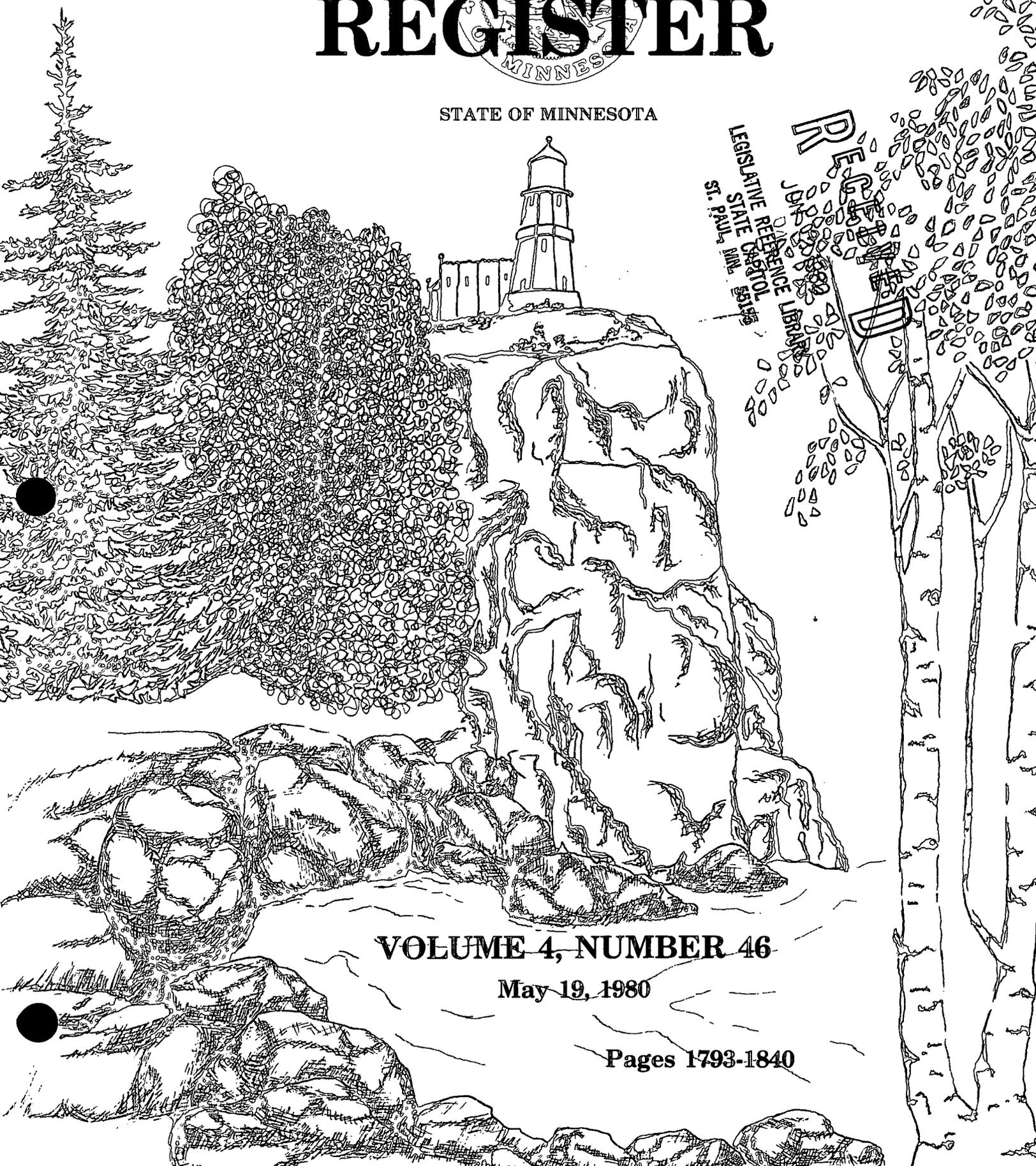


STATE REGISTER

STATE OF MINNESOTA



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VOLUME 4, NUMBER 46

May 19, 1980

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Volume 4 Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 4			
47	Monday May 12	Monday May 19	Monday May 26
48	Monday May 19	Friday May 23	Monday June 2
49	Friday May 23	Monday June 2	Monday June 9
50	Monday June 2	Monday June 9	Monday June 16

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

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

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION**. Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The **PROPOSED RULES** section contains:

- Proposed new rules (including Notice of Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The **ADOPTED RULES** section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All **ADOPTED RULES** and **ADOPTED AMENDMENTS TO EXISTING RULES** published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
Issue 27-38, inclusive	

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EXECUTIVE ORDERS

Executive Order No. 80-5

Amending Executive Order No. 79-1

I, ALBERT H. QUIE, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution of the State of Minnesota and applicable statutes, do hereby issue this Executive Order amending Executive Order 79-1:

WHEREAS, Executive Order No. 79-1, providing for the establishment of the Governor's Committee on Appointments was issued on February 20, 1979; and

WHEREAS, it is desirable to have the chairperson or co-chairpersons who serve as coordinators of the committee be voting members of the Committee and receive reimbursement for expenses reasonably incurred;

NOW, THEREFORE, I Order:

That Section 2 of the Executive Order No. 79-1 be amended to read as follows:

"2. That there be a chairperson or co-chairpersons selected by the Governor from among the members of the Committee who shall serve as coordinators of the Committee."

Pursuant to Minn. Stat. § 4.035 (1978), this Order shall be effective fifteen (15) days after filing with the Secretary of State and its publication in the *State Register* and shall remain in effect until it is rescinded by proper authority or expires in accordance with Minn. Stat. §§ 4.034 or 15.0593.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 30th day of April, 1980.



PROPOSED RULES

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

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

Public Hearings on Proposed Agency Rules May 26-31, 1980

Date	Agency and Rule Matter	Time & Place
May 29	Transportation Department Amendment of Rules on Public Transit Subsidy, Paratransit Grant Program, Regular Route Transit Improvement Program, Financial Application for Subsidy & Grant Assistance; and New Rules on Uniform Performance Standards, Metro Transit Taxing District, & Public Transit Capital Grant Assistance Program	10:00 a.m., Rm. 81, State Office Bldg., 435 Park Street, St. Paul, MN
	Hearing Examiner: Richard DeLong	

Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, Telephone number: (612) 296-5938, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least two (2) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411, 15.0417, and 15.052, and by 9 MCAR §§ 2.010-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

If adopted, the proposed amendments would make the following changes:

1. An amendment to 7 MCAR § 3.005 would permit the board to set licensure fees below, but not above, the fees already established by rule.

2. An amendment to 7 MCAR § 3.011 E. would carry out the provisions of Minn. Stat. § 150A.06, subd. 1 (1978) by requiring graduates of nonaccredited dental schools who are seeking licensure to pass a clinical examination prior to taking the National Board examination.

3. Amendments to 7 MCAR § 3.014 would carry out the provisions of Minn. Stat. § 150A.06, subd. 4 (1978) which authorizes the board to grant licensure to dentists and dental hygienists who are already licensed in other states or Canada. The proposed rule specifies the procedures and requirements for licensure.

4. An amendment to 7 MCAR § 3.015 would update the present rule and would carry out the provisions of Minn. Stat. § 150A.09, subd. 1 (1978) which requires annual registration of all registered dental assistants.

5. Amendments to 7 MCAR §§ 3.031, 3.032 A. and 3.034 would carry out the provisions of Minn. Stat. § 150A.10, subd. 2 (1978) which authorized the board to specify what functions dentists may delegate to registered and nonregistered assistants. The proposed rule would allow an assistant to monitor a patient who has been given nitrous oxide anesthesia by a dentist. It would allow registered dental assistants to remove rubber dams and place peridental packs. The proposed rule would also allow dental hygienists to place any sealants, not just cement, for the

Board of Dentistry

Proposed Amendments to Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising and Classification, and Reorganization of Existing Rules

Notice Of Hearing

A public hearing concerning the proposed amendments to the rules captioned-above will be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on June 26, 1980, commencing at 9:30 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner,

temporary replacement of restorations and to administer local anesthesia under the direct supervision of a dentist.

6. An amendment to 7 MCAR § 3.032 B. would clarify the intent of the Board at the time the rule was adopted to allow qualified persons in allied health fields, such as X ray technicians, to take dental radiographs.

7. An amendment to 7 MCAR § 3.044 would permit the use of the words clinic or institute, except when used with the name of a state, city, or political subdivision. It would prohibit the use of specific adjectives which would create false expectations of favorable results.

8. Amendments to 7 MCAR § 3.045 would carry out the provisions of Minn. Stat. § 150A.11, subd. 2 (1978) permitting the board to establish rules for professional advertising and would conform to the US Supreme Court decision allowing professional advertising. The proposed rule establishes limitations on advertising, services that can be advertised, the criteria that will be used to define these services, and what types of advertising would violate this rule.

9. An amendment to 7 MCAR § 3.045I would identify all of the recognized specialty areas in dentistry and the specialty credentialing bodies. The rule would prohibit any dentist from using the term specialist unless the dentist has met the education and experience criteria provided by the amendment.

10. An amendment to 7 MCAR § 3.063 would remove the restrictions on the use of such words as "chartered" and would instead require that the use of these terms conform to the provisions of Minn. Stat. § 319A.07 (1978), the Professional Corporations Act.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to Dale Forseth, Minnesota Board of Dentistry, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414. Additional copies will be available at the door on the date of the hearing.

Twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rule. However, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the Statement of Need and Reasonableness before the hearing and to attend the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The statutory authority of the Board of Dentistry to adopt these rules is contained in Minn. Stat. §§ 150A.04 subd. 5 (1978).

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

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (Supp. 1979) as any individual:

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

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

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

May 5, 1980

Dale J. Forseth
Executive Secretary

Amendments as Proposed

7 MCAR § 3.002 Definitions.

D. "Auxiliary" means a dental hygienist, registered dental assistant, ~~and~~ assistant, and dental technician.

O. "Person" includes an individual, corporation, partnership, association or any other legal entity.

~~P.Q.~~ "Registered dental assistant" means an assistant registered by the board pursuant to § ~~150A.16~~ 150A.06, subd. 2a of the Act.

~~Q.P.~~ "Registrant" means a registered dental assistant.

~~R.Q.~~ "Registry" means the centralized recordkeeping service of the American Dental Association, Continuing Education Registry.

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

PROPOSED RULES

~~S.R.~~ "Sponsor" means an organization approved by the board pursuant to § 3.052 to offer CDE courses.

~~T.S.~~ "Supervision" shall be defined in one of the following classifications:

7 MCAR § 3.004 Officers. The officers of the board shall consist of a President, a Vice-President, and a Secretary-Treasurer, as provided in § 150A.03, subd. 1, of the Act. Election of officers may be held at any regular or special meeting.

7 MCAR § 3.005 Fees.

B. Annual license or registration fees. Each dentist, dental hygienist and registered dental assistant shall submit with his annual license or registration renewal application a fee as established by the Board not to exceed ~~in~~ the following amounts:

1. Dentist—\$38.00
2. Dental hygienist—\$15.00.
3. Registered dental assistant—\$10.00.

7 MCAR § 3.011 Applications to practice dentistry.

C. The applicant must furnish certification of having passed all parts of ~~the~~ a national board examination as defined in Rule 7 MCAR § 3.002 N.

~~E. 3. After successful completion of steps 1 and 2, the board may then certify the applicant as eligible to take National Board examination. applicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its equivalent, as the board may approve, to determine whether the applicant has the clinical proficiency in dentistry comparable to that of a student who has graduated from the University of Minnesota, School of Dentistry.~~

~~4. Upon the evidence of passage of National Board examination, applicants of dental schools not accredited by the Commission on Accreditation must complete such testing procedures, clinical training in the School of Dentistry, University of Minnesota, or its equivalent, as the board may prescribe in order to establish that the knowledge, skill and competence of the applicant to practice dentistry is equivalent in all respects to that of a graduate of a dental school accredited by the Commission on Accreditation and approved by the board.~~

~~4. Only after successful completion of steps 1, 2, and 3 will the board certify the applicant's eligibility to take a national board examination as defined in 7 MCAR § 3.002 N.~~

~~5. Only Upon completion of the first four steps may the applicant may make application to the board to take the examination for licensure.~~

G. The applicant shall furnish a testimonial of good ~~moral~~ professional character from an authorized representative of the dental school from which the applicant graduated. ~~If he is a member of a dental society, he shall furnish the recommendation of the president or secretary of the society, and a certification by the secretary of the Board of Dental Examiners of the state or Canadian Province in which he is licensed. Provided,~~

however, the board may in its discretion and for good cause waive the certification of good ~~moral~~ professional character by an authorized representative of the dental school.

7 MCAR § 3.012 Application to practice dental hygiene.

B. Applicants must furnish certification that they have passed the National Board Examination as defined in 7 MCAR § 3.002N.

F. The applicant shall furnish evidence of good ~~moral~~ professional character satisfactory to the Board and certification from the Board Of Dental Examiners in the state or Canadian Province in which he is already licensed.

7 MCAR § 3.013 Application for registration as a registered dental assistant.

B. The applicant shall furnish a certified copy or its equivalent of a diploma or certificate of satisfactory completion of a training program approved by the Commission on Accreditation or other program which, in the judgment of the board, is equivalent. If the curriculum of the training program does not include training in the expanded duties specified in ~~DE 31 and 32 A.~~ 7 MCAR § 3.032 A., applicant must successfully complete a course in these functions which has been approved by the board.

7 MCAR § 3.014 Application for licensure by credentials.

Any person, who is already a licensed dentist or dental hygienist in another state or Canadian Province desiring to be licensed to practice dentistry or dental hygiene in Minnesota, must present to the board an application and credentials, as prescribed by the Act. The applicant shall conform to the following rules of the board:

A. The applicant shall complete an application and credential verification questionnaire on forms furnished by the board.

B. The applicant shall furnish satisfactory evidence of having graduated from a school of dentistry, or dental hygiene, whichever the case may be, which has been accredited by the Commission on Accreditation.

C. An applicant for licensure as a dentists must have been in active practice in another state or Canadian Province for at least three years immediately preceding application, United States Governmental service may be included, and submit at least three references from other dentists. The application must include a physician's statement attesting to the applicant's physical and mental condition.

D. An applicant for licensure as a dental hygienist must have been in active practice in another state or Canadian Province for at least one year immediately preceding application, and must submit at least two character references from dentists and two references from practicing hygienists.

E. Each applicant must submit with the application a fee as prescribed in 7 MCAR § 3.005 C.

F. For identification purposes, the applicant shall furnish one notarized unmounted passport-type photograph, 3" x 3", taken not more than six (6) months before the date of application.

G. An applicant must appear before the board for a personal interview to determine the applicant's fitness to practice dentistry or dental hygiene in Minnesota.

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

7 MCAR § 3.014 7 MCAR § 3.015 Requirements for all Applications applicants.

A. Every applicant shall provide evidence of having fulfilled all the requirements of the Act.

~~C.A.~~ Incomplete applications shall be returned to the applicant with the tendered fee, together with a statement setting forth the reason for such rejection.

~~D.C.~~ Nothing contained in these rules shall be construed to limit the board's authority to seek from an applicant such other information pertinent to the character, education, and experience of the applicant insofar as it relates to the applicant's ability to practice as a licensee or registrant as the board may deem necessary in order to pass on the applicant's qualification.

7 MCAR § 3.015 7 MCAR § 3.016 Expiration of license and registration and renewal thereof.

~~Any person already registered by the board as of the effective date of this rule shall submit to the board no later than December 31, 1976, or within one (1) month after the effective date of this rule, whichever occurs last, an initial registration renewal application as prescribed below together with the fee prescribed in 7 MCAR § 8.005B. Each dentist, dental hygienist and each registered dental assistant, except as modified by the immediately preceding sentence, shall submit an application for renewal of his license or registration together with the necessary fee no later than January 1, December 31, of the year preceding that for which the license or registration renewal is requested. The application form shall provide a place for the renewal applicant's signature and shall solicit information to include but not be limited to the applicant's office address or addresses, the number of his license or registration certificate whether such licensee or registrant has been engaged during the year preceding the year for which renewed licensure or registration is sought in the active practice of dentistry or dental hygiene or has worked as a registered dental assistant, and if so, whether within or without the state, and such other information which may be reasonably requested by the Board.~~

7 MCAR §§ 3.016 7 MCAR §§ 3.017-3.020 Reserved for future use.

7 MCAR § 3.021 Written examination procedures: dentists, dental hygienists, and registered dental assistants.

F. Notes, ~~testbooks,~~ textbooks or other informative data shall not be brought to the examination rooms.

7 MCAR § 3.022 Scope of clinical examinations: dentists, dental hygienists, and registered dental assistants applicants.

7 MCAR § 3.025 Scope of written examination, dental hygienists.

B. At the discretion of the board, any dental hygienist duly licensed to practice as such in another state which has and maintains laws regulating the practice of dental hygiene by dental hygienists, equivalent to this state's, who is of good moral professional character and is desirous of ~~moving to this licensure in this state~~ and presents a certificate from the examining board of the state in which the applicant is licensed so certifying, may be exempted from taking a National Board examination provided the applicant has been licensed for five or more years.

7 MCAR § 3.031 Assistants. Assistants may:

A. Retract a patient's cheek, tongue or other parts of tissue during a dental operation; assist with the placement or removal of a rubber dam and accessories used for its placement and retention, as directed by an operating dentist during the course of a dental operation; remove such debris as is normally created or accumulated during the course of treatment being rendered by a licensed dentist during or after operative procedures by the dentist by the use of vacuum devices, compressed air, mouthwash and water; monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia; provide any assistance, including the placement of articles and topical medication in a patient's oral cavity in response to a specific direction to do so by a licensed dentist who is then and there actually engaged in performing a dental operation as defined in the Act and who is then actually in a position to give personal supervision to the rendition of such assistance. In addition, assistants may aid dental hygienists and registered assistants in the performance of their duties as defined in 7 MCAR § 3.032 B., and 7 MCAR § 3.034.

7 MCAR § 3.032 Registered dental assistants.

- A. 4. Place and remove rubber dam.
- 9. Place and Rremove periodontal packs.
- ~~11. Monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia.~~

B. A dental assistant, who by virtue of academic achievement which is equal to or greater than that of a registered assistant, and is currently registered or licensed qualified in Minnesota in related health profession may, at the Board's discretion, be permitted to take dental radiographs after successful completion of an approved course. Such permission shall not be granted until such dental assistant shall have filed with the Board an application for permission, along with proof of suc-

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

PROPOSED RULES

cessful completion of such course, and proof of current Minnesota licensure or registration in an allied health profession.

7 MCAR § 3.033 Display of certificate of registered dental assistant. In each office in which there is employed a registered dental assistant there shall be prominently displayed the certificate of registration of said registered dental assistant. [This deleted material is moved to 7 MCAR § 3.046 B.]

7 MCAR § 3.034 Dental hygienists. Dental hygienists may perform:

B. Complete prophylaxis to include scaling, root planning, soft tissue curettage, polishing of fillings, and placement of temporary cement material replacement of lost restorations.

C. Preliminary examination charting of the oral cavity and surrounding structures to include case histories, and periodontal examination and charting recording of clinical findings; this does not infer the making of a diagnosis.

G. Administer local anesthesia after successful completion of a course approved by the Board.

~~H-G.~~ Procedures A., B., C., and D., and F. may be carried out under the general supervision of a dentist, whether or not a dentist is present or supervising, but acting under his direction. Examination and diagnosis must be accomplished only by a dentist.

7 MCAR § 3.044 Practice of dentistry under any name except the licensee's own proper name. Names.

A. The use of the words, "clinic," "institute," or any other title that may suggest a public or semi-private activity, or teaching institution or that could be interpreted to imply superiority over other practitioners, shall constitute the unlawful practice of dentistry by an individual or under the name of a corporation, company association, or trade name, as those terms are used in § 150A.11, subd. 1 of the Act and shall be grounds for discipline under § 150A.08, subd. 1. Any name which incorporates the use of the name of a state, city, or other political subdivision in whole or in part or which connotes unusual or superior dental ability, or which is likely to create a false or unjustified expectation of favorable results shall be in violation of § 150A.11, subd. 1 of the Act and Minn. Stat. § 319A.07.

~~B. The title on a building wherein one or more dentists practice shall be used as an address only.~~

7 MCAR § 3.045 Professional advertising. There shall be no public advertising by dentists other than as provided for herein. Dentists shall be permitted to insert a professional card in the local press, in programs and in yearbooks, providing that such professional card contain the name of the dentist and his title or degree using the abbreviation "D.D.S." or "D.M.D." only. Institutional advertising promoting dentistry generally, by dental associations and groups is encouraged and approved, provided individual dentists are not advertised therein. A dentist shall be permitted to use signs to advertise his name, the fact that he is engaged in the practice of dentistry, the location of his

office and his office hours. These signs shall be limited to a total area of not more than six hundred (600) square inches and shall not contain letters more than seven (7) inches in height. Such signs shall not be specially luminated or have other attention-getting properties or characteristics. No sign shall be permitted to hang over or beyond the edge of the public thoroughfare. Within thirty (30) days immediately following the opening of an office, changing locations, association or type of practice, announcement cards may be mailed to bona fide patients and members of the health science professions and placed in the local press for not more than two consecutive issues, but such cards shall not be greater in size than eight column inches nor more than two columns in width and four inches in depth. Such announcement cards shall state only the dentist's name, degree, or any specialty as recognized by the Board, office location, telephone number and office hours. Professional cards shall not be greater in size than two inches by three and one half inches and shall include only the dentist's name, degree or any specialty, office location, telephone number and office hours. Residence telephone number may be included. All directory listings shall be consistent in style and text with the custom of dentists of the community. A dentist may permit one listing of his name in the alphabetical and may permit only listing of his name in the commercial section of the telephone directory. A dentist may permit one listing of his name in other directories provided that all dentists in similar circumstances have access to the same listing. Such listing shall be limited to the dentist's name, dental degree, "D.D.S." or "D.M.D." using the abbreviation only, any specialty to which the dentist confines his practice exclusively, office location, residence and office telephone numbers, residence address, and hours during which the telephone will be answered.

A. A person shall not, on behalf of himself, a partner, associate or any other dentist affiliated with him through a corporation or association, use or participate in the use of any form of public communication containing a false, fraudulent, misleading or deceptive statement or claim.

1. A false, fraudulent, misleading or deceptive statement or claim is one which:

- a. Contains a misrepresentation of fact;
- b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;
- c. Is self-laudatory or is intended or is likely to create false or unjustified expectations of favorable results;
- d. Implies unusual or superior dental ability;
- e. Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

B. A person shall not compensate or give anything of value to a representative of the press, radio, television, or other communicative medium in anticipation of or in return for professional publicity unless the fact of compensation is made known in such publicity.

C. A person shall not directly or indirectly offer, give, receive, or agree to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.

D. Fees may be advertised for routine services only.

1. A routine service is defined as one which is performed frequently in the dentist's practice; is usually provided at a set fee; is provided with little or no variance in technique; and includes all professionally recognized components within generally accepted standards. If the following routine dental services are advertised, they must adhere to these minimum standards (which are examples of the comprehensiveness required to satisfy the above definition):

a. Examination—a study by the dentists of all of the structures of the oral cavity, including the recording of the condition of all such structures and appropriate history thereof, including as a minimum the charting of caries, identification of periodontal disease and occlusal discrepancies, and the detection of oral abnormalities. If an examination fee is advertised, the same advertisement must include the following additional diagnostic procedures and their fees:

(1) Radiographs (X-rays)—X-rays of the oral structures to be used for purposes of diagnosis and which included either: 1) a panograph and four bitewings, or 2) an intra-oral full mouth review utilizing a minimum of fourteen periapical and four bitewing films. Any films must be adequate to provide a complete radiographic study.

(2) Diagnosis—a written opinion of items found in an examination.

(3) Treatment planning—A written itemized treatment recommendation and written itemized fee estimate provided to the patient.

b. Denture—either a full upper or full lower replacement of the natural dentition with artificial teeth. If the service advertised is for a denture which is partially prefabricated or is intended to be used as an emergency or temporary denture, such fact shall be fully set forth in the text of the advertisement. The fee shall include a reasonable period for readjustment.

c. Prophylaxis—the removal of calculus (tartar) and stains from the exposed and unexposed surfaces of the teeth by scaling and polishing.

d. Extractions—this service is for the removal of non-impacted teeth and includes necessary x-rays, anesthesia, preoperative and post-operative care.

2. At the request of the board, the licensee, office or professional corporation shall bear the burden of proving that any advertised services, are in fact "routine dental services" as defined.

3. Related services which may be required in conjunction with the advertised services, and for which additional fees will be charged, must be identified as such in the advertisement.

E. Advertising a range of fees for a given service is prohibited.

F. Advertised fees must be honored for those seeking the advertised services during the entire time period stated in the advertisement, whether or not the services are actually rendered in that time. If no time period is stated, the advertised fees shall be so honored for 30 days or until the next scheduled publication, whichever is later.

G. Any advertising must include the corporation, partnership, or individual dentist's (dentists') name and address.

H. Advertisements shall not:

1. Include descriptive words or phrases which are qualitative representations or comparative claims such as, but not limited to: painless, high quality, low prices and reasonable;

2. Include testimonials and endorsements, including but not limited to character references, statements of benefits from dental services received, or expressions of appreciation for dental services;

3. Include the use of celebrities;

4. Use dramatization or graphic illustrations to imply patient satisfaction;

5. Reveal a patient's identity or personally identifiable facts, data, or information obtained in a professional capacity;

6. After one year, include the name of any dentists formerly practicing at or associated with any advertised location;

7. Indicate or imply affiliation with any organization other than the dental practice being advertised.

I. Advertising of practice in a dental specialty:

1. The following special areas of dentistry are recognized as suitable for the announcement of specialty dental practices:

- Endodontics (Endodontist);
- Oral and Maxillofacial surgery (Oral Surgeon/Oral and Maxillofacial Surgeon);
- Oral Pathology (Oral Pathologist);
- Orthodontics (Orthodontist);
- Pedodontics (Pedodontist);
- Periodontics (Perodontist);
- Prosthodontics (Prosthodontist);
- Public Health

a. Only licensed dentists who have successfully completed a post-doctoral course approved by the Commission

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on Accreditation in one of the specialty areas, or who announced a limitation of practice prior to 1967, or who have been approved by one of the following specialty examining boards, may announce specialty practice and may advertise as a specialist: American Board of Dental Public Health, American Board of Endodontics, American Board of Oral Surgery, American Board of Oral Pathology, American Board of Orthodontics, American Board of Pedodontics, American Board of periodontology, and American Board of Prosthodontics.

b. 7 MCAR § 3.0451. a. does not prohibit a dentist who does not meet the above education or experience criteria from restricting his practice to one or more specific areas of dentistry. Such individuals may not use the terms specialist, specialty, specializing, or limited to. The advertising must state that the services are being provided by a general dentist.

J. Failing to respond within 30 days to written communications from the Board of Dentistry or failure to make available to the board any relevant records with respect to an inquiry or complaint about the licensee's advertising practices shall constitute a violation of § 150A.08, subd. 1 (5) of the Act and 7 MCAR § 3.045. The period of 30 days shall commence on the date when such communication was sent from the Board by certified mail with return receipt requested to the address appearing in the last registration.

7 MCAR § 3.046 Display of name and certificates.

B. Every licensed dentist, upon changing his place of business, and every dental hygienist and registered dental assistant upon changing his address, shall within ten 30 days thereafter, furnish the secretary-treasurer of the Board with his the new address. A practicing dentist shall inform the Board of his the office address(es).

7 MCAR § 3.063 Corporation Names. The use of any name for a corporation other than the name or names of one or more of the participating dentists followed by the word "Chartered," "Limited," "Ltd.," "Professional Association," or "P.A." is declared to be an unlawful attempt to imply superiority or quasi-public sponsorship in violation of Minn. Stat. § 319A.07 of the Minnesota Professional Corporations Act and 7 MCAR § 3.044. The names of professional corporations shall be governed by Minn. Stat § 319A.07 and 7 MCAR § 3.044.

Department of Health

Proposed Amendments to Rules Governing the Minnesota Hospital Rate Review System

Notice of Hearing

A public hearing concerning the proposed amendments to the rules captioned above will be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on June 27, 1980, commencing at 9:30 a.m. The proposed rules may be modified as a result of the

hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Peter Erickson, Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8108, either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least two (2) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411, 15.0417, and 15.052, and by 9 MCAR §§ 2.010-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

Twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rule. However, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the Statement of Need and Reasonableness before the hearing and to attend the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

A copy of the proposed rules is attached hereto and made a part hereof. The statutory authority of the Commissioner of Health to adopt these rules is contained in Minn. Stat. § 144.703 (1978) and Minn. Stat. § 144.7021 (Supp. 1979).

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

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she

commences lobbying. A lobbyist is defined in Minn. Stat § 10A.01, subd. 11 (Supp. 1979) as any individual:

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

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

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

April 29, 1980

George R. Pettersen, M.D.
Commissioner of Health

Amendments as Proposed

7 MCAR § 1.472 G. "Charges" means the regular amounts charged less expected bad debts, contracted allowances and discounts to patients and/or insurers, prepayment plans and self-insured groups on the patient's behalf. The terms "charges" and "rates" are synonymous for the purposes of these rules. "Gross charges" means "charges" irrespective of any discounts, deductions, or other reductions which by contract or other agreement may be applicable. The terms "gross charges," "gross acute care charges," and "gross rate" are synonymous for the purpose of these rules.

7 MCAR § 1.474 A.9. Each hospital claiming exempt status pursuant to Minn. Stat. § 144.7021 and 7 MCAR § 1.505 shall include or append a clearly identifiable statement(s) of annual gross acute care charges.

7 MCAR § 1.505 Acceptable increases in hospital gross acute care charges: Exemptions from hospital rate review.

A. Each hospital that anticipates an increase in budget year gross acute care charges which is less than the acceptable increase determined by the Commissioner of Health may claim and shall be granted, and an exemption from the filing of a rate revenue and expense report as required by 7 MCAR § 1.481 C. and as described in 7 MCAR § 1.481 C. and the review and comment provisions of 7 MCAR § 1.487 C.2., upon filing an abbreviated projected operating statement as described in 7MCAR § 1.505 E.2.

B. Commissioner of Health establishment.

1. The Commissioner of Health shall establish at the beginning of each quarter of the fiscal year (July 1, October 1, January 1, April 1), a percentage figure for each set of hospitals described in 7 MCAR § 1.505 B.3., representing an acceptable increase in gross acute care charges for the succeeding six quarters (eighteen months).

a. Each hospital being reviewed by the Commissioner of Health pursuant to Minn. Stat. § 144.701 shall be notified of each quarterly established acceptable increase in and adjustments to the acceptable increase in gross acute care charges pursuant to 7 MCAR § 1.505 D.

b. Each voluntary non-profit rate review organization approved pursuant to 7 MCAR § 1.496 shall be notified of each quarterly established acceptable increase in and adjustments to the acceptable increase in gross acute care charges and shall in turn notify each of the hospitals electing to be reviewed by said organization.

2. Basis. The single percentage figure established by the Commissioner of Health shall be the algebraic sum of the following percentages:

a. An estimate of the forthcoming annual rate of change in the average total cost of all goods and services to hospitals. This estimate shall be determined by summing the weighted change in price of each of the natural expense classifications described in 7 MCAR § 1.474 A.2.f. The weights shall be the proportionate contributions of each of these natural expense classifications to hospitals' total cost. The estimate shall explicitly recognize the expected overall level of price change in the state's economy and shall be derived from expected annual changes in the Consumer and/or Producer Price Indices, and/or relevant components of the Consumer and/or Producer Price and/or other similar economic indices published by the Bureau of Labor Statistics, United States Department of Commerce.

b. An estimate of the dollar value of the forthcoming annual statewide rate of change in:

(1) the average mix of patients utilizing hospitals, and

(2) the average intensity of services received by patients during hospital stays or visits as is consistent with the delivery of medical care which is of generally accepted quality and efficiency. The estimate shall not be less than zero nor more than .036.

For the purposes of this section:

(1) "Mix" means the types of illnesses, injuries, and conditions treated in hospitals.

(2) "Intensity of services" means the styles and

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methods of treating illness, injuries, and conditions in hospitals.

c. An estimate of the forthcoming annual rate of change in the statewide number of hospital adjusted admissions per 1,000 population as is consistent with the delivery of medical care which is of generally accepted quality and efficiency.

3. For purposes of 7 MCAR § 1.505, hospitals shall be divided into two sets, as of the effective date of these rules and every 5 years thereafter, as follows:

a. Set I shall be composed of hospitals whose combined total gross acute care charges (inpatient plus outpatient) comprise 15% of total gross acute care charges (inpatient plus outpatient) for all non-state, non-federal acute care hospitals. Determination of the hospitals to be included in this set shall be made as follows:

(1) The total gross acute care charges used shall be for each hospital's 1977 fiscal year, pursuant to 7 MCAR § 1.474 B.1.a.

(2) The hospital with the lowest total gross acute care charges shall be selected first. The hospital with the second lowest total gross acute care charges shall be selected second and its gross acute care charges shall be added to the charges of the first selected hospital. The hospital with the third lowest gross acute care charges shall be selected third and its total gross acute care charges shall be added to the sum of the gross acute care charges of the hospitals selected first and second. The procedure shall continue in direct ascending order so as to maximize the number of hospitals included, but the sum of gross patient acute care charges included shall not exceed 15% of the total gross acute care charges for all non-state and non-federal acute care hospitals subject to the provisions of Minn. Stat. §§ 144.695-144.703.

b. Set II shall be composed of all non-state, non-federal acute care hospitals subject to the provisions of Minn. Stat. §§ 144.695-144.703 and not included in Set I as described in 7 MCAR § 1.505 B.3.a.

C. Conformity.

1. Each exempted hospital, by the close of the third quarter of its fiscal year, shall assess its likely conformity with its most recently filed abbreviated projected operating statement. If the anticipated actual increase in gross acute care charges, to be reported pursuant to 7 MCAR § 1.474 A.9., for an exempt hospital is in excess of the acceptable increase in gross acute care charges under which exemption was claimed pursuant to 7 MCAR § 1.505 A., as adjusted pursuant to 7 MCAR § 1.505 D., then that hospital shall file a rate revenue and expense report for the coming budget year pursuant to 7 MCAR § 1.474 B. and 7 MCAR § 1.481 C.

2. If an exempt hospital estimates that it is likely to conform with its most recently filed abbreviated projected operating statement and does not file a rate revenue and expense report pursuant to 7 MCAR § 1.505 C.1. and it is subsequently found that the actual increase in gross acute care charges was more than .00125 in excess of the acceptable increase in gross

acute care charges under which exemption was claimed pursuant to the 7 MCAR § 1.505 A., as adjusted pursuant to 7 MCAR § 1.505 D., then that hospital shall file a rate revenue and expense report pursuant to 7 MCAR § 1.481 C. no later than 150 days after the close of the fiscal year in question.

D. Adjustments to the acceptable change. Each figure in 7 MCAR § 1.505 B. shall be adjusted and updated at the close of the third quarter after its establishment according to the criteria specified in 7 MCAR § 1.505 B.2.a. and shall reflect actual changes in the overall price change level throughout the state's economy. The updated figure shall be used when judging conformity to 7 MCAR § 1.505 C.1.

E. Abbreviated projected operating statement.

1. Each hospital claiming exempt status shall file an abbreviated projected operating statement no later than the commencement of its fiscal year or up to sixty days prior to the commencement of its fiscal year. Pursuant to Minn. Stat. § 144.701, subd. 5. no change in rates may be made until sixty days have elapsed from the date of filing.

2. An abbreviated projected operating statement for hospitals in Set II, as described in 7 MCAR § 1.505 B.3.b.1. shall include the following data for the prior, current and budget years:

a. A natural expense summary consisting of total institutional expenses for:

- (1) Salaries and wages,
 - (2) Employee benefits,
 - (3) Medical fees,
 - (4) Raw food,
 - (5) Drugs,
 - (6) Medical supplies,
 - (7) Other supplies,
 - (8) Utilities,
 - (9) Repairs and maintenance,
 - (10) Rental expense,
 - (11) Insurance,
 - (12) Interest,
 - (13) Depreciation—buildings and fixed equip-
- ment,
- (14) Depreciation—movable equipment,
 - (15) Other expense.

b. Total acute care hospital operating expense.

c. Total institutional patient charges.

d. Total acute care hospital patient charges.

e. Total acute care hospital inpatient charges.

f. Total acute care hospital outpatient charges.

g. An expense analysis consisting of acute care:

Office of Hearing Examiners
Proposed Amendments to Rules
Relating to the Procedural
Conduct of Rulemaking and
Contested Case Hearings

Notice of Hearing

A public hearing concerning the proposed rule amendments will be held at the William Mitchell College of Law, Room 111, 875 Summit Avenue, Saint Paul, Minnesota, on Tuesday, June 24, 1980, commencing at 9:30 a.m. The proposed rule amendments may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendments, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested (or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Melvin B. Goldberg, Hearing Examiner, Room 326, William Mitchell College of Law, 875 Summit Avenue, Saint Paul, Minnesota 55105, telephone (612) 227-9171, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at Hearing Examiner Goldberg's office and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The proposed rule amendments regarding rulemaking would modify and add to the content of the Notice of Hearing, would clarify the use of the Statement of Need and Reasonableness at the hearing, would clarify the agency's burden in regard to existing rules when amendments are proposed, would modify and add to the documents to be filed 25 days prior to hearing, would provide a disqualification procedure for hearing examiners, would modify registration at the hearing, would delete the

- (1) Direct costs for:
 - (a) Daily hospital services,
 - (b) Ancillary service,
 - (c) Non-revenue producing centers.
- (2) Costs after allocation of non-revenue producing centers costs to:
 - (a) Daily hospital services,
 - (b) Ancillary service.
- h. An acute care hospital statistical summary consisting of:
 - (1) Number of patient days (excluding nursery),
 - (2) Number of nursery days,
 - (3) Number of total patient days,
 - (4) Number of admissions,
 - (5) Average length of stay,
 - (6) Occupancy—licensed beds,
 - (7) Occupancy—staffed and set-up beds,
 - (8) Number of outpatient and emergency room visits.
- i. An acute care hospital full time equivalent summary consisting of salary and numbers of full-time equivalent personnel for:
 - (1) Daily hospital services,
 - (2) Ancillary services,
 - (3) Non-revenue producing centers,
 - (4) Total hospital,
 - (5) Total institution.
- j. An acute care bed summary consisting of:
 - (1) Number of licensed beds,
 - (2) Number of physically present beds,
 - (3) Number of staffed and set-up beds.
- k. Depreciation fund.
 - (1) Beginning balance,
 - (2) Ending balance.
- 3. An abbreviated projected operating statement for hospitals in Set I, as described in 7 MCAR § 1.505 B.1.a., shall include all data elements found in 7 MCAR § 1.505 B.2.b., c., d., e., f., g., h., i., j., k.
- 4. The information provided on the abbreviated projected operating statement shall support the hospital's claim that it will achieve an increase in gross acute care charges less than that established by the Commissioner of Health pursuant to 7 MCAR § 1.505 B.

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PROPOSED RULES

incorporation by reference rule effective July 1, 1981, would clarify the meaning of the phrase "recommended by the Hearing Examiner" in Minn. Laws 1980, ch. 615, § 6, subd. 4e, would outline a revised procedure for submission of a rule to the Chief Hearing Examiner, would clarify what rules are compared in determining a substantial change, and would make other house-keeping changes.

The proposed amendments regarding contested cases would authorize a summary disposition of cases, would allow prefiled testimony, would simplify Chief Hearing Examiner approval of shortened notice periods, would require a Notice of Appearance to be served upon all parties and in all hearings, would clarify when a default occurs, would permit consideration of the Rules of Civil Procedure, would conform the evidence rules to statutory changes, would clarify the burden of proof, would require hearing examiner orders and continuance requests to be served on a non-party agency, would clarify the meaning of "late filed exhibits," would permit a Notice of and Order for Rehearing to be served less than 30 days before the Rehearing, and would make other housekeeping changes.

The agency's authority to adopt the proposed rule amendments is contained in Minn. Stat. § 15.052, subd. 4 (1978). Several of the proposed amendments are required by the passage of Minn. Laws 1980, ch. 615.

The agency estimates that there will be no cost to local public bodies in the State to implement the amendments for the two years immediately following its adoption, within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Copies of the proposed rule amendments are now available and at least one free copy may be obtained by writing to Duane R. Harves, Chief Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8100. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendments, contact Chief Hearing Examiner Harves.

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

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including *his own* travel expenses and membership dues, in any

year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

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

May 1, 1980.

Duane R. Harves
Chief Hearing Examiner
by George A. Beck
Hearing Examiner

Amendments as Proposed

9MCAR § 2.102 Initiation of Hearing. Any agency desiring to initiate a rule hearing pursuant to Minn. Stat. §§ 15.0411 through ~~15.051~~ 15.0417 and § 15.052 shall first file with the Chief Hearing Examiner or his designee the following documents:

A. A copy of the proposed rule or rules.

B. ~~The An Order for Hearing proposed to be issued. The Order for Hearing which~~ must contain the following:

1. A proposed time, date and place for the hearing to be held.

2. A statement that the Notice of Hearing shall be given to all persons who have registered with the ~~Secretary of State agency~~ for that purpose and a statement that the Notice of Hearing shall be published in the *State Register*.

3. The signature of the person authorized to order a hearing. If a board is ordering the hearing, the person signing the Order must be so authorized and a document of authority must be attached to the Order for Hearing.

C. The Notice of Hearing proposed to be issued which must contain the following:

1. A proposed time, date and place for the hearing to be held.

2. A statement that all interested or affected persons will have an opportunity to participate.

3. A statement or a description of the subjects and issues involved. If the proposed rules themselves are not included with the Notice of Hearing, then the Notice must clearly indicate the nature and extent of the proposed rules and a statement shall be included announcing the availability and the means of obtaining upon request at least one free copy of the proposed rules.

4. A citation of the agency's statutory authority to promulgate the proposed rules.

5. A statement describing the manner in which interested persons may present their views and advising persons that

the proposed rule may be modified as a result of the hearing process.

6. A statement advising interested persons that lobbyists must register with the State Ethical Practices Board, which statement shall contain a summary of the statutory definition of a lobbyist and indicate that questions should be directed to the board, giving the address and telephone number thereof.

7. A statement that written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, ~~or for~~ and a statement that the comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner at the hearing.

8. A separate paragraph which shall read as follows:

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

9. A separate paragraph which will read as follows:

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

10. If required by Minn. Stat. § 15.0412, subd. 7, a statement relating to the expenditure of public monies by local public bodies.

11. A statement that the rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules) and a statement that questions about procedure may be directed to the hearing examiner.

D. A statement by the agency of the number of persons expected to attend the hearing and the estimated length of time that will be necessary for the agency to present its evidence at the hearing.

Within ten days of receipt of the aforementioned documents, the Chief Hearing Examiner shall appoint a hearing examiner to preside at the hearing and the hearing examiner shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected interests and shall advise the agency as to whether or not the proposed Notice of Hearing is proper as required by Minn. Stat. § 15.052, subd. 3.

9 MCAR § 2.104 Statement of Need and Reasonableness.

Each agency desiring to adopt rules shall prepare a Statement of Need and Reasonableness which shall be prepared pursuant to 9 MCAR § 2.105. The Statement of Need and Reasonableness shall be a document containing, at the minimum, a summary of all of the evidence and argument which is anticipated to be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules, including citations to any statutes or case law to be relied upon, citations to any economic, scientific or other manuals or treatises to be utilized at the hearing, and a list of any expert witnesses to be called to testify on behalf of the agency, together with a brief summary of the expert opinion to be elicited. The Statement need not contain evidence and argument in rebuttal of evidence and argument presented by the public. To the extent that an agency is proposing amendments to existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.

The Statement shall be prepared with sufficient specificity so that interested persons will be able to fully prepare any testimony or evidence in favor of or in opposition to the rule/rules as proposed. Presentation of evidence or testimony (other than bona fide rebuttal) not summarized in the Statement of Need and Reasonableness may result in the hearing examiner, upon proper motion made at the hearing by any interested person, recessing the hearing to a future date in order to allow all interested persons an opportunity to prepare testimony or evidence in opposition to such newly presented evidence or testimony, which recessing shall be for a period not to exceed 25 calendar days, unless the 25th day is a Saturday, Sunday or legal holiday, in which case, the next succeeding working day shall be the maximum date for the resumed hearing.

If the agency so desires, the Statement of Need and Reasonableness may contain the verbatim affirmative presentation by the agency ~~which may then be either read at the hearing or, if all persons appearing at the hearing have had an opportunity to review the Statement,~~ and, provided that copies are available for review at the hearing, may be introduced as an exhibit into the record as though read. In such instance, agency personnel or other persons thoroughly familiar with the rules and the agency's Statement shall be available at the hearing for questioning by the hearing examiner and other interested persons or to

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briefly summarize all or a portion of the Statement of Need and Reasonableness if requested by the Hearing Examiner.

9 MCAR § 2.105 Documents to be filed before hearing. At least 25 days prior to the date and time of the hearing, the agency shall file with the ~~Chief hearing examiner or his designee~~ assigned to the hearing copies of the following documents:

~~A. The Order for Hearing.~~

~~A. B.~~ The Notice of Hearing as mailed.

~~B. C.~~ The affidavit of receipt of the Secretary of State's list. The agency's certification that the mailing list required by Minn. Stat. § 15.0412, subd. 4, which was used for this hearing, was accurate and complete.

~~C. D.~~ An Affidavit of Mailing of the Notice to all persons on the ~~Secretary of State's~~ agency's list.

~~D.~~ An Affidavit of Additional Notice if such discretionary notice was given pursuant to Minn. Stat. § 15.0412, subd. 4.

E. The Statement of Need and Reasonableness.

F. The petition requesting a rule hearing, if one has been filed pursuant to Minn. Stat. § 15.0415.

G. All materials received following a notice made pursuant to Minn. Stat. § 15.0412, subd. 6, together with a citation to said notice.

H. The names of agency personnel who will represent the agency at the hearing together with the names of any other witness solicited by the agency to appear on its behalf.

~~I.~~ A copy of the *State Register* in which the notice and rules or rule amendments were published.

9 MCAR § 2.106 Disqualification. The hearing examiner shall withdraw from participation in a rulemaking proceeding to which he has been assigned if, at any time, he deems himself disqualified for any reason. Upon the filing in good faith by an affected person of an affidavit of prejudice against the hearing examiner, the Chief Hearing Examiner shall determine the matter as a part of the record provided that the affidavit shall be filed no later than five days prior to the date set for hearing.

9 MCAR § 2.186 2.107 Conduct of hearings. All hearings held pursuant to Minn. Stat. § 15.0412 shall proceed substantially in the following manner:

~~A. All persons intending to present evidence or questions, other than agency personnel previously disclosed to the Hearing Examiner under 9 MCAR § 2.105, attending shall register with the hearing examiner prior to the presentation of evidence or questions by writing their names, addresses, telephone numbers and the names of any individuals or associations that the persons represent in connection with the hearing, on a register to be provided by the hearing examiner. The Hearing Examiner shall keep a second register which shall include a section where persons may indicate their desire to be informed of the date on which the hearing examiner's report will be available and the date on which the agency submits the record to the Attorney General.~~

B. The hearing examiner shall convene the hearing at the proper time and shall explain to all persons present the purpose of the hearing and the procedure to be followed at the hearing. The hearing examiner shall notify all persons present that the record will remain open for five working days following the hearing, or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner, for the receipt of written statements concerning the proposed rule or rules.

C. The hearing examiner shall advise the persons present of the requirements of Minn. Stat. ch. 10A concerning the registration of lobbyists.

D. The agency representatives and any others who will be presenting the agency position at the hearing shall identify themselves for the record.

E. The agency shall make available copies of the proposed rule at the hearing.

F. The agency shall introduce its exhibits relevant to the proposed rule including written material received prior to the hearing.

G. The agency shall make its affirmative presentation of facts showing the need for and the reasonableness of the proposed rule and shall present any other evidence it deems necessary to fulfill all relevant, substantive and procedural, statutory or regulatory requirements.

H. Interested persons shall be given an opportunity to address questions to the agency representatives or witnesses.

I. Interested persons shall be given an opportunity to be heard on the proposed rule and/or to present written evidence. All interested persons submitting oral statements are subject to questioning by representatives of the agency.

J. The hearing examiner may question all persons, including the agency representatives.

K. The agency may present any further evidence that it deems appropriate in response to statements made by interested persons. Upon such presentation by the agency, interested persons may respond thereto.

L. Consistent with law, the hearing examiner shall be authorized to do all things necessary and proper to the performance of the foregoing and to promote justice, fairness and economy, including but not limited to, the power to:

1. Preside at the hearing;
2. Administer oaths or affirmations when he deems it appropriate;
3. Hear and rule on objections and motions;
4. Question witnesses where he deems it necessary to make a complete record;
5. Rule on the admissibility of evidence and strike from the record objectionable evidence.

9 MCAR § 2.107 2.108 The record. The record shall be closed upon the last date for receipt of written statements. The

record in each hearing shall include all of the documents enumerated in 9 MCAR § 2.105, all written comments or other evidence received prior to, during or subsequent to the hearing but prior to the close of the record, and a tape recording of the hearing itself, unless the Chief Hearing Examiner has determined that the use of a reporter is more appropriate a court reporter has taken the proceedings. In the event a transcript of the proceedings has been prepared, it shall be part of the record, and copies will be available to persons requesting them at a reasonable charge. The charge for transcripts shall be set by the Chief Hearing Examiner, and all monies received for transcripts shall be payable to the State Treasury and shall be deposited in the Office of ~~Hearing Examiners' Administrative Hearings'~~ account in the State Treasury. The agency and any other persons so requesting of the hearing examiner shall be notified of the date of the completion of the transcript.

9 MCAR § 2.108 2.109 Incorporation by reference. ~~When an agency desires approval of the Chief Hearing Examiner to incorporate certain materials by reference in its rules, such approval must be obtained prior to the publication of the proposed rules in the State Register. The agency shall submit its request in writing and shall include with the request, the materials sought to be incorporated and shall further indicate to the Chief Hearing Examiner where the materials are conveniently available for viewing, copying and acquisition by interested persons. The Chief Hearing Examiner shall have ten working days to approve or disapprove the request.~~

(Repealed effective 7-1-81 provided that Minn. Laws 1980, ch. 615 § 43 is not repealed or substantially amended prior to that time.)

9 MCAR § 2.109 2.110 Report of the hearing examiner. Subsequent to the close of the record and the completion of the transcript of the hearing, the hearing examiner shall make his report pursuant to Minn. Stat. § 15.052, subd. 3, and unless the approval of the Chief Hearing Examiner is required pursuant to Minn. Stat. § 15.0412, subd. 4d, shall file the original of said report, together with the complete record of the proceedings, with the agency. Both the agency, if authorized by statute, and the Office of ~~Hearing Examiners~~ Administrative Hearings shall make a copy of said report available to any interested person upon request at a reasonable charge. The phrase "recommended by the Hearing Examiner" as used in Minn. Stat. § 15.0412, subd. 4e, shall mean those changes in the rule, if any, and based upon the record, which the hearing examiner concludes are required in order to make the rule needed and/or reasonable and which would not constitute a substantial change. Where the hearing examiner identifies more than one option from which the agency may choose, then each of the options is deemed to be "recommended by the Hearing Examiner" provided that the hearing examiner has found, based upon the record, that the

option is needed and reasonable and that adoption of the option would not constitute a substantial change.

9 MCAR § 2.110 2.111 Submission of rule to Chief Hearing Examiner.

A. If the Chief Hearing Examiner's approval of the hearing examiner's report is required pursuant to Minn. Stat. § 15.0412, subd. 4d, the hearing examiner shall submit the report and the record to the Chief Hearing Examiner prior to filing with the agency as required by 9 MCAR § 2.110.

B. Pursuant to Minn. Stat. § 15.0412, subd. 4e, the agency shall, if it proposes to adopt the rules with changes other than as recommended by the hearing examiner as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, the complete hearing record and a copy of the rules as proposed to be adopted, showing the changes, to the Chief Hearing Examiner, for review pursuant to Minn. Stat. § 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General.

C. The Chief Hearing Examiner shall complete his review and submit his report, along with the complete record, to the agency on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412, subd. 4, within ten calendar days. The agency will be responsible for filing the rules with the Attorney General.

9 MCAR § 2.111 2.112 Substantial change. Reconvened Hearings. ~~Should the Chief Hearing Examiner find, after a review of the record, that the proposed final rule is substantially different from the rule which was proposed at the public hearing, or should the Chief Hearing Examiner find that the agency failed to meet the requirements of Minn. Stat. § 15.0412, subd. 4, or these rules, then the Chief Hearing Examiner shall forthwith notify the agency and the Attorney General of said finding. The agency shall then either withdraw the proposed final rule or reconvene the rule hearing. The reconvening of the rule hearing shall comply with all statutory and regulatory requirements as if a new rule hearing were being held. In determining whether the proposed final rule is substantially different, the hearing examiner and the Chief Hearing Examiner shall consider the degree to which it:~~

- A. Affects classes of persons not represented at the previous hearing; or
- B. Goes to a new subject matter of significant substantive effect; or
- C. Makes a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing; or
- D. Results in a rule fundamentally different from that contained in the Notice of Hearing.

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In making his substantial change determination pursuant to Minn. Stat. § 15.0412, subd. 4d, the hearing examiner shall compare the proposed rule or rule amendment as published in the *State Register* with the rule or rule amendment as last proposed by the agency prior to the close of the record. In making his substantial change determination pursuant to Minn. Stat. § 15.0412, subd. 4e, the Chief Hearing Examiner shall compare the rule or rule amendment as published in the *State Register* with the final rule or rule amendment as adopted by the agency.

9 MCAR § 2.112 2.113 Effective date. These rules shall be effective for all rule proceedings initiated five working days after publication of these rules in the *State Register*.

9 MCAR §§ 2.113 2.114-2.199 Reserved for future use.

9 MCAR § 2.201 Scope and purpose. The procedures contained herein shall govern all contested cases held by any agency of state government as defined in Minn. Stat. § 15.0411, subd. 2, required to be conducted by the Office of Administrative Hearings.

9 MCAR § 2.203 Hearing examiners.

A. Request for assignment. Any agency desiring to order a contested case hearing shall first file with the Chief Hearing Examiner a request for assignment of a hearing examiner together with the Notice of and Order for hearing proposed to be issued which shall include a proposed time, date and place for the hearing.

B. Assignment. Within ~~ten~~ 10 days of the receipt of a request pursuant to 9 MCAR § 2.203 A., the Chief Hearing Examiner shall assign a hearing examiner to hear the case, and the hearing examiner shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected persons.

C. Duties. Consistent with law, the hearing examiner shall perform the following duties:

1. Grant or deny a demand for a more definite statement of charges.
2. Grant or deny requests for discovery or for including the taking of depositions.
3. Receive and act upon requests for subpoenas where appropriate.
4. Hear and rule on motions.
5. Preside at the contested case hearing.
6. Administer oaths and affirmations.
7. Grant or deny continuances.
8. Examine witnesses where he deems it necessary to make a complete record.
9. Prepare findings of fact, conclusions and recommendations.
10. Make preliminary, interlocutory or other orders as he deems appropriate.

11. Recommend a summary disposition of the case where there is no genuine issue as to any material fact or recommend dismissal where the case has become moot or for other reasons.

12. Require that testimony be prefiled in whole or in part.

13. ~~11-~~ Do all things necessary and proper to the performance of the foregoing.

14. ~~12-~~ In his discretion, perform such other duties as may be delegated to him by the agency ordering the hearing.

9 MCAR § 2.204 Commencement of a contested case. A contested case is commenced, subsequent to the assignment of a hearing examiner, by the service of a Notice of and Order for Hearing by the agency.

A. The Notice and Order. Unless otherwise provided by law, a Notice of and Order for Hearing, which shall be a single document, shall be served upon all parties and shall contain, among other things, the following:

1. The time, date and place for the hearing.
2. Name and address and telephone number of the hearing examiner.
3. A citation to the agency's statutory authority to hold the hearing and to take the action proposed.
4. A statement of the allegations or issues to be determined together with a citation to the relevant statutes or rules.
5. Notification of the right of the parties to be represented by legal counsel, by a person of their choice, or by themselves if not otherwise prohibited as the unauthorized practice of law.
6. A citation to these rules, ~~and~~ to any applicable procedural rules of the agency, ~~and to the contested case provisions of Minn. Stat. ch. 15.~~
7. A statement advising the parties of the name of the agency official or member of the Attorney General's staff to be contacted to discuss informal disposition pursuant to 9 MCAR § 2.207 or discovery pursuant to 9 MCAR § 2.214.

8. ~~In cases wherein the agency is a party, a~~ A statement advising the parties that a Notice of Appearance must be filed with the Hearing Examiner within 20 days of the date of service of the Notice of and Order for Hearing if a party intends to appear at the hearing unless the hearing date is less than 20 days from the issuance of the Notice of and Order for Hearing.

9. A statement advising existing parties that failure to appear at the hearing may result in the allegations of the Notice of and Order for Hearing being taken as true, or the issues set out being deemed proved, and a statement which explains the possible results of the allegations being taken as true or the issues proved.

B. Service. Unless otherwise provided by law, the Notice of and Order for Hearing shall be served not less than 30 days prior to the hearing. Provided, however, that a shorter time may be allowed, where it can be shown to the Chief Hearing Examiner that a shorter time is ~~required~~ in the public interest and that ~~no~~

~~interested person will be adversely affected~~ persons are not likely to be prejudiced.

C. Publication. Where the agency participates in the hearing in a neutral or quasi-judicial capacity, the Notice of and Order for Hearing shall be published as required by law or as ordered by the agency, and copies of the Notice of and Order for Hearing may be mailed by the agency to persons known to have a direct interest.

D. Amendments. At any time prior to the close of the hearing, the agency may file and serve an amended Notice of and Order for Hearing, provided that, should the amended Notice and Order raise new issues or allegations, the parties shall have a reasonable time to prepare to meet the new issues or allegations if requested.

E. Alternative. With the prior written concurrence of the Chief Hearing Examiner, an agency may substitute other documents and procedures for the Notice of and Order for Hearing provided that the documents and procedures inform actual and potential parties of the information contained in 9 MCAR § 2.204 A.1.-9. above.

9 MCAR § 2.205 Notice of Appearance. Each party intending to appear at a contested case hearing ~~wherein the agency is a party~~ shall file with the hearing examiner and serve upon all other known parties a Notice of Appearance which shall advise the hearing examiner of the party's intent to appear and shall indicate the title of the case, the agency ordering the hearing, the party's current address and telephone number, and the name, office address, and telephone number of the party's attorney or other representative. The Notice of Appearance shall be filed with the hearing examiner within 20 days of the date of service of the Notice of and Order for Hearing, except that, where the hearing date is less than 20 days from the commencement of the contested case, the Notice of Appearance shall not be necessary. The failure to file a Notice may, in the discretion of the hearing examiner, result in a continuance of the hearing if the party failing to file appears at the hearing. ~~The A Notice of Appearance form shall be included with the Notice of and Order for Hearing in all applicable cases for use by the party served.~~

9 MCAR § 2.208 Default. The agency may dispose of a contested case adverse to a party which defaults. Upon default, the allegations of or the issues set out in the Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further proof evidence. A default occurs when a party fails to appear at a hearing or fails to comply with any interlocutory orders of the hearing examiner.

9 MCAR § 2.213 Prehearing procedures.

A. Prehearing conference.

1. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined, to consider amendment

of the agency's order if necessary, to obtain stipulations in regard to foundation for testimony or exhibits, to consider the proposed witnesses for each party, to consider such other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

2. Procedure. Upon the request of any party or upon his own motion, the hearing examiner may, in his discretion, hold a prehearing conference prior to each contested case hearing. The hearing examiner may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the hearing examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing examiner. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the hearing examiner.

B. Motions. Any application to the hearing examiner for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions provided for in these rules require a written notice, to all parties and to the agency, to be served five days prior to ~~their~~ the submission of the motion to the hearing examiner, except where impractical. The hearing examiner may, at his ~~descretion,~~ discretion, require a hearing before an order on the motion will be issued. All orders on such motions, other than those made during the course of the hearing, shall be in writing and shall be served upon all parties of record and the agency if it is not a party. In ruling on motions where these rules are silent, the hearing examiner may consider the Rules of Civil Procedure for the District Courts of the State of Minnesota to the extent that it is appropriate to do so.

9 MCAR § 2.217 The hearing.

A. Rights of parties. All parties shall have the right to present evidence, rebuttal testimony and argument with respect to the issues and to cross-examine witnesses.

B. Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon his own motion, the hearing examiner may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

C. Rules of evidence.

1. General rules. The hearing examiner may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable prudent persons

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are accustomed to rely in the conduct of their serious affairs. The hearing examiner shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or unduly repetitious may be excluded.

2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents (~~except tax returns and tax reports~~) in the possession of the agency or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence (~~except tax returns and tax reports~~) shall be considered in the determination of the case.

3. Documentary evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing examiner or upon agreement of the parties.

4. Notice of facts. The hearing examiner may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to ~~rebut~~ contest the facts so noticed.

5. The burden of and standard of proof. The party ~~initiating the contested case~~ proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.

6. Examination of adverse party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent or employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate him by leading questions and contradict and impeach him on material matters in all respects as if he had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by his testimony.

D. The record.

1. The hearing examiner shall ~~prepare and~~ maintain the official record in each contested case until the issuance of his final report, at which time the record shall be sent to the agency.

2. What the record shall contain. The record in a contested case shall contain:

- a. All pleadings, motions and orders;
- b. Evidence received or considered;
- c. Offers of proof, objections and rulings thereon;
- d. The hearing examiner's findings of fact, conclusions and recommendations;
- e. All memoranda or data submitted by any party in connection with the case;
- f. The transcript of the hearing, if one was prepared.

3. The transcript. The verbatim record shall be transcribed if requested by ~~any person~~ the agency, a party or in the

discretion of the Chief Hearing Examiner. If a transcription is made, the Chief Hearing Examiner shall require the requesting person and other persons who request copies of the transcript from him to pay a reasonable charge therefor. The charge shall be set by the Chief Hearing Examiner and all monies received for transcripts shall be payable to the State Treasurer and shall be deposited in the State Office of ~~Hearing Examiners~~ Administrative Hearings' Account in the State Treasury.

E. Continuances. A request for continuance shall be made in writing to the hearing examiner and shall be served upon all parties of record and the agency if it is not a party.

1. A request for continuance filed not less than five days prior to the hearing may, in the discretion of the hearing examiner, be granted upon a showing of good cause. Due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance.

2. A request for a continuance filed within five days of the hearing shall be denied unless good cause exists and the reason for the request could not have been earlier ascertained.

3. During a hearing, if it appears in the interest of justice that further testimony should be received, the hearing examiner, in his discretion, may continue the hearing to a future date and such oral notice on the record shall be sufficient.

F. Motions to the agency. No motions shall be made directly to or be decided by the agency subsequent to the assignment of a hearing examiner and prior to the completion and filing of the hearing examiner's report unless the motion is certified to the agency by the hearing examiner. Uncertified motions shall be made to the hearing examiner and considered by the agency in its consideration of the record as a whole subsequent to the filing of the hearing examiner's report.

Any party may request that a pending motion or a motion decided adversely to that party by the hearing examiner before or during the course of the hearing be certified by the hearing examiner to the agency. In deciding what motions should be certified, the examiner shall consider the following:

1. Whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or
2. Whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or
3. Whether or not the delay between the ruling and the motion to certify would adversely affect the prevailing party; or
4. Whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or
5. Whether it is necessary to promote the development of the full record and avoid remanding.

G. Hearing procedure.

1. Hearing examiner conduct. The hearing examiner shall not communicate, directly or indirectly, in connection with

any issue of fact or law with any person or party including the agency concerning any pending case, except upon notice and opportunity for all parties to participate.

2. Conduct of the hearing. Unless the hearing examiner determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

a. After opening the hearing, the hearing examiner shall ~~indicate~~ ensure that the parties are aware of the procedural rules for the hearing including the following:

(1) All parties may present evidence and argument with respect to the issues and cross-examine witnesses. At the request of the party or the attorney for the party whose witness is being cross-examined, the hearing examiner may make such rulings as are necessary to prevent repetitive or irrelevant questioning and to expedite the cross-examination to the extent consistent with disclosure of all relevant testimony and information.

(2) All parties have a right to be represented by an attorney at the hearing.

(3) The rules of evidence as set forth in 9 MCAR § 2.217 C.1.

b. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

c. The party with the burden of proof may make an opening statement. All other parties may make such statements in a sequence determined by the hearing examiner.

d. After any opening statement, the party with the burden of proof shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the hearing examiner.

e. Cross-examination of witnesses shall be conducted in a sequence determined by the hearing examiner.

f. When all parties and witnesses have been heard, opportunity shall be offered to present final argument, in a sequence determined by the hearing examiner. Such final argument may, in the discretion of the hearing examiner, be in the form of written memoranda or oral argument, or both. Final argument need not be recorded, in the discretion of the hearing examiner. Written memoranda may, in the discretion of the hearing examiner, be submitted simultaneously or sequentially and within such time periods as the hearing examiner may prescribe.

g. After final argument, the hearing shall be closed or continued at the discretion of the hearing examiner. If continued, it shall be either (a) continued to a certain time and day, announced at the time of the hearing and made a part of the

record, or (b) continued to a date to be determined later, which must be upon not less than five days' written notice to the parties.

h. The record of the ~~hearing~~ contested case proceeding shall be closed upon receipt of the final written memorandum, transcript, if any, or late filed exhibits ~~(if requested by the examiner)~~ which the parties and the hearing examiner have agreed should be received into the record, whichever occurs latest.

3. Participation by agency head. An agency which is a party to a contested case may only participate in the hearing ~~by the giving of testimony and~~ through its designated representative or counsel. Where the agency is not a party and participates in the hearing in a neutral or quasi-judicial capacity, the agency head or a member of the governing body of the agency or his delegate may engage in such examination of witnesses as the hearing examiner deems appropriate.

H. Disruption of hearing.

1. Cameras. No television, newsreel, motion picture, still or other camera, and no mechanical recording devices, other than those provided by the Office of ~~Hearing Examiners~~ Administrative Hearings or at its discretion, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the hearing examiner prior to the opening of the hearing and then subject to such conditions as the hearing examiner may impose to avoid disruption of the hearing.

2. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the hearing examiner shall read this rule to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

9 MCAR § 2.218 The hearing examiner report and the agency decision.

A. Basis for the report and the decision.

1. The record. No factual information or evidence, ~~except tax returns and tax reports,~~ which is not a part of the record shall be considered by the hearing examiner or the agency in the determination of a contested case.

2. Administrative notice. The hearing examiner and agency may take administrative notice of general, technical or scientific facts within their specialized knowledge in conformance with the requirements of Minn. Stat. § 15.0419, subd. 4.

B. Hearing examiner's report. Following the close of the record, the hearing examiner shall make his report pursuant to

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Minn. Stat. §§ 15.0412, subd. 4d, and 15.052, subd. 3, and, upon completion, a copy of said report shall be served upon all parties by personal service, by First Class mail or by depositing it with the Central Mailing Section, Publications Division, Department of Administration.

C. Agency decision. Following receipt of the hearing examiner's report, the agency shall proceed to make it final decision in accordance with Minn. Stat. §§ 15.0421 and 15.0422, and shall ~~send~~ serve a copy of such its final order ~~to the Office of Hearing~~

~~Examiners~~ upon the hearing examiner by First Class mail.
9 MCAR § 2.219 Rehearing. An agency Notice of and Order for Rehearing shall be served on all parties in the same manner prescribed for the Notice of and Order for Rehearing provided that the hearing examiner may permit service of the Notice and Order for Rehearing less than 30 days prior to rehearing. The rehearing shall be conducted in the same manner prescribed for a hearing.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

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

If an adopted rule differs from its proposed form, language which has

been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

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

Department of Labor and Industry Occupational Safety and Health Division Adoption by Reference of Federal OSHA Standards

Pursuant to Minn. Stat. § 182.655 (1978), notice was duly published at *State Register*, Volume 4, Number 38, page 1530 (4 S.R. 1530), dated March 24, 1980, specifying the establishment and modification of certain Occupational Safety and Health Standards. No written comments or requests for hearing on objections have been received concerning the adoption of said standards.

Therefore, those occupational safety and health standards are hereby adopted and are identical in every respect to their proposed form.

Harry D. Peterson
Commissioner

Department of Labor and Industry Prevailing Wage Division Adopted Rules Governing Prevailing Wage Determinations as Amended

The rules proposed and published at *State Register*, Volume 4, Number 24, pp. 977-990, December 17, 1979 (4 S.R. 977) are now adopted with the following amendments. Please note: 8 MCAR § 1.8016, although published at the proposed stage, was not amended, nor was it amended when this set of rules was adopted. It is reprinted here for clarity, and is designated "no change."

Rules As Amended

8 MCAR § 1.8001 Authority, scope and purpose.

A. These rules are promulgated pursuant to the authority provided to the Minnesota Department of Labor and Industry by the provisions of Minn. Stat. § 175.171, subd. 2 (~~1974~~) and the requisites of Minn. Stat. § 15.0412, subd. 3 (~~Supp. 1975~~). Their

purpose is to provide procedures for prevailing wage determinations.

B. Minn. Stat. § 177.43 (Supp. 1975) requires the Department of Labor and Industry to ascertain the prevailing wage rates for all trades and occupations required in any contemplated state project. Thereafter, the state agency contemplating the project must include these rates in their proposed contracts.

Minn. Stat. § 177.44 (1974) requires the Department of Labor and Industry to conduct investigations and hold public hearings necessary to define classes of laborers and mechanics, and to inform itself as to the wage rates prevailing in all areas of the state for all classes of laborers, workmen and mechanics commonly employed in highway construction. The Commissioner must determine and certify these prevailing wage rates at least once a year and these rates must be contained in all highway construction contracts to which the state is a party.

These rules and regulations apply to all wage rate determinations made pursuant to Minn. Stat. §§ 177.43 and 177.44.

Minn. Laws 1976, Chapter 331, §§ 37 and 38 (1976) provide that an aggrieved party may request a reconsideration of any wage rate determination. These rules are intended to implement these provisions and shall apply to all future requests for wage rate reconsiderations.

C. These rules implement and make specific the procedures to be utilized in determining prevailing wage rates for each "area" as that term is defined in Minn. Stat. § 177.42 (1974). Their purpose is to provide consistent guidelines in making these determinations and to assure that the wages of laborers, workmen and mechanics engaged in state projects are comparable to wages paid for similar work in the community as a whole, consistent with the purpose and intent of the prevailing wage law.

D. These rules may be cited as the Rules and Regulations of the Prevailing Wage Division, § 1.8001 through § 1.8016.

8 MCAR § 1.8002 Definitions. For purposes of all wage rate determinations, the following definitions shall apply;

A. Area means the county or other locality from which labor for any project would normally be secured. (Minn. Stat. § 177.42, subd. 3 (1974)).

B. Wage rate means the basic hourly rate of pay plus any contribution for health and welfare benefits, vacation benefits, pension benefits or any other economic benefit paid for work done.

C. Prevailing wage rate means the wage rates paid to the largest number of workmen within a given class of labor.

D. Largest number of workmen means the largest number of

workmen engaged in the same class of labor within the area considered as determined in accordance with these rules.

E. Project means erection, construction, remodeling or repairing any public building or other public work financed in whole or part by state funds.

A. Highway and heavy construction. All construction projects which are similar in nature to those projects based upon bids as provided under Minn. Stat § 161.32 for the construction or maintenance of highways or other public works and includes roads, highways, streets, airport runways, bridges, power plants, dams and utilities.

B. Commercial construction. All building construction projects exclusive of residential construction.

C. Residential construction/agricultural construction. All construction, remodeling or repairing of single or two family homes and structures appurtenant thereto including agricultural or farming buildings appurtenant to private farm residences when utilized to carry on primary farming operations.

D. As utilized in these rules the term "project" means the erection, construction, remodeling or repairing of commercial, residential or public buildings or any highway and heavy construction.

E. State project. Those projects which are subject to the requirements of Minn. Stat. § 177.41-44.

8 MCAR § 1.8003 Classes of Labor.

A. In each area to be considered, a prevailing wage rate shall be determined for each individual class of labor within the following general classifications.

1. Laborers: each class of labor customarily used on highway and other construction projects within this general classification shall constitute a separate class of labor.

2. Power equipment operators: each class of power equipment operators customarily used on highway and other construction projects within this general classification shall constitute a separate class of labor.

3. Truck drivers: each class of driver based upon the nature of the vehicle driven shall constitute a separate class of labor.

4. Special crafts: the following crafts shall constitute separate classes of labor; Bricklayers, Carpenters, Cement Masons, Linemen, Electricians, Iron Workers, Painters, Pipefitters, Plumbers, Plasterers, Roofers, Sheet Metal Workers, and other labor or work which is customarily considered as an individual trade or craft based upon its character and skills required.

B. The classifications and classes of labor described herein are for illustrative and guidance purposes only and are not

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ADOPTED RULES

~~intended to limit or extend the number of classes requiring wage rates in a particular area.~~

8 MCAR § 1.8003 Prevailing wage determinations.

~~A. The department shall, at least once each calendar year, determine and certify prevailing wage rates applicable to state projects which are similar in nature to highway and heavy construction projects.~~

~~B. The department shall, upon the request of any state agency that is contemplating the advertisement for bids on a state project which is similar in nature to commercial construction projects, determine and certify prevailing wage rates applicable to said state project if a certification has not been made within the twelve-month period prior to the request.~~

~~C. Prevailing wage rates applicable to state projects which are similar in nature to residential construction projects will be made upon request of a governmental official involved in the bidding process for a state project who desires such rates for insertion in a specific contract proposal.~~

~~D. Each wage survey shall be based upon work performed in the preceding calendar year and the resulting wage determinations will be certified following the close of the survey.~~

~~E. Except as provided in subpart F. herein, all prevailing wage determinations shall be based upon the survey procedures contained in these rules.~~

~~F. The department shall, pursuant to Minn. Stat. §§ 177.43, subd. 4, and 177.44, subd. 3, conduct public hearings when necessary to determine county wage rate determinations. Such hearings shall be conducted within the county for which wage rates are being determined and shall be conducted as contested cases by a hearing examiner from the State Office of Hearing Examiners.~~

8 MCAR § 1.8004 General guidelines for all determinations.

~~A. Each prevailing wage rate shall be determined at least once a year and shall be based upon work performed within the preceding one year period. If in the opinion of the commissioner, a change in the certified prevailing wage rate is required, the commissioner may at any time certify that change in accordance with the requisites of these rules.~~

~~B. For purposes of determining individual prevailing wage rates, each county shall comprise a separate "area" and each prevailing wage rate shall be based solely upon work done in that county except as provided under subparts 1 and 2 herein.~~

~~1. Where the work done or wage rates paid in a given county are insufficient to determine the prevailing wage rate or where an individual classification is insufficient, the prevailing wage rate(s) for that county shall be based upon wage rates paid within the adjacent counties.~~

~~2. Data shall be considered insufficient where the work done in a county for the prior year consists of less than \$25,000 in total project cost.~~

~~C. All individual prevailing wage rates shall be based solely upon work performed within the corresponding class of labor.~~

~~D. All prevailing wage rates for each class of law shall reflect the wage rate paid to the largest number of workers.~~

~~1. The largest number of workers shall be determined for each class of labor within each county or area under consideration. Thus where the same worker performs work on more than one project or in more than one classification within the area, he shall be counted only once.~~

~~2. Where a project involves work in more than one county, the county where the greater part of the work was performed shall be determined. The project shall only be utilized in determining wage rates for the county where the greatest part of the work was performed.~~

~~E. All initial determinations made in accordance with these rules shall be based upon a physical survey of the county or area under consideration except for those determinations which may be made in accordance with § 1.8008. Thereafter, additional wage determinations may be made in accordance with § 1.8008.~~

8 MCAR § 1.8004 Basis for each determination.

~~A. Individual prevailing wage rates shall be made on a county by county basis and each prevailing wage rate shall be based upon work performed solely within the applicable class of labor.~~

~~B. For each county survey, the department shall issue wage determinations for all classes of labor commonly or customarily used in similar construction projects.~~

~~1. Where work has been performed in a class of labor in the county during the time period of the survey, the wage determination for that class of labor shall be based solely upon that work.~~

~~2. Where work was performed in any other classes of labor in two or more of the Minnesota counties physically adjacent to the county being surveyed, the department shall consider those classes of labor as ones which are customarily or commonly used in construction projects and determine wage rates for those classes in accordance with paragraphs 4. and 5. herein.~~

~~3. Where no work was performed in a class of labor either in the county being surveyed or in two or more of the adjacent Minnesota counties, no wage rate will be determined for that class of labor.~~

~~4. In looking to adjacent counties for determining additional classes of labor for which prevailing wage rates should be made, only those adjacent Minnesota counties for which surveys are either in progress or for which wage rates have been determined by survey within the preceding 12 months shall be utilized.~~

~~5. In determining a wage rate for a class of labor based upon work performed in adjacent counties, all workers in the class of labor in all the adjacent counties shall be totaled and the wage rate shall be based upon the wage rate paid to the largest number as determined in accordance with these rules.~~

~~C. Following certification of wage rates for a county, no wage rates for additional classifications of labor shall be made for that~~

county until such time that a subsequent survey of the county demonstrates utilization of those additional classes of labor.

8 MCAR § 1.8005 Determinations based upon physical surveys.

Where the prevailing wage rates are based upon a physical survey of the county, that survey shall include the following procedures:

A. Contacting county, state district, and city engineers for information pertaining to projects upon which work was performed in the county and the names of contractors who performed work on these projects.

B. Contacting each accessible contractor who performed work in the county and auditing his payroll records relating to that work.

C. Collecting and retaining verified "Project Worksheets" for each project.

8 MCAR § 1.8005 Classes of labor. Each class of labor shall be based upon the particular nature of the work performed with consideration given to those trades, occupations, skills or work generally considered within the construction industry as constituting distinct classes of labor. Wage determinations will be issued for those separate classes of labor which fall under the following general classes.

1. Laborers.

2. Power equipment operators.

3. Truck drivers.

4. Special crafts. The following crafts shall constitute separate classes of labor: bricklayers, carpenters, cement masons, linemen, electricians, iron workers, painters, pipefitters, plumbers, plasterers, roofers, and sheet metal workers, and other labor or work which is customarily considered as an individual trade or craft based upon its character and skills required. Workers reported as helpers shall be considered to be skilled laborers when making determinations.

5. In determining particular classes of labor, the department shall consider work classifications contained in collective bargaining agreements, apprenticeship agreements on file with the department and customs and usage applicable to the construction industry.

6. Primary responsibility for classifying individual workers shall be upon the contractor.

7. Where a worker performs work in more than one class of labor, he shall be counted only once and placed in the class in which he worked the greatest number of hours.

8. The contractor reporting shall have the responsibility to determine the class in which the worker has worked the greatest number of hours on each project reported.

9. Workers employed within a class of labor as apprentices or trainees at reduced wage rates will not be included or counted within that class of labor.

8 MCAR § 1.8006 Specific procedures for survey determinations.

A. The labor investigator shall contact each contractor believed to have performed work within the county and shall request identification of all projects on which work was performed and the payroll records relating thereto.

1. Where a particular contractor having worked in the county during the applicable time period cannot be located or where his records are not available for inspection, a certified form approved by the department shall be left at his main office or shall be sent by certified mail. The form shall contain appropriate instructions to be completed by the contractor or his representative and returned to the department via certified mail.

2. Where forms so left by the department are not returned within 30 days, the work or projects for which they were intended to document wage rates shall not be considered in that current determination for that area.

B. A "Project Worksheet" shall be compiled for each project upon which work was performed.

1. The worksheet shall identify the contractor and the project, its location, the dates of the project and its total dollar cost.

2. Based on the payroll records for the project, the worksheet shall list each class of labor within which work was performed, the names of all workers who worked on that project within that class of labor and the wage rates paid to those workers.

3. On each project, the department shall determine the number of workers who were subject to collective bargaining agreements and so designate on its worksheet for that project.

4. The worksheet shall contain appropriate language for the contractor or its representative to sign and acknowledge indicating that he has reviewed the contents of the worksheet and that to the best of his knowledge and belief, its contents are true and correct. The project worksheet shall be signed by the contractor and a copy left with him.

5. All completed worksheets shall be separated into two categories one representing work performed on highway and heavy construction and one representing work performed on other projects. Wage determinations for one category shall not be based upon projects performed within the other category.

C. The number of workers in each class of labor and their respective wage rates shall be determined from all project worksheets and reflected on a "County Survey Report."

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D. Except as provided in F through G herein, the prevailing wage rate shall be based upon the wage rate paid to the largest number of workers in each class of labor.

E. Where an equal number of workers worked at different wage rates, the prevailing wage rate shall be based upon the highest wage rate paid.

F. In each survey conducted pursuant to § 1.8005, where it appears that the largest number of workers in a given class of labor are subject to a collective bargaining agreement which provides for a different rate of pay than that required to be paid under the previously determined prevailing wage rate, and which would have been paid in the absence of the previously determined wage rate, the new prevailing wage rates determined for that county or area under these rules shall be based upon their agreed to collective bargaining rates. Collective bargaining agreements or written understandings between employers and bona fide organizations of labor currently in force may be utilized in determining the hourly rates of pay.

G. In each survey conducted pursuant to § 1.8005, where it appears that the largest number of workers in a given class of labor are non-union employees not subject to collective bargaining agreements whose wages would have been at a different rate in the absence of the previously determined prevailing wage rate, the new prevailing wage rate determined for that county or area under these rules shall be determined based upon the most current rate paid to these workers. In addition where the largest number of workers within a given class of labor are non-union workers, the prevailing wage rate shall be based upon the highest wage rate paid to these non-union workers.

8 MCAR §1.8006 Survey procedures. The purpose of each county survey is to develop a data base upon which to determine prevailing wage rates which are reasonably comparable to those wage rates paid on similar projects in the area. The following procedural steps shall be taken in each wage survey:

1. For each survey, the department shall identify contractors who performed projects during the previous calendar year.

2. For the purpose of identifying contractors who performed work on projects in each county, the department shall keep and maintain a mailing list of governmental officials, district, county and city engineers, city clerks, administrators and zoning officials and those contractor associations and labor organizations who have requested to be on the mailing list.

3. The department shall also keep and maintain lists of contractors for each county which lists shall be kept updated through applicable telephone directories, trade publications and through previous wage survey contacts. Any contractor may request that its name be added to any county list.

4. Upon initiation of a wage survey the department will issue a form request for project identification to those entities referred to in paragraph 2. above. The request shall indicate the nature of the projects and the time period for which information is requested, and shall request the government official to identify contractors and their addresses who performed work during

the survey time period. Such forms shall be completed and returned to the department within 33 days.

5. The department shall send to all those contractors identified as having performed work in the county through the forms returned from those entities referred to in paragraph 2, above, and to all those contractors whose names appear on the applicable county lists compiled under paragraph 3, above, a request for project information and a request for the identification of sub-contractors who worked on those projects. Enclosed with the request shall be copies of the department's Contractor Reporting Form.

a. For each project upon which the contractor performed work within the county during the time period of the survey, the contractor shall complete a separate Contractor Reporting Form and provide the following information:

(1) description of project;

(2) dollar cost of the project;

(3) list of the employees who worked on the project;

(4) class of labor for each employee;

(5) wage rate paid each employee on the project and the hourly cost of fringe benefit for H & W, Pension, Vacation, Training for each employee.

b. All Contractor Reporting Forms and forms identifying sub-contractors who worked on the projects shall be signed and dated by the contractor or its representative attesting that the information provided is a true and correct summary of the information contained in the contractor's payroll and business records.

c. The Contractor Reporting Forms and forms identifying sub-contractors shall be returned to the department within 30 days following the receipt of the request for information.

d. Information which is not received by the department within 33 days following the date upon which the request was mailed by the department shall not be used in making determinations.

e. Contractor Reporting Forms which do not report the names of workers, classes of labor, wage rates paid, description of project, type of construction and location of project will not be utilized in making wage determinations. Any unsigned or incomplete forms which are received within the 33-day time period shall be returned to the contractor with a request that the form be properly completed. If that form is not returned to the department within 15 days from the date of mailing, it shall be excluded from the survey. In no event shall information on unsigned Contractor Reporting Forms be utilized in making determinations.

6. Upon learning the identification of sub-contractors who performed work on projects within the county, the department shall proceed with the procedures provided in paragraph 5, above, and the sub-contractors so contacted shall be subject to the same requirements provided under paragraph 5.

7. In addition to the mail procedures described in paragraph 5, above, the department shall make on-site visits to the offices of contractors or governmental representatives for the purposes of collecting project data and for auditing payrolls when necessary for the determination of prevailing wage rates.

a. Information so collected, either through a review of the contractor's payrolls or copies of payrolls provided by contractors to government offices, will be utilized in making determinations provided that such information is compiled on an Investigator's Project Worksheet and is signed by the investigator who compiled the information.

8. The number of workers in each class of labor and their respective wage rates shall be determined and reflected on a "County Abstract."

8 MCAR § 1.8007 Contractor's duties.

A. Each contractor in the course of a survey, shall be prepared to present copies of all payroll records representing work done on projects in the county or area for the preceding twelve months.

B. For each worker, the contractor shall document for the investigator, his name, class of labor and rate of pay.

1. Contractors must utilize the Master Job Classifications specified in § 1.8014 in documenting classes of labor;

2. The contractor shall document the employee's basic hourly wage rate and where fringe benefits are paid, the amount of each such fringe benefit payment and the name and address of the fund, plan or program to which each such payment was made;

3. The contractor shall document each employee's daily and weekly hours worked in each classification and net wages paid;

4. Where the investigator is unable to determine the class of labor for a particular employee, he is authorized to determine from the information available, an appropriate classification for that employee.

5. Where a payroll record describes a particular worker as performing work within several different classes of labor and the contractor does not indicate a specific class of labor for that worker, the investigator may classify him in the class of labor which he deems appropriate.

8 MCAR § 1.8007 Determining the largest number of workers and Prevailing Wage Rate.

A. Each wage rate determination shall be based upon the actual wage rates paid to the largest number of workers within each labor classification reported in the survey.

B. For purposes of determining the largest number of work-

ers, each worker within a class of labor and his total hourly rate paid shall be tabulated.

1. Total hourly rate includes the hourly rate plus the hourly contribution for all wage and fringe benefits.

2. The largest number of workers with identical rates of pay within each classification shall determine the specific prevailing wage rate.

3. When determining the prevailing wage rate and there is an equal number of workers (which represent the greatest number of workers) with differing hourly wage rates, the prevailing wage rate shall be the highest wage rate paid to those workers.

Example:

4 workers @ \$7.00 per hour
4 workers @ \$8.00 per hour
2 workers @ \$8.50 per hour

The prevailing wage rate will be determined as \$8.00 per hour.

4. Where a worker performs work on more than one project within the county, he shall be counted only once in the class of labor and at the wage rate paid on the most recent project within the time period of the survey.

8 MCAR § 1.8008 Determinations without survey.

A. Where it appears to the Department, based upon the information compiled under this rule and the information compiled under PWD 11, that in a given county or area the number of AFL-CIO represented workers or the number of independent union represented workers comprised more than 50% of the total number of workers in that county or area, the prevailing wage rates for all classification of laborers in that county need not be based upon a physical survey but may be based upon the rates contained in the applicable current collective bargaining agreement provided that:

1. Nothing contained herein shall preclude an aggrieved person from petitioning for a redetermination under Minn. Stat. §§ 177.43-177.44;

2. In any case where an employer operating under a collective bargaining agreement or written understanding with a bona fide organization of labor is paying his employees at a rate less than that called for in the collective bargaining agreement or written understanding, the wage rate to be utilized for the purpose of calculating the prevailing wage rate for those employees shall be the wage rate set forth in the collective bargaining agreement or written understanding.

B. For purposes of this rule, it shall be the duty of every contractor performing work within the State of Minnesota to furnish the department upon its request, with copies of all payroll records relating to each project. Records so requested shall contain the information listed under § 1.8007.

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~~1. All payroll records shall be signed by the contractor or his representative and shall certify that the contractor has reviewed their contents and that they are accurate and correct.~~

~~2. All payroll records submitted to the Department shall be date stamped on the day of their receipt and filed in accordance with the county within which the work was performed.~~

~~C. The Department shall periodically request from the Minnesota Department of Transportation all data indicating state projects let by that department, the counties in which work will be performed, the contractors awarded the contracts and their costs. This data shall be kept on file and may be utilized in making wage determinations under this rule.~~

8 MCAR § 1.8008 Apprentices.

A. Apprentices working on state projects are not subject to the prevailing wage rate determinations, except as they may be affected by registered apprenticeship agreements. The hourly rates of pay for such workers are established by the particular program to which the apprentice or trainee is subject.

B. The term apprentice means (a) a person employed and registered in a bona fide apprenticeship program registered with the U.S. Department of Labor or with a state apprenticeship agency and (b) a person in his first 90 days of probationary employment as an apprentice who is not registered in the program but who has been certified by the U.S. Bureau of Apprenticeship and Training or a State Apprenticeship agency or council to be eligible for probationary employment as an apprentice.

C. Any employee listed on a payroll for a state project who does not fall within the term "apprentice" contained in subpart (B) shall be paid the prevailing wage rate for the classification of work performed.

8 MCAR § 1.8009 Multi-county projects.

~~Where a state project will extend into more than one county, the prevailing wage rate to be certified and utilized on that project shall be based upon the prevailing wage rate for the county within which the greatest volume of work will be performed.~~

8 MCAR § 1.8009 Reserved for future use.

8 MCAR § 1.8010 Notice of wage determinations.

A. Upon certification of wage rates for a given county, the department shall publish notice of such certification in the *State Register* but need not publish the individual rates so certified. The certification date shall coincide with the date published in the *State Register*.

B. The notice published in the *State Register* shall indicate where copies of the determined rates may be obtained upon request.

C. The department shall maintain a list of all persons who request that copies of wage rate determinations be sent to them.

D. Copies of wage rate determinations shall be mailed within 5 days of their certification to those persons who have requested

such notice and whose names appear on the list maintained by the department. The department may charge a reasonable fee for the copying and mailing of these notices as allowed under Minn. Stat. § 15.17, subd. 4 (1974).

8 MCAR § 1.8011 Utilization of additional information.

A. In addition to such information requested by the department under § 1.8008, voluntary information received by the Prevailing Wage Division from contractors or their representatives, contractors associations, labor organizations, public officials, individual laborers and other interested parties shall be kept on file by the department and may be utilized in making wage determinations under § 1.8008.

B. Illustrative of the type of information which will be kept on file if submitted are:

1. Notarized statements showing wage rates and hours worked on projects (such statements should indicate the names and addresses of contractors, including subcontractors, the location, approximate cost, dates of construction and types of projects, the number of workers employed in each class of labor on each project, and the respective wage rates paid to each worker.

2. Signed collective bargaining agreements or understandings between an employer or a group of employers and bona fide organizations of labor.

3. Wage rate determinations and other information furnished by federal agencies.

4. Contract and bidding information submitted by the Department of Transportation or other state agencies.

5. Reports or records of county or city engineering offices.

6. Other information pertinent to the determination of prevailing wage rates.

8 MCAR § 1.8012 Apprentices and trainees.

A. Apprentices, under programs approved by the U.S. Department of Labor, will be permitted to work as such only when they are registered, with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph b of this paragraph or is not registered as above, shall be paid the wage rate determined by the Commissioner of the Department of Labor and Industry, State of Minnesota, for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the Department of Labor and Industry written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any

~~apprentices on the contract work. The term "apprentice" means (1) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or (2) a person in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training, or a State Apprenticeship Council (where appropriate) to be eligible for probationary employment as an apprentice.~~

~~B. Trainees: Trainees will be permitted to work as such if they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training.~~

~~C. Apprentices and Trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with Federal aid highway construction programs are not subject to the wage determinations made herein. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.~~

8 MCAR §§ 1.8011-1.8012 Reserved for future use.

8 MCAR § 1.8013 Petition for reconsideration of prevailing wage rates.

A. Any person including contractor associations or labor organizations aggrieved by a final determination of a prevailing wage rate may petition the Commissioner for reconsideration of that wage rate within 30 days following its certification. The petitioner shall indicate the county and class(es) of labor contested, the reason the petitioner believes the rate to be inaccurate, and the rates the petitioner believes to be correct.

B. Within 10 days following receipt of a Petition for Reconsideration, the Department shall informally meet with the Petitioner and any other interested person, associations or labor organizations to review the contested wage determination(s).

1. The petitioner shall be prepared to support his contentions with any documents or data he deems necessary.

2. The department shall be prepared to produce and review the data, summary sheets and other documents upon which its determinations were based, and shall produce for the petitioner's inspection, all such documents.

C. Following the informal conference, the Department shall, within 10 days, notify the petitioner of any decision modifying, changing, or reaffirming the contested wage rate or indicate to the petitioner that a survey will be necessary to resolve the contested wage rate(s).

1. Where the department determines that a new survey is necessary, such survey shall be conducted within 30 days. Thereafter, the department shall inform the petitioner by certified mail of its final decision based on that survey.

D. No prevailing wage rate will be deemed to be vacated or suspended pending the resolution of a Petition for Reconsideration nor will the department request any state agency contemplating a state project to suspend, delay or otherwise change its contract and bidding schedules due to any pending procedures resulting from a Petition for Reconsideration.

E. Any person aggrieved by a final decision following reconsideration of a prevailing wage rate may, within 20 days after the decision, petition the Commissioner for a public hearing in the manner of a contested case under the administrative procedures act, Minn. Stat. §§15.0418 to 15.0421.

1. Upon receipt of a petition for a public hearing the commissioner shall order the initiation of a contested case in accordance with Minn. Stat. § 15.052.

2. All contested case hearings initiated herein shall be conducted in accordance with the rules of Operation of the Office of Hearing Examiners.

8 MCAR § 1.8014 Application.

These rules shall apply to all prevailing wage determinations certified subsequent to the effective date of these rules.

8 MCAR § 1.8014 Reserved for future use.

8 MCAR § 1.8015 Master job classifications.

For purposes of these rules, the following code numbers shall be utilized to describe the applicable classes of labor.

<u>Highway Laborers</u> (In Mpls.-St. Paul Metropolitan Wage Areas)	
<u>CODE NO.</u>	<u>POSITION TITLE</u>
103	Bituminous batcherman (Stationary plant)
105	Bituminous raker, floater and utility man
107	Bituminous tamper
113	Blacksmith helper
116	Bottom man (sewer, water or gas trench)
117	Bottom man (sewer, water or gas trench) (more than 8' below starting level of manual work)
123	Brick or block paving setter
125	Bricklayer tender
132	Cement coverman (batch trucks)
134	Cement gun operator (1 1/2" and over)
136	Cement handler (bulk or bag)
138	Chain Saw Operator
140	Chipping hammer operator
141	Concrete batcherman (proportioning plant)
143	Concrete longitudinal floatman (manual bull float on paving)
145	Concrete mixer operator (1 bag capacity)

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ADOPTED RULES

CODE NO.	POSITION TITLE
147	Concrete shoveler, tamper and puddler (paving)
149	Concrete vibrator operator
153	Conduit layers (without wiring)
156	Curb setter (stone or precast concrete)
163	Dumper (wagon, truck, etc.)
165	Dumpman
167	Dumpman (paver) (dumper batch trucks at mixer)
173	Drill runner (blasting)
175	Drill runner (heavy, including churn drill)
181	Flagman
185	Formsetter (municipal type curb and sidewalk)
186	Formsetter (pavement)
192	Hydrant and valve setter
194	Jackhammer man and paving buster
196	Joint filler (concrete pavement)
203	Kettleman (bituminous or lead)
207	Mortar mixers
213	Pipe derrickman (tripod, manual)
215	Pipe handler (water, gas, cast iron)
217	Pipe layer (sewer, water or gas)
223	Powderman
224	Powder monkey
225	Power buggy operator
227	Pump Operator (3" and under, semi-skilled)
233	Reinforced steel labor
235	Reinforced steel setter (pavement)
241	Sand cushion and bed maker
243	Service connection maker (water or gas)
245	Squeegee man (bituminous brick or block pavement)
247	Stabilizing batcherman (Stationary plant)
249	Stone mason tender
253	Tunnel laborer (atmospheric pressure)
255	Tunnel men (air pressure)
257	Tunnel miner
263	Unskilled laborers
265	Watchmen
267	Winch handler (manual)
273	Caisson work
275	Cofferdam work
277	Open ditch work
279	Tunnel work
281	Underground laborers
283	Underpinning work
285	Other work more than 8' below starting level of manual work
286	Water well driller helper
287	Nozzelman (gunite)
288	Joint sawer
289	Carpenter tender
290	Wrecking and demolition

CODE NO.	POSITION TITLE
Classification:	
463	Laborer, highway & heavy, unskilled Pavement:
336	Cement handler
367	Dumper
353	Conduit layer
347	Concrete shoveler, tamper and puddler
384	Formsetter, curb, walk and pavement

CODE NO.	POSITION TITLE
394	Jackhammer
338	Chain saw operator
397	Joint sawer
349	Concrete vibrator operator
423	Powderman
435	Reinforced steel setter (pavement)
334	Cement coverman
335	Sack Shaker
Blacktop:	
305	Bituminous, raker, floater and utility man
363	Dumper
308	Tamper operator
381	Flagman
465	Watchman
Sewer, Water and Tunnel:	
417	Pipelayer
403	Kettleman, bituminous or lead
453	Tunnel laborer—atmospheric pressure
452	Tunnel laborer—air pressure
456	Tunnel miner—atmospheric pressure
454	Tunnel miner—air pressure
315	Bottom man or ditchman
418	Pipe handler
Miscellaneous:	
372	Drill runner
374	Drill runner wagon drill or churn drill
376	Drill runner helper
475	Cofferdam work
473	Caisson work
345	Concrete mixer operator (1 bag capacity)
346	Nozzelman (gunite)
427	Pump operator—3 inches and under
486	Work 8 feet or more below adjoining ground where excavation is not more than 8 feet wide
426	Power Buggy Operator
430	Bricklayer tender
431	Carpenter tender
432	Mortar mixer
433	Stone mason tender
464	Wrecking and demolition laborer

CODE NO.	POSITION TITLE
Power Equipment Operators (Statewide)	
501	Air compressor operator
502	Crane Operator with 135' Boom, excluding jib
503	Asphalt, bituminous stabilizer plant operator
504	Dragline and/or other similar equipment with shovel type controls up to 3 cu. yds. mfg. rated capacity
505	Backfiller operator
506	Batch Plant (concrete)
507	Bituminous spreader & finishing operator (power) (Adnum or Jaeger)
508	Bituminous spreader & bituminous finishing machine operator (helper) (power) (Adnum or Jaeger)
509	Brakeman or switchman
510	Boom Truck (power operated boom)
511	Cableway operator
512	Conveyor operator
513	Concrete distributor & spreader operator, finishing machine, longitudinal float operator, joint machine operator & spray operator

ADOPTED RULES

CODE NO.	POSITION TITLE	CODE NO.	POSITION TITLE
514	Concrete mixer operator, on job site over 14S	562	Paving breaker or tamping machine operator (power driven) (Mighty Mite or similar type)
515	Concrete mixer operator, on job site 14S and under	563	Pick up Sweeper, not including Tennant or similar types
516	Concrete mixer, stationary plant operator, over 34E	564	Power shovels and/or other equipment with shovel type controls, 3 1/2 cu. yds. & over
517	Dragline and/or other similar equipment with shovel type controls 3 cu. yds. and over mfg. rated capacity	565	Power shovels and/or other equipment with shovel type controls, up to 3 1/2 cu. yds.
518	Concrete saw operator (multiple blade) (power operated)	566	Power plant engineer, 100 K.W.H. and over
519	Crushing plant operator (gravel & stone) or gravel washing, crushing & screening plant operator	567	Pugmill operator
520	Curb Machine	568	Pump operator
521	Derriek (Guy or stiffleg) (power) (skids or stationary)	569	Pumperete operator
522	Dope Machine (pipeline)	570	Mucking machine
523	Dredge deck hand	571	Refrigeration plant engineer
524	Dredge operator or engineer, dredge operator (power) & engineer	572	Mole operator including power supply
525	Elevating Grader Operator	573	Roller operator, self propelled roller for compaction, including stabilized base
526	Drill rigs, heavy duty rotary or churn drill	574	Roller operator, self propelled, rubber tired for compaction including stabilized base
527	Drilling machine	575	Roller operator, up to & including 6 tons for bituminous finishing and/or wearing courses
528	Euclid loader operator	576	Roller operator, over 6 tons for bituminous finishing and/or wearing courses
529	Engineer in charge of plant requiring first class license	577	Scraper, 32 cu. yds. and over
530	Front End Loader Operator up to and including 1 cu. yd.	578	Self propelled vibrating packing operator (pad type)
531	Fine grade operator	579	Rubber tired farm tractor, back hoe attachment
532	Helicopter Pilot	580	Sheet foot roller (self propelled) (3 drum and over)
533	Fireman or tank car heater operator	581	Shouldering machine operator (power) (Apsco or similar type)
534	Fork lift or lumber stacker (for construction job site)	582	Slip Form (power driven) (paving)
535	Fork lift or straddle carrier operator	583	Tie tamper & ballast machine operator
536	Form trench digger (power)	584	Stump chipper
537	Mechanic Helper	585	Turnapull operator (or similar type)
538	Front end loader operator (under 30 h.p. rubber tired)	586	Tandem scraper
539	Front end loader operator, all types 30 h.p. and over	587	Tractor operator — boom type
540	Automatic Road Machine Operator (GMI or similar)	588	Tractor operator, D2, TD6 or similar h.p. with power take off
541	Grader or motor patrol, finishing, earthwork and bituminous	589	Tractor operator, over D2, TD6, or similar h.p. with power take off
542	Grader operator (motor patrol)	590	Tractor operator, 50 h.p. or less without power take off
543	Power Actuated Horizontal boring machine over 6"	591	Tractor operator, over 50 h.p. without power take off
544	Gravel screening plant operator (portable not crushing or washing)	592	Trenching machine operator (sewer, water, gas)
545	Lead greaser on grease truck (where no mechanic is employed)	593	Power Actuated Augers & Boring Machine
546	Greaser (truck and tractor)	594	Truck crane operator
547	Gunite operator gunall	595	Truck crane oiler
548	Hoist engineer (power)	596	Tugboat (100 h.p. and over)
549	Self propelled chip spreader (Flaherty or similar)	597	Well point installation, dismantling or repair mechanic
550	Self propelled soil stabilizer	598	Two or more pumps, compressors or welding machines
551	Launchman (tankerman or pilot license)	599	Power Actuated Jacks
552	Leverman		
553	Loader Operator (Barber Green or similar type)		
554	Locomotive, all types		
555	Locomotive crane operator		
556	Master Mechanic		
557	Mechanic or Welder		
558	Mechanical space heater (temporary heat)		
559	Mixer (paving) Concrete Paving Operator, road		
560	Pipeline Wrapping Cleaning or Bending Machine		
561	Oilers (power shovel, crane, dragline)		

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ADOPTED RULES

CODE NO.	POSITION TITLE
	Truck Drivers (Statewide)
601	Bituminous Distributor Driver
602	Bituminous Distributor Spray Operator (Rear end oiler)
603	Bituminous Distributor Driver (one-man operation)
605	Boom and "A" frame driver
606	Dumpman
608	Dumpster Operator (no h.p. limit)
611	Greaser and truck serviceman
615	Mechanical Broom Driver
617	Pilot Car Driver
621	Ready Mix Driver (mixer capacity up to and including 4 cu. yds.)
622	Ready Mix Driver (mixer capacity over 4 cu. yds. up to and including 6 cu. yds.)
623	Ready Mix Driver (Mixer capacity over 6 cu. yds.)
626	Self-propelled Packer Operator
629	Tank truck helper (gas, oil, road oil and water)
631	Teamster or stableman
633	Tractor Operator (wheel type used for any purpose)
641	Truck Driver (up to and including 6 cu. yds. box water level)
642	Truck Driver (over 6 cu. yds. up to and including 8 cu. yds. box water level)
643	Truck Driver (over 8 cu. yds. up to and including 12 cu. yds. box water level)
644	Truck Driver (over 12 cu. yds. up to and including 16 cu. yds. box water level)
645	Truck Driver (over 16 cu. yds. box water level)
648	Truck Driver (hauling machinery for contractors own use including operation of hand or power operated winches)
650	Truck Mechanic (in cases where an operating engineer mechanic is not employed)
651	Truck Welder Truck Driver:
662	Single axle or 2 axle unit
663	Tandem axle or 3 axle unit
664	Four axle unit
665	Five axle unit
	For each additional axle, 10 cents additional per hour
666	Slurry Driver
667	Slurry operator
	Special Crafts (Statewide)
711	Bricklayers
712	Bricklayers Apprentice (6 mos. interval)
721	Carpenters
722	Carpenters apprentice (1000 hr. interval)
731	Cement Masons
732	Cement Masons (6 mos. interval)
733	Cement Masons (1 year intervals)
740	Cable Splicer
741	Electricians
742	Electricians Apprentice
743	Electricians (on work up to \$4,000)
744	Electricians on work over \$4,000
745	Electricians Apprentice (3 mos. interval)
746	Electricians Apprentice (6 mos. interval)
747	Electricians Apprentice (years intervals)

CODE NO.	POSITION TITLE
748	Lineman
749	Groundman (1st year, 2nd year, 3rd year)
751	Ironworkers, ornamental
752	Ironworkers, reinforcing
753	Ironworkers, structural
754	Ironworkers Apprentice (1000 hrs. interval)
755	Ironworkers (6 mos. intervals)
761	Painters
762	Painters; brush
763	Painters, structural steel and bridge
764	Painters Apprentice (1000 hrs. interval)
765	Painters (6 mos. intervals)
766	Painters, spray
771	Piledriverman
773	Plumbers
775	Plumbers Apprentice (928 hours)
781	Stone Masons
791	Sheet metal workers
784	Stone Masons (6 mos. interval)

8 MCAR § 1.8015 Master job classifications. For purposes of these rules, contractors must use the following codes and classifications in documenting classes of labor.

Laborers	
CODE NO.	POSITION TITLE
101	Laborer, common (general labor work)
102	Laborer, skilled (assisting skilled craft journeyman)
103	Laborer, Landscaping (gardener, sod layer and nurseryman)
104	Flagperson
105	Watchperson
106	Powderman
107	Pipelay (water, sewer & gas)
108	Tunnel miner
109	Underground and open ditch laborer (8 feet below starting grade level)
Power Equipment Operators	
CODE NO.	POSITION TITLE
201	Air compressor operator
202	Asphalt, bituminous stabilizer plant operator
203	Dragline and/or other similar equipment with shovel type controls
204	Bituminous spreader and finishing operator
205	Bituminous spreader and bituminous finishing machine operator (helper)
206	Conveyor operator
207	Concrete distributor and spreader operator, finishing machine, longitudinal float operator, joint machine or spray operator
208	Concrete saw operator (multiple blade) (power operated)
209	Crushing plant operator (gravel and stone) or gravel washing, crushing and screening plant operators
210	Curb machine
211	Front end loader operator up to and including 1 cu. yd.
212	Fine grade operator
213	Fork lift operator
214	Front end loader operator
215	Helicopter pilot
216	Fireman or tank car heater operator

ADOPTED RULES

<u>CODE NO.</u>	<u>POSITION TITLE</u>
<u>217</u>	<u>Grader or motor patrol, finishing, earthwork and bituminous</u>
<u>218</u>	<u>Grader operator (motor patrol)</u>
<u>219</u>	<u>Greaser (truck and tractor)</u>
<u>220</u>	<u>Hoist engineer</u>
<u>221</u>	<u>Self propelled chip spreader</u>
<u>222</u>	<u>Mechanic or welder</u>
<u>223</u>	<u>Oilers (power shovel, crane, dragline)</u>
<u>224</u>	<u>Pick up sweeper</u>
<u>225</u>	<u>Pugmill operator</u>
<u>226</u>	<u>Roller operator, self propelled roller for compaction</u>
<u>227</u>	<u>Roller operator, up to and including 6 tons for bituminous finishing and/or wearing courses</u>
<u>228</u>	<u>Roller operator, over 6 tons for bituminous finishing and/or wearing courses</u>
<u>229</u>	<u>Scraper, 32 cu. yds. and over</u>
<u>230</u>	<u>Self propelled vibrating packing operator (pad type)</u>
<u>231</u>	<u>Rubber tired tractor, back hoe attachment</u>
<u>232</u>	<u>Shouldering machine operator (power) (apsco or similar type)</u>
<u>233</u>	<u>Slip form (power-driven) (paving)</u>
<u>234</u>	<u>Turnapull operator (or similar type)</u>
<u>235</u>	<u>Tractor operator, D2, TD6 or similar h.p. with power take-off</u>
<u>236</u>	<u>Tractor operator, over D2, TD6 or similar h.p. with power take-off</u>
<u>237</u>	<u>Power actuated augers and boring machine</u>
<u>238</u>	<u>Truck crane oiler</u>

Truck Drivers

<u>CODE NO.</u>	<u>POSITION TITLE</u>
<u>301</u>	<u>Bituminous Distributor driver</u>
<u>302</u>	<u>Dumpman</u>
<u>303</u>	<u>Greaser and truck serviceman</u>
<u>304</u>	<u>Self propelled packer operator</u>
<u>305</u>	<u>Truck driver (hauling machinery for contractors own use including operation of hand or power operator winches)</u>
<u>306</u>	<u>Single axle or 2 axle unit</u>
<u>307</u>	<u>Tandem axle or 3 axle unit</u>
<u>308</u>	<u>Four axle unit</u>
<u>309</u>	<u>Five axle unit</u>

Special Crafts

<u>CODE NO.</u>	<u>POSITION TITLE</u>
<u>401</u>	<u>Asbestos workers</u>
<u>402</u>	<u>Boilermakers</u>

<u>CODE NO.</u>	<u>POSITION TITLE</u>
<u>403</u>	<u>Bricklayers</u>
<u>404</u>	<u>Carpenters</u>
<u>405</u>	<u>Carpet Layers (linoleum)</u>
<u>406</u>	<u>Cement Masons</u>
<u>407</u>	<u>Electricians</u>
<u>408</u>	<u>Elevator Constructors</u>
<u>409</u>	<u>Glaziers</u>
<u>410</u>	<u>Lathers</u>
<u>411</u>	<u>Groundman</u>
<u>412</u>	<u>Ironworkers</u>
<u>413</u>	<u>Lineman</u>
<u>414</u>	<u>Millwright</u>
<u>415</u>	<u>Painters</u>
<u>416</u>	<u>Piledriverman</u>
<u>417</u>	<u>Pipefitters—steamfitters</u>
<u>418</u>	<u>Plasterers</u>
<u>419</u>	<u>Plumbers</u>
<u>420</u>	<u>Roofer</u>
<u>421</u>	<u>Sheet metal workers</u>
<u>422</u>	<u>Sprinkler fitters</u>
<u>423</u>	<u>Terrazzo workers</u>
<u>424</u>	<u>Tile setters</u>

Wage determinations may be made for other classifications not listed if such other classifications are in general use in the area being surveyed.

8 MCAR § 1.8016 Posting of wage rates. [No change.]

Each contractor and subcontractor performing work on a public project shall post on the project the applicable prevailing wage rates and hourly basic rates of pay for the county or area within which the project is being performed, including the effective date of any changes thereof, in at least one conspicuous place for the information of the employees working on the project. (Minn. Stat. § 177.43, subd. 4 and Minn. Stat. § 177.44, subd. 5 (1974)). The information so posted shall include a breakdown of contributions for health and welfare benefits, vacation benefits, pension benefits and any other economic benefit required to be paid.

8 MCAR § 1.8017 Wage rate determinations previously certified by the department shall, subject to the review procedures contained in § 1.8013, remain in effect until such time that new wage rates are determined in accordance with the provisions of these rules as amended.

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SUPREME COURT

Decisions Filed Friday, May 9, 1980

Compiled by John McCarthy, Clerk

49466, 49761/496 Carlyle Pederson, Respondent (49466), Appellant (49761), vs. All Nation Insurance Company, defendant and third party plaintiff, Appellant (49466), Respondent (49761), vs. State Automobile and Casualty Underwriters, third party defendant. Olmsted County.

In this action to recover basic economic loss benefits pursuant to the Minnesota No-Fault Automobile Insurance Act, whether plaintiff was insured under Minn. Stat. § 65B.43, subd. 5 (1978) as a relative residing in the same household with the named insured was a question of fact. The finding that he was not has sufficient evidentiary support.

The finding of the trial court relative to the extent of plaintiff's wage loss has sufficient evidentiary support.

Plaintiff is entitled to interest on the award of basic economic loss benefits pursuant to Minn. Stat. § 65B.54, subsd. 1 and 2 (1978).

Affirmed in part, reversed in part, and remanded. Kelly, J. Took no part, Otis, J.

50294/150 Margaret Krug, Appellant, vs. Independent School District No. 16, Spring Lake Park, Minnesota. Anoka County.

Where a strict application of the rule concerning appeals from amended orders would bar an appeal, the appeal may be entertained if the interests of justice are served by doing so.

Since a public health nurse in the school system is required to hold a professional license from the State Board of Education, a public health nurse is a teacher for the purposes of Minn. Stat. § 125.12, subd. 1 (1978).

Teachers, as defined by Minn. Stat. § 125.12, subd. 1 (1978), acquire tenure and seniority rights if the services they render in their position as teacher are full-time professional activities.

Under the regulations contained in 5 MCAR § 3.106, the position of school nurse consists of three levels, one of which is public health nurse. A public health nurse is not a separate position from that of school nurse.

The decision of the trial court is reversed, the writ of certiorari is reinstated, and the matter is remanded to the district court for further proceedings consistent with this opinion. Todd, J.

50597/160 In the Matter of the Welfare of S. R. J. vs. State of Minnesota, Appellant. Ramsey County.

Police reports evidencing the alleged offenses and their underlying circumstances are relevant to and admissible in a reference hearing for the purpose of determining whether the juvenile is amenable to treatment or is a threat to the public safety.

A juvenile court has the discretionary power, pursuant to Minn. Stat. § 260.151, subd. 1 (1978), to order a psychiatric or psychological examination of a juvenile by a court-appointed expert in the context of a reference hearing. The report of such an examination shall be considered by the court and, at the reference hearing, either party may examine the court-appointed expert regarding the report.

On remand, the state has the right to request that the matter be assigned to a juvenile judge other than the one who originally heard this matter.

The order of dismissal is vacated and the matter is remanded for further proceedings consistent with this opinion. Todd, J.

50199/245 State of Minnesota vs. Rodney Allen Neville, Appellant. Ramsey County.

Mere observation by police of defendant entering and leaving residence which police had probable cause to believe was at that moment being used as a wholesale LSD outlet did not give the police probable cause to arrest defendant; however, officers also had reliable information, which they obtained from a fellow officer, that an undercover LSD "buy" had been made at defendant's own residence within the previous 2 weeks, and under all these circumstances the officers had probable cause to arrest defendant after he left the supplier's residence.

Affirmed. Todd, J.

49389/45 Allen Leskey vs. Heath Engineering Company, defendant and third party plaintiff, Appellant, vs. Zalk-Josephs Company. St. Louis County.

Jury findings that a product was not defective when manufactured but that the manufacturer was negligent are not inconsistent where the manufacturer could have been found negligent for failure to warn of potential hazards from the use of the product.

Affirmed in part, reversed and remanded in part. Yetka, J.

49907/139 Patrick J. Murphy, et al., vs. City of Minneapolis, et al., Appellants. Hennepin County.

The trial court did not err in instructing the jury that the Minneapolis Police Department order governing the use of firearms was evidence of what constituted reasonable care under the circumstances.

The trial court did not err in instructing the jury on the statutory privilege of a police officer to use deadly force as a defense to a battery charge but not to negligence.

The trial court erred in preventing the testimony of two witnesses for failure to disclose a note where the note was not a statement of the witnesses.

Reversed and remanded for a new trial. Yetka, J.

49763/96 Emil Olson, Inc., Relator, vs. The Commissioner of Revenue. Tax Court.

Where the relator excavated virgin rock, crushed, screened, sized and stockpiled the resulting gravel, and then transferred the gravel for money consideration to roadbuilding contractors who used it for a roadbed in the construction of an interstate highway, there was a "sale" within the meaning of Minn. Stat. Ch. 297A (1978).

The exemption provided for in Minn. Stat. § 297A.25, subd. 1(h), is not applicable to such sales because the gravel is not used or consumed in the "industrial production of personal property intended to be sold ultimately at retail." Further, since the contractors used the gravel for the purpose of constructing an interstate highway, Minn. Stat. § 297A.25, subd. 4, precludes the utilization of an exemption which might otherwise be available under § 297A.25, subd. 1.

Affirmed. Scott, J.

Decisions Filed Friday, May 2, 1980

50755/311 State of Minnesota, Appellant, vs. Patricia Mae Hall. Washington County.

Prison officers had probable cause to believe that defendant, who was a visitor, was guilty of introducing contraband into prison and therefore were justified in arresting her and conducting a custodial search of her person as an incident thereto; district court erred in holding that arrest was illegal and we therefore reverse order which suppressed evidence on this ground and dismissed prosecution.

Reversed and remanded. Sheran, C. J.

50906/314 State of Minnesota vs. Scott Nils Nystrom, Appellant. Ramsey County.

Juvenile court did not clearly err in its findings or abuse its discretion in determining that public safety would be endangered by keeping juvenile in the juvenile court system, and therefore juvenile court's decision to grant reference motion pursuant to Minn. Stat. § 260.125 (1978) is affirmed.

Affirmed. Sheran, C. J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any

consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Administration

Notice of Request for Proposals to Provide Diagnostic and Referral Services for the State Employee Assistance Program

Notice is hereby given that the Department of Administration intends to engage the services of a contractor in each of the following areas to provide diagnostic and referral services for state employees: Winona, Owatonna, Cambridge, Rochester,

Mankato, Marshall, Willmar, Fergus Falls, Crookston, Bemidji, Brainerd, St. Cloud, Virginia and Duluth.

The estimated amount of the contract in each of these areas will not exceed \$4,000. Responses must be received by June 16, 1980.

Direct inquiries to:

Warren Gahlon
Director
State Employee Assistance Program
Suite 101
2301 Woodbridge Avenue
Roseville, Minnesota 55113
(612) 296-0765

**Department of Economic Security
Program and Management Support Division
Office of Statewide CETA Coordination**

Notice of Request for Proposals for Professional and Technical Auditing Services for CETA Title V Older Americans Act Programs

1. Agency name and address: MN Department of Economic Security, Office of Statewide CETA Coordination, 690 American Building, 160 E. Kellogg Blvd., St. Paul, MN 55101.

2. Contact person: Persons or Certified Public Accounting firms wishing to receive this request for proposals package, or who would like additional information may call the Contracting Officers, Marv McNeff, (612) 296-6069, or Jim Markoe, (612) 296-4983, or write them at the following address: Office of Audit Coordination, MN Department of Economic Security, Room 200, 390 North Robert Street, St. Paul, MN 55101.

3. Description: An RFP will be issued on or about May 12, 1980, calling for the performance of Financial and Compliance audits at 12 CETA Title V (formerly Title IX) Older Americans Act subgrantees, located in the Twin Cities Metropolitan area and throughout the State of Minnesota.

4. Cost: One or more audit contract awards will be made at an estimated \$8,400.00 in total costs.

5. Final proposal submission date: Proposals must be received by 4 p.m., Tuesday, May 27, 1980.

6. Bidder's Conference: A Bidder's Conference to answer questions from interested CPA firms is scheduled for 10 a.m., on May 16, 1980.

7. Ending date for completion of audit work: The audit reports resulting from the audit work should be completed within sixty (60) days of June 30, 1980.

Department of Economic Security

Office of Weatherization

Notice of Request for Proposals for Training of Residential Energy Auditors and Community Action Agency Weatherization Outreach Personnel

The Minnesota Department of Economic Security, Office of Weatherization, is requesting proposals from qualified bidders to conduct a series of training sessions for residential energy auditors and Community Action Agency Weatherization Outreach personnel. Training sessions are to be conducted for the period of July 1, 1980 through August 1, 1980.

Estimate fee range: \$18,000-\$21,000.

Firms/individuals desiring consideration should send their response to:

Donald Foley
Training Coordinator
Department of Economic Security
Office of Weatherization
690 American Center Building
St. Paul, MN 55101
(612) 296-4658

Request for Proposal is available upon request.

All responses should be sent in no later than 5:00 p.m., June 2, 1980. Late responses will not be accepted.

**Department of Education
Special Services Division**

Notice of Requests for Proposals for the Narration of Master Tapes Utilized in Assessment Test Administration

A contractor is needed by the Department of Education to narrate and produce approximately 20 reel-to-reel masters which can be duplicated.

The anticipated contract in this regard will be approximately \$3,000 and all responses to RFPs should be received no later than June 27, 1980.

Interested persons are invited to seek further information from the department by contacting:

Dr. William B. McMillan, Director of Assessment Section
Division of Special Services
State Department of Education
Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Notice of Requests for Proposals for Receipt Control, Scanning, and Computer Reporting of Assessment Results

A contractor is needed by the Department of Education to essentially provide scoring, reporting and related services in conjunction with Department assessment functions. Services are required for: 1) an Arts test at grades 4, 8, and 11, and 2) a Reading Literacy test at grades 7 through 12.

In addition, similar services are required in conjunction with the "piggyback" option portion of the Assessment Program.

The estimated contract will be approximately \$35,000 and responses to RFP's should be received no later than June 27, 1980.

Interested persons are invited to seek further information from the department by contacting:

Dr. William B. McMillan, Director of Assessment Section
Division of Special Services
State Department of Education
Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject,

either orally or in writing.

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

Department of Commerce Banking Division

Bulletin No. 2237: Maximum Lawful Rate of Interest for Mortgages for May 1980

Notice is hereby given that pursuant to Minn. Stat. § 47.20, subd. 4a, the maximum lawful rate of interest for conventional home mortgages for the month of May, 1980, is fifteen and three-quarters (15.75) percentage points.

April 29, 1980

Michael J. Pint
Commissioner of Banks

Maximum Lawful Rate of Interest for Contracts for Deed for May 1980

Pursuant to Senate File No. 273, Chapter 373, 1980 Session Laws, as it amended Minn. Stat. § 47.20, effective May 1, 1980, the maximum lawful rate of interest for contracts for deed is based on the Federal National Mortgage Association conventional loan auction yield for April 29, 1980. The 15.665 percent average yield results, when rounded up to the next highest one-quarter percent, produces a 15.75 percent maximum interest rate for the month of May, 1980.

May 1, 1980

Michael J. Pint
Commissioner of Banks

Department of Education Instruction Division

Notice of Availability of Basic Skills Improvement Grants

Under Section 222 of Public Law 95-561, the state of Minnesota is pleased to invite competitive applications for the \$48,900 of federal funds which it has available for Basic Skills in School Projects and Basic Skills Parent Involvement Projects.

Applications will be approved in amounts ranging from \$1,000 to \$15,000, with the lower end of that range being emphasized. It is anticipated that 10-20 proposals will be funded.

School Projects must:

1. Identify the population to be served.
2. Identify needs of the population.
3. Address either development of goals and objectives, in-service training, getting support of parents, evaluation procedures or dissemination activities.

Parent Involvement Projects may do one, some or all of the following:

1. Develop and disseminate materials for home use.
2. Coordinate between learning experiences in the home and those in the schools.

OFFICIAL NOTICES

3. Plan for, develop and improve centers accessible to parents to private information to help them work with their children.

4. Demonstrate training programs for parents who desire new skills to complement the instruction their children receive in schools.

Because of the relatively small sums of money available, proposal forms will be quite brief, a maximum of three pages.

For further information and/or application packet, contact Patricia Moran, Supervisor of the Basic Skills Unit (telephone (612) 297-2657) or Alton Greenfield, Supervisor of the Reading Unit (telephone (612) 296-6998).

Department of Education Special and Compensatory Education Division

Notice of Public Hearing on the Minnesota State Plan for Fiscal Years 1981 through 1983 for Meeting the Requirements of Public Law 94-142, the Education of All Handicapped Children Act (45 C.F.R. 121a.)

Three public hearings on the proposed Minnesota State Plan for Fiscal Years 1981 through 1983 will be conducted on Friday, June 13, 1980. Each hearing will begin at 9:00 a.m. The hearings will be held in the following three locations: (1) Metro: St. Paul Schools Administration Building, 300 Colborne, Auditorium A, St. Paul, MN; (2) Mankato: Mankato State University, Centennial Student Union, Rooms 101 & 102, Mankato, MN (Parking in yellow lots and Ramp Lot #4); and (3) Bemidji: J. W. Smith Elementary School, J. W. Smith Auditorium, 17th-18th St. and Minnesota Avenue, Bemidji, MN.

The State Plan may be modified as a result of the hearing process. Therefore, if you are affected by the activities included in the proposed State Plan, you are urged to participate in the hearing process. An interpreter for the hearing impaired will be present at the Metro hearing and upon request in Bemidji and Mankato.

Following the agency's brief overview of the plan, all interested persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing written comments may be submitted to Dr. Jeanne E. Dorle, State Department of Education, Division of Special and Compensatory Education, Special Education Section, 550 Cedar Street, St. Paul, MN 55101, before June 18, 1980.

Copies of the plan will be available upon request from the Special Education Section by June 2, 1980. Additional copies will be available at the hearings. If you have any questions on the content of the plan contact Jeanne Dorle, Ph.D. (296-1793).

Department of Employee Relations

Notice of Meeting

The Department of Employee Relations wishes to meet with home office representatives of insurance companies interested in presenting a proposal to provide basic hospital and medical benefits to state employees. This information meeting will be held on Friday, May 30, 1980 at 9:00 a.m. in the offices of the Department of Employee Relations, 3rd floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101.

Chapter 617, Laws of 1980 directs that where feasible an insurance company licensed under Section 62A of the Minnesota Statutes shall be selected as one of the carriers providing the above benefit to state employees. Coverage would be effective October 1, 1980. However, proposals will be required on August 1, 1980 so that the contract can be awarded prior to an open enrollment period which begins on August 15, 1980. Specifications based on the present health insurance coverage provided in labor agreements and state law will be available at the meeting.

Please notify the Employee Benefits Division, Department of Employee Relations (telephone 296-2457, area code 612) on or before May 28, 1980 if you plan to attend.

Environmental Quality Board

Notice of Intent to Solicit Outside Opinions or Information Concerning Revision of Rules Relating to Power Plant Siting Program

Pursuant to Minn. Stat. § 15.0412, subd. 6, notice is hereby given that the Minnesota Environmental Quality Board is soliciting information and opinions from sources outside the agency for the purpose of developing rules for determining an Inventory of Power Plant Study Areas and revising the existing rules on Siting Large Electric Power Generating Plants, 6 MCAR § 3.071. Such rules are required by Minn. Stat. § 116C.55.

Any persons desiring to submit information or comments on the subject may do so either orally or in writing. All statements of information and comment must be received by June 9, 1980. Any written material received by this date will become part of the record of any rules hearing held on this subject. Public hearings on these rules will be held at a date yet to be determined.

Written or oral information and comment should be addressed to:

Sheldon Mains
Power Plant Siting Program
Environmental Quality Board
Room 15
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2757 (collect calls accepted)

May 9, 1980

Arthur E. Sidner, Chairman
Environmental Quality Board

Ethical Practices Board

Meeting Notice

The Ethical Practices Board will meet Friday, May 30, 1980 in Room 51, State Office Building, at 9:30 a.m.

Preliminary Agenda

1. Minutes (April 21, 1980)
2. Chairman's Report
3. Legal Counsel Report
4. Advisory Opinion #63—Americans For Democratic Action—(Independent Expenditures)
5. Advisory Opinion #64—Senator Wayne Olhoft—(Purchase of Capital Equipment)
6. Advisory Opinion #65—Representative Jerry Knickerbocker—(Candidate Spending on Behalf of Ballot Questions)
7. Executive Director's Report
 - a) Financial Report
 - b) Late Filing Waiver Requests
8. Other Business
9. Executive Session pursuant to Minn. Stat. § 10A.02, subd. 11.

Department of Health Community Development Office

Notice of Availability of Home Care Demonstration Grants

Amount, Purpose and Eligibility

\$500,000 of state funds are available for special grants to develop programs to assist the elderly and physically disabled to reside in a family setting or home community. The range of services and programs established by these special grants shall be designed to:

A. Avoid premature or inappropriate admission to an institutional care setting;

B. Provide respite for families and responsible caretakers from continuous care, and assist them in providing appropriate services;

C. Maintain or restore elderly and adult physically impaired persons to optimal functional potential and retard physical/emotional deterioration;

D. Provide support and follow-up services to persons residing in their own or a family members home; and

E. Facilitate appropriate release of elderly and adult physically impaired persons from acute and long-term care facilities to family care or to other community based programs.

Special grant funds may *not* be used to replace or substitute for services or programs otherwise funded from other local, state or federal sources, but shall be used to expand health and health related supportive social service programs existing as of July 1, 1980, or to add programs.

Effect of Grant Rules

These grants are subject to the provisions of 7 MCAR §§ 1.451-1.455.

How to Apply for Funds

Letter of Intent—Letters of intent to apply for special grant funds must be submitted to the Commissioner of Health, Minnesota Department of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, by May 26, 1980, and must identify the amount of funds to be requested and the general programmatic focus of the application.

Application Process

A. Applications for special grant funds may be made by Boards of Health as a revision to the approved 1980/81 CHS Plan, according to CHS Policy #4. The revision should include a project description and budget for the activity as stated in Parts III, IV and V of the Instructions and Forms for CHS Plans for Calendar Years 1980 and 1981.

B. County Commissioners not organized under Minn. Stat. §§ 145.911 to 145.922 shall submit a Letter of Intent to Apply for Funds and appropriate application materials will be forwarded to them.

C. Five copies of the completed applications for these special grants must be submitted to the Commissioner of Health, Minnesota Department of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, by June 6, 1980. Regional review requirements apply as stated in 7 MCAR § 1.453. The commissioner will act on these applications by June 30, 1980.

Funding Criteria and Duration

Funds for these purposes are available from July 1, 1980 to June 30, 1981. To ensure adequate geographic representation an effort will be made to fund at least one project from each of the eight MDH geographic Districts.

As with the CHS Plan review process, special attention will be given to both demonstrated and planned local coordination of services to enhance home care system development.

Minnesota Teachers Retirement Association

Meeting Notice

The Board of Trustees, Minnesota Teachers Retirement Association, will hold a meeting on Wednesday, June 18, 1980, at 9 a.m. in the office of the association, 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, to consider matters which may properly come before the board.

Pollution Control Agency Solid Waste Division

Notice of Intent to Solicit Outside Opinion in the Development of a State Solid Waste Management Plan Pursuant to the Federal Resource Conservation and Recovery Act

The Minnesota Pollution Control Agency is presently preparing a draft plan for managing and regulating all major forms of solid wastes including mixed municipal solid wastes, hazardous wastes, residual wastes from pollution control devices, industrial wastes, agricultural wastes (animal wastes), mining wastes, and automobile-related wastes (tires, oil, and car bodies). The plan is directed primarily at solid waste management in geographical areas outside of the Twin Cities metropolitan area and outside of the Western Lake Superior Sanitary District.

U. S. Environmental Protection Agency has issued guidelines under authority of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (RCRA) which require all states to prepare a plan by January 31, 1981. The guidelines were published on July 31, 1979, in the *Federal Register*. Copies of the guidelines are available for inspection at the Minnesota Pollution Control Agency and at many public libraries. The plan must discuss provisions for systematic management and regulation of solid wastes in order to protect the public health and the environment and to conserve valuable material and energy resources.

At this time Minnesota Pollution Control Agency is soliciting opinions concerning matters which should be addressed in the plan. Minnesota Pollution Control Agency is particularly interested in obtaining views about objectives, policies, issues, or problems, recommendations, and immediate and long-term goals which relate to the following:

1. Measures to reduce amounts of wastes generated;
2. Measures to encourage the separation of reusable materials;
3. Measures to promote the construction of facilities to recover energy and usable materials from wastes; and

4. Measures to assure safe siting, design, and operation of disposal facilities.

Any interested person may submit views or information in writing or orally to:

Gregg Downing
Resource Planning Section
Division of Solid Waste
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Phone: 612-297-2702

Comments should be submitted on or before June 18, 1980, to be considered in preparation of the draft plan. Written statements will become part of the public comment record.

Upon completion of a draft plan, Minnesota Pollution Control Agency will provide notice of its availability for review and of public meetings at which time the plan will be discussed. Interested persons who desire to examine a copy of the draft plan when available or notice of any scheduled meetings may contact Mr. Downing at the above address or phone number.

Department of Public Welfare Bureau of Income Maintenance

Notice of Intent to Solicit Outside Opinion Concerning Medical Transportation Covered by Title XIX (Medical Assistance)

Notice is hereby given that the Minnesota Department of Public Welfare is considering amending a permanent rule, 12 MCAR § 2.047, paragraphs D.11. and E.2.r.(1) (DPW Rule 47, Medical Transportation sections). This notice is to request comments and opinions which will be considered when determining definitions and rates for Medical Transportation to be included in rule 47.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Bradley J. Stoneking
P.O. Box 43170
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-2846. All statements and comments must be received by August 1, 1980. Any written material received by the Department shall become part of the hearing record.

Notice of Intent to Solicit Outside Opinion Concerning Pre-admission Screening for Nursing Home Care

Notice is hereby given that the Minnesota Department of Public Welfare is drafting a temporary rule, 12 MCAR § 2.065 (DPW Rule 65), and, subsequently, a permanent rule, 12 MCAR § 2.065, governing pre-admission screening for nursing home care. This notice is to request comments and opinions for the permanent rule. A separate notice will be published in the *State Register* requesting comments when the proposed temporary rule is published.

Authority for the rule is contained in Laws of Minnesota, ch. 575 (1980), codified as Minn. Stat. § 256B.091.

The rule will govern the establishment of local nursing home pre-admission screening teams, prescribe the duties of the teams and the Commissioner of Public Welfare, and provide for a sliding fee scale for interested persons desiring screening who are not Medical Assistance recipients or who would be eligible for Medical Assistance within 90 days of admission. This rule will affect admission of Medical Assistance recipients, those who would be eligible for Medical Assistance within 90 days, or those desiring the screening service only if the admission is not from an acute care facility or a transfer from another nursing home.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Charlene Seavey, Supervisor
Utilization Control Unit
444 Lafayette Road, Box 43208
St. Paul, Minnesota 55101

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-6963.

All statements and comment must be received by June 20, 1980. Any written material received by the department shall become part of the hearing record.

**Department of Public Welfare
Mental Health Bureau**

Notice of Intent to Solicit Outside Opinion Concerning Rule Relating to the Licensure and Operation of Residential Programs for Adult Mentally Ill Persons

Notice is hereby given that the Minnesota Department of Public Welfare is considering draft amendments to 12 MCAR § 2.036 (DPW 36). This rule governs licensure and operation of all residential programs for adult mentally ill persons.

The proposed changes are to 1.) refine the levels of care so that each level accurately describes the standard of care and treatment needed by each client category. 2.) develop a funding proposal for each level according to the services needed to adequately provide the appropriate standard of care and treatment.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to: Jay Bambery, Minnesota Department of Public Welfare, Mental Health Program Division, 4th Floor Centennial Building, St. Paul, MN 55155.

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-3923. All statements of information and comment must be received by July 1, 1980.

Any written material received by the department shall become part of the hearing record.

Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-2805. **Application deadline is Tuesday, June 10, 1980.**

Council on the Economic Status of Women has 11 vacancies open June 30, 1980. Council studies the economic status of women and makes recommendations to the governor and the legislature; monthly meetings; members are appointed by the governor and receive \$35 per diem plus expenses. For specific information, call or write Council on the Economic Status of Women, 400 S.W. State Office Building, St. Paul, MN 55155; (612) 296-8590.

OFFICIAL NOTICES

Employment Agency Advisory Council has a vacancy open immediately for a public member. Council advises the Department of Labor and Industry on the licensing and supervising of employment agencies; members are appointed by the Commissioner of Labor and Industry and receive \$35 per diem plus expenses. For specific information, call or write Employment Agency Advisory Council, 444 Lafayette Road, St. Paul, MN 55101; (612) 296-2125.

Ethical Practices Board has 2 vacancies open immediately. Board administers campaign financing for state candidates; economic interest disclosure for state and metropolitan public officials; lobbyist registration and reporting; monthly meetings; members are appointed by the Governor and confirmed by the House and Senate, and receive \$35 per diem plus expenses. For specific information, write or call Ethical Practices Board, 41 State Office Bldg., St. Paul, MN 55155; (612) 296-5148.

Soil and Water Conservation Board has one vacancy open immediately for a soil and water conservation district supervisor from natural resources administrative district 3 (includes Benton, Cass, Chisago, Crow Wing, Isanti, Kanabec, Mille Lacs, Morrison, Pine, Sherburne, Stearns, Todd, Wadena and Wright counties). Board coordinates programs of the 92 soil and water conservation districts; monthly meetings; members are appointed by the Governor and confirmed by the Senate, and receive \$35 per diem plus expenses. For specific information, call or write Soil and Water Conservation Board, 2nd Floor, Space Center Building, 444 Lafayette Road, St. Paul, MN 55101; (612) 296-3767.

Advisory Council on Workers' Compensation has one vacancy open immediately for an employer representative. Council studies workers compensation law and recommends changes; monthly meetings; members are appointed by the Commissioner of Labor and Industry, and receive \$35 per diem plus expenses. For specific information, call or write Advisory Council on Workers' Compensation, 444 Lafayette Road, St. Paul, MN 55101; (612) 296-6490.

Minnesota Conference on Small Business has 3 positions open immediately. Conference will establish procedures for regional meetings of small business owners, and report proposals for small business development aids to the Governor and the Legislature; members are appointed by the Governor and receive \$35 per diem. For specific information, call or write Patricia Jensen, Governor's Special Assistant for Appointments to Boards and Committees, 130 State Capitol, St. Paul, MN 55155; (612) 296-6614.

Council on Black Minnesotans has 7 positions open immediately, to include at least 3 men and at least 3 women, broadly representative of the Black community. Council advises the Governor and the Legislature and recommends steps to improve the economic and social condition of Blacks in the state; members are appointed by the Governor and receive \$35 per diem. For specific information, call or write Patricia Jensen, Governor's Special Assistant for Appointments to Boards and Committees, 130 State Capitol, St. Paul, MN 55155; (612) 296-6614.

Governor's Task Force on Ridesharing has 15 positions open immediately, to be filled by: 1 state department commissioner, 2 elected officials from outside the 7 county metro area, 2 elected officials from within the metro area, up to 5 chief executive officers (or their designees) from outside of the metro area, and up to 10 chief executive officers (or designees) from within the metro area. Task force will make recommendations to encourage wider use of car and van pools in the private and public sector; members are appointed by the Governor, and are compensated for expenses. For specific information, call or write Robert Benke, B-26A Transportation Building, St. Paul 55155; (612) 297-2069.

Governor's Task Force on Juvenile Justice has 15 positions open immediately, to be filled by: 4 elected officials, 1 juvenile court judge, 1 county attorney, 1 public defender, 1 juvenile officer, 1 law enforcement official, 1 educator, 1 member of court services, 1 senior citizen, 1 school administrator, and 2 public members. Task force will provide the Governor and the Legislature with an objective analysis of the state juvenile justice system from a statewide and system-wide perspective; members are appointed by the Governor, and compensated for expenses. For specific information, call or write Robert Griesgraber, 444 Lafayette Road, St. Paul, MN 55101; (612) 296-3052.

State Ceremonial Building Council has 7 positions open immediately, to be filled by: 1 member in the field of higher education, 1 member of the American Society of Interior Designers, 1 member of the American Institute of Architects, 1 member of the American Society of Landscape Architects, one member of the family that donated the building to the state, and 4 public members. The council develops an overall restoration plan for the Governor's mansion; members are appointed by the Governor, and receive no compensation. For specific information, call or write Patricia Jensen, Governor's Special Assistant for Appointments to Boards and Committees, 130 State Capitol, St. Paul, MN 55155; (612) 296-6614.

Elementary-Secondary-Vocational (ESV) Computer Council has 11 positions open immediately, to be filled by: 4 representatives of school districts, 2 representatives of regional management information center governing boards, 4 management representatives (2 private sector and 2 public sector) including 2 data processing managers, and 1 public member. Council advises the Commissioner of Education regarding ESV-IS (Elementary, secondary and vocational education management information systems) and SDE-IS (State Department of Education information system); members are appointed by the Governor and receive \$35 per diem. For specific information, call or write Ron Lalibergter, Board of Education, Capitol Square Building, St. Paul, MN 55101; (612) 296-8420.

Governor's Task Force on Highways for Economic Vitality has 15 positions open immediately, to be filled by: 2 labor representatives, 2 business representatives, 2 persons involved in agricultural production, 2 persons involved in recreational enterprise, 3 public members, and 4 legislators (2 DFL, 2 IR). Task force will determine long range (6-10 year) highway needs and make recommendations to the governor and the Legislature; members are appointed by the Governor. For specific information, call or write Kent Eklund, Department of Economic Development, 480 Cedar St., St. Paul, MN 55101; (612) 296-3924.

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

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