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# STATE REGISTER

STATE OF MINNESOTA

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**VOLUME 5, NUMBER 38**

**March 23, 1981**

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**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 5			
39	Monday Mar 16	Monday Mar 23	Monday Mar 30
40	Monday Mar 23	Monday Mar 30	Monday Apr 6
41	Monday Mar 30	Monday Apr 6	Monday Apr 13
42	Monday Apr 6	Monday Apr 13	Monday Apr 20

\*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 and notices of intent to adopt rules without a public hearing 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, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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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:

- Calendar of Public Hearings on Proposed Rules.
• Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A 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:

Table with 2 columns: Issue range and Issue number. Includes: Issues 1-13, inclusive; Issues 14-25, inclusive; Issue 26, cumulative for 1-26; Issue 27-38, inclusive; Issue 39, cumulative for 1-39; Issues 40-51, inclusive; Issue 52, cumulative for 1-52.

The listings are arranged in the same order as the table of contents of the MCAR.

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## Public Hearings on Agency Rules March 27-April 3

Date	Agency & Rule Matter	Time & Place
Mar 27	State Board of Education Department of Education Prohibition of Discriminatory Practices in Athletic Programs in Public and Elementary Schools Hearing Examiner: George Beck	9:00 a.m., Room D, Veterans Services Building, 20 W. 12th Street & Columbus Avenue St. Paul, MN 55155
Apr 2	State Board of Education Department of Education Licensure Requirements for Head Varsity Coaches of Interscholastic Sports in Senior High Schools Hearing Examiner: Peter Erickson	9:00 a.m., Room D, Veterans Services Building 20 W. 12th Street & Columbus Avenue, St. Paul, MN 55155
Apr 3	State Board of Education Department of Education Standards & Procedures of Special Education Instruction & Services for Children & Youth Who Are Handicapped Hearing Examiner: Jon Lunde	9:00 a.m., Room D, Veterans Services Building, 20 W. 12th Street & Columbus Avenue, St. Paul, MN 55155

# PROPOSED RULES

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Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
  2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
  3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

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 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

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## Department of Agriculture Dairy Industries Division

### Proposed Amendments to Rules Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (Chapter 47: AGR 1149-1167)

#### Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt amendments to the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these amendments to the rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subdivisions 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

Authority for the adoption of these rules is contained in Minnesota Statutes, § 32.394, subdivision 4. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments to the rules and identifies the data and information relied upon to support the proposed amendments to the rules has been prepared and is available from Mr. Heil upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Heil.

The amendments are proposed in order to adopt an updated version of the federal standard for the identity, production, and processing of Grade A milk, milk products, and goat milk. The 1965 Recommendations of this federal standard, the Grade A Pasteurized Milk Ordinance, are currently used in Minnesota. The proposed amendments would incorporate the 1978 Recommendations of the Grade A Pasteurized Milk Ordinance, identify for Grade A designation in Minnesota milk products included in Supplement I to the 1978 Recommendations, and make minor technical and grammatical changes. If adopted, the

## PROPOSED RULES

proposed amendments to the rules would assure continued interstate acceptance of Minnesota milk and milk products and assure consumers an adequate supply of safe and wholesome Grade A milk, milk products, and goat milk.

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

Copies of this Notice and proposed amendments to the rules are available and may be obtained by contacting Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

Mark W. Seetin  
Commissioner of Agriculture

### Amendments as Proposed

#### 3 MCAR § 1.1149 Purpose and authority.

A. Purpose. A regulation defining “milk”, “condensed milk,” “dry milk products,” “condensed whey,” “dry whey,” “cottage cheese,” and certain “milk products,” “milk producer,” “pasteurization,” etc.; prohibiting the sale of adulterated and misbranded milk and milk products; requiring permits for the sale of Grade A milk and Grade A milk products; regulating the inspection of Grade A dairy farms and Grade A milk plants, the examination, grading, labeling, pasteurization, distribution and sale of Grade A milk and Grade A milk products; providing for the construction of future Grade A dairies and Grade A milk plants, and the enforcement of this regulation. ~~and the fixing of penalties.~~

B. Authority. The rules contained herein are prescribed pursuant to Minn. Stat. § 32.394, subd. 4 by the commissioner to provide regulations regarding the identity, production and processing standards for milk, milk products and goat milk which are intended to bear the Grade A label.

C. Definitions. As used in 3 MCAR § 1.1149 through 3 MCAR § 1.1167, the following definitions shall apply:

1. “Regulatory agency” shall mean the commissioner of the Minnesota Department of Agriculture.

2. “Grade A Pasteurized Milk Ordinance” shall mean the “Grade A Pasteurized Milk Ordinance—1978 Recommendations” and the “Grade A Condensed and Dry Milk Products and Condensed and Dry Whey—Supplement I to the Grade A Pasteurized Milk Ordinance 1978 Recommendations”, including all footnotes and appendixes, standards of the United States Public Health Service/Food and Drug Administration. A copy of this ordinance shall be filed in the office of the regulatory agency.

3 MCAR § 1.1150 ~~Agr 1149~~ Enforcement. The production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products intended to bear the Grade A label and sold for ultimate consumption within the state of Minnesota, including the inspection of dairy herds, dairy farms, milk plants, receiving stations and transfer stations and the issuing and revocation of permits to milk producers, haulers, distributors, milk plants, receiving stations and transfer stations, shall be regulated in accordance with the provisions of ~~Part H of the 1978 Grade A Pasteurized Milk Ordinance, 1965 Recommendations of the U.S. Public Health Service,\* including footnotes,~~ with the following exceptions:

A. (a) [Omit Sections 9, 16 and 17 in their entirety.]

(b) Omit footnote 2 as it relates to the definitions for cream, light cream, coffee cream, table cream, whipping cream, light whipping cream, heavy cream, heavy whipping cream, cottage cheese and creamed cottage cheese.

(c) Definitions for egg nog and egg nog flavored milk as set forth in Agr 1150 and Agr 1151 below shall be included in the definition of milk products (Section 1-0).

B. The definitions of egg nog flavored milk and cottage cheese as set forth in 3 MCAR § 1.1151 and 3 MCAR § 1.1152 below shall be included in the definition of milk products.

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

## PROPOSED RULES

~~Agr 1150 Egg Nog.~~ "Egg Nog." Egg nog is a milk product consisting of a mixture of milk or milk product of at least 6.0 per cent butterfat, at least 1.0 per cent egg yolk solids, sweetener and flavoring, emulsifier and not over 0.5 per cent stabilizer may be added. Egg nog shall be pasteurized in approved and properly operating equipment so that every particle is heated and continuously held for the following minimum specified times and temperatures:

~~155°F. and held at or above this temperature for at least 30 minutes.~~

~~175°F. and held at or above this temperature for at least 25 seconds.~~

3 MCAR § 1.1151 ~~Agr 1151~~ Egg nog flavored milk. "Egg nog flavored milk" Egg nog flavored milk is a milk product consisting of a mixture of at least 3.25 per cent butterfat, at least 0.5 per cent egg yolk solids, sweetener, and flavoring, e Emulsifier and a maximum of 0.5 per cent stabilizer may be added<sup>2</sup>. Egg nog flavored milk shall be pasteurized in approved and properly operating equipment so that every particle is heated and continuously held for the following minimum specified times and temperatures:

150° F. and held at or above this temperature for at least 30 minutes.

166° F. and held at or above this temperature for at least 16 seconds.

3 MCAR § 1.1152 Cottage cheese defined.

A. Cottage cheese. Cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.128.

B. Dry curd cottage cheese. Dry curd cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.129.

C. Lowfat cottage cheese. Lowfat cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.131.

~~Agr 1152 Health Authority.~~ "Health authority" as used herein shall mean the commissioner.

3 MCAR § 1.1153 ~~Agr 1153~~ Minimum requirements. All references herein to municipalities, municipal ordinances or police jurisdiction shall refer to the local subdivisions of state government having jurisdiction, provided such local subdivision's subdivisions' standards are not inconsistent herewith. In all other cases the provisions of this chapter shall apply and the state of Minnesota shall be the proper legal jurisdiction.

3 MCAR § 1.1154 ~~Agr 1154~~ Examination of milk and milk products. Sampling procedures and laboratory examinations as set forth in Section 6 shall be in substantial compliance with the ~~Eleventh~~ Fourteenth Edition of Standard Methods for the Examination of Dairy Products of the American Public Health Association, and the ~~Tenth~~ Thirteenth Edition of Official Methods of Analysis of the Association of Official ~~Agricultural~~ Analytical Chemists.

~~Agr 1155 Unconstitutionality clause.~~ The various provisions of this regulation shall be severable, and if any part or provision shall be held to be invalid, it shall not be held to invalidate any other part or provision thereof.

~~Agr 1156 Effective date.~~ The regulation shall be effective July 1, 1967.

~~\*A certified copy of the Grade A Pasteurized Milk Ordinance—1965 Recommendations of the U.S. Public Health Service shall be filed in the office of the Commissioner.~~

3 MCAR §§ 1.1155-1.1167 ~~Agr 1157-1167~~ [Reserved for future use.]

Filed 6-14-67

## Department of Revenue Property Equalization Division

### Proposed Rules Governing the Apportionment of the Value of Railroad Operating Property to Counties and Taxing Districts

#### Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the State of Minnesota Department of Revenue proposes to adopt the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these rules will be uncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).



Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such requests to:

Gerald D. Garski, Manager  
State Assessed Properties  
Property Equalization Division  
Minnesota Department of Revenue  
Centennial Office Building  
St. Paul, MN 55145  
(612) 296-5131

Authority for the adoption of these rules is contained in Minnesota Statutes, §§ 270.06 (14), 270.81 subd. 5 and specifically 270.86. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from G. D. Garski at the above listed address upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to G. D. Garski at the above listed address.

The rules proposed for adoption relate to the following matters: definitions of terms; general comments on the apportionment method; a description of the reporting requirements and computation of the three apportionment components of railroad operating land, miles of track, and railroad structures which will be used in the apportionment method; a narrative description and a comprehensive numerical example of the complete apportionment computation.

Copies of this Notice and the proposed rules are available and may be obtained by contacting G. D. Garski either in writing or by telephone.

Clyde E. Allen, Jr.  
Commissioner of Revenue

## **Rules as Proposed**

### **Chapter Two: Valuation and Assessment of Railroads**

**13 MCAR § 1.0022 Definitions.** As used in this chapter, the following words, terms and phrases shall have the meanings given to them by this rule. Some of the words, terms and phrases listed below are defined by statute but are included here for completeness.

A. "Allocation" means the process by which a fair and reasonable portion of each railroad's total unit value is assigned to Minnesota for purposes of taxation.

B. "Apportionment" means the process of distributing that portion of the railroad's unit value which has been allocated to Minnesota after deducting exempt and non-operating property to the various counties and taxing districts in which the railroad company operates.

C. "Book depreciation" means the depreciation shown by a railroad company on its corporate books, and allowed the company by the Interstate Commerce Commission.

D. "Capitalization rate" means an anticipated rate of return from an investment; a rate at which income is processed (capitalized) to indicate the probable capital value. This rate is usually expressed as a percentage.

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E. "Exempt property" means property which is non-taxable for ad valorem tax purposes by statutes. Examples of such property are approved pollution control equipment for which an exemption has been granted, and personal property otherwise exempt from taxation under Minn. Stat. ch. 272.

F. "I.C.C." means the Interstate Commerce Commission, a Federal regulatory agency.

G. "Mainline track" means all track reported to the I.C.C. by the respondent railroad as main line.

~~H.~~ "Non-operating property" means all property owned by a railroad company which does not fall under the definition of operating property. Non-operating property shall include real property which is leased or rented or available for lease or rent to any person which is not a railroad company. Vacant land shall be presumed to be available for lease or rent if it has not been used as operating property for a period of one year preceding the valuation date. It shall also include land which is not necessary and integral to the performance of railroad transportation services and which is not used on a regular and continual basis in the performance of these services.

~~I.~~ "Operating property" means all property owned or used on a regular and continual basis by a railroad company in the performance of railroad transportation services, including without limitation franchises, rights-of-way, bridges, trestles, shops, docks, wharves, buildings and structures.

~~J.~~ "Original cost" means the amount paid for an asset as recorded on the railroad's books in accordance with ICC accounting rules and regulations.

~~K.~~ "P.U.C." means the Minnesota Public Utilities Commission.

~~L.~~ "Railroad company" means any company which as a common carrier operates a railroad or a line or lines of railway situated within or partly within Minnesota.

M. "Structure" means all coal and ore wharves or docks, station houses, depots, shops, office buildings, and all other buildings with an original cost of over \$10,000.

~~N.~~ "System" means the total tangible property, real and personal, of a company which is used in its railroad operations in all states in which it operates.

~~O.~~ "Unit value" means the value of the system of a railroad company taken as a whole without any regard to the value of its component parts.

~~P.~~ "Weighting" means the confidence or reliability given to a factor or indicator. It is usually expressed as a portion of 100%.

### 13 MCAR § 1.0027 Apportionment.

A. General. After the taxable Minnesota portion of the railroad's unit value has been determined this value must be distributed to the various counties and taxing districts in which the railroad operates. This distribution will be accomplished by the Commissioner of Revenue through the use of certain apportionment components. Each of the components in the apportionment method is a reflection of the property owned or used by the railroad within a particular taxing district. The figures making up these components will be developed on the basis of information submitted by the railroad companies in annual reports filed with the commissioner, and information supplied to the commissioner by the various county auditors and assessors.

B. Apportionment components. There are three components which will be used in the distribution of the value of railroad property to the various taxing districts. They are: railroad operating land, miles of track, and railroad operating structures with an original cost of \$10,000 or more.

1. Railroad operating land. The information for the computation of this apportionment component will be based on information submitted by both the railroads and the various county auditors and assessors. The railroad companies shall file with the Commissioner of Revenue each year, in conjunction with their Annual Reports required by 13 MCAR § 1.0023 A., the number of acres of railroad operating land owned or used by them in each taxing district in which they operate. The county auditor shall also be requested to submit to the Commissioner of Revenue a report showing the number of acres of railroad operating land, detailed by owning railroad, in each taxing district within his county. If either the railroads or the auditors find that it is administratively impracticable to submit this information, the commissioner shall make an estimate of the number of acres of railroad operating land within each taxing district based on the best information available to him. Such information would usually consist of the miles of railroad track within the taxing district and the normal width of the right-of-way used by the railroad. In addition, information relative to the current estimated market value of all land within the respective taxing districts will be obtained from the county or city assessors by a review of the Abstract of Assessment of Real and Personal Property which the various assessors are required to submit yearly to the Commissioner of Revenue in compliance with Minn. Stat.

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§ 273.061, subd. 9. A review will also be made of the Abstract of Assessment of Exempt Real Property which is submitted to the Commissioner of Revenue by the various assessors in compliance with Minn. Stat. § 273.18.

The computation for the railroad operating land apportionment component will be accomplished annually in the following manner:

a. The average estimated market value per taxable acre within a specific taxing district will be calculated by dividing the estimated market value of all taxable land within the taxing district (as indicated by the most recent Abstract of Assessment of Real and Personal Property) by the number of taxable acres within the taxing district. The number of acres within a taxing district will be obtained from the most recent statistics available from the Land Management Information Center, State Planning Agency. The total number of acres will be adjusted to allow for non-taxable or exempt acres by subtracting these non-taxable or exempt acres from the total acres. The number of non-taxable or exempt acres will be obtained from the most recent Abstract of Assessment of Exempt Real Property. The following example illustrates this calculation.

Estimated Market Value of All Taxable Land Within Taxing District		\$200,000
Total Area of Taxing District	210 Acres	
Non-Taxable or Exempt Acres	<u>10 Acres</u>	
Taxable Acres within Taxing District		<u>200</u>
Average Estimated Market Value per Acre		<u>\$ 1,000</u>

b. This average estimated market value per taxable acre is then applied to the number of acres of railroad operating land within the taxing district to compute a gross railroad operating land component within the taxing district. The following example illustrates this computation:

Average Estimated Market Value Per Acre	\$1,000
Acres of Railroad Operating Land	<u>× 5</u>
Gross Railroad Operating Land Component	<u>\$5,000</u>

c. This railroad operating land component will then be adjusted. This adjustment is achieved by striking a ratio between the System Unit Value for all Minnesota railroads as described in 13 MCAR § 1.0024 E to the total of Investment in Railway Property Used in Transportation Service as defined by the I.C.C. for all railroads operating in Minnesota. This relationship will be computed annually and will then be applied to the Gross Railroad Operating Land Component to arrive at the Adjusted Railroad Operating Land Component. This adjusted land value will then be used as one element of the apportionment computation.

The following is an example of how the Adjusted Railroad Operating Land Component is to be computed:

<u>Railroad</u>	<u>System Unit Value</u>	<u>Investment in Railway Prop. Used in Trans. Services</u>
ABC Railway	\$20,000,000	\$ 40,000,000
FGH Railway	5,256,000	8,000,000
JKL Railroad	2,000,000	4,780,830
MNO Railroad	50,000,000	90,000,000
XYZ Railroad	<u>22,212,500</u>	<u>25,000,000</u>
	\$99,468,500	\$165,780,830

Total System Unit Value (\$99,468,500 ÷ Total Investment in Railway Property Used in Transportation Services (\$165,780,830) = 60%

Gross Railroad Operating Land Component	
Within the Taxing District	\$5,000
Adjustment Factor	<u>60%</u>
Adjusted Railroad Operating Land Component	<u>\$3,000</u>

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2. Miles of track. The information for the computation of this apportionment component will be based on information submitted by the railroads to the Commissioner of Revenue in conjunction with the Annual Report required by 13 MCAR § 1.0023 A. Each railroad will be required to list the miles of track they own in each taxing district within Minnesota. The track must be separated into two classes; main line track and all other track.

In order to make the miles of track in each taxing district compatible with the other apportionment components, the miles must be converted to dollars. This conversion will be computed annually. The conversion will be accomplished by adding together the following I.C.C. accounts for each railroad's investment in Minnesota: Account 1 Engineering, Account 3 Grading, Account 8 Ties, Account 9 Rails, Account 10 Other Track Material, Account 11 Ballast, Account 12 Track Laying. The total of these accounts will then be divided by the number of miles of track operated by the respective railroads within Minnesota to obtain a cost per mile figure. This will be used as the average cost per mile for track within Minnesota.

The following is an example of how the average cost per mile of track in Minnesota will be computed.

<u>Railroad</u>	<u>Total of Accts. #1,3,8,9,10,11,12</u>	<u>Mileage Operated in Minn.</u>
ABC Railway	\$4,000,000	154
FGH Railway	800,000	42
JKL Railway	500,000	20
MNO Railway	7,450,000	290
XYZ Railway	2,500,000	104
	<u>\$15,250,000</u>	<u>610</u>

Total cost of track (\$15,250,000) ÷ Total miles operated (610)  
 = Average Cost per Mile of Track \$ 25,000

An additional calculation is necessary to adjust this average cost per mile of track to allow for weighting. Mainline track shall be weighed at 1.5 times the cost of all other track; thus if the average cost per mile of track is \$25,000, mainline track would be worth more than \$25,000 per mile, while all other track would be worth less. The calculation for the average cost of both main line and all other track shall be made annually on an industry basis.

The calculation to determine the average cost per mile of mainline track and the average cost per mile of all other track will be computed in the following manner:

- Total mileage operated will be multiplied by the average cost per mile to arrive at a total track cost.
- Total mileage operated will be separated into the two types of track, main line and all other track.
- Main line track will be multiplied by 1.5 to arrive at adjusted main line miles.
- Adjusted main line miles will be added to all other track miles to arrive at adjusted total track miles.
- Total track cost will be divided by adjusted total track miles to arrive at the cost per mile of all other track.
- The cost per mile of main line track will be computed by multiplying the cost per mile of all other track by 1.5.

An illustration of this computation is as follows:

<u>Railroad</u>	<u>Mileage Operated</u>	<u>Main Line Miles</u>	<u>All other Track Miles</u>
ABC Railway	154	96	58
FGH Railway	42	10	32
JKL Railway	20	15	5
MNO Railway	290	132	158
XYZ Railway	104	52	52
	<u>610</u>	<u>305</u>	<u>305</u>
Total Mileage Operated			610
Average Cost Per Mile of Track			<u>\$ 25,000</u>
Total Track Cost			\$15,250,000
Main Line Miles		305	
Weighting Factor		1.5	
Adjusted Main Line Miles		457.5	
Other Track Miles		<u>305.0</u>	
Adjusted Total Track Miles		762.5	

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Total Track Cost	\$15,250,000
Adjusted Total Track Miles	÷ 762.5
Average Cost Per Mile of Other Track	<u>\$ 20,000</u>
Average Cost Per Mile of Other Track	\$ 20,000
Weighting Factor	1.5
Average Cost Per Mile of Main Line Track	<u>\$ 30,000</u>

After the per mile cost figures for main line and all other track are obtained, these per mile cost figures would be multiplied by the length of each type of track in a particular taxing district to obtain the value of the trackage in that district. The same cost figures will be used for all railroads operating in Minnesota.

3. Structures. The information for the computation of this apportionment component will be based on statements submitted by the railroads. These schedules shall be submitted annually to the Commissioner of Revenue in conjunction with the Annual Report required by 13 MCAR § 1.0023 A. The schedules shall show the location, by taxing district, of all operating structures owned by the reporting railroad within Minnesota with an original cost of \$10,000 or more. The schedules shall list a description of the structure and the railroad's current original cost investment in the structure as it appears in the appropriate I.C.C. account.

An example of this listing is as follows:

XYZ RAILROAD

<u>Taxing District</u>	<u>Description</u>	<u>Original Cost</u>
St. Paul, S.D. #625	Office Building	\$400,000
Minneapolis, S.D. #1	Depot	20,000
Fridley, S.D. #16	Yard Tower	200,000
Anoka, S.D. #11	Engine and Car Shop	<u>250,000</u>
	Total	<u>\$870,000</u>

C. Apportionment computation. After the three apportionment components have been calculated for each taxing district in which the railroad operates, the apportionment of the railroads taxable Minnesota portion of the unit value can begin. This apportionment is accomplished by totaling the value of the land, track, and structure components as developed in 13 MCAR § 1.0027 B. 1., 2. and 3 for each taxing district, then finding the sum of these totals for all the taxing districts in which the subject railroad operates. The taxable Minnesota portion of the railroad's unit value is divided by this total value of the three apportionment components for all taxing districts in which the railroad operates in order to arrive at a percentage. This resulting percentage is then applied to the total value of the three apportionment components for each specific taxing district. The figure produced by this multiplication process is the taxing district's share of the railroad's taxable Minnesota portion of the unit value. It is important to note that no more value can be distributed to the various taxing districts than that produced by the valuation process described in 13 MCAR § 1.0021 to 1.0026 inclusive.

The following example illustrates the apportionment process:

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# ADOPTED RULES

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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.

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## Department of Administration Building Codes and Standards Division

### Adopted Rule, National Electrical Code, 1981 Edition

The rule proposed and published at *State Register*, Volume 5, Number 30, p. 1159, January 26, 1981 (5 S.R. 1157) was adopted by the Commissioner of the Department of Administration, James J. Hiniker, Jr., February 26, 1981, approved by the Office of the Attorney General, March 4, 1981, and filed with the Office of the Secretary of State, March 6, 1981.

#### Rule as Adopted

2 MCAR § 1.18601 Electrical. Scope. All new electrical wiring, apparatus, and equipment for electric light, heat and power shall comply with the regulations contained in the 1981 edition of the National Electrical Code (NEC) as approved by the American National Standards Institute (ANSI-CI-1981) and Minn. Stats. 326.243 and the State Building Code as promulgated by the commissioner of administration. Synopsis as follows:

## Office of Administrative Hearings

### Adopted Rules Governing Revenue Recapture Act Hearings

The rules proposed and published at *State Register*, Volume 5, Number 22, pp. 867-873, December 1, 1980 (5 S.R. 867) are adopted with the following amendments:

#### Rules as Adopted

9 MCAR § 2.501 Scope and waiver of these rules.

A. Scope. These rules govern hearings between state agencies and ~~citizens taxpayers~~ based on the Revenue Recapture Act, (Laws of Minnesota 1980, Chapter 607, Article XII, to be codified as Minnesota Statutes, §§ 270A.01 to 270A.12 (1980)). In addition, these rules may be used for any other hearings conducted by the State Office of Administrative Hearings if all parties to a particular hearing agree to use them. In the event that these rules are used for a proceeding other than one arising under the Revenue Recapture Act, the parties shall agree upon appropriate substitutions for terms in the rules which are peculiar to the Revenue Recapture Act (example: claimant agency, debtor, etc.).

B. Waiver and modification. Upon request of all parties, the hearing examiner shall waive or modify any of these rules, provided that such waiver or modification does not conflict with any provision of Minn. Stat. §§ 15.0418 to 15.0426, § 15.052, or §§ 270A.01 to 270A.12 (1980).

9 MCAR § 2.502 Definitions.

- A. Agency, claimant agency. Agency or claimant agency means the state or public agency asserting a claim to a tax refund.
- B. Debtor. Debtor means a natural person whose tax refund is the subject of a claim by the claimant agency.
- C. Party. Party means the claimant agency, the debtor, and any other persons granted permission to intervene pursuant to 9 MCAR § 2.506 of these rules.
- D. Service, serve. Service or serve may be accomplished by either:
1. Delivering a document to an individual in person or by leaving a document at his/her home with some person of suitable age and discretion who resides in the same house. If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution; or,

2. Mailing the document to the person by first class United States mail. Postage shall be prepaid. Mail to a person other than a state agency shall be addressed to the last known address of the person. Agencies of the State of Minnesota may also deposit the document with the Central Mailing Section, Publications Division, Department of Administration, addressed as above.

**9 MCAR § 2.506 Additional parties—intervention.**

A. Petition. Any person not named in the Notice of Hearing who desires to participate as a party shall submit a ~~timely~~ written petition to intervene to the examiner and shall serve a copy of the petition upon all existing parties and the agency. ~~Timeliness will be determined by the examiner in each case based on circumstances at the time of filing.~~ The petition shall show (1) how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceeding, (2) shall set forth the grounds and purposes for which intervention is sought, and (3) shall indicate petitioner's statutory right to intervene if one should exist.

B. Objection. Any party may object to the petition for intervention by filing a written Notice of Objection with the examiner within seven days of service of the petition if there is sufficient time before the hearing. The Notice shall state the party's reasons for objection and a copy shall be served upon all parties, the person petitioning to intervene and the agency. If there is insufficient time before the hearing for such written objection, the objection may be made orally at the hearing.

C. Order. The examiner shall allow intervention upon a proper showing pursuant to paragraph A. above unless the examiner finds that the Petitioner's interest is adequately represented by one or more other parties participating in the case.

**9 MCAR § 2.507 Prehearing procedures.**

A. Prehearing conference. ~~If the amount in controversy in any case exceeds \$1,000~~ Upon the request of any party or upon his/her own motion, the examiner ~~may~~ shall hold a prehearing conference prior to the hearing, if the amount in controversy in any case exceeds \$1,000.

1. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined at the hearing; to consider amendment of the agency's Notice if necessary; to obtain agreements in regard to uncontested facts or admissibility of testimony or exhibits; to determine the identity and number of 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.

2. Procedure. A prehearing conference shall be an informal proceeding conducted expeditiously by the examiner. Agreements on the simplification of issues, uncontested facts, admissibility of evidence, or other matters shall be either entered on the record at the hearing or be made the subject of a written order by the examiner.

B. Prehearing motions. If a party desires the examiner to issue an order before the hearing or during a continuance in the hearing, (other than a request for a continuance or a subpoena), he/she shall make a request to the examiner in writing. The request shall state, in detail, the need for the order and what is being requested. A copy of the request shall be served upon all known parties. If a party is opposed to the granting of a motion, he should notify the examiner as soon as possible. Orders on motions may be either oral or written but the examiner shall notify all parties of record of the order.

**9 MCAR § 2.509 Subpoenas.**

A. Requests. A party desiring to compel the attendance of a witness or the production of documents shall file with the examiner a written request for a subpoena. The request shall indicate:

1. The name and address of the person upon whom the subpoena will be served;
2. A brief statement of the potential relevance of the testimony or documents sought;
3. If the subpoena request is for the production of documents, the documents sought should be identified with specificity.

B. Service of subpoenas. Subpoenas shall be served personally in the manner provided in 9 MCAR § 2.502 D.1. They shall not be served by mail. The witness fees provided for service of subpoenas applicable in the District Courts by pursuant to Minn. Stat. § 357.22 shall apply and shall be paid to the potential witness at the time of service. Such fees are \$10 per day for each day of attendance plus 12 cents per mile for travel going to and returning from the place of attendance, to be estimated from the witness' residence.

C. Objection to a subpoena. Any person served with a subpoena who has an objection to it may file an objection with the

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examiner. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The examiner shall cancel or modify the subpoena if he/she finds that it is unreasonable or oppressive, taking into account (1) the issues or amounts in controversy, (2) the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and (3) whether or not there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers or other tangible things.

### 9 MCAR § 2.511. Conduct of the hearing procedures.

~~A.~~ ~~Conduct of the hearing.~~ The hearing shall be conducted substantially in the following manner:

~~A.1.~~ The examiner shall open the hearing by reading the title of the case, stating the amount claimed by the claimant agency and briefly stating the facts as alleged in the Notice of Hearing which give rise to the claim.

~~B.2.~~ 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.3.~~ The claimant agency shall have the burden of proof and shall begin the presentation of evidence. It shall be followed by the other parties in a sequence determined by the examiner.

~~D.4.~~ Testimony may be given in narrative fashion by witnesses rather than by question and answer format.

~~E.5.~~ Cross-examination of witnesses shall be conducted in a sequence and in a manner determined by the examiner to expedite the hearing while ensuring a fair hearing. At the request of the party whose witness is being cross-examined, the examiner shall make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

~~F.6.~~ Any party may be a witness or may present other persons as witnesses at the hearing. All oral testimony at the hearing shall be under oath or affirmation.

~~G.7.~~ A party may question an adverse party or any witness identified with an adverse party, by leading questions and contradict and impeach him/her on material matters.

~~H.8.~~ When all parties and witnesses have been heard, the hearing shall be closed unless a continuance has been ordered under ~~9 MCAR § 2.410~~ 2.510.

9 MCAR § 2.517 Timing of the decision. Following the close of the record, the examiner shall make his/her report pursuant to 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.

## Department of Commerce Insurance Division

### Adopted Rules Governing the Issuance and Sale of Variable Life Insurance

The rules proposed and published at the *State Register*, Volume 5, No. 24, pp. 960-971, December 15, 1980 (5 S.R. 960) are adopted with the following amendments:

#### Amendments as Adopted

#### 4 MCAR § 1.9403 Qualification of insurer to issue variable life insurance.

A. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless it has complied with Minn. Stat. §§ 61A.13 to 61A.21 and 4 MCAR §§ 1.9401-1.9412~~1~~, and the commissioner has granted the insurer the authority to issue variable life insurance policies in the State of Minnesota pursuant to § 61A.20.

#### 4 MCAR § 1.9404 Insurance policy requirements.

B. Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

3. A minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of 4 MCAR § 1.9404 C.2.).



7. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other nonforfeiture benefits, as described either in the policy or in a statement filed with the commissioner or person fulfilling the equivalent function of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by Minn. Stat. § 61A.24 (Standard Non-Forfeiture Law) for a fixed benefit policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Non-Forfeiture Law of this state. The method of computation may disregard incidental minimum guarantees as to the dollar amount payable. Incidental minimum guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

C. Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

9. a description of the basis for computing the cash surrender value under the policy shall be included. Such surrender value may be expressed as either:

b. one cash value schedule as described in paragraph (1.) for the death benefit, or for each one thousand dollars of death benefit, which would be in effect if the net investment return is always equal to the assumed investment rate and a second schedule applicable to any adjustments to the death benefit (disregarding the minimum death benefit guarantee and term insurance amounts) if the net investment return does not equal the assumed investment rate at each age for at least 20 years from issue, or for the premium paying period if it is less than 20 years.

E. Other policy provision.

3. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans or partial withdrawals under 4 MCAR § 1.9404 ~~E.D.~~, except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.

4 MCAR § 1.9406 Separate accounts. The following requirements apply to the establishment and administration of variable life insurance separate accounts:

B. Amounts in the separate account.

2. The benefit base of any variable life insurance policy as of the beginning of any valuation period shall not be less than the sum of the following factors after deduction amounts of any indebtedness pursuant to 4 MCAR § 1.9404 ~~E.D.~~:

4 MCAR § 1.9407 Information furnished to applicants. ~~An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such applicant coincident with or prior to the execution of the application, the following information:~~ The requirements of 4 MCAR § 1.9407 are delivered, either in the form of (1) a prospectus included in a registration statement relating to the policies which satisfies the requirements of the Securities and Exchange Commission; or (2) all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3 (a) (2) thereof. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such application coincident with or prior to the execution of the application, the following information:

A. A summary explanation, in non-technical terms, of the principal terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by 4 MCAR § 1.9404 ~~B-C.~~ 1.e. and Minn. Stat. § 61A.03 (3).

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# ADOPTED RULES

## Department of Health Environmental Health Division

### Adopted Rules Relating to Mineral Explorers and Exploratory Borings

The rules proposed and published at *State Register*, Vol. 5, Number 8, pp. 267-271, August 25, 1980 (5 S.R. 267) are adopted with the following amendments:

#### Amendments as Adopted

7 MCAR § 1.210 Definitions and policies.

B.2. "Council" means the Water Well Contractors' and Exploratory Borers' Advisory Council created pursuant to the provisions of Minn. Stat. § 156A.06.

B.6. "Applicant" means any person who applies for a water well contractor's ~~or explorer's~~ license pursuant to the Act.

B.9. "Year of experience" for a water well contractor means a year during which the applicant personally drilled five (5) water wells and was actively working in the trade for a period of 1,000 hours under the supervision of a licensed water well contractor. An applicant drilling 1,000 hours per year and completing fewer than five wells per year may qualify, if the experience is gained in constructing one or more large diameter wells (casing outer diameter is ten inches or more) which are more than 500 feet deep. An applicant who seeks to qualify under this provision shall have his license limited to construction of such deep and large diameter wells. ~~A year of experience for an explorer means a year during which the applicant supervised or personally drilled five exploration borings.~~

B.10. "Licensee" means a person who is licensed as a water well contractor ~~or explorer~~ pursuant to the provisions of the Act and these rules.

~~7 MCAR § 1.225 This rule applies to all explorers who engage in exploratory boring in accordance with the provisions of Minn. Stat. § Chap. 156A (as amended by Laws 1980, Chap. 535).~~

#### A. Policies.

1. This rule shall apply to all exploratory borings constructed in the State of Minnesota except those specifically exempted by Minn. Stat. § 156A.02, subd. 5. Those aspects covered are the licensing of explorers, the examination of responsible individuals, and the proper abandonment of exploratory borings to protect the quality of groundwater aquifers. [The following sentence was previously under C.2.] The explorer shall be responsible for the construction and abandonment of all exploratory borings completed under his license.

~~E. Any request for modification of the provisions of rules applicable to exploratory borings shall be submitted according to the procedure prescribed in 7 MCAR § 1.210D.3.a. and b.~~

#### 2. Modification by the Commissioner.

a. When the strict application of any provision of this rule presents practical difficulties or unusual hardships, the commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this rule and the Act and upon such conditions as are necessary, in the opinion of the commissioner, to protect the ground water of the state and the health, safety, and general well-being of persons using or potential users of ground water.

b. Any request for modification shall be submitted to the commissioner in writing and shall be signed by the licensed explorer and the designated responsible individual. Such request shall specify in detail the nature of the modification being sought, the reasons therefor, and the special precautions to be taken to avoid contamination of the ground water. The request shall also include: the proposed boring depth, casing type and depth, method of construction and grouting, geological conditions likely to be encountered, and location of the boring and of possible sources of contamination. Whether or not the request is granted, the commissioner shall state in detail the reasons for the decision.

~~A. Unless otherwise specified in this rule, the definitions given in 7 MCAR § 1.210 B and C shall apply to the terms used in this rule, as appropriate.~~

B. Definitions. For the purpose of this rule, the following terms or phrases shall have the meaning given them, except where the context clearly indicates otherwise.

1. "Aquifer" means a water-bearing formation (soil or rock horizon).

2. "Act" means Minnesota Statutes §§ 156A.01-156A.08, as amended, under which this rule is promulgated.

3. “Annular space” means the space between two cylindrical objects one of which surrounds the other, such as the space between a drillhole and a casing pipe, or between a casing pipe and liner pipe.

4. “APA” means the Administrative Procedure Act, Chapter 15, Minnesota Statutes.

5. “Casing” means an impervious durable pipe placed in a boring to prevent the walls from caving and to seal off surface drainage or undesirable water, gas or other fluids to prevent their entering the boring and the ground water.

6. “Commissioner” means the commissioner of health or his or her authorized representative.

7. “Council” means the Water Well Contractors and Exploratory Borers Advisory Council, created pursuant to the provisions of Minnesota Statutes, § 156A.06.

8. “Established ground surface” means the intended or actual finished grade (elevation) of the surface of the ground at the site of the exploratory boring.

9. “Exploratory boring” means any surface drilling done for the exploration of oil, natural gas or metallic minerals as defined in Minnesota Statutes, § 156A.02, subd. 5.

10. “Explorer” means a person who has the right to drill any exploratory boring.

11. “Geological material” means all materials penetrated in drilling an exploratory boring.

a. The following table lists materials other than consolidated rock classified according to average particle size (Wentworth 1922):

Material	Particle Diameters						Screen Slot No.	
	Millimeters			Inches			From	To
Clay	Up to	—	0.005	Up to	—	0.0002		
Silt	0.005	—	0.062	0.0002	—	0.0025		
Fine sand	0.062	—	0.250	0.0025	—	0.010	2	10
Medium Sand	0.250	—	0.050	0.010	—	0.020	10	20
Coarse Sand	0.50	—	1.00	0.020	—	0.040	20	40
Very Coarse Sand	1.00	—	2.00	0.040	—	0.080	40	80
Fine Gravel	2.00	—	4.00	0.080	—	0.160	80	160
Coarse Gravel	4.00	—	62.50	0.160	—	2.50	60 & larger	
Cobbles	62.5	—	250.0	2.50	—	10.0		
Boulders	250.0 and larger			10.0 and larger				

b. “Limestone” means rock which contains at least 80% of carbonates of calcium and has strong reaction with HCl (muriatic acid).

12. “Ground water” means the water in the zone of saturation in which all of the pore spaces of the subsurface material are filled with water.

13. “Grout” means neat cement, concrete, heavy drilling fluid or heavy bentonite slurry.

a. “Neat cement” means a mixture of 1 bag (94 pounds) of Portland cement meeting the standard specifications of ASTM C150-69a, and not more than 6 gallons of clean water. Bentonite up to 2% by weight of cement may be used to reduce shrinkage. Other admixtures meeting the standard specifications of ASTM C494-68 may be used to reduce permeability and/or control time of set.

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## ADOPTED RULES

b. "Concrete" means a mixture of Portland cement, sand and water in the proportion of 1 bag (94 pounds) of Portland cement meeting the standard specifications of ASTM C150-69a, and an equal volume of dry sand and not more than 6 gallons of clean water. Where large volumes are required to fill annular openings, gravel not larger than 1/2-inch size may be added.

c. "Heavy drilling fluid" or "heavy bentonite slurry" shall contain a high percentage of clay or bentonite to minimize shrinkage of the slurry. Bentonite shall contain at least 85% of the mineral monmorillinite and shall meet American Petroleum Institute specification standard 13A (March 1966). Heavy drilling fluid or heavy bentonite slurry shall be of sufficient viscosity to require a time of at least 70 seconds to discharge 1 quart of the material through an API Marsh funnel viscometer. Saline, acid, or alkaline substances or other additives that cause a temporary increase in viscosity of the bentonite slurry are not permitted.

14. "Person" means any natural person, corporation, partnership, or other business association.

15. "Pollution" or "contamination" means the presence or addition of any substance to water which is or may become injurious to the health, safety or welfare of the general public or private individuals and which is or may become injurious to domestic, commercial, industrial, agricultural or other uses which are being made of such water.

16. "Responsible individual" means a person who has met the qualifications prescribed in C.4.a. and has been approved for designation by the Commissioner in accordance with the terms of C.4.c.

~~B. Licensing. The procedures and conditions for licensing of water well contractors which are contained in 7 MCAR § 1.211 A. through G. shall apply to the licensing of explorers, except that experience in supervising the construction of borings need not have been gained in Minnesota.~~

C. ~~Explorer responsibilities.~~ Licensing.

1. No person shall drill, construct or otherwise cause to be made, ~~constructed~~ any an exploratory boring within this state unless he possesses, or is employed by one who possesses, a valid explorer's license issued by the commissioner.

~~2. The explorer shall be responsible for the construction and abandonment of all exploratory borings completed under his license. [Moved to A.1.]~~

2. An explorer engaging in exploratory boring shall obtain a license in accordance with this rule.

3. A person shall annually apply for an explorer's license by submitting to the commissioner a properly completed application accompanied by a \$50.00 license fee, payable to the Treasurer, State of Minnesota. An explorer's license shall be effective for the calendar year for which it is issued.

a. The person applying for an explorer's license shall include the name of the responsible individual who will supervise or oversee the location, construction, and abandonment of exploratory borings on behalf of the explorer.

b. If the person applying for the explorer's license does not designate a responsible individual, the commissioner shall issue a conditional license. Such a license is not considered valid for the purpose of engaging in the construction of exploratory borings until a responsible individual has been designated and the commissioner has been notified of such designation. The notification of designation shall be made at least 10 days prior to the commencement of exploratory boring.

4. Qualification as responsible individual.

a. A person who seeks to qualify for designation as a responsible individual shall

(1) complete and submit an application for qualification to the commissioner, along with a \$50.00 fee which is payable to the Treasurer, State of Minnesota,

(2) take and pass an examination on the portions of this rule which relate to mineral exploration activities, or document the fact that he or she is a registered professional engineer or certified professional geologist, in accordance with Minn. Stat. § 156A.071, subd. 2.

(a) A person may take the examination as many times as he desires. Each new application for qualification shall be accompanied by a new fee.

(b) All applicants in any one examination session will be given the same combination of written, oral, or practical work based on the substance of this rule.

b. The commissioner shall not act upon the application for qualification until he has received all the information required by this rule.

c. When the commissioner determines that an individual has met all the qualifications prescribed in part C.4. (above), the commissioner shall notify the person and shall enter that person's name on a list of persons who qualify for designation as responsible individuals.

5. Revocation of license; disqualification.

a. The commissioner or council may cause an investigation to be made in any case in order to determine whether there has been a violation of the Act or this rule, and, in so doing may request the explorer and/or the designated responsible individual to appear before them to determine the merits of the situation in question. The council may make a recommendation to the commissioner as to whether proceedings under the act and the APA would be appropriate.

b. Any disciplinary action taken under this rule shall comply with the APA.

c. The commissioner may revoke the license of an explorer and may disqualify a responsible individual upon finding that the explorer or the designated responsible individual has violated the act or this rule. The commissioner may initiate such proceedings upon his own motion or upon recommendation of the council.

d. A license may be revoked and a responsible individual may be disqualified until certain conditions specifically related to the violations giving rise to the revocation are fulfilled and/or for a specified period of time as determined to be most appropriate by the commissioner and as specified in the commissioner's order of revocation. A revoked license shall be returned to the commissioner.

e. Reinstatement:

(1) An explorer who has had his license revoked may be relicensed by submitting the usual application and fee.

(2) A responsible individual who has been disqualified may be requalified by following the procedure prescribed in

C.4.a.

(3) The commissioner shall require an investigation or hearing to determine whether an explorer should be issued a new license or a responsible individual should be requalified provided, however, that in no case shall a new license be issued or a responsible individual be requalified prior to one year after revocation or disqualification has taken effect.

D. Procedures for location, construction and abandonment of exploratory borings:

1. Location and construction:

a. An exploratory boring shall be located in accordance with the isolation distances from sources of contamination which are specified in 7 MCAR § 1-217 C.1.a. through e.

b. An exploratory boring shall be constructed in a location and maintained in such a manner as to prevent all known sources of contamination from entering the boring at any time.

c. Any boring which encounters a cavernous limestone formation shall be cased and grouted to prevent the introduction of surface water into the groundwater and to prevent the passage of water from one aquifer to another. The casing and grouting procedures are prescribed in 7 MCAR § 1-220 A., C. and H.

d. No boring shall be open except during the time when it is actually being drilled or logged.

2. Abandonment.

D. Abandonment of exploratory borings.

1.2.a. Abandonment of all exploratory borings shall be carried out in accordance with the provisions of chapter 156A and these this rules (7 MCAR § 1-210 1-225) as appropriate. b. Abandonment, whether temporary or permanent, shall be undertaken immediately upon completion of drilling activities. The commissioner may order that an exploratory boring be sampled and any contamination be removed prior to abandonment. If an exploratory boring provides a potential or actual source or channel of contamination for an aquifer, the commissioner may order that the boring be permanently abandoned.

2. Temporary abandonment.

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a. A temporarily abandoned exploratory boring shall be maintained whereby it is not a source or channel of contamination for any aquifer.

b. Until a boring is permanently abandoned, all provisions for protection of the ground water against contamination and pollution and for maintaining satisfactory sanitary conditions around the boring shall be carried out.

e.(1) A boring which is temporarily abandoned shall be cased from bedrock or the bottom of the boring, to one foot above the ground surface, or if in a flood plain at least two feet above the level of the highest flood of record, and protected with a water-tight cap which will prevent any surface contamination from entering the boring.

(2) Any boring which is temporarily abandoned shall be marked and protected with four steel posts as prescribed in 7 MCAR § 1.217 C.4.b.

c. A boring which is temporarily abandoned shall be constructed to prevent the introduction of surface contaminants into the boring to prevent the passage of water from one aquifer to another. At the minimum, a temporarily abandoned boring shall be cased from bedrock or from the bottom of the boring if the boring terminates in unconsolidated materials, to a point one foot above the ground surface, or if in a flood plain, at least two feet above the level of the highest flood of record. The casing shall be protected with an overlapping cap which will prevent any surface contamination from entering the boring.

d. Any boring which is temporarily abandoned shall be marked and protected with four steel posts (schedule 40 steel pipe) of at least 4-inch diameter at equal distances from each other and which are placed 2 feet from the center of the casing. Such posts shall be installed to a depth of 4 feet into solid ground, or to a depth of 2 feet if each post is surrounded with 1 foot of concrete to a depth of 2 feet.

e.(3) A boring shall not be temporarily abandoned for more than five years.

### 3.d. Permanent abandonment.

a.(4) Whenever the explorer determines that a boring need not remain open any longer, or whenever he is about to lose the right to explore, the explorer shall permanently abandon the boring. in the manner prescribed in these rules.

(2) A boring which is permanently abandoned shall be completely filled in the manner and with the materials prescribed in 7 MCAR § 1.218 C.2.a. through e.

The boring shall be filled with grout to prevent contaminating materials from entering the water-bearing ground formations.

b. All materials, debris and obstructions that may interfere with sealing operations shall be removed from the boring. Liner pipe shall be removed or perforated when necessary to assure placement of an effective seal. The commissioner shall be consulted for instruction in case of abandonment of a contaminated boring or where there is a question of proper procedure.

c. All casing and screen may be salvaged except casing that has been cemented in place. The boring shall be filled with appropriate sealing materials as described in subpart D.3.g. prior to removal of the casing.

d. The top of the hole shall be filled with 10 feet of cement or concrete grout to within 2 feet of the land surface. Casing remaining in the hole shall be cut off at least 2 feet below land surface. The remaining top 2 feet of hole shall be filled with native topsoil.

e. When concrete, cement or heavy drilling fluid is used as a grout material, it shall be inserted in the boring through a grout pipe from the bottom of the boring upward to the surface under pressure.

f. The flow in a boring,<sup>1</sup> encountering flowing artesian conditions shall be confined if possible; and the boring abandoned in accordance with these rules.

g. A permanently abandoned boring shall be filled and sealed using one or more of the following substances in accordance with the geological materials penetrated.

(1) The section of a boring in unconsolidated deposits shall be filled with neat cement, concrete, or heavy drilling fluid to provide a permeability no greater than the natural condition.

<sup>1</sup> Proper judgment shall be exercised in the feasibility and practicability of sealing a boring encountering flowing artesian conditions. In some cases the confining formation may have been so badly disturbed that sealing may only cause the flow to discharge in a less appropriate location. In other situations, the flow may have eroded so much material that the landscape has taken on the appearance of a natural spring. The sealing in this case may be impractical, if not impossible.

(2) The section of a boring in a rock formation shall be filled with neat cement or concrete.

(3) The section of a boring in a cavernous or creviced rock (such as cavernous limestone or creviced granite, etc.) shall be filled with concrete or neat cement or alternate layers of concrete or neat cement and gravel or stone aggregate. At the top of the cavernous or creviced formation, the filling shall be completed by a layer of neat cement or concrete extending at least ten feet (10 feet) into the above overlying formation, and finished as provided in these rules.

(4) A boring so large that the use of neat cement, concrete or heavy drilling fluid is impractical, may be sealed with other materials subject to the approval of the commissioner.

4.e. Abandonment report. Within 30 days of temporary or permanent abandonment, the explorer shall submit the an abandonment report required by Minnesota Statutes, § 156A.071, subd. 8, to the commissioner. The abandonment report shall specify whether the boring is being temporarily or permanently abandoned. A separate abandonment report shall be filed when a temporarily abandoned boring is permanently abandoned.

## **Metropolitan Waste Control Commission**

### **Adopted Amendments to the Waste Discharge Rules for the Metropolitan Disposal System**

The rules published at *State Register*, Volume 5, Number 10, pp. 355-378 (5 S.R. 355) are now adopted with the following amendments:

#### **Amendments as Adopted**

6 MCAR § 6.010 C. These rules are intended:

1. To carry out the comprehensive plan for the Metropolitan Disposal System as contained in the "Metropolitan Development Guide, Waste Management Policy Plan" adopted by the Metropolitan Council, as amended;
2. To comply with provisions of the Federal Clean Water Act (33 U.S.C. 1251 et.seq), as amended;
3. To comply with permit requirements under the National Pollutant Discharge Elimination System;
4. To comply with federal (~~U.S. Environmental Protection Agency (EPA)~~) and state (Minnesota Pollution Control Agency) rules and regulations in order to maintain eligibility for federal and state grants for construction of treatment facilities;
5. To prevent and abate pollution;
6. To prevent the introduction of pollutants into the MDS which will interfere with the operation of the MDS, including interference with its use or disposal of sewage sludge;
7. To prevent the introduction of pollutants into the MDS which will pass through the treatment works or otherwise be incompatible with such works; and
8. To improve opportunities to recycle and reclaim municipal and industrial waste water and sludges.

6 MCAR § 6.011 H. "Industrial user"—~~A persons who discharge industrial waste and whose activities are activity is listed in the SIC major group, group, or industry numbers contained in attached Appendix C shall be deemed industrial users unless the discharge contains only domestic waste generated at the discharge site. or unless the discharge of Industrial Waste is insignificant.~~

6 MCAR § 6.012 A. Scope. Industrial users discharging directly or indirectly into the Metropolitan Disposal System shall obtain an industrial discharge permit pursuant to these rules—unless the Chief Administrator determines after a review of a completed permit application that the discharge has no noticeable or measurable impact on the MDS. Issuance of an industrial discharge permit shall not relieve the industrial user from any obligation to obtain a hazardous waste permit from the appropriate other authorities.

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6 MCAR § 6.012 B.1. ~~An industrial user who is required to obtain an industrial discharge permit~~ All industrial users shall complete and file with the commission a permit application in a form substantially the same as that set forth in Appendix A. The appropriate permit fee as provided in § 6.012 F. shall accompany the permit application form at the time of application. No industrial user shall discharge into the MDS after ~~January~~ March 1, 1982, unless the industrial user has been granted an industrial discharge permit. ~~or has submitted a completed permit application.~~

6 MCAR § 6.012 C.9. Requirements for notification to the chief administrator of any change in the volume or characteristics of industrial waste introduced into the MDS which the permittee knows or has reason to ~~know~~ believe will or is likely to have, either singly or by interaction with other wastes, a negative impact on the MDS treatment process;

6 MCAR § 6.012 D.1. An industrial discharge permit ~~may~~ shall be modified, suspended, or revoked, in whole or in part, by the chief administrator during its term for ~~cause, including~~ the following causes:

- a. Violation of these rules;
- b. Violation of any terms or conditions of the industrial discharge permit;
- c. Obtaining an industrial discharge permit by misrepresentation or failure to disclose fully all relevant facts;
- d. Amendment of these rules where permit provisions are affected;
- e. A change in the MDS treatment process which results in the permittee's discharge having a significantly different and negative impact on the process;
- f. A change in the permittee's industrial waste volume or characteristics which ~~the permittee knows or has reason to know~~ will or is likely to have, either singly or by interaction with other wastes, a negative impact on the MDS treatment process (modification only);
- g. A determination by the chief administrator that the permittee's discharge reasonably appears to present an imminent endangerment to the health or welfare of persons, present an endangerment to the environment, or threaten interference with the operation of the MDS.

6 MCAR § 6.012 G.1. Industrial discharge permits shall be issued to specific industrial users at specific location, except in the case of waste transport haulers. An industrial discharge permit shall not be assigned or transferred to a new owner or different premises without the written consent of the commission.

6 MCAR § 6.012 K. Report and monitoring discrepancies. A permittee shall be notified in writing by the ~~Commission~~ chief administrator of a significant discrepancy between the permittee's routine self-monitoring reports and the commission's monitoring results within thirty (30) days after the receipt of such reports and monitoring results. The permittee shall then have ten (10) working days to reply in writing to such notification. If mutual resolution of such discrepancy is not achieved, additional sampling shall be performed by the commission. Samples shall be split between the permittee's laboratory or agent and the commission's laboratory for analysis.

6 MCAR § 6.012 L. Public access to information. Public access to information and data furnished to the commission by permittees shall be available to the public as provided by the Minnesota Government Data Practices Act, Minn. Stat. § 15.1611 to § 15.1698, and 40 CFR § 403.14 of the General Pretreatment Regulations.

6 MCAR § 6.013 J. After August 25, 1981, heat in amounts which will or is likely to inhibit biological activity in any commission treatment plant resulting in interference or causing damage to the MDS, but in no case heat in such quantities that the industrial waste temperature is greater than 65°C (150°F) at its point of discharge to the MDS, or heat causing, individually or in combination with other wastewater, the influent at any commission treatment plant to have a temperature exceeding 40°C (104°F).

6 MCAR § 6.013 O. Any hazardous waste, as defined by Minn. Stat. § 116.06, subd. 13 and 6 MCAR §§ 4.9001 through 4.9002, unless prior approval has been obtained from the chief administrator upon a showing by the discharger that the hazardous waste would not cause, or threaten to cause, an endangerment to the health or welfare of persons, an endangerment to the environment, or interference with the operation of the MDS.

6 MCAR § 6.014 A. 1. No persons, except as authorized pursuant to a compliance schedule in a permit, shall discharge or cause or allow to be discharged, directly or indirectly, into the MDS any waste containing concentrations in excess of the following:

Pollutant	Limitation
<del>Parameter</del>	(Maximum for any operating day)
Cadmium (Cd)	2.0 mg/l
Chromium total (Cr)	8.0 mg/l



Copper (Cu)	6.0 mg/l
Cyanide total (Cn)	4.0 mg/l
Lead (Pb)	1.0 mg/l
Mercury (Hg)	0.1 mg/l
Nickel (Ni)	6.0 mg/l
Zinc (Zn)	8.0 mg/l

6 MCAR § 6.014 B. 1. An industrial user shall make industrial waste acceptable under the limitations established in § 6.014A.1., the prohibitions under § 6.013, and/or any applicable pretreatment standard before discharging, directly or indirectly, into the MDS. Any industrial user required to pretreat industrial waste shall provide, operate, and maintain such a facility at the industrial user's expense. Detailed plans showing the pretreatment facilities shall be submitted to the commission for review and approval at least sixty (60) days prior to the initiation of construction. The chief administrator shall approve the industrial user's pretreatment plans if it appears that the proposed pretreatment facility is capable of meeting all applicable limitations and prohibitions. The commission's review and approval shall in no way relieve the industrial user from the responsibility of modifying the facility as necessary to produce an effluent complying with the provisions of these rules. Any subsequent modifications in the pretreatment facilities which will result in a substantial change in discharge shall be reported to and be approved by the chief administrator, upon a determination that the modified facility is capable of meeting all applicable limitations and prohibitions, prior to the modification of the existing facility.

6 MCAR § 6.015 A.1. Pretreatment standards as promulgated pursuant to § 307 of the Act shall be met by all affected industrial users. Where an industrial user is subject to applicable pretreatment standards, such industrial user shall comply with the pollutant limitations contained therein and not the limitations under § 6.014A.1., except that where the applicable pretreatment standards, by reason of the nature of particular industrial user, do not regulate all the pollutants parameters specified in § 6.014A.1. for that industrial user, then such industrial user shall be subject to the limitations provided in § 6.014A.1. for those pollutants, parameters for which it is not regulated under the pretreatment standards. In all other respects, industrial users subject to pretreatment standards shall comply with all provisions of these rules and any permit issued thereunder, notwithstanding less stringent provisions of the General Pretreatment Regulations or any applicable pretreatment standard. Industrial users subject to pretreatment standards shall comply with all more stringent provisions of the General Pretreatment Regulations and applicable pretreatment standards, notwithstanding less stringent provisions contained in these rules or any permit issued thereunder.

6 MCAR § 6.016 B.2. The responsible person shall send a letter describing the prohibited discharge to the Commission within ~~three (3)~~ five (5) calendar days after obtaining knowledge of the discharge. The letter shall include the following information:

- a. the time and location of the spill;
- b. description of the accidentally discharged waste, including estimate of pollutant concentrations;
- c. time period and volume of wastewater discharged;
- d. actions taken to correct or control the spill;
- e. a schedule of corrective measures to prevent further spill occurrences.

6 MCAR § 6.016 C. Slug discharges. In the event that an industrial user discharges a slug in such a volume or strength that which the industrial user knows or has reason to know ~~it~~ will cause interference in the MDS, the industrial user shall immediately report the same to the chief administrator. Within ~~three (3)~~ five (5) calendar days thereafter, the industrial user shall send a letter to the commission describing the slug.

6 MCAR § 6.017 Enforcement.

B. Criminal penalties.

~~Any person who willfully or negligently violates any provision of these rules or any provision or condition of any permit issued by the Commission thereunder including discharging waste in violation of any Commission order, prohibition, discharge limitation, or pretreatment standard, or any person who continues such violation beyond the time limit provided for in the chief administrator's written notice of violation, shall be a misdemeanor. Each day in which any such violation continues shall be deemed a separate offense.~~

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# ADOPTED RULES

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a. Any person who willfully or negligently violates any provision of these rules or any provision of a permit issued by the Commission thereunder shall be guilty of a misdemeanor.

b. Any person who continues any violation of any provision of these rules or any provision of a permit issued by the Commission thereunder beyond the time limit provided for in the chief administrator's written notice of violation shall be guilty of a misdemeanor.

c. Each day in which a violation referred to in either B 6.017 B. 1. a. or b. continues shall be deemed a separate offense.

**6 MCAR § 6.018 D. Variances.** Except in the case of pretreatment standards, upon the written request of any person the ~~chief administrator~~ **commission** shall grant a variance where there is no prudent and feasible alternative to non-compliance with these rules or a permit issued thereunder. The chief administrator, upon approval of the commission, shall respond within forty-five (45) days of a request for a variance and shall set forth in writing ~~his~~ **the** reasons for granting or denying the variance.

## APPENDIX A. J.

### J. CERTIFICATION OF INFORMATION

I hereby certify that the information supplied in this application is complete and correct to the best of my knowledge.

\* \_\_\_\_\_ Name (PRINT): \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Phone (Area Code): \_\_\_\_\_  
Date: \_\_\_\_\_

\*For Federal Categorical Pretreatment Industries, the signatory must be an authorized representative. An authorized representative may be:

- 1) a principal executive officer of at least the level of vice president, if the permittee is a corporation;
- 2) a general partner or proprietor, if the permittee is a partnership or sole proprietorship, respectively; or
- 3) a duly authorized representative of the individual designated in (1) or (2) above if such representative is responsible for overall operation of the facility.

Send completed form and an application fee of \_\_\_\_\_ to:

Metropolitan Waste Control Commission  
Industrial Waste Section  
350 Metro Square Building  
St. Paul, Minnesota 55101

# TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota

Hennepin County

Maribeth Jennings, Successor  
Executrix of the Estate of  
George E. Kennedy, Deceased,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

Tax Court

Regular Division

In the Matter of an Appeal  
from the Commissioner's Order  
dated October 1, 1979, Relating  
to the Inheritance Taxes of the  
Estate of George E. Kennedy,  
Deceased.

Docket No. 2994

Order Dated March 3, 1981.

The above matter was submitted for decision on the basis of a Stipulation of Facts and briefs filed by the parties and was considered by the Honorable Carl A. Jensen, Judge of the Minnesota Tax Court.

Mr. Lee N. Johnson, Attorney at Law, appeared on behalf of Appellant.

Mr. James W. Neher, Special Assistant Attorney General, appeared on behalf of Appellee.

## Issue

The issue is whether a share of stock in a cooperative corporation which entitles the owner to a proprietary interest in a specific apartment in the cooperative apartment building is an intangible interest taxable by Minnesota in the estate of a Minnesota resident. If it is an interest in real property it is taxable only by the State of Florida. If it is an intangible interest such as most shares of stock are, it is taxable in the state of residence of the decedent.

## Decision

The share of stock in this case represents an interest in a specific parcel of real estate located outside of the State of Minnesota and is not subject to Minnesota Inheritance Taxes and it is ordered that the taxes levied on the basis of the inclusion of this property for Minnesota Inheritance Tax purposes be abated.

## Findings of Fact

The parties stipulated to the facts as follows:

1. The deceased was a resident of the State of Minnesota.
2. At the time of his death the deceased owned Certificate No. 81 for one share of capital stock in Harbor Colony, Inc., a Florida cooperative corporation and this certificate entitled the owner to a proprietary interest in apartment 7 of the cooperative apartment building owned by the corporation.
3. That Florida statutes relating to condominiums clearly indicate that ownership of a condominium is an interest in real estate but that the Florida statutes relating to cooperative apartment units do not clearly indicate that such interest is an interest in real estate.
4. That real estate taxes in Florida are in fact assessed against each of the owners of the various units and the real estate taxes are paid by the owners of the units directly to the collecting authorities.
5. That read as a whole the Florida statutes indicate that the owners of such shares of stock in cooperative units do in fact own a specific parcel of real estate and that such Certificate of Ownership is not an intangible item of personal property.

## Conclusions of Law

1. That the interest of the decedent in the cooperative apartment building in Florida was an interest in real estate located outside the State of Minnesota and was not subject to Minnesota Inheritance Taxes.

2. It is ordered that the inheritance taxes assessed on the basis that this was intangible personal property are hereby abated.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

MINNESOTA TAX COURT  
Carl A. Jensen

# TAX COURT

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## Memorandum

This was a very close question and the issues were well briefed by both the parties. It was agreed by the parties that the determination of the issue was properly based on an interpretation of Florida law.

Florida statutes are quite clear in indicating that ownership of condominium units are clearly an interest in real property and as such would not be subject to Minnesota Inheritance taxes on Minnesota residents. The Florida statutes are not so clear relative to ownership of a unit in a cooperative association. No judicial rulings of Florida law on this issue were brought to the attention of this Court. An Exhibit G was offered by the Appellee which was a letter dated October 13, 1980 from the Florida Department of Revenue over the signature of R. Glenn Dixon, Technical Assistant, Statutory Compliance Section. This letter stated the following:

"This is also to advise, per your request, that Florida considers cooperative apartments, where title is held by shares of stock, to be an intangible asset taxable by the state of domicile.

It is generally a matter of reciprocity between states that cooperative apartments are considered intangible rather than real property.

If you have further questions please advise."

The letter does not indicate whether or not the writer is an attorney nor does it indicate the status of such a letter, so the evidentiary value of the letter is questionable. It is probably safe to assume that there have been no judicial rulings on the issue as it would appear that letter would have indicated if there had been such rulings.

We are persuaded by the fact that the decedent did in fact own a specific unit in this cooperative and we find it difficult to distinguish this ownership from the ownership of a condominium and it is agreed that a condominium unit would not be subject to Minnesota taxes.

We are further persuaded by a Florida Statute, Section 719.108 which relates to liability for assessments and liens and priorities. This statute talks about the "unit owner of the cooperative parcel". This section discusses a judicial sale and voluntary and involuntary conveyances. It also provides that liens for assessments may be foreclosed by suit in the same manner as a foreclosure of mortgage on real property. This is not language ordinarily used in discussing intangible shares of stock in a corporation. This and other sections of the Florida statutes lead us to conclude that the interest of the decedent, as evidenced by the certificate in the cooperative, was in fact an interest in real property and was not subject to Minnesota Inheritance Taxes.

**State of Minnesota  
County of Ramsey**

**Tax Court  
Regular Division**

Ted Glasrud Associates, Inc.,

Appellant,

v.

In the Matter of the Appeal  
from the Commissioner's  
Order dated December 14, 1979,  
relating to sales and use tax  
of Ted Glasrud Associates, Inc.  
for the taxable period 4/1/75  
through 7/31/79.

The Commissioner of Revenue,  
through 7/31/79.

Appellee.

Docket No. 3052  
Order dated March 6, 1981.

The above matter came on for trial in the Tax Court in the City of St. Paul, Minnesota, before the Honorable Jack Fena who was then one of the Judges of the Court, on the 28th day of August, 1980. Subsequent to that briefs were filed by the parties and Judge Fena's term of office ended February 2, 1981 before he had rendered his decision in the matter. The parties through their attorneys agreed to have the case submitted to another Tax Court Judge upon the transcript, briefs and other materials in the file and the case was submitted to the Honorable Carl A. Jensen, Judge of the Minnesota Tax Court.

Mr. Steven Z. Kaplan of Briggs and Morgan, represented the Appellant.

Mr. Paul R. Kempainen, Special Assistant Attorney General, represented the Appellee.

**Issue**

The issue is whether the failure to file certain use tax returns within the times specified was due to wilful neglect and therefore subject to the penalties provided therefore.

**Decision**

The facts do not substantiate a finding that the failure to file use tax returns was due to wilful neglect and Appellant is not subject to the penalties provided for in the case of wilful neglect.

From all the files, records and proceedings herein the Court finds as follows:

**Findings of Fact**

1. Appellant is a Minnesota corporation engaged in the business of constructing and selling condominiums and apartments and managing apartment complexes. The corporation was formed in 1971. Mr. Theodore Glasrud is the President and sole shareholder.
2. The controller-treasurer of the Appellant corporation during the periods at issue herein was Mr. Steve Anderson. He was responsible for the corporation's recordkeeping and financial affairs and the preparation of most of the returns required by the state and federal governments such as unemployment taxes, workers compensation, withholding, employment returns and all other returns of a similar nature except the income tax returns which were prepared by auditors Peat, Marwick, Mitchell and Company and were signed by Mr. Glasrud.
3. Appellant's President, Theodore Glasrud, is a lawyer by profession but has been in the construction business as a business man since 1960. In 1971 he formed his own corporation Ted Glasrud Associates, Inc. and has been carrying on his business as such corporation since 1971.
4. The records of Appellant were audited in 1975 and certain delinquent use taxes were assessed against Appellant for the period April 1, 1971 through December 31, 1974. Appellant made no sales that were subject to sales taxes and Appellant's purchase orders require that the sales tax be included in the total invoice submitted. For reasons which were unexplained by either party, a number of Appellant's vendors failed to collect sales taxes due. The department originally assessed a penalty on this audit but subsequently agreed to settle the matter without penalty.
5. After 1975, Steve Anderson, the controller-treasurer filed some Sales and Use Tax Returns all of which indicated that no sales or use tax was payable. Minn. Stat. § 297A.27 requires returns to be filed by any person making retail sales or any persons subject to use taxes on purchases on which no sales tax was paid. Appellant assumed that the sales taxes were included in invoices received. It appears that Appellant did not believe Sales or Use Tax Returns were required since Appellant believed no such tax was due, although this is not spelled out precisely in the record.
6. Appellant's records were again audited in August of 1979 and delinquent use taxes, penalties and interest were assessed against Appellant for the period from April 1, 1975 to July 1, 1979. The use tax originally assessed for this period was \$82,676.32 and the penalty was \$15,106.28. The parties have subsequently agreed to the amount of use tax that is owed and this amount is now shown in the record. The only issue involved is whether or not the penalty provided for failing to file and pay the taxes due because of wilful neglect should be assessed against Appellant.
7. The record shows that in 1975 when the first audit was being conducted, the department requested Appellant to file Sales & Use Tax Returns. Some returns were filed but they all showed no tax due. Although Appellant's purchase orders required the invoices to include the sales tax, Steve Anderson, Appellant's controller-treasurer, was negligent in not taking some further action to see that this was always done after the first audit but, this negligence is not considered wilful neglect. Steve Anderson was not a CPA and he apparently thought the department's letters directing the filing of returns were merely form letters.
8. The primary responsibility for collecting the sales and use taxes is upon the seller. There is no explanation in the record as to any action that the department may have taken relative to the vendors to Appellant who were not collecting sales tax.
9. The failure on the part of Appellant to take affirmative steps to see that sales taxes were paid on all purchases subject to sales or use taxes is close to the wilful neglect provided in the statutes but, this Court, finds that such failure on the part of the Appellant was due to ordinary negligence.
10. Minn. Stat. § 297A.39, subd. 2, provides that penalties up to 25 percent of the tax due can be assessed in cases where the failure to file the return and pay the taxes is due to wilful neglect. The department adopted a rule which contains the following language:  
"The wilful neglect penalty will be assessed unless the person required to file the return exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time."  
This rule attempts to define wilful neglect as the failure to exercise ordinary care and prudence and to this extent goes beyond the rule making power of the department.

## TAX COURT

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11. The facts in this case do not substantiate a finding that failure to file the returns and pay the taxes was due to wilful neglect and the penalties therefore should not be assessed.

### Conclusions of Law

1. The failure to file the Sales and Use Tax Returns and failure to pay the use tax under the facts in this case was not due to wilful neglect and the Order of the Commissioner assessing penalties on the basis of the provision in the statute relative to wilful neglect should be reversed.

### Order for Judgment

The Commissioner's Order dated December 14, 1979 assessing certain penalties is hereby reversed only as to the assessment of the penalties.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

MINNESOTA TAX COURT  
Carl A. Jensen, Judge

### Memorandum

This is a very close case. Appellant made no attempt to avoid paying the use tax and in fact assumed it was paying the use taxes since its purchase order forms stated that the sales tax should be included in the invoices. Apparently this was not done in some cases. It appears that in some instances the invoices included the sales tax but did not so indicate, although this is contrary to the statutes. The primary responsibility for the collection of the tax is on the seller. It would appear that if the department had attempted to collect the taxes from the delinquent sellers instead of the Appellant, that there would be no question that the delinquent sellers were guilty of wilful neglect. Although the state has the power to collect the tax from the purchaser if the seller fails to collect it, penalties for wilful neglect should be assessed only when there is a clear showing that the purchaser knew that the sales tax had not been paid. It does appear that Steve Anderson was not competent for the job and Appellant has now realized this. All businesses have sufficient problems with complying with all the necessary rules, regulations, taxes, forms etc. of the various units of government without being charged with penalties for wilful neglect for employing a person who is not quite competent for the job.

It would appear that there might be some negligence on the part of the department if the department thought the same situation would occur after the first audit. In hindsight, under the circumstances, it appears that the department should have clearly notified Appellant that it would be subject to wilful neglect penalties in the future on failure to comply with the statutes or that it would have been prudent for the department to audit the Appellant's books more than every 4 years.

## SUPREME COURT

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### Decisions Filed Friday, March 13, 1981

#### Compiled by John McCarthy, Clerk

81-28/Sp. In the Matter of the Contest of the General Election Held on November 4, 1980 for the Purpose of Electing A County Commissioner for the Third District in Dakota County. James W. Kennedy, Contestant, v. John Voss, Contestee, Appellant. Dakota County.

An extreme or illogical inference in campaign literature, if based upon an accurate statement of fact, does not constitute distribution of "false information" within the meaning of Minn. Stat. § 210A.04, subd. 1 (1980).

Reversed. Sheran, C. J. Conc. spec. Peterson, J.

50529/335 Hennepin County Welfare Board, Plaintiff, Anita Elizabeth Boyer, Appellant, v. Stephen Guy Ayers. Hennepin County.

In a paternity action, once a proper foundation is laid and an offer is made to introduce into evidence the results of blood tests tending to confirm paternity, it is reversible error to refuse to admit that evidence.

Reversed and remanded. Otis, J.

51177/Sp. State of Minnesota v. Paul R. Hayes, Appellant. Polk County.

Evidence of defendant's guilt held sufficient.

Assault with a dangerous weapon, Minn. Stat. § 609.222 (1980), is a lesser-included offense of criminal sexual conduct by a person armed with a dangerous weapon, Minn. Stat. §§ 609.342(d) and 609.343(d) (1980).

Three convictions affirmed, one vacated. Otis, J.

**51126/381 Soo Line Railroad Company, petitioner, Appellant, v. Minnesota Department of Transportation, City of Bemidji, Hennepin County.**

Minn. Stat. § 219.40 (1978) (amended 1980) requires the cost of building a bridge over railroad tracks to be apportioned on the basis of benefits to the users.

Because the Commissioner of the Department of Transportation apportioned the cost according to specific findings of benefits, the commissioner adhered to the statutory requirements and did not exceed his statutory authority.

When the commissioner's findings of benefits are not supported by substantial evidence, the findings cannot be sustained.

Reversed and remanded with instructions. Yetka, J.

**50997,**

**51013/368 Ideal Life Church of Lake Elmo, Petitioner, Relator-Respondent, v. County of Washington, Respondent-Relator. Tax Court.**

The proper test for determining the meaning of the word "church," under Minn. Const. art. X, § 1, and Minn. Stat. § 272.02(1)(5), depends upon an analysis of all the facts and circumstances of each particular case. Applying this "factual analysis test" to this case, we find that the property in question is not owned by a "church," and is therefore not exempt from real property taxes.

Scott, J. Conc. spec. Wahl, J. Took no part, Sheran, C. J.

**50514/Sp. C. R. Investments, Inc., Petitioner, Appellant, v. Village of Shoreview. Ramsey County.**

The denial of a special use permit was arbitrary when some of the reasons given for the denial were legally sufficient but did not have sufficient factual basis and other reasons given were not legally sufficient because they had no substantial relation to public health, safety, and welfare.

Reversed. Scott, J.

**51408/Sp. Cumis Insurance Society, Inc., v. Lois E. Blum, Appellant. Chisago County.**

Affirmed. Wahl, J.

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## **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.

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### **Department of Agriculture Agronomy Services Division**

#### **Notice of Special Local Need Registrations for Aatrex 80 W, Aatrex Nine-0, Aatrex 4L, and Aatrex 4LC**

Pursuant to Minn. Stat. § 18A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on March 10, 1981, issued Special Local Need Registrations for Aatrex 80 W, Aatrex Nine-0, Aatrex 4L, and Aatrex 4LC manufactured by Ciba-Geigy Corporation, Greensboro, North Carolina 27409.

The Commissioner of Agriculture, based upon information in the applications, has deemed it in the public interest to issue such registrations, and has deemed that the information in the applications indicates that the pesticides do not have the potential for unreasonable adverse environmental effects.

## OFFICIAL NOTICES

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In addition to the uses prescribed on the product labels, these Special Local Need Registrations permit the use of these products to control weeds in proso millet.

The applications and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to these registrations (identified as SLN #MN 81-0004, MN 81-0005, MN 81-0006, and MN 81-0007) are on file for inspection at:

Minnesota Department of Agriculture  
Pesticide Control Section  
90 West Plato Blvd.  
Saint Paul, Minnesota 55107  
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of these Special Local Need Registrations. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding these registrations.

Mark W. Seetin, Commissioner  
Department of Agriculture

### **Notice of Special Local Need Registrations for Anchor Permethrin 10% EC and Bioceutic Overtime**

Pursuant to Minn. Stat. § 18A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on March 10, 1981, issued Special Local Need Registrations for Anchor Permethrin and Bioceutic Overtime manufactured by Philips Roxane, Inc., St. Joseph, Missouri 64506.

The Commissioner of Agriculture, based upon information in the applications, has deemed it in the public interest to issue such registrations, and has deemed that the information in the applications indicates that the pesticides do not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product labels, these Special Local Need Registrations permit the use of these products for premise fly control in beef, horse, dairy, poultry, and swine barns.

The applications and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to these registrations (identified as SLN #MN 81-0001 and MN 81-0002) are on file for inspection at:

Minnesota Department of Agriculture  
Pesticide Control Section  
90 West Plato Blvd.  
Saint Paul, Minnesota 55107  
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of these Special Local Need Registrations. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding these registrations.

Mark W. Seetin, Commissioner  
Department of Agriculture

### **Notice of Special Local Need Registration for Evercide Permethrin**

Pursuant to Minn. Stat. § 18A.23 and 3 MCAR § 1.033 B., the Minnesota Department of Agriculture on March 10, 1981, issued a Special Local Need Registration for Evercide Permethrin to Mosquito Control Technology, Saint Paul, Minnesota 55110.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.



In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of this pesticide when necessary to achieve localized control of potential disease-bearing mosquitos by ground back-pack sprayers rather than area wide aerial spraying.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN #MN 81-0003) is on file for inspection at:

Minnesota Department of Agriculture  
Pesticide Control Section  
90 West Plato Blvd.  
Saint Paul, Minnesota 55107  
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding this registration.

Mark W. Seetin, Commissioner  
Department of Agriculture

## **Department of Commerce Insurance Division**

### **Meeting Notice**

Minnesota Comprehensive Health Association  
Nominating Committee  
Tuesday, April 14, 1981  
10:45 a.m.  
Blue Cross and Blue Shield of Minnesota  
3535 Blue Cross Road  
St. Paul, Minnesota 55165

Changes in any scheduled meetings and notices of any additional meetings will be posted or otherwise be available upon inquiry at the office of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, telephone (612) 296-2202.

## **Ethical Practices Board**

### **Request for Advisory Opinion**

#### **Re: Hennepin County Disclosure Law—Administration**

The Minnesota State Ethical Practices Board solicits opinions and comments on the following request for an advisory opinion which will be discussed at its March 27, 1981 Board meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to March 25, 1981.

Ms. Mary Ann McCoy  
Executive Director  
State Ethical Practices Board  
41 State Office Building  
St. Paul, Minnesota 55155

Dear Ms. McCoy:

I am the official responsible for administration of the election laws for Hennepin County and am requesting advisory opinions on several matters regarding duties of the filing officer pursuant to Chapter 362, Laws of 1980.

1. The Hennepin County Park Reserve Board has eleven members. Three members are appointed by the Hennepin County

## OFFICIAL NOTICES

Board; the Minneapolis Park Board appoints two members, and the Minneapolis City Council appoints two members. The remaining four members are elected on a district basis within Hennepin County.

(a) Is a member of the Hennepin County Park Reserve Board so appointed an elected official of Hennepin County who is required to file a statement of economic interest pursuant to section 13?

(b) Is an elected member of the Hennepin County Park Reserve Board an "elected official of Hennepin County" for purposes of section 13?

2. In December, 1979, Alan Greene resigned as an elected member of the Hennepin County Park Reserve Board. Mr. John Hannah was duly appointed by the Hennepin County Board on December 18, 1979, to fill the unexpired term of Mr. Greene's office. Mr. Hannah will not face election until 1982.

(a) As an appointed official to an elected office, is Mr. Hannah required by section 13 to file a statement of economic interest as an "elected official of Hennepin County?" If the answer is affirmative, what is the due date for filing the statement?

3. Since January 1, 1980, there have been no city council elections in Bloomington and Minneapolis. Several of these city council members did not receive contributions or make expenditures in excess of \$100 in 1980, and they did not register their principal campaign committees or make campaign reports.

(a) What is my responsibility in this matter as a filing officer, assuming that neither my staff nor I have any knowledge that these city council members had campaign activity during 1980?

(b) If no registration or campaign report has been filed, may I assume that none is required?

4. Section 14, subdivision 8 requires that if the filing officer has knowledge or reason to believe that a violation of Chapter 362, Laws of 1980, has occurred, he or she shall immediately notify the county attorney of the county in which the violation is thought to have occurred. A copy of the report shall also be sent to the ethical practices board.

(a) In view of the conflicting or redundant procedures prescribed in greater specificity in section 14, subdivision 7 and section 17 for the reporting and prosecution of violations arising from failure to file the required statements or reports, is section 14, subdivision 8 applicable to violations for failure to file the statements or reports required in chapter 362?

(b) If your answer is in the affirmative, at what point does the failure to file a required statement or report constitute a "violation" for the purpose of reporting pursuant to section 14, subdivision 8?

(c) If a political fund reports a contribution to a candidate, does section 14, subdivision 8 or any other section of chapter 362 require the filing officer to audit, review and monitor the political funds reports and the candidate's principal campaign committee reports to assure that the contributions have been properly reported as income? Must the candidate's reports be monitored to assure that political funds register and file appropriate reports? In other words, does section 14, subdivision 8 charge the filing officer with the constructive knowledge of information contained in reports or statements filed?

I thank you in advance for your helpful assistance.

Sincerely,

Vernon T. Hoppe, Director of Property Taxation

## The Metropolitan Council and Metropolitan Health Board

### Public Hearing for the Joint Consideration of Revising the 1980-81 Health Systems Plan

The Metropolitan Council and Metropolitan Health Board will hold a public hearing on Wednesday, April 15, 1981, at 7:00 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota, 55101 for the purpose of receiving oral and written comments on ten service plan components for inclusion in the 1980-81 Health Systems Plan for the Twin Cities Metropolitan Area. These service components include stratified coronary care, trauma care, burn care, regional poison information and treatment, spinal injury care, medical control, computed tomography scanning, home health care, developmental disabilities services and emergency medical services overview. Copies of these plan components are available for public inspection beginning March 17, 1981 at the following locations:

Metropolitan Council Library  
300 Metro Square Building  
St. Paul, MN 55101

Minneapolis Public Library  
Government Documents Room  
300 Nicollet Mall  
Minneapolis, MN 55401

St. Paul Public Library  
Science and Industry Room  
90 West Fourth Street  
St. Paul, MN 55102

Anoka County Library—Blaine Branch  
707 Highway 10  
Blaine, MN 55434

Carver County Library—Chaska Branch  
314 Walnut Street  
Chaska, MN 55318

Dakota County Library—Burnsville Branch  
1101 W. County Rd. 42  
Burnsville, MN 55337

Hennepin County Library—Southdale Branch  
7001 York Avenue  
Edina, MN 55435

Ramsey County Library—Roseville Branch  
2180 N. Hamline Avenue  
Roseville, MN 55113

Scott County Library—Shakopee Branch  
235 S. Lewis Street  
Shakopee, MN 55379

Washington County Library—Park Grove Branch  
7520—80th Street S.  
Cottage Grove, MN 55106

Copies of the ten service components are available free of charge from the Metropolitan Health Board, 300 Metro Square Building, St. Paul, Minnesota 55101, telephone 291-6352.

People who wish to speak at this public hearing may register in advance by contacting Eleanor Suneson at 291-6352. Those who register first will be scheduled to speak first. If you cannot attend you are encouraged to send written comments to the Metropolitan Health Board, up to seven days following this hearing. For further information contact the Metropolitan Health Board at 291-6352.

Barbara O'Grady, Chairperson  
Metropolitan Health Board  
Charles Weaver, Chairman  
Metropolitan Council

## **Department of Public Safety Driver and Vehicle Services Division**

### **Notice of Intent to Solicit Outside Opinion Regarding Proposed Revisions to Rules on Driver Training, Vehicles, Instruction, Instructors and Schools**

Notice is hereby given that the Department of Public Safety is seeking information, comments and opinions from sources outside the department in preparing to draft revisions to rules relating to commercial driver training schools. Such rules are authorized by Minn. Stat. §§ 171.33 and 171.34. The department is proposing to incorporate rules concerning truck driver training and to update the existing rules, Driver License 31-38.

All interested or affected persons or groups are invited to provide information on this subject until May 1, 1981 by contacting:

Mr. Rollis Odendahl  
Driver Training Supervisor  
314 Transportation Building  
St. Paul, MN 55155

Written statements will be made part of the public hearing record.

## OFFICIAL NOTICES

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### Department of Transportation Public Transportation Division

#### Notice of Intent to Solicit Outside Opinion Concerning Rules for the Implementation of the State Rail Bank Program

Notice is hereby given that the Minnesota Department of Transportation (hereinafter "department") is seeking information or opinions from sources outside the department in preparing to propose the adoption of rules relating to the implementation of the State Rail Bank Program authorized by Minn. Laws of 1980, ch. 558, § 228.63 (Act).

The rules are authorized by Minn. Stat. § 15.0412, subd. 3 (1978). The proposed rules would include the following areas:

1. The establishment of criteria for the purchase of abandoned rail lines under the State Rail Bank Program.
2. The definition of the types of property that may be purchased.
3. The delineation of the purposes for which the line purchased may be used.
4. Procedures for the acquisition and disposition of the land purchased.

The department requests information and comments concerning the subject matter of the proposed rules. Interested or affected persons or groups may submit statements of information, comment and advice in writing or orally to:

Mr. G. W. Boldt, Director  
Office of Railroad Administration  
Minnesota Department of Transportation  
419 Transportation Building  
John Ireland Boulevard  
St. Paul, Minnesota 55155

All statements of information and comment must be received by May 15, 1981. Any written material received by the Department shall become part of the hearing record when rules governing the subject are promulgated.

Richard P. Braun  
Commissioner of Transportation

### Department of Transportation

#### Petition of the County of Blue Earth for A Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of the County of Blue Earth has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards along County State Aid Highway No. 10, between its Junctions at Trunk Highway No. 22 at Beauford and Trunk Highway No. 83 northwest of Pemberton.

The request is for a variance from 14 MCAR § 1.5032 H.1.d. Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit 43 miles per hour design speed instead of 45 miles per hour design speed.

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

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

Dated this 16th day of March, 1981.

Richard P. Braun  
Commissioner of Transportation

#### Petition of the County of Jackson for A Variance from State Aid Standards for Bridge Width

Notice is hereby given that the County Board of the County of Jackson has made a written request to the Commissioner of Transportation for a variance from minimum design standards for bridge width along CSAH 14 (Ashley Street) between U.S. Highway 71 (Main Street) and CSAH 23 (River Street) over the Des Moines River in the City of Jackson.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a minimum roadway width of 32 feet instead of 46 feet and maintain two traffic lanes across the bridge.

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

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

Dated this 16th day of March, 1981

Richard P. Braun  
Commissioner of Transportation

### **Petition of the County of Hennepin for A Variance from State Aid Standards for Street Width and Parking Restrictions in the City of Mound**

Notice is hereby given that the County Board of the County of Hennepin has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along County State Aid Highway No. 110 (Commerce Boulevard) from County State Aid Highway No. 125 (Bartlett Boulevard) to County State Aid Highway No. 15 (Lynwood Boulevard) in the City of Mound.

The request is for a variance from 14 MCAR § 1.5032 H.1.c., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a minimum roadway width of 48 feet instead of 50 feet and permit two parallel restricted peak traffic hour parking lanes between a point approximately 200' south of County Road 125 (Bartlett Boulevard) and a point approximately 300' south of County State Aid Highway No. 15 (Shoreline Boulevard).

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

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

Dated this 16th day of March, 1981

Richard P. Braun  
Commissioner of Transportation

### **Petition to the County of Hennepin for A Variance from State Aid Standards for Street Width**

Notice is hereby given that the County Board of the County of Hennepin has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along County State Aid Highway No. 57 (Fremont Avenue North) between West Broadway and Lowry Avenue in the City of Minneapolis.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 32 feet with restricted peak hour parking permitted on the east side of the street and still maintain two traffic lanes.

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

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

Dated this 16th day of March, 1981.

Richard P. Braun  
Commissioner of Transportation

### **Petition of the County of Hennepin for A Variance from State Aid Standards for Design Speed**

Notice is hereby given that the County Board of the County of Hennepin has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for County State Aid Highway 125 over the Spring Park Channel of Lake Minnetonka between Spring Park and Mound.

## OFFICIAL NOTICES

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The request is for a variance from 14 MCAR § 1.5032 H.1.c., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a design speed of 25 MPH over the bridge instead of 30 MPH.

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

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

Dated this 16th day of March, 1981.

Richard P. Braun  
Commissioner of Transportation

### **Petition of the County of Hennepin for A Variance from State Aid Standards for Bridge Width**

Notice is hereby given that the County Board of the County of Hennepin has made a written request to the Commissioner of Transportation for a variance from minimum design standards for bridge width along County State Aid Highway 123 over Crow River near the City of Hanover.

The request is for a variance from 14 MCAR § 1.5032 H.1.a. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a 32' wide bridge instead of a 40' wide bridge.

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

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

Dated this 16th day of March 1981

Richard P. Braun  
Commissioner of Transportation

### **Petition of the City of Duluth for A Variance from State Aid Standards for Street Width**

Notice is hereby given that the City Council of the City of Duluth has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along 24th Avenue West between Michigan Street and Skyline Boulevard.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 30' with no parking permitted on either side of the street instead of a 32' wide street.

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

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

Dated this 16th day of March, 1981.

Richard P. Braun  
Commissioner of Transportation

## **Department of Transportation Technical Services Division**

### **Appointment and Scheduled Meeting of A State Aid Standards Variance Committee**

Notice is hereby given that the Commissioner of Transportation has appointed a State-Aid Standards Variance Committee who will conduct a meeting on Wednesday, April 8, 1981, at 9:30 a.m. in Room 419, State Transportation Building, John Ireland Boulevard, St. Paul, Minnesota.

This notice is given pursuant to Minnesota Statute § 471.705.

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## OFFICIAL NOTICES

The purpose of the open meeting is to investigate and determine recommendation(s) for variances from minimum State-Aid roadway and parking standards as governed by 14 MCAR § 1.5032 M.4.b. Rules for State-Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978), as amended.

The agenda will be limited to these questions:

1. Petition of the County of Blue Earth for a variance from minimum design Speed Standards on County State Aid Highway 10 between Beauford and Pemberton.
2. Petition of the County of Jackson for a variance from Standards for Bridge Width on County State Aid Highway 14 (Ashley Street) in the City of Jackson.
3. Petition of the County of Hennepin for a variance from Standards on County State Aid Highway 110 for Street Width and parking restrictions in the City of Mound.
4. Petition of the County of Hennepin for a variance from Standards for street width on County State Aid Highway 57 (Fremont Avenue North) in the City of Minneapolis.
5. Petition of the County of Hennepin for a variance from design speed standards on County State Aid Highway 125 over the Spring Park Channel of Lake Minnetonka.
6. Petition of the County of Hennepin for a variance for bridge width on County State Aid Highway 123 over Crow River near the City of Hanover.
7. Petition of the City of Duluth for a variance from street width on Municipal State Aid Street 116 (24th Avenue West) from Michigan Street to Skyline Boulevard.

Dated this 16th day of March, 1981

Richard P. Braun  
Commissioner of Transportation

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State Register and Public Documents Division  
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