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STATE REGISTER

STATE OF MINNESOTA



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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 7			
2	Monday June 28	Friday July 2	Monday July 12
3	Friday July 2	Monday July 12	Monday July 19
4	Monday July 12	Monday July 19	Monday July 26
5	Monday July 19	Monday July 26	Monday Aug 2

*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:

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

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

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PROPOSED RULES

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

Department of Agriculture Food Inspection Division

Proposed Amendments to Rules Governing the Candling and Grading of Eggs (Chapter 18: Agr 388-417)

Notice of Intent to Adopt Rules without a Public Hearing

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

Persons interested in these rules shall have 30 days to submit comment 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, subds. 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, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes §§ 29.23 and 29.27. 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 upon request from Mr. Heil.

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 adopted, should submit a written statement of such request to Mr. Heil.

The commissioner is authorized by Minnesota Statutes §§ 29.23 and 29.27 (1980) to adopt federal standards for quality, grades and weight for Minnesota eggs moving in interstate commerce, as well as to establish requirements for candling, grading,

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PROPOSED RULES

cleaning, purchasing, and selling eggs for the purpose of preserving and protecting the public health. The proposed amendments to these rules adopt federal standards for Minnesota purchase and consumer egg grades AA, A and B, at both origin and destination; create a new state standard requiring that Grade B or better eggs be used by food service establishments in preparing and serving food for human consumption; clarify procedures for candling, storing, refrigerating, cleaning, labeling, advertising, coding, open dating, using the word "fresh," and keeping records. The proposed amendments also provide definitions of terms used in the rules and other clarifications of language.

Please be advised that Minnesota Statutes ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250.00, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250.00, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

Copies of this notice and proposed rules are available and may be obtained by contacting Mr. Heil.

June 21, 1982

Mark W. Seetin
Commissioner of Agriculture

Rules as Proposed

3 MCAR § 1.0388 Authority; purpose. Rules 3 MCAR §§ 1.0388-1.0404 are adopted by the commissioner pursuant to Minn. Stat. §§ 29.23 and 29.27 to preserve and protect the public health by regulating the grading, candling, cleaning, breaking, buying and selling of eggs and egg products.

3 MCAR § 1.0389 Definitions.

- A. Applicability. For the purposes of 3 MCAR §§ 1.0388-1.0404, the terms defined in this rule have the meanings given them.
- B. Adulterated eggs. "Adulterated eggs" has the meaning given in Minn. Stat. § 29.24.
- C. Checks. "Checks" means eggs that have cracks or breaks in the shell but have intact shell membranes which do not leak.
- D. Commissioner. "Commissioner" means the Commissioner of Agriculture or the commissioner's authorized representative.
- E. Dealer. "Dealer" means a person, firm or corporation licensed by the department under Minn. Stat. § 28A.04, and subject to Minn. Stat. § 29.22, or a producer who offers or sells eggs directly to the consumer off the producer's premises.
- F. Department. "Department" means the Department of Agriculture.
- G. Dirties. "Dirties" means eggs with adhering dirt or foreign material or prominent or moderate stains covering more than one-fourth of the shell surface.
- H. Grading. An "at destination" grade means the grading is done where the eggs are sold at retail or consumed. An "at origin" grade means the grading is done somewhere other than the destination.
- I. Incubator rejects. "Incubator rejects" means eggs that have been subjected to incubation and have been removed during the hatching operation as infertile or otherwise unhatchable.
- J. Inedible eggs. "Inedible eggs" has the meaning given in Minn. Stat. § 29.24.
- K. Leakers. "Leakers" means eggs that have a crack or break in the shell and shell membrane to the extent that the contents are exuding or are free to exude through the shell.
- L. Loss. "Loss" means eggs that are unfit for human food because they are smashed or broken so that their contents are

leaking, because they are overheated, frozen, or contaminated, because they are incubator rejects, or because they contain bloody whites, large meat spots, a large quantity of blood or other foreign material.

M. Restricted eggs. "Restricted eggs" means eggs that contain dirties, checks, leakers, inedibles, loss and incubator rejects.

~~Agr 388~~ 3 MCAR § 1.0390 Candling defined. ~~Persons dealing in eggs, pursuant to provisions of Chapter 29, Statutes of 1971 as amended by Laws of Minnesota 1973 shall~~ Dealers must have adequate equipment and space and a room darkened sufficiently to make possible accurate quality determinations of the candled appearance of the eggs. The room shall be free from dirt, mustiness, and foreign odors, and debris. ~~In Operations utilizing using mechanical equipment adequate light shall be provided to facilitate must have adequate light for all necessary determination procedures, including the detection and removal of dirt and stains~~ dirties, the detection of staining, and the determination of the condition of the packing material.

~~Agr 389~~ 3 MCAR § 1.0391 Storage and refrigeration provisions. ~~Persons dealing in eggs shall~~ Dealers must have adequate space and proper storage facilities ~~where with temperatures not to exceed of 60 F- shall be degrees Fahrenheit or less as required by law. All storage and transportation facilities must be maintained in a sanitary condition. All licensed buyers of eggs shall~~ Dealers must transport ~~all~~ eggs in enclosed trucks that are sanitary and provide ~~such~~ insulation or refrigeration ~~as may be necessary to maintain the quality and temperature of the eggs. Coverings such as Trucks with canvas tarpaulins, blankets and or similar covers of a similar nature will not be acceptable within the meaning of the word are not "enclosed" except by unless special permission which may be is given when roads are officially posted for weight limits.~~

~~Agr 390~~ 3 MCAR § 1.0392 Egg cleaning provisions.

~~In all instances~~ A. Protection from soil. Eggs shall must, so far as reasonably possible and by use of all reasonable means, be protected from being soiled or dirtied by foreign matter in all stages of production, transportation and processing.

(a) B. Wet cleaning. Wet cleaning of eggs using rags, sponges or other devices to scrub or wipe the eggs by hand is strictly prohibited.

(b) C. Dry cleaning. Dry cleaning with abrasive material reasonably free of bacterial contamination is permitted.

(c) Wet cleaning is permitted provided the following minimum D. Washing equipment and procedures. Eggs may be washed subject to the following requirements are employed:

(1) 1. Egg washing equipment and the surrounding area in which it is operated shall must be of such construction as to permit thorough cleaning.

(2) 2. Egg washing equipment and the surrounding area shall must be kept in a sanitary condition.

(3) 3. The water used in washing eggs shall must be potable and contain less than ~~two~~ five parts of iron per million.

(4) 4. The water temperature for both washing and rinsing shall must be thermostatically controlled.

(5) 5. The temperature of the wash water shall must be maintained at a minimum of 90 F- degrees Fahrenheit and shall must be at least 20 F- degrees Fahrenheit warmer than the temperature of the eggs and. The rinse water temperature shall must exceed the wash water temperature by at least 10 F degrees Fahrenheit. Prewetting by submersion shall not exceed five (5) minutes must be accomplished by spraying a continuous flow of water over the eggs in a manner that permits the water to drain away.

(6) 6. Only approved cleaning and sanitizing compounds shall may be used. (Refer to the USDA United States Department of Agriculture list of chemical compounds authorized for use under the USDA poultry, meat, rabbit and egg products inspection programs).

(7) 7. Washed eggs shall must be spray rinsed with an approved sanitizing agent. The rinse shall must contain not less than 100 PPM nor at least 50 parts per million and may contain no more than 200 PPM parts per million of available chlorine or its equivalent.

(8) 8. Washed eggs must be reasonably dry prior to cartoning or casing.

(9) 9. Washers shall must be operated in accordance with the manufacturer's instructions in all instances which are not in conflict with these regulations 3 MCAR §§ 1.0388-1.0404.

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PROPOSED RULES

~~(10)~~ 10. No Immersion type washers shall may not be used.

~~(11)~~ 11. Whenever All eggs must be removed from the washing and rinsing area of the egg washer and the scanning area where there may be a build up of heat when those areas are not in use, all eggs shall be removed from those surfaces.

~~Agr 391~~ 3 MCAR § 1.0393 Candling and grading records.

~~(a) A. Each person dealing in eggs shall~~ A dealer must keep an accurate candling and grading record, known as a "bench record," for each patron from whom eggs are purchased on a graded basis, which records shall be designated as the "Bench Record". Candling and grading bench records shall must be kept in a manner sufficient to indicate that the eggs purchased by the first licensed buyer dealer have been candled and graded and all inedible eggs removed. Bench records, consecutively numbered, shall must be written in ink or other nonerasable writing and shall must include the following data:

~~(1)~~ 1. name and address of licensed egg the dealer;

~~(2)~~ 2. name or number and address of the producer or person selling eggs;

~~(3)~~ 3. date received;

~~(4)~~ 4. number of dozen eggs received;

~~(5)~~ 5. exact number of eggs in each Minnesota purchase grade;

~~(6)~~ 6. deductions for inedible and or adulterated eggs;

~~(7)~~ 7. name or initial of candler and date candled; and

8. dirties and checks may be identified as such or may be grouped together in one column in order to simplify record keeping.

~~(b) The permanent office record shall include the original bench record or a carbon copy thereof and the remittance ticket on which the producer was paid. The bench record or remittance ticket shall show the amount of advance payment, the price and the total amounts paid for each grade and balance paid the producer. Such B. Permanent office records. Records shall must be kept in a neat and orderly manner and shall, must be available to the commissioner of agriculture, or his representative at all reasonable times, and shall must be retained by the licensee dealer for a period of at least 90 days after the date of purchase.~~

~~Agr 392~~ 3 MCAR § 1.0394 Minnesota purchase grades required. Persons A person buying eggs from the a producer on a graded basis shall must do so on the basis of the purchase grades promulgated by the commissioner of agriculture set in 3 MCAR § 1.0398.

~~Agr 393~~ 3 MCAR § 1.0395 Minnesota consumer grades required. All candled and graded eggs which are purchased for resale, sold, transferred or consigned to consumers, dealers, brokers, retailers or wholesalers within the state, shall must be sold, transferred or consigned on the basis of the consumer grades promulgated by the commissioner of agriculture set in 3 MCAR § 1.0398. All eggs sold, consigned or transferred, except eggs sold at retail, shall must be accompanied by an invoice to the receiver showing the number of cases of eggs of each consumer grade in each shipment.

~~Agr 394~~ 3 MCAR § 1.0396 Containers and packaging material used in the marketing eggs. Any container, including the packaging material therein inside the container, which is unfit for the marketing of eggs due to condition or contamination shall must, at the discretion of the inspector and under his supervision, be rendered unfit for further use unusable.

~~Agr 395~~ 3 MCAR § 1.0397 Identification of eggs in the possession of licensed dealers. Each case of eggs held by a licensed dealer shall must be identified as to grade and size in a manner acceptable to the commissioner or his representative. Grade designation shall may not be abbreviated. Acceptable methods of identifying cases shall include stamping, marking with chalk or other legible marking, or a grade slip or label in or attached to each case. Each case or part of a case of eggs or portion thereof which has not been candled and graded shall must be identified with the producer's name and address in a manner satisfactory to the commissioner or his representatives.

~~Agr 396~~ 3 MCAR § 1.0398 Minnesota purchase and consumer grades.

A. Purchase grades.

~~(1)~~ 1. Eggs shall may be purchased only on the basis of the standards for of grades and weight classes established for consumer grades except that Grade AA, Grade A Jumbo and Grade A Extra Large are optional purchase grades.

~~(2)~~ "Grade C" shall consist of all edible eggs which do not meet specifications for Grade AA, Grade A, Grade B,

~~dirty and checks. In the preparation of bench records, Grade C, dirty and checks may be grouped together in one column in order to simplify record keeping.~~

~~(3) Dirty and checks shall be identified as such but record keeping may be done as specified under Agr 396 (a) (2).~~

~~(4) 2. Eggs may be purchased as "nest run" or "current receipts".~~

~~(5) 3. All restricted eggs (dirty, checks, leakers, inedible, loss and incubator rejects) shall, must be handled in a manner conforming to the requirements of the Federal Egg Products Inspection Act of 1970 and, regulations relating thereto promulgated under that act, and the Minnesota Egg Law, Section 29.235, MS 1971 Minn. Stat. § 29.235.~~

4. All eggs used in the manufacture of food products or by a restaurant, caterer, nursing home, school, charitable organization or similar establishment which prepares or serves food for human consumption must be of Grade B or better, except for checks and dirty which may be processed for human consumption by an official egg processing plant licensed by the department.

(b) B. Consumer grades.

(1) Grade AA (Quality Controlled) shall consist of eggs produced and marketed under the Minnesota Certified Quality Egg Program (Agr 434-457) or the Federal-State Quality Egg Program (7 CFR Part 56, Section 56.216) for Fresh Fancy Quality labeling. Eggs from flocks that meet the provisions of these programs may be packaged and officially labeled after eggs with blood spots, or meat spots, check, loss eggs and eggs with shells failing to meet the requirements for AA quality have been removed.

(2) Grade AA (Candled Quality) shall consist of eggs which are 80 percent AA quality. The minimum tolerance of 20 percent which may be below AA quality may consist of A or B quality in any combination with not more than 5 percent C quality or checks in any combination and not more than 0.5 percent leakers or dirty in any combination.

(3) Grade A shall consist of eggs which are 80 percent A quality or better. Within the maximum tolerance of 20 percent which may be below A quality, not more than 5 percent may be C quality or checks in any combination, and not more than 0.5 percent leakers or dirty in any combination.

(4) Grade b shall consist of eggs which are 80 percent B quality or better. Within the maximum tolerance of 20 percent which may be below B quality, not more than 10 percent may be checks and not more than 0.5% leakers or dirty in any combination.

1. "Grade AA (at origin)" consists of eggs which are at least 87 percent AA quality. The maximum tolerance of 13 percent which may be below AA quality may consist of A or B quality in any combination, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than five percent checks are permitted and not more than 0.50 percent leakers, dirty or loss due to meat or blood spots are permitted in any combination except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

2. "Grade AA (at destination)" consists of eggs which are at least 72 percent AA quality. The remaining tolerance of 28 percent shall consist of at least ten percent A quality and the remainder shall be B quality, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than seven percent checks are permitted and not more than one percent leakers, dirty, or loss due to meat or blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

3. "Grade A (at origin)" consists of eggs which are at least 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than five percent, or seven percent for jumbo size, checks are permitted and not more than 0.50 percent leakers, dirty or loss due to meat or blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

4. "Grade A (at destination)" consists of eggs which are at least 82 percent A quality or better. Within the maximum tolerance of 18 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch,

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PROPOSED RULES

blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than seven percent, or nine percent for jumbo size, checks are permitted and not more than one percent leakers, dirties, or loss due to meat or blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

5. "Grade B (at origin)" consists of eggs which are at least 90 percent B quality or better. Not more than ten percent may be checks and not more than 0.50 percent may be leakers, dirties, or loss due to meat or blood spots in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

6. "Grade B (at destination)" consists of eggs which are at least 90 percent B quality or better. Not more than ten percent may be checks and not more than one percent may be leakers, dirties, or loss due to meat or blood spots in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

(e) C. Quality standards specifications. Specifications for standards for quality of individual shell eggs shall be regulated in accordance with the United States Standards for Quality of Individual Shell Eggs and Weight Classes for Shell Eggs, (7 CFR Part 56 Subpart C Sections 56.201 through 56.212 effective July 1, 1971) which regulations are hereby adopted by reference 7 Code of Federal Regulations Part 2856, effective December 26, 1978, as amended October 1, 1981.

(d) Summary of grades for shell eggs

Consumer Guide	Quality Required	Tolerance Permitted Percent	Quality
Candled Grade Grade AA	80 percent AA	Up to 20 Not over 5	A or B C or Checks Leakers, Dirties or Loss*
Grade A	80 percent A or better	Up to 20 Not over 5	B C or Checks Leakers, Dirties or Loss*
Grade B	80 percent B or better	Up to 20 Not over 10 Not over 0.5	C Checks Leakers, Dirties or Loss*

* Loss refers to meat or blood spots only—Such loss may not exceed 0.30 percent.

(e) D. Weight classes for Grades for shell Eggs egg grades. Weight classes for shell egg grades are established in Exhibit 3 MCAR § 1.0398 E.-1.

Exhibit 3 MCAR § 1.0398 E.-1.
Weight Classes for Shell Egg Grades

Size or Weight Class	Minimum Net Weight per doz./ dozen, in ounces	Minimum Net Weight per 30 doz./lbs. dozen, in pounds	Minimum Weight for Individual Eggs at Rate per dozen ¹ , in ounces
Jumbo	30	56	29
Extra Large	27	50½	26
Large	24	45	23
Medium	21	39½	20
Small	18	34	17

A lot average tolerance of 3.3% percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds 5 five percent.

~~Ag-397~~ 3 MCAR § 1.0399 Invoices. Every person dealer selling eggs to retailers shall furnish to such retailers a retailer must give the retailer an invoice showing the grade of such the eggs, according to the standards prescribed by Regulation Ag-396 (b) as it relates to Consumer Grades under 3 MCAR § 1.0398 B. A copy of each such invoice shall must be kept on file by the person selling seller and the retailer at his their respective place places of business for a period of 30 days and shall must be available to and open for inspection at all reasonable times to a representative of the department of agriculture by the commissioner.

~~Ag-398~~ 3 MCAR § 1.0400 Labeling. Any person dealer exposing or offering eggs for sale to a consumer shall must give notice of the grade of eggs in the following manner: set out in this rule.

If eggs are exposed or offered for sale in cartons, bags or other containers, such the cartons, bags or other containers shall must be plainly and conspicuously printed in letters not smaller than 1/4 one-quarter inch in height, or plainly and conspicuously stamped or marked in letters not smaller than 1/2 one-half inch in height with the exact grade and size. If eggs are offered or exposed for sale in bulk, there shall must be placed a placard among or adjacent to such the eggs, a placard, and such placard shall state which states the grade and size of such the eggs and shall be is in letters not smaller than 1/2 one-half inch in height. Grade designations shall may not be abbreviated. All containers shall must also include the name and address of the producer or, processor, or distributor. In the case of the processor or distributor, the words "packed for" or "distributed by" or some equivalent phrasing shall should be used.

~~Agr 399~~ 3 MCAR § 1.0401 Advertising.

(a) Any advertisement of eggs at a given price shall must plainly and conspicuously indicate the grade and size. Grade designations shall may not be abbreviated.

(b) All reference to grades of eggs in advertising or in any other manner, either for procurement or sale of eggs, shall must conform to the grade and size terminology for purchase and consumer grades promulgated by the commissioner of agriculture.

~~Agr 400~~ 3 MCAR § 1.0402 Misleading statements. No person shall dealer may sell, or offer for sale, or advertise for sale, eggs for human consumption if the package containing them or the, a label thereon on the package, or any advertising accompanying them shall bear bears any statement or device which may be is in any way false or misleading in any particular.

~~Agr 401~~ 3 MCAR § 1.0403 Coding and open dating.

A. Coding. Consumer grades of eggs, except quality controlled Grade AA, shall must be code dated in type not smaller than eight-point capitals to indicate the date of delivery, which date shall must not be more than three (3) days from the date of candling and grading. All cartons shall must bear a code date and cases of eggs for bulk sales shall be plainly coded. Such code date shall guarantee to the retailer the grade indicated, for a period not to exceed seven days, when properly handled and refrigerated. If retailers carton eggs which have been delivered in bulk cases, the code date on the carton shall must be the same as on the cases.

Cartons or containers for Grade AA quality controlled eggs shall bear in distinctly legible form a date stated as the "month" and "day" or the number of the "month" and "day" (e.g. 4-3) preceded by the letters "EXP" or an equivalent statement. The expiration date shall not exceed 15 days from the date the eggs are packed, excluding the day of pack. Cartons and containers shall be labeled as to grade and size in accordance with Minnesota Statutes 1974, Sections 29.021 and 29.27, and the applicable regulations adopted thereunder. The plant and/or flock certificate number shall be marked on each carton or container.

B. Open dating. All consumer grade eggs must carry an "open date" in addition to the code date. The code date is the day of delivery and must be a Julian date so it is not confused with the open date by consumers. The open date or freshness date must be spelled out as the month or number of the month and day, for example: 2-1 or Feb. 1. The open date must have an explanatory clause, such as "Sell by" or "Use by," the word "Expires" or the abbreviation "Exp."

~~Agr 403~~ 3 MCAR § 1.0404 Use of word "Fresh". The use of the word "Fresh" shall be is limited to eggs of Grade Grades AA, A and B quality which are less than 31 days old. However, The term "Fresh" or any term of a similar import, shall term is not deemed to be a substitute for grade designation.

~~Agr 405-417 Reserved for future use.~~

Repealer. Rules Agr 402 and 404 are repealed.

Minnesota Housing Finance Agency

Proposed Temporary Rules Governing Income Limits for Limited Unit Developments

Request for Public Comment

Notice is hereby given that the Minnesota Housing Finance Agency has proposed the following temporary rules for the purpose of setting income limits for the Limited Unit Developments pursuant to Laws 1981, Chapter 306, § 3.

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

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register* by writing to Monte Aaker, Research Coordinator, Minnesota Housing Finance Agency, Suite 200, 333 Sibley Street, St. Paul, Minnesota 55101. The temporary rule may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rule.

James J. Solem
Executive Director

Temporary Rule as Proposed

12 MCAR § 3.002 [Temporary] Definitions.

O. "Persons and families of low and moderate income" means:

1. [Unchanged.]

2. [Temporary.] With respect to limited-unit mortgage loans to veterans and veterans' dependents to assist in making down payments pursuant to Minn. Stat. § 462A.05, subd. 19, those persons and families whose adjusted income does not exceed ~~\$22,000 for the nonmetropolitan area and \$27,000 for the metropolitan area~~ the amounts set forth in Exhibit 12 MCAR § 3.002 O.-2 regardless of the interest rate on the mortgage loan for which down payment assistance has been given;

EXHIBIT 12 MCAR 3.002 O.-2

	<u>Nonmetropolitan Area</u>	<u>Metropolitan Area</u>
	<u>Maximum Adjusted Income</u>	<u>Maximum Adjusted Income</u>
<u>New Construction</u>	<u>\$ 27,000</u>	<u>\$ 32,000</u>
<u>Existing Construction</u>	<u>\$ 23,000</u>	<u>\$ 27,000</u>

3.-5. [Unchanged.]

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
County of Ramsey

Tax Court
Regular Division

Bemidji Community Hospital,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

In the Matter of the
Appeals from the Commissioner's
Orders dated March 6, 1981,
relating to the Sales and Use
Tax Liability for the taxable
periods ending between
May 31, 1978, and December 31,
1979.

Docket No. 3284
Order dated June 16, 1982

The above entitled matter was heard by the Minnesota Tax Court, Judge Carl A. Jensen presiding, on March 2, 1982. Subsequently, briefs have been submitted by the parties, together with an Amicus Curiae Brief by the St. Therese Retirement Apartments represented by Patrick V. Johnson from the firm of Speeter, Johnson, Hautman and Olson.

Joseph E. Hamilton and John J. Bowden, Hamilton and Bowden, P.A., 1100 First Bank Place West, Minneapolis, Minnesota, appeared on behalf of Appellant.

Paul R. Kempainen, Special Assistant Attorney General, Department of Revenue, appeared on behalf of Appellee.

Syllabus

Appellant has substantially complied with Sales Tax Regulation Number Tax S & U 112 C 3, which relates to the appointment of an agent to purchase materials for a tax exempt organization to be used in building and construction, and the purchases by the agents are, in fact, purchases by the tax exempt organization and are exempt from Minnesota Sales and Use Tax.

Findings of Fact

1. The taxpayers in this case are fifteen (15) private construction contracting corporations, each of whom entered into a contractual relationship with Appellant herein, Bemidji Community Hospital (hereinafter "the Hospital"), to act as contractor on the construction of a new hospital facility in Bemidji, Minnesota. (Stip., paras. 1 and 2).

2. Because the Hospital agreed to indemnify the taxpayers for all sales and use taxes assessed against them as a result of the contracts involved herein, the Hospital is in effect acting as the attorney for the taxpayers in making this consolidated sales and use tax appeal, and for that purpose the Hospital has obtained limited powers of attorney from each of the fifteen taxpayers. (Tr. 17, lines 1-4; Notice of Appeal; and Stip., Exh. 16). While the Hospital is not itself liable to the State of Minnesota for any tax, for purposes of convenience the parties have agreed to denominate the Hospital, rather than all fifteen contractor-taxpayers, as the Appellant herein. (Tr. 17).

3. This case arose when, on March 6, 1981, the Commissioner of Revenue issued Orders Determining Sales and Use Tax Liability against each of the taxpayers as listed below, which assessments were based upon transactions entered into pursuant to the construction of a new hospital facility in Bemidji, Minnesota, during the taxable periods ending between May 31, 1978, and December 31, 1979 (Stip., para. 1; Exhs. 1 through 15):

<u>Taxpayer</u>	<u>Tax Assessed (Exclusive of Interest)</u>
1. Dwayne Young, Inc.	\$ 5,053.72
2. Stretar Masonry, Inc.	2,681.49
3. Nordheim Roofing Company	876.11
4. Lake Region Glass Co., Inc.	3,746.88
5. Hanay Electrical Construction, Inc.	12,243.94
6. Guillaume & Associates, Inc.	383.66
7. Robert Gibb & Sons, Inc.	9,013.46
8. Flament Hampshire, Inc.	613.88
9. Dale Tile Company	422.88
10. Cowin & Company, Inc.	7,200.00
11. Casework Concepts, Inc.	1,296.44
12. Apollo Sprinkler Company, Inc.	1,270.70
13. American Sterilizer Company	2,184.28
14. Air Control Heating, Inc.	18,219.75
15. Dakota Food Equipment, Inc.	3,151.27

4. In late 1976, the Hospital engaged the services of McCarthy Brothers Company ("McBro") to act as construction manager. (T23, 14-18) McBro was to perform two functions. The first involved planning the construction of the new 89-bed facility. (T25, 6-11; Ex. B, part A) The second function involved supervision of the actual construction work, as the Hospital's agent. (T25, 6-11; Ex. B, part B) In carrying out its duties, McBro was charged with keeping the Hospital within budget and completing the construction within the prescribed period of time. (T24, 21-25; T25, 1-5)

5. In early 1977 and with the assistance of McBro, the Hospital contracted with an architect for the design of the new facility. (T23, 14-18) About that same time in 1977, the Hospital began to investigate the possibility of appointing the various primary contractors purchasing agents of the Hospital for the purchase of the materials and supplies. (T25, 18-25; T26, 1-14) The Hospital was cognizant of the fact that the Department had a regulation which set forth when the Department would recognize a purchasing agent arrangement between a tax-exempt entity and its contractors. (T26, 15-19)

6. In deciding whether to appoint the various primary contractors purchasing agents, the Hospital was mindful of the fact that the Hospital would incur added risks with a purchasing agent arrangement than with the "traditional" owner-contractor arrangement. Title to the materials and supplies would transfer to the Hospital at point of delivery to the agents, on or off of the job site, at which time the Hospital would begin to bear the risk of loss. The Hospital would also be responsible for the defects in the materials and supplies. (T26, 24-25; T27, 1-11; T29, 18-25)

7. Despite the added risks, the Board of Directors decided to enter into a purchasing agent arrangement with the various primary contractors, in accordance with the Department's regulation. Inasmuch as the Hospital's budget was very tight, the Hospital determined that it was worth incurring the added risks in order to have the benefit of reduced bids by the primary contractors of four percent of the cost of the materials and supplies. (T26, 15-19)

8. At a meeting in October, 1977, the Board of Directors formally appointed the contractors purchasing agents and authorized its president to enter into contracts with the contractors "reasonable and necessary to carry out the terms and intent" of the appointment. (T28, 16-25; T29, 1-5; Ex. A) The complete text of the resolution adopted by the Board of Directors at this meeting was as follows:

RESOLUTION

OF THE BEMIDJI COMMUNITY HOSPITAL

BE IT RESOLVED, that the Bemidji Community Hospital does hereby appoint as its purchasing agent those construction contractors and subcontractors employed by the Bemidji Community Hospital in the construction of its new 89 bed hospital. The appointment shall be limited to the purchase of personal property, building materials, equipment and supplies which are necessary to complete their construction contracts, and which become affixed to and a part of the real estate. Notwithstanding any other contract, the construction contractors and subcontractors shall have the authority and responsibility and only that authority and responsibility as required by law to qualify said purchases of personal property, building materials, equipment and supplies as exempt from Minnesota sales tax and use tax. The President is authorized to enter into any contracts reasonable and necessary to carry out the terms and intent of this resolution.

The Bemidji Community Hospital Tax Exemption Number:

21630

9. It was not until January, 1978, that bids were invited from the various contractors (T25, 4-6) At that time, an Information for Bidders was sent to each of the prospective bidders. (Ex. D) In pertinent part, the Information for Bidders provided as follows:

The Owner is a Hospital which is exempt from the payment of Minnesota Sales and Use Tax. The Contractor shall act as agent of the Owner and shall not pay Sales or Use taxes on materials and equipment which are affixed and made a part of the Real Estate or which are purchased for the Project and become the property of the Owner. The Owner's Sales and Use Tax exemption certificate number, which the Contractor shall use as agent of the Owner is 21630. The Contractor shall pay all other taxes required by law. (Ex. D, page SIB-8)

The bidders also had available to them the contract specifications. The contract specifications included copies of some of the actual contract documents. (T91, 3-11) One of these contract documents was the Supplementary General Conditions. In pertinent part, the Supplementary General Conditions provided as follows:

Delete subparagraph 4.6.1 and substitute the following subparagraph:

4.6.1 The Owner is a Hospital which is exempt from the payment of Minnesota Sales and Use Tax. The Contractor shall act as agent of the Owner and shall not pay sale or use taxes on materials and equipment which are affixed and made a part of the real estate or which are purchased for the Project and become the property of the Owner. The Owner's Sales and Use Tax Exemption Certificate Number, which the Contractor shall use as agent of the Owner is 21630. The Contractor shall pay all other taxes required by law. (Ex. 16, page SGC-2)

10. A pre-bid conference was held on or about January 19, 1978. At the pre-bid conference, representatives of McBro discussed the purchasing agent arrangement with the contractors desiring to bid on the various construction work. (T82, 20-25; T83; T84, 1-9)

11. Contracts were awarded to some 18 primary contractors and a pre-construction meeting was held on April 17, 1978. (T112, 11-17) At that meeting, questions were again raised about the purchasing agent arrangement. The contractors were instructed as to how to notify their materialmen and suppliers of the purchasing agent arrangement. Also at the pre-construction meeting, all of the contract documents were signed by the various primary contractors. (T112, 18-25; T113; T114, 1-16; Ex. K) The contract documents which the parties signed at the preconstruction meeting were as follows:

- AIA Standard Form of Agreement Between Owner and Contractor
- General Conditions of the Contract for Construction
- Supplementary General Conditions
- Special Conditions
- Farmers Home Administration—Supplemental General Conditions
- Instruction to and Agreement with Purchasing Agents

12. As aforesaid, in pertinent part, the Supplementary General Conditions provided as follows:

Delete subparagraph 4.6.1 and substitute the following subparagraph:

4.6.1 The Owner is a Hospital which is exempt from the payment of Minnesota Sales and Use Tax. The Contractor shall act as agent of the Owner and shall not pay sale or use taxes on materials and equipment which are affixed and made a part of the real estate or which are purchased for the Project and become the property of the Owner. The Owner's Sales and Use Tax Exemption Certificate Number, which the Contractor shall use as agent of the Owner is 21630. The Contractor shall pay all other taxes required by law.

(Ex. 16, page SGC-2)

13. The Instruction to and Agreement with Purchasing Agents, which all of the contractors entered into at the April 17, 1978, pre-construction meeting, provided as follows:

Pursuant to the Contract Documents you are to act as agent of the hospital for the purchase of materials and equipment used in the project so that the purchases may be exempt from the Minnesota Sale and Use Taxes in accordance with Minn. Rev. Reg. Tax S&U 112(c) (3).

The board of directors of the hospital has by resolution appointed the various contractors purchasing agents.

As purchasing agent you will be asked to follow and agree to the following:

1. The materials and supplies purchased will be in accordance with the contract documents.
2. The title to any materials and supplies purchased pursuant to this appointment will immediately vest in the owner at the point of delivery and all reasonable precaution should be taken for their safekeeping prior to installation.
3. When the title to the materials and supplies transfers to the hospital, the hospital will assume the incidents of ownership including the risk of loss.

4. All vendors and suppliers that you deal with will be advised of this agency relationship and the hospital's Sales and Use Tax Exemption Certificate Number 21630 will be affixed on all purchasing orders.

5. Notwithstanding anything in the Contract Documents to the contrary the arrangement between the hospital and contractor purchasing agent herein shall be deemed to be in compliance with those provisions of Minnesota Revenue Regulations, Tax S&U 112(c) (3) which are applicable and which are consistent with Minnesota Statute 297A.25 Subd. 1(p).

The parties hereto have agreed as set forth above and have affixed their signatures [sic] hereto this 15th day of April, 1978. (Ex. 17)

14. The Instruction to and Agreement with Purchasing Agents tracked the language of Tax S & U 112(c) (3) with regard to vesting of title, risk of loss and notification of vendors and suppliers. (Ex. 17) However, the Hospital believed that the regulation departed from the common law in exonerating the contractor-agents from responsibility for all defects. The Hospital believed that, even as the Hospital's agents, the contractors were, and should be, responsible for knowingly purchasing defective materials, such as materials that did not meet the specifications. Therefore, the Hospital included the regulation's defective materials provision in an incorporation clause in the Instruction. (T37, 17-25; T38 1-23; Ex. 17)

15. Each of the above-named taxpayers entered into a lump-sum, materials and labor construction contract with the Hospital on or about April 17, 1978, which contract consisted of the American Institute of Architects' "Standard Form of Agreement Between Owner and Contractor," as well as the following other contract documents: General Conditions of the Contract for Construction; Supplementary General Conditions; Special Conditions; and Farmers Home Administration—Supplemental General Conditions. (Stip., para. 3; Exh. 16; and Tr. 113). Article 2 of this contract required each contractor to "perform all the Work required by the Contract Documents" for that contractor's particular portion of the job. The term "Work" was defined in the General Conditions portion of the contract (page 5, para. 1.1.3) as follows:

The term Work includes all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

The contract price to be paid by the Hospital to each contractor was agreed to in Article 4 of the contract, and on each contract this amount was one lump sum for both the materials and labor going into the construction of the new hospital. (Tr. 56-58). No separate breakdown was made for materials and for labor.

16. The lump sum agreed to in each contract was in effect a guarantee by the contractor to the Hospital that the total cost of the materials procured by the contractor for its portion of the work would not exceed a firm ceiling figure. (Tr. 58, 89-90, and 109). In other words, if the materials purchased by the contractor for the completion of the contract exceeded the original cost estimate, the contractor and not the Hospital would bear the extra cost. (Tr. 58 and 109). This contractual provision for a lump sum materials and labor price is exactly the same as that which exists in the traditional contractor-owner relationship (Tr. 109); and it was one of the benefits sought by the Hospital in structuring its transactions the way it did. (Tr. 33, lines 18-23).

17. Each contractor on the hospital project was required to and did obtain a standard Performance and Payment Bond in favor of the Hospital and covering the entire lump sum amount of the contract, for both materials and labor. (Stip., para 4; Exh. 18; and Tr. 58-59). This requirement for a Performance and Payment Bond is exactly the same as that which exists in the traditional contractor-owner relationship. (Tr. 66).

18. Shortly after the April 17, 1978 pre-construction meeting, construction of the new 89-bed hospital facility began. Thereafter, at monthly construction meetings, the purchasing agent arrangement was discussed from time to time. (T111, 23-25; T112, 1-10; T51, 14-25; T52, 1-22). The various vendors and suppliers were notified of the purchasing agent arrangement by being supplied with a copy of the actual Instruction to and Agreement with Purchasing Agents or by a notation on the purchase orders that the materials and supplies were being purchased by the contractors as the Hospital's purchasing agents. (T87-88; T107; Ex. H; T98-99).

19. During the construction, McBro, as the Hospital's agent, verified that the materials that were stated to be purchased on behalf of the Hospital were in fact so purchased, and since the risk of loss for those materials was the Hospital's, McBro took steps to further safeguard them. (T113, 21-25; T115, 1-15) From time to time, McBro also assisted the contractor-agents with problems that they were having with materialmen and suppliers. (T115, 16-25; T116, 1-6) McBro was also available to the Hospital to handle its defect problems. Unless the defect was a knowing one, such as an item failing to conform with the specifications, the Hospital looked only to the contractors for defects in installation, as opposed to defects in the materials themselves. (T41-48; Ex. E; Ex. F; Ex. G)

20. Under the contractual arrangements herein, each contractor was responsible for paying the suppliers out of its own funds for the materials furnished, which payments were made either before or after the contractor was reimbursed by the Hospital, depending upon circumstances. (Tr. 63, 89 and 101). Suppliers of materials always sent their invoices to the contractor which purchased the materials from them, and it was the contractor who paid the suppliers with its own check. (Tr. 62-63, 101 and 120). The contractor would then incorporate the invoices into an Application and Certificate for Payment which included both the material and labor costs incurred thus far on the project. (Stip. Exhs. 19-21; Tr. 120-121). On each such Application the contractor would begin with the lump sum figure set forth in its contract and then calculate the value of the work done to the date of the Application, which value (minus retainages) then become the amount of payment claimed by the contractor for both materials and labor to date. (Stip. Exhs. 19-21; Tr. 122-123).

21. All Applications and Certificates for Payment were submitted by the taxpayers herein to the construction manager, McBro, who consolidated all of the individual applications into one consolidated Application and Certificate for Payment, which was then forwarded, together with a cover letter, to the project's architect (Ellerbe and Associates), who in turn attached its own certification for payment and sent the entire package to Mr. Leon Swanson, administrator of the Hospital. (Stip. para. 7; Exhs. 22-25; and Tr. 124-125). After approval by the Hospital's building committee, the Hospital then caused lump-sum payments to be made to the individual contractors. (Tr. 63 and 126). At no time did the Hospital ever directly pay any supplier for materials furnished. (*Ibid.*)

22. Construction of the new facility was financed from tax-exempt bonds, the Farmers Home Administration, community donations, and the Hospital's own reserves. (T21, 21-25; T22, 1-2). Construction was completed in October, 1979, at which time the Hospital occupied its new facility.

23. The complete text of Regulation Tax S&U 112(c) (3) reads as follows:

3. The transfer of building materials by an exempt entity to its contractor for use in connection with a contract for the erection, alteration, repair or improvement of realty is not deemed a retail sale (and is thus exempt from the sales or use tax) provided: (1) the contract is for labor only; (2) all incidents of ownership to the building materials remain in the exempt entity at all times; (3) the contractor bears no responsibility for inherent defects in the building materials; and (4) the contractor bears no risk of loss of any of the building materials.

An exempt entity, in addition to contracting with a contractor for the erection of a building or the alteration or repair of real estate, may appoint and designate the contractor as "purchasing agent" for such exempt entity in connection with the construction contract. In such situations the department will recognize the agency relationship asserted only if the written contract clearly sets forth: (1) that such appointment has been made; (2) that title to all materials and supplies purchased pursuant to such appointment shall immediately vest in the owner or principal at point of delivery; (3) that the risk of loss with respect to such materials and supplies is that of the owner or principal; and (4) that the owner or principal, and not the agent, shall have responsibility for all defective materials and supplies, including those incorporated into realty purchased in such manner. In the event that the contract in question does not specify as to risk of loss, other competent evidence, such as insurance coverage, will suffice.

Any contractor who has been appointed agent for the purchase of materials and supplies, as specified above, shall furnish adequate notification to all vendors and suppliers of such agency relationship and shall make it clear to such vendors that the

obligation for payment is that of the owner and not the contractor-agent. All purchase orders and other documents furnished to the vendor shall clearly reflect the agency relationship.

24. Upon audit by the Commissioner of Revenue, it was determined that each of the contractors herein were liable for Minnesota Use Tax upon their purchase and use of the materials going into the construction of the new Bemidji Hospital, and assessment Orders were accordingly issued on March 6, 1981. (Stip., para. 1). The taxpayer-contractors, through their attorney-in-fact (the Hospital), have taken a timely appeal from those Orders.

25. Appellants have followed substantially the Regulation Tax S&U 112 C 3, which provides for the appointment of contractor purchasing agents for tax exempt organizations and the purchases referred to in the Commissioner's Orders involved in this appeal are exempt from sales and use taxes.

Conclusions of Law

1. The contractors were the purchasing agents of the Hospital within the meaning of Tax S&U 112 C 3. In their written construction contracts, the parties agreed that the materials and supplies would be purchased by the contractors as purchasing agents for the Hospital. The agreements for the purchase of the materials and supplies conformed with the express terms and conditions of the aforementioned regulation, and the parties acted in accordance with their agreements.

2. Therefore, the fifteen (15) Orders of the Commissioner of Revenue, all dated March 6, 1981, must be vacated.

LET JUDGMENT BE ENTERED ACCORDINGLY.

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

Memorandum

This is a very difficult case. There are a substantial number of cases that have dealt with the problem involved here, and most of them have held that the sales and use tax applied to the purchases involved.

The situation is that certain bodies are exempt from paying sales tax on purchases. Governmental bodies are exempt from paying sales tax on purchases of materials, and this case involves such a governmental body.

The question involved is whether or not the governmental body actually makes the purchase. If it does, the purchase is exempt from tax. In this case the governmental body, Bemidji Community Hospital, built a hospital costing several million dollars. Tax Regulation, Tax S&U 112 C 3, provides a method for a governmental body to purchase the materials for a building so that the purchases are exempt from sales and use tax. Bemidji Community Hospital, hereinafter referred to as "the Hospital," attempted to follow the regulation from almost the very inception of the project and considered that the purchases were exempt. After the project was completed, Appellee determined that the Hospital had not completely followed the Regulation, and, therefore, the purchases were subject to tax.

There is no question that if the tax must be paid, it must be paid by the Hospital, ordinarily an exempt body. This, however, has been true in several other cases in which the courts have found that the tax applies, so this is not determinative of whether or not the tax does apply.

There have been a sufficient number of contested cases involving similar situations, so that it would appear that the questions could best be settled by legislation or by more explicit regulations.

We feel that the Hospital has made a good faith attempt to comply with all of the necessary requirements of the Regulation and is, therefore, exempt. The Regulation clearly states that the exempt entity may appoint and designate a contractor as a purchasing agent for the entity and that the purchases made by the agent will be exempt. Appellee contends that the Hospital did not completely follow all of the requirements. It appears that the principal requirement that the Appellee states that was not followed was that the written contract did not provide that the Hospital had full responsibility for defective materials. The Hospital contends that it did, in fact, comply with this part of the Regulation, and that the agent was only liable for his responsibility as an agent which was to purchase supplies and materials meeting the regulations and requirements of the contract. Considering the facts in this case, we have no difficulty in finding that the Hospital did have the responsibility for defective materials, as was indicated by the situation involving the windows where the architect had approved the windows as meeting the specifications. Some difficulty arose relative to the windows and the contractor was not responsible and the Hospital would have to deal with the manufacturer.

We find the most difficult aspect of this case to be that the bids were taken on a lump sum basis, that is that the bidders quoted a single figure for the materials and labor or construction costs. If the Regulation did not exist, we would have more difficulty in finding that the purchases were exempt. We take the position that the Regulation spelled out the procedure that had to be

followed in order to result in exempt purchases. We find that the Hospital did make a very serious effort to comply with all of the provisions of the Regulation, and we feel that they are then entitled to the benefit of the exemption. If we did not so hold, the Hospital would have expended a substantial amount of money in compliance with the Regulation without any benefit.

It appears to this Court that under the statute the Regulation could have been written to provide that purchases will not be exempt unless the materials are bid completely separately from the construction. This might mean that one party could obtain the material contract and another party might obtain the construction contract, although the specifications certainly could provide that any bidder could submit tie-in bids so that if his bid was accepted, both his bid for material and construction would have to be accepted.

We feel that it is unfortunate that under the statute exempt entities can be exempt from sales taxes on purchases of materials going into a building if the exempt entity makes the purchases and such materials would be taxable if the purchases of the materials are made by the contractor. There is no doubt that that situation exists under the statute and the Commissioner cannot change that by regulation. We feel that the statute should be clarified so that all exempt entities are treated in the same manner regardless of what kind of actions or paperwork are done.

The regulation specifies what must be done in order to obtain the exemption. A good faith attempt to follow the regulation should not be nullified by a technicality, if in fact there is a technical variation. It appears to us that under the regulations and in accord with all of the arguments of the Commissioner, the Hospital would clearly have been exempt if it had taken separate bids for the materials even if the Hospital allowed tie-in bids. It also appears to this Court that if this had been done, the bids would have been in exactly the same amounts. It also appears to this Court that the Regulation, as it is written, does not require this and that if it had required this, it appears that the Hospital would have complied with that requirement because the Hospital attempted to comply completely with the requirements of the Regulation.

The Commissioner makes a semantic argument about the provision in the Regulation relating to responsibility for defective materials. We don't feel there is much substance to this argument, and, in fact, it does appear that the Hospital did have the responsibility for defective materials in those situations where the materials purchased had been approved by the Hospital or the architect. Even if the Hospital had appointed an agent solely for the purpose of purchasing materials without anything to do with construction, the agent would be responsible for his actions as agent, and if he purchased defective materials, he would be responsible for his failure as an agent and not exactly for the defective materials although the end result would be very similar.

After so stating the general nature of the case, we will discuss some of the law and matters in more particularity. *County of Hennepin v. State of Minnesota*, 263 N.W. 2d 639 (Minn. 1978) is cited by the Commissioner as precedent for levying the tax in the present situation. It does not appear that the Regulation involved in this case was in effect in 1971 when the Hennepin County case occurred. There is no indication in that case that the county attempted to follow any regulation of the Department. There is no indication that anything was done prior to the bid being let for the entire contract including both materials and construction. It appears that only after the contract was let that the county issued two contracts, one for materials and fabrications and the other for construction. Even under those circumstances, it was a 4 to 3 decision.

In other later cases where purchases were held taxable, there was no reasonable attempt to comply with the Regulation. See *Hauenstein and Burmeister, Inc. et. al. v. Commissioner of Revenue*, Minn. Tax Ct. Dkt. No. 3080 (March 18, 1981) summarily affirmed by Order of Minn. Sup. Ct. dated December 17, 1981.

We agree with the Commissioner's statement that a sales or use tax imposed on private contractors is not invalid merely because the economic burden of the tax is passed on to an otherwise tax exempt entity. No one argues that point so no citations are required. The only question involved here is whether the purchases were made by the exempt entity through an appointed agent and perhaps even more important, whether the requirements of the regulations were met. A regulation has the force and effect of law. After it is adopted, the final determination of its meaning is for the Court. In construing tax statutes or regulations, the Court must favor the taxpayers. In *Wallace v. Commissioner of Taxation*, 184 N.W. 2d 588 (Minn. 1971), the Court stated:

"Where the meaning of the taxing statute is doubtful, the doubt must be resolved in favor of the taxpayer. *We are not permitted to extend the scope of a tax-levying statute beyond the clear meaning of the language used. Northland Country Club v. Commissioner of Taxation*, 241 N.W. 2d 806, 807 (Minn. 1976)." (citation omitted) (emphasis supplied)

Appellant raised an interesting point when it discussed the fact that in 1973 a bill was introduced into the Senate which apparently would have taxed materials going into all buildings whether or not they were constructed for tax exempt entities and regardless of any attempts to avoid the tax by the agency situation allowed by the present statute and spelled out by the regulation. We agree with the Appellee that the introduction of this bill has absolutely no bearing on the interpretation of the present statutes and regulations. We do, however, note that there was an awareness of the problem in 1973, and it is unfortunate that it was not taken care of at that time and has still not been resolved. Until it is resolved, some tax exempt entities will legitimately avoid taxes that are legally required to be paid by other tax exempt entities simply by structuring its contracting procedures as the Appellant has done in this case. We feel that it is unfortunate that this situation prevails but because the procedural methods are available to all tax exempt entities, it is not unequal treatment under the Constitution.

The Appellee made a curious argument in his Brief in which he appears to indicate that the contractors were not really purchasing agents for the purposes of sales and use taxes even though he seems to admit that they may have been agents, in fact, as between the Appellant and the contractors. The Appellee in his Brief on page 25 and 26 stated:

“And the Hospital’s purported appointment of them as its agents, however valid it may be as between themselves for other purposes, is for sales and use tax purposes a mere formalism which has no effect on the tax liabilities of the contractor taxpayers herein.”

It is true that the courts can disregard form and consider the substance where it is obvious there is an attempt to avoid a legal tax. The situation here is different in that the attempt is only to obtain a legitimate exemption and a good faith attempt to do this should not fail because of a technicality, if, in fact, any technical failure exists as we have previously stated.

Appellee makes an interesting argument relative to distinguishing between an agent or an independent contractor. The citations seem to principally revolve around the control of how the work is to be done. They do not seem to be really pertinent to the present case since the agents had to purchase materials that met the specifications of the Hospital, and in that sense the contractor-agents really had no control. If they did not purchase materials that met the specifications, they would have been liable for breach of their duty as agent.

The resolution of the dispute in this case rests on the interpretation of the tax statutes and regulations. As we construe the regulations, the Hospital was specifically authorized to act to avoid the tax in the manner that they did. The Appellee states that the regulations should be interpreted otherwise. Although the Appellee originally drafted the regulations, it is clear that once they have been adopted they have the force and effect of law. It is also clear that the determination of the meaning of both the statutes and the regulations is finally for the Courts. See *White Bear Lake Care Center, Inc. v. Minnesota Department of Public Welfare*, 319 N.W. 2d 7; *Resident v. Noot*, 305 N.W. 2d 311 (Minn. 1981).

C.A.J.

SUPREME COURT**Decisions Filed Friday, June 25, 1982**

Compiled by John McCarthy, Clerk

81-438/Sp. Title Insurance Company of Minnesota, John R. Lugar, and Bonnie L. Lugar v. Agora Leases, Inc., Appellant. Ramsey County.

Neither legal nor equitable principles favor enlarging the exemption for homesteads from judgment liens beyond the land area expressly provided in Minn. Stat. § 510.02 (1980).

Reversed and remanded. Amdahl, C. J., Dissenting, Todd and Yetka, JJ.

81-460, 81-696/Sp. William A. Johnson v. Arthur E. Noot, Commissioner of Public Welfare, Appellant, and Edward Lorange Mathews, Appellant v. Arthur E. Noot, Commissioner of Public Welfare of the State of Minnesota. Ramsey County.

The statutory definition of a mentally ill person, which requires a showing of “psychiatric or other disorder which substantially impairs * * * mental health,” Minn. Stat. § 253A.02, subd. 3 (1980), means that a person suffering from a character disorder must lack the ability to control his conduct.

A person committed as mentally ill and dangerous must be discharged when he is no longer mentally ill or when he is no longer dangerous.

The findings of the appeal panel in No. 81-460 are supported by sufficient evidence; the findings of the appeal panel in No. 81-696 are clearly erroneous.

Affirmed in part; reversed in part. Amdahl, C. J. Took no part, Kelley, J.

81-1172/Sp. Hauenstein & Burmeister, Inc., Appellant v. Met-Fab Industries, Inc., etc. Hennepin County.

A reasonable forum selection clause in a bargained-for sales agreement may be enforced.

Forum selection clause in a written sales agreement is not waived where, in addition to asserting such clause in its answer as a defense, a party asserts claims for affirmative relief.

Affirmed. Amdahl, C. J.

SUPREME COURT

51512/Sp. Agnes Johnson, as personal representative of the Estate of Warren Johnson, deceased v. Farmers and Merchants State Bank of Balaton, *et al.*, Appellants, Minnesota Mutual Life Insurance Company, Defendant. Lyon County.

Failure of a creditor-insurance agent to deliver a copy of a line of credit insurance policy or a certificate of insurance in violation of Minn. Stat. § 62B.06 (1980) did not constitute negligence when the insured received the policy proceeds for which he applied and was entitled to under the policy.

In the absence of a contractual undertaking by an insurance agent or broker to procure insurance sufficient to liquidate the insured's total indebtedness upon death, the agent or broker has no legal duty toward an insured beyond that specifically undertaken by him or her.

When a borrower executes a promissory note with a bank in excess of the agricultural line of credit he has with the bank, the execution of that note constitutes a single credit transaction and is not within the agricultural exception under 15 U.S.C. § 1603(5) (1976).

Where a creditor bank fails to make the disclosure to a debtor as required under 15 U.S.C. § 1639 (1976), the borrower or his heirs may recover damages equivalent to double the amount of the finance charge plus reasonable attorneys fees.

Affirmed in part; reversed in part. Kelley, J.

51219/Sp. Gerald G. Rieger v. Michael Zackoski, Defendant and Brainerd International Raceway, Inc., Appellant. Crow Wing County.

The trial court properly submitted to the jury the issue of whether plaintiff was a trespasser or entrant.

The trial court properly instructed the jury that defendant racetrack owed a duty to plaintiff of reasonable care under the circumstances.

The trial court did not commit reversible error by refusing to instruct the jury on the issue of superseding cause.

The trial court did not commit reversible error by refusing to instruct the jury on the issue of primary assumption of risk.

The evidence was sufficient to uphold the jury's verdict and apportionment of negligence.

Affirmed. Rogosheske, J. Dissenting, Otis, Peterson, and Todd, JJ. Took no part, Kelley, J.

STATE CONTRACTS

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

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

Department of Energy, Planning and Development Office of Business Development

Notice of Request for Proposals for a Central Waste Treatment Resource Recovery Facility for Industrial Discharges to the Metropolitan Disposal System

The purpose of the study is to determine whether it is more cost effective to comply with EPA industrial pretreatment requirements through the use of central waste treatment facilities rather than individual shop compliances. The study will focus on but not be limited to industrial characterization, Estimation of treatment costs and wastewater/sludge flow rates, characterization of wastewater and sludge volumes to CWT/RRF, conceptual designs of CWT/RRF, investment costs for CWT/RRF and economics of on-site treatment compared to CWT/RRF.

The department estimated that the cost of such a study to be \$30,000.

Proposals must be submitted no later than 4:00 p.m. Monday, July 26, 1982. Further information is available by writing or calling:

Linda Koerner
Department of Energy, Planning and Development
480 Cedar Street, Room 100
St. Paul, Minnesota 55101
(612) 296-3977

Joseph E. Sizer
Assistant Commissioner

Department of Energy, Planning and Development Energy Division Energy Analyses Activity

Notice of Request for Proposals for Virginia, Minnesota Peat Test Burn Project

The Minnesota Department of Energy, Planning and Development/Energy Division (DEPD/Energy) is requesting proposals from consulting firms interested in working, with DEPD/Energy and the Virginia, Minnesota Public Utility (VPU), on a project to assess the potential of peat as a boiler fuel. The approach will be to conduct a series of boiler tests, using a conventional coal fired boiler, where each test will use a different mixture of peat and coal as fuel. Results of the testing will provide data for the construction of performance curves as well as additional data relating to fuel and ash characteristics. Proposals are being requested in each of four major project activities as listed below:

- A. test management
- B. engineering particulate testing and stack sampling
- C. laboratory analyses
- D. fuel procurement

The formal RFP may be requested and inquiries should be directed to:

James F. Idzorek
Minnesota Department of Energy, Planning and Development
Energy Division
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Phone: (612) 296-3741

Funds presently available for each of the services requested are as follows:

<u>Activity</u>	<u>Estimated Cost</u>
A. Test management	\$ —
B. Engineering particulate testing and stack sampling	12,000
C. Laboratory analyses	5,000
D. Fuel procurement	9,000

Test managers will be requested to submit letters of interest and qualifications. Proposals will be requested of test managers as funds become available. All respondents should be prepared to modify their proposals when additional funds are made available.

The deadline for the submission of completed proposals will be 4:30 p.m. July 26, 1982.

Office of the State Public Defender

Notice of Availability of Contract for Legal Services

The Office of the State Public Defender may require the services of experienced attorneys to perform legal services to indigents beginning July 1, 1982.

STATE CONTRACTS

The legal services will include the following:

1. Prepare post-conviction proceedings
2. Prepare and attend parole revocation hearings
3. Prepare appellant briefs and do legal research
4. Prepare and lecture at training schools

The estimated range for these services is \$8.62 to \$29.68 per hour for 380 hours to 1,044 hours. Attorneys in the State of Minnesota are to be given first consideration. Extensive experience in these specialized areas required.

Attorneys desiring consideration should submit a resume immediately. The decision will be made in the month of July, 1982. Send your response to:

C. Paul Jones
State Public Defender
95 Law Center, University of Minnesota
229 19th Avenue South
Minneapolis, Minnesota 55455
(612) 373-5725

Department of Public Welfare Social Services Division

Notice of Availability of Contract for Migrant Day Care Services

The Department of Public Welfare/Division of Social Services is seeking an agency to organize and implement a short-term bilingual/bicultural day care service program for the children of Minnesota's Migrant farm workers.

It is expected that a total of 20,500 days of developmental day care services be provided to approximately 900 Spanish speaking children (6 weeks to 6 years of age) of migrant farm workers in Minnesota. Direct services shall be provided between the months of May and September of 1983 in cooperation and coordination with the Department of Education-Migrant Special Education Programs, Minnesota Migrant Head Start Programs, USDA Summer Feeding Program and Migrant Health Services, Inc.

Project Funding Level: \$486,551.

Final Submission Date: July 26, 1982

Inquiries and formal expressions of interest should be directed to:

Cherie Kotilinek
Division of Social Services
Department of Public Welfare
Centennial Office Building
St. Paul, MN 55155
(612) 296-3929

OFFICIAL NOTICES

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

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

Department of Commerce Banking Division

Bulletin No. 2605: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of July 1982

Notice is hereby given that pursuant to Minnesota Statutes § 47.20, subd. 4a (1980), the maximum lawful rate of interest for conventional home mortgages for the month of July 1982 is seventeen (17.00) percentage points. Further, pursuant to Minnesota Statutes § 47.20, the maximum lawful rate of interest for contracts for deed for the month of July 1982 is seventeen (17.00) percentage points.

It is important to note that this maximum lawful interest rate does not apply to all real estate loans and contracts for deed. Under Minnesota's interest rate moratorium, which is identical to the Federal Usury Preemption, in most instances any rate may be charged on real estate mortgages and contracts for deed that constitute first liens.

This is based on the Federal National Mortgage Association (FNMA) June 21, 1982, auction results and an average yield for conventional mortgage commitments of 16.913%. Current rates regarding the monthly publication are available by telephoning the Banking Division's 24-hour information number, (612) 297-2751.

June 23, 1982

Michael J. Pint
Commissioner of Banks

Department of Military Affairs

Notice of State Surplus Property Sale

The State Department of Military Affairs offers for sale by sealed bids the National Guard Armory at 419 South Minnesota Avenue, St. Peter, Minnesota 56082. The property is legally described as follows:

Lot 3 and North 10½ feet of Lot 4, Block 201, Original Plat, and a permanent easement and right-of-way over the easterly 20 feet of the southerly 55.5 feet of Lot 4, Block 201, along and adjacent to the alley at the easterly end of said Lot 4.

The sale shall include the improved site, which measures approximately 76.5' × 155', the armory building described as follows:

The original armory is a masonry structure with concrete floors. It was built in 1912 and has about 5000 square feet of ground floor area. There is an attached vehicle storage addition built in 1941 which has about 2880 square feet. It is of masonry construction with concrete floor and overhead heaters.

The property will be available for inspection by appointment only. Arrangements for showing may be made by contacting Robert Junge at the address and telephone in an ensuing paragraph.

Sealed bids for the purchase of the property will be received in the Office of Real Estate Management, Room G-22 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, until 2:30 p.m. on July 29, 1982, at which time and place bids will be publicly opened and read aloud.

BIDS IN AN AMOUNT LESS THAN \$75,000.00 WILL NOT BE ACCEPTED.

Bids will be accepted only if submitted on forms supplied by the state. Bid forms with complete instructions as to the bidding procedure may be obtained by contacting Robert Junge, Unit Administrator, St. Peter National Guard Armory, 419 South Minnesota Avenue, St. Peter, Minnesota 56082, telephone 507/931-2710, or Howard Eicher, Assistant Director, Real Estate Management, at the St. Paul address in the previous paragraph, telephone 612/296-6674.

To qualify as an acceptable bid, a bid must be accompanied by bid security in the form of a cashier's check or a certified check or a money order payable to the State of Minnesota in an amount not less than 10% of the bid. The bid security will act as a down payment for the successful bidder. Bid security for all unsuccessful bidders will be returned within 15 days to each respective unsuccessful bidder.

OFFICIAL NOTICES

The successful bidder will have the option of making payment of the balance remaining after use of the bid security as a down payment by one of the two following methods.

1. Payment in full of the remaining balance no later than October 29, 1982;
2. Payment of the remaining balance in not less than equal annual installments for not to exceed five years, with principal and interest payable annually in advance at the rate of 14½% per annum on the unpaid balance, by certified check or cashier's check payable to the State Treasurer on or before June 1 of each year.

In the event the successful bidder elects to make payment in installments in accordance with option (2) above, the State of Minnesota will enter into a contract for deed with the successful bidder. The contract for deed will set forth the conditions of the sale.

Bidders are advised that the property is offered "as is." Possession will be transferred to the successful bidder on or about October 15, 1982, if the successful bidder has (1) made payment in full, or (2) entered into a contract for deed with the State of Minnesota.

When payment in full has been received by the State of Minnesota, the State shall convey the property by QUIT CLAIM DEED. The State of Minnesota *will not* furnish an abstract. Prospective bidders are hereby admonished that the state assumes no obligation to perform any acts or to pay for any expenses incurred in connection with possible title deficiencies except to deliver an executed QUIT CLAIM DEED. Interested prospective bidders are advised to inspect the real estate and conditions of title in order to insure full knowledge of existing conditions.

The State of Minnesota will pay the real estate taxes, if any, due and payable against this property in the year 1982 and all prior years. The successful bidder shall be responsible for the payment of all real estate taxes due and payable in 1983, if any, and in all succeeding years.

The State of Minnesota will pay in full all special assessments due and payable against this property as of the date of the sale.

The Adjutant General reserves the right to reject any or all bids and to waive informalities therein.

Department of Public Safety State Patrol Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Vehicle Weighing Devices

Notice is hereby given that the State Department of Public Safety is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing standards for portable and semi-portable weighing devices and their use in enforcement of commercial vehicle highway weight limits.

The promulgation of these rules is authorized by Minnesota Statutes § 299.01, which permits the agency to promulgate rules and by Minnesota Statutes § 169.85 which authorizes the agency to enforce vehicle weight limitation statutes.

The State Department of Public Safety requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

John Harbinson
State Patrol
107 Transportation Bldg.
St. Paul, MN 55112

Oral statements will be received during regular business hours over the telephone at (612) 296-3080 and in person at the above address.

All statements of information and comment shall be accepted until August 2, 1982. Any written material received by the State Department of Public Safety shall become part of the record in the event that the rules are promulgated.

John P. Sopsic
Commissioner of Public Safety

**Department of Public Welfare
Department of Health
Department of Public Safety
Merit System****Notice of Intent to Solicit Outside Opinion Concerning Merit System Rules**

Notice is hereby given that the Minnesota Department of Public Welfare (12 MCAR), the Minnesota Department of Health (7 MCAR) and the Minnesota Department of Public Safety (11 MCAR) are considering proposed amendments to those rules affecting their compensation plans and salary schedules.

If adopted, these rule changes will alter the salaries paid to those employees in agencies under the jurisdiction of the Merit System which have not negotiated a compensation plan with the exclusive representative for a bargaining unit.

The proposed rule changes are:

12 MCAR § 2.840
7 MCAR § 1.314
11 MCAR § 1.2140

The Minnesota Department of Public Welfare, the Minnesota Department of Health, and the Minnesota Department of Public Safety are also considering proposed amendments to several other rules affecting:

- (1) Compensation Plan
- (2) Leaves of Absence
- (3) Inter-agency Operations

If adopted, these rules will alter various personnel policies in agencies under the jurisdiction of the Merit System.

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

Ralph W. Corey, Supervisor
Minnesota Merit System
Fourth Floor, Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-3996.

All statements of information and comment must be received by August 2, 1982. Any written material received by the department shall become part of the hearing record. The notice of hearing on all of the above mentioned rules will be published in the *State Register* in August.

Under the provisions of Minn. Stat. § 10A.01, subd. 11 (1974), any individual representing persons or associations attempting to influence administrative action, such as the promulgation of these proposed rules and amendments, must register with the Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The Ethical Practices Board is located in Room 41, State Office Building, St. Paul, Minnesota 55155.

Office of the Secretary of State**Notice of Vacancies in Multi-member State Agencies**

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is July 27, 1982.

OCCUPATIONAL SAFETY AND HEALTH ADVISORY COUNCIL has 1 vacancy open for a safety member. The council advises the Department of Labor and Industry on administration of the state Occupational Safety and Health Act. Members are appointed by the Governor. Meetings are at the call of the chairperson, Space Center Bldg., St. Paul. Members receive \$35 per

OFFICIAL NOTICES

diem. For specific information, contact the Occupational Safety and Health Advisory Council, Space Center Bldg., 444 Lafayette Rd., St. Paul 55101; (612) 296-2342.

WATER PLANNING BOARD has 3 vacancies open for citizen members. The board directs preparation of state water plan; coordinates public water resources management and regulation; administers the Federal Water Resources Planning Act; evaluates state participation in federal-state river basin commissions; recommends changes in laws, rules and procedures. Members appointed by the Governor and confirmed by the Senate. Quarterly meetings. For specific information, contact the Water Planning Board, 600 American Center Bldg., St. Paul, MN 55101; (612) 296-1424.

ADVISORY COUNCIL FOR THE MENTALLY RETARDED AND PHYSICALLY HANDICAPPED has 1 vacancy open for a public member. The council advises the Commissioner of Public Welfare on enforcement of laws relating to mental retardation and physical disabilities. Members appointed by the commissioner. For specific information, contact the Advisory Council for the Mentally Retarded and Physically Handicapped, Dept. of Public Welfare, Centennial Bldg. St. Paul 55155; (612) 296-2160.

HUMAN RIGHTS ADVISORY COMMITTEE has 1 vacancy open for a member. The committee advises the Commissioner of Human Rights, and recommends programs and policies. Members are appointed by the Governor. Monthly meetings are held. Members receive \$35 per diem. For specific information, contact the Human Rights Advisory Committee, 240 Bremer Bldg., St. Paul 55101; (612) 296-5676.

BOARD OF ABSTRACTORS has 1 vacancy open for an abstractor, (can not be from a county containing a city of the first class). The board examines and licenses abstractors, and handles complaints from the public. Members are appointed by the Governor and must file with EPB. Meetings are twice yearly at the Department of Commerce; members receive \$35 per diem plus expenses. For specific information, contact the Board of Abstractors, Metro Square Bldg., St. Paul 55101; (612) 296-7903.

MINNESOTA OFFICE ON VOLUNTEER SERVICES ADVISORY COMMITTEE has 1 vacancy open for an at-large representative member. The committee works with public and private sector organizations to promote volunteerism by effectively coordinating and channeling voluntary action. It also advises and makes recommendations to the Governor and director on program directions and policy issues relating to G.O.V.S. Members are appointed by the Governor. Three to five meetings per year are held at the State Capitol Complex; members are reimbursed for expenses. For specific information, contact the Minnesota Office on Volunteer Services Advisory Committee, 127 University Ave., St. Paul 55155; (612) 296-4731.

ADVISORY TASK FORCE ON THE WOMEN OFFENDER IN CORRECTIONS has 3 vacancies open for members to reflect a statewide geographical representation. The task force consults with the Commissioner of Corrections regarding choice of model programs to receive funding. Review and make recommendations to the commissioner on matters affecting women offenders. Identify problem areas and make recommendations for problem resolution. Assist the commissioner when and where possible in seeking improved programming for women offenders. Members are appointed by the Commissioner of Corrections. Members receive expenses, in the same manner and amount as state employees. Meetings are held the 3rd Wednesday of each month at the Dept. of Corrections. For specific information, contact Dept. of Corrections, 430 Metro Square Bldg., St. Paul 55101; (612) 296-3525.

Errata

At 6 S.R. 2043 (June 7, 1982) the Minnesota Pollution Control Agency published proposed amendments to the rules governing the management of hazardous waste. Please make the following corrections.

At S.R. 2116 strike "4.9005" before "4.9254 Transportation of hazardous waste."

At S.R. 2142 11.a. (last line) insert "or" after "as specified in this rule;"

At S.R. 2155 between line 8 ("Liability limit: \$") and line 9 ("Name(s) and title(s) [typed]:") insert "Signature(s):"

At S.R. 2157 on line 4 change "one" to "a" before "period of [at least one year]"

At S.R. 2164 on line 3 the sentence starting "As required by 6 MCAR § 4.9284," starts a new paragraph.

At S.R. 2204 6 MCAR § 4.9414 A. on line 4 change "the" to "that" in "In the event, management"

STATE OF MINNESOTA

State Register and Public Documents Division
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FOR LEGISLATIVE NEWS

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

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

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

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

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

Legislative Reference Library
Room 111 Capitol
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