

82 July 19

# STATE REGISTER

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STATE OF MINNESOTA



**VOLUME 7, NUMBER 3**

**July 19, 1982**

**Pages 69-104**



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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
<b>SCHEDULE FOR VOLUME 7</b>			
4	Monday July 12	Monday July 19	Monday July 26
5	Monday July 19	Monday July 26	Monday Aug 2
6	Monday July 26	Monday Aug 2	Monday Aug 9
7	Monday Aug 2	Monday Aug 9	Monday Aug 16

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

\*\*Notices of public hearings on proposed rules 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 published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 15.051. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$3.00 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

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

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NOTICE

How to Follow State Agency Rulemaking Action in the State Register

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

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
• Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
• Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
• Proposed temporary rules.

The ADOPTED RULES section contains:

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

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

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

Table with 2 columns: Issue/Section and Page/Status. Includes rows for Issues 1-13, 14-25, 26, 27-38, 39, 40-51, and 52.

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 Administration Division of Building Codes and Standards

### Proposed Rules Governing Licensing of Manufactured Home Dealers & Manufacturers

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

Notice is hereby given that the State of Minnesota Department of Administration (hereinafter "agency") proposes to adopt the above-titled rules without a public hearing. The agency has determined that the proposed adoption of these rules are noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subd. 4h, for the adoption of noncontroversial rules.

The proposed rules provide for implementation, interpretation, and carrying out the provisions of Minnesota Statutes §§ 327B.01-327B.12 relating to the licensing of Manufactured Home Dealers & Manufacturers.

The agency has prepared a statement of need and reasonableness describing the agency's reasons for the proposed rules, identifying data and information relied upon by the agency to support such rules. Copies of the statement of need and reasonableness may be obtained from the agency by contacting: Ms. Peggy Opalinski, Building Codes & Standards Division, 408 Metro Square Bldg., 7th & Robert Sts., St. Paul, MN 55101.

Interested persons have 30 days after publication of the proposed rules in the *State Register* to submit comments. The proposed rules may be modified if the data and views submitted to the agency warrant modification if modifications do not result in substantial change in the proposed language.

If, during the comment period, seven or more persons submit to the agency a written request for a hearing on the proposed rules, the agency shall proceed to schedule a public hearing before adoption of the rules. The agency requests that the persons desiring a public hearing submit written statements which identify particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied upon to support the modifications.

July 6, 1982

James J. Hiniker, Jr.  
Commissioner of Administration

#### Rules as Proposed (all new material)

2 MCAR § 1.8001 Authority. Rules 2 MCAR §§ 1.8001-1.8024 are adopted by the commissioner pursuant to Laws of 1982, ch. 526, art. 1, § 10 to implement and administer the provisions of Laws of 1982, ch. 526, art. 1, §§ 1-12 relating to the licensing of manufactured home manufacturers, dealers, and dealers' subagencies.

**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

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### 2 MCAR § 1.8002 Definitions.

A. Scope. The terms used in 2 MCAR §§ 1.8001-1.8024 have the meanings given them in this rule and in Laws of 1982, ch. 526, art. I, § 1.

B. Applicant. "Applicant" means a person who is applying for a manufactured home manufacturer or dealer license.

C. Distributor. "Distributor" means a manufacturer.

D. Franchise. "Franchise" means a written contract or agreement between the manufacturer and the dealer authorizing the dealer to sell or distribute the manufacturer's manufactured homes which establishes such things as the length of the agreement, the area of the state under franchise by the dealer, model names, and warranty service responsibilities.

E. Length of a manufactured home. "Length of a manufactured home" means its largest overall length in the traveling mode, including cabinets and other projections which contain interior space. Length does not include bay windows, roof projections, overhangs, or eaves under which there is no interior space, or drawbars, couplings, or hitches.

F. Licensee. "Licensee" means a person licensed under Laws of 1982, ch. 526, art. I, § 4.

G. Listing dealer. "Listing dealer" means the broker who has an agreement with the owner to list, sell, exchange, or arrange the sale of the owner's manufactured home.

H. Width of a manufactured home. "Width of a manufactured home" means its largest overall width in the traveling mode, including cabinets and other projections which contain interior space. Width does not include bay windows, roof projections, overhangs, or eaves under which there is no interior space.

### 2 MCAR § 1.8003 License application.

A. Forms; requirements. An applicant shall apply for a manufacturer, dealer, or dealer subagency license on forms furnished by the commissioner and shall comply with the requirements in Laws of 1982, ch. 526, art. I, § 4.

B. Required information. The kinds of information listed in 1. and 2. satisfy the related requirements in Laws of 1982, ch. 526, art. I, § 4, subds. 3 and 4.

1. An application for a dealer's license must contain the following information:

a. Proof of identity. The applicant shall submit a photocopy of the applicant's valid driver's license clearly showing the applicant's signature and photograph, or, if the applicant has no current driver's license, some other form of identification showing a photograph and the signature of the applicant.

b. Business name. The name under which the applicant desires to do business in this state.

If the name is an assumed name the applicant shall submit proof of filing the assumed name with the Secretary of State.

If the business is a corporation the applicant shall submit a copy of its Minnesota Certificate of Incorporation.

c. Type of business. The type of business to be operated by the applicant such as manufacturing, selling (new or used), or brokering manufactured homes, and the applicant's business location.

d. Owner's names. The names, home and business addresses, and telephone numbers of the applicant's directors, officers, limited and general partners, controlling shareholders, and affiliates.

e. Signature. The signature of the applicant's owner, general partner, or corporate president verified under oath.

f. Qualifications. A statement of the applicant's qualifications for licensure as a dealer by means of education, work experience, and any other qualifications in manufactured home construction, sales, repair, or related fields involving sales, financing, title transfer, or contracts.

g. Other licenses. A statement of all other manufactured home dealer or manufacturer licenses held by the applicant either directly or indirectly in this or another state.

h. Business history. A statement of the type of businesses the applicant has previously been involved in, either directly or indirectly, for the past five years by company name, address, partners, associates, corporate offices, dates, and current business status.

i. Surety bond. The original copy of the surety bond required by Laws of 1982, ch. 526, art. I, § 4, subd. 4 on a form furnished by the commissioner.

2. An application for a manufacturer's license must contain the following information:

a. Business name. The name under which the applicant desires to do business in this state.

If the name is an assumed name the applicant shall submit proof of filing the assumed name with the Secretary of State.

If the business is a corporation the applicant shall submit a copy of its Minnesota Certificate of Incorporation.

b. Franchised dealers. A current list of Minnesota dealers with whom the applicant has a franchise or written agreement, as required by Laws of 1982, ch. 526, art. I, § 4, subd. 4.

c. Manufactured facilities. A list of the manufacturer's manufacturing facilities that will be shipping manufactured homes into this state.

d. Brand names. A list of the brand names of manufactured homes that the manufacturer will ship into this state.

C. Fee. An applicant shall submit with the application required in A. the fee set in 2 MCAR § 1.8014.

D. Copy for applicant's records. An applicant shall photocopy the complete application, bond, and any revisions as submitted to the commissioner and shall keep the photocopies on file at all times at the applicant's principal place of business.

**2 MCAR § 1.8004 Established place of business.**

A. Proof required. The commissioner shall not grant a dealer license until the applicant has furnished the commissioner with proof that he has an established place of business, as required by Laws of 1982, ch. 526, art. I, § 4, subd. 4, and that the requirements in B.-G. have been met.

B. Building or office space. An applicant for a dealer license must have a permanent enclosed building, other than a residence, or a commercial office space for the principal place of business and for each subagency location.

A manufactured home, other than a residence, qualifies as an established place of business if it is set up in a permanent manner, it is connected to sewer, water, and electricity, it is skirted, it is owned by the applicant and is not part of the applicant's inventory, and it is not being offered for or subject to sale while being used as an office.

A commercial office space used as a place of business must be self-contained and must have its own entrance to a public corridor or to the exterior of the building. The commercial office space must be separated from other areas of the building by floor-to-ceiling walls.

C. Unimproved sales lots. Unimproved lots and premises may be used for sale and display of manufactured homes if they are in proximity to the applicant's principal place of business or subagency location so as to avoid confusion or uncertainty as to their relationship to the business. A photo or drawing must be submitted to the commissioner clearly indicating the relationship of the unimproved lot or premises to the business location.

D. Unimproved storage lots. Unimproved lots and premises may be used for storage of manufactured homes. The applicant shall notify the commissioner of the location of the unimproved lot or premises prior to storage of manufactured homes there.

E. Photograph. The applicant shall submit a current photograph which accurately depicts the principal place of business, each subagency location, and unimproved lots to be used for sales and display for which the applicant is requesting a license.

F. Deed, contract, or lease. The applicant shall submit a photocopy of a valid warranty deed, contract for deed, or lease for a term of not less than one year for the premises housing the principal place of business and each subagency.

G. Sole licensed occupant. Only one licensee may own or lease and occupy an established place of business or commercial office space. Two or more licensees may occupy one established place of business if they are related by means of ownership or are one legal entity.

**2 MCAR § 1.8005 Franchise.** A dealer shall furnish a copy of the contract or franchise required by Laws of 1982, ch. 526, art. I, § 4, subd. 4, cl. (b), to the commissioner. The dealer shall notify the commissioner within 14 days of the time when a contract or franchise expires or becomes void.

**2 MCAR § 1.8006 Trust account.** A dealer desiring to broker manufactured homes shall establish a trust account with a bank located in this state, and must comply with Laws of 1982, ch. 526, art. I, § 8, subds. 3-5. The trust account information must be submitted on a form furnished by the commissioner. Trust account revisions and additions must be accompanied by the fee set in 2 MCAR § 1.8014.

**2 MCAR § 1.8007 Returned checks.** When a check is offered to the commissioner in payment for fees or changes pursuant to 2 MCAR §§ 8001-8024 and the check is returned without payment for any reason, the fee set in 2 MCAR § 1.8014 becomes due and is a part of the total obligation in addition to other consequences permitted by law and 2 MCAR §§ 8001-8024.

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## PROPOSED RULES

**2 MCAR § 1.8008 Posting of license.** A current license must be posted at the principal place of business and at each subagency location in a conspicuous place and clearly visible to all consumer customers. The posted license must be the license issued for the specific location at which it is posted. Only valid licenses may be posted.

**2 MCAR § 1.8009 Reapplying for a license.** A person whose license has been suspended, revoked, or whose license application has been denied may not reapply for a license until the error, omission, or cause for suspension, revocation, or denial has been corrected to the satisfaction of the commissioner. This does not limit the applicant's rights pursuant to Laws of 1982, ch. 526, art. 1, § 5, subd. 2.

**2 MCAR § 1.8010 Closing of principal place of business or subagency.** When a dealer closes a principal place of business or subagency the dealer must notify the commissioner and return the appropriate license certificate within five days of the closing.

**2 MCAR § 1.8011 License renewal.** Licensees must renew their licenses pursuant to Laws of 1982, ch. 526, art. 1, § 4 and this rule. The renewal must be submitted on forms furnished by the commissioner for principal places of business and subagencies, accompanied by the fee set in 2 MCAR § 1.8014. License renewal applications must be received by the commissioner no later than December 15 of the year a license expires. Applications received on December 16 through December 31 will be subject to a 25 percent penalty fee. All licenses expire at midnight, December 31 of the year of expiration. Failure to renew a license prior to its expiration results in automatic cancellation of the license. An expired license will not be renewed. A new license application may be filed pursuant to 2 MCAR § 1.8003.

**2 MCAR § 1.8012 Dealer's records.** A dealer shall retain copies of all records as required by Laws of 1982, ch. 526, art. 1, § 6, subd. 1. Records of a transaction must be kept at the licensed location at which the transaction was initiated. Copies of all records relating to transactions initiated at a subagency location must also be kept at the principal place of business and must be on file at the principal place of business within 14 days after the closing of the sales transaction.

**2 MCAR § 1.8013 Salespeople.** Every dealer shall submit a written list to the commissioner of all salespersons employed by the dealer, as required by Laws of 1982, ch. 526, art. 1, § 7, subd. 2. The list must include the starting date and, when applicable, the termination date, for each salesperson. A running list must be maintained to show all the salespersons currently employed and previously employed. Any change of a salesperson's status must be noted on the running list and the entire list must be submitted to the commissioner within 14 days of a change, along with the fee set in 2 MCAR § 1.8014. A copy of the current complete salesperson list as submitted to the commissioner must be retained and kept on file at all times at the dealer's principal place of business. The format of the salesperson list shall conform to that contained in sample forms provided by the commissioner.

**2 MCAR § 1.8014 Fees.** Fees for licenses and services associated with 2 MCAR §§ 1.8001-1.8024 are as follows:

Initial license for principal location (remainder of calendar year)	\$150.00
Initial license for dealer subagency location	35.00
License biennial renewal	
Principal location	200.00
Dealer subagency location	50.00
Renewal application resubmission fee	10.00
Change of address of principal or subagency locations	10.00
Dealer subagency location addition or subtraction	10.00
Change of bonding company	10.00
Reinstatement of bond after cancelation	10.00
Change of corporate structure	10.00
Change of dealer salespersons list	10.00
Dealer trust account revisions or additions	10.00
Duplicate license	5.00
Checks returned without payment	10.00

**2 MCAR § 1.8015 Trust funds.** Unless the parties to a transaction have a different agreement in writing, the listing dealer is the dealer with whom trust funds are to be deposited in satisfaction of Laws of 1982, ch. 526, art. 1, § 8, subd. 3.

Trust funds must be maintained in the trust account until they are disbursed in accordance with the terms of the applicable agreements. Disbursement must be made within three days following the consummation or termination of a transaction if the applicable agreements are silent as to the time of disbursement.

**2 MCAR § 1.8016 Notice to the commissioner.**

A. Notification requirement. A licensee shall notify the commissioner of the occurrence of any of the events in B.-F.

B. Change in application information. A licensee shall notify the commissioner in writing within ten days of the change of any

change in information contained in a license application on file with the commissioner. Changes must be submitted on a form furnished by the commissioner and must be accompanied by the fee set in 2 MCAR § 1.8014.

C. Civil judgment. A licensee shall notify the commissioner in writing within ten days of any decision of a court regarding a proceeding in which the dealer was named as a defendant, and in which fraud, misrepresentation, or the conversion of funds was alleged to have been committed by the licensee.

D. Disciplinary action in another state. A licensee shall notify the commissioner in writing within ten days of the suspension or revocation of the licensee's manufactured home dealer license or other occupational license issued in another jurisdiction.

E. Criminal offense. A dealer shall notify the commissioner in writing within ten days if the dealer is charged with or found guilty of a felony, gross misdemeanor, misdemeanor, or any comparable offense related to manufactured home sales, improper business practices, fraud, misrepresentation, or violation of the consumer laws.

F. Inventory list. Each 60 days a dealer shall submit a list to the commissioner of new manufactured homes in the dealer's inventory that the dealer is offering for sale after being installed in a manufactured home park or on private property. The list must identify the manufactured homes by brand name, serial number, and the location by street address, city, and county, and by the park name when the manufactured home is installed in a manufactured home park.

**2 MCAR § 1.8017 Required documents.** A dealer shall furnish to the parties to a transaction at the time the documents are signed or become available, true and accurate copies of listing agreements, earnest money receipts, purchase agreements, contracts for title, option agreements, disclosure statements; energy audits, and other records, instruments, or documents which are material to the transaction and which are in the dealer's possession.

The format of the disclosure statement must conform to that contained in sample forms provided by the commissioner and the statement must be signed by the dealer or the dealer's authorized salesperson, the buyer, and the seller. A copy of the disclosure must be kept on file by the dealer.

**2 MCAR § 1.8018 Material facts.** A dealer shall disclose to a prospective purchaser all reasonably apparent material facts pertaining to the manufactured home, of which the dealer is aware, which could adversely and significantly affect an ordinary purchaser's use or enjoyment or any intended use of the manufactured home.

**2 MCAR § 1.8019 Standards of conduct.** The methods, acts, or practices set forth in 2 MCAR § 1.8020 are standards of conduct governing the activities of a dealer. Failure to comply with these standards is a ground for denial, suspension, or revocation of the dealer's license.

**2 MCAR § 1.8020 Responsibilities of dealers.**

A. Supervision of personnel. Dealers shall closely supervise the activities of their salespersons and employees which are related to the sale of manufactured homes. Supervision includes the on-going monitoring of listing agreements, purchase agreements, and other manufactured home documents which are prepared or drafted by the dealer's salespersons or employees or which are otherwise received by the dealer's office, and the review of all trust account books and records.

B. Preparation and safekeeping of documents. Dealers are responsible for the preparation, custody, safety, and accuracy of all manufactured home contracts, documents, and records, even though another person may be assigned these duties by the dealer.

C. Resolution of complaints. Dealers shall investigate and attempt to resolve complaints made regarding the practices of individuals employed by them.

D. Supervision of place of business. Each principal place of business and each subagency shall be under the direction and supervision of a manager. The dealer shall furnish the commissioner with the name of each manager responsible for a licensed location. Designation of a manager does not relieve the dealer of overall responsibility for the actions of salespersons or the manager.

**2 MCAR § 1.8021 Disclosures by salesperson.** All dealers shall require their salespersons to conduct business only under the licensed name of and on behalf of the dealer by whom they are employed and to disclose in every transaction the name of the dealer by whom they are employed.

**2 MCAR § 1.8022 Length and width.** The length and width of a manufactured home when shown on sales contracts, documents and records is the length and width to the nearest foot as defined in 2 MCAR § 1.8002, except on an application or permit to

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## PROPOSED RULES

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transport a manufactured home if the total length of the manufactured home is required to include drawbars, couplings, or hitches. Room additions must be noted and measured separately.

**2 MCAR § 1.8023 Disclosure.** If a manufactured home being sold is located in a manufactured home park, the dealer, prior to the buyer's signing of the purchase agreement, shall obtain a written statement signed by the buyer acknowledging the dealer's disclosure of the contents of Laws of 1982, ch. 526, art. II, § 7, subd. 1, regarding in-park sales of manufactured homes.

**2 MCAR § 1.8024 Enforcement.** The commissioner shall administer and enforce 2 MCAR §§ 1.8001-1.8024. Any authorized representative of the commissioner may at any reasonable time enter the premises where manufactured homes are manufactured, or where new or used manufactured homes are sold, solicited, brokered, or advertised for sale, and may examine the manufacturer's or dealer's records to the extent necessary to enforce the provisions of 2 MCAR §§ 1.8001-1.8024.

## Department of Agriculture Family Farm Security Program

### Proposed Rules Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR §§ 1.0543-1.0547)

#### 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, subdivision 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, subdivisions 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests 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 § 41.53, subd. 2. 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 § 41.53, subd. 2 (1980) to adopt rules for administration of the Family Farm Security Program. The proposed rules provide eligibility criteria for the program; provisions for application, preliminary approval, notification and reconsideration; closing procedures for the family farm security loan; conditions and termination of the 90 percent guarantee; payment, renewal and reimbursement of the state's 4 percent interest payment adjustment; conditions, consequences and waiver of participant default; family farm security loan servicing; and the commissioner's right to information. The proposed rules also provide definitions of terms used in the rules.

The proposed rules provide an amplification of the current rules governing the Family Farm Security Program due to statutory changes and the department's experience in administering the program since the current rules were promulgated in 1977. Because the proposed rules substantially amplify various parts of the current rules, it was determined easier to repeal the current rules and reorganize their language into these proposed rules. Thus, the language of the present rules is included but new language is also provided in many of these proposed rules.

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## PROPOSED RULES

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.

July 2, 1982

Rollin M. Dennistoun  
Deputy Commissioner

### Rules as Proposed (all new material)

#### 3 MCAR § 1.0548 Purpose and authority.

A. Purpose. It is the purpose of 3 MCAR §§ 1.0548-1.0560 to carry out and administer the family farm security program established by Minn. Stat. ch. 41.

B. Authority. Rules 3 MCAR §§ 1.0548-1.0560 are adopted pursuant to Minn. Stat. § 41.53, subd. 2.

#### 3 MCAR § 1.0549 Definitions.

A. Applicability. For the purposes of 3 MCAR §§ 1.0548-1.0560 the terms defined in this rule have the meanings given them.

B. Amortization schedule. "Amortization schedule" means the loan repayment schedule approved by the commissioner.

C. Applicant. "Applicant" means a natural person applying for a family farm security loan.

D. Balloon payment. "Balloon payment" means the final payment of an amortization schedule which is equal to or exceeds four times the amount of the immediately preceding payment.

E. Commissioner. "Commissioner" means the Commissioner of Agriculture or the commissioner's authorized representative.

F. Cooperating agency. "Cooperating agency" has the meaning given in Minn. Stat. § 41.52, subd. 11.

G. Council. "Council" means the Family Farm Advisory Council.

H. Even payment. "Even payment" means the payment amount necessary at a given interest rate to fully amortize the loan over a given period of time.

I. Farm business management course. "Farm business management course" means a course in farm record keeping, farm business management, or other related areas approved by the commissioner.

J. Farm land. "Farm land" has the meaning given in Minn. Stat. § 41.52, subd. 6.

K. Fully amortize. "Fully amortize" means to insert terms or provisions in a loan which do not result in a balloon payment.

L. Guarantee. "Guarantee" means the "family farm loan guarantee" defined in Minn. Stat. § 41.52, subd. 9.

M. Lender. "Lender" has the meaning given in Minn. Stat. § 41.52, subd. 7.

N. Loan. "Loan" means "family farm security loan" as defined in Minn. Stat. § 41.52, subd. 5.

O. Memorandum of understanding. "Memorandum of understanding" has the meaning given in Minn. Stat. § 41.52, subd. 12.

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## PROPOSED RULES

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P. Participant. "Participant" means an applicant who has received final approval for a guarantee which has been fully executed by the state.

Q. Payment adjustment. "Payment adjustment" has the meaning given in Minn. Stat. § 41.52, subd. 10.

R. Program. "Program" means the family farm security program of the Department of Agriculture.

S. Seller-sponsored loan. "Seller-sponsored loan" has the meaning given in Minn. Stat. § 41.52, subd. 8.

T. State. "State" means the State of Minnesota.

U. Subordination. "Subordination" means that the commissioner agrees that the state's interest in a loan has a lower lien priority than the interest of another party.

### 3 MCAR § 1.0550 Eligibility.

A. Criteria. To be eligible for a guarantee, an applicant must meet the criteria listed in Minn. Stat. §§ 41.55 and 500.221, subd. 2 and those in this rule.

B. Net worth. The current net worth of the applicant, dependents, and spouse, as determined by generally accepted accounting principles, must not exceed the level set in Minn. Stat. § 41.55, clause (c).

C. Farm land. Applications will be accepted only for loans to acquire farm land.

D. Ownership. The applicant must be purchasing a 100 percent interest in the farm land. The farm may be operated in partnership, but the applicant must own the farm land individually.

E. Use and feasibility. The applicant must detail the intended agricultural uses of the land and substantiate the economic feasibility of the proposed farming operation.

### 3 MCAR § 1.0551 Preliminary approval; notification and reconsideration.

A. Application. An applicant must apply for a guarantee on forms provided by the commissioner. The application must include, but is not limited to, the following:

1. a farm land appraisal;
2. a purchase agreement;
3. letters of commitment, if appropriate;
4. the financial information required in E.;
5. copies of any partnership agreements; and
6. a farm business management course registration form.

B. Farm land appraisal. An appraisal of the market value of the farm land to be guaranteed must be performed by a qualified appraiser and recorded on the form provided by the commissioner. The appraiser must sign the form. A letter stating the appraiser's qualifications and experience must be on file with the commissioner. The commissioner may require the applicant to obtain an additional independent appraisal when it is necessary to determine the current market value.

C. Purchase agreement. A binding purchase agreement between the seller of the farm land and the applicant, containing all terms agreed upon by the two parties, must be completed. The terms must be in accordance with Minn. Stat. ch. 41 and 3 MCAR §§ 1.0548-1.0560. The agreement must include a statement that the sale of the farm land is contingent upon the applicant's obtaining a guarantee from the commissioner. The purchase price of the farm land cannot exceed the appraisal value.

D. Letters of commitment. The following information must accompany the application:

1. A letter of commitment for the financing, containing all the terms and provisions of the loan and signed by the lender, if any portion of the farm land purchase price is to be financed through a lender other than the seller;
2. A letter of credit from a financial institution for required operating credit for the first year of operation;
3. A written financing commitment, if financing is necessary for the purchase of livestock and equipment; and
4. Written equipment use agreements signed by both the applicant and the equipment owner, if equipment will be shared.

E. Financial information. The application must include the following financial information:

1. a statement of the applicant's current net worth;
2. at least two years' statements of the applicant's past earnings, if available;

3. at least two years' statements of projected income and expenses for the farm operation;
4. credit references; and

5. a statement of the applicant's parents' net worth and the applicant's spouse's parents' net worth or other documentation of the parents' ability or willingness to financially assist the applicant.

F. Privacy of information. Personal financial documents submitted in support of an application shall be treated as security information under Minn. Stat. § 15.1673 and benefit data under Minn. Stat. § 15.783 and is considered to be private data pursuant to those sections.

G. Review of applications. The commissioner shall consider and act upon an application for a guarantee, taking into account the recommendations of the council. In the event of a request for reconsideration of the commissioner's decision pursuant to J., the matter shall be reviewed at a regularly scheduled meeting of the council.

H. Criteria for preliminary approval. The following criteria shall be considered by the commissioner in granting the preliminary approval for a guarantee:

1. the eligibility criteria set forth in 3 MCAR § 1.0550;
2. submission of a complete application and any additional information requested by the commissioner;
3. the degree to which farming will be the applicant's principal occupation;
4. the extent to which the applicant demonstrates financial need for the guarantee to acquire farm land;
5. the existence of or provisions for financing-related farm expenses other than real estate;
6. the economic feasibility of the loans as evidenced by the applicant's present, past, and projected financial situation;
7. the applicant's credit rating;
8. an analysis of the applicant's debt-to-worth ratio and other factors related to risk and profit potential; and
9. the likelihood of success of the applicant's proposed farming operation, based on the criteria in 1.-8.

I. Notification. After each review of an application for a guarantee, the commissioner shall provide written notification of the determination. If the application is approved, the commissioner shall notify the applicant and the lender. If the application is not approved, the commissioner shall notify the applicant and specify the reasons for disapproval.

J. Reconsideration of decision. An applicant who wishes the commissioner to reconsider the decision may request, within 90 days of the notification of nonapproval, that the application be reconsidered. The applicant may present to the council, in writing or in person, any additional facts relevant to the reasons given for nonapproval of the application.

### **3 MCAR § 1.0552 Final approval.**

A. Closing. Upon receiving notice of preliminary approval for a guarantee, the applicant shall proceed in accordance with instructions provided by the commissioner for obtaining final approval for the guarantee. All actions required of the applicant and lender to prepare for the state's execution of guarantee documents, including submission of a preliminary title opinion and execution of all relevant statements or declarations required for loan transactions by federal or state law, regulation, or rule, should normally be completed within 120 days of receipt of the notice. The commissioner may request and examine copies of other security agreements or loan documents or other records which relate to the applicant's farm land purchase in order to determine all liens and encumbrances on the property.

B. Closing documents; seller-sponsored loan. If the loan to be guaranteed is seller-sponsored, the applicant and seller must execute a contract for deed or purchase money real estate mortgage and all additional instruments required to protect the interests of the applicant, the seller, and the state in accordance with the terms and conditions upon which the preliminary approval for the guarantee was granted.

C. Closing documents; lender-sponsored loan. If the loan to be guaranteed is lender-sponsored, the applicant and lender must execute a mortgage and note or an assignment of contract for deed and any additional instruments. The lender shall take other actions consistent with prudent lending practices required to protect the interests of the applicant, the lender, and the state.

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## PROPOSED RULES

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D. Closing documents; releases. The seller must obtain a release or satisfaction of any underlying mortgages, liens, or encumbrances that exceed 90 percent of the balance of the loan to be guaranteed.

E. Guarantee. When the closing documents are properly executed, the commissioner shall enter into an agreement with the participant and the lender providing that in the event of default by the participant of any of the terms of the contract for deed, mortgage and note, or assignment of contract for deed, the state shall pay the lender 90 percent of the sums due and payable under those terms. Sums due and payable include the principal balance outstanding, accrued interest up to the date on which the state performs under the guarantee, real estate taxes paid by the lender, and any other expenses incurred by the lender for maintenance and protection of the property during the default period which are determined by the commissioner to be reasonable and prudent.

F. Recording. After the loan is closed, the appropriate instruments shall be recorded. The applicant shall furnish the commissioner with copies of the recorded instruments.

G. Final title opinion. After the appropriate instruments are recorded, the applicant shall furnish the commissioner with a final title opinion which recognizes the interests of all parties.

### 3 MCAR § 1.0553 Payment adjustment.

A. Amount and eligibility requirement. The state shall pay to the lender, according to the amortization schedule, an amount of money equal to four percent of the principal balance of the loan, provided that the conditions in B.-D. are met.

B. Loan terms and payments. The loan must either have a term of 20 years or less and require payments so that the loan is amortized with equal annual payments, including consideration of variable interest rates used by some lenders, or the loan must have a reasonable reduction of the principal balance with a balloon payment in ten years or less.

1. Extra days of interest may be included in calculating total interest for the first payment, provided that the total number of days used does not exceed an additional 50 percent of the normal payment period and does not cause a balloon payment for those loans on a fully amortized schedule.

2. Certain 20-year loans which have a specified interest only payment preceding the 20-year schedule of principal and interest payments will be accepted for the guarantee, but the state shall not participate in the interest-only payment.

3. A disaster clause may be included in provisions of a loan to be eligible for a payment adjustment, provided that it does not cause repayment to extend beyond 20 years or cause a balloon payment for loans on a fully amortized schedule.

4. An extension may be granted to the length of a loan that would require a balloon payment in ten years or less and the stated interest rate may be adjusted by consent of all parties to the loan including the state, the participant, and the lender, if the following conditions are met:

- a. the participant and lender both sign a written request for extension;
- b. the repayment provisions of the loan are based on a fully amortized schedule of 20 years or less; and
- c. the extension is for the total remaining portion of the amortization schedule.

C. Net worth. The conditions in 1.-3. regarding net worth apply to all participants.

1. Before February 20 of each year, on forms provided by the commissioner, the participant must submit to the commissioner a statement of the participant's, dependents', and spouse's net worth as of December 31 of the year immediately preceding the filing date, except for the first year of participation. This statement is not required if the statement of net worth submitted with the original application is less than ten months old on the February 15 following the applicant's preliminary approval by the commissioner.

2. If the total net worth as determined by generally accepted accounting principles exceeds the limitation stated in Minn. Stat. § 41.57, subd. 3, the participant shall not be eligible for a payment adjustment for the next 12 months commencing April 1. The commissioner shall notify the participant and the lender that the participant is responsible for all interest payments for that 12-month period of the loan.

3. The net worth statement used by the council to recommend preliminary approval shall prevail in matters of determining eligibility for the guarantee and the first year's payment adjustment.

D. Course registration. Before February 20 of each year, the participant must submit a farm business management course registration form.

E. Extension of deadline. The commissioner may grant an extension of up to 30 days on the deadlines stated in C. and D. if the participant is not able to submit the net worth statement or the farm business management course registration form on time due to circumstances beyond the participant's immediate control.

3 MCAR § 1.0554 Recipient of payment adjustments. Payment adjustments are made by the state directly to the lender, who

annually bills the commissioner for the amounts due for the current loan year. Under circumstances where the participant has paid a full installment, including the state's payment adjustment, to the lender, the participant may request that the payment adjustment be made to him by submitting proof to the commissioner that the full installment was paid.

### 3 MCAR § 1.0555 Reimbursement of payment adjustments.

A. Time; generally. The participant shall reimburse the state within 12 months after the tenth anniversary of the date of the loan for all sums paid as payment adjustments by the state on the participants' behalf.

B. Reimbursement obligation as lien. The reimbursement obligation shall be a lien against the property and be subordinate to the real estate mortgage or contract for deed.

#### C. Renewals and reimbursement.

1. The participant may petition the commissioner for up to a ten-year renewal of the payment adjustment which the commissioner shall grant if the participant has complied with all terms of the loan guarantee and has submitted to the commissioner a net worth statement and a farm business management course registration form annually within the time frames prescribed in 3 MCAR § 1.0553.

2. If the payment adjustment is renewed for an additional period of years, within 12 months after the final payment date of the mortgage or contract for deed, the participant shall reimburse the state for all payment adjustments paid on the participant's behalf.

3. If the participant has more than one loan approved under a single guarantee, disposition of the renewal request on the latest maturing loan governs when reimbursement of the payment adjustment will be made on all the loans included under that guarantee.

D. Reimbursement upon sale or conveyance. Except as provided in 3 MCAR § 1.0559 C., a participant who sells or conveys the farm land for which a guarantee was approved shall immediately retire the entire debt owed the state for payment adjustments paid on the participant's behalf.

E. Interest; late payment. If the participant does not reimburse the state within the required time period, the commissioner may charge the maximum interest provided by law on the outstanding debt for the period of delinquency.

### 3 MCAR § 1.0556 Default of participant.

#### A. Conditions. A participant is in default if one or more of the following conditions exist:

1. the participant does not pay the principal or interest payment on the date due;
2. the participant breaches a material obligation in the note, loan agreement, or any instrument securing the loan, and the lender determines that this breach constitutes an adverse change in the participant's ability to repay the guaranteed loan; or
3. the participant fails to personally maintain the farm land in active agricultural production for longer than one year.

#### B. Consequences.

1. If the participant is in default for reasons given in A.1. or A.2., the lender, the participant, and the commissioner may take any steps reasonable to assure fulfillment of the loan obligation. If the matter is not resolved, the lender or seller and the commissioner shall take action according to the following procedures, dependent on who sponsored the loan.

##### a. Under a contract for deed, the seller has two options which may be pursued.

(1) The seller may proceed according to the contract law in Minn. Stat. § 559.21 to cancel the contract. In this event, the seller shall forward to the commissioner all sums owed the state and regain real estate interest in the property.

(2) The seller may exercise the state's guarantee pursuant to Minn. Stat. § 41.56, subd. 3.

b. A lender may use statutory foreclosure proceedings in lieu of exercising the guarantee provisions of Minn. Stat. ch. 41 provided that the following conditions are met:

(1) The lender pledges to take all reasonable and prudent steps to protect and maintain the farm land and to obtain the highest possible net proceeds from the subsequent sale of the property; and

(2) The lender agrees that any money from the foreclosure sale in excess of 90 percent of the balance of the loan,

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## PROPOSED RULES

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plus 90 percent of the accrued interest calculated to the end of the 180-day default period, plus 90 percent of reasonable costs incurred during the foreclosure period will first be applied toward the satisfaction of the outstanding balance of the state's lien for reimbursement of the payment adjustment prior to any other disbursements, settlements, or satisfactions.

c. If the lender fails to notify the commissioner in writing within 180 days of the initial default of the participant, the state shall exercise its guarantee based on the principal balance of the loan at the time of notification of the default according to the amortization schedule of the loan. Maximum accrued interest to be paid by the state, calculated on the principal balance at the time of notification of default, may not exceed 180 days beyond the normal payment period.

d. When there is more than one loan under a single guarantee, all loans are considered to be in default if one is in default. The lenders concerned must then exercise their options in concert with each other and with the commissioner.

2. If a participant is in default under A.3. and has not received a waiver pursuant to 3 MCAR § 1.0557, the state shall cease its payment adjustments on the loan, all payment adjustments made on the participant's behalf will be due and payable to the state within 12 months of the default date, the participant will no longer be considered active in the program, and the guarantee will no longer be in force or effect.

C. Sale of defaulted farm land. In the event of default, the commissioner shall sell the farm land involved pursuant to Minn. Stat. § 41.56, subd. 4 and the following:

1. The commissioner has the right to reject any bid submitted on the farm land to be sold.
2. For the purposes of Minn. Stat. § 41.56, subd. 4, the following definitions apply:
  - a. "Date of sale" means the date on which the state fully executed the purchase agreement.
  - b. "Proceeds" means the sale price less reasonable closing costs, including but not limited to, payment of taxes due, expenses for abstracting, custom field work completed, and other reasonable costs associated with the sale.

### 3 MCAR § 1.0557 Waiver of default.

A. Granting waiver. The commissioner may waive the default resulting from a participant's failure to personally continue agricultural production pursuant to 3 MCAR § 1.0556 A.3. The waiver shall be granted for the reasons and following the procedures in B.-D. If the waiver is granted, the participant shall continue to be eligible to receive the payment adjustment.

B. Waiver for public service. The participant may be granted a waiver if the participant has accepted a position of public service through a government agency, church, charitable organization, or similar organization, with the intent to serve for a limited period of time and then return to full-time farming, provided that:

1. the participant submits a written notice of intent to the commissioner within 60 days after accepting the position;
2. the participant continues to submit annual financial statements to the commissioner; and
3. the participant agrees to make the full loan installments, including the state's payment adjustment, due during the waiver period.

C. Waiver for financial difficulty. The participant may be granted a waiver and remain eligible for the payment adjustment if the participant demonstrates to the commissioner, as evidenced by financial statements and discussions with lenders, that the participant is in financial difficulty and has taken a job off the farm with the intent of providing the cash flow needed to return to full-time production, provided that:

1. the participant submits a written notice of intent to the commissioner within 60 days of taking an off-farm job;
2. the participant submits semiannual financial statements to the commissioner; and
3. the participant continues enrollment in a farm business management course.

D. Waiver for physical disability or extenuating circumstances. The participant may be granted a waiver and remain eligible for the payment adjustment if the participant demonstrates to the commissioner that the farm land was not personally farmed by the participant because of the participant's physical disability or other extenuating circumstances beyond the immediate control of the participant, provided that:

1. the participant submits documentation as to the disability or other circumstances which prohibit continuation in full-time farming; and
2. the participant submits semiannual financial statements to the commissioner.

E. Denial of waiver. If the commissioner determines that the default should not be waived, the participant is entitled to a contested case hearing pursuant to Minn. Stat. ch. 15 to review the commissioner's determination.

F. Expiration. If the participant does not return to full-time farming at the end of a two-year waiver period and does not

provide convincing evidence that he will do so in the near future, the commissioner shall inform the participant that he is in default.

### 3 MCAR § 1.0558 Termination of Guarantee.

A. Conditions. The guarantee will remain in force and effect until maturity of the loan unless default occurs under 3 MCAR § 1.0556 and no waiver is granted pursuant to 3 MCAR § 1.0557 or any of the conditions in 1.-3. occur.

1. The lender consents to the change or alteration of any of the terms and provisions of the loan, or attempts to waive or waives any rights of the lender, the participant, the commissioner, or the state included in the loan, in a manner inconsistent with the terms of the loan as represented to and approved by the commissioner at the time of delivery of the guarantee, without the written consent and approval of the commissioner;

2. The lender fails to notify the commissioner in writing within 30 days of a transfer or assignment of the loan. The guarantee shall remain in force and effect if the commissioner is notified, provided that the purchaser of the loan assumes all duties and obligations of the original lender and agrees to comply with all the requirements of the laws and rules governing the program; or

3. The lender violates any terms, provisions, covenants, or conditions of any document or agreement to which the lender is a party for purposes of the guarantee.

B. Consequences. In the event that any of the conditions in A.1., A.2., or A.3. occur, where there is substantial evidence that the lender's actions were calculated to defraud the state or misrepresent conditions of the loan, the state may terminate its guarantee and immediately and forever be released from all claims and demands based on the guarantee. If it can be clearly ascertained that the participant had no knowledge of and did not collaborate with the lender's actions, the state may make the payment adjustment directly to the participant.

### 3 MCAR § 1.0559 Loan servicing.

A. Partial release. The commissioner may approve the release of a portion of the property purchased under a loan from the state's lien for reimbursement of the payment adjustment under the following conditions:

1. the participant requests the release and pledges that it will not adversely affect the participant's ability to continue in the program; and

2. all lenders included in the guarantee agree to release their interest in the property and agree to the commissioner's conditions for release from the state's lien for reimbursement of the payment adjustment.

If the release is requested because the participant wishes to sell a portion of the property, the commissioner may stipulate to what use the proceeds from that sale may be put. Ordinarily a certain portion of these proceeds will be used as a special principal payment on the loans included under the guarantee.

B. Reamortization. Reamortization of a loan will normally be considered only in cases where the participant has made a sizeable, special principal payment. The reamortization shall not extend the maturity date of the loan, except for those loans originally calling for a balloon payment which have been approved for an extension according to 3 MCAR § 1.0553 B.4.

C. New owner guarantee. If the participant sells the property for which a guarantee was issued, the purchaser may apply for a guarantee in his own right, but under no circumstances may the original loan guarantee be directly assumed by the purchaser. The purchaser may assume the former participant's responsibility for reimbursing the state for payment adjustments made if the following conditions are met:

1. the purchaser has obtained preliminary approval for a guarantee;

2. the council determines that permitting this assumption will be in the best interests of the state; and

3. the assumed indebtedness is not included in the guarantee for which the purchaser may receive final approval.

D. Subordination. The commissioner may approve a request for subordination of the state's lien for reimbursement of the payment adjustment if he determines this action is in the best interests of the state and the participant, or provisions for subordination are included in the memorandum of understanding with a cooperating agency.

3 MCAR § 1.0560 Commissioner's right to information. At any time during the existence of a loan, the commissioner may request information and documents from the lender or the participant to enable the commissioner to determine that all terms and

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## **PROPOSED RULES**

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conditions of any agreements made pursuant to Minn. Stat. ch. 41 or 3 MCAR §§ 1.0548-1.0560 are in compliance with the statutes and rules.

Repealer. Rules 3 MCAR §§ 1.0543; 1.0544; 1.0545; 1.0546; and 1.0547 are repealed.

### **Department of Energy, Planning and Development Energy Division**

#### **Proposed Amendment of Rules Governing the Petroleum Supply Shortage Conservation and Allocation Plan**

##### **Notice of Intent to Amend Rules without a Public Hearing**

Notice is hereby given that the Department of Energy, Planning and Development, hereinafter "department," intends to adopt the above-entitled amendments without a public hearing. The commissioner has determined that the amendment of the rules will not be controversial and has elected to follow the procedures set out in Minn. Stat. § 15.0412, subd. 4h.

Rules for the petroleum emergency plan program were adopted recently. Those rules were published in the *State Register* on May 24, 1982. The department is now proposing amendments to those rules. The amendments would simply delay the availability of two emergency measures. The delay would allow schools and employers more time to prepare plans for their conservation measures and will delay possible initiation of the two affected measures to a time when their effect will be greater. Copies of the amendments now proposed may be obtained by writing or calling Ms. Abigail McKenzie at the address or telephone number given below.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed amendments to submit comments in writing on the proposed amendments and to object to the lack of public hearing on the proposed amendments. Your written comments or request for hearings should be submitted to the Department of Energy, Planning and Development, Energy Division, c/o Abigail McKenzie, 980 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota 55101. Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, no public hearing will be held. If seven or more persons request hearings on the proposed amendments, the department will order public hearings in accordance with Minn. Stat. § 15.0412, subds. 4-4(f). The department may modify the proposed amendments if modification is supported by the data and views submitted in written comments and if no substantial change results from the modification.

If no hearing is required, and the department decides to adopt the amendments as proposed, or as modified if written comments justify modification, the department will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the amendments as proposed, the amendments as adopted, the order adopting the amendments, any written comments received by the department, the department's statement of need and reasonableness supporting adoption of the amendments, and any written comments received by the department in response to the earlier notices seeking outside opinions. Any person may request notification of the date the department makes the submission to the Attorney General. If you desire to be so notified, you must inform the department in writing during the 30-day comment period.

The department has prepared a statement of need and reasonableness in support of the proposed amendments which is also available from the department in writing to the address indicated above or calling (612) 296-8285.

The department's authority to promulgate the proposed amendments can be found in Minn. Stat. § 116H.09.

Please be advised that Minnesota Statutes ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$150 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, Telephone (612) 296-5615.

July 2, 1982

Kent E. Ecklund

**Rule as Proposed**

6 MCAR § 2.3120 **Motor fuel emergency measures.** Upon declaration of an energy supply emergency based upon a petroleum shortage, the Governor shall select from the following measures to reduce a motor fuel shortage.

A. (Unchanged.)

B. Employer-based motor fuel conservation measure.

1. The purpose of this measure is to conserve motor fuel by requiring certain employers to reduce employee commuting and business-related motor fuel consumption in an energy supply emergency. The department shall inform affected employers before May 25, 1983 of the requirements for participating in the employer-based conservation measure. The governor may not implement this measure before May 25, 1983.

2.-10. (Unchanged.)

C. School conservation measure.

1. and 2. (Unchanged.)

3. The governor may not implement the school conservation measure before October 1, 1982. School boards shall submit to the department ~~within 18 months after the effective date of these rules~~ before April 1, 1984, or within 45 days after declaration of an energy supply emergency, whichever comes first, an emergency motor fuel conservation plan as defined in paragraphs 6. or 7.

4.-9. (Unchanged.)

D.-H. (Unchanged.)

## **Department of Energy, Planning and Development Office of Local Government of the Planning Division**

### **Proposed Rules Governing the Community Development Block Grant Program**

#### **Notice of Intent to Adopt Rules without a Public Hearing**

Notice is hereby given that the State Department of Energy, Planning and Development proposes to adopt the above-entitled rules without a public hearing. The commissioner 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, subdivision 4h (1980).

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

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

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

D. Beigbender, Department of Energy, Planning and Development  
100 Hanover Building, 480 Cedar Street, St. Paul, Minnesota  
55101 (612) 296-2262

Authority for the adoption of these rules is contained in Minnesota Statutes §§ 4.13 and 4.17. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies

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## PROPOSED RULES

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the data and information relied upon to support the proposed rules has been prepared and is available from D. Beigbender upon request.

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

(A copy of the proposed rules is attached to this notice.)

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

Kent Eklund, Commissioner  
Department of Energy, Planning and Development

### Rules as Proposed (all new material)

#### 10 MCAR § 1.500 Small cities community block grant program; general provisions.

A. Purpose of these rules. Rules 10 MCAR §§ 1.500-1.565 give procedures for evaluating applications for grants and awarding them to eligible applicants by the Department of Energy, Planning and Development under United States Code, title 42, sections 5301-5136 (1981), and regulations adopted in Code of Federal Regulations, title 24, part 570.

B. Objective of the program. The primary objective of this program is to develop viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for persons of low and moderate income. Activities funded under this program shall not benefit moderate-income persons to the exclusion of low-income persons. All funded activities must be designed to:

1. benefit low- and moderate-income persons;
2. prevent or eliminate slums and blight; or
3. alleviate urgent community development needs caused by existing conditions which pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet those needs.

C. Definitions. As used in 10 MCAR §§ 1.500-1.565, the following terms have the meanings given them.

1. "Community development need" means a demonstrated deficiency in housing stock, public facilities, economic opportunities, or other services which are necessary for developing or maintaining viable communities.
2. "Comprehensive program" means a combination of at least two interrelated projects which are designed to address community development needs which by their nature require a coordination of housing, public facilities, or economic development activities. A comprehensive program must be designed to benefit a defined geographic area, otherwise known as a program area.
3. "Eligible activities" means those activities so designated in United States Code, title 42, section 5305 (1981) and as described in Code of Federal Regulations, title 24, sections 570.200-570.207 (1981).
4. "General purpose local government" means townships as described in Minn. Stat. ch. 365; cities as described in Minn. Stat. chs. 410 and 412; and counties.
5. "Grant" means an agreement between the state and an eligible recipient through which the state provides funds to carry out specified programs, services, or activities.
6. "Grant close-out" means the process by which the office determines that all applicable administrative actions and all required work have been completed by the grant recipient and the department.
7. "Grant year" means any period of time during which the United States Department of Housing and Urban Development makes funds from any federal fiscal year available to the state for distribution to local governments under United State Code, title 42, sections 5301-5316 (1981), and includes the period of time during which the office solicits applications and makes grant awards.
8. "Infrastructure" means the basic physical systems, structures, and facilities, such as roads, bridges, water, and sewer, which are necessary to support a community.
9. "Low and moderate income" means income which does not exceed 80 percent of the median income for the area, with adjustments for smaller and larger families.

10. "Metropolitan city" means a city over 50,000 population or a central city of a standard metropolitan statistical area that receives entitlement grants under United States Code, title 42, section 5306 (1981) directly from the United States Department of Housing and Urban Development.

11. "Nonentitlement area" means an area that is not a metropolitan city or part of an urban county.

12. "Office" means the Office of Local Government in the Department of Energy, Planning and Development.

13. "Per capita assessed valuation" means the adjusted assessed valuation divided by population.

14. "Population" means the number of persons who are residents in a county, city, or township as established by the last federal census, by a census taken pursuant to Minn. Stat. § 275.53, subd. 2, by a population estimate made by the Metropolitan Council, or by the population estimate of the state demographer made under Minn. Stat. § 4.12, subd. 7, clause (10), whichever is most recent as to the stated date of count or estimate, up to and including the most recent July 1.

15. "Poverty persons" means individuals or families whose incomes are below the poverty level as determined by the most current data available from the United States Department of Commerce, taking into account variations in cost of living for the area affected.

16. "Program" means the community development block grant program for nonentitlement areas.

17. "Program area" means a defined geographic area within which an applicant has determined that, based on community plans or other studies, there exists a need for community development activities. A program area may be a neighborhood in a community or an entire community.

18. "Program income" means gross income earned by the grant recipient from grant-supported activities, excluding interest earned on advances.

19. "Project" means one or more activities designed to meet a specific community development need.

20. "Regional or community development plans" means written documents, resolutions, or statements which describe goals, policies, or strategies for the physical, social, or economic development of a neighborhood, community, or substate area. Regional or community development plans include comprehensive plans and elements of comprehensive plans, including land use plans, which have been approved by the governing boards of townships, counties, or cities, and also include regional development plans adopted under Minn. Stat. § 462.381, where applicable.

21. "Slums and blight" means areas or neighborhoods which are characterized by conditions used to describe deteriorated areas in Minn. Stat. § 462.421 or which are characterized by the conditions used to describe redevelopment districts in Minn. Stat. § 273.73, subd. 10.

22. "Single purpose project" means one or more activities designed to meet a specific community development need.

23. "Urban county" means a county which is located in a metropolitan area and is entitled to receive grants under United States Code, title 42, section 5306 (1981), directly from the United States Department of Housing and Urban Development.

#### 10 MCAR § 1.505 Types of grants available.

A. Single purpose grants. The office shall approve grants for single purpose projects for funding from a single grant year. The office shall place single purpose grant applications in one of the following categories for purposes of evaluation:

1. housing projects which include one or more activities designed to increase the supply or quality of dwellings suited to the occupancy of individuals and families;

2. public facilities projects which include one or more activities designed to acquire, construct, reconstruct, or install buildings or infrastructure which serve a neighborhood area or community; or

3. economic development projects which include one or more activities designed to create new employment, maintain existing employment, or otherwise increase economic activity in a community.

B. Comprehensive grants. The office shall approve comprehensive grants for two or more projects which constitute a comprehensive program. Comprehensive grants shall be approved for funding from one, two, or three grant years. In the case of grants approved for funding from more than one grant year, the office shall make funds available to the grant recipient in the

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## **PROPOSED RULES**

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second or third year only after the recipient submits an approved application. The office must also find that the grant recipient has made normal progress and is in compliance with 10 MCAR §§ 1.500-1.565.

### **10 MCAR § 1.510 Application process and requirements.**

A. Grant application manual. The office shall prepare a manual for distribution to eligible applicants no later than 120 days before the application closing date. The manual must instruct applicants in the preparation of applications and describe the method by which the office will evaluate and rank applications. If 10 MCAR §§ 1.500-1.565 are not adopted before September 15, 1982, the 120-day period is waived for the 1983 grant year but the office shall make the manual available no later than 60 days before the application closing date.

B. Eligibility requirements. Any unit of general purpose local government, including cities, counties, and townships located in a nonentitlement area or electing exclusion from an urban county under United States Code, title 42, section 5302 (1981), may apply for a grant. An eligible applicant may apply on behalf of other eligible applicants. Applications submitted on behalf of other applicants must be approved by the governing body of all local governments party to the application. An eligible applicant may apply for only one grant per grant year and no eligible applicant shall be included in more than one application.

C. Disqualification of applicants. Applications from otherwise eligible applicants shall be disqualified where for previously awarded grants under these rules or awarded by the Department of Housing and Urban Development under United States Code, title 42, section 5306 (1981), it is determined by the office that any of the following conditions exist:

1. there are outstanding audit findings on previous community development grants and the grantee has not objected on a reasonable basis to the findings or demonstrated a willingness to resolve the findings;
2. previously approved projects have passed scheduled dates for grant close-out and the grantee's ability to complete the project in an expeditious manner is in question; or
3. the applicant has not made scheduled progress on previously approved projects and the grantee's ability to complete the project in an expeditious manner is in question.

D. Contents of application. The contents of the application must be consistent with the informational requirements of 10 MCAR §§ 1.500-1.565 and must be on a form prescribed by the office. The application must be accompanied by:

1. an assurance, signed by the chief elected official, that the applicant will comply with all applicable state and federal requirements;
2. an assurance signed by the chief elected official certifying that at least one public hearing was held at least ten days but not more than 30 days before submitting the application; and
3. a copy of a resolution passed by the governing body approving the application and authorizing execution of the grant agreement if funds are made available.

The office may request additional information from the applicant if it is necessary to clarify and evaluate the application.

E. Time limit for submitting applications. Applications must be received in the office or postmarked by the closing date. The office shall give notice of the period during which applications will be accepted. The notice must be published in the *State Register* at least 120 days before the closing date.

F. Regional review. The applicant must submit a complete copy of the application to the Regional Development Commission, where such a commission exists, or the Metropolitan Council, where it has jurisdiction, for review and comment in accordance with Minn. Stat. § 462.391, subd. 3, or Minn. Stat. § 473.171, respectively.

**10 MCAR § 1.515 Evaluation of applications; in general.** All applications shall be evaluated by the office. A fixed amount of points shall be established as the maximum score attainable by any application. Points shall be made available within each class of rating criteria in accordance with the percentages and fractions indicated in 10 MCAR §§ 1.520-1.545.

### **10 MCAR § 1.520 Comparison of all applications; general competition.**

A. Points available. Thirty percent of the total available points shall be awarded by the office based on a general competition involving a comparison of all applications.

B. Evaluation of community need. Two-thirds of the points in the general competition shall be awarded based on evaluation of community need, which shall include:

1. the number of poverty persons in the area under the applicant's jurisdiction;
2. the percentage of persons resident in the area under the applicant's jurisdiction who are poverty persons; and
3. the per capita assessed valuation of the area under the jurisdiction of the applicant, such that points are awarded in inverse relationship to applicants' per capita assessed valuation.

- C. Evaluation of other factors. One-third of the points in the general competition shall be awarded based on evaluation of:
1. the extent to which the proposed activities are compatible with regional or community development plans; and
  2. adequacy of the applicant's management and financial plan.

**10 MCAR § 1.525 Comparison of applications within categories.** After completing the general competition described in 10 MCAR § 1.520, the office shall place each application in the appropriate grant category in accordance with 10 MCAR § 1.505. The categories are housing projects, public facilities projects, economic development projects, and comprehensive programs. Seventy percent of the total points available for each application shall be awarded based on a comparison of the applications within each of the categories as further described in 10 MCAR §§ 1.530-1.545.

**10 MCAR § 1.530 Evaluation of housing projects.**

A. Project need. Three-sevenths of the points available in the housing category competition shall be awarded by the office based on evaluation of the need for improvements or additions to the housing stock serving low- and moderate-income persons as evidenced by:

1. housing units which are occupied by low- and moderate-income persons and are either substandard or pose a threat to the health or safety of the occupants;
2. an inadequate supply of affordable housing for low- or moderate-income persons; or
3. other documented conditions which give evidence of the need for improvements or additions to the housing stock serving low- and moderate-income persons.

B. Project impact. Three-sevenths of the points available in the housing category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will eliminate or reduce the need for improvements or additions to the housing stock serving low- and moderate-income persons.

C. Project cost-effectiveness. One-seventh of the points available in the housing category competition shall be awarded by the office based on:

1. evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds including coordination with, and use of, funds from other public and private sources; and
2. evidence that the cost of the proposed activities per benefiting household is reasonable.

**10 MCAR § 1.535 Evaluation of public facilities projects.**

A. Project need. Three-sevenths of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities are necessary to improve provision of public services to low- and moderate-income persons or to eliminate an urgent threat to public health or safety.

B. Project impact. Three-sevenths of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will reduce or eliminate the need identified under A., and, in the case of activities designed to improve the provision of public services to low- and moderate-income persons, an evaluation of the extent to which the proposed activities directly benefit low- and moderate-income persons.

C. Project cost-effectiveness. One-seventh of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds, including consideration of:

1. the extent to which the requested grant funds are necessary to finance all or a portion of the costs;
2. evidence that the cost of the proposed activities per benefiting household or person is reasonable; and
3. the extent to which the project benefits existing, rather than future, population, except in cases where the proposed activities are necessary due to expected development or growth which is beyond the applicant's control.

**10 MCAR § 1.540 Evaluation of economic development projects.**

A. Project need. Three-sevenths of the points available in the economic development category competition shall be awarded by the office based on evaluation of the applicant's need for economic development assistance, as evidenced by:

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## PROPOSED RULES

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1. long-term employment problems;
2. unusual dependence on a small number of industries or employers; or
3. other documented conditions which give evidence of the need for economic development assistance.

B. Project impact. Three-sevenths of the points available in the economic development category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will benefit low- and moderate-income persons and will reduce or eliminate the need identified under A., and shall include:

1. the immediacy of the project's impact;
2. the beneficial effect on personal income in the area;
3. the extent to which the proposed activities are reasonably expected to result in long-term improvement in the economic base of the area; and
4. the number and quality of permanent jobs created or maintained.

C. Project cost-effectiveness. One-seventh of the points available in the economic development category competition shall be based on evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds, including consideration of:

1. the cost per job created or maintained;
2. coordination with, and use of, other public and private funds; and
3. the economic viability of any business being assisted.

### 10 MCAR § 1.545 Evaluation of comprehensive program projects.

A. Program need. Three-sevenths of the points available in the comprehensive program category competition shall be awarded by the office based on evaluation of need for the proposed comprehensive program, including consideration of:

1. the number of low- and moderate-income persons in the program area;
2. the percentage of residents in the program area which are of low or moderate income; and
3. the need for the proposed comprehensive program as evidenced by at least two of the following: the need for improvements or additions to the housing stock serving low- and moderate-income persons, the need for new or improved public facilities in the program area, or employment problems in the program area.

B. Program impact. Three-sevenths of the points available in the comprehensive program category competition shall be awarded by the office based on evaluation of the extent to which the proposed comprehensive program will eliminate or reduce the need identified under A., and the extent to which the proposed program will improve the long-term physical or economic condition of the program area and its residents.

C. Program cost-effectiveness. One-seventh of the points available in the comprehensive program category competition shall be based on evaluation of the extent to which the proposed comprehensive program will make cost-effective and efficient use of grant funds, including consideration of coordination with, and use of, funds from other public and private sources.

### 10 MCAR § 1.550 Determination of grant awards.

A. Funds available for grants. The amount of funds available for grants shall be equal to the total allocation of federal funds made available to the State under United States Code, title 42, section 5306 (1981), after subtracting an amount for costs incurred by the office for administration of the program, as allowed by that law. The office is not liable for any grants under 10 MCAR §§ 1.500-1.565 until funds are received from the United States Department of Housing and Urban Development.

B. Division of funds.

1. Of the funds available for grants in each grant year, 55 percent shall be reserved by the office to fund comprehensive grants, including the second and third years of comprehensive grants approved for funding under 10 MCAR § 1.545. However, the office may modify the proportions of funds available for single purpose and comprehensive grants if, after review of all applications, it determines that there is a shortage of fundable applications in either category.

2. At least 20 percent of the funds made available for single purpose grants shall be awarded for applications in each of the three categories: housing, public facilities, and economic development. However, no application with a rating below the median score for its category shall be funded by the office solely for the purpose of meeting this requirement.

C. Funding list. Within each grant category, a list of applications shall be prepared in rank order of the scores received after evaluation pursuant to 10 MCAR §§ 1.515-1.545. Based on these lists, and subject to the availability of funds within each category, applications with the highest rank shall be recommended to the commissioner for funding. In the case of a tie between

any two applications within any category, the application with the highest score in the general competition shall receive the higher ranking on the list.

D. Approval by commissioner. The list of applications recommended for funding, including recommended grant awards, shall be submitted by the office to the commissioner for approval. A decision by the commissioner not to approve any application recommended for funding must be made in writing to the applicant, giving reasons for disapproval.

E. Reduction in amount requested. The office may recommend an application for funding in an amount less than requested if, in the opinion of the office, the amount requested is more than is necessary to meet the applicant's need. If the amount of the grant is reduced, the reasons for the reduction shall be given to the applicant.

F. Grant ceilings. No single purpose grant may be approved for an amount over \$600,000. No comprehensive grant may be approved for an amount over \$700,000 from any single grant year or for more than a total of \$1,400,000 over three grant years.

#### 10 MCAR § 1.555 Grant agreements.

A. Grant contract required. A grant contract shall be offered to each applicant whose application is approved for funding. The contract must be signed by a person authorized to commit the applicant to legally binding agreements and to execute the contract.

B. Contents of grant contract. The grant contract must include:

1. a work program which indicates completion dates for major parts of the project and a projected budget supporting the work program;

2. a description of the manner in which payments will be made to grant recipients with the condition that five percent of the grant award will not be paid until successful completion of all activities in the work program; and

3. assurances that the grant recipient will comply with all applicable state and federal laws, including at least the federal laws or regulations for which the state is made responsible for enforcement in Code of Federal Regulations, title 24, sections 570.495 and 570.496.

C. Use of program income. Program income from sources such as reimbursements to and interest from a grant recipient's loan program, proceeds from disposition of real property, and proceeds from special assessments must be used for project-related costs within 12 months from the time it is earned. The office shall reduce future grant payments by the amount of any unobligated program income which an applicant has and shall take whatever additional action is necessary to recover any remaining amounts owed.

D. Grant account required. Grant recipients must establish and maintain separate accounts for grant funds. In accordance with Code of Federal Regulations, title 24, section 570.494, clause 4, interest earned by grant recipients on grant funds before disbursement is not program income, and it must be returned to the United States Treasury.

E. Restrictions on use of funds. No grant funds shall be used to finance activities not included in the grant agreement. If it is determined that an improper use of funds has occurred, the office will take whatever action is necessary to recover improperly spent funds.

F. Suspension of payments. The office shall suspend payments of funds to grant recipients which are not in compliance with applicable state and federal laws, rules, and regulations. Grant recipients must return funds which are improperly expended.

G. Amendments to the agreement. Amendments to the grant agreement must be in writing.

#### 10 MCAR § 1.560 Record keeping and monitoring.

A. Financial records. Grant recipients shall maintain financial records which identify the source and application of funds for grant-supported activities. These records must contain information about grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, income, and other information required by the office under the responsibilities it assumes under Code of Federal Regulations, title 24, section 570.497, clause b. Financial records, supporting documents, statistical records, and all other records pertinent to a grant must be retained by the grant recipient for three years from the date of submitting the final financial report. No such records or documents may be disposed of while audits, claims, or litigations involving the records are in progress.

B. Audits. Grant recipients must arrange for and pay for an audit before grant close-out. Audits will usually be done

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annually, but no less frequently than every two years. In the case of two- and three-year comprehensive programs, the office shall require an audit after two years; costs incurred pursuant to this requirement are eligible under this program.

C. Financial status report. Grant recipients shall file financial status reports at the close of each reporting period as designated by the office and shall file a final financial report before grant close-out. Financial status reports must be on forms prescribed by the office. The office may not require these reports more often than quarterly.

D. Performance report. Grant recipients shall also file performance reports at the close of each reporting period as designated by the office and shall file a final performance report before grant close-out. Performance reports shall be on forms prescribed by the office. The office may not require these reports more often than quarterly.

E. Access to records. Representatives of the office, either the State Auditor or Legislative Auditor as is appropriate, and federal auditors shall have access to all books, records, accounts, reports, files, and other papers, things, or property belonging to grant recipients which are related to the administration of grants and necessary for audits and monitoring compliance with 10 MCAR §§ 1.500-1.565.

10 MCAR § 1.565 Application of federal law. If it is determined that any provisions of 10 MCAR §§ 1.500-1.560 are inconsistent with federal law, then federal law controls to the extent necessary to eliminate the conflict.

## ADOPTED RULES

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

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

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

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

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### Department of Commerce Office of Consumer Services

#### Temporary Rules Governing Cosmetology Schools, Licensing and License Fee

##### Notice of Continuance of Temporary Rules

Notice is hereby given that the Office of Consumer Services is reissuing the temporary rules, which became effective on January 11, 1982, governing cosmetology schools, licensing and licensing fees, temporarily amending 4 MCAR §§ 10.004, 10.021, 10.026, 10.028 and 10.041, as authorized by Minn. Stat. ch. 155A.05 (Supp. 1981). These rules shall continue in effect for an additional 180 days from July 11, 1982.

June 24, 1982

Krista Sanda, Director  
Office of Consumer Services

### Department of Commerce Office of Consumer Services

#### Adopted Temporary Rules Governing Sanitation in Cosmetology Schools, School License Renewals, Instructor License Renewals, Sanitation in Cosmetology Salons, Cosmetology Salon License Renewals, and Professional Liability Insurance

The rules as proposed and published at *State Register*, Volume Number 6, pages 1905-1906, Monday, May 17, 1982 (6 S.R. 1905) were approved by the Attorney General's Office on July 6, 1982, and are now adopted as approved.

July 7, 1982

Krista Sanda, Director  
Office of Consumer Services

# SUPREME COURT

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## Decisions Filed Friday, July 9, 1982

Compiled by John McCarthy, Clerk

81-332 Minnesota Education Association, *et al.*, v. Kenneth Bennett, *et al.*, Appellants. Cass County.

A school superintendent is not a member of the "governing body" of a school district and therefore is not subject to the Open Meeting Law, Minn. Stat. § 471.705, subd. 1 (1980).

A closed meeting of a school board to discuss labor negotiation strategies is within the scope of the Open Meeting Law and may be authorized by the mediator expressly or, as in this case, by implication.

Reversed. Amdahl, C. J.

51940, 52042 Charlotte Striebel, Appellant (51940), State of Minnesota, by William L. Wilson, Commissioner, Department of Human Rights, Appellant (52042), v. The Minnesota State High School League. Ramsey County.

Where limited athletic facilities make it necessary to schedule high school boys' and girls' athletic teams in the same sport in two separate seasons, and neither season is substantially better than the other, that scheduling decision is not a denial of equal protection of the law.

The cost of a transcript ordered by a party to use in the preparation of post-trial briefs is not taxable to the losing party under Minn. Stat. § 549.04 (1980) as a cost which was "necessarily incurred."

Reversed in part, affirmed in part. Otis, J. Dissenting, Wahl, J., Todd, J., Yetka, J., and Scott, J.

51614, 51615 In the Matter of the Marriage of Diane Tischendorf (now Diane Montgomery), petitioner, Appellant (51614), v. Peter Tischendorf, William J. Hempel, Appellant (51615). Ramsey County.

Where the divorced parents of a child have stipulated to custody in the mother, residing in the United States, and visitation rights of the father, residing in West Germany, the child does not have an independent constitutional right to remain in the United States if it is judicially determined that it is in his best interests to visit his father in Germany.

Under such circumstances it is proper and appropriate for the court to impose conditions of visitation designed to implement the enforcement of the Minnesota decree and to prevent a foreign jurisdiction from frustrating the terms of that decree as it governs the parents' respective rights to custody and visitation.

Remanded. Otis, J. Dissenting, Wahl, J., and Yetka, J. Took no part, Kelley, J.

## Decisions Filed Tuesday, June 29, 1982

82-104 State of Minnesota v. Roger Dwight Olson, Appellant. Hennepin County.

District court properly denied postconviction petition for resentencing according to the Minnesota Sentencing Guidelines where petitioner failed to meet his burden of proving that his early release from sentence would not present a danger to the public and would not be incompatible with the welfare of society.

Affirmed. Amdahl, C. J.

82-312 State of Minnesota v. Daniel Alan Nelson, Appellant. Hennepin County.

Postconviction court properly denied petition seeking resentencing according to the Minnesota Sentencing Guidelines.

Affirmed. Amdahl, C. J.

82-345, 82-346 State of Minnesota v. Robert Archie Kunshier, Appellant. Ramsey County.

District court properly denied postconviction petition for resentencing according to the Minnesota Sentencing Guidelines.

Affirmed. Amdahl, C. J.

# STATE CONTRACTS

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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.

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## Department of Energy, Planning and Development Developmental Disabilities Program

### Notice of Request for Proposals for Modification of Developmental Achievement Centers to Make Them Accessible to Persons in Wheelchairs

The Developmental Disabilities Program announces that it is seeking proposals from eligible public or private non-profit organizations concerning the following tasks:

To undertake modifications to existing Developmental Achievement Center facilities in order to make the facility accessible to persons in wheelchairs. Financial support will be provided by the Developmental Disabilities Program of the Department of Energy, Planning and Development using a grant from the McKnight Foundation.

Funding of up to \$62,000 is available for these projects. Organizations receiving grants will be expected to have the work completed by December 1, 1983.

The guidelines to be used in the preparation of an application are available from the Developmental Disabilities Program Office. Deadline for receipt of applications in the office is 5:00 p.m., Friday, September 17, 1982. To obtain a copy of the guidelines, please write or call:

Ronald E. Kaliszewski  
Developmental Disabilities Program  
201 Capitol Square Building  
550 Cedar  
St. Paul, MN 55101  
Phone: (612) 297-3207

## Department of Energy, Planning and Development

### Notice of Request for Proposals for Provision of Export Development Assistance to Small Minnesota Firms

The Minnesota Department of Energy, Planning and Development has received a grant from the Economic Development Administration, United States Department of Commerce, for provision of export development assistance to small Minnesota firms. Special emphasis will be placed on firms in those counties of the state that have been identified by the Economic Development Administration as economically distressed areas. The Department of Energy, Planning and Development has identified two major elements of the Minnesota economy, high technology manufacturing and tourism, which appear to offer the greatest opportunities for export of goods and services in those areas presently distressed by stagnation in other areas of the state economy, especially areas usually dependent on the mining and timber business. The department will, in fiscal year 1983, be presenting a number of workshops throughout the state to provide instruction, counseling and assistance to these types of businesses on how to export their goods and services. The department is soliciting proposals from individuals and firms having the necessary qualifications and capabilities to perform three services required in advance of the conduct of the workshops:

- 1) Conduct of market analyses for four specific technology intensive industries.
- 2) Conduct of market analyses for Minnesota's tourism related businesses (including but not limited to, hotels, motels, resorts).
- 3) Review and updating and/or expanding the department's current published materials on how to export.

Both the market analyses and the published materials will be used in the conduct of workshops.

Individuals and firms wishing to receive a copy of the Request for Proposal should contact:

Charles A. Schaffer  
Minnesota Department of Energy, Planning & Development  
480 Cedar Street  
St. Paul, Minnesota 55101 Telephone: 612/296-0617  
612/296-3871

Proposals will be due at the office of the Minnesota Department of Energy, Planning and Development by 5:00 p.m. on August 23, 1982. Anticipated date of contract award is September 1, 1982.

## **State University System**

### **Notice of Availability of Temporary/Intermittent Instructional Positions**

The State University System will, from time to time, employ instructors on a temporary short-term basis. Instructors may be needed in all areas of higher education. Interested persons should contact the respective universities (listed below) by sending their credentials indicating particular areas of interest or expertise to the Vice President for Academic Affairs.

Contact:

Bemidji State University  
Dr. Les Duly  
14th & Birchmont Drive  
Bemidji, Minnesota 56601

Mankato State University  
Dr. Philip Kendall  
5th & Jackson  
Mankato, Minnesota 56001

Metropolitan State University  
Dr. Jerry Silver  
Room 121 Metro Square Building  
St. Paul, Minnesota 55101

Moorhead State University  
Dr. Nancy Parlin (acting)  
1104 7th Avenue South  
Moorhead, Minnesota 56560

St. Cloud State University  
Dr. David Johnson  
1st Avenue South and 7th Street  
St. Cloud, Minnesota 56301

Southwest State University  
Dr. Judith Sturnick  
Marshall, Minnesota 56258

Winona State University  
Dr. James Spear (acting)  
8th and Johnson  
Winona, Minnesota 55987

Estimated cost: Salary rate is negotiable.

Submission deadline: Resumes may be submitted at any time. Openings may occur at any time during the year.

# OFFICIAL NOTICES

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

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

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## Department of Agriculture Agronomy Services Division

### Notice of Special Local Need (SLN) Registration for "Lorsban 4E"

Pursuant to Minnesota Statutes § 18A.23, and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture, on July 8, 1982, issued a Special Local Need (SLN) Registration for "Lorsban 4E," EPA Registration Number 464-448, manufactured by Dow Chemical Company, Midland, Michigan 48640.

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

In addition to the uses prescribed on the product label, this Special Local Need (SLN) Registration permits the use of this product on sunflowers for the control of cutworms.

The application and other data required under Minnesota Statutes §§ 18A.22, subd. 2(a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B, relative to this registration (identified as SLN No. MN82-0013) is on file for inspection at:

Minnesota Department of Agriculture  
Agronomy Services Division  
Pesticide Control Section  
90 West Plato Boulevard  
Saint Paul, Minnesota 55107  
Telephone: (612) 296-8547

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

July 8, 1982

Mark W. Seetin, Commissioner

## Department of Administration

### Notice of Proposal to Discontinue Participation in the Federal Surplus Property Program

Notice is hereby given that the Commissioner of Administration proposes to discontinue participating in the Federal Surplus Property Program and to cease the operations of the Minnesota State Agency for Surplus Property. If this action is taken, the result will be that federal surplus property will no longer be available to governmental or non-profit organizations located in Minnesota with few exceptions.

The Commissioner of Administration, State of Minnesota, is publishing this notice so that any interested party may comment before the final decision is made. Interested parties may submit comments to James J. Hiniker, Jr., Commissioner of Administration at 200 State Administration Building, St. Paul, Minnesota, 55155 before August 23, 1982.

Dated this 9th day of July, 1982.

James J. Hiniker, Jr.  
Commissioner of Administration

## **Department of Health**

### **Notice of Application for Licensure of Basic Life Support Transportation Service**

As of July 19, 1982, a complete application for scheduled basic life support transportation service was submitted by J.P. Pettit, Pettit Ambulance Service, Inc., Route 1, Box 615, Solon Springs, Wisconsin.

This notice is given pursuant to Minnesota Statutes § 144.802 (1979), which requires that the Commissioner of Health publish notice in the *State Register* at the applicant's expense, and in a newspaper in the municipality in which the service will be provided, or if no newspaper is published in the municipality, or if the service would be provided in more than one municipality, in a newspaper published in the county seat of the county or counties in which the service would be provided. Each Municipality, County, Community Health Services Agency, and any other interested person wishing to comment on this application may submit comments to the health systems agency in which the service applying is located. The health systems agency to contact for comments concerning this application is the Health Systems Agency of Western Lake Superior, 202 Ordean Building, 424 West Superior Street, Duluth, Minnesota 55802, Atten: Carol Cochran (218) 727-8371. Your comments must be submitted before the close of business on August 19, 1982.

After a public hearing has been held in one of the municipalities in which the service is to be provided, the health systems agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Western Lake Superior Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of the receipt of the health systems agencies recommendations, the Commissioner of Health shall grant or deny the license to this applicant.

## **Department of Labor and Industry Labor Standards Division**

### **Notice of Prevailing Wage Rates for Highway and Heavy Construction**

Minn. Stat. § 177.44 requires the Commissioner of Labor and Industry to certify, at least once a year, the prevailing wage rates for highway and heavy construction under contracts based on bids as provided for in Minn. Stat. § 161.32, and Minnesota Code of Agency Rules 8 MCAR §§ 1.8003 A. and 1.8010 which require notice of those certifications to be published in the *State Register*.

On July 19, 1982, the commissioner certified wage rates for highway and heavy construction for each of the 87 counties in Minnesota.

A copy of the determined wage rates for Minnesota counties may be obtained by writing to the State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155. The charges for the cost of copying and mailing are \$.50 for the first county and \$.30 for any subsequent copies of the same or other counties. For all 87 counties, the charge is \$25.00. A \$1.00 handling charge must be included for each order. Minnesota sales tax of 5% must be added to all orders.

A check or money order payable to the State of Minnesota must accompany each request.

Russell B. Swanson, Commissioner  
Department of Labor and Industry

## **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:

## OFFICIAL NOTICES

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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.

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.

## Minnesota State Retirement System Special Meeting, Board of Directors

A special meeting of the Board of Directors of the Minnesota State Retirement System will be held on Friday, July 30, 1982 at 8:30 a.m. in the fifth floor conference room, Veteran's Service Building, 20 West Twelfth Street, St. Paul, Minnesota.

The purpose of the meeting is to consider proposals for changes to the retirement plan.

## Department of Transportation

### Order and Notice of Permitted Exception to the *Minnesota Manual on Uniform Traffic Control Devices for Streets and Highways of the State of Minnesota*, under Minnesota Statutes § 169.06, subd. 2, Pertaining to Fluorescent Chartreuse Reflective Sign Sheeting

#### Order No. 66842

WHEREAS, the Commissioner of Transportation has adopted a uniform system of traffic control devices manual and specifications as required by Minnesota Statutes section 169.06, subdivision 1, and

WHEREAS, the Commissioner may authorize variations from the manual and specifications for the purpose of investigation and research into the use and development of traffic control devices, and

WHEREAS, there is a need to determine if FASIGN RTC Fluorescent Chartreuse Reflective Sign Sheeting—No. 30004 colored material offers a higher degree of visibility and is more effective, for traffic control purposes, than the conventional orange color sheeting now used on striper train vehicle delineators and passive warning signs,

NOW THEREFORE, pursuant to authority vested in me as provided in Minnesota Statutes section 169.06, subdivision 2, I do hereby authorize the use of fluorescent reflective chartreuse sign sheeting as specified above; which may differ from the *Minnesota Manual on Uniform Traffic Control Devices for Streets and Highways of the State of Minnesota*, dated December 20, 1973 (Order No. 54014).

This Order will remain in effect until such time as the reflective sheeting described herein is officially adopted in the *Minnesota Manual on Uniform Traffic Control Devices*, or, evaluation indicates it should not be used for this purpose.

Dated this 12th day of July, 1982.

Richard P. Braun  
Commissioner of Transportation

## Wright County Law Library

### Notice of Filing Fees for the Wright County Law Library

Pursuant to Laws of Minnesota 1982, Chapter 576, the Wright County Law Library Board of Trustees announces the law library fees to be collected in the District, County, Municipal, Probate and Conciliation Courts of Wright County.

#### Civil Suits

Plaintiff/Petitioner	\$5.00
Defendants/Respondents/Intervenors (jointly or separately)	5.00
Probate Court	
Petitioner	5.00
Criminal Convictions	
Defendant	000
Conciliation Court	
Petitioner	3.00
Respondent	3.00

These fees shall be in effect from July 1, 1982, to June 30, 1983.

Dated this 29th day of June, 1982

Michel Nelson  
Chairman of the Law Library Board  
Paul McAlpine  
County Commissioner

STATE OF MINNESOTA

State Register and Public Documents Division  
117 University Avenue  
St. Paul, Minnesota 55155

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**EACH ORDER MUST INCLUDE ADDITIONAL \$1.00 FOR POSTAGE AND HANDLING.**

Name \_\_\_\_\_

Attention of: \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_

**FOR LEGISLATIVE NEWS**

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

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

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

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

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

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Legislative Reference Library  
Room 111 Capitol

Interoffice