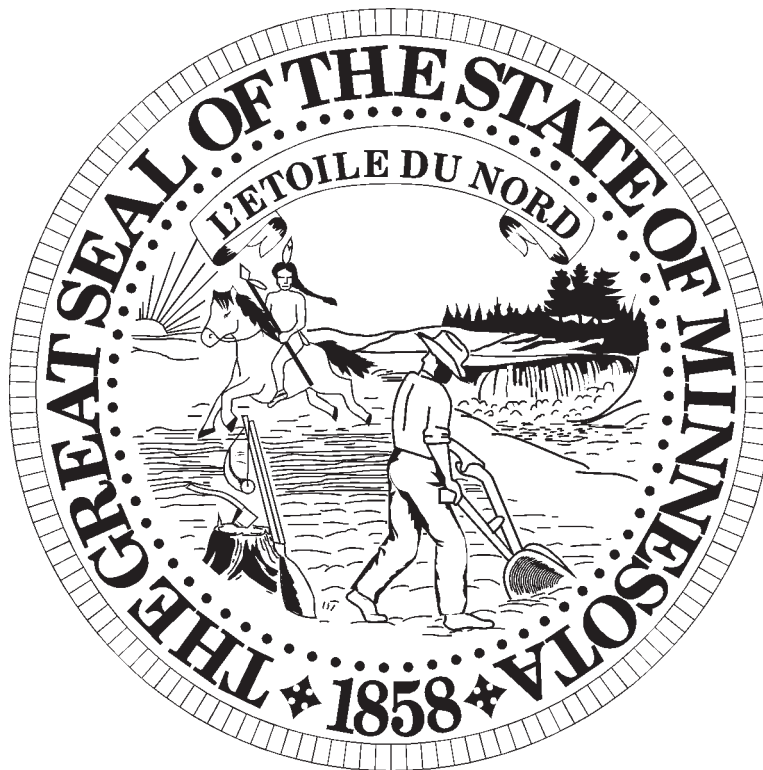


State of Minnesota

# State Register



**Rules and Official Notices Edition**

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# State Register

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# 10	<b>TUESDAY 5 SEPTEMBER</b>	Noon Tuesday 29 August		Noon Wednesday 23 August	
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# Minnesota Rules: Amendments and Additions

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

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 80 state agencies have the authority to issue rules. Each agency is assigned specific **Minnesota Rule** chapter numbers. Every odd-numbered year the **Minnesota Rules** are published. The current 1999 set is a 13-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

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

When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or a notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the most current edition of the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues #1-13 inclusive; issues #14-25 inclusive; issue #26 cumulative for issues #1-26; issues #27-38 inclusive; issue #39, cumulative for issues #1-39; issues #40-51 inclusive; and issues #1-52 (or 53 in some years), cumulative for issues #1-52 (or 53). An annual subject matter index for rules was separately printed usually in August, but starting with Volume 19 now appears in the final issue of each volume. For copies or subscriptions to the *State Register*, contact Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000, or toll-free 1-800-657-3757.

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## Exempt Rules

Exempt rules are excluded from the normal rulemaking procedures (*Minnesota Statutes* §§ 14.386 and 14.388). They are most often of two kinds. One kind is specifically exempted by the Legislature from rulemaking procedures, but approved for form by the Revisor of Statutes, reviewed for legality by the Office of Administrative Hearings, and then published in the *State Register*. These exempt rules are effective for two years only.

The second kind of exempt rule is one adopted where an agency for good cause finds that the rulemaking provisions of *Minnesota Statutes*, Chapter 14 are unnecessary, impracticable, or contrary to the public interest. This exemption can be used only where the rules:

- (1) address a serious and immediate threat to the public health, safety, or welfare, or
- (2) comply with a court order or a requirement in federal law in a manner that does not allow for compliance with *Minnesota Statutes* Sections 14.14-14.28, or
- (3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required, or
- (4) make changes that do not alter the sense, meaning, or effect of the rules.

These exempt rules are also reviewed for form by the Revisor of Statutes, for legality by the Office of Administrative Hearings and then published in the *State Register*. In addition, the Office of Administrative Hearings must determine whether the agency has provided adequate justification for the use of this exemption. Rules adopted under clauses (1) or (2) above are effective for two years only. The Legislature may also exempt an agency from the normal rulemaking procedures and establish other procedural and substantive requirements unique to that exemption.

**KEY: Proposed Rules** - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

## Department of Administration

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## Department of Employment and Economic Development

### Adopted Exempt Permanent Rules Relating to Unemployment Insurance; Making Technical and Style Changes

#### 3310.2901 SCOPE AND PURPOSE.

Parts 3310.2901 to 3310.2926 establish procedures for hearings conducted by department unemployment law judges on the appeal of department determinations pertaining to eligibility or ~~disqualification from ineligibility for~~ unemployment benefits, charges to employers' accounts and tax rate assignments, determinations on an employer's liability to pay taxes, determinations on the erroneous or fraudulent payment of unemployment benefits, and all other appeals which are decided by unemployment law judges of the appeals office either by law or rule.

#### 3310.2902 DEFINITIONS.

[For text of subs 1 to 4, see M.R.]



# Exempt Rules

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Subp. 5. **Party.** “Party” means any unemployment benefits ~~claimant~~ applicant or employer whose legal rights, duties, or privileges will be directly determined in a hearing.

## 3310.2905 NOTICE OF APPEAL.

Subp. 2. **Information.** The notice of appeal ~~shall~~ must also include the following information:

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

H. If a decision issued ~~pursuant to~~ under part 3310.2926 could result in a determination that a party has been overpaid unemployment benefits, the notice ~~shall~~ must contain the following statement: “You have already received unemployment benefits on your ~~claim~~ benefit account. It is important for you to attend this hearing even if you are back to work and not receiving unemployment benefits now, because if you lose the appeal, you will not be able to receive further unemployment benefits and you will have to pay back all the unemployment benefits you have already received. These unemployment benefits are called overpaid unemployment benefits and they could be deducted from your state income tax refund, rent credit refund, or from a future unemployment compensation claim benefit account.”

## 3310.2908 RESCHEDULING.

Requests to reschedule a hearing must be addressed to the appellate appeals office in advance of the regularly scheduled hearing date. The request may be made in person, by telephone, or in writing. Unless a determination is made by the appellate appeals office that a request to reschedule a hearing is made for the purposes of delay, a hearing ~~shall~~ must be rescheduled by the appellate appeals office based on a party’s need for additional time to obtain necessary evidence or to obtain representation or adequately prepare, inability to be present at the regularly scheduled time due to illness, other judicial or quasi-judicial proceedings which have previously been scheduled, or other compelling reasons beyond the control of the party which prevent attendance at the originally scheduled time. A hearing may be rescheduled only once except in the case of an emergency. If requested by the appellate appeals office, a letter confirming the reasons for requesting that the case be rescheduled ~~shall~~ must be provided to the appellate appeals office by the requesting party.

Unless a determination is made by the referee unemployment law judge that a request to reschedule a hearing is made for the purpose of delay, a referee judge who has been assigned a case for hearing ~~shall~~ must reschedule a hearing at the request of a party provided grounds for rescheduling as set forth above have been established. The failure of subpoenaed witnesses to appear at the hearing or the failure to produce subpoenaed documents may constitute grounds for rescheduling.

## 3310.2910 NOTICE OF HEARING; CONSOLIDATION OF ISSUES.

The notice of hearing ~~shall~~ must be mailed to each party at the last known address at least ten days before the scheduled date of hearing unless otherwise provided by law, or when notice is waived by the parties. The notice ~~shall~~ must state the time, date, and place of the hearing, the name of the referee unemployment law judge who will hear the case, the issues to be considered at the hearing, and ~~shall~~ must contain the information required by part 3310.2905, subpart 2, items B to H. If the issue to be considered at the hearing involves a ~~disqualification from ineligibility for unemployment benefits because of a separation from employment~~, the notice ~~shall~~ must explain that either the issue of misconduct or ~~voluntary termination without good cause attributable to quit for other than a good reason caused by the employer~~ may be heard if the facts brought out at the hearing so warrant, and the parties should be prepared to discuss all incidents which arose during the course of the employment which led to the separation. The parties ~~shall~~ must also be advised of their right to represent themselves or to be represented by an attorney or other duly authorized representative. Upon the motion of a party to a hearing or on the referee’s unemployment law judge’s motion, the referee unemployment law judge may consolidate for hearing issues involving the same parties and may take testimony and render a decision on issues not listed on the notice of hearing if each party is so notified on the record at the hearing and does not object on the record.

## 3310.2911 INTERPRETERS.

The department ~~shall~~ must provide an interpreter, when necessary, upon the request of a party. The requesting party ~~shall~~ must notify the appellate appeals office at least seven calendar days before the date of the hearing that an interpreter is required. If no request is made, the referee shall unemployment law judge must continue any hearing where a witness or principal party in interest is a handicapped person so that an interpreter can be appointed. All notices and other documents distributed to parties and witnesses by the appellate appeals office ~~shall~~ must be prepared in easily understood English.

A written statement in English, Spanish, Laotian, Vietnamese, Cambodian, and Hmong which states that the accompanying documents are important, and that if the reader does not understand the documents, the reader should seek immediate assistance, ~~shall~~ must accompany all notices and written documents distributed by the appellate appeals office to the party whenever the office has reason to believe the primary language of the party is one of those previously listed other than English.

## 3310.2912 EXHIBITS IN TELEPHONE CONFERENCE HEARINGS.

Upon receipt of notice of a telephone conference hearing, and no later than five calendar days before the scheduled time of hearing, parties

may submit to the department any documents they wish to offer as exhibits at the hearing. Copies of the documents as well as all documents which are to be introduced as department exhibits ~~shall must~~ be mailed to all parties by the ~~appellate appeals~~ office in advance of the hearing. If a party moves to introduce additional documents during the course of the hearing, and the ~~referee unemployment law judge~~ rules that the documents should be admitted into evidence, the moving party ~~shall must~~ send copies of the documents to the ~~referee unemployment law judge~~ and the opposing party. The record ~~shall must~~ be left open for sufficient time for the submission of a written objection and for response to the documents. The response may be in writing or the ~~referee unemployment law judge~~ may, when appropriate, reconvene the telephone conference hearing to obtain a response or permit cross-examination regarding the late filed exhibits.

### **3310.2913 ACCESS TO DATA.**

The parties to a hearing ~~shall must~~ be allowed reasonable access to department data necessary to represent themselves properly in proceedings under parts 3310.2901 to 3310.2926. Access to data under parts 3310.2901 to 3310.2926 ~~shall must~~ be consistent with *Minnesota Statutes*, section 268.19, *Minnesota Statutes*, chapter 13, and other laws relating to data practices. Upon oral or written request by a party or the party's representative, the appeals office ~~shall must~~ provide copies of documents that are to be introduced as department exhibits. The copies ~~shall must~~ be provided at no cost and, upon request, ~~shall must~~ be mailed to the party or the party's representative.

### **3310.2914 SUBPOENAS AND DISCOVERY.**

Subpart 1. **Subpoenas.** Subpoenas are available to a party to compel the attendance of witnesses, the production of documents or other exhibits upon a showing of necessity by the party applying for subpoenas. Subpoenas may be obtained by calling or writing the ~~appellate appeals~~ office sufficiently in advance of the scheduled hearing to allow for the service of the subpoenas. The requesting party must identify the person or documents to be subpoenaed, the subject matter of the evidence requested, and their necessity. A request for a subpoena may be denied if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious. A request for a subpoena may be renewed when a party finds an additional basis or need for evidence.

A party whose request for a subpoena has been denied may request at the time of the hearing that the ~~referee unemployment law judge~~ who conducts the hearing issue the subpoena. If the ~~referee unemployment law judge~~ grants the request for a subpoena, the ~~referee unemployment law judge~~ may adjourn the hearing to allow a sufficient time for service of and compliance with the subpoena.

Subp. 2. **Discovery.** Each party, within three working days following demand by another party, ~~shall must~~ disclose the name of the party's attorney or other representative and the names of all witnesses the party intends to call at the hearing and identify any written documents that the party intends to introduce at the hearing. The demand and the response may be made by mail or by telephone. The demanding party ~~shall must~~ be permitted to inspect any identified documents at a mutually agreeable time and location prior to the hearing if a demand to inspect is made at least three working days before the hearing. Unless otherwise agreed, the demanding party ~~shall must~~ be permitted to reproduce copies of any identified documents only when reproduction is possible without removing them from a party's possession. Any witnesses unknown at the time of the disclosure ~~shall must~~ be disclosed as soon as they become known. If a party fails to comply with the disclosure requirements of this subpart, the ~~referee shall unemployment law judge must~~, upon request by the demanding party, consider rescheduling the hearing ~~pursuant to under~~ part 3310.2908.

### **3310.2915 DISQUALIFICATION OF REFEREE UNEMPLOYMENT LAW JUDGE.**

~~A referee shall~~ An unemployment law judge ~~must~~ remove himself or herself from any case where the ~~referee judge~~ believes that presiding over the case would create the appearance of impropriety. No ~~referee judge~~ may hear any case where any of the parties to the appeal are related to the ~~referee judge~~ by blood or marriage. A ~~referee shall judge must~~ not hear any case if the ~~referee judge~~ has a financial or personal interest in the outcome. A ~~referee judge~~ having knowledge of such a relationship or interest ~~shall must~~ immediately remove himself or herself from the case.

Any party may move for the removal of a ~~referee judge~~ by written application of the party together with a statement of the basis for removal. Upon the motion of the party, the director of the ~~appellate appeals~~ office ~~shall must~~ decide the fitness of the ~~referee judge~~ to hear the particular case.

### **3310.2916 REPRESENTATION BEFORE REFEREE UNEMPLOYMENT LAW JUDGE.**

Any individual may personally appear in any proceeding before ~~a referee an unemployment law judge~~ and may be represented by an attorney or a duly authorized representative. Any partnership may be represented by any of its members, an attorney, or other duly authorized representative. Any corporation or association may be represented by an officer, an attorney, or other duly authorized representative.

The commissioner may refuse to allow any person to represent others in any proceeding before ~~a referee an unemployment law judge~~ if that person is unethical in conduct or intentionally and repeatedly fails to observe the provisions of the law or rules relative to such proceedings or the instructions of the commissioner or ~~a referee an unemployment law judge~~.

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## 3310.2917 PUBLIC ACCESS TO HEARINGS.

Appeal hearings are public hearings. ~~A referee~~ An unemployment law judge may exclude nonessential persons only when necessary due to physical space limitations or to maintain decorum. Upon the ~~referee's~~ judge's motion or upon the motion of a party, a ~~referee~~ judge may sequester witnesses due to space limitations or to avoid prejudice or collusion.

The ~~referee shall judge must~~ make a ~~tape~~ recording of all testimony that is the official record. No other voice recordings or pictures ~~shall~~ may be made in the hearing room of any party, attorney, representative, or witness involved in the hearing while the hearing is in session.

## 3310.2919 DATA PRACTICES NOTICE.

At the beginning of each hearing, ~~a referee shall~~ an unemployment law judge must advise the parties in the following or a similar manner of the data practices implications of the hearing:

“The purpose of this hearing is to take testimony and evidence. This information will be used to decide your rights under Minnesota law. Certain other government officials may have access to information provided at this hearing if this is allowed by statute or the information may be disclosed pursuant to a valid court order.”

## 3310.2920 ADMINISTRATION OF OATH OR AFFIRMATION.

Before testifying, every witness ~~shall be~~ is required to declare to testify truthfully, by oath or affirmation. The mode of administering an oath ~~shall be~~ is as practiced in this state. The form of the oath or affirmation ~~shall be~~ is as set forth in *Minnesota Statutes*, sections 358.07 and 358.08.

## 3310.2921 CONDUCT OF HEARING.

The order of presentation of evidence ~~shall be~~ is determined by the ~~referee~~ unemployment law judge. The ~~referee shall judge must~~ inform the parties of their burdens of proof before the taking of testimony.

Each party may present and examine witnesses and offer their own documents or other exhibits. To the extent permitted by *Minnesota Statutes*, section 268.19, and other laws pertaining to the protection of data, a party ~~shall must~~ be provided with a copy of any document or exhibit accepted into evidence upon the request of the party. Opposing parties ~~shall~~ have the right to examine witnesses, object to exhibits and testimony, and cross-examine the other party's witnesses. The ~~referee judge~~ should assist unrepresented parties in the presentation of evidence. The ~~referee shall judge must~~ rule upon evidentiary objections on the record. The ~~referee shall judge must~~ permit rebuttal testimony. Parties ~~shall~~ have the right to make closing statements. Closing statements may include comments based upon the evidence and arguments of law. The ~~referee judge~~ may limit repetitious testimony and arguments.

The ~~referee shall judge must~~ exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing. The ~~referee shall judge must~~ ensure that relevant facts are clearly and fully developed.

## 3310.2922 RECEIPT OF EVIDENCE.

Only evidence received into the record of any hearing may be considered by the ~~referee~~ unemployment law judge. The parties may stipulate to the existence of any fact or the authenticity of any exhibit.

All competent, relevant, and material evidence, including records and documents in the possession of the parties which are offered into evidence, ~~shall be~~ are part of the hearing record. A ~~referee judge~~ may receive any evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. A ~~referee judge~~ may exclude any evidence which is irrelevant, immaterial, unreliable, or unduly repetitious. A ~~referee shall judge is not be~~ bound by statutory and common law rules of evidence. The rules of evidence may be used as a guide in a determination of the quality and priority of evidence offered. A ~~referee judge~~ may draw adverse inferences from the refusal of a party or witness to testify on the basis of any privilege. A ~~referee shall judge may~~ only use reliable, probative, and substantial evidence as a basis for decision.

## 3310.2923 OFFICIAL NOTICE.

~~A referee~~ An unemployment law judge may take official notice of adjudicative facts and matters of common knowledge and may take notice of facts within the ~~referee's~~ judge's specialized knowledge in the field of unemployment benefits. Any fact officially noticed ~~shall must~~ be noticed on the record in the decision. Parties ~~shall must~~ be notified of any facts officially noticed by the ~~referee judge~~ and ~~shall must~~ be given an opportunity to contest the noticed facts.

A ~~referee judge~~ may officially note any facts which are subject to judicial notice in the courts of Minnesota.

## 3310.2924 EX PARTE COMMUNICATIONS.

Private communication between ~~a referee~~ an unemployment law judge assigned to an appeal and one or more of the parties to an appeal, in the absence of the other parties to the appeal, is forbidden if it relates to the substance of the matter at issue. Private communication



is to be avoided even when it does not relate to the subject matter of the appeal if it would create the appearance of impropriety.

### **3310.2925 NONAPPEARANCES.**

When a party fails to appear at a regularly scheduled hearing, the ~~referee~~ unemployment law judge may issue a decision based upon the evidence that is available unless it appears that there is good and sufficient cause to reschedule the hearing.

### **3315.0200 PURPOSE.**

Subpart 1. **Scope.** Parts 3315.0200 to 3315.0220 further define “wages” as defined in *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~25~~ 29, and used in *Minnesota Statutes*, sections 268.03 to 268.24; this chapter; interpretations; forms; and other official pronouncements issued by the department.

### **3315.0203 WAGES PAYABLE, CORPORATE OFFICERS.**

If a corporation does not have a regularly scheduled pay date for its officers or have reference to one in the corporate minutes, the wages of its corporate officers ~~shall be~~ are considered due when paid. If the corporate minutes specify an amount to be paid each period, such as a week, month, or year, without specifying an exact pay date, the wages for a period ~~shall be~~ are considered due no later than the end of the period.

### **3315.0210 TYPES OF WAGES, GENERALLY.**

Wages include the monetary value of:

- A. Dwelling unit rent, utilities, meals, exchange of services, or other goods or services that are to compensate for an employee’s services.
- B. Vacation pay or payment in lieu of vacation.
- C. Termination, severance, or dismissal payment or payment in lieu of notice whether notice is required or not.
- D. That portion of the payment which compensates for services rendered received in the form of an award or allowance in accordance with a contractual agreement or settlement reached through any arbitrator, regulatory agency, or court.
- E. Any payments made by a subchapter “S” corporation to or on behalf of officers and shareholders which is reasonable compensation for services performed for the corporation and which the department ~~shall~~ must treat as wages for tax purposes, except as provided in subitems (1) to (5). An “S” corporation is a corporation that is organized under the rules of subchapter S of the Internal Revenue Code of 1986.

“Wages” does not include:

- (1) a distribution of earnings and profits which is in excess of any payment treated as wages as defined in this item;
- (2) a loan for business purposes to an officer or shareholder evidenced by a promissory note signed by an officer before the payment of the loan proceeds and recorded on the books and records of the corporation as a loan to an officer or shareholder;
- (3) a repayment of a loan or payment of interest on a loan made by an officer to the corporation and recorded on the books and records of the corporation as a liability of the corporation;
- (4) a reimbursement of reasonable corporation expenses incurred by an officer and documented by a written expense voucher and recorded on the books and records of the corporation as corporate expenses; and
- (5) a reasonable lease or rental payment to an officer who owns property which is leased or rented to the corporation.
- F. The value of any consideration, award, bonus, or prize which accrues before separation from employment.
- G. Payments for accrued sick leave when not related to a specific absence due to sickness or injury, regardless of whether or not the employer maintains a sick pay plan as defined in *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~25~~ 29.
- H. Idle time or standby compensation paid by an employer for a guaranteed minimum number of hours of employment per week when employees are to be available for a specific period of time and payment is made to them for idle time even if they do not render services for the minimum number of hours.
- I. Advances or draws against future earnings, when paid, unless the payments are designated as a loan or return of capital on the books of the employer at the time of payment.
- J. Payments to corporate shareholders or officers, who perform services for the corporation for wages below that which would approximate reasonable compensation for services, although designated as loans, unless the loan is evidenced by a note or other legal document, the loan is for business purposes, repayments are made pursuant to a payoff schedule, and the agreement provides for the payment of reasonable interest.
- K. Payments made directly or indirectly to an individual to perform or assist in performing the work of any employee of the employer provided that the employer had actual or constructive knowledge that the work was being performed.
- L. Payments made for services as a caretaker. Unless there is a contract or other proof to the contrary, ~~remuneration shall be~~ compensation is considered as being equally received by a married couple where the employer makes payment to only one spouse, or by all tenants of a household who perform services where two or more individuals share the same dwelling and the employer makes payment

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to only one individual.

M. Payments made for services by a migrant family. Where services are performed by a married couple or a family and an employer makes payment to only one individual each worker ~~shall be~~ is considered as having received an equal share of the ~~remuneration compensation~~ unless there is a contract or other proof to the contrary.

N. An employer's vehicle furnished to an employee to the extent the vehicle is used for personal purposes. If the employee has use of the vehicle without charge, the amount deemed to be wages ~~shall be~~ is \$200 per month or, if for less than a calendar month, \$7 for each day that the employee has use of the vehicle for personal purposes. If the employee reimburses the employer for the use of the vehicle, the amount deemed to be wages ~~shall~~ must be determined as follows:

(1) if the employee reimburses the employer at an established rate of less than 20 cents per mile for each mile of personal use, the amount deemed to be wages ~~shall be~~ is the difference, if any, between the amount reimbursed and 20 cents per mile; or

(2) if the employee reimburses the employer at an established daily, weekly, or monthly rate, the amount deemed to be wages ~~shall be~~ is the difference, if any, between the amount reimbursed and \$200 per month or, if for less than a month, \$7 for each day that the employee has use of the vehicle for personal purposes.

O. Payments made for an unexpired portion of an employment contract.

## 3315.0212 EMPLOYEE EQUIPMENT AND VEHICLES.

Subpart 1. **Trucks, bulldozers, tractors.** The ~~remuneration compensation~~ of the operator and supplier of a bulldozer, tractor, or similar equipment, and trucks other than truck owner-operators excluded under part 3315.0525, whose ~~remuneration compensation~~ includes wages for personal services as well as the cost of operating and hiring the equipment are wages unless the amount attributable to wages is separately identified either by making separate payments; or, if both wages and equipment hire are combined in a single payment, by a prearranged written agreement or by specifically indicating the separate amounts at the time of each payment.

Subp. 2. **Advances or reimbursements as wages.** Payments to an employee that include advances or reimbursements for use of a personal vehicle of up to 9,000 pounds gross vehicle weight in the employer's business are wages unless the amount attributable to the use of the vehicle is separately paid or stated as prescribed in part 3315.0220, item H and the advance or reimbursement is not unreasonable or arbitrary in which case only the amount attributable to services performed ~~shall be~~ is wages.

Subp. 3. **Commissioner determination of wages.** If the commissioner finds that the wage determination of the equipment operators or employees who use their personal vehicles in the employer's business prescribed by subparts 1 and 2 would be unreasonable or arbitrary in a particular case, then the commissioner ~~shall~~ must determine the amount of the wages of the employee involved.

## 3315.0213 NONCASH WAGES.

Except as may otherwise be provided in this chapter, the cash value of wages payable in any medium other than cash ~~shall be~~ is:

A. the fair market value of meals or any value agreed upon between the employer and employee if it is not less than the allowance as provided in *Minnesota Statutes*, sections 177.21 to 177.35, the Minnesota Fair Labor Standards Act, and rules promulgated thereunder;

B. the value of rent of a house, apartment, or other lodging, furnished to an employee that would be paid by an employee for similar or equivalent accommodations, but in no event less than the allowance provided in *Minnesota Statutes*, sections 177.21 to 177.35 and rules promulgated thereunder; or

C. the fair market value, determined when received, of any other payment for services unless a higher value is agreed upon between the employer and the employee.

If the commissioner determines that the reasonable fair market value is other than as determined by the employer the commissioner ~~shall~~ must, after affording the employer reasonable opportunity for the submission of relevant information, determine the reasonable cash value of board, rent, housing, meals, or similar advantage.

## 3315.0220 EXEMPT WAGES.

Except as provided under *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~25~~ 29, paragraph (k); the term "wages" ~~shall~~ does not include:

A. the value of any special discount or markdown allowed to an employee in goods purchased from or services supplied by the employer where the purchases are optional and do not constitute regular or systematic payment for services rendered;

B. customary and reasonable directors' fees paid to individuals who are not otherwise employed by the corporation of which they are directors;

C. money allowed to employees for reimbursement of meal expenses when employees are required to perform work after their regular hours;

D. payment into a trust or plan for purposes of providing legal or dental services if provided for all employees generally or for a class or classes of employees;

E. the value of parking facilities provided or paid for by an employer, in whole or in part, if provided for all employees generally or for

a class or classes of employees;

F. compensation, reimbursement, fees, meals, or other payments paid or provided through a court to an individual for services performed as a juror;

G. royalties to an owner of a franchise, license, copyright, patent, oil, mineral, or other right;

H. amounts paid specifically as advances or reimbursements for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer (traveling and other reimbursed expenses must be identified either by making separate payments or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment);

I. ~~remuneration~~ compensation paid to radio and television artists which represents residual payments and which is accrued subsequent to the production of musical jingles, spot announcements, radio transcriptions, and film sound tracks; or

J. any payment to or on behalf of an employee under a plan or system established by an employer, which makes provisions for employees generally or for a class or classes of employees for the supplementation of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument if the plan or system provides benefits which are only supplemental to, and does not replace or duplicate any state or federal unemployment compensation. The plan or system must provide that funds are to be used solely for the supplementation of state unemployment benefits. Potential recipients of the plan or system must be required to file for unemployment benefits in accordance with state law. The plan or system ~~shall~~ may not allow the assignment of benefits or the payment of any consideration in lieu of any benefit upon the employee's withdrawal from the plan or system, or termination of employment or the termination of the plan or system. The plan or system must not be designed for the purpose of avoiding the payment of unemployment benefit taxes on money disbursed from its plan or system.

### 3315.0515 AGENT-DRIVERS AND SALESPERSONS.

Subpart 1. **Statutory employees.** Certain classes of agent-drivers, salespersons, and commission persons are statutory employees even though they are independent contractors under common law rules. *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~ 15, clause ~~(1)(b)~~ (4), sets forth the conditions which must be present for members of each class to be employees.

Subp. 2. **Fulltime.** In the case of a traveling or city salesperson, other than an agent-driver or commission-driver, *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~ 15, clause (4), provides that the individual must be engaged on a fulltime basis. "Full-time" means the number of hours in the calendar week during which individuals engaged in the same or similar occupations usually or customarily perform services, except that any week during which an individual worked 40 hours or more providing those services ~~shall be~~ are deemed to be fulltime.

Subp. 3. **Substantial investment in facilities.** Agent-drivers, commission-drivers, and traveling or city salespersons to be employees must not have a substantial investment in facilities, other than facilities for transportation, used in connection with the performance of the services.

"Facilities" means equipment or premises necessary to perform the work. Inventory, clothing, and items not actually required to adequately perform the assigned tasks are not facilities.

"Substantial investment" refers to a monetary investment representing something of considerable worth in relation to the overall investment requirements in the distribution or sale of the particular product involved.

### 3315.0520 EMPLOYMENT, GENERAL INCLUSIONS.

The services described in items A to C are considered to be in employment:

A. Services performed by an employee as an insurance agent, insurance solicitor, or real estate salesperson for the pay period in which payments for the services not constituting commissions were paid or became due and payable. The exclusionary provisions of *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~ 20, clauses ~~(15)(m)~~ (26) and ~~(o)~~ (29), apply to services which require a Minnesota real estate or insurance agent's sales license and to those individuals, except corporate officers, possessing the license. Services of corporate officers, who are employees by statute, ~~shall~~ are not be considered in the application of this exclusionary provision. Noncommission ~~remuneration~~ compensation includes guaranteed salary, training allowance, bonus, and draws or advances against future earnings as described in part 3315.0210, item I. For the purpose of this item commission means ~~remuneration~~ compensation paid to individuals as a direct result of a sale, including the percentage of the sale price paid to the salesperson responsible for the sale, and payments including overrides, listing fees, and closing fees which are related to the sale.

B. Services performed as election judges.

C. Services performed by factory demonstrators who are placed by a manufacturer or distributor in stores and other locations to aid in the sale of products, who are hired by, who are paid directly or indirectly by, and who work under the direction of the manufacturer or distributor, although this direction may be delegated to the retailer, are in the employment of the manufacturer or distributor making the placement. If the retailer, not acting as an agent for the manufacturer or distributor, hires, directs, and pays the demonstrator directly, the retailer is the employer. If the wages are paid in part by the manufacturer or distributor, and in part by the retailer, the demonstrator is in

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the employment of both. Each is required to pay taxes on the part of the ~~remuneration~~ compensation which it pays, provided that it is an employer under *Minnesota Statutes*, sections 268.03 to 268.24. If the demonstrator is referred to the job through a placement agency that is in the business of providing demonstrators to clients, the placement agency is the employer unless the placement agency neither pays nor receives, directly or through an agent, the salary or wages of the demonstrator, but is compensated on a fee basis by the demonstrator or the client for whom the service is performed.

## 3315.0530 EMPLOYMENT, GENERAL EXCLUSIONS.

Subp. 2. **Ministers and members of religious orders.** *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~ 20, clause ~~(10)~~ (8), ~~paragraph (b)~~, excludes from employment the service of a minister in the exercise of his or her ministry and services performed by members of religious orders when the services are required by their order. The term “exercise of his or her ministry” includes:

- A. the conduct of religious worship and the ministration of sacerdotal functions;
- B. services performed in the control, conduct, and maintenance of:
  - (1) a religious organization under the authority of a religious body constituting a church or church denomination; or
  - (2) an organization operated as an integral agency of a religious organization or of a church or church denomination;
- C. services performed for an organization described in *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~ 20, clauses ~~(7)~~ (7); ~~and (8), and (9)~~; under an assignment or designation by a church. This does not include cases in which a church merely helps a minister by recommending the minister for a position involving nonministerial services for an organization not connected with the church; and
- D. missionary service or administrative work in the employ of a missionary organization.

As used in item B, “control, conduct, and maintenance” of an organization does not include services such as operating an elevator, or being a janitor, but includes services performed in the directing, management, or promotion of the activities of the organization. Accordingly, service of a member of the clergy as a chaplain and the services of members of a teaching or nursing order who are engaged in teaching or nursing are excluded. In the case of a member of a religious order, the criterion to determine if the employment is excluded is whether the order requires the performance of the services.

Subp. 3. **Convention or association of churches.** *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~ 20, clause ~~(10)~~ (7), provides that service performed in the employ of a church or convention or association of churches is excluded from employment. “Convention or association of churches” means a formal or informal group of churches whose purpose is concerned with religious and denominational matters of the group represented.

Subp. 4. **Policy-making or advisory positions with the state of Minnesota, its instrumentalities, and political subdivisions.** *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~ 20, ~~clause 10, (f), (v)(a), (b), and (c)~~ clauses (15) and (16), excludes from employment services performed for the state of Minnesota, its instrumentalities, and political subdivisions if performed by an individual in a policy-making position that ordinarily does not require more than eight hours per week in the performance of the duties; or in a major nontenured policy-making or advisory position and that, if performed for the state of Minnesota, is in the unclassified service. The word “major” in the phrase “major nontenured policy-making or advisory position” refers to high level governmental positions usually filled by appointment by the chief executive or the executive’s designee. An individual in a policy-making position is one who determines the direction, emphasis, and scope of action in the development and the administration of governmental programs. An individual in an advisory position is one who advises governmental agencies and officers with respect to policy, program, and administration without having authority to implement its recommendations. For the state of Minnesota and political subdivisions that do not have authority to enact ordinances without recourse to the state legislature, the position must be designated as policy-making or advisory by state law or local ordinance enacted under state law. Political subdivisions may enact an ordinance creating or designating one of its positions as policy-making or advisory, provided the ordinance is under authority of the laws of the state. If a law or ordinance does not clearly and specifically so label a position, other pertinent factors used in determining whether a position is advisory or policy-making include:

- A. job descriptions;
- B. qualifications required of individuals for the position; and
- C. responsibilities involved.

The most important factor in the application of *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~, ~~clauses (10), (f), (v)(a) and (c)~~ 20, is whether a particular position is designated as a major nontenured policy-making or advisory position under state law. If an agency or department is covered by a merit system, the provisions of this exclusion apply only to individuals that are nontenured. “Nontenured” means that the position is not covered by a merit system or civil service law or rules with respect to duration of service or appointment.

Subp. 5. **Temporary employees hired for emergencies.** *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~ 20, clause ~~(10)~~ (13), ~~(f), (iv)~~; applies to employees who are pressed into service during an existing or imminent emergency. The exclusion does not apply to any services performed in the prevention or detection of a disaster nor to permanent employees, such as volunteer firefighters whose usual responsibilities include emergency situations.

Subp. 6. **Students employed by school, college, or university.** *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~ 20, clause ~~(15)~~ (20), ~~(g), (2)~~; excludes from employment the services of students in the employ of a school, college, or university if the student is

enrolled and is regularly attending classes at the school, college, or university. “Regularly attending classes” means meeting the minimum attendance required for a student’s course of study in pursuit of a degree and that the course of study is not by correspondence, part of an extension course, or a continuing education course required by an employer as a condition to employment.

### 3315.0540 PREVIOUSLY EXCLUDED EMPLOYMENT.

If within a calendar year an individual’s services and ~~remuneration~~ compensation should no longer be excluded because the ~~employing unit~~ employer has met the employment or wage requirement for that individual’s class of workers, all of the previously excluded employment for that class within the same calendar year is subject to the provisions of *Minnesota Statutes*, sections 268.03 to 268.24. The previously excluded wages for all workers in that class of employment are reportable in the calendar quarters in which the wages were paid or were due and payable.

### 3315.0550 MULTISTATE EMPLOYMENT.

Subpart 1. **Localized employment.** If an employee works in more than one state, it is necessary to determine if the employment is localized in and reportable to Minnesota. In making this determination, only the employee’s regular services are to be considered. “Regular” services refers to the primary duties of the employee. For example, a salesperson’s regular duties are limited to services directly involved in selling, so a salesperson’s regular duties do not include commuting. An employee’s services are considered localized in Minnesota in any calendar quarter in which 80 percent or more of his or her regular services are performed in Minnesota.

Regular services include those services performed in an office located in the home of the employee if all of the following conditions are met: the employer does not provide other facilities; the office meets the requirements of the Internal Revenue Code of 1986 for the deduction of business related expenses; and the services performed are an integral part of the employee’s regular duties.

Nonregular services include:

A. attending periodic meetings or returning to one’s residence which is located outside his or her area or territory, by salespersons or others who normally perform services within a given area or territory; and

B. any other services which are apart from or not a permanent part of an employee’s regular duties, are temporary or transitory in nature, or are incidental to an employee’s regular duties.

Subp. 2. **Multistate worker.** When an individual’s services are not localized, and absent any reciprocal agreement provided for in *Minnesota Statutes*, section ~~268.13~~ 268.042, subdivision 1 4, ~~clause (1)~~; the employee is a “multistate” worker and the application of the tests listed in subparts 3 to 6 is required, to determine whether the services are reportable to Minnesota.

Subp. 3. **Base of operations.** If an individual’s services are not localized in any state and some services, other than those determined to be nonregular, are performed in Minnesota and the base of operations is in Minnesota, the employee’s entire services are reportable to Minnesota. “Base of operations” means the place, usually permanent in nature, from which the employee starts his or her work, to which he or she customarily returns, and to which the employer may direct instructions to the employee. A branch office of the employer or the place of residence of the employee could be a base of operations.

Subp. 4. **Direction and control.** If an individual’s services are not localized in any state and the base of operations test does not apply, all of the services are reportable to Minnesota if Minnesota is the state from which the employer exercises general direction and control over the employee, and if some services, other than those determined to be nonregular, are performed in Minnesota.

Subp. 5. **Residence.** If an individual’s services are not localized within any state and the base of operations and the direction and control tests do not apply, the individual’s entire services are reportable to Minnesota if the individual’s residence is located in Minnesota and some services, other than those determined to be nonregular are performed in Minnesota.

Subp. 6. **Service not covered under laws of any other state or Canada.** If subparts 3 to 5 do not apply, and the individual’s services are not covered under the laws of any other state or Canada, the services are covered under *Minnesota Statutes*, sections 268.03 to 268.24 if the services are directed and controlled from Minnesota.

### 3315.0555 DETERMINING WORKER STATUS.

Subpart 1. **Essential factors.** When determining whether an individual is an employee or an independent contractor, five essential factors must be considered and weighed within a particular set of circumstances. Of the five essential factors to be considered, the two most important are those:

A. that indicate the right or the lack of the right to control the means and manner of performance; and

B. to discharge the worker without incurring liability. Other essential factors to be considered and weighed within the overall relationship are the mode of payment; furnishing of materials and tools; and control over the premises where the services are performed.

Other factors, including some not specifically identified in this part, may be considered if a determination is inconclusive when applying the essential factors, and the degree of their importance may vary depending upon the occupation or work situation being considered and why the factor is present in the particular situation.

Subp. 2. **Additional factors considered.** Additional factors to be considered are those listed in items A to H.



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A. **Availability to public.** That an individual makes services available to the general public on a continuing basis is usually indicative of independent status. An individual may offer services to the public in a number of ways including having an office and assistants, displaying a sign in front of the home or office, holding a business license, having a listing in a business directory or a business listing in a telephone directory, or advertising in a newspaper, trade journal, or magazine.

B. **Compensation on job basis.** A person working in employment is usually paid by the hour, week, or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings indicates the existence of employment.

C. **Realization of profit or loss.** An individual who is in a position to realize a profit or suffer a loss as a result of the individual's services is generally independent, while the individual who is working in employment is not in that position.

D. **Obligation.** An individual working in employment usually has the right to end the relationship with an employer at any time the individual wishes without incurring liability, although the individual may be required to provide notice of termination for some period in advance of the termination. An independent worker usually agrees to complete a specific job. An independent worker is responsible for its satisfactory completion and is liable for failure to complete the job.

E. **Substantial investment.** A substantial investment by a person in facilities used by the person in performing services for another tends to show an independent status. The furnishing of all necessary facilities by the ~~employing unit~~ employer tends to indicate the absence of an independent status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. A substantial expenditure of time or money for an individual's education is not necessarily indicative of an independent relationship. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation, or vocation.

F. **Simultaneous contracts.** If an individual works for a number of persons or firms at the same time, it indicates an independent status because the worker is usually free from control by any of the firms. It is possible that a person may work for a number of people or firms and still be an employee of one or all of them.

G. **Responsibility.** An ~~employing unit~~ employer is usually responsible for the negligence, personal behavior, and work actions of a person working in employment in contacts with customers and the general public during times that the person is performing services for the ~~employing unit~~ employer. An independent worker is usually accountable for his or her own actions.

H. **Services in the course of the ~~employing unit's~~ employer's organization, trade, or business.** Services that are in the course of the ~~employing unit's~~ employer's organization, trade, or business consist of services which are a part or process of the ~~employing unit's~~ employer's organization, trade, or business and ancillary or incidental services. Services which are a part or process of the ~~employing unit's~~ employer's trade or business are generally performed by individuals in employment. Therefore, it is a consideration in determining the status of an individual. This consideration, as with all other considerations, is not a sole determinative factor. "Part" and "process" are not synonymous. Process refers to those services which directly carry out the fundamental purposes for which the organization, trade, or business exists, for example, painting and repairing automobile bodies in an automobile body paint and repair shop. Part refers to any other services which are essential to the operation or maintenance of the organization, trade, or business, for example, routine cleaning of premises and maintenance of tools, equipment, and buildings. Ancillary or incidental services include landscaping the areas around an automobile body paint and repair shop. Other services that meet the part, process, or ancillary classification are those services in connection with purchasing, receiving, storing, pricing, displaying, selling, and delivery of merchandise and housekeeping services required for the safety and comfort of customers and the general public or to maintain the premises in a manner as to promote business.

Subp. 3. **Determination of control.** Items A to M describe criteria for determining if the ~~employing unit~~ employer has control over the method of performing or executing services. The total circumstances must be considered to determine if control is present.

A. **Authority over assistants.** Control over the individual is indicated when the ~~employing unit~~ employer hires and pays the individual's assistants and supervises the details of the assistant's work.

B. **Compliance with instructions.** Control is indicated when an individual is required to comply with detailed instructions about when, where, and how to work including the order or sequence in which the service is to be performed. Mere suggestions as to detail or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally evince control. Some individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control factor is present if the ~~employing unit~~ employer has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the ~~employing unit~~ employer from a client or customer, generally does not evince control.

C. **Oral or written reports.** Control is indicated if regular oral or written reports relating to the method in which the services are performed must be submitted to the ~~employing unit~~ employer. Periodic reports relating to the accomplishment of a specific result may not

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## Exempt Rules

be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion of a job, or the reports are needed to determine compliance with the terms of a contract. Completion of receipts, invoices, and other forms customarily used in the particular type of business activity or required by law does not constitute written reports.

D. **Place of work.** Doing the work on the ~~employing unit's~~ employer's premises is not control in itself; however, it does imply that the employer has control, especially when the work could be done elsewhere. When work is done off the premises it does indicate some freedom from control; however, in some occupations, the services are necessarily performed away from the premises of the ~~employing unit~~ employer and are still considered to be in employment.

E. **Personal performance.** Control is indicated if the services must be personally rendered to the ~~employing unit~~ employer. Personal performance of a very specialized work, when the worker is hired on the basis of professional reputation, as in the case of a consultant known in the academic and professional circles to be an authority in the field, is a less reliable indicator of control. Lack of control may be indicated when an individual has the right to hire a substitute without the ~~employing unit's~~ employer's knowledge or consent.

F. **Existence of a continuing relationship.** The existence of a continuing relationship between an individual and the person for whom an individual performs services is a factor tending to indicate the existence of an employer-employee relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the ~~employing unit~~ employer or whenever work is available.

G. **Right to discharge.** The right to discharge is a very important factor indicating that the right to control exists particularly if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. An independent worker generally cannot be terminated without the firm being liable for damages if he or she is producing according to his or her contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative of the right to control. That a right to discharge is restricted because of a contract with a labor union or with other entities does not mean there is no control.

H. **Set hours of work.** The establishment of set hours of work by the ~~employing unit~~ employer indicates control. Where fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times is an element of control.

I. **Training.** Training of an individual by an experienced employee working with the individual, by required attendance at meetings, and by other methods, is a factor of control especially if the training is given periodically or at frequent intervals.

J. **Amount of time.** If the worker must devote full time to the activity, control is indicated. Full time does not necessarily mean an eight-hour day or a five- or six-day week. Its meaning may vary with the intent of the parties, the nature of the occupation and customs in the locality. Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels the person to devote all working time to that business, or the person may not be permitted to work for anyone else.

K. **Tools and materials.** The furnishing of tools, materials, and supplies by the ~~employing unit~~ employer is indicative of control over the worker. When the worker furnishes these items it indicates a lack of control, but lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

L. **Expense reimbursement.** Payment by the ~~employing unit~~ employer of either the worker's approved business or traveling expenses, or both, is a factor indicating control over the worker. A lack of control is indicated when the worker is paid on a job basis and has to take care of all incidental expenses.

M. **Satisfying requirements of regulatory and licensing agencies.** If an ~~employing unit~~ employer is required to enforce standards or restrictions imposed by regulatory or licensing agencies, such action does not evince control.

Subp. 4. **Procedures for determining control.** The department ~~shall~~ must determine if control exists by:

- A. reviewing written contracts between the individual and the ~~employing unit~~ employer;
- B. interviewing the individual or ~~employing unit~~ employer;
- C. obtaining statements of third parties;
- D. examining regulatory statutes governing the organization, trade, or business;
- E. examining the books and records of the ~~employing unit~~ employer; and
- F. making any other investigation necessary to determine if the elements of control specified in subpart 3 exist.

### 3315.0801 PURPOSE.

Parts 3315.0801 to 3315.0845 further define and clarify terms used in *Minnesota Statutes*, section ~~268.04~~, subdivision 12, clause (15)(a) 268.035, subdivisions 2, 11, and 20, clause (33), and in parts 3315.0801 to 3315.0845.

### 3315.0810 UNMANUFACTURED STATE.

*Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision 12, clause (15)(a)(4), requires that the services described in that clause be in connection with commodities that are in their unmanufactured state. A commodity that loses its original identity is considered in a manufactured state and services relating to the manufactured product are not agricultural. The following products are considered as being

# Exempt Rules

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in a manufactured state: cheese; butter; yogurt; ice cream; dried or powdered milk; dried fruits or vegetables; juices, oils, and syrups derived from fruits and vegetables; and dried or powdered eggs.

## **3315.0825 AGRICULTURAL LABOR ON FARMS.**

Services connected with the following activities must be performed on a farm as defined in *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~ 2, ~~clause (15)(a)(5)~~ and in parts 3315.0801 to 3315.0845, to be agricultural labor:

- A. breeding and training horses;
- B. hatching poultry;
- C. aerial seeding, fertilizing, spraying, and dusting including services related to the mixing of the spray or dust material or the loading of the material into the airplane, as well as services related to the measuring of the swaths and the marking and flagging of fields to be dusted or sprayed;
- D. clerical, bookkeeping, and other office work in conjunction with the services referred to in *Minnesota Statutes*, section ~~268.04~~, ~~subdivision 12, clause (15)(a)(1)~~ 268.035, subdivisions 2 and 11; or
- E. holding, feeding, and fattening livestock in feed lots.

## **3315.0830 AGRICULTURAL LABOR, CONDITIONAL SITUATIONS.**

Subpart 1. **Generally.** The services described in subparts 2 to 5 are not agricultural labor unless they meet the specific requirements set forth in subparts 2 to 5 with regard to where and for whom they are performed. When reference is made to “incidental to ordinary farming operations,” that means services of the character ordinarily performed by employees of a farmer or of a farmer’s cooperative organization or group as a prerequisite to marketing in its unmanufactured state any agricultural or horticultural commodity produced by the farmer, organization, or group.

Subp. 2. **Clerical work.** Record keeping and other clerical or office work performed in connection with the functions described in *Minnesota Statutes*, section ~~268.04, subdivision 12, clauses (15)(a)(2) and (4)~~ 268.035, subdivisions 2 and 11, unless they are:

- A. performed in the employ of the owner or tenant or other operator of a farm;
- B. rendered in major part on a farm; and
- C. performed incidentally to ordinary farming operations.

Subp. 3. **Commodity retailing.** Retailing agricultural or horticultural commodities, on or off the farm, unless:

- A. the services are performed for, and the commodities are produced by the operator of the farm; and
- B. less than 50 percent of the employee’s time is devoted to the services. The 50 percent test is to be applied to each employee with respect to either a pay period or 31 days, whichever is less.

Subp. 4. **Waterways work.** Services in the construction of canals, reservoirs, waterways, or drainage ditches, unless in the employ of the owner or tenant or other operator of a farm.

Subp. 5. **Land clearance.** Services in the clearing of stumps, brush, and debris from land in preparation for its use as a farm, unless done in the employ of the owner tenant or other operator of the farm.

## **3315.0840 AGRICULTURAL LABOR, SEPARATE COMMODITIES.**

The services with respect to each commodity are to be considered separately in determining whether the conditions set forth in *Minnesota Statutes*, section ~~268.04, subdivision 12, clause (15)(a)(4)~~ 268.035, subdivisions 2 and 11, have been satisfied.

## **3315.0901 PURPOSE.**

Parts 3315.0901 to 3315.0920 further define and clarify terms used in *Minnesota Statutes*, section ~~268.04, subdivision 12, clause (14)~~ 268.035, subdivision 20, clause (17), and in parts 3315.0901 to 3315.0920.

## **3315.0910 DOMESTIC SERVICE, GENERAL.**

Subpart 1. **Maintenance of employer’s private home.** Domestic service in connection with the maintenance of an employer’s private home is service which contributes directly to the protection, cleaning, and normal maintenance, in contrast to major repair projects, of the home and surrounding area. It does not include service which is not ordinarily a part of home duties or which involves the use of skilled or specialized training including service performed by persons in the construction trades.

Subp. 2. **Administering to personal wants and comforts of employer.** Certain services, although performed in or around the private home of the employer are not domestic services because they are too remotely associated with the requirement that they administer to the personal wants and comforts of the employer. Examples of nondomestic services include those performed by a private or social secretary, tutor, librarian, bookbinder, museum assistant, and medical nurse.

Subp. 3. **Domestic service performed by relatives.** Domestic service performed by relatives, other than that excluded from employment by *Minnesota Statutes*, section ~~268.04~~ 268.035, subdivision ~~12~~ 20, ~~clause (15)(d) (18)~~, is domestic service within parts

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## Exempt Rules

3315.0901 to 3315.0920 if there is a contractual agreement between a relative and the ~~employing unit~~ employer.

Subp. 4. **Service performed by employees of landlords or rental agencies.** Service of a household nature performed in or around rental units by employees of landlords and rental agencies is not domestic service. Service performed by domestic workers in and around the private home of the landlord is not within this exception.

Subp. 5. **Workers obtained through referral or placement agency.** Domestic workers referred to jobs through employment placement agencies that neither supervise nor pay them directly are in the employ of the recipient of the services. However, if an agency is in the business of providing temporary services to clients the agency is the ~~employing unit~~ employer and the workers are not providing domestic services.

Subp. 6. **Service performed for a minister, priest, rabbi, or any other member of a religious order.** Service performed in the private home of a minister, priest, rabbi, or any member of a religious order is considered domestic service if the worker is in the employ of the recipient of the service. If the worker is in the employ of the church or religious order the service is excluded employment. The recipient of the service is the employer if the funds for the payment of the domestic worker are not specifically provided by the church or religious order. Funds provided by a congregation of a church are considered as being provided by the church. If funds are not provided by the church specifically for domestic service and the spouse hires, directs, and otherwise controls the worker, the spouse is the employer.

Subp. 7. **Registered and licensed practical nurses.** Registered nurses performing private duty services are generally performing service as independent contractors if they have full discretion in administering their professional services and are not subject to direction and control. Registered and licensed practical nurses who are engaged by hospitals, nursing homes, physicians, government agencies, or commercial businesses generally are not performing services as an independent contractor and the services are nondomestic.

Subp. 8. **Nurses aides and patient helpers.** Nurses aides and patient helpers who are engaged to perform services in the private home of the patient, although they may occasionally administer medication, are usually performing services that are primarily domestic in nature. Patient helpers who are selected by patients who require their services, either in the hospital or after returning to their homes, are generally in the employ of the patient.

### 3315.1001 SCOPE.

Parts 3315.1001 to 3315.1020 clarify an ~~employing unit's~~ employer's duty with regard to records and reports as required under *Minnesota Statutes*, chapter 268.

### 3315.1005 NOTIFICATION.

Subpart 1. **Establishment of new business or change in existing business.** Each ~~employing unit shall~~ employer must notify the department within 30 days of a change in legal entity, or the start, transfer, sale, acquisition, or termination of a business conducted in Minnesota, in whole or in part, insofar as the transaction results in the creation of a new or different ~~employing unit~~ employer or affects the establishment of employer accounts, the assignment of rates, or the transfer of experience records as provided in *Minnesota Statutes*, section ~~268.06~~ 268.051, subdivision 4. If the information as submitted is incomplete, subsequent requests for additional information required in determining liability, modifying an existing account, and assigning or transferring of experience rates must be completed, signed, and returned to the department in accordance with the instructions on the form or accompanying correspondence. When the forms require the address of business establishments, the ~~employing unit~~ employer must furnish a complete street and city address if one exists. Post office box numbers or similar addresses that do not show the actual location of the business will not be acceptable except as a mailing address.

Subp. 3. **Bankruptcy.** In the case of bankruptcy or receivership proceedings, or any proceedings for the relief of a debtor who is an employer, the trustee in bankruptcy, receiver, or person designated by order of the court as the one in control of the assets of the debtor ~~shall~~ must promptly file notice of the proceedings with the department.

### 3315.1010 RECORDS.

Subpart 1. **Record keeping.** Each ~~employing unit shall~~ employer must establish, maintain, and preserve records with respect to individuals performing personal services for it, including individuals who perform or assist in performing the work of any employee of the employer if the employer had actual or constructive knowledge that the work was being performed. The records ~~shall~~ must be preserved for a period of not less than eight years after the calendar year in which the ~~remuneration~~ compensation for the services was paid or payable, and ~~shall~~ must show for each individual the following:

- A. name;
- B. social security number;
- C. days in which the individual performed personal services;
- D. location where services were performed;
- E. wages paid and wages due but not paid for personal services, showing separately:

# Exempt Rules

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- (1) money wages, excluding special payments;
  - (2) wages paid and wages due but not paid, in any medium other than money, excluding special payments;
  - (3) special payments such as bonuses, gifts, and prizes, showing separately money payments, other special payments, and the character of the payments; and
  - (4) tips and gratuities paid to an employee by a customer and accounted for by the employee to the employer as defined in part 3315.0211, subparts 1 and 2;
- F. rate and base unit of pay;
- G. amounts paid as allowances or reimbursement for travel or other activity pertaining to the furtherance of the ~~employing unit's~~ employer's business which were not included as wages. The account ~~shall~~ must show each item of expense incurred during each pay period or calendar month;
- H. the date of separation and the reason, in detail, for the termination;
- I. the complete resident address of the employee;
- J. for each pay period:
- (1) the beginning and ending dates of the period;
  - (2) the total amount of wages paid and wages due but not paid for personal services performed; and
  - (3) the date of payment; and
- K. for each calendar month or, if less, the established pay period of the employer, the hours spent performing services in employment and the hours spent performing ~~excluded services~~ noncovered employment, by each employee for which the provisions of part 3315.0535 apply.

Subp. 2. **Instate and outstate.** For services performed within and without Minnesota the records required by subpart 1 ~~shall~~ must include:

- A. the city or county and state in which the ~~employing unit~~ employer maintains a base of operations, as defined in part 3315.0550, subpart 3, used by the individual;
- B. the city or county and state from which the services are directed and controlled, if the ~~employing unit~~ employer does not have a base of operations in the states in which an individual performs services; and
- C. a list of the states in which the individual performs other than temporary or incidental services and the dates services were performed at each location.

Subp. 3. **Covered and uncovered employment.** For services performed in both employment and ~~excluded~~ noncovered employment within a pay period the records required by subpart 1 ~~shall~~ must include the hours spent performing services in employment and the hours spent performing ~~excluded services~~ noncovered employment.

## 3315.1315 EXPERIENCE RATES.

Subp. 4. **Previously liable employing unit employer.** An ~~employing unit~~ employer that ceases to be a liable employer as a result of its business being transferred or discontinued or as a result of the business entity being granted termination of coverage under *Minnesota Statutes*, section 268.042, ~~shall regain~~ regains its previous experience rating account if it should once again become subject to the law and if:

- A. less than 14 quarters have elapsed in which no covered wages were paid or due and payable;
- B. the account contains taxable payroll in the experience rate period applicable at the time it again becomes subject to the law; and
- C. all of the experience had not been transferred to a successor.

## 3315.2010 ADJUSTMENTS AND REFUNDS, TAXPAYING ACCOUNTS.

Subpart 1. **Overpayments.** Tax reports, other than those lacking proper signature, will not be returned to employers for correction. Whenever an erroneous report is submitted that results in a tax overpayment, the employer may obtain a credit allowance or refund if the payment was made within the current or preceding four calendar years. A request for adjustment must show the total wages, excess wages, taxable wages, and tax as previously reported and as corrected for the period involved. If the adjustment changes the total wages reported, the request must also include the social security number, name, wages, and weeks worked as previously reported and as corrected for each individual whose wages were changed. The department's form, Employer's Application for Wage Adjustment, may be used for this purpose. The credit allowance or refund ~~shall~~ must be reduced by any indebtedness due the department by the employer and by the amount of benefits paid to a claimant as a direct result of the employer's erroneous report. This subpart does not apply to overpayments of voluntary taxes.

The commissioner may, upon request of the employer or ~~employing unit~~ or upon the commissioner's own initiative, issue a refund covering the overpayment. Lacking specific instructions from the employer, the commissioner ~~shall~~ must issue a credit statement and mail it to the employer at the employer's last known address. If the employer fails to use the credit, the commissioner may cancel it and issue a refund covering the overpayment.



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## Exempt Rules

Subp. 2. **Underpayments.** If the tax report first submitted by an employer understates the amount of taxable wages resulting in an understatement of the tax due and owing for a given period, the employer ~~shall~~ must file the department's form, Employer's Application for Wage Adjustment, and make remittance covering the additional tax due. The information provided to the department ~~shall~~ must include the total wages, excess wages, taxable wages, and tax as previously reported and as corrected for the period involved. If the adjustment changes the total wages reported, the request must also include the social security number, name, wages, and weeks worked as previously reported and as corrected for each individual whose wages were changed.

Subp. 3. **Wages reported to another state in error.** Wages for services determined to be reportable to Minnesota but reported to another state in error ~~shall~~ must be reported and the tax paid to Minnesota. This does not apply to wages paid more than four calendar years before the year of the determination or paid beyond the refunding state's statute of limitations, whichever is less.

### 3315.2810 REIMBURSING ACCOUNTS.

Subp. 2. **Change in method of payment.** An employer that changes from reimbursing to taxpaying ~~shall continue~~ continues to be liable to reimburse the trust fund for benefits that are paid based on wages paid during the effective period of the employer's election to make reimbursements. All benefit charges based on wages paid after the effective date of the approval of the change to taxpaying ~~shall~~ must be charged to the employer's experience rating account. When an employer changes from taxpaying to reimbursing, benefit charges in the employer's experience rating account ~~shall~~ must be used in future rate computations if the employer reverts back to taxpaying and the benefit charges are within the experience rate computation period in effect at the time of the change.

Subp. 4. **Application of partial payments.** Except for an indebtedness that has been reduced to judgment, payments received without specific instructions and which are not clearly intended for a specific benefit charge or indebtedness ~~shall~~ must be applied to remove all benefit charges and interest beginning with the oldest calendar quarter.

## Expedited Emergency Rules

Provisions exist for the Commissioners of some state agencies to adopt expedited emergency rules when conditions exist that do not allow the Commissioner to comply with the requirements for emergency rules. The Commissioner must submit the rule to the attorney general for review and must publish a notice of adoption that includes a copy of the rule and the emergency conditions. Expedited emergency rules are effective upon publication in the State Register, and may be effective up to seven days before publication under certain emergency conditions.

Expedited emergency rules are effective for the period stated or up to 18 months. Specific *Minnesota Statute* citations accompanying these expedited emergency rules detail the agency's rulemaking authority.

**KEY: Proposed Rules** - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

## Department of Natural Resources

### Adopted Expedited Emergency Game and Fish Rules: Waterfowl Hunting

**NOTICE IS HEREBY GIVEN** that the above entitled rules have been adopted through the process prescribed by *Minnesota Statutes*, section 84.027, subdivision 13 (b). The statutory authority for the contents of the rules is *Minnesota Statutes*, Sections 97A.092, 97A.401, 97B.731, and 97B.803.

The emergency conditions that do not allow compliance with *Minnesota Statutes*, sections 97A.0451 to 97A.0459, are that breeding population data for coots, moorhens, ducks, and geese are not available until June and federal frameworks for late season migratory birds are not announced until early August. The current limits on the number of shells and hunting trips on wildlife management area regulated hunts were based on the previous daily limit of one Canada goose. They need to be increased to maintain similar harvest opportunity for hunters, to achieve Canada goose population management goals.

Dated: August 10, 2006

Gene Merriam, Commissioner  
Department of Natural Resources

# Expedited Emergency Rules

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## 6230.0700 LAC QUI PARLE SPECIAL PROVISIONS.

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

Subp. 4. **Limitation on number of shells possessed.** Only persons hunting may bring shotgun shells into the controlled hunting zone. A waterfowl or small game hunter may not bring in more than ~~six~~ 12 shells per ~~day~~ trip or have in possession more than ~~six~~ 12 shells at any one time.

[For text of subs 5 and 6, see M.R.]

Subp. 7. **Limitation on number of trips.** Waterfowl and small game hunters are limited to three trips per season either as a guest or a successful applicant except when vacancies exist. Hunters are limited to ~~one trip~~ two trips per day to the hunting stations.

## 6230.0800 THIEF LAKE SPECIAL PROVISIONS.

[For text of subs 1 to 4, see M.R.]

Subp. 5. **Limitation on number of shells possessed.** Only persons hunting may bring shotgun shells into the controlled hunting zone. A hunter may not bring more than ~~six~~ 12 shells per trip into the controlled hunting zone or have more than ~~six~~ 12 shells in possession at any one time.

[For text of subs 6 and 7, see M.R.]

## 6240.0650 TAKING COOTS, MOORHENS, AND DUCKS.

Subpart 1. **Open season.** Coots, moorhens, and ducks may be taken statewide during the 60-day period from September 30 to November 28, 2006.

Subp. 2. **Daily limits.** In any one day, a person may not take more than four ducks, five mergansers, and a total of 15 coots and moorhens. The daily limit of ducks (other than mergansers) may not include more than one female mallard; one black duck; two redheads; two lesser or greater scaup; two wood ducks; one pintail; and one canvasback. The daily limit of mergansers may not include more than two hooded mergansers.

## 6240.0950 OPEN SEASONS; DAILY LIMIT; WEST AND WEST CENTRAL GOOSE ZONES.

Subpart 1. **Open season; West Goose Zone.** Canada geese may be taken in the West Goose Zone during the 60-day period from September 30 to November 28, 2006, except in the West Central Goose Zone as provided in subpart 2.

Subp. 2. **Open season; West Central Goose Zone.** Canada geese may be taken in the West Central Goose Zone during the 40-day period from October 19 to November 27, 2006.

Subp. 3. **Daily limit.** A person may not take more than two Canada goose in the West and West Central Goose Zones.

## 6240.1750 TAKING GEESE IN NORTHWEST GOOSE ZONE.

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

Subp. 2. **Daily limits.** A person may not take more than ~~two~~ five Canada geese per day during the early season.

## 6240.1900 LATE SEASONS FOR TAKING CANADA GEESE.

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

Subp. 3. **Seasons.** Canada geese may be taken statewide ~~during the late seasons from December 9 to December 18, 2006, except for the Southeast Goose Zone where Canada geese may be taken from December 15 to December 24, 2006, and~~ except in the West Central Goose Zone ~~which is closed to late season hunting of Canada geese.~~

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

**EFFECTIVE PERIOD.** The emergency amendments to *Minnesota Rules*, parts 6230.0700, 6230.0800, 6240.1750, and 6240.1900, expire January 1, 2007. After the emergency amendments expire, the permanent rules as they read prior to those amendments again take effect, except as they may be amended by permanent rule. *Minnesota Rules*, parts 6240.0650 and 6240.0950 expire January 1, 2007.

## Department of Natural Resources

### Adopted Expedited Emergency Game and Fish Rules: Early Goose Hunting

NOTICE IS HEREBY GIVEN that the above entitled rules have been adopted through the process prescribed by *Minnesota Statutes*, Section 84.027, subdivision 13 (b). The statutory authority for the contents of the rule is *Minnesota Statutes*, Sections 97B.731, and 97B.803.

The emergency conditions that do not allow compliance with *Minnesota Statutes*, Sections 97A.0451 to 97A.0459, are as follows: Provisions for taking Canada geese in early seasons are based on population data that is not available until June and selection of options

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# Expedited Emergency Rules

as allowed under federal frameworks for early season migratory bird hunting announced in June. This rule corrects an omission in an earlier expedited rule by including the City of Inver Grove Heights in the exception to restrictions on hunting over water. The purpose of this exception is to reduce excessively high local populations of resident Canada geese.

Dated: August 10, 2006

Gene Merriam, Commissioner  
Department of Natural Resources

## **6240.1200 SPECIAL PROVISIONS ON TAKING GEESE DURING EARLY SEASONS.**

### **Subpart 1. Taking near water.**

A. Taking Canada geese during the early seasons is prohibited on or within 100 yards of all surface waters in the following areas:

(1) the Northwest, Southeast, and Twin Cities Metro Goose Zones, except for the city of Inver Grove Heights, Spurzem Lake in Baker Park Reserve, Mud Lake in Elm Creek Park Reserve, and Cleary Lake in Cleary Lake Regional Park;

(2) all of the Carlos Avery Wildlife Management Area, including that portion outside the Twin Cities Metro Goose Zone; and

(3) the Swan Lake area in Nicollet County, within the boundary described as follows:

Beginning at the junction of State Trunk Highway (STH) 14 and County StateAid Highway (CSAH) 12 north along CSAH 12 to CSAH 5; thence east along CSAH 5 to CSAH 13; thence south along CSAH 13 to STH 99; thence west along STH 99 to CSAH 17; thence south along CSAH 17 to STH 14; thence northwest and west along STH 14 to CSAH 12.

B. Taking Canada geese on or within 100 yards of surface waters during the early Canada goose seasons is allowed for youth hunters participating in youth waterfowl hunting days and on specific bodies of water in closed zones as described or shown on maps provided by the commissioner.

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

**REPEALER.** The expedited emergency amendment to *Minnesota Rules*, part 6240.1200, subpart 1, published in the *State Register*, volume 31, page 262, August 21, 2006, is repealed.

**EFFECTIVE PERIOD.** The expedited emergency amendment to *Minnesota Rules*, part 6240.1200, expires January 1, 2007. After the emergency amendment expires, the permanent rule as it read prior to that amendment again takes effect, except as it may be amended by permanent rule.

# Executive Orders

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

## Office of the Governor

### Executive Order # 06-12: Creating the Governor's Conservation Legacy Council

**I, TIM PAWLENTY, GOVERNOR OF THE STATE OF MINNESOTA**, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this executive order:

**WHEREAS**, Minnesota's lands, waters, fish, wildlife and other natural resources are critical assets that benefit all people of the State and preserving these assets requires development of a comprehensive, long-term and sustainable model for the governance, management and funding of the State's natural resources; and

**WHEREAS**, the Minnesota Constitution was amended in 1998 to recognize that hunting and fishing are a valued part of our heritage that must be forever preserved for the people and managed by law for the public good; and

**WHEREAS**, the Minnesota Constitution dedicates a portion of the State's lottery proceeds to the Environment and Natural Resources Trust Fund and assets of the Fund are dedicated to the "protection, conservation, preservation and enhancement of the state's air, water, land, fish, wildlife, and other natural resources;" and

**WHEREAS**, existing government programs and the Environment and Natural Resources Trust Fund represent an important source of funding for the protection, enhancement and improvement of our State's natural resources; however, the current funding and delivery structure may not be sufficient to ensure that Minnesotans will be able to have continued access to the legacy of quality hunting, fishing, and enjoyment of Minnesota's natural resources; and

**WHEREAS**, the input and advice of knowledgeable citizens with natural resource expertise and experience will provide valuable insight into developing long-term and sustainable strategies for the future governance, management and funding of Minnesota's natural resources.

**NOW, THEREFORE**, I hereby order the creation of the Governor's Conservation Legacy Council ("Council").

1. The Council will be comprised of up to 15 members appointed as follows:
  - a). The Governor will appoint up to 11 public members.
    - i). Public members must be residents of Minnesota who are outdoor enthusiasts and who represent a wide range of Minnesota's outdoor interests including, but not limited to, hunting, fishing, conservation and recreation.
    - ii). Public members will include residents from geographically diverse areas of the State.
  - b). The Legislature may, at its discretion, appoint four legislators to serve as members of the Council:
    - i). The Majority Leader of the Senate may appoint two Senators, one from the minority and one from the majority caucus.
    - ii). The Speaker of the House of Representatives may appoint two Representatives, one from the minority and one from the majority caucus.
  - c). The Governor will designate a public member to serve as the chair.

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## Executive Orders

- d). The Governor will fill any vacancies in the positions for public members. The Majority Leader will fill vacancies for the legislative members from the Senate and the Speaker will fill vacancies of members from the House of Representatives.
  - e). Council members will serve a two-year term. Council members will serve on a voluntary basis and are not eligible for per-diem or payment of expenses. The Senate or House of Representatives may allow for per diem or other payment of expenses to legislative members from legislative funds.
2. The Council's responsibilities include providing advice and recommendations to the Governor on matters relating to the development of a sustainable governance and funding model which will create a lasting legacy for the conservation, protection and enhancement of the state's natural resources and which will establish Minnesota as the nation's leading conservation state.
- a). The Council's focus must be on developing recommendations that provide for a sustainable governance and funding model for the conservation, protection and enhancement of the State's water, land, fish, wildlife and other natural resources.
  - b). The Council should emphasize developing a strategic plan for the State to achieve the recommended governance and funding models.
  - c). The Council must consider in its recommendations governance and funding models that incorporate partnerships between governmental entities, non-governmental entities, organizations, land owners and others.
  - d). The Council should consider governance and funding as to all current and recommended future state government operated or managed activities relating to natural resources; including, fish game and wildlife habitat protection and restoration, water quality protection and enhancement, forestry activities, prairie restoration, and biological diversity.
3. The Council will meet beginning in October 2006, following the completion of the open appointment process.

Pursuant to *Minnesota Statutes* 2004, section 4.035, subdivision 2, this Executive Order will be effective fifteen (15) days after publication in the *State Register* and filing with the Secretary of State and will remain in effect in accordance with *Minnesota Statutes* 2004, Section 4.035, Subdivision 3.

Signed: **TIM PAWLENTY**  
Governor

Filed According to Law

Signed: **MARY KIFFMEYER**  
Secretary of State



## Official Notices

Pursuant to *Minnesota Statutes* §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

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

### Board of Animal Health

#### Notice of Quarterly Meeting September 11, 2006

The Board of Animal Health will hold its quarterly meeting on Monday, September 11, 2006 at 9:30am at the Best Western Inn, 1060 Highway 32 S, Thief River Falls, MN 56701.

### Emergency Medical Services Regulatory Board

#### Notice of Completed Application: In the Matter of the License Application of the Belle Plaine Community Ambulance, Belle Plaine, Minnesota

**PLEASE TAKE NOTICE** that the Emergency Medical Services Regulatory Board (hereinafter EMSRB) has received a completed application from the **Belle Plaine Community Ambulance, Belle Plaine, Minnesota**, for a new license, advanced ambulance – part time.

**NOTICE IS HEREBY GIVEN** that, pursuant to *Minnesota Statutes* sec. 144E.11, subd. 3, each municipality, county, community health board, governing body of a regional emergency medical services system, ambulance service and other person wishing to make recommendations concerning the disposition of the application, shall make written recommendations or comments opposing the application to the EMSRB within 30 days or by September 28, 2006, 4:30 p.m.

Written recommendations or comments opposing the application should be sent to: Mary Hedges, Executive Director, EMSRB, 2829 University Avenue S.E., Suite 310, Minneapolis, Minnesota 55414-3222.

If fewer than six comments opposing the application are received during the comment period, and the EMSRB approves the application, the applicant will be exempt from a contested case hearing, pursuant to *Minnesota Statutes* sec. 144E.11, subd. 4. If six or more comments in opposition to the application are received during the comment period or the EMSRB denies the application, the applicant may immediately request a contested case hearing, or may try to resolve the objections of the public and/or the EMSRB within 30 days, pursuant to *Minnesota Statutes* sec. 144E.11, sub. 5(a), (b). If the applicant is unable to resolve the objections within 30 days, or if the applicant initially requests a contested case hearing one will be scheduled and notice of the hearing given pursuant to *Minnesota Statutes* sec. 144E.11, subd. 5(c), (e).

Dated: August 9, 2006

Mary F. Hedges, Executive Director

### Executive Council

### State Board of Investment

### Land Exchange Board

### Investment Advisory Council

#### Official Notice of Meetings, September 5 and September 6, 2006

The Executive Council, State Board of Investment and the Land Exchange Board will meet on Wednesday, September 6, 2006 at 9:00 A.M. in Room 123, State Capitol, St. Paul, MN.

The Investment Advisory Council will meet on Tuesday, September 5, 2006 at 2:00 P.M. at the State Board of Investment, Board Room (Main Floor), 60 Empire Drive, St. Paul, MN.

**Department of Human Services  
Disability Services Division,  
Continuing Care Administration****Public Notice Regarding Payment Rate Change for Intermediate Care Facilities for  
Persons with Mental Retardation (ICFs/MR) participating in the Medical  
Assistance Program**

**NOTICE IS HEREBY GIVEN** to recipients, providers of services under the Medical Assistance Program, and the public, of payment rate changes for ICFs/MR participating in the Medical Assistance Program.

This notice is published pursuant to 42 *United States Code* §1396a(a)(13)(A) (§1902(a)(13)(A) of the Social Security Act), which requires the Department to publish final institutional payment rates, the methodologies underlying the establishment of such rates, and the justification for such rates. It is also published pursuant to *Code of Federal Regulations*, title 42, part 447, section 205 (42 CFR §447.205), which requires publication of a notice when there is any significant proposed change in the methods and standards for setting payment rates for services.

The change to the MA Program is estimated to result in a net increase in the non-federal share of MA Program expenditures of \$2.5 million for State Fiscal Year 2007 (July 1, 2006 through June 30, 2007).

The actual text of this change is contained in *Laws of Minnesota 2005, First Special Session*, chapter 4 — (HF 139). This is available by calling the House of Representatives Public Information Office at (651) 296-2146 (voice) or (651) 296-9896 (TTY) or 1-800-657-3550 (Greater Minnesota) or the Senate Information Office at (651) 296-0504 (voice) or (651) 296-0250 (TTY); for Greater Minnesota call 1-888-234-1112 (voice) or 1-888-234-1216 (TTY). Also see:

[http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H0139.1&session\\_year=2005&session\\_number=1](http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H0139.1&session_year=2005&session_number=1)

Information relating to implementation of this provision has been sent to local human services agencies through a bulletin and manual update, to recipients and enrollees through written notice, and to health care providers through newsletters and updates to the *Minnesota Health Care Programs Provider Manual* (available at:

[http://www.dhs.state.mn.us/main/groups/business\\_partners/documents/pub/DHS\\_id\\_000094.hcsp](http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/DHS_id_000094.hcsp)

**Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR)**

Effective October 1, 2006, ICF/MR service providers will receive a 2.2553 percent rate increase. *Laws of Minnesota 2005, First Special Session*, chapter 4, article 7, section 45.

Questions about ICF/MR payment rates should be directed to Barb Nelson, Disability Services Division, Minnesota Department of Human Services, 540 Cedar Street, St. Paul, Minnesota 55155; **phone** (651) 431-2434.

**Minnesota Statewide Independent Living Council  
Public Hearing Notice on the State Plan for Independent Living**

**WHAT:** This public hearing is an opportunity for consumers of Independent Living services, Independent Living service-providers, other providers of disability-related services, and interested individuals to voice any concerns, suggest new and innovative approaches for the provision of independent living services, and comment on what is and what is not working for Minnesotans with disabilities. The comments provided will be used to assist the Statewide Independent Living Council and the Minnesota Department of Employment and Economic Development in drafting a new three year State Plan for Independent Living (SPIL). The SPIL, effective October 2007, will guide the direction and expansion of IL programs and services statewide.

The Statewide Independent Living Council's goal is to provide the leadership, research, planning, and education necessary to support and expand independent living services in Minnesota. Public input is a crucial piece in enabling the Statewide Independent Living Council to provide effective advice.

**WHY:** To remain eligible for Federal Independent Living funds, the State of Minnesota must develop and submit to the U.S. Department of Education, Rehabilitation Services Administration, a new SPIL every three years. The deadline for submitting this SPIL is June 30, 2007. With final approval from the Rehabilitation Services Administration, this SPIL will be effective from October 1, 2007 through September 30, 2009.

**WHEN:** The public hearing will be held on September 20, 2006 from 1:00 p.m. to 3:00 p.m. and also from 4:00 p.m. to 6:00 p.m.

**WHERE:** The New Ulm Civic Center Meeting Room at 1212 North Franklin Street, New Ulm, MN (507) 233-8400.

**TELECONFERENCE CAPACITY:** If you cannot attend in person, phone conferencing is available. Call 1-(800)-779-6211 and use

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the access code 20106. If you have difficulty accessing this number, call Gail Lundeen at (651) 278-5195. Please remember that there will be a break between 3:00 and 4:00.

**WHO SHOULD ATTEND:** Consumers of IL services, IL service-providers, other providers of disability-related services, and all other interested individuals.

For more information, or to obtain a print, formatted or electronic copy of the current SPIL prior to the public hearing, phone (651) 297-2705, or toll free (800) 328-9095, or TTY (651) 296-3900.

Individuals unable to attend the public hearing may e-mail, telephone, or submit written comments on the direction of IL services in Minnesota by contacting Bradley Westerlund, Rehabilitation Specialist, 332 Minnesota Street, St. Paul, MN 55101, or at the telephone numbers listed above, or e-mail:

*Brad.westerlund@state.mn.us*

**ASL INTERPRETERS WILL BE AVAILABLE UPON REQUEST. THE PUBLIC HEARING SITE IS FULLY ACCESSIBLE TO PEOPLE WITH PHYSICAL DISABILITIES.**

## Department of Labor and Industry

### Labor Standards Unit

#### Notice of Certification of Truck Rental Rates and Effective Date Pursuant to *Minnesota Rules, Part 5200.1105*

On August 28, 2006 the commissioner certified the minimum truck rental rates for highway projects in the state's ten highway and heavy construction areas for trucks and drivers operating "four or more axle units, straight body trucks," "three axle units," "tractor only," and "tractor trailers." The certification by the commissioner came after Notice of Determination of Truck Rental Rates by the commissioner, including the determination of truck operating costs, was published in the *State Register* on June 26, 2006 and the informal conference pursuant to *Minnesota Rules, Part 5200.1105* to receive further public input prior to certification was held at the department on July 24, 2006.

The operating costs were determined by survey on a statewide basis. The operating cost for "four or more axle units, straight body trucks" was determined by survey to be \$36.06 per hour. The operating cost for "three axle units" was determined by survey to be \$34.61 per hour. The operating cost for "tractor only" was determined by survey to be \$43.95 per hour. The operating cost for "trailer only" was determined to be \$11.46 per hour. The operating cost for "tractor trailers" was determined by survey to be \$55.41 per hour.

Adding the prevailing wage for drivers of these four types of trucks from each of the state's ten highway and heavy construction areas to the operating costs, the minimum hourly truck rental rate for the four types of trucks in each area is certified to be as follows:

	<b>Tractor Trailer</b>	<b>4 or More Axle</b>	<b>3 Axle</b>	<b>Tractor Only</b>
<b>Region 1</b>	88.81	68.91	67.36	77.35
<b>Region 2</b>	83.88	52.27	50.58	72.42
<b>Region 3</b>	83.88	56.18	62.42	72.42
<b>Region 4</b>	71.62	52.27	54.61	60.16
<b>Region 5</b>	76.41	60.64	59.19	64.95
<b>Region 6</b>	87.01	60.66	65.56	75.55
<b>Region 7</b>	80.51	60.66	62.42	69.05
<b>Region 8</b>	79.46	60.11	55.42	68.00
<b>Region 9</b>	89.21	69.31	67.76	77.75
<b>Region 10</b>	80.51	60.66	62.42	69.05

The operating costs, including the average truck broker fee paid by those survey respondents who reported paying truck broker fees, and the truck rental rates may also be reviewed by accessing the department's web site at [www.doli.state.mn.us](http://www.doli.state.mn.us). Questions regarding the operational costs and truck rental rates can be answered by calling (651) 284-5091.

The minimum truck rental rates certified for these four types of trucks in the state's ten highway and heavy construction areas will be effective for all highway and heavy construction projects financed in whole or part with state funds advertised for bid on or after August 28, 2006.

Dated: August 28, 2006

M. Scott Brener,  
Commissioner

**Minnesota Department of Labor and Industry****Workers' Compensation Division****Request for Comments on Possible Amendment to Rules Governing Workers' Compensation Treatment Parameters, *Minnesota Rules*, part 5221.6010 to 5221.8900**

**Subject of Rules.** The Minnesota Department of Labor and Industry requests comments on its possible amendment to rules governing workers' compensation treatment parameters. The Department is considering rule amendments to adopt parameters for drugs commonly used in the treatment of patients with workers' compensation injuries, including parameters for use of non-steroidal anti-inflammatory drugs, muscle relaxants and acute and long-term use of narcotic analgesics for enduring, intractable pain. The department is also considering amendments to define traction technologies, electrical muscle stimulation and manual therapy modalities. Other updates and technical corrections to existing parameters will also be considered.

**Persons Affected.** The amendments to the rules would likely affect injured workers and health care providers who treat patients with workers' compensation injuries, including physicians, chiropractors, physical therapists, hospitals and pharmacies. The amendments would also affect workers' compensation insurers, self-insured employers and other workers' compensation payers; certified managed care plans; and others involved in the workers' compensation system.

**Statutory Authority.** *Minnesota Statutes*, section 176.82, subd. 5 authorizes the department to adopt by rule standards for health care provider treatment to be used to determine whether treatment provided to injured workers is excessive, unnecessary or inappropriate based upon accepted medical standards.

**Public Comment.** Interested persons or groups may submit comments or information on these possible rules in writing or orally until further notice is published in the *State Register*. Any rule amendments the commissioner intends to propose will be reviewed by the Medical Services Review Board established pursuant to *Minnesota Statutes* § 176.103, which may make recommendations to the commissioner of the Department of Labor and Industry. The schedule, agenda and minutes of Medical Services Review Board meetings are posted on the department's web site at <http://www.doli.state.mn.us/msrb>.

**Rules Drafts.** The department anticipates that a draft of the rule amendments will be available before the publication of proposed rules in the *State Register*. A link to drafts of the rules, when they become available, will be posted on the department rule docket web site at [http://www.doli.state.mn.us/rulemaking\\_activity.html](http://www.doli.state.mn.us/rulemaking_activity.html). You may also contact the contact person listed below to be placed on a list to receive e-mail notice of the drafts as they become available.

**Agency Contact Persons.** Written or oral comments and questions, requests to receive e-mail notice when drafts of the rules become available, and requests for more information on these possible rules should be directed to the following people:

Written comments, written questions, and written or telephone requests to receive notice when drafts of the rules become available should be directed to Carrie Rohling at the Department of Labor and Industry in one of the following ways: by mail at 443 Lafayette Road, St. Paul, MN 55155; by phone at (651) 284-5217; by FAX at (651) 284-5725; or by e-mail at [carrie.rohling@state.mn.us](mailto:carrie.rohling@state.mn.us).

Telephone questions and comments about the substance of the possible amendments should be directed to Dr. William Lohman at (651) 284-5275 or Julie Marquart at (651) 284-5173.

TTY users may call the Department at (651) 297-4198.

**Alternative Format.** Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact Carrie Rohling at the address, fax, e-mail or telephone number listed above.

**NOTE:** This Request for Comments replaces the Request for Comments published on May 29, 2001. Comments received in response to this notice or the previous notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submit or have submitted comments during the development of the rules and you

# Official Notices

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want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: August 17, 2006

M. Scott Brener, Commissioner  
Department of Labor and Industry

## Minnesota Department of Revenue

### Request for Comments on Possible Amendment to Rules Governing the Application of the Sales and Use Tax Laws to Sales of Food Sold With Eating Utensils Provided by the Seller, *Minnesota Rules*, Chapter 8130

**Subject of Rules.** The Minnesota Department of Revenue requests comments on its planned amendment to the rules governing the application of the sales and use tax laws to the sale of food. The department is considering rule amendments to clarify a statutory term in *Minnesota Statutes*, Section 297A.61, subdivision 31. Specifically, the department proposes to explain the meaning of the term “sold with eating utensils provided by the seller,” used within the definition of “prepared food.” This rule will amend *Minnesota Rules*, Chapter 8130, probably by adding a subpart to part 8130.4700.

**Persons Affected.** The proposed rule would likely affect taxpayers in the food industry.

**Statutory Authority.** *Minnesota Statutes*, section 270C.06 authorizes the department to adopt rules for the administration and enforcement of state tax laws.

**Public Comment.** Interested persons or groups may submit comments or information on this rule in writing until 4:30 p.m. on Friday, October 27, 2006.

**Rules Drafts.** The department is in the initial stages of preparing a draft of the planned rule amendments.

**Agency Contact Person.** Written comments, questions, requests to receive a draft of the rule and requests for more information on these possible rules should be directed to:

Susan Barry, Supervising Attorney  
Minnesota Department of Revenue  
Appeals and Legal Services Division  
600 North Robert Street, Mail Station 2220  
St. Paul, Minnesota 55146-2220  
**Telephone:** (651) 556-4062  
**Fax:** (651) 296-8229  
TTY users may call the Department at 711.

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

**NOTE:** Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed.

Dated: August 21, 2006

Daniel A. Salomone, Commissioner  
Department of Revenue



## **Teachers Retirement Association**

### **Notice of Meeting of the Board of Trustees September 13, 2006**

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Wednesday, September 13, 2006 at 9:30 a.m. in Suite 400, 60 Empire Drive, St. Paul, MN to consider matters which may properly come before the Board.

## **State Grants & Loans**

In addition to requests by state agencies for technical/professional services (published in the State Contracts Section), the *State Register* also publishes notices about grants and loans available through any agency or branch of state government. Although some grant and loan programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself. Agencies are encouraged to publish grant and loan notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

## **Department of Human Services**

### **HIV/AIDS Program Division**

### **Notice of Availability of Contract for Clinical Consultation Services To HIV Case Managers**

The Minnesota Department of Human Services HIV/AIDS Program Division is requesting proposals for the purpose of providing clinical consultation support to contracted vendors in order to increase their capacity to provide quality case management services to a diverse population with multiple, complex needs.

Work is proposed to start after October 2, 2006.

A Request for Proposals will be available by mail from this office through September 11, 2006. **A written request direct mail email is required to receive the Request for Proposal.** After September 11, 2006, the Request for Proposal must be picked up in person.

The Request for Proposal can be obtained from:

Michelle D. Sims  
Department of Human Services  
HIV/AIDS Program Division  
P.O. Box 64972,  
St. Paul, MN 55164-0972  
**E-mail:** [michelle.sims@state.mn.us](mailto:michelle.sims@state.mn.us)

Proposals submitted in response to the Request for Proposals in this advertisement must be received at the address above no later than September 15, 2006. **Late proposals will not be considered.** Faxed or e-mailed proposals will **not** be considered.

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

# State Contracts

**Informal Solicitations:** Informal solicitations for professional/technical (consultant) contracts valued at over \$5,000 through \$50,000, may either be published in the *State Register* or posted on the Department of Administration, Materials Management Division's (MMD) Web site. Interested vendors are encouraged to monitor the P/T Contract Section of the MMD Web site at [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us) for informal solicitation announcements.

**Formal Solicitations:** Department of Administration procedures require that formal solicitations (announcements for contracts with an estimated value over \$50,000) for professional/technical contracts must be published in the *State Register*. Certain quasi-state agency and Minnesota State College and University institutions are exempt from these requirements.

## Department of Administration

### Notice of Availability of Request for Proposal (RFP) for Designer Selection for: MCF –Shakopee 92 Bed Expansion (State Designer Selection Board Project No. 06-15)

The State of Minnesota, Department of Administration is soliciting proposals from interested, qualified consultants for architectural and engineering design services for the above referenced project.

A full Request for Proposals is available on the State Architect's Office website: [www.sao.admin.state.mn.us](http://www.sao.admin.state.mn.us), click on "Solicitation Announcements."

A copy of the pre-design is available for review at the State Architect's Office. Contact Larry Nichols.

A mandatory informational meeting will be held August 17, 2006 at 10:00 AM CDT at MCF Shakopee, Shakopee, MN. Pre-registration for attendance must be received by the facility staff **no later than 4:00 PM August 14, 2006**. Contact Mr. Gordon Peters at (952) 496-4442 with name(s), date of birth and driver's license, number of people attending, and request for possession of a camera, if desired. Failure to pre-register will result in no admittance to facility.

Project questions will be taken by Larry Nichols at [Larry.Nichols@state.mn.us](mailto:Larry.Nichols@state.mn.us) or faxed to (651) 296-7650, and must be received by 1:00 p.m. August 23, 2006. Response to all questions will be posted as addenda on the SAO website by August 25, 2006.

Proposals must be delivered to Mary Golike, Executive Secretary, State Designer Selection Board, 301 Centennial Office Building in the State Architect's Office, 658 Cedar St., St. Paul, MN 55115-1625; **phone:** (651) 201-2372 not later than 1:00 P.M., August 28, 2006. Late responses will not be considered.

The State of Minnesota is not obligated to complete the proposed project and reserves the right to cancel the solicitation if it is considered to be in its best interest.

## Department of Administration

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Obtain MORE and FASTER information. You receive much more with a subscription than viewing the *State Register* on our website. Subscribe and receive many LINKS to the *State Register*. Open the *State Register* and click on Bookmarks in the upper right corner. You will also receive ALL the current rules, with an INDEX, and previous years' indices. You also receive a summarized "Contracts & Grants" section to review. Subscriptions cost \$180 a year (normal cost \$260 - an \$80 savings). Here's what you receive:

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## Minnesota State Colleges and Universities

### Alexandria Technical College

### Notice of Availability of Request for Proposal (RFP) for Engineering Services to Correct Storm Water Drainage Flooding Conditions

The Minnesota State Colleges and Universities, acting as the owner for the State of Minnesota, is soliciting proposals from interested, qualified engineers for the above referenced project.

A Feasibility Study for Alexandria Technical College Storm Water, prepared by LANDTEAM INC., AIA Document B141 - Standard form of Agreement Between Architect and Owner as amended by Minnesota State Colleges and Universities, and a full Request for Proposals are available on Alexandria Technical College's website: [www.alextech.edu/drainagerfp](http://www.alextech.edu/drainagerfp).

Proposals must be delivered to Alexandria Technical College, David Bjelland, Chief Financial Officer, 1601 Jefferson Street, Alexandria, MN 56308, not later 4:00 p.m. September 18, 2006. Late responses will not be considered.

Minnesota State Colleges and Universities is not obligated to complete the proposed project and reserves the right to cancel the solicitation if it is not considered to be in its best interest.

## Minnesota State Colleges and Universities

### Bemidji State University

#### Notice of Request for Proposal (RFP) for Consultant Services for Design of Linden Hall Redevelopment

The Minnesota State Colleges and Universities, Office of the Chancellor, acting as the owner for the State of Minnesota is soliciting proposals for experienced Consultant Services to design for the redevelopment of Linden Hall at Bemidji State University in Bemidji, Minnesota. The Consultant's team will be responsible for complete design, bidding, construction administration, including equipment, controls, and connections to existing utilities.

An informational meeting will be held on Thursday, September 7, 2006, at 1:00 p.m., in the Residential Life Conference Room at Walnut Hall, Bemidji State University, 331 19<sup>th</sup> Street NW, Bemidji, MN.

Minnesota State Colleges and Universities is not obligated to complete the proposed project and reserves the right to cancel the solicitation if it is considered to be in its best interest.

To receive a full request for proposal and supplemental information, [www.facilities.mnscu.edu](http://www.facilities.mnscu.edu), Solicitation Announcements.

Completed proposals are due by 4:00 PM on Tuesday, September 19, 2006.

## Minnesota State Colleges and Universities

### Chancellor's Office

#### Request for Proposals for a Financial Advisor

**Nature of Work/Contract:** Contractor to act as a financial advisor for both debt issuance and non-debt issuance financial activities.

**Description of Work:** Minnesota State Colleges and Universities is requesting proposals from qualified firms to provide financial advising services for both Revenue Fund Debt Issuance services and non-debt issuance activities to the organization. A Contractor may submit a proposal for one service or both. Detailed specifications are contained in the RFP. Interested parties may download the RFP at the website at [www.facilities.mnscu.edu](http://www.facilities.mnscu.edu), click on "**Solicitation Announcements**". Proposals must be submitted no later than 3:00 pm Central Time, September 11, 2006. Late proposals will not be considered; fax or e-mailed proposals will not be considered. Questions may be submitted in accordance with the process outlined in the RFP and will be answered online. Minnesota State Colleges & Universities reserves the right to cancel the solicitation if it is considered to be in its best interest.

**Contracting Agency:** Minnesota State Colleges and Universities

**Location of Work:** Minnesota State Colleges and Universities is a system of 32 colleges and universities with 53 campuses located in 46 Minnesota communities. The Office of the Chancellor is located in St. Paul, MN.

Response to this solicitation is due no later than 9/11/06 at 3:00 pm CDT.

To receive a copy of the complete solicitation, see [www.facilities.mnscu.edu](http://www.facilities.mnscu.edu), click on "**Solicitation Announcements**".

## Minnesota State Colleges and Universities

### Minneapolis Community & Technical College

#### Notice of Intent to Request Proposals for an Independent Evaluation of the Power of You Program

**Description:** The **Power of You** program is a new initiative conducted together by Minneapolis Community and Technical College and Saint Paul College with the goal of increasing the participation of under-represented students by offering free tuition to recent Minneapolis and Saint Paul high school graduates. The purpose of the evaluation will be to determine whether and to what extent the

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components of the **Power of You** program produce the desired outcomes and what other factors influence student outcomes.

Contact for further information and to obtain copies of the Request for Proposal:

Lois Bollman  
Vice President of Strategy, Planning & Accountability  
Minneapolis Community and Technical College  
1501 Hennepin Avenue So.  
Minneapolis, MN 55403  
**Telephone:** (612) 659-6305  
**E-mail:** *Lois.Bollman@minneapolis.edu*

## Colleges and Universities, Minnesota State (MnSCU)

### Rochester Community and Technical College

#### Notice of Request for Telecommunications Cabling and AV/Multimedia Systems

**NOTICE IS HEREBY GIVEN** that Rochester Community and Technical College requests bids for the installation of Technology Cabling Infrastructure, and A/V Multimedia Systems in the new Health Sciences Building.

To receive a copy of the request for bid, drawings and specs., contact:

Elert & Associates Technology Consultants  
140 3rd St S  
Stillwater, MN 55082  
**Telephone:** (651) 430-2772

A deposit of \$50.00 is required for each set.

A Mandatory pre-bid meeting will be held at 1:00 PM, Tuesday, September 5th, 2006 Room EA235 at Rochester Community and Technical College in Rochester, MN.

Bids are due by 1:00 PM, September 11th, 2006 and are to be addressed to June Meitzner, Rochester Community and Technical College 851 30th Ave SE Rochester, MN 55904 Room EA134.

Late responses will not be considered.

Any questions should be in the form of a RFI and direct to June Meitzner: *June.meitzner@roch.edu*

Minnesota State Colleges and Universities is not obligated to complete the proposed project and reserves the right to cancel the solicitation if it is considered to be in its best interest.

## Colleges and Universities, Minnesota State (MnSCU)

### St. Cloud Technical College

#### Request for Proposals for Packaged Water Chiller

**NOTICE IS HEREBY GIVEN** that St. Cloud Technical College will receive proposals for the delivery and set-up of a complete 500 ton water chiller at the college's heating and cooling plant. The complete Request for Proposal will be available on Monday, August 21<sup>st</sup>, 2006, on the **website:** *http://www.sctc.edu/rfp*. Copies of the water chiller specifications can be obtained from Jack Christofferson, Widseth, Smith, Nolting at phone number (218) 829-5117, **e-mail:** *jackc@wsn-mn.com*, or by writing to: Widseth, Smith, Nolting, 7804 Industrial Park Road, Baxter, MN 56425.

Proposal responses must be delivered in a sealed envelope or package clearly marked "Water Chiller RFP" to Paula Andrist at St. Cloud Technical College, Room 1-401H, 1540 Northway Drive, St. Cloud, MN 56303 by 2:00 p.m. on Tuesday, September 5, 2006. St. Cloud Technical College reserves the right to reject any or all proposals, or portions thereof, or to waive any irregularities or informalities, in proposals received.

#### Background/Purpose:

The purpose of this Request for Proposal (RFP) is to evaluate and select a vendor to deliver and set-up a complete 500 ton chiller at St. Cloud Technical College's heating and cooling plant, located at 1540 Northway Drive, St. Cloud, Minnesota.

**Questions:**

All questions and inquiries related to this RFP must be in writing and directed to Don Kremers, Building Maintenance Supervisor, St. Cloud Technical College, 1540 Northway Drive, St. Cloud, MN 56303, **e-mail:** [dkremers@sctc.edu](mailto:dkremers@sctc.edu), **phone:** (320) 249-0276. Other department personnel are NOT allowed to discuss the Request for Proposal with anyone, including responders, before the proposal submission deadline.

**Minnesota State Colleges and Universities****Winona State University****Notice of Availability of Request for Proposal (RFP) for Designer Selection for the Memorial Hall Expansion and Renovation****(State Project No. 06-14)**

The State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of Winona State University, through the State Designer Selection Board, is soliciting proposals from interested, qualified consultants for architectural and engineering design services for the above referenced project.

A full Request for Proposals is available on the Minnesota State Colleges and Universities website: [www.facilities.mnscu.edu](http://www.facilities.mnscu.edu), click on "Solicitation Announcements."

An informational meeting is tentatively scheduled for 11:00 AM, August 31, 2006 in the Memorial Hall Building at Winona State University, Johnson Street & Main Street, Winona, MN 55987. All firms interested in this meeting should contact Nancy Nelton, at (507) 457-5052 or [Nnelton@winona.edu](mailto:Nnelton@winona.edu) to sign up for the meeting.

Proposals must be delivered to Mary Golike, Executive Secretary, State Designer Selection Board, in the State Architect's Office, 301 Centennial Office Building, 658 Cedar St., St. Paul, MN 55155 not later than 1:00 P.M., Monday, September 11, 2006. Late responses will not be considered.

Minnesota State Colleges and Universities is not obligated to complete the proposed project and reserves the right to cancel the solicitation if it is considered to be in its best interest.

**Minnesota Department of Health****Health Promotion and Chronic Disease Division****Tobacco Prevention and Control Office****Notice of Intent to Solicit Proposals for Tobacco Prevention Projects**

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health (MDH) is seeking qualified applicants in developing and implementing locally driven tobacco prevention projects. Funding available is \$2.4 million per year. Grant awards will be made for a two-year time period (January 1, 2007 – December 31, 2008), with the opportunity to negotiate and renew the grant agreements through December, 2011, contingent on satisfactory performance, fulfillment of grant requirements, availability of funds, and MDH's strategic priorities.

Funding will be allocated between two project categories: reducing youth exposure to tobacco influences and creating tobacco-free environments. Approximately \$1.2 million is available per year in each category for the funding period of January 1, 2007 – December 31, 2008. Approximately four to six grants will be funded in each project category, ranging in amount from about \$200,000 to \$300,000 annually per grant.

Funding will also be allocated between two regions of the state: the metro region (7-county metro area: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties) and the greater Minnesota region (all remaining 80 counties). Approximately \$1.2 million is available in each region per year for the funding period of January 1, 2007 – December 31, 2008.

Applicants must apply for one of the two regions (7-county metro or 80-county greater Minnesota). Within the pre-defined region, applicants must further define the geographic community (e.g., neighborhood, city, county, multiple counties) for which their proposal applies.

Copies of the RFP will be available on August 28, 2006, by mail or for pick-up. A copy will also be available on the department's website on August 28, 2006 at <http://www.health.state.mn.us/divs/hpcd/tpc/TP-5c.html>. To request a copy of the Request for Proposals, please contact the Tobacco Prevention and Control Office, Minnesota Department of Health, by telephone: (651) 201-3535 or e-mail: [tpc@health.state.mn.us](mailto:tpc@health.state.mn.us). Copies will be available for pick-up on or after August 28, 2006 between 8:00 AM and 4:30 PM at the Minnesota Department of Health, Suite 220, Golden Rule Building, 85 East Seventh Place, St. Paul, MN 55101.



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Questions regarding the Request for Proposal should be directed to:

Michonne Bertrand  
Minnesota Department of Health,  
Tobacco Prevention and Control Office  
**E-mail:** *michonne.bertrand@health.state.mn.us*

A bidder's conference call will be held on September 7, 2006 from 1:00 – 3:00. Participation in the conference call is not required to submit a proposal. You must register to participate in the call. To register, contact Carol Ault by e-mailing *carol.ault@health.state.mn.us*. The registration deadline is 4:30 p.m. on Wednesday, September 6, 2006. Once you have registered, you will be provided with call-in instructions and any other relevant information about the call.

In order to best facilitate the conference call, all questions about the RFP must be submitted in advance. Send your questions by 4:30 p.m. on Tuesday, September 5, 2006, to Michonne Bertrand at *michonne.bertrand@health.state.mn.us*. Questions received after this deadline will not be answered on the call but will be responded to individually via e-mail. There will not be an opportunity to ask new questions during the conference call.

For the purpose of planning the review process, MDH requests that prospective applicants submit a Notification of Intent to Submit a Proposal form (see Appendix H in the RFP), or provide the information requested therein, in one of the following ways. The form or information may be submitted by e-mail to Carol Ault at *carol.ault@health.state.mn.us*, by fax to (651) 201-3636, or by mail to Minnesota Department of Health, Tobacco Prevention & Control-Letter of Intent, P.O. Box 64882, St. Paul, MN 55164-0882.

The applicant must indicate whether they plan to submit a proposal for a Reducing Youth Exposure to Tobacco Influences grant or a Creating Tobacco-Free Environments grant, and whether this proposal will be for the metro or greater Minnesota region. Please submit this information by September 15, 2006.

Submission of the notification of intent to submit a proposal is in no way binding if a potential applicant should later decide not to submit a proposal.

## Department of Transportation (Mn/DOT)

### Engineering Services Division

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

This document is available in alternative formats for persons with disabilities by calling Ron Bisek at (651) 296-1361 for persons who are hearing or speech impaired by calling the Minnesota Relay Service at (800) 627-3529.

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

Mn/DOT is currently requesting applications from consultants. Refer to Mn/DOT's Consultant Services web site, indicated below, to see which highway related professional/technical services are available at this time. Following the advertisement of particular category of services, applications will be accepted on a continual basis.

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

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

Send completed application material to:

Ron Bisek  
Consultant Services  
Office of Technical Support  
Minnesota Department of Transportation  
Consultant Services  
395 John Ireland Boulevard, Seventh Floor North, Mail Stop 680  
St. Paul, MN 55155

**Note: DUE DATE: APPLICATION MATERIAL WILL BE ACCEPTED ON A CONTINUAL BASIS.**

## Department of Transportation (Mn/DOT)

### Engineering Services Division

#### Notice Concerning Professional/Technical Contract Opportunities

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

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

## Non-State Contracts & Grants

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *State Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector. It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of commodity, project or tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from the date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact editor for further details.

## Dakota County

### Notice of Request for Proposals (RFP) for Design Engineering Services

**NOTICE IS HEREBY GIVEN** That the Dakota County Transportation Department requests proposals for the second phase of the design reconstruction of County Project (CP) 42-82, SP 19-624-43, SP 1906-45, and MP TA05MN97(100) detail design on TH 52 and CSAH 42 and project scoping/preliminary engineering for the combination of CSAH 42 and TH 55.

Qualification-based selection criteria will be used to analyze submittals from responding consultants. Upon completion of the technical rankings, Dakota County will enter into contract negotiations with the firm evaluated most qualified. There is a **10.0% DBE Goal** for this contract.

The following is the anticipated solicitation schedule:

Issue Request for Proposals

Monday, August 28, 2006

Receive Request for Proposals by 11:00 AM

Wednesday, September 27, 2006

Prospective responders who have any questions regarding this Request for Proposals may contact: John Sass, **phone:** (952) 891-7130, **fax:** (952) 891-7127, **e-mail:** [john.sass@co.dakota.mn.us](mailto:john.sass@co.dakota.mn.us)

## Dakota County

### Notice of Request for Proposal (RFP) for Driving With Care Services

**NOTICE IS HEREBY GIVEN** that Dakota County Community Corrections seeks qualified Contractors to provide educational and cognitive-behavioral based services to individuals convicted of driving while impaired with alcohol or other drugs. In 2003, Kenneth Wanberg, Harvey Milkman and David Timken developed "Driving With Care," a curriculum designed for the education and treatment of the impaired driving offender. Community Corrections plans to contract for services with a Provider for the 24 hour education component of the program. Higher consideration will be given proposals that reflect prior successful experience in the same or similar services. This

# Non-State Contracts & Grants

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contract will be in effect from January 1, 2007 through December 31, 2008 with an option to renew for up to three years on an annual basis.

To access the complete RFP online or to acquire additional information about Dakota County visit our website at: [www.co.dakota.mn.us](http://www.co.dakota.mn.us) click on E-Government and select RFP on the menu.

Contact:

David Hoppe, Contract Manager  
Dakota County Community Services Division  
1 Mendota Road West, Suite 500  
West St. Paul, MN 55118-4773  
**Phone:** (651) 554-5872  
**Fax:** (651) 554-5948  
**E-mail:** [david.hoppe@co.dakota.mn.us](mailto:david.hoppe@co.dakota.mn.us)

Responder's Meeting is scheduled at 2:00 p.m. on Thursday, August 31<sup>st</sup> at the Dakota County Western Services Center in Apple Valley. See proposal for details.

Deadline for proposals is 4:45 p.m. on Friday, September 15<sup>th</sup>, 2006.

## Metropolitan Council

### Advertisement for Sealed Bids for Installation of Switchgear and Cabling for 2 MW Generators

#### Document 00150

Notice is given that on **September 7, 2006** at 2:00 P.M. the Metropolitan Council will receive and publicly open separate sealed bids for MCES Project Number 800807 at their office at 390 Robert Street North, St. Paul, MN, 55101-1805. Sealed bids should be delivered to receptionist.

The Work of this Project includes Installation of switchgear and cabling for two 2 MW generators supplied by others for standby power at the Effluent Pumping Station at the Metropolitan Wastewater Treatment Plant.

The estimated construction cost is between \$50,000 and \$100,000.

Bidding Documents may be obtained at a non-refundable cost of \$25.00 per set from the Metropolitan Council, 390 Robert Street North, St. Paul, MN 55101-1805, Attn: Sunny Jo Emerson, (651) 602-1499, [sunnyjo.emerson@metc.state.mn.us](mailto:sunnyjo.emerson@metc.state.mn.us).

A Pre-Bid Meeting will be held at Metropolitan Wastewater Treatment Plant 2400 Childs Road, St. Paul MN 55101, on August 30, 2006 at 9:00 a.m. Attendees should report to receptionist. A site visit will follow the pre-bid meeting.

Direct inquiries to the COUNCIL's Project Manager, Roger Rehbein at (651) 602-8726.

Dated this 18<sup>th</sup> day of August, 2006

## Metropolitan Council

### Notice of Invitation for Bids (IFB) for the Rental of Two 2 MW Generators for Standby Power at the Effluent Pumping Station at the Metropolitan Wastewater Treatment Plant from March through May for Each of Four Years

#### Reference Number 06P125

The Metropolitan Council is requesting bids for the MWWTP Effluent Pumping Generator Rental.

Issue Invitation for Bids	August 21, 2006
Bids Due	September 7, 2006
Award Contract	September

All firms interested in submitting bids for this contract and desiring to receive an IFB package are invited to make a request by e-mail, fax, mail or phone to:

Sunny Jo Emerson  
Senior Administrative Assistant,  
Contracts and Procurement Unit  
Metropolitan Council

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## Non-State Contracts & Grants

390 Robert Street North  
St. Paul, MN 55101 -1801  
**Phone:** (651) 602-1499  
**Fax:** (651) 602-1083  
**E-mail:** [sunnyjo.emerson@metc.state.mn.us](mailto:sunnyjo.emerson@metc.state.mn.us)

### Metropolitan Council - Metro Transit

#### Request for Proposals for Information Management System for the Metro Transit Police Department

Metro Transit, a division of the Metropolitan Council, is seeking the services of a qualified firm to provide and implement a CAD, Mobile and RMS solution and the related interfaces for the Metro Transit Police Department. The project details are contained in the Request for Proposals document, which is available from the Metro Transit Purchasing Department (see below).

A Pre-Proposal Conference will be held on September 12, 2006 at 10:00 AM local time, at the Metro Transit Police Station, 2425 Minnehaha Avenue, Minneapolis MN 55404.

Proposals are due by 2:00 p.m. on September 25, 2006.

Firms interested in receiving the Request for Proposals document should contact:

Candace Osiecki  
Metro Transit Purchasing Department  
515 N. Cleveland Avenue  
St. Paul, MN 55114  
**Phone:** (612) 349-5070  
**Fax:** (612) 349-5069  
**E-mail:** [candace.osiecki@metc.state.mn.us](mailto:candace.osiecki@metc.state.mn.us)

### Minnehaha Creek Watershed District

#### Call For Bids and Bid Notice for the Highway 26 Wetland Restoration Project

The MCWD Board of Managers is currently accepting bids for the Highway 26 Wetland Restoration Project located in the City of Minnetrista, Minnesota. The project involves clearing and grubbing, muck excavation, sheet pile weir construction and vegetation management. The project is located at the south side of the Highway 26, Painter Creek crossing.

Bids will be accepted until 12:00 PM, CST September 13, 2006. Bid opening will commence immediately thereafter at the MCWD offices located at 18202 Minnetonka Boulevard, Deephaven, MN 55391.

An optional PRE-BID meeting will be held at the offices of Emmons and Olivier Resources, Inc. at 10:00 AM, CST on August 31, 2006. Please notify the ENGINEER 24 hours in advance of attendance.

Contractors desiring a copy of the bid package, plans, specifications and proposal forms may obtain them from the offices of Emmons & Olivier Resources, Inc. 651 Hale Avenue, Oakdale, MN upon the payment of a \$30.00 **non-refundable** fee for each bid package.

Bid submittals must be labeled "MCWD Painter Creek Wetland Restoration" legibly in large, noticeable print on the outside of the submittal package. Unlabeled submittals will not be accepted.

All communications relative to this project should be addressed to the ENGINEER prior to opening of the Bid. Emmons & Olivier Resources, Inc.: Attention Joel Peterson, PE, phone (651) 770-8448.

### University of Minnesota

#### Subscribe to Bid Information Service (BIS)

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

Request for Bids/Proposals are also available to the public each business day from 8:00 a.m. to 4:30 p.m. in the Purchasing Services lobby, Suite 560, 1300 S. 2nd Street, Minneapolis, Minnesota 55454.