 2. Twenty-five days prior to the hearing a statement of need and reasonableness will be available for review at the department and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the department at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available after which date the department may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the department. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report) or to the department (in the case of the department's submission or resubmission to the Attorney General).

Under Minn. Stat. 10A.01, subd. 11 (1978), a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute, "lobbyist" means any individual engaged for pay or other consideration or authorized by another individual or association to spend money who spends more than five (5) hours of any month or more than \$250 not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or who spends more than \$250, not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. "Lobbyist" does not include any: (a) public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity; (b) party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action; (c) individual in the course of selling goods or services to be paid for by public funds; (d) news media or their employees or agents acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments or paid advertisements which directly or indirectly urge official action; (e) paid expert witness whose testimony is requested either by the body before which he is appearing or one of the parties to a proceeding, but only to the extent of preparing or delivering testimony; or (f) stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over \$250, excluding travel expenses, in any year in communicating with public officials.

Questions regarding lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155; telephone (612) 296-1720.

### Rules as Proposed

#### 6 MCAR § 1.5060 General Provisions (All New Material)

##### A. Purpose.

In order to provide for the orderly establishment of lake improvement districts in a manner that will preserve and protect the lakes of Minnesota and increase and enhance the use and enjoyment of these lakes, the Commissioner of Natural Resources does hereby provide guidelines,

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## PROPOSED RULES

criteria, and standards for establishment of lake improvement districts by counties, cities, and towns, as authorized by Minn. Stat. §§ 378.41-378.56 and 459.20 in furtherance of the policies declared in Minn. Statutes.

### B. Scope.

These rules establish minimum guidelines, criteria, and requirements relating to:

1. Procedures by which proposed lake improvement districts shall be reviewed prior to establishment.

2. Standards and criteria which all proposed lake improvement districts shall meet before establishment, modification, or termination.

### C. Jurisdiction.

These rules shall apply to all existing and proposed lake improvement districts.

These rules shall not apply to lake conservation districts established by special legislation of the Minnesota State Legislature.

### D. Definitions.

For the purpose of these regulations, certain terms or words used herein shall be interpreted as follows: The word "shall" is mandatory, not permissive.

"Agency" means the Minnesota Pollution Control Agency.

"Commissioner" means the Commissioner of the Department of Natural Resources or his authorized representative.

"Direct drainage basin" means that portion of a lake's total watershed which is not drained to an upstream water basin, as defined herein. The determination of size and physical limits of a lake's direct drainage basin shall be made by the Commissioner.

"District boundaries" means, for the purpose of these rules, the territorial boundaries of a lake improvement district. All lands and waters within the direct drainage basin, as defined herein, shall be included within the district boundaries, except those exclusions for which written approval is obtained from the Commissioner. The boundaries shall include a sufficient amount of the lake's watershed and related land to develop and implement feasible solutions to the problems the district intends to address. The boundaries shall also include all lands and waters which can reasonably be considered adversely affected by the proposed programs, plans or actions of the lake improvement district.

"Lake" means, for the purpose of these rules, any public water basin identified and classified in the shoreland management ordinances of the local county or municipal unit of government.

"Lake improvement district" means a district formed around a lake in accordance with Minn. Stat. ch. 378. A lake improvement district is a local unit of government established by resolution of appropriate county boards and/or city governing bodies, or by the Commissioner, for the implementation of defined lake management projects and for the assessment of the costs thereof.

"Natural hydrologic boundaries" means the boundaries of a lake's direct drainage basin, as defined herein.

"Resident" means a person eighteen years of age or older who meets the residency requirements of Minn. Stat. §§ 201.26.

"Resident owner" means a Minnesota resident who is the owner of land or the contract purchaser of land within the boundaries of a lake improvement district.

"Water basin" means an enclosed basin normally partly or completely filled with water. The water basin may have inlet and outlet streams, it may have only an inlet or outlet, or it may be completely enclosed.

"Watercourse" means any channel which has definable beds and banks capable of conducting confined runoff from adjacent lands.

"Watershed" means the entire surface drainage area that contributes water to a lake.

### E. Severability.

The provisions of these rules shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

### 6 MCAR § 1.5061 Goals for Lake Improvement Districts.

Proposals for the establishment of lake improvement districts shall be evaluated according to the degree to which they promote the following goals:

1. Lake protection and rehabilitation.

2. Protection and enhancement of environmental values by preventing degradation of fish and wildlife habitat, surface and ground water quality, natural beauty and unique scientific values, recreation values, and the quality of life generally.

## PROPOSED RULES

3. Preservation of the public rights in the public waters of the state and to provide the public use of the lake consistent with the preservation of environmental values.

4. Ensuring local involvement in the project and a commitment to future lake management.

5. Conformity with federal, state, regional and local laws, rules and water and related land management policies.

6. Fair and objective resolution of conflicts between competing lake related interests in and around the district.

### 6 MCAR § 1.5062 Types of Lake Improvements Eligible for the Creation of a Lake Improvement District.

1. Studying the sources of and solutions to lake problems.

2. Preserving and improving water quality by means of:

(a) Water and related land management, excluding land use zoning authority.

(b) Inlake water treatment.

3. Sedimentation and siltation control.

4. Shoreline erosion control.

5. Aquatic nuisance control.

6. Preserving and improving fish and wildlife habitat.

7. Preserving and improving recreational potential of the lake.

8. Any other purposes approved by the county board pursuant to Minn. Stat. §§ 378.51, subd. 3.

### 6 MCAR § 1.5063 Criteria and Standards for Establishment.

Proposals for the establishment of lake improvement districts shall be evaluated based on the extent to which they demonstrate the following:

1. Local need for district. The proposal shall demonstrate the need for the district and why another unit of government with similar powers, or a voluntary lake association, can not or will not satisfactorily accomplish the district's proposed purposes.

2. Appropriateness of proposed boundaries. The proposed boundaries shall be consistent with district boundaries as defined in 6 MCAR § 1.5060 D. The proposed boundaries shall include all lands and waters within the lake's direct drainage basin, unless justification is provided for including a lesser area and approved in writing by the Commissioner. The proposed boundaries shall include a sufficient amount of the lake's watershed and related land to develop and implement feasible solutions to the identified problems. The proposed boundaries shall include those lands and waters which can reasonably be considered adversely affected by the proposed actions of the district. The proposed boundaries shall be delineated so as to provide appropriate public representation and the equitable distribution of benefits and levying of costs.

3. Appropriateness of proposed purposes. The proposed purposes shall be consistent with existing state, federal, regional and local laws, policies, objectives, and plans pertaining to water and related land management, fish and wildlife habitat, surface and ground water quality, natural beauty and unique scientific values, economic and recreation values, and the quality of life. The proposed purposes shall be consistent with the public rights in the public waters of the state. When a district is proposed for the purpose of conducting a feasibility study of the sources of and solutions to lake problems, the proposal shall demonstrate an understanding that subsequent lake restoration measures may require modification of the districts' boundaries and statement of purposes, pursuant to 6 MCAR 1.5065 A. and Minn. Stat. 378.55.

4. Technical feasibility of proposed plans and programs. The proposal shall demonstrate the technical feasibility of the proposed plans and programs, or provide for the determination of technical feasibility.

5. Adequacy of proposed means of financing. The proposal shall demonstrate capability of raising sufficient funds to meet district purposes, to ensure continuity of district operations, and to meet the requirements of these rules and regulations.

6. Adequacy of procedures for planning, decision-making, and public involvement. The proposal shall assure consideration of the interests of concerned citizens both within and outside the boundaries of the proposed district. The proposal shall include the identification of varying and often conflicting interests regarding water and related land management in and around the proposed district, and procedures to assure the consideration of such diverse interests so

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

## PROPOSED RULES

that decisions are made in the best overall interests of fairness and public health, safety and welfare.

7. Public access. The proposed plan shall provide for public access consistent with the size of the lake, the extent of public interest in using the lake, and combined beneficial uses of the lake. If service charges are to be imposed on the use of public accesses, the cost schedule for such charges shall be specified.

8. Adequacy of long range monitoring of the environmental effects of district programs. The proposal plan shall demonstrate an understanding of potential environmental effects of the proposed district plans and programs, and provide for long range monitoring of such effects.

9. Coordination with other special purpose districts. The proposal shall demonstrate how the proposed district programs will be coordinated with existing special purpose districts formed for water and related land management. Examples of such units of government are watershed districts, sanitary districts, drainage and conservancy districts, lake conservation districts and soil and water conservation districts. Lake improvement districts shall not be established where a special purpose unit of government for water and related land management exists which can implement the purposes of the proposed lake improvement district, unless written approval is acquired from such unit of government and from the Commissioner. Any conflict arising between an existing special purpose district and the proposed lake improvement district shall be resolved at the local level.

### **6 MCAR 1.5064 Creation of a Lake Improvement District.**

#### **A. Petition or Resolution Requirements.**

A county board resolution creating, or a petition to create a lake improvement district shall contain the following elements:

1. A written statement of lake problems and objectives.

2. The proposed type or types of water and related land resource management programs to be undertaken by the proposed district. This shall include a detailed statement of intended studies, management programs, remedial actions, and construction projects.

3. A statement of the means by which the programs will be financed.

4. A map showing the boundaries of the proposed lake improvement district. The map shall show the number and location of permanent homes and seasonal dwellings in the

district. The scale of the map, and basic geographical information, such as range, township, and section numbers, shall be clearly indicated on the map.

5. The number of directors proposed for the district.

6. Copies of local ordinances which regulate use of the lake or any public access.

7. Any information indicating the degree of local interest and commitment to future management.

8. The identification of any lands and waters which may be adversely affected by the implementation of district purposes, and a preliminary assessment of these adverse effects.

9. A statement outlining the adequacy and ownership of public accesses, including public lands and beaches.

10. An estimate of the total equalized valuation of the property within the district.

11. Any other information demonstrating accordance with the criteria and standards for establishment as contained in 6 MCAR 1.5063.

#### **B. Procedural Requirements.**

1. Initial submittal of petition or resolution to County Board, the Commissioner, and the Agency for:

a. Creation by petition. No later than five days after the official filing of a petition for the establishment of a lake improvement district with the county board, the citizens or organization sponsoring the petition shall provide a certified copy of the petition to the Commissioner and the Agency. This is necessary in order to facilitate preliminary review of the petition prior to the notification of the public hearing.

b. Creation by resolution. At least 40 days prior to the public hearing, the county board shall provide a certified copy of the document containing the information required by 6 MCAR 1.5064 to the Commissioner and the Agency. This is necessary to facilitate preliminary review of the proposed district boundaries prior to notification of the public hearing.

2. Notification of the public hearing. At least 21 days prior to the public hearing, the county board shall give notice of the public hearing to the Commissioner and the Agency, and make a reasonable attempt to notify every resident and every resident owner within the proposed district of the pending resolution or petition and the public hearing. A reasonable attempt to notify shall consist of mailing notice to the last known address of each landowner within the proposed district, publication of notice in two



## PROPOSED RULES

successive issues of a newspaper widely circulated in the proposed district, and posting notice in public buildings and several leading commercial establishments in or near the proposed district, as appropriate and reasonable. All local and regional units of government, special purpose districts, and development commissions within and adjacent to the boundaries of the proposed district shall be given notice of the public hearing.

As part of the notification procedure, a statement shall accompany the notice setting forth the following:

- a. A description of the proposed purposes, programs, funding and boundaries of the proposed district, and the name proposed for the district.
- b. The time and place of the public hearing.
- c. The following paragraph shall be included:

“The establishment of the proposed lake improvement district requires review by the Commissioner of Natural Resources and the approval of the (as appropriate) county board(s) (and/or city governing body). Concerned citizens may submit evidence at a public hearing to be held prior to the passage of any resolution establishing the proposed lake improvement district. Concerned citizens may also submit evidence and opinions to the Commissioner of Natural Resources. A copy of the petition (or document, as appropriate) for the establishment of the lake improvement district is available for public review at the (as appropriate) county courthouse (or other appropriate public building; give address and telephone number where interested citizens can review the document).”

If the establishment of the lake improvement district is proposed by the county board pursuant to 6 MCAR 1.5064 B.1.b. and Minn. Stat. §§ 378.42, the following paragraph shall be included in the notice of the public hearing:

“Citizens may call for a referendum on the question of whether or not to establish a lake improvement district by filing a petition requesting such a referendum. The petition shall be signed by twenty-five percent of the land owners within the territory of the proposed district, who are Minnesota residents. Upon receipt of such a petition prior to the effective date of creation of the district, the county board shall hold the creation in abeyance pending the referendum vote of all qualified voters residing within the boundaries of the proposed district.”

3. Public review of petition or resolution. The county board shall make the petition or document containing the information required by 6 MCAR § 1.5064 available for review by concerned citizens, at the county courthouse or other appropriate public building.

4. Review by the commissioner and the agency. Upon receipt of a copy of the petition or document by the Commissioner, he shall:

a. Review the petition or document and any evidence presented by the Agency or concerned citizens pertaining to the establishment of the proposed district. This review shall include an evaluation of the statement of district purposes and its relation to existing laws, rules and regulations, units of government, water and related land management programs and policies. The proposed district boundaries shall be examined to assess their consistency with these rules. When one or more of the stated purposes of the proposed district relate to pollution control, this review shall be conducted with the assistance of the Agency.

b. Prepare an advisory report stating his findings as to whether the proposed lake improvement district should be established. The Commissioner shall set forth in his report any matters pertaining to the district which should be further investigated and evaluated. If the Commissioner determines that the establishment of the proposed district is not in the public interest, he shall so report the specific reasons and inadequacies. The Commissioner may request additional time for review of the proposed district in such cases where additional time can be shown to be necessary for the proper evaluation. The Commissioner's report may contain reports by the Agency.

5. The county board may grant requests by citizens, the Commissioner, or the Agency for postponement or continuance of the public hearing to a time more than 30 days after receipt of the petition and verification of the signatures thereon. Such requests may be granted if the county board determines that the additional time requested is appropriate and reasonable in order for the requesting organization or citizens to adequately prepare for the public hearing, and consistent with the goals of promptness and fairness in the proceedings.

6. The Commissioner's advisory report shall be publicly read into the record at the public hearing.

7. The Commissioner may modify his findings based on evidence presented during and subsequent to the public hearing.

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## PROPOSED RULES

8. No sooner than 10 days but within 30 days following the holding of the public hearing, the county board shall formally convene to approve or disapprove the establishment of the proposed lake improvement district. At least 10 working days notice shall be given to the Commissioner of the time and place where the board will formally convene for this purpose. If the Commissioner or his representative does not appear, any modifications of the Commissioner's advisory report shall be publicly read into the record.

### 6 MCAR 1.5065 General Provisions.

#### A. Modification.

1. No program, remedial action, project or change of district boundaries which is not specified in the resolution creating a lake improvement district may be undertaken, except by modifying the appropriate items listed in 6 MCAR § 1.5064 A.1-5.

2. For an established district, any of the items listed in 6 MCAR § 1.5064 A.1-5 may be modified by petition to or resolution by the county board, in the same manner that a district is created.

B. Legal responsibilities and liabilities of lake improvement districts.

1. Nothing in these rules shall be construed to relieve a lake improvement district of the legal duties, obligations, or liabilities incident to the programs, plans or actions of the district.

2. The lake improvement district shall assume all legal risks and liabilities, including those for damages or any injury to persons or property, arising from the construction, operation, maintenance, alteration, or abandonment of its programs, plans or actions.

3. In the event of termination of the district, or failure of the district to meet its obligations, these responsibilities and liabilities shall fall upon the unit or units of government which established the lake improvement district.

#### C. Limited state liabilities.

The establishment of a lake improvement district shall not impose any liability upon the State of Minnesota, its officers, employees, agents, or consultants, for any damage or injury to any persons or property resulting from the activities of the lake improvement district.

No action shall be brought against the state, the Commissioner or the Agency for the recovery of damages caused by the partial or total failure of any undertaking or project constructed by a lake improvement district.

#### D. Rights of lake improvement districts.

Nothing in these rules shall be construed to deprive any lake improvement district of such recourse to the courts as it may be entitled to under the laws of this state.

#### E. Inspections.

The Commissioner shall be given prompt access to and inspection of all records, plants, structures, facilities, and operations at all reasonable times as may be necessary to monitor compliance with the terms of existing permits and to insure protection of the public health, safety, and welfare. The Commissioner's inspections shall not relieve the lake improvement district from the full responsibility of providing adequate inspection and supervision for all programs and projects undertaken by the district.

F. Compliance with other laws and water management policies.

Lake improvement districts shall conform to federal, state, regional, and local laws, rules, and fish and wildlife, water, and related land management policies. Lake improvement districts shall obtain all necessary permits, as required by law, prior to implementing district purposes and programs.

G. Compliance by pre-existing lake improvement districts.

1. Within one year following promulgation of these rules and regulations, lake improvement districts in existence prior to the promulgation of these rules shall submit to their county board and to the Commissioner a certified copy of a document containing the information required by 6 MCAR 1.5064. This document shall also contain a report on the past and current activities and financial condition of the district.

2. The Commissioner shall review the document and prepare an advisory report stating his findings as to whether the district is consistent with these rules and regulations. The report may contain such recommendations as the Commissioner determines is necessary to bring the district into compliance with these rules and regulations.

3. Within 60 days following the official filing of the Commissioner's report with the county board, the board shall formally convene to consider the report. The county board shall give 10 working days notice to the Commissioner of the time and place where it will convene to consider his report. If the Commissioner or his representative does not appear, the report shall be publicly read into the record.

# STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

## Department of Administration Information Systems Division

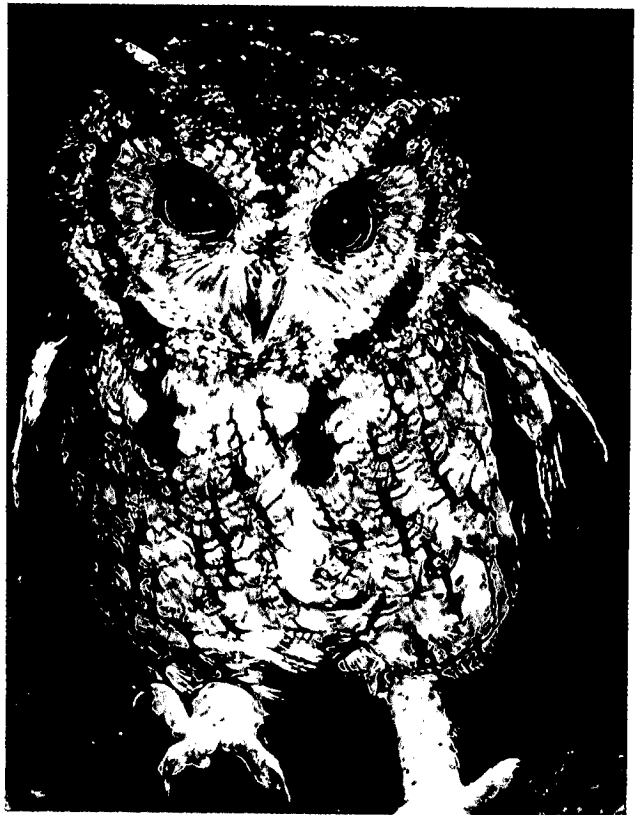
### Notice of Request for Proposals for Consultant Services

The Information Systems Division (ISD), Department of Administration, is seeking proposals from firms/organizations with expertise in data processing organizational structure and management practices. The project is a study of the organizational structure and management practices in ISD and its user agencies in the State of Minnesota. The result of this project will be recommendations as to the organizational structure for information systems development and operations in ISD and user agencies for optimum utilization of the available personnel and equipment resources. The management considerations for the proposed organizational structure will be specified.

The estimated cost for this project should not exceed \$60,000 for professional services and expenses. All proposals are due not later than 4:00 p.m. April 30, 1979. The evaluation and selection will be completed by May 4, 1979. The project completion date is October 1, 1979.

For further information or copy of the Request for Proposal, contact:

Charles E. Coskran  
Information Systems Division  
State of Minnesota  
Fifth Floor Centennial Office Building  
658 Cedar Street  
St. Paul, MN 55155  
Telephone: (612) 296-8083



Found throughout most of the U.S. east of the Rocky Mountains, the screech owl inhabits tree cavities, woodpecker holes and crevices in small buildings and is usually sighted in orchards, woodlands or forests. Its "ears" are only tufts of feathers, but owls do have ear openings behind their eyes and have extremely acute hearing. When threatened, this owl camouflages itself by closing its eyes to slits and aligning its feathers and ear tufts vertically to blend in with tree bark. Its curved beak and powerful talons enable it to feed on rodents, small birds and frogs, as well as insects. (Photograph courtesy of the National Wildlife Federation and the Department of Education)

## Department of Administration Intergovernmental Information Systems Advisory Council

Notice of Request for Proposals for Computer Aided Property Appraisal System

The Intergovernmental Information Systems Advisory Council (IISAC) is interested in the design and pilot implementation of a Computer Aided Property Appraisal System to serve medium sized Minnesota counties. In this regard, a Request for Proposal (RFP), which further delineates the requirements and constraints of this potential

## STATE CONTRACTS

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effort, has been distributed to all known interested firms. The deadline for receipt of the proposal is May 4, 1979. Anyone not receiving the RFP and desiring more information is requested to contact Roger Sell, Executive Director of IISAC, at 222-2861.

Mr. Edwin Ross, Supervisor  
Ground Water Quality Unit  
Minnesota Department of Health  
717 Delaware Street S.E.  
Minneapolis, Minnesota 55440

### **Crime Control Planning Board**

#### **Notice of Request for Proposals to Assist in the Planning and Implementation of a Statewide Juvenile Justice Conference**

Notice is hereby given that the Crime Control Planning Board is releasing a Request for Proposals (RFP) to assist in the planning for and implementation of a Statewide Juvenile Justice Conference. A total of \$25,000 has been made available for the work described in the solicitation. A statewide conference shall be held no later than September 15, 1979. Proposals will be accepted until May 18, 1979.

The Crime Control Planning Board invites all interested persons or groups to obtain a Request for Proposal solicitation on the above subject by calling or writing:

Mary Turner  
Crime Control Planning Board  
444 Lafayette Road, Sixth Floor  
St. Paul, Minnesota 55101  
(612) 296-7441

### **Department of Health Commissioner of Health**

#### **Notice of Request for Proposals for Well Abandonment Services**

The Minnesota Department of Health is seeking proposals from water well contractors licensed by the state to locate, open, test pump, clean out and seal four wells located in the City of St. Louis Park. This work is to be completed by June 30, 1979.

An amount not to exceed \$20,000 is available for this project. All proposals must be submitted no later than April 30, 1979. Direct all inquiries and requests for proposals to:

### **Public Employees Retirement Association**

#### **Notice of Available Position**

**Executive Director**, Public Employees Retirement Association, a retirement system covering more than 100,000 Minnesota public employees. Salary open. College degree, extensive knowledge of principles of accounting, plus five years administrative experience preferably in retirement field. More information furnished upon request. Send resume or inquiries to 203 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. An equal opportunity employer.

### **Department of Public Welfare**

#### **Chemical Dependency Programs Division**

#### **Notice of Request for Proposals for Policy Analysis of Detox Costs and the Chronic Recidivist Problem**

The Chemical Dependency Programs Division of the Department of Public Welfare is accepting proposals to conduct a policy study and prepare a report on the cost of detox programs in Minnesota, the issues surrounding the chronic recidivist problem, and an exploration of feasible alternatives. No exact cost limit has been set. Costs will be judged against products to be delivered.

Proposals are due in the office of the Chemical Dependency Programs Division by April 30, 1979.

Copies of the RFP or questions regarding this procurement should be addressed to Ms. Terri Seppala, Chemical Dependency Programs Division, Centennial Office Building, St. Paul, MN 55155.

**Department of Public Welfare  
St. Peter State Hospital Complex**

**Notice of Request for Proposals for Services to Be Performed on a Contractual Basis**

Notice is hereby given that the St. Peter State Hospital Complex, Mental Health Division, Department of Public Welfare, is seeking the following services for the period July 1, 1979 through June 30, 1980. These services are to be performed as requested by the Administration of the St. Peter State Hospital Complex.

1. Services of an individual to provide clinical supervision, psychactive reviews, staff instruction of practical and didactic psychopharmacology. The estimated amount of the contract will not exceed \$24,000.

2. Services of an individual to provide examinations/evaluations/communications with courts, etc. for residents of the Security Hospital. The estimated amount of the contract will not exceed \$31,250.

3. Services of an individual to provide individual and group psychotherapy to residents referred by unit teams, written and oral consultation with the staff on resident progress and psychodiagnostic evaluations. The estimated amount of the contract will not exceed \$11,250.

4. Services of an individual to provide medical/physical examinations of mentally ill residents. The estimated amount of the contract will not exceed \$15,750.

5. Services of an individual to provide psychological examinations to residents and consultations to staff as well as lectures to chemically dependent residents. The estimated amount of the contract will not exceed \$12,000.

6. Services of an individual to provide psychiatric examination/evaluation of mentally ill residents. The estimated amount of the contract will not exceed \$40,320.

7. Services of an individual to provide psychiatric medical services dealing with mentally retarded children and adults. Areas of emphasis are drug evaluation, adjustment and monitoring for behavioral management, psychiatric assessments, referrals and follow-up for problematic individuals. Also, at our Security Hospital to perform duties, examinations, and evaluations of residents, necessary communications with courts, individual and/or

group psychotherapy, consultations with staff and/or Medical Director, and mental status diagnosis and suggested treatment for all admissions. The estimated amount of the contract will not exceed \$16,200.

8. Services of two (2) individuals to provide psychiatric examinations/evaluations of mentally ill/chemically dependent/mentally retarded residents. The estimated amount of these contracts will not exceed \$16,640 each.

Responses for the above services must be received by April 30, 1979. Direct inquiries:

Thomas R. Bolstad  
Sr. Accounting Officer  
St. Peter State Hospital Complex  
100 Freeman Drive  
St. Peter, MN 56082  
Phone: (507) 931-3000 x386

**Department of Public Welfare  
Willmar State Hospital**

**Notice of Request for Proposals for Services to be Performed on a Contractual Basis**

Notice is hereby given that the Willmar State Hospital, Mental Health Division, Department of Public Welfare, is seeking the following services for the period July 1, 1979 through June 30, 1980.

These services to be performed as requested by the Administration of the Willmar State Hospital.

Service of Physicians trained in medicine and surgery to provide medical and surgical services for patients at Willmar State Hospital as mutually agreed upon by the Administration of the Hospital and Consultants.

The estimated amount of the contract will not exceed \$14,000.00.

Responses for the above services must be received by April 30, 1979. Direct inquiries to:

Mae Forstrom, Accounting Officer  
Willmar State Hospital  
Box 1128  
Willmar, MN 56201  
(612) 235-3322, ext. 396

# OFFICIAL NOTICES

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Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject,

either orally or in writing.

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

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## **Department of Administration Building Code Division**

### **Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules for Training and Certification of Evaluations for Energy Disclosure Program**

Notice is hereby given that the Department of Administration is drafting rules which will establish procedures for a residential energy disclosure program and for the training and certification of evaluators. The rules are authorized by Minn. Stat. § 116H.129, subsd. 5, 6, and 7 (1978).

It is the intent of these rules to provide procedures for a disclosure program; to establish courses of training for energy evaluators; to outline requirements for certification of energy evaluators; and to clarify various questions relating to conflict of interest, non-endorsement, disclaimer, continuing education, certification fees, and bonding requirements of energy evaluators.

The Department invites all interested persons or groups to provide information, comments, advice or opinions on the subject by writing to:

Sivert Hendrickson  
Building Code Division  
408 Metro Square Building  
St. Paul, MN 55101

All statements of information or comment must be received by April 20, 1979. Any written material received by the Department will become part of the public hearing record.

## **Department of Economic Security Vocational Rehabilitation Division**

### **Notice of Withdrawal of Proposed Amendments to Rules Governing Services to Persons with Severe Disabilities through Long-term Sheltered Workshops and Work Activity Programs and Notice to Solicit Outside Opinion Regarding Amendments to Existing Rules Governing Said Services**

Notice is hereby given that the Department of Economic Security, Division of Vocational Rehabilitation, is withdrawing the proposed amendments to rules relating to the above subject as published in the *State Register*, Volume 3, Number 18, November 6, 1978, pp. 916-926 (3 S.R. 916-926). The Department will use comments and information collected during the hearing process on these proposed rules in a new assessment of needed changes to existing rules governing this subject. Minn. Rules EDU 480-499.

The Department has begun consideration of proposed amendments to the existing rules and all interested or affected persons or groups are requested to participate. Items under consideration include amending the rules to reflect that the vocational rehabilitation program is now organizationally within the Department of Economic Security, the addition of new language for long-term sheltered workshops and work activity programs to appeal decisions regarding certification by the Division of Vocational Rehabilitation, and the addition of new language establishing standards which workshops and work activity programs must adhere to for continuing their certifications, including standards for the wages, fringe benefits, and working conditions of long-term sheltered workshop employees and work activity program participants. Statements and comments on this subject may be made orally or in writing. Written statements of information and comment may be addressed to Marvin Spears, Director of Rehabilitation Resources, Division of

## OFFICIAL NOTICES

Vocational Rehabilitation, 444 Lafayette Road, St. Paul, MN 55101.

Oral statements of information and comment will be received during regular business hours over the phone (612) 296-5628 and in person at the above address.

All statements of information and comment must be received by May 31, 1979. Any written materials shall become part of the hearing record.

Marijo Olson, Acting Commissioner  
Department of Economic Security

## Office of the Governor

### Notice of Assumption of Office by a Temporary Commissioner

In accordance with Minn. Stat. § 15.06, subd. 3 and subd. 5, the following individuals assumed the position of Temporary Commissioner on the date indicated for the department indicated.

<i>Dept.</i>	<i>Name</i>	<i>Date</i>
Human Rights	Richard Rolle	March 17, 1979

### Notice of Appointment of Department Heads

Notice is hereby given of the following department head appointments made pursuant to Minn. Stat. § 15.06, subd. 2. The effective date of each appointment is listed below.

<i>Dept.</i>	<i>Name</i>	<i>Date</i>
Economic Security	Rolf Middleton	March 26, 1979
Human Rights	Marilyn McClure	March 31, 1979
Public Service	Eugene Avery, Director	March 28, 1979
Iron Range Resources and Rehabilitation Bd.	Patrick McGauley	March 26, 1979

## Department of Health Personal Health Services

### Notice of Public Hearing Regarding Fiscal Year 1980 Minnesota State Plan of Program Operations and Administration for the Special Supplemental Food Program for Women, Infants, and Children (WIC)

Pursuant to the requirement of regulations issued by the United States Department of Agriculture under Section 3 of Public Law 95-627 which amends Section 17 of the Child Nutrition Act of 1966, the Minnesota Department of Health will sponsor two public meetings to enable the general public to participate in the development of the Fiscal Year 1980 Minnesota State Plan of Program Operations and Administration for the Special Supplemental Food Program for Women, Infants and Children (WIC) Program. Copies of the draft Plan will be available for public inspection at Minnesota Department of Health district offices and local WIC projects after May 7, 1979.

The meetings will be held Monday, May 21, 1979, 10:00 a.m. in the Board Room, Minnesota Department of Health, 717 SE Delaware Street, Minneapolis, Minnesota, and Thursday, May 24, 1979, 10:00 a.m., East Ball Room, West Union Building, Bemidji State University, 15th Street and Birchmont Drive, Bemidji, Minnesota. Registration will begin at 9:00 a.m.

Any citizen or group may submit either written or oral testimony at the meetings. Testimony will be given on a first come, first served basis and will be limited to ten (10) minutes.

For further information, contact the Minnesota Department of Health, WIC Program, 717 SE Delaware Street, Minneapolis, Minnesota (612) 296-5280.

George R. Pettersen, M.D.  
Commissioner of Health

# SUPREME COURT

## Decisions Filed Friday, March 30, 1979

Compiled by John McCarthy, Clerk

**48277/125 Comfort Homes, Inc., Appellant, vs. Auto-Owners Insurance Co. Dakota County.**

A mobile home occupied as a residence by a mother and her four children is held not to have been used principally in the business of the owner of the mobile home which had leased it at a monthly rental to the occupant who, although employed by the lessor as a salesperson, had made no affirmative efforts to sell the unit which she was occupying when the loss occurred.

Affirmed. Sheran, C. J. Took no part, Otis, J.

**48532, 48547 Myles Brooks, A.M.F., Inc., et al, Lynn 48631/323 Gieseke, d.b.a. St. Paul Seamless Surfacing Co., et al, Child's Construction Company, et al, Saxon Bowling Lanes, et al, and Blue Cross and Blue Shield of Minnesota, intervenor, Relator, Prudential Insurance Company, intervenor, Relator, and Elmer A. Hendrickson, Central States Insulation, Inc., et al, and General American Life Insurance Company, intervenor, Relator. Workers' Compensation Court of Appeals.**

A health insurer-intervenor who is excluded from participating in negotiations resulting in a full, final and complete settlement of an employee's workers' compensation claim and who is not a party to the "stipulation for an award" is entitled to full reimbursement of the expenses it paid or incurred on behalf of the employee under an insurance policy which excludes coverage of claims covered by workers' compensation.

Reversed and remanded. Rogosheske, J.

**48961/346 Harold M. Kahl vs. Minnesota Wood Specialty, Inc., Employer-Petitioner, and Employers Mutual Liability Insurance Co., Insurer-Petitioner, Warren Spannaus, Attorney General, State of Minnesota. Supreme Court.**

In workers' compensation proceedings to impose a penalty for unreasonably and vexatiously delaying payment of employee's benefits, neither Minn. St. 176.225, subd. 2, nor § 176.411 governing such proceedings abrogates the

common-law attorney-client privilege enacted by Minn. St. 595.02(2).

Let the writ of prohibition issue. Rogosheske, J.

**48327 John G. Romanik, a Minor, by Bernard 48331/397 J. Bringle, Guardian Ad Litem vs. Toro Company and Gerald J. Romanik, Appellants. Washington County.**

On the facts of this case, there was sufficient evidence for the jury to find that defendant manufacturer negligently caused plaintiff minor's hand injury where plaintiff's hand became caught in the partially unshielded pulley and drive belt assembly of a snowthrower made by manufacturer.

Taking into consideration the severe and permanent injuries suffered by plaintiff to his hand, the trial court did not abuse its discretion in ruling that the award of damages was not excessive.

A parent, who entrusts a potentially dangerous piece of machinery to a child and instructs him to operate it contrary to the operator's manual, acts in an affirmatively negligent manner and cannot avoid liability under either exception to the abrogation of the parent-child tort immunity doctrine.

Affirmed. Rogosheske, J. Took no part, Otis, J.

**48307/356 Lloyd M. LaValle, et al, vs. Faye Kulkay, et al, Appellants. Carver County.**

There is sufficient evidence to support the trial court's finding that the original grantors had a general plan in mind in developing their property and that this plan was to restrict the development to single-family dwellings.

There is sufficient evidence to support the trial court's finding that plaintiffs' swimming pool was constructed and located with the acquiescence and consent of defendants.

Affirmed. Peterson, J. Took no part, Otis, J.

**48594/394 James Kletschka, petitioner, Appellant, vs. The Le Sueur County Board of Commissioners, et al. Le Sueur County.**

The swearing in and cross-examination of witnesses is not mandated by due process of law in the usual type of zoning proceeding involving issuance of a conditional-use permit.

Affirmed. Peterson, J.

**48457/56 State of Minnesota vs. Joel Peter Yaeger, Appellant. Benton County.**

Police officers, standing on land with consent of owner,



## SUPREME COURT

were in a place where they had a right to be when they peered into defendant's truck and saw in open view items which were subject to seizure, and the officers were justified in entering the vehicle and seizing the items by the so-called motor vehicle exception to the warrant requirement.

Seizure of incriminating evidence in open view from the interior of the house in which defendant was residing was justified by the so-called "plain view doctrine," where the officers' observations of the evidence was made following a valid intrusion.

Affirmed. Kelly, J.

**48535/426 Pan-O-Gold Baking Company, Appellant, vs. Metz Baking Company, et al. Clay County.**

In action for injunctive relief and damages for breach of covenant not to compete, verdict was properly directed for defendants where employee had not had access to plaintiff's trade secrets on confidential information, defendants did not use secret information to harm plaintiff, and plaintiff suffered no loss.

Affirmed. Todd, J.

**48198 Republic National Life Insurance Company vs. Lorraine Realty Corp., et al, Angeline P. Stoppel, et al, Appellants. Olmsted County.**  
**48793/398**

Even though a subordination agreement lacks specificity, it will be held enforceable where it has been in existence for 15 years and where the subordination clause has been used and relied upon for 14 years.

Parol evidence will not be admitted to contradict rather than clarify the language of a written agreement. It was not error for the trial court to exclude extrinsic evidence.

A subordination agreement does not extinguish the rights of the person executing such an agreement, but allows another lienholder to have priority in satisfying its lien. Thus, the ground lessors' rights to rentals are not extinguished, but are merely subordinated to a mortgage holder.

The mortgage holder with a lien on a leasehold is in essence a trustee for a commercially reasonable time and shall disburse the annual rental income in the following order: first, Republic shall pay the usual landlord expenses and shall pay real estate taxes; second, Republic shall retain an amount that will reimburse it for costs of foreclosure and attorneys fees and that will amortize the principal amount of its claim plus the interest rate provided in the original mortgage until the year 2013 or until the principal and interest are paid in full, whichever occurs first; third, Republic shall retain amounts owed as a result of deficient amortiza-

tion in previous years; fourth, Republic shall pay to ground lessors the annual rents that they would have received had Lorraine not defaulted and any rents owed as a result of deficiencies in previous years; and fifth, Republic shall retain any excess rental income so as to reduce the balance of the foreclosed mortgage.

Affirmed in part and modified in part. Yetka, J. Took no part, Otis, J.

**48848/19 Janet Janzen, widow of Frank H. Janzen, deceased employee, vs. Land O'Lakes, Inc., et al, Relators. Workers' Compensation Court of Appeals.**

Minn. St. 176.061, subs. 5 and 6, do not entitle a workers' compensation carrier to subrogation against proceeds received by the widow of a deceased employee as settlement of a claim against the employee's uninsured motorist coverage carrier.

Affirmed. Yetka, J. Took no part, Rogosheske, J.

**48008 Alvin T. Pederson, vs. Indianhead Truck Line, Inc., et al, Relators. Workers' Compensation Court of Appeals.**  
**48941/106**

Minn. St. 176.155, subd. 2 confers broad discretion on the Workers' Compensation Court of Appeals to appoint a neutral physician to examine an injured employee not only where medical opinions differ and there is no rational basis for favoring one over the other, but also where the "dispute as to injury" involves one party's claim that the disability is work-related and the other party's denial of it.

Affirmed in part, reversed in part. Yetka, J.

**49327/440 In the Matter of the Welfare of George Stewart Dahl. Beltrami County.**

A juvenile cannot be referred for adult prosecution solely on the basis of his age or the offense in question. To meet the legislative standards for such certification, the record must show that the juvenile is "not suitable" to treatment or that the "public safety" will suffer.

Order vacated and case remanded. Scott, J.

**48750/9 In the Matter of the Real Estate Salesperson's License of Robert E. Haugen, Plaintiff, In the Matter of the Real Estate Brokers' Licenses of Sterling Investment, Inc., and Mel B. Gullickson, petitioners, vs. State of Minnesota, Department of Commerce, Securities Division, Appellant. Hennepin County.**

Where certain real estate brokers complied with the

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specific contract provisions concerning the disbursement of earnest money upon the buyer's breach of a purchase agreement, neither Minn. St. 82.24 nor regulations promulgated thereunder was violated.

The trial court was therefore correct in finding that the brokers' licenses should not have been suspended and revoked by the Minnesota Commissioner of Securities.

Affirmed. Scott, J. Took no part, Todd, J.

**47835/306 Farmington Plumbing & Heating Company, et al, Plaintiffs, vs. Fischer Sand and Aggregate, Inc., Appellant, Wenzel Plumbing and Heating, Inc., and Hilite Electric Company, Peoples Natural Gas Company. Dakota County.**

The evidence was sufficient to support the jury findings that the general contractor was 25 percent negligent in failing to inform the subcontractor of the location of gas lines and that it had graded the alley, removing 2 to 8 inches of earth, and that such negligence was a proximate cause of plaintiffs' damages.

A tortfeasor must accept responsibility for damages commensurate with his own relative culpability and is not entitled to indemnity for damages caused by his own negligence.

A tortfeasor is entitled to indemnity for his own negligence under a contract only if that contract expressly provides for such indemnity.

Where a subcontractor is not contractually obligated to indemnify the general contractor for the general contractor's negligence, it is not liable for attorneys fees when it refuses to accept the defense tendered by the general contractor.

A general contractor cannot recover damages for a subcontractor's failure to carry the amount of insurance required by contract where the required insurance would not have insured the general contractor for its own negligence.

Affirmed. Wahl, J.

**48715/6 Northern Petrochemical Company vs. United States Fire Insurance Company, defendant and third party plaintiff, Appellant, and Traff & Associates. Blue Earth County.**

Where the defendant assures plaintiff that it need not pursue a claim until pending litigation determines the cause of the damage, the defendant is estopped from asserting the statute of limitations as a defense to plaintiff's claim.

Once the pending litigation has terminated plaintiff must pursue its claim with due diligence.

Affirmed. Wahl, J.

**48366/18 Associated Lithographers vs. Stay Wood Products, Inc., et al., defendants and third party plaintiffs, Appellants, vs. David H. Affeldt, third party defendant. Dakota County.**

An order for printing did not require the approval of corporation's president, was submitted by one acting with apparent authority, did not result in personal liability of corporation's president, and was not within the statute of frauds.

Affirmed in part; reversed in part. Kennedy, J. Took no part, Todd, J.

**47949/95 State of Minnesota vs. Ludger Vance Clement, Appellant. Beltrami County.**

It was not a violation of Minn. St. 609.035 or the double jeopardy clause of the Federal Constitution to prosecute defendant for the crime of illegal possession of a disabling chemical after earlier prosecuting him unsuccessfully on a charge of driving while under the influence of alcohol, because no material elements of the crime were litigated in defendant's favor in the earlier prosecution and the motivations underlying the nonintentional traffic offense were different from and unrelated to the motivations underlying the intentional possessory offense.

Affirmed. Per Curiam: Concurring specially, Otis and Wahl, JJ.

**48293/98 State of Minnesota vs. Robert Earl Scott, Appellant. Hennepin County.**

It is within the trial court's discretion to determine that a jury's request to have a substantial portion of a record reread is unreasonable and to refuse that request.

Affirmed. Per Curiam.

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