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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 8		
15	Monday Sept 26	Monday Oct 3	Monday Oct 10
16	Monday Oct 3	Monday Oct 10	Monday Oct 17
17	Monday Oct 10	Monday Oct 17	Monday Oct 24
18	Monday Oct 17	Monday Oct 24	Monday Oct 31

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

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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

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NOTICE

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

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

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

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

The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

MCAR AMENDMENTS AND ADDITIONS

PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 §§ 14.13-14.20 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. § 14.29, 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 Labor and Industry Workers' Compensation Division

Proposed Temporary Rules Governing Workers' Compensation Permanent Partial Disability Schedule

Notice of Hearing and of Intent to Adopt Temporary Rules

Notice is hereby given that the Department of Labor and Industry proposes to adopt temporary rules to govern the Workers' Compensation schedule for permanent partial disability, as authorized by Minn. Stat. § 176.105, subd. 4 (1983).

A hearing for the purpose of public comment will be held pursuant to Minn. Stat. § 14.10 (1982) in Room 83, State Office Building on November 4, 1983 commencing at 8:30 a.m. and continuing until all persons or representatives of associations or groups have had an opportunity to be heard. Comments may be made by submitting either oral or written data. Statements or briefs may be submitted without appearing at the hearing provided all written material is submitted prior to hearing to:

Steve Keefe, Commissioner
Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101

A copy of the proposed rules follows this notice in the *State Register*. Additional copies will be available at the hearing. The proposed rules may be modified as a result of the hearing. No hearing examiner's report will be issued. The temporary rules shall remain in effect until permanent rules are adopted. The procedure for adoption of temporary rules is governed by Minn. Stat. §§ 14.29-.36 and 176.105, subd. 4. It is expected that the hearing will last one day and that in excess of fifty (50) people will be in attendance.

Although not required for temporary rules, 25 days prior to the hearing a statement of need and reasonableness will be available for review at the agency. This statement of need and reasonableness will include a discussion of the factors considered by the agency in promulgating the proposed rules.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1982) as any individual:

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

(b) Who spends more than $250, not including his own traveling expenses in 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 statutes provide certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

September 21, 1983

Steve Keefe, Commissioner
Department of Labor and Industry

Temporary Rules as Proposed (all new material)

8 MCAR § 1.9001 [Temporary] Workers' compensation permanent partial disability schedule rules.

A. Purpose of schedules. Laws of Minnesota 1983, chapter 290, section 86, requires the commissioner of labor and industry to promulgate temporary rules assigning specific percentages of disability of the whole body for specific permanent partial disabilities. Rules 8 MCAR §§ 1.9001-1.9023 [Temporary] assign percentages of disability of the whole body for permanent partial disabilities.

B. Interpretation of schedules. Only the categories set forth in the schedules in 8 MCAR §§ 1.9001-1.9023 [Temporary] may be used when rating the extent of a disability. Where a category represents the disabling condition, the disability determination shall not be based on the cumulation of lesser included categories. If more than one category may apply to a condition, the category most closely representing the condition shall be selected. Where more than one category is necessary to represent the disabling condition, categories shall be selected to avoid double compensation for any part of a condition. The percentages of disability to the whole body as set forth in two or more categories shall not be averaged, prorated, or otherwise deviated from, unless specifically provided in the schedule. With respect to the musculo-skeletal schedule, the percent of whole body disability for motor or sensory loss of a member shall not exceed the percent of whole body disability for amputation of that member.

C. Disabilities not part of schedules. A category not found within 8 MCAR §§ 1.9001-1.9023 [Temporary] shall not be used to determine permanent partial disability.

D. Rules of construction. The technical terms in 8 MCAR §§ 1.9001-1.9023 [Temporary] are defined in either 8 MCAR § 1.9002 [Temporary], or by the documents incorporated by reference in this rule. These documents are as follows:

1. Guides to the Evaluation of Permanent Impairment, published by the American Medical Association, Committee on Rating of Mental and Physical Impairment, 1971 edition. This document is also known as the A.M.A. Guides.

2. Snellen Charts, published by American Medical Association Committee for Eye Injuries and designated Industrial Vision Test Charts. These charts are also known and referred to as A.M.A. charts;

3. American Medical Association Rating Reading Card of 1932, published by the American Medical Association Committee for Eye Injuries. This document is also known as the A.M.A. Card.

4. American National Standard Institutes, Inc., §3.1-1977 Criteria for Permissible Ambient Noise during Audiometric Testing and §3.6-1969 Specification for Audiometers;

5. Metropolitan Life Insurance Company Weight Tables, published by the Metropolitan Life Insurance Company, 1983;

6. The Revised Kenny Self-Care Evaluation: A Numerical Measure of Independence in Activities of Daily Living, Sister Kenny Institute, 1973;

7. Dorland's Illustrated Medical Dictionary, 25th edition, 1974. This document is also known as Dorland's;

8. D.S.M. III, Diagnostic and Statistical Manual of Mental Disorders, American Psychiatric Association, 1980. This document is also known as D.S.M. III;

9. Fractures, Charles A. Rockwood and David Green, 1975; and

10. Textbook on Anatomy, William Henry Hollinshead, 1974.

8 MCAR § 1.9002 [Temporary] Definitions.

A. Scope. For the purpose of 8 MCAR §§ 1.9001-1.9023 [Temporary] the terms defined in this rule have the meanings given

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.

them unless the context clearly indicates otherwise. Terms not defined in this rule are defined in Dorland's or other documents incorporated by reference. If the definition in a document incorporated by reference conflicts with or differs from the definition set forth in 8 MCAR § 1.9001-19023 [Temporary], the specific definitions set forth in these rules shall govern.

B. Acromio-clavicular grade 1. "Acromio-clavicular grade 1" means an undisplaced acromio-clavicular joint.

C. Acromio-clavicular grade 2. "Acromio-clavicular grade 2" means a 50 percent displacement of the clavicle in the relationship to the acromion at the acromio-clavicular joint.

D. Acromio-clavicular grade 3. "Acromio-clavicular grade 3" means a completely disrupted acromio-clavicular joint.

E. Activities of daily living. "Activities of daily living" means the ability to perform self cares, to perform housework and related tasks, to ride in or operate a motor vehicle, and to perform vocational tasks not requiring physical labor.

F. Ankylosis. "Ankylosis" means the stiffening or fixation of a joint.

G. ANSI. "ANSI" means the American National Standards Institute.

H. Category. "Category" means a permanent partial disability as described in these rules and the corresponding percent of disability to the whole body for that permanent partial disability.

I. Chronic. "Chronic" means the repeated or continuous occurrence of a specific condition or symptom.

J. Desirable level of weight. "Desirable level of weight" means preferred weights set forth in tables created by the Metropolitan Life Insurance Company.

K. Disarticulation. "Disarticulation" means an amputation occurring through a joint.

L. Distance vision. "Distance vision" means the ability to distinguish letters at a distance of 20 feet according to the Snellen and A.M.A. Charts.

M. Family member. "Family member" means cohabitants and is not limited to those related by blood or marriage. In cases of institutionalization or similar nonhome environment, family member may include staff members who care for the individual on a regular basis.

N. Fore-quarter. "Fore-quarter" means the amputation of the upper extremity involving the scapula, clavicle, and muscles that attach to the chest.

O. Fusion. "Fusion" means the surgical uniting of one vertebral segment to an adjoining vertebral segment.

P. Gastrostomy. "Gastrostomy" means a surgical creation of a gastric fistula through the abdominal wall for the purpose of introducing food into the stomach.

Q. Glossopharyngeal. "Glossopharyngeal" means the ninth cranial nerve with sensory fibers to the tongue and pharynx. It affects taste and swallowing.

R. Hypoglossal. "Hypoglossal" means the motor nerve to the tongue. It is the 12th cranial nerve and carries impulses from the brain to the tongue, including movement of muscles and secretion of glands and motor movement.

S. Kenny scale. "Kenny scale" means the Kenny self-care evaluation system as set forth in The Revised Kenny Self-Care Evaluation: A Numerical Measure of Independence of Activities of Daily Living.

T. Laminectomy. "Laminectomy" means the removal of part or all of the lamina of one vertebral segment, usually with associated disc excision.

U. Lethary. "Lethargy" means, in relation to a nervous system injury to the brain, that an individual is drowsy, but can be aroused.

V. Moderate referred shoulder and arm pain. "Moderate referred shoulder and arm pain" means pain of an intensity necessitating decreased activity in order to avoid the pain. This pain is demonstrated in a dermatomal distribution into the shoulder and upper extremity.

W. Moderate partial dislocation. "Moderate partial dislocation" means a loss of normal vertebral alignment of up to 50 percent of the vertebral body on the adjacent vertebral body associated with vertebral fractures.

X. Near vision. "Near vision" means clearness of vision at the distance of 14 inches.

Y. Nonpreferred extremity. "Nonpreferred extremity" means the arm or leg not used dominantly, as for example, the left hand of a right-handed writer.

Z. Objective clinical findings. "Objective clinical findings" as used in 8 MCAR § 1.9007 [Temporary] means examination results which are reproducible and consistent. Examples of objective clinical findings are involuntary muscle spasms, consistent postural abnormalities, and changes in deep tendon reflexes.

AA. Postural abnormality. "Postural abnormality" means a deviation from normal posture, as found on anterior/posterior or lateral X-rays, that involves the spine and pelvis or segments of the spine or pelvis, such as kyphosis, lordosis, or scoliosis.

BB. Preferred extremity. "Preferred extremity" means the dominant leg or arm, as for example, the right arm of a right-handed person.

CC. Presbycusis. "Presbycusis" means a decline in hearing acuity that occurs with the aging process.

DD. Pseudophakia. "Pseudophakia" means that the crystalline lens of the eye has been replaced with a surgically implanted lens.

ÈE. Self cares. "Self cares" means bed activities, transfers, locomotion, dressing, prrsonal hygiene, bowel and bladder, and feeding as described in The Revised Kenny Self-Care Evaluation: A Numerical Measure of Independence in Activities of Daily Living, pages 10-24.

FF. Spinal stenosis. "Spinal stenosis" means the narrowing of the spinal canal.

GG. Spondylolisthesis. "Spondylolisthesis" means the forward movement of one vertebral body of one of the lower lumbar vertebrae on the vertebrae below it or upon the sacrum.

HH. Spondylolisthesis grade 1. "Spondylolisthesis grade 1" means forward movement from zero to 25 percent of the vertebral body.

II. Spondylolisthesis grade 2. "Spondylolisthesis grade 2" means forward movement from 25 to 50 percent of the vertebral body.

JJ. Spondylolisthesis grade 3. "Spondylolisthesis grade 3" means movement from 50 to 75 percent of the vertebral body.

KK. Spondylolisthesis grade 4. "Spondylolisthesis grade 4" means forward movement from 75 to 100 percent of the vertebral body.

LL. Stupor. "Stupor" means, in relation to a nervous system injury to the brain, that a strong stimulus or pain is needed to arouse consciousness or response.

MM. Tinnitus. "Tinnitus" means a subjective sense of noises in the head or ringing in the ear for which there is no observable external cause.

NN. Trigeminal. "Trigeminal" means the mixed nerve with sensory fibers to the face, cornea, anterior scalp, nasal and oral cavities, tongue and supertentorial dura matter. It also has motor fibers to the muscles of mastication. It is the fifth cranial nerve.

OO. Vertigo. "Vertigo" means a sensation of moving around in space or having objects move about the person. It is the result of a disturbance of the equilibratory apparatus.

PP. Vestibular. "Vestibular" means the main division of the auditory nerve. It is the eighth cranial nerve and deals with equilibrium.

QQ. 14/14. "14/14" is a term used in the measurement of near vision. It is the clearness of vision at a distance of 14 inches. The numerator is the test distance in inches. The denominator is the distance at which the smallest letter on the A.M.A. card can be seen.

RR. 20/20 Snellen or A.M.A. Chart. "20/20 Snellen or A.M.A. Chart" refers to a chart imprinted with block letters or numbers in gradually decreasing sizes, identified according to distances at which they are ordinarily visible. It is used in testing visual acuity. The numerator is the test distance in feet. The denominator is the distance at which the smallest letter discriminated by a patient would subtend five minutes of arc.

8 MCAR § 1.9003 [Temporary] Eye schedule.

A. Complete loss of vision. For complete loss of vision in both eyes, disability of the whole body is 85 percent. For complete loss of vision in one eye, disability of the whole body is 24 percent. In determining the degree of vision impairment and of whole body disability, B.-F. shall be used.

B. Examination. Disability shall not be determined until all medically acceptable attempts to correct the defect have been made. Prior to the final examination on which disability is to be determined, at least six months shall elapse after all visible

inflammation has disappeared. In cases of disturbance of extrinsic ocular muscles, optic nerve atrophy, injury of the retina, sympathetic ophthalmia, and traumatic cataract, at least 12 months shall elapse before the final examination is made. Testing shall be conducted with corrective lenses applied, unless indicated otherwise in this rule.

C. Maximum and minimum limits of primary coordinate factors of vision. The primary coordinate factors of vision are central visual acuity, visual field efficiency, and ocular motility. The determination of maximum and minimum limits for each of the coordinate functions is established below.

1. Maximum limit.

a. The maximum limit of central visual acuity is the ability to recognize letters or characters which subtend an angle of five minutes, each unit part of which subtends a one-minute angle at the distance viewed. A 20/20 Snellen or A.M.A. chart is 100 percent (maximum) central visual acuity for distance vision. 14/14 A.M.A. card is 100 percent (maximum) central visual acuity for near vision.

b. A visual field is 500 degrees. A visual field which extends from the point of fixation outward 85 degrees, down and out 85 degrees, down 65 degrees, down and in 50 degrees, inward 60 degrees, in and up 55 degrees, upward 45 degrees, and up and out 55 degrees is 100 percent visual field efficiency.

c. Maximum ocular motility is present if there is absence of diplopia in all parts of the field of binocular fixation, and if normal binocular motor coordination is present.

2. Minimum limit.

a. The minimum limit of central visual acuity is

(1) for distance vision, 20/800 Snellen or A.M.A. chart;

(2) for near vision, 14/560 A.M.A. card.

b. The minimum limit for field vision is established as a concentric central contraction of the visual field to five degrees. Five degrees of contraction of the visual field reduces the visual efficiency of the eye to zero.

c. The minimum limit for ocular motility is established by the presence of diplopia in all parts of the field of binocular fixation or by absence of binocular motor coordination. The minimum limit is 50 percent ocular motility efficiency.

D. Measurement of coordinate factors of vision and the computation of their partial loss.

1. Central visual acuity efficiency. Central visual acuity shall be measured both for distance vision and for near vision, each eye being measured separately, both with and without correction. A Snellen or A.M.A. chart shall be used for distance vision and an A.M.A. card shall be used for near vision. Illumination shall be at least five footcandles.

a. Table 1 shows the percentage of visual efficiency corresponding to the notations for distance vision and for near vision. For test readings between those listed on the chart, round up from the midpoint to the nearest reading, and round down from below the midpoint.

Where distance vision is less than 20/200 and the A.M.A. chart is used, readings are at ten feet. The test reading is translated to the corresponding distance reading in Table 1 by multiplying both the numerator and the denominator of the test reading by two.

TABLE 1
Central Visual Acuity

A.M.A. Chart or Snellen Reading for Distance	A.M.A. Card Reading for Near	Percentage of Central Visual Acuity Efficiency
20/20	14/14	100.00
20/25	14/17.5	95.7
20/25.7	. . .	95.0
20/30	14/21	91.5
20/32.1	. . .	90.0
20/35	14/24.5	87.5
20/38.4	. . .	85.0
20/40	14/28	83.6
20/44.9	14/31.5	80.0
20/50	14/35	76.5

20/52.1	. . .	75.0
20/60	14/42	69.9
20/60.2	. . .	70.0
20/68.2	. . .	65.0
20/70	14/49	64.0
20/77.5	. . .	60.0
20/80	14/56	58.5
20/86.6	. . .	55.0
20/90	14/63	53.4
20/97.5	. . .	50.0
20/100	14/70	48.9
20/109.4	. . .	45.0
20/120	14/84	40.9
. . .	14/89	38.4
20/122.5	. . .	40.0
20/137.3	. . .	35.0
20/140	14/98	34.2
20/155	. . .	30.0
20/160	14/112	28.6
20/175	. . .	25.0
20/180	14/126	23.9
20/200	14/140	20.0
20/220	14/154	16.7
20/240	14/168	14.0
. . .	14/178	12.3
20/260	14/182	11.7
20/280	14/196	9.7
20/300	14/210	8.2
20/320	14/224	6.8
20/340	14/238	5.7
20/360	14/252	4.8
20/380	14/266	4.0
20/400	14/280	3.3
20/450	14/315	2.1
20/500	14/350	1.4
20/600	14/420	0.6
20/700	14/490	0.3
20/800	14/560	0.1

b. The percentage of central visual acuity efficiency of the eye for distance vision is that percentage in Table I which corresponds to the test reading for distance vision for that eye.

c. The percentage of central visual acuity efficiency of the eye for near vision is that percentage in Table I which corresponds to the test reading for near vision for that eye.

d. The percentage of central visual acuity efficiency of the eye in question is determined as follows:

(1) Multiply by two the value determined for corrected near vision in c.

(2) Add the product obtained in step 1 to the value determined for corrected distance vision in b.

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(3) Divide the sum obtained in step 2 by three.

The following is an example of this calculation. If the central visual acuity efficiency for distance is 70 percent, and that for near is 25 percent, the percentage of central visual acuity efficiency for the eye is:

$$\frac{70\% + (2 \times 25)}{3} = 40\% \text{ central visual acuity efficiency}$$

e. For traumatic aphakia, the corrected central visual acuity efficiency of the eye is 50 percent of the central visual acuity efficiency determined in d. This paragraph shall not apply if an adjustment for glasses or contact lenses pursuant to E.2.b. or c. results in a lower visual efficiency than would be given by application of this paragraph.

f. For traumatic pseudophakia, the corrected central visual acuity efficiency of the eye is 80 percent of the central visual acuity efficiency determined in d. This paragraph shall not apply if an adjustment for glasses or contact lenses pursuant to E.2.b. or c. results in a lower visual efficiency than would be given by application of this paragraph.

2. Visual field efficiency. For each eye, the extent of the field of vision shall be determined by perimetric test methods. A three millimeter white disk which subtends a 0.5-degree angle under illumination of not less than seven footcandles shall be used. For aphakia, a six millimeter white disk shall be used. The result shall be plotted on the visual field chart as illustrated in the A.M.A. Guides, page 94.

a. The amount of radial contraction in the eight principal meridians shall be determined. The sum of the degrees of field vision remaining on these meridians, divided by 500, is the visual field efficiency of one eye, expressed as a percentage. If the eye has a concentric central contraction of the field to a diameter of five degrees, the visual efficiency is zero.

b. When the impairment of field is irregular and not fairly disclosed by the eight radii, the determination shall be based on a number of radii greater than eight and the divisor in a. shall be changed accordingly.

c. Where there is a loss of a quadrant or a half-field, the degrees of field vision remaining in each meridian are added to one-half the sum of the two boundary meridians.

3. Ocular motility. Ocular motility shall be measured in all parts of the motor field with any useful correction applied.

a. All directions of gaze shall be tested with use of a test light and without the addition of colored lenses or correcting prisms. The extent of diplopia is determined on the perimeter at 330 millimeters or on a tangent screen at a distance of one meter from the eye.

b. For each eye, plot the test results on a motility chart as illustrated in the A.M.A. Guides, page 97.

c. Determine the percentage loss of ocular motility from the motility chart.

d. The percentage loss of ocular motility is subtracted from 100 percent to obtain the ocular motility efficiency. The minimum ocular motility efficiency of one eye is 50 percent.

E. Visual efficiency. The visual efficiency of one eye is the product of the efficiency values of central visual acuity, of visual field, and of ocular motility. For the purpose of this calculation, these values shall be expressed as decimals and not as percentages; a value of zero percent is deemed to be one percent.

1. For example, if central visual acuity efficiency is 50 percent, visual field efficiency is 80 percent, and ocular motility efficiency is 100 percent, the visual efficiency of the eye is .50 times .80 times 1.00, equals 40 percent. If ocular motility efficiency is changed to 50 percent, the visual efficiency is .50 times .80 times .50, equals 20 percent.

2. Visual efficiency shall be adjusted as set in this clause. Visual efficiency may not be less than zero percent. No adjustment for glasses or contacts shall be made in cases of aphakia or pseudophakia where the central visual efficiency was adjusted pursuant to D.1.e. or f.

a. Visual efficiency shall be decreased by subtracting two percent for any of the following conditions which are present due to the injury: loss of color vision; loss of adaptation to light and dark; metamorphosis; entropion or ectropion uncorrected by surgery; lagophthalmos; epiphora; and muscle disturbances such as ocular ticks not included under diplopia.

b. If glasses are required as a result of the injury, subtract five percent from the visual efficiency. Where the glasses contain prisms, subtract six percent.

c. If a noncosmetic contact lens is required in one or both eyes as a result of the injury, subtract seven percent from the visual efficiency.

d. Adjustments for preexisting impairments shall be made pursuant to Minnesota Statutes, section 176.101, subdivision 4, clause (a).

F. Procedure for determining whole body disability due to vision loss. For each eye, subtract the percentage of visual

efficiency as determined in E. from 100 percent. The difference is the percentage impairment of each eye. The better eye has the lower percentage impairment. The poorer eye has the greater percentage impairment.

1. Multiply the percentage impairment of the better eye by three.

2. Add the percentage impairment of the poorer eye to the product obtained in step 1.

3. Divide the sum obtained in step 2 by four.

4. The quotient obtained in step 3 is the percentage impairment of the visual system. Fractions shall be rounded to the nearest whole number percentage as provided in D.1.a.

5. The percentage impairment of the visual system is translated to the percentage disability of the whole body by Table 2.

TABLE 2
Eye Schedule

Impairment of Visual System, %	Disability of Whole Man, %	Impairment of Visual System, %	Disability of Whole Man, %
0	0	45	42
1	1	46	43
2	2	47	44
3	3	48	45
4	4	49	46
5	5	50	47
6	6	51	48
7	7	52	49
8	8	53	50
9	8	54	51
10	9	55	52
11	10	56	53
12	11	57	54
13	12	58	55
14	13	59	56
15	14	60	57
16	15	61	58
17	16	62	59
18	17	63	59
19	18	64	60
20	19	65	61
21	20	66	62
22	21	67	63
23	22	68	64
24	23	69	65
25	24	70	66
26	25	71	67
27	25	72	68
28	26	73	69
29	27	74	70
30	28	75	71
31	29	76	72
32	30	77	73
33	31	78	74

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34	32	79	75
35	33	80	76
36	34	81	76
37	35	82	77
38	36	83	78
39	37	84	79
40	38	85	80
41	39	86	81
42	40	87	82
43	41	88	83
44	42	89	84
		90-100	85

8 MCAR § 1.9004 [Temporary] Ear schedule.

A. General. For hearing loss, the maximum disability of the whole body is 35 percent. The procedures in B.-G. shall be used to determine the extent of binaural hearing loss and of whole body disability.

B. Medical diagnosis. Otological evaluation shall be the method for determining the degree of permanent partial hearing loss. The medical diagnosis shall include the following:

1. A complete history of occupational, military, and recreational noise exposure. This medical history shall include documentation of any previous hearing loss, if that information is available;

2. A complete physical examination of the ear; and

3. An audiological evaluation which shall include pure tone air conduction and bone conduction testing.

C. Standards for audiometric calibration and test environment. To ensure accurate measurement of hearing loss, the following standards shall be observed in conducting the tests required in B.:

1. The audiometer used to measure hearing loss shall be calibrated to meet the specifications of ANSI §3.6-1969, Specifications for Audiometers. The following are also required:

a. Biological or electroacoustical calibration checks of the audiometer shall be performed monthly;

b. Electroacoustical calibration shall be performed annually to certify the audiometer to the ANSI standard in 1; and

c. The calibration records shall be preserved and shall be provided upon request; and

2. Audiometric test rooms or booths shall meet the specifications of ANSI §3.1-1977 Criteria for Permissible Ambient Noise during Audiometric Testing.

D. Waiting period for final evaluation of hearing loss. A waiting period of at least three months shall elapse between the date of the occurrence of the noise injury and the final evaluation of the permanent partial hearing loss.

E. Procedure for determining disability of whole body due to hearing loss.

1. The binaural hearing loss is determined. The calculation for the percent of binaural hearing loss consists of the following steps:

a. For each ear, test the hearing threshold levels at the four frequencies of 500, 1,000, 2,000, and 3,000 Hertz;

b. For each ear, determine the average four-frequency hearing level. The average four-frequency hearing level is one-fourth of the sum of the threshold levels at each of the four tested frequencies. The average four-frequency hearing level is expressed in decibels;

c. For each ear, subtract 25 decibels from the average four-frequency hearing level for that ear. The remainder, expressed in decibels, is the adjusted average four-frequency hearing level;

d. For each ear, multiply the adjusted average four-frequency hearing level by 1.5 percent. The product is the monaural hearing loss, expressed as a percentage. A product less than zero percent is deemed to be zero. A product greater than 100 percent is deemed to be 100 percent;

e. Considering both ears, compare the monaural hearing losses as determined in d. The ear with the smaller monaural hearing loss is the better ear. The ear with the larger monaural hearing loss is the poorer ear; and

f. Multiply the monaural hearing loss of the better ear by five, add this product to the monaural hearing loss of the poorer ear, and divide the sum by six. The quotient is the binaural hearing loss, expressed as a percentage. The formula is:

$$\frac{(\text{monaural hearing loss of better ear}) \times 5 + (\text{monaural hearing loss of poorer ear})}{6} = \text{percent binaural hearing loss}$$

2. The calculation of the percent of binaural hearing loss is illustrated by the following examples.

Example 1

	500 Hertz	1,000 Hertz	2,000 Hertz	3,000 Hertz
Right ear	15	25	45	55
Left ear	30	45	60	85

a. Calculation of the average four-frequency hearing level:

$$\text{Right ear} = \frac{15 + 25 + 45 + 55}{4} = \frac{140}{4} = 35 \text{ decibels}$$

$$\text{Left ear} = \frac{30 + 45 + 60 + 85}{4} = \frac{220}{4} = 55 \text{ decibels}$$

b. Calculation of adjusted average four-frequency hearing level:

Right ear = 35 decibels − 25 decibels = 10 decibels;
Left ear = 55 decibels − 25 decibels = 30 decibels;

c. Calculation of monaural hearing loss:

Right ear = 10 × 1.5% = 15%
Left ear = 30 × 1.5% = 45%

d. Calculation of binaural hearing loss:

$$\frac{(15\% \times 5) + 45\%}{6} = 20 \text{ percent of binaural hearing loss}$$

Example 2

	500 Hertz	1,000 Hertz	2,000 Hertz	3,000 Hertz
Right ear	20	25	30	35
Left ear	30	45	60	85

a. Calculation of average four-frequency hearing level.

$$\text{Right ear} = \frac{20 + 25 + 30 + 35}{4} = 25 \text{ decibels}$$

$$\text{Left ear} = \frac{30 + 45 + 60 + 85}{4} = 55 \text{ decibels}$$

b. Calculation of adjusted average four-frequency hearing level.

Right ear = 25 decibels − 25 decibels = 0 decibels
Left ear = 55 decibels − 25 decibels = 30 decibels

c. Calculation of monaural hearing loss:

Right ear = 0 × 1.5 percent = 0
Left ear = 30 × 1.5 percent = 45 percent

d. Calculation of binaural hearing loss:

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$$\frac{(0\% \times 5) + 45\%}{6} = 7.5 \text{ percent binaural hearing loss}$$

3. The binaural hearing loss is translated to a percentage of disability of the whole body by the ear schedule set forth below:

EAR SCHEDULE

Binaural Hearing Loss, Percent	Disability of Whole Body Percent
0 - 1.7	0
1.8 - 4.2	1
4.3 - 7.4	2
7.5 - 9.9	3
10.0 - 13.1	4
13.2 - 15.9	5
16.0 - 18.8	6
18.9 - 21.4	7
21.5 - 24.5	8
24.6 - 27.1	9
27.2 - 30.0	10
30.1 - 32.8	11
32.9 - 35.9	12
36.0 - 38.5	13
38.6 - 41.7	14
41.8 - 44.2	15
44.3 - 47.4	16
47.5 - 49.9	17
50.0 - 53.1	18
53.2 - 55.7	19
55.8 - 58.8	20
58.9 - 61.4	21
61.5 - 64.5	22
64.6 - 67.1	23
67.2 - 70.0	24
70.1 - 72.8	25
72.9 - 75.9	26
76.0 - 78.5	27
78.6 - 81.7	28
81.8 - 84.2	29
84.3 - 87.4	30
87.5 - 89.9	31
90.0 - 93.1	32
93.2 - 95.7	33
95.8 - 98.8	34
98.9 - 100.0	35

F. Presbycusis. The calculation of the binaural hearing loss shall not include an additional adjustment for presbycusis.

G. Tinnitus. No additional percentage of permanent partial disability for hearing loss shall be allowed for tinnitus.

8 MCAR § 1.9005 [Temporary] Skull defects.

For skull defects the percent of disability of the whole body is provided by the following schedule:

	Unfilled defect Percent	Filled defect Percent
0 - 1-1/2 square inches	0	0
1-1/2 - 2-1/2 square inches	5	0
2-1/2 - 4 square inches	10	2
4 - 6-1/2 square inches	15	3
6-1/2 or more square inches	20	5

8 MCAR § 1.9006 [Temporary] Central nervous system.

A. General. For permanent partial disability of the central nervous system the percentage of disability of the whole body is as provided in B.-I.

B. Trigeminal nerve. Permanent partial disability of the trigeminal nerve is a disability of the whole body as set forth below:

1. Partial unilateral sensory loss, 3 percent;
2. Complete unilateral sensory loss, 5 percent;
3. Partial bilateral sensory loss, 10 percent;
4. Complete bilateral sensory loss, 25 percent;
5. Intractable trigeminal neuralgia, 20 percent;
6. Atypical facial pain, 5 percent;
7. Partial unilateral motor loss, 2 percent;
8. Complete unilateral motor loss, 5 percent;
9. Partial bilateral motor loss, 10 percent; or
10. Complete bilateral motor loss, 30 percent.

C. Facial nerve. Permanent partial disability of the facial nerve is a disability of the whole body as set forth below:

1. Total loss of taste, 3 percent;
2. Partial unilateral motor loss, 25 to 75 percent of function lost, 5 percent;
3. Unilateral motor loss, more than 75 percent of function lost, 15 percent;
4. Partial bilateral motor loss, 25 to 75 percent of function lost, 15 percent;
5. Bilateral motor loss, more than 75 percent of function lost, 30 percent.

D. Vestibular loss with vertigo or disequilibrium is a disability of the whole body as set forth below:

1. A score of 4 on the Kenny scale, and restricted in activities involving personal or public safety, such as operating a motor vehicle or riding a bicycle, 10 percent;
2. A score of 3 or 4 on the Kenny scale, and ambulation impaired due to equilibrium disturbance, 30 percent;
3. A score of 2 on the Kenny scale, 40 percent;
4. A score of 1 or 0 on the Kenny scale, 70 percent.

E. Glossopharyngeal, vagus and spinal accessory nerves. Permanent partial disability to glossopharyngeal, vagus and spinal accessory nerves is a disability of the whole body as set forth below:

1. Swallowing impairment caused by disability to any one or more of these nerves:
   a. diet restricted to semi-solids, 10 percent;
   b. diet restricted to liquids, 25 percent; or
   c. diet by tube feeding or gastrostomy, 50 percent.
2. Mechanical disturbances of articulation due to disability to any one or more of these nerves:

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a. 95 percent or more of words are understood by those who are not family members and others outside the immediate family, but speech is distorted, 5 percent;

b. 95 percent or more of words are understood by family members, but speech is distorted and not easily understood by those who are not family members, 10 percent;

c. 75 percent or more of words are understood by family members, but speech is distorted, 15 percent;

d. more than 50 percent of words are understood by family members, 20 percent;

e. less than 50 percent of words are understood by family members, 25 percent;

f. 10 percent or less of words are understood by family members, 30 percent.

G. Hypoglossal nerve. Permanent partial disability of hypoglossal nerve is a disability of the whole body as listed below:

1. Bilateral paralysis; swallowing impairment:

a. diet restricted to semi-solids, 10 percent;

b. diet restricted to liquids, 25 percent; and

c. diet by tube feeding or gastrostomy, 50 percent.

2. Mechanical disturbances of articulation:

a. 95 percent or more of words are understood by family members and others outside the immediate family, but speech is distorted, 5 percent;

b. 95 percent or more of words are understood by family members, but speech is distorted and not easily understood by nonfamily members, 10 percent;

c. 75 percent or more of words are understood by family members, but speech is distorted, 15 percent;

d. more than 50 percent of words are understood by family members, 20 percent;

e. less than 50 percent of words are understood by family members, 25 percent;

f. 10 percent or less of words are understood by family members, 30 percent.

H. Spinal cord and brain nervous system. Permanent partial disability of the spinal cord and brain is a disability of the whole body as set forth below:

1. Lower extremities. A permanent partial disability in the use of lower extremities is a disability of the whole body as set forth below:

a. can rise to a standing position and can walk, but has difficulty walking onto elevations, grades, steps, and distances, 15 percent;

b. can stand but can walk only on a level surface, 30 percent;

c. can stand but cannot walk, 45 percent; and

d. can neither stand nor walk, 65 percent.

2. Upper extremities. Permanent partial disability in the use of upper extremities is a disability of the whole body as set forth below:

Whole Body Disability, Percentages

	Preferred extremity	Nonpreferred extremity	Both
score of 4 on Kenny scale, but some difficulty with digital dexterity	10	5	15
score of 3 or 4 on Kenny scale, but no digital dexterity	20	10	30
score of 2 on Kenny scale	40	40	50
score of 1 or 0 on Kenny scale	70	70	85

3. Respiration. Permanent partial disability of the respiratory function is a disability of the whole body as set forth below:

a. difficulty only where extra exertion is required, such as running, climbing stairs, heavy lifting, or carrying loads, 10 percent;

b. restricted to limited walking not beyond one's own home, 35 percent;

c. restricted to bed, 75 percent; and

d. has no spontaneous respiration, 95 percent.

4. Urinary bladder function. Permanent partial disability of the bladder is a disability of the whole body as set forth below. Evaluative procedures to be followed are set forth in 8 MCAR § 1.9022 [Temporary] B.

a. Impaired voluntary control evidenced by urgency or hesitancy, but continent without collecting devices, 10 percent.

b. Impaired voluntary control, incontinent requiring external collecting devices, 20 percent.

c. Impaired voluntary control, incontinent requiring internal collecting or continence devices, 30 percent.

5. Anorectal function. The permanent partial disability of the anorectal function is a disability of the whole body as set forth below:

a. impaired voluntary control with urgency, 10 percent;

b. impaired voluntary control without reflex regulation, 20 percent;

c. impaired voluntary control, incontinent without diversion, 30 percent.

6. Sexual function. Permanent partial disability of sexual function is a disability of the whole body as set forth below.

a. Male:

(1) impaired sexual function, but vaginal penetration possible, 10 percent;

(2) impaired sexual function, and vaginal penetration not possible, 20 percent.

b. Female:

(1) impaired sexual function, but penile containment possible, 10 percent;

(2) impaired sexual function, and penile containment not possible, 20 percent.

I. Brain injury. Supporting objective evidence of structural injury, neurological deficit, or psychomotor findings is required to substantiate the permanent partial disability. Permanent partial disability of the brain is a disability of the whole body as set forth below.

1. Communications disturbances, expressive:

a. mild disturbance of expressive language ability not significantly impairing ability to be understood, such as mild word-finding difficulties, mild degree of paraphasias, or mild dysarthria, 10 percent;

b. severe impairment of expressive language ability, but still capable of functional communication with the use of additional methods such as gestures, facial expression, writing, word board, or alphabet board, 35 percent;

c. unable to produce any functional expressive language, 70 percent.

2. Communication disturbances, receptive:

a. mild impairment of comprehension of aural speech, but comprehension functional with the addition of visual cues such as gestures, facial expressions, or written material, 40 percent;

b. some ability to comprehend language is present, but significant impairment even with use of visual cues such as gestures, facial expressions, and written material, 60 percent;

c. no evidence of functional comprehension of language, 90 percent.

3. Complex integrated cerebral function disturbances must be determined by medical observation in a controlled setting and organic dysfunctions supported by psychometric testing. Functional overlay or primary psychiatric disturbances shall not be rated under this rule. The permanent partial disabilities are as follows:

a. mild impairment of higher level cognitive function or memory, but able to live independently and function in the community as evidenced by independence in activities such as shopping and taking a bus, 20 percent;

b. same as a.; and also requires supporting devices and direction to carry out limited vocational tasks, 30 percent;

c. moderate impairment of memory, judgment, or other higher level cognitive abilities, can live alone with some supervision such as for money management, some limitation in ability to function independently outside the home in activities such as shopping and traveling, 50 percent;

d. moderately severe impairment of memory, judgment, or other higher cognitive abilities, unable to live alone and some supervision required at all times, but able to perform self cares independently, 70 percent;

e. severe impairment of memory, judgment, or other higher cognitive abilities such that constant supervision and assistance in self cares are required, 95 percent.

4. Emotional disturbances and personality changes must be substantiated by medical observation in a controlled setting and by organic dysfunction supported by psychometric testing. Permanent partial disability is a disability of the whole body as set forth below:

a. only present under stressful situation such as losing one's job, getting a divorce, or a death in the family, 10 percent;

b. present at all times but not significantly impairing ability to relate to others, to live with others, or to perform self cares, 30 percent;

c. present at all times in moderate to severe degree, minimal ability to live with others, some supervision required, 65 percent;

d. severe degree of emotional disturbance which, because of danger to self and others, requires continuous supervision, 95 percent.

5. Psychotic disorders not caused by organic dysfunction must be substantiated by medical observation in a controlled setting as described in D.S.M. III:

a. only present under stressful situation, such as losing one's job, getting divorced, a death in the family, 10 percent;

b. present at all times but not significantly impairing ability to relate to others, live with others, or perform self cares, 30 percent;

c. present at all times in moderate to severe degree significantly affecting ability to live with others, and requiring some supervision, 65 percent;

d. severe degree of emotional disturbance which, because of danger to self or others, requires continuous supervision, 95 percent.

6. Consciousness disturbances; permanent partial disability of the whole body is as set forth below:

a. mild or intermittent decreased level of consciousness manifested by periodic mild confusion or lethargy, a score of 3 or 4 on the Kenny scale, 40 percent;

b. moderate intermittent or continuous decreased level of consciousness manifested by a moderate level of confusion or lethargy, and a score of 2 on the Kenny scale, 70 percent;

c. severe decreased level of consciousness manifested as stupor with inability to function independently, and a score of 1 or 0 on the Kenny scale, 95 percent;

d. persistent, comatose state, manifest by absence of any response to environmental stimuli, 99 percent.

7. Paralysis of one side of body; permanent partial disability due to paralysis of one side of body is disability of the whole body as set forth below:

a. mild paresis or spasticity involving upper, lower, or both extremities on one side only, resulting in some difficulties in function, and a score of 3 or 4 on the Kenny scale, 20 percent;

b. moderate degree of spasticity or paresis affecting upper, lower, or both extremities on one side only, and a score of 3 on the Kenny scale, 40 percent;

c. moderately severe paresis and spasticity involving lower extremity and upper extremity, and a score of 2 on the Kenny scale, 75 percent;

d. severe hemiparesis and spasticity, and a score of 1 or 0 on the Kenny scale, 90 percent.

8. Epilepsy; permanent partial disability due to epilepsy is a disability of the whole body as set forth below:

a. well controlled, on medication for one year or more, able to enter work force but with restrictions preventing operation of motor vehicles or dangerous machinery and climbing above six feet in height, 10 percent;

b. seizures occurring at least once a year, but not severely limiting ability to live independently, 20 percent;

c. seizures occurring at least six times a year, some supervision required, 40 percent;

d. seizures poorly controlled with at least 15 seizures per year, supervision required, protective care required with activities restricted, 75 percent;

e. frequency of seizures requires continuous supervision and protective care, activities restricted, unable to perform self cares, 95 percent.

9. Headaches; permanent partial disability due to vascular headaches with nausea or vomiting is a five percent disability of the whole body.

8 MCAR § 1.9007 [Temporary] Musculo-skeletel schedule; back.

A. Lumbar spine. The spine rating is inclusive of leg symptoms except for gross motor weakness, bladder or bowel dysfunction, or sexual dysfunction. Permanent partial disability of the lumbar spine is a disability of the whole body as set forth below:

1. Healed sprain, strain, or contusion;

a. Subjective symptoms of pain not substantiated by demonstrable structural pathology, 0 percent.

b. For (1)-(6), chronic muscle spasm, rigidity (loss of motion or postural abnormality), and pain are present, and each is substantiated by objective clinical findings:

(1) demonstrable degenerative changes, such as small osteophytes, are revealed by X-ray; involvement of single vertebral level; 3.5 percent;

(2) demonstrable degenerative changes, such as small osteophytes, are revealed by X-ray; involvement of multiple vertebral levels; 7 percent;

(3) demonstrable degenerative changes, such as large osteophytes, are revealed by X-ray; involvement of multiple vertebral levels; 10.5 percent;

(4) demonstrable degenerative changes, such as spondylolysis or spondylolisthesis grade 1 or 2, are revealed by X-ray; no previous surgery for treatment; 14 percent;

(5) demonstrable degenerative changes, such as spondylolysis or spondylolisthesis grade 3 or 4, are revealed by X-ray; no previous surgery for treatment; without fusion surgery; 24.5 percent;

(6) demonstrable degenerative changes revealed by X-ray, spinal fusion surgery for single vertebral level with or without a laminectomy, after surgery pain is moderated, 17.5 percent.

2. Herniated intervertebral disc, single vertebral level:

a. back and specific radicular pain present with objective neurologic findings, computer axial tomography, X-ray or electromyelogram positive, no surgery is performed for treatment, 14 percent;

b. condition treated by surgery:

(1) surgery or chemonucleolysis with excelle it results such as mild low back pain, no leg pain, and no neurologic deficit, 9 percent;

(2) surgery or chemonucleolysis with average results such as mild increase in symptoms with bending or lifting, and mild to moderate restriction of activities related to back and leg paid, 14 percent;

(3) surgery with poor surgical results such as persistent or increased symptoms with bending or lifting, and major restriction of activities because of back and leg pain, 21 percent;

(4) multiple operations on low back with poor surgical results such as persisting or increased symptoms of back and leg pain, 28 percent;

c. recurrent herniated intervertebral disc, occurring to same vertebral level previously treated with surgery or chemonucleolysis, add five percent to b. (1)-(4);

d. herniated intervertebral disc at a new vertebral level other than the previously treated herniated intervertebral disc, calculate rating the same as a. and b.

3. Spinal stenosis, central or lateral, proven by computer axial tomography or myelogram:

a. mild symptoms such as occasional back pain with athletic activities or repetitive bending or lifting, leg pain with radicular symptoms, one vertebral level and no surgery, 14 percent;

b. severe spinal stenosis with bilateral leg pain requiring decompressive laminectomy, single vertebral level, with or without surgery (if multiple vertebral levels, add five percent per vertebral level), 18 percent.

4. Fusion surgery. Single vertebral level for degenerative disease, add five percent per additional vertebral levels, 17.5 percent.

5. Fractures:

a. vertebral compression with a decrease of 25 percent or less in vertebral height, 10.5 percent;

b. vertebral compression fracture, with a decrease of more than 25 percent in vertebral height, 15 percent;

c. vertebral compression with a decrease of 25 percent or less in vertebral height, one or more vertebral segments, no fragmentation, no involvement posterior elements, no nerve root involvement, 14 percent;

d. vertebral compression fracture, with a decrease of more than 25 percent in vertebral height, one or more vertebral segments, no fragmentation, no involvement posterior elements, no nerve root involvement, 19 percent;

e. vertebral fracture with involvement of posterior elements with X-ray evidence of moderate partial dislocation:

(1) no nerve root involvement, healed, 10.5 percent;

(2) with persistent pain, with mild motor and sensory manifestations, 17.5 percent;

(3) with surgical fusion, healed, no permanent motor or sensory changes, 14 percent;

f. severe dislocation, normal reduction with surgical fusion:

(1) no residual motor or senory changes, 17.5 percent;

(2) poor reduction with fusion, persistent radicular pain, motor involvement, mild weakness and numbness, 24.5 percent;

(3) poor reduction with fusion, persistent radicular pain, motor involvement, mild weakness and numbness with partial paralysis as defined in 8 MCAR § 1.9006 [Temporary] H.1.b., 30 percent.

B. Cervical spine. For the permanent partial disability of cervical spine, the disability of the whole body is as follows:

1. Healed sprain, strain, or contusion:

a. subjective symptoms of pain not substantiated by demonstrable structural pathology, 0 percent;

b. chronic muscle spasm, rigidity (loss of motion or postural abnormality), and pain, each substantiated by objective clinical findings; loss of anterior curve revealed by X-ray, although no demonstrable structural pathology; moderate referred shoulder and arm pain, 7 percent;

c. same as b. but with gross degenerative changes consisting of narrowing of intervertebral spaces and small osteophytes at the vertebral margins, 14 percent.

2. Fracture:

a. vertebral compression with a decrease of 25 percent or less in vertebral height, one or more vertebral segments, no fragmentation, no involvement posterior elements, no nerve root involvement, loss of motion in the neck in all planes, approximately 50 percent normal range of motion in neck with pain, 14 percent;

b. vertebral compression with a decrease of more than 25 percent of vertebral height, one or more vertebral segments, no fragmentation, no involvement posterior elements, no nerve root involvement, loss of motion in the neck in all planes, approximately 50 percent normal range of motion in neck with pain, 19 percent;

c. vertebral fracture with involvement of posterior elements with X-ray evidence of moderate partial dislocation:

(1) no nerve root involvement, healed, 10.5 percent;

(2) with persistent pain, with partial motor and sensory loss, 17.5 percent;

(3) with surgical fusion, healed, no permanent motor or sensory changes, 14 percent;

d. severe dislocation, normal reduction with surgical fusion:

(1) no residual motor or sensory changes, 17.5 percent;

(2) poor reduction with fusion, persistent radicular pain, partial motor loss, only slight weakness and numbness, 24.5 percent;

(3) same as (2) with partial paralysis as defined in 8 MCAR § 1.9006 [Temporary] H.1.b., 30 percent.

C. Cervical intervertebral disc. For permanent partial disability of cervical intervertebral disc, the disability of the whole body is as follows:

1. successful surgical removal of disc, with relief of acute pain, no surgical fusion, no neurologic residual, 7 percent;
2. same as 1. with neorological manifestations such as persistent pain, numbness, weakness in fingers, 14 percent.

8 MCAR § 1.9008 [Temporary] Musculo-skeletal schedule; amputations of upper extremity.

A. Permanent partial disability due to amputation of upper extremities is a disability of the whole body as set forth below:

1. forequarter amputation, 70 percent;
2. disarticulation at shoulder joint, 60 percent;
3. amputation of arm above deltoid insertion, 60 percent;
4. amputation of arm between deltoid insertion and elbow joint, 57 percent;
5. disarticulation at elbow joint, 57 percent;
6. amputation of forearm below elbow joint proximal to insertion of biceps tendon, 57 percent;
7. amputation of forearm below elbow joint distal to insertion of biceps tendon, 54 percent;
8. disarticulation at wrist joint, 54 percent;
9. midcarpal or midmetacarpal amputation of hand, 54 percent;
10. amputation of all fingers except thumb at metacarpophalangeal joints, 32.5 percent;
11. amputation of thumb;
    a. at metacarpophalangeal joint or with resection of metacarpal bone, 21.5 percent;
    b. at interphalangeal joint or through proximal phalynx, 16 percent;
    c. from interphalangeal joint to midportion distal phalynx, 13 percent;
12. amputation of index finger:
    a. at metacarpophalangeal joint or with resection of metacarpal bone or through proximal phalynx, 13.5 percent;
    b. at proximal interphalangeal joint or through middle phalynx, 11 percent;
    c. at distal interphalangeal joint to middistal phalynx, 5 percent;
    d. from middistal phalynx, distal, 2.5 percent;
13. amputation of middle finger:
    a. at metacarpophalangeal joint or with resection of metacarpal bone or through proximal phalynx, 11 percent;
    b. at proximal interphalangeal joint or through middle phalynx, 9 percent;
    c. at distal interphalangeal joint to middistal phalynx, 5 percent;
    d. from middistal phalynx, distal, 2.5 percent;
14. amputation of ring finger:
    a. at metacarpophalangeal joint or with resection of metacarpal bone or through proximal phalynx, 5.5 percent;

b. at proximal interphalangeal joint or through middle phalynx, 4 percent;

c. at distal interphalangeal joint to middistal phalynx, 3 percent;

d. from middistal phalynx, distal, 1.5 percent;

15. amputation of little finger:

a. at metacarpophalangeal joint or with resection of metacarpal bone or through proximal phalynx, 3 percent;

b. at proximal interphalangeal joint or through middle phalynx, 2 percent;

c. at distal interphalangeal joint to middistal phalanx, 1 percent;

d. from middistal phalynx, distal, 0.5 percent.

8 MCAR § 1.9009 [Temporary] Musculo-skeletal schedule; sensory loss, upper extremities.

A. General. For sensory loss to the upper extremities resulting from peripheral nerve injury, the disability of the whole body is set forth in B.-D. For the portion of the body described in the category, there must be a total loss of the sensory function.

B. Sensory loss, complete:

1. median function at wrist, 32.5 percent;
2. ulnar function at wrist, 11 percent;
3. radial function at wrist, 5.5 percent;
4. medial antebrachial cutaneous, 3 percent;
5. medial brachial cutaneous, 3 percent;
6. loss of thumb, whole, 11 percent;
   a. radial digital nerve, 4 percent;
   b. ulnar digital nerve, 6.5 percent;
7. index finger, whole, 5.5 percent;
   a. radial digital nerve, whole, 3.5 percent;
   b. ulnar digital nerve, 2 percent;
8. long finger, whole, 5.5 percent;
   a. radial digital nerve, 3.5 percent;
   b. ulnar digital nerve, 2 percent;
9. ring finger, whole, 3 percent;
   a. radial digital nerve, 2 percent;
   b. ulnar digital nerve, 1 percent;
10. little finger, whole, 3 percent;
   a. radial digital nerve, 1 percent;
   b. ulnar digital nerve, 2 percent;
11. sensory loss distal to proximal interphalangeal joint, 50 percent of the value of entire digital nerve as set forth in B., either radial or ulnar as applicable;
12. sensory loss distal to one-half distal phalanx, 25 percent of entire digital nerve as set forth in B.

C. Quality of sensory loss. The levels of sensory loss and the corresponding disabilities of the whole body are measured as follows:

1. minimal, 2-point discrimination at 6 millimeters or less, 0 percent;
2. moderate, 2-point discrimination greater than 6 millimeters, ½ of value in B.;
3. severe, 2-point discrimination at greater than 10 millimeters, ¾ of value in B.;
4. total, 2-point discrimination at greater than 15 millimeters, same value as in B.

D. Causalgia. When objective medical evidence shows persistent causalgia despite treatment, there is loss of sensory and motor function, loss of joint function, and inability to use the extremity in any useful manner. The permanent partial disability to

the member, rating from the most proximal joint involved, and the percentage disability of the whole body is 50 percent of that set forth in 8 MCAR § 1.9008 [Temporary] A.1.-15.

8 MCAR § 1.9010 [Temporary] Musculo-skeletal schedule; motor loss, upper extremities.

A. General. Permanent partial disability due to motor loss of the upper extremities is a disability of the whole body as set forth in B.-C.

B. Motor loss, complete:

1. median nerve above mid forearm, 30 percent;
2. median nerve below mid forearm, 19 percent;
3. radial nerve, 19 percent;
4. ulnar nerve above mid forearm, 19 percent;
5. ulnar nerve below mid forearm, 13.5 percent.

C. Complete motor and sensory loss:

1. median nerve above mid forearm, 40.5 percent;
2. median nerve below mid forearm, 35 percent;
3. radial nerve, 27 percent;
4. ulnar nerve above mid forearm, 21.5 percent;
5. ulnar nerve below mid forearm, 16 percent.

D. Complete loss of motor function:

1. brachial plexus complete, 60 percent:
   a. upper trunk C5-6, 47 percent;
   b. mid trunk C7, 23 percent;
   c. lower trunk C8-T1, 46 percent;
2. anterior thoracic, 3 percent;
3. axillary nerve, 23 percent;
4. dorsal scapular, 3 percent;
5. long thoracic, 9 percent;
6. musculo cutaneous, 17.5 percent;
7. subscapular, 3 percent;
8. suprascapular, 11.5 percent;
9. thoraco dorsal, 6 percent.

8 MCAR § 1.9011 [Temporary] Musculo-skeletal schedule; shoulder.

A. General. For permanent partial disability to the shoulder, disability of the whole body is as set forth in B.-C.:

B. Range of motion:

1. total ankylosis in optimum position, abduction 60 degrees, flexion ten degrees, rotation, neutral position, 30 percent;
2. total ankylosis in mal-position, grade upward to 50 percent;
3. mild limitation of motion: no abduction beyond 90 degrees, rotation no more than 40 degrees with full flexion and extension, 3 percent;
4. moderate limitation of motion: no abduction beyond 60 degrees, rotation no more than 20 degrees, with flexion and extension limited to 30 degrees, 12 percent;

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5. severe limitation of motion: no abduction beyond 25 degrees, rotation no more than ten degrees, flexion and extension limited to 20 degrees, 30 percent;

C. Procedures or conditions:

1. acromio-clavicular separation of the following severity:
   a. grade 1, 0 percent;
   b. grade 2, 3 percent;
   c. grade 3, 6 percent.
2. anterior or posterior shoulder dislocation, no surgery, single episode, 3 percent.
3. recurrent dislocation, at least three times in six months, 10 percent.
4. repair recurrent shoulder dislocation, no loss of motion, 6 percent.
5. resection distal end of clavicle, 3 percent.
6. humeral shaft fracture, normal range of motion both joints, 0 percent.
7. humeral shaft fracture, open reduction, mild restriction of shoulder and elbow motion, 6 percent.
8. surgical neck fracture, healed, mild loss of motion, 0 percent.
9. greater tuberosity fracture, mild loss of motion, mild pain on abduction, 2 percent.

8 MCAR § 1.9012 [Temporary] Musculo-skeletal schedule; elbow.

A. General. Permanent partial disability of the elbow is disability of the whole body as set forth in B.-C.

B. Range of motion. Flexion and extension of forearm is 85 percent of the arm. Rotation of the forearm is 15 percent of the arm.

1. Total ankylosis in optimum position approximating midway between 90 degrees flexion and 180 degrees extension, a 45-degree angle, 30 percent.
2. Total ankylosis in mal-position, 40 percent.
3. Limitation of motion:
   a. mild, motion limited from ten degrees flexion to 100 degrees of further flexion, 6 percent;
   b. moderate, motion limited from 20 degrees flexion to 75 degrees of further flexion, 12 percent.
   c. severe, motion limited from 45 degrees flexion to 90 degrees further flexion, 21 percent;
4. Flail elbow, pseudarthrosis above joint line, wide motion but very unstable, 39 percent.
5. Resection head of radius, 9 percent.

C. Procedures or conditions:

1. radial or ulnar shaft fracture, full motion, 0 percent;
2. radial or ulnar fracture, open reduction, mild limitation of motion as defined in B.3., 9 percent;
3. olecranon frature, no loss of motion, 0 percent;
4. olecranon fracture, open reduction internal fixation, mild limitation of motion as defined in B.3., 6 percent;
5. epicondylar fracture, no loss of motion, 0 percent;
6. epicondylar fracture, mild loss of motion as defined in B.3., 6 percent;
7. release medial or lateral epicondyle, 2 percent;
8. ulnar nerve transposition, 2 percent.

8 MCAR § 1.9013 [Temporary] Musculo-skeletal schedule; wrist.

A. General. Permanent partial disability of wrist is disability of the whole body as set in B.-C.

B. Range of motion:

1. excision distal end of ulna, flexion and extension credited with 75 percent of hand, and rotation 25 percent of hand, 5 percent;
2. total ankylosis in optimum position, 19 percent;

3. total ankylosis in mal-position of extreme flexion or extension, 25 percent;

4. limitation of motion:

a. mild, rotation normal, loss of 15 degrees palmar flexion and loss of 20 degrees dorsiflexion, 5 percent;

b. moderate, rotation limited to 60 degrees in pronation-supination, loss of 25 degrees palmar flexion, loss of 30 degrees dorsiflexion, 10 percent;

c. severe, rotation limited to 30 degrees in pronation-supination, palmer flexion less than 25 degrees, dorsi-flexion less than 30 degrees, 15 percent.

C. Procedure or conditions.

1. Colles/Smith, extraarticular:

a. no loss of motion, 0 percent;

b. mild loss of motion as defined in B.4.a., 3 percent.

2. Colles/Smith/Barton, intraarticular.

a. no loss of motion, 0 percent;

b. mild loss of motion as defined in B.4.a., 6 percent;

c. moderate loss of motion as defined in B.4.b., 10 percent.

3. Carpal bone fracture, no loss of motion, 3 percent.

4. Carpal dislocation, mild loss of motion as defined in B.4.a., 6 percent.

5. Carpal tunnel release, 0.5 percent.

6. Carpal tunnel release with moderate paresthesias, 3 percent.

7. DeQuervain's release, 0 percent.

8. Ganglion excision, 0 percent.

9. Scaphoid graft, 3 percent.

8 MCAR § 1.9014 [Temporary] Musculo-skeletal schedule, fingers.

A. General. Permanent partial disability of fingers is a disability of the whole body as set forth in B.-C.

B. Ankylosis of joints.

1. Any digit, excluding the thumb.

a. Total ankylosis of distal interphalangeal joint:

(1) optimum position, 4 percent;

(2) mal-position, flexed 35 degrees or more, 5 percent.

b. Total ankylosis or proximal interphalangeal joint:

(1) optimum position, flexed 25 to 40 degrees, 8 percent;

(2) mal-position, any position other than (1) above, 9 percent.

c. Total ankylosis of both distal and proximal interphalangeal joints. If total ankylosis of distal and proximal interphalangeal joints occurs, calculate disability according to a., and then add c. (1) or (2) as appropriate:

(1) optimum position, 1 percent;

(2) mal-position, 2 percent.

d. Total ankylosis metacarpophalangeal joint:

(1) optimum position, 35-50 degree flexion; 0.5 percent;

(2) mal-position, any position other than (1), 1 percent.

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e. Total ankylosis both interphalangeal joints and metacarpophalangeal joint, add an additional 2 percent.

2. Thumb.

a. Total ankylosis interphalangeal joint:

(1) optimum position, 0 to 15 degrees, 1 percent;

(2) mal-position, flexion greater than 15 degrees, 2 percent.

b. Total ankylosis metacarpophalangeal joint:

(1) optimum position, up to 25 degree flexion, 1 percent;

(2) mal-position, flexion greater than 25 degrees, 2 percent.

c. Total ankylosis both interphalangeal and metacarpophalangeal joints:

(1) optimum position, 4 percent;

(2) mal-position, 5 percent.

d. Total ankylosis carpometacarpal joint alone:

(1) optimum position, 4 percent;

(2) mal-position, 8 percent.

e. Total ankylosis interphalangeal, metacarpophalangeal, and carpometacarpophalangeal joints:

(1) optimum position, 21 percent;

(2) mal-position, 23 percent.

3. Limitation of motion, fingers and thumb:

a. mild, total closing motion tip of digit, can flex to touch palm and thumb, and extend to 15 degrees flexion, strength of grip normal, 3 percent;

b. moderate, total closing motion, tip of digit, lacks ½ inch of touching palm and can extend to 30 degrees flexion, 6 percent;

c. severe, total closing motion tip of digit lacks one inch of touching palm and can extend to 45 degrees flexion, 9 percent;

d. soft tissue loss, isolated soft tissue loss of the end of digit, 20 percent of the disability to the whole body for amputation of that digit as set forth at 8 MCAR § 1.9009 [Temporary] A.1.-19.

B. Procedures or conditions:

1. release of trigger finger or thumb, 0 percent;

2. release of Guyon's Canal, 0 percent;

3. Boutonniere repair, 3 percent;

4. extensor tendon repair, 0 percent.

8 MCAR § 1.9015 [Temporary] Musculo-skeletal schedule; amputations of lower extremities.

For permanent partial disability due to amputation of lower extremities the disability of the whole body is:

1. hemipelvectomy, 50 percent;

2. disarticulation at hip joint, 40 percent;

3. amputation above knee joint with short thigh stump, 3 inch or less below tuberosity of ischium, 40 percent;

4. amputation above knee joint with functional stump, 36 percent;

5. disarticulation at knee joint, 36 percent;

6. amputation below knee joint with short stump, 3 inch or less below intercondular notch, 36 percent;

7. amputation below knee joint with functional stump, 28 percent;

8. amputation at ankle, Syme type, 28 percent;

9. partial amputation of foot, Chopart's type, 21 percent;

10. mid-metatarsal amputation, 14 percent;

11. amputation of all toes at metatarsophalangeal joints, 8 percent;
12. amputation of great toe:
    a. with resection of metatarsal bone, 8 percent;
    b. at metatarsophalangeal joint, 5 percent;
    c. at interphalangeal joint, 4 percent;
13. amputation of lesser toe, 2nd-5th:
    a. with resection of metatarsal bone, 2 percent;
    b. at metatarsophalangeal joint, 1 percent;
    c. at proximal interphalangeal joint, 0 percent;
    d. at distal interphalangeal joint, 0 percent.

8 MCAR § 1.9016 [Temporary] Musculo-skeletal schedule; sensory loss, lower extremities.

For sensory loss to the lower extremities resulting from nerve injury, and where there is total loss of the sensory function for those particular portions of the body, the disability of the whole body is:

1. femoral, anterior crural, 13 percent;
2. femoral, anterior crural, below iliacus nerve, 11 percent;
3. genitofemoral, genito crural, 2 percent;
4. inferior gluteal, 9 percent;
5. lateral femoral cutaneous, 3 percent;
6. obturator, 3 percent;
7. posterior cutaneous of thigh, 2 percent;
8. superior gluteal, 7 percent;
9. sciatic, above hamstring innervation, 31 percent;
10. common peroneal, lateral, or external popliteal, 13 percent;
11. deep peroneal, above midshin, 9 percent;
12. deep peroneal, below midshin, anterior tibial, 2 percent;
13. superficial peroneal, 5 percent;
14. tibial nerve, medial, or internal popliteal:
    a. above knee, 15 percent;
    b. posterior tibial, midcalf and knee, 11 percent;
    c. below midcalf, 9 percent;
    d. lateral plantar branch, 3 percent;
    e. medial plantar branch, 3 percent;
15. sural, external saphenous, 1 percent.

8 MCAR § 1.9017 [Temporary] Musculo-skeletal schedule; joints.

A. General. For permanent partial disability of joints, disability of the whole body is set forth in B.-I.

B. Surgical or traumatic shortening of lower extremity.
    1. ¼ inch to ¾ inch, 3 percent;
    2. ¾ to 1¼ inches, 4.5 percent;

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3. 1¼ to 1¾ inches, 6 percent;

4. 1¾ inches and above, 9 percent;

C. Hip.

1. range of motion.

a. limitation of motion:

(1) mild, anterior posterior movement from 0 degree to 120 degree flexion, rotation and lateral motion, abduction, adduction free to 50 percent of normal, 6 percent;

(2) moderate, anterior posterior motion from 15 degrees flexion deformity to 110 degrees further flexion, rotation, lateral motion, abduction, and adduction free to 25 percent normal, 12 percent;

(3) severe, anterior posterior motion from 30 degrees flexion deformity to 90 degrees further flexion, 22 percent.

2. Procedures or conditions:

a. nonunion proximal femur fracture without reconstruction, 33 percent;

b. arthroplasty, able to stand at work and walk, motion 25 percent to 50 percent of normal, 18 percent;

c. total hip arthroplasty, normal result, 13 percent;

d. femoral endoprosthesis:

(1) minimal pain, near normal range of motion, able to walk unsupported, 15 percent;

(2) mild to moderate pain with weight bearing, motion 50 percent of normal, 20 percent;

e. hip pinning for fracture.

(1) minimal pain, near normal range of motion, able to walk unsupported, 5 percent;

(2) mild to moderate pain, motion 50 percent of normal, 10 percent.

D. Femur:

1. shaft fracture, closed, healed, 0 percent;

2. femoral shaft fracture, open reduction, loss of less than 20 degrees of movement of any one plane of either the hip or the knee, no malalignment, 2 percent.

E. Knee:

1. Range of motion.

a. ankylosis and limited motion, total ankylosis optimum position, 15 degrees flexion, 22 percent;

b. limitation of motion:

(1) mild, 0 degrees to at least 110 degrees flexion, 2 percent;

(2) moderate, 5 degrees to at least 80 degrees flexion, 7 percent;

(3) severe, 5 degrees to at least 60 degrees flexion, 15 percent;

(4) extremely severe, limited from 15 degrees flexion deformity with further flexion to 90 degree, 18 percent.

2. Procedures or conditions:

a. surgical removal of medial or lateral semilunar cartilage, no complications, 3 percent;

b. surgical removal both cartilages, 9 percent;

c. ruptured cruciate ligament, repaired or unrepaired:

(1) mild laxity, 3 percent;

(2) moderate laxity, 7 percent;

(3) severe laxity, 10 percent;

d. excision of patella, 9 percent;

e. plateau fracture, depressed bone elevated, semilunar excised, 9 percent;

f. plateau fracture, undisplaced, 2 percent;

g. supracondylar or intercondylar fracture, displaced, 7 percent;

h. supracondylar or intercondylar fracture, undisplaced, 2 percent;

i. patella fracture, open reduction or partial patellectomy, displaced, 5 percent;

j. patella fracture, open reduction or partial patellectomy, undisplaced, 2 percent;

k. arthroscopy, 0 percent;

l. repair collateral ligament, mild laxity, 2 percent;

m. repair collateral ligament, moderate laxity, 4 percent;

n. repair patellar dislocation, 5 percent;

o. total knee arthroplasty, flexion to 90 degrees, extension to 0 degrees, 13 percent;

p. total knee unicondylar, 7 percent;

q. lateral retinacular release, 1 percent;

n. proximal tibial osteotomy, flexion to 90 degrees, extension to 0 degrees, 5 percent.

F. Tibia:

1. tibial shaft fracture, undisplaced, healed, normal motion and alignment, 0 percent;

2. tibial shaft fracture, open reduction, loss of less than 20 degrees of movement in any one plane in either the knee or the ankle with full knee extension, no malalignment, 5 percent.

G. Ankle and foot.

1. Range of motion:

a. total ankylosis ankle and foot, pantalar arthrodesis:

(1) in 10 degrees plantar flexion, 15 percent;

(2) mal-position 30 degrees plantar flexion, 20 percent;

b. ankylosis of foot, subtalar or triple arthrodesis tarsal bones, ankle, normal motion, 7.5 percent;

(1) decreased motion, subtalar joint, 3.5 percent;

(2) ankylosis in mal-position, 8 percent;

c. ankylosis of tibia and talus, subtalar joints free, optimum position 15 degrees plantar flexion, 12 percent;

d. limitation of motion in the ankle:

(1) mild, motion limited from position of 90 degrees right angle to 20 degrees plantar flexion, 3 percent;

(2) moderate, motion limited from position of 10 degrees flexion to 20 degrees plantar flexion, 6 percent;

(3) severe, motion limited from position of 20 degrees plantar flexion to 30 degrees plantar flexion, 12 percent.

2. Procedures or conditions:

a. achilles tendon rupture with treatment surgically or nonsurgically, able to stand on toes, 2 percent;

b. achilles tendon rupture with treatment surgically or nonsurgically, unable to sustain body weight on toes, 4 percent;

c. open reduction ankle:

(1) normal range of motion:

(a) medial malleolus only, 2 percent;

(b) lateral malleolus only, 2 percent;

(2) mild restriction on range of motion:

(a) medial and lateral malleolus, 4 percent;

(b) trimalleolar, 4 percent;

d. ankle, lateral ligament reconstruction, mild laxity, normal range of motion, 2 percent.

H. Foot.

1. Range of motion:

a. ankylosis of tarsal metatarsal or mild tarsal joints:

(1) normal position, 2.5 percent;

(2) mal-position, 5 percent;

b. limited motion in the foot:

(1) mild, limited motion with mild pain with weight bearing, no change in activities, 2.5 percent;

(2) moderate, limitation of motion with pain with weight bearing, no reduction in athletic or vigorous activities, 5 percent;

(3) severe, limitation of motion with pain with weight bearing, sedentary activities not affected, 10 percent;

2. Procedures or conditions:

a. calcaneal fracture, extra articular, pain with weight bearing, 6 percent;

b. calcaneal fracture, intra articular:

(1) mild limitation of motion as in 1.b.(1), 6 percent;

(2) moderate limitation of motion as in 1.b.(2), 12 percent;

(3) severe limitation of motion as in 1.b.(3), 18 percent;

c. avascular necrosis talus:

(1) mild limitation of motion as in 1.b.(1), 6 percent;

(2) moderate limitation of motion as in 1.b.(2), 12 percent;

(3) severe limitation of motion as in 1.b.(3), 18 percent;

d. tarsal fractures, healed, mild pain, 3 percent;

e. metatarsal fractures, healed, 0 percent;

f. phalyngeal fractures, healed, 0 percent.

I. Toes.

1. complete ankylosis of metatarsophalangeal joint, any toe, 3 percent;

2. complete ankylosis any toe, interphalangeal joint, optimum position semi-flexion, 1 percent.

8 MCAR § 1.9018 [Temporary] Respiratory system.

A. Evaluation procedures. The procedures used in evaluating permanent partial disability of the respiratory system shall include the following:

1. complete history and physical examination with special reference to cardiopulmonary symptoms and signs;

2. chest roentgenography (posteroanterior in full inspiration, posteroanterior in full expiration timed, three seconds, lateral);

3. hematocrit or hemoglobin determination;

4. electrocardiogram;

5. performance of not less than two of the following tests of ventilation:

a. one-second forced expiratory volume;

b. forced vital capacity;

c. forced expiratory volume (FEV)/forced vital capacity (FVC) ratio expressed as a percentage; and

6. at least one pulmonary function test, such as a diffusing capacity study.

B. Measurement of respiratory loss of function. Table 1 shall be used to calculate the percentage of disability of the whole body due to permanent partial disability of the respiratory system.

TABLE 1

Symptoms	Forced Spirometry $FEV_{1.0}$ FVC $FEV_1/FVC\%$ (Test three times)	Diffusing Capacity*	Percent Disability of Whole Body
When dyspnea occurs, is consistent with the circumstances of activity.	Not less than 85 percent of normal	Not Applicable	0
Dyspnea does not occur at rest and seldom occurs during the performance of the usual activities of daily living.	70 to 85 percent of normal	Not Applicable	15
Dyspnea does not occur at rest but does occur during the usual activities of daily living.	50 to 70 percent of normal	Usually Not Applicable	30
Dyspnea occurs during activities such as climbing one flight of stairs or walking one block on the level.	25 to 50 percent of predicted	40 percent or less of normal	60
Confined to bed and oxygen dependent.	Less than 25 percent of normal	20 percent or less of normal	85

* The diffusing capacity studies must be performed when complaints of dyspnea continue unabated in spite of forced spirometric measurement results above the cut-off limits set forth in Table 1.

8 MCAR § 1.9019 [Temporary] Organic heart disease.

A. General. For permanent partial disability due to organic heart disease, the disability of the whole body is set forth in B.

B. Heart ratings. The following ratings may be applied only after a compilation of a patient's complete history and a physical examination. Testing must include chest X-ray and electrocardiogram. The testing may include echocardiography, exercise testing, and radionuclide studies.

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The following table sets forth symptoms of organic heart disease. The percentage of disability of the whole body is determined by the symptoms present.

Organic Heart Disease Schedule

Percentage Disability of Whole Body	10 percent	30 percent	60 percent	85 percent
Organic Heart Disease	Present	Present	Present	Present
Symptoms	Not present	Not present at rest	Not present at rest	Present at rest
Level of activity causing symptoms	No symptoms from usual activities of daily living, including such activities as stair- or hill-climbing, and walking	No symptoms from usual activities of daily living	Symptoms from a one or more block walk or from climbing stairs. Symptoms also from activities of daily living	Worsening of symptoms with any activity
Level of unusual activity causing symptoms	No symptoms from walking quickly, recreation, hill- or stair-climbing, arm-work, and similar activities	Symptoms from hill- or stair-climbing, walking quickly, arm-work, or recreation	Symptoms from emotional stress, walking quickly, and similar activities	May be present at rest or may awaken patient
Signs of heart failure	No	No	Relieved by therapy	Not usually relieved by therapy
Signs of symptoms of angina	No	With prolonged or severe exertion	With mild exertion	Rest or nocturnal symptoms

8 MCAR § 1.9020 [Temporary] Vascular disease affecting the extremities.

The following schedule shall be used to determine the percentage of disability of the whole body for permanent partial disability due to vascular disease. Permanent partial disability from vascular disease affecting the extremities must be rated according to the following classifications. The system shall be used only after a complete history and physical examination. The full evaluation shall include imaging examination (X-ray with and without contrast, computer axial tomography scanning, sonography, radionuclide studies) volume studies, or flow studies.

Vascular Disease Schedule

Percentage of disability of whole body	0 percent	10 percent	30 percent	60 percent	90 percent
Intermittant claudication distance	No	Approx. one city block	Approx. 1/4 city block	Less than 1/4 city block	Constant pain
Pain at rest	No	No	No	Sometimes	Constant
Physical signs of diagnosis	None No ulceration	Healed, painless stump, or healed ulcer	Healed stump but persistent signs of activity, or persistent superficial ulcer	Amputation above wrist or ankle with continued sign of disease, or widespread deep ulcer	Amputation above wrist or ankle in more than one limb, or wide, deep ulceration of more than one limb
Edema	Rare and transient	Persistent, incompletely controlled	Very severe and only partially controlled	Marked and uncontrollable	Marked and uncontrollable

8 MCAR § 1.9021 [Temporary] Gastrointestinal tract.

A. General. The following schedule is for the evaluation of permanent partial disability of the gastrointestinal tract. The evaluation must include a thorough history and physical examination. Additional studies, such as radiographic, metabolic, absorptive, endoscopic, and biopsy may be necessary to determine the functioning of these organs. Disability shall not be determined until after completion of all medically accepted diagnostic and therapeutic efforts. The percentages indicated in this schedule are the disability of the whole body for the corresponding class.

For evaluative purposes, the digestive tract has been divided into (1) the esophagus, stomach, duodenum, small intestine, and pancreas, (2) the colon and rectum, (3) the anus, and (4) the liver and biliary tract.

B. Upper digestive tract (esophagus, stomach, duodenum, small intestine, and pancreas).

1. Class 1, 2 percent.

a. Symptoms or signs of upper digestive tract disease are present or there is anatomic loss or alteration; continuous treatment is not required; and weight can be maintained at the desirable level; or

b. There are no complications after surgical procedures.

2. Class 2, 15 percent. Symptoms and signs of organic upper digestive tract disease are present or there is anatomic loss

or alteration; dietary restriction and drugs are required for control of symptoms, signs, or nutritional deficiency; and loss of weight below the desirable weight does not exceed 10 percent.

3. Class 3, 35 percent.

a. Symptoms and signs of organic upper digestive tract disease are present or there is anatomic loss or alteration; and dietary restrictions and drugs do not completely control symptoms, signs, or nutritional state; or

b. There is 10 to 20 percent loss of weight below the desirable weight and the weight loss is ascribable to a disorder of the upper digestive tract.

4. Class 4, 65 percent.

a. Symptoms and signs of organic upper digestive tract disease are present or there is anatomic loss or alteration; and symptoms are not controlled by treatment; or

b. There is greater than a 20 percent loss of weight below the desirable weight and the weight loss is ascribable to a disorder of the upper digestive tract.

C. Colon and rectum.

1. Class 1, 2 percent:

a. signs and symptoms of colonic or rectal disease are infrequent;

b. limitation of activities, special diet, or medication is not required; no systemic manifestations are present and weight and nutritional state can be maintained at a desirable level; or

c. there are no complications after surgical procedures.

2. Class 2, 15 percent. There is objective evidence of colonic or rectal disease or anatomic loss or alteration. There are mild gastrointestinal symptoms with intermittent disturbance of bowel function, accompanied by periodic or continual pain. Minimal restriction of diet or mild symptomatic therapy may be necessary. No impairment of nutrition results.

3. Class 3, 30 percent. There is objective evidence of colonic or rectal disease or anatomic loss or alteration; there are moderate to severe exacerbations with disturbance of bowel habit, accompanied by periodic or continual pain; restriction of activity, special diet and drugs are required during attacks; and there are constitutional manifestations such as fever, anemia, or weight loss.

4. Class 4, 50 percent. There is objective evidence of colonic and rectal disease or anatomic loss or alteration; there are persistent disturbances of bowel function present at rest with severe persistent pain; complete limitation of activity, continued restriction of diet, and medication do not entirely control the symptoms; there are constitutional manifestations such as fever, weight loss, or anemia present; and there is no prolonged remission.

D. Anus.

1. Class 1, 2 percent. Signs of organic anal disease are present or there is anatomic loss or alteration; or there is mild incontinence involving gas or liquid stool; or anal symptoms are mild, intermittent, and controlled by treatment.

2. Class 2, 12 percent. Signs of organic anal disease are present or there is anatomic loss or alteration; and moderate but partial fecal incontinence is present requiring continual treatment; or continual anal symptoms are present and incompletely controlled by treatment.

3. Class 3, 22 percent.

a. Signs of organic anal diseases are present and there is anatomic loss or alteration; and complete fecal incontinence is present; or

b. Signs of organic anal disease are present and severe anal symptoms are unresponsive or not amenable to therapy.

E. Liver and biliary tract.

1. Class 1, 5 percent.

a. There is objective evidence of persistent liver disease even though no symptoms of liver disease are present; and no history of ascites, jaundice, or bleeding esophageal varices within five years; nutrition and strength are normal; and biochemical studies indicate minimal disturbance of the liver function; or

b. Primary disorders of bilirubin metabolism are present.

2. Class 2, 20 percent. There is objective evidence of chronic liver disease even though no symptoms of liver disease are present; and no history of ascites, jaundice, or bleeding esophageal varices within five years; nutrition and strength are normal; and biochemical studies indicate more severe liver damage than Class 1.

3. Class 3, 40 percent. There is objective evidence of progressive chronic liver disease, or history of jaundice, ascites, or bleeding esophageal or gastric varices within the past year; nutrition and strength may be affected; and there is intermittent ammonia and meat intoxication.

4. Class 4, 75 percent. There is objective evidence of progressive chronic liver disease, or persistent ascites or persistent jaundice or bleeding esophageal or gastric varices, with central nervous system manifestations or hepatic insufficiency; and nutrition state is below normal.

F. Biliary tract.

1. Class 1, 5 percent. There is an occasional episode of biliary tract dysfunction.

2. Class 2, 20 percent. There is recurrent biliary tract impairment irrespective of treatment.

3. Class 3, 40 percent. There is irreparable obstruction of the bile tract with recurrent cholangitis.

4. Class 4, 75 percent. There is persistent jaundice and progressive liver disease due to obstruction of the common bile duct.

8 MCAR § 1.9022 [Temporary] Reproductive tract schedule.

A. General. This rules sets forth the percentage of disability of the whole body for permanent partial disability of the reproductive and urinary systems. The percentages indicated in this schedule are the disability of the whole body for the corresponding class.

B. Evaluative procedures. For evaluative purposes the reproductive and urinary systems are divided into the: (1) upper urinary tract, (2) bladder, (3) urethra, (4) male reproductive organs, and (5) female reproductive organs.

Procedures for evaluating permanent partial disability of the genitourinary and reproductive systems shall include:

1. a complete history and physical examination with special reference to genitourinary/reproductive symptoms and signs, including psychological evaluation when indicated by the symptoms;

2. laboratory tests to identify the presence or absence of associated disease. The tests may include multi-channel chemistry profile, complete blood count, complete urinalysis, including microscopic examination of centrifuged sediment, chest X-ray, both posterior/anterior and left lateral views, electrocardiogram, performance of a measurement of total renal functions—endogenous creatinine clearance corrected for total body surface area. Other tests may include:

a. kidney function tests, such as arterial blood gases and determinations of other chemistries that would reflect the metabolic effects of decreased kidney function;

b. special examinations such as cystocopy, voiding cystograms, cystometrograms; and

c. a description of the anatomy of the reproduction or urinary system.

B. Upper urinary tract.

1. Solitary kidney, 10 percent. This category shall apply only when a solitary kidney is the only upper urinary tract permanent partial disability. When a solitary kidney occurs in combination with any one of the following four classes, the disability rating for that class shall be increased by 10 percent.

2. Class 1, 5 percent. Diminution of kidney function as evidenced by a creatinine clearance of 50 to 70 percent of age and sex adjusted normal values, other underlying causes absent.

3. Class 2, 22 percent. Diminution of the upper urinary tract function as evidenced by a creatinine clearance of 40 to 50 percent of age and sex adjusted normal values, no other underlying disease.

4. Class 3, 47 percent. Diminution of upper urinary tract function, as evidenced by creatinine clearance of 25 to 40 percent of age and sex adjusted normal values.

5. Class 4, 77 percent. Diminution of upper urinary tract function as evidenced by creatinine clearance below 25 percent of age and sex adjusted normal values.

C. Bladder.

1. Class 1, 5 percent. Symptoms and signs of bladder disorder requiring intermittent treatment, but without evidence of intervening malfunction between periods of treatments or symptomatology.

2. Class 2, 15 percent. Symptoms and signs of bladder disorder requiring continuous treatment, or there is bladder reflex activity but loss of voluntary control.

3. Class 3, 20 percent. Poor reflex activity evidenced by intermittent dribbling, and no voluntary control.

4. Class 4, 30 percent. Continuous dribbling.

D. Urethra.

1. Class 1, 2 percent. Symptoms and signs of urethral disorder are present which require intermittent therapy for control.

2. Class 2, 15 percent. Symptoms and signs of urethral disorder that cannot be effectively controlled by treatment.

E. Penis.

1. Class 1, 10 percent. Impaired sexual function but vaginal penetration is possible.

2. Class 2, 20 percent. Impaired sexual function and vaginal penetration is not possible.

F. Testes, epididymides, and spermatic cords.

1. Class 1, 5 percent.

a. Symptoms and signs of testicular, epididymal, or spermatic cord disease are present and there is anatomic alteration; and

b. Continuous treatment is not required; and

c. There are no abnormalities of seminal or hormonal functions; or

d. Solitary teste is present.

2. Class 2, 10 percent.

a. Symptoms and signs of testicular, epididymal or spermatic cord disease are present and there is anatomic alteration; and

b. Frequent or continuous treatment is required; and

c. There are detectable seminal or hormonal abnormalities.

3. Class 3, 20 percent. Trauma or disease produces bilateral anatomical loss or there is no detectable seminal or hormonal function of testes, epididymides, or spermatic cords.

G. Prostate and seminal vesicles.

1. Class 1, 5 percent. A patient belongs in Class 1 when:

a. there are symptoms and signs of prostatic or seminal vesicular dysfunction or disease;

b. anatomic alteration is present; and

c. continuous treatment is not required.

2. Class 2, 10 percent.

a. frequent severe symptoms and signs of prostatic or seminal vesicular dysfunction or disease are present; and

b. anatomic alteration is present; and

c. continuous treatment is required.

3. Class 3, 20 percent. There has been ablation of the prostate or seminal vesicles.

H. Vulva and vagina.

1. Class 1, 10 percent. Impaired sexual function but penile containment is possible.

2. Class 2, 20 percent. Impaired sexual function and penile containment is not possible.

J. Cervix and uterus.

1. Class 1, 5 percent.

a. Symptoms and signs of disease or deformity of the cervix or uterus are present which do not require continuous treatment; or

b. Cervical stenosis, if present, requires no treatment; or

c. There is anatomic loss of the cervix or uterus in the postmenopausal years.

2. Class 2, 10 percent.

a. Symptoms and signs of disease or deformity of the cervix or uterus are present which require continuous treatment; or

b. Cervical stenosis, if present, requires periodic treatment.

3. Class 3, 20 percent.

a. Symptoms and signs of disease or deformity of the cervix or uterus are present which are not controlled by treatment; or

b. Cervical stenosis is complete; or

c. Anatomic or complete functional loss of the cervix or uterus occurs in premenopausal years.

K. Fallopian tubes and ovaries.

1. Class 1, 5 percent.

a. Symptoms and signs of disease or deformity of the fallopian tubes or ovaries are present which do not require continuous treatment; or

b. Only one fallopian tube or ovary is functioning in the premenopausal years.

2. Class 2, 10 percent. Symptoms and signs of disease or deformity of the fallopian tubes or ovaries are present which require continuous treatment, but tubal patency persists and ovulation is possible.

3. Class 3, 20 percent.

a. Symptoms and signs of disease or deformity of the fallopian tubes or ovaries are present and there is total loss of tubal patency or total failure to produce ova in the premenopausal years; or

b. Bilateral loss of the fallopian tubes or ovaries occurs in the premenopausal years.

8 MCAR § 1.9023 [Temporary] Skin disorders.

Permanent partial disability resulting from skin disorders are a disability of the whole body as set forth in this rule. This schedule is based upon the effect of the disorder on the ability to function and perform activities of daily living and the degree of treatment required for the disorder. The schedule is not based upon the location or the percentage of the body affected by a specific skin disorder.

1. Class 1, 2 percent. Signs or symptoms of skin disorder are present and supported by objective skin findings. With treatment there is no or minimal limitation in the performance of the activities of daily living, although certain physical or chemical agents might temporarily increase the extent of limitation.

2. Class 2, 10 percent. Signs and symptoms of skin disorder are present and intermittent treatment is required. There is limitation in the performance of some of the activities of daily living.

3. Class 3, 20 percent. Signs and symptoms of skin disorder are present. Continuous treatment is required. There is limitation in the performance of many of the activities of daily living.

4. Class 4, 45 percent. Signs and symptoms of skin disorder are present. Continuous treatment is required which may include periodic confinement at home or other domicile. There is limitation in the performance of many of the activities of daily living.

5. Class 5, 70 percent. Signs and symptoms of skin disorder are present. Continuous treatment is required which necessitates confinement at home or other domicile. There is severe limitation in the performance of nearly all of the activities of daily living.

Effective Date. Rules 8 MCAR §§ 1.9001-1.9023 [Temporary] are effective January 1, 1984.

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Department of Revenue
Property Tax Division

Proposed New Rule Relating to Enterprise Zones (13 MCAR §§ 1.0010-1.0014)

Notice of Withdrawal of Proposed Rules

The rules proposed and published at *State Register*, Volume 7, Number 42, pages 1513 to 1516, are withdrawn in their entirety by the department. The rules are withdrawn because the enabling statute was repealed and replaced with Chapter 392, Laws of Minnesota 1983, which removes the requirement for compliance with the rulemaking procedures of the State's Administrative Procedures Act.

September 14, 1983

Arthur C. Roemer, Commissioner
Department of Revenue

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 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. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

State Board of Education
Department of Education
Instruction Division

Adopted Rules Governing Special Education (5 MCAR §§ 1.0120-1.0127) and Adopted Repeal of Parts of 5 MCAR §§ 1.0120-1.0123

The rules proposed and published at *State Register*, Volume 7, Number 34, pages 1198-1211, February 21, 1983 (7 S.R. 1198) are adopted with the following modifications:

Rules as Adopted

5 MCAR § 1.0120 Policies for special education.

6. [Reletter as D.]

7.-8. [See Repealer.]

5 MCAR § 1.01201 Definitions for special education.

H. Management aide or aide. "Management aide" or "aide" means a person who assists in the provision of special education under the direct supervision of regular teachers, teacher, or related services staff. The primary responsibilities of an aide are to provide physical management and to implement pupil behavior management techniques as determined by the team staff. This person may also provide incidental follow-up instruction and training in conjunction with the primary responsibilities and under the direct supervision of a teacher.

J. Parent. "Parent" or "parents" means the mother, father, ~~legally appointed~~ guardian, conservator, or surrogate parent for a pupil under age 18 ~~years and~~. For a pupil over age 18 ~~years old or older and under legal guardianship.~~, it means the pupil ~~if a pupil is 18 years old or older and not under legal guardianship~~ unless a guardian or conservator has been appointed, in which case it means the guardian or conservator. When the parents are separated or divorced, it means the parent who has the legal right, by court decree or agreement, to determine the pupil's education, even though the pupil may be living with the other parent ~~may have custody of the pupil~~.

O. Related services. "Related services" means any specially designed services not provided by regular education or special education instruction to meet the unique needs of a pupil to benefit from the educational program. This includes psychological services, social worker services, occupational therapy, physical therapy, audiology, orientation and mobility training, health services, medical services for diagnostic purposes,music therapy, and other similar services.

P. Resident district. "Resident district" means the district in which the pupil's parent resides, if living, or the guardian, or the district designated by the commissioner ~~of education~~ as provided in Minnesota Statutes, section 120.17, subdivisions 6 and 8a. It does not mean the district in which a surrogate parent resides.

Q. Special education. "Special education" means any specially designated instruction ~~or~~ and related services ~~and~~ or support services to meet the unique cognitive, affective, or psychomotor needs of a pupil as stated in the IEP.

5 MCAR § 1.0121 Application.

C. Annual application for programs and budget.

2. Districts shall submit separate applications for program and budget approval for summer school. The commissioner shall approve, disapprove, or modify each application and notify the district of the action and the estimated level of special education aid within 45 days.

3. Districts ~~may~~ which desire to apply ~~to amend applications as needed during the school term to reflect~~ for additional state aid because program and budget ~~changes~~ modifications are necessary to meet ~~the~~ changing needs of pupils ~~in the district~~ shall make an amended application.

D. State aid for special education personnel. Salaries for essential personnel who are teachers, related services and support services staff members, directors, and supervisors are reimbursable for the following activities:

10. supervison and administration of the total special education system; ~~and~~

11. school psychological services and school social worker services provided alone or in conjunction with the instructional program;

12. other related services provided in conjunction with the instructional program ~~other activities approved through the annual application for programs and budget.~~

E. Experimental proposal.

1. The State Board of Education shall approve or disapprove a district's experimental proposal for exemption from its rules. No exemption shall be given from federal regulations, Minnesota Statutes, 5 MCAR §§ 1.0122 B.1. and 1.01225 B. A proposal shall be designed to accomplish at least one of the following:

a. improved instructional quality;

b. increase cost effectiveness; or

c. make better use of community resources or available technology.

5 MCAR § 1.0122 Facilities and staff.

A. Facilities.

1. Classrooms and other facilities in which pupils receive instruction, related services, and support services shall:

a. be accessible as defined in Code of Federal Regulations, title 34, section 104;

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B. Staff.

2. Directors. Every director and assistant director shall hold an appropriate supervisory license for general special education or supervisory license for one or more program areas.

5. Contracts. When contracting for assessments, instruction, or related services, a district shall contract with personnel who hold licenses issued by the Board of Teaching or State Board of Education~~, or who meet recognized professional standards~~. If either board does not issue a license for a necessary related service, the district shall contract with personnel who are members in good standing of professional organizations which regulate the conduct of its members and set standards for that profession.

6. Personnel variances. A district may apply to the commissioner of education for and the commissioner shall grant a variance from 1.~~5.~~ 3. with regard to its employees for one year or less when~~, in an emergency situation, instruction or related services must be initiated or continued and documented attempts have been made to find a licensed person~~:

a. the district has made documented attempts to employ an appropriately licensed person and none are available; and

b. the person who will be employed holds any license issued by the Board of Teaching or the State Board of Education.

5 MCAR § 1.01222 Pupils placed for care and treatment.

A. Handicapped pupil placement.

~~1. Services required. The district shall provide regular education, instruction, and related services in the home or a facility if a pupil, who is receiving services at level 2 through level 6, is prevented from attending the usual school site for 15 or more consecutive days or is other health-impaired and is unable to attend the usual school site for 15 or more intermittent days. The amount and nature of regular education, instruction, and related services, must be provided, as required by the pupil's IEP, to the extent that medical consideratons allow a pupil to participate.~~

~~2. In a home. If a pupil is medically restricted from leaving the home, the district shall make available no less than an average of one hour of regular education, instruction, and related services for every day the pupil would otherwise attend the usual school site.~~

~~3. In a facility.~~

~~a. If a pupil is placed in a facility for care and treatment and is medically restricted from leaving the facility on a daily basis because of the treatment therein, the district shall make available up to three hours of regular education, instruction, and related services in the facility for every day the pupil would otherwise attend the usual school site. If a pupil can benefit from more than three hours of regular education, instruction, and related services, consideration shall be made for placement at a school site for the regular education, instruction, and related services.~~

~~b. If a pupil is placed in a facility and is medically able to leave the facility on a daily basis to attend a school site, the providing district shall make available up to a full day of regular education, instruction, and related services within a district building for every day the pupil would otherwise attend the usual school site.~~

~~c. If a pupil is restricted from leaving a correctional facility, the providing district shall make available up to a full day of regular education, instruction, and related services in the facility for every day the pupil would otherwise attend the usual school site.~~

1. When district services required. A district must provide regular education, instruction, and related services in a facility or home to a pupil placed there for care and treatment. The services must be provided to a pupil who is:

a. prevented from attending the usual school site for 15 consecutive days; or

b. other health-impaired and predicted by the team to be absent from the usual school site for 15 intermittent days.

The services must be provided as required by the pupil's IEP, and to the extent that treatment considerations allow the pupil to participate. The services also must be provided for each day the pupil would otherwise attend the usual school site.

2. Minimum hours of service required. The team must predict how long the pupil will be restricted because of treatment from leaving the facility or home on a daily basis. If the prediction is for a restricted period of more than 175 days or its equivalent, exclusive of summer school, an average of at least three hours of services must be provided. If the predicted restricted period is 175 days, or its equivalent, exclusive of summer school, or shorter, an average of at least one hour of services must be provided.

3. Consideration of school site placement. If the team concludes a pupil can benefit from an average of more than three hours of services, it must consider placement at a school site.

4. Due process required. The district shall comply with the due process procedures of 5 MCAR §§ 1.0124-1.0129.

5. Team meeting required. The placing agency or the providing district shall hold a team meeting as soon as possible after ~~it is determined that~~ a pupil ~~may be~~ has been placed for care and treatment. At least the following persons shall receive written notice to attend: the person or agency placing the pupil, the resident district, the appropriate teachers and related services staff from the providing district, the parents, and, when appropriate, the pupil. This team meeting may be held in conjunction with a meeting called by the placing agency according to Minnesota Statutes, section ~~124.2129~~ 124.2133, subdivision 4.

6. IEP required. The IEP developed by the team shall include the provisions of 5 MCAR § 1.0125, the location of the instruction and related services ~~when provided other than in the facility~~, the projected duration of the instruction and related services, and provisions for coordinating the care and treatment and the instruction and related services.

7. Notice of anticipated return. When possible, a notice of discharge from the facility and anticipated return to the resident district shall be given by the providing district to the resident district.

8. Aid for special education only. When regular education, instruction, and related services are provided, only the special education portion shall be reimbursed with special education aid. When placement is made by a noneducational agency, the cost of care and treatment for which a child is placed shall not be reimbursed with special education aid, nor is such expense assessable against the resident district.

5 MCAR § 1.01225 Multidisability team teaching.

C. Team member responsibility. The team member licensed in a pupil's disability shall be responsible for that pupil's reassessment, IEP development and coordination, periodic and annual reviews, and ongoing consultation and indirect services as defined in 5 MCAR § 1.01224 B.2. to the teacher providing instruction. The frequency and progress documentation of the specific consultation and indirect services shall be included in the pupil's IEP.

E. Case loads. The total case load assigned to the team shall not exceed the case loads at the appropriate level of service set forth in 5 MCAR § 1.01224 C., times the full-time teachers and related services staff members assigned to the team. ~~Case load means the number of IEP's for which a teacher is responsible~~ In counting the total case load for the team, case loads for speech and language handicapped and developmental adaptive physical education shall be excluded. An aide or aides shall be a part of the team when designated in 5 MCAR § 1.01224 C., but shall not be counted when determining case loads for related services staff members.

5 MCAR § 1.01226 Single disability case management services.

D. ~~A district may not assign to the team of teachers more than:~~

~~1. 18 pupils, times~~

~~2. the number of teachers in the team plus the case management teacher~~ The total case load assigned to the team shall not exceed the case loads at the appropriate level of service set forth in 5 MCAR § 1.01224 C., times the full-time teachers assigned to the team.

5 MCAR § 1.01228 Pupil performance plan.

A district shall be exempted from the ~~ratios~~ case loads for levels 2, 3, and 4 services when a pupil performance plan is established and approved by the State Board of Education or its designee. The plan must contain all of the following:

1. Development of IEP's for all pupils in levels 2, 3, and 4 based on district-wide performance expectations for all handicapped and nonhandicapped pupils;

5 MCAR § 1.01229 Considerations to be made when determining ratios.

A. Variances. The district may apply to the State Board of Education or its designee for a variance from the ~~ratios~~ case loads in 5 MCAR §§ 1.01223, 1.01224, and 1.01226 ~~for one year or less when special circumstances exist or when~~ the state board or its

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designee shall grant a variance for less than 90 days when it is demonstrated that unanticipated special education enrollment increases ~~occur~~ have occurred.

B. Method of counting pupils. For the purposes of the ~~ratios~~ case loads in 5 MCAR §§ 1.01223, 1.01224, and 1.01226, each pupil receiving instruction or level 2 services shall be counted as one pupil in the teacher's case load.

C. Reduction of ratios. The district shall reduce the teacher to pupil ~~ratio accordingly~~ case loads to the extent necessary, to ensure the provision of services delineated in each pupil's IEP, if a teacher;

1. is assigned to more than one early childhood program alternative, or

2. is assigned to pupils in more than one level of service, or

3. is serving pupils representing a significant range of severity of problems, or

4. is providing instruction at more than one building.

5 MCAR § 1.01232 Supervision.

A. Directors.

3. Conditions for special education reimbursement of a part-time director of special education include an enrollment of 2,000 in public and nonpublic schools within a district or group of districts cooperating to provide special education or any cooperative having between five and seven districts cooperating to provide special education through a host district, joint powers agreement, or educational cooperative service unit. The maximum reimbursement shall equal the ratio of the actual enrollment to 5,000 within a district or 4,000 in a group of cooperating districts, as applicable, but not less than one-half. A part-time director must be assigned duties other than direct instruction for unreimbursed time.

4. Reimbursement for the ~~1983–1984~~ 1984–1985 through 1986–1987 school years shall be based on the 1982–1983 enrollment as reported to the State Department of Education. The enrollment year, as the basis for reimbursement, shall be changed every fourth year. When a district or cooperative has an increase or decrease in enrollment of ten percent or more, the district or cooperative shall have its reimbursement recalculated based on the actual enrollment for that year. The district must notify the State Department of Education of the increase by July 1 prior to the school year for which the adjustment is sought.

D. Variance. A district may apply to the commissioner of education for a variance from the mandatory employment of a director and conditions for reimburesments. The commissioner shall grant a variance from A. when:

1. the growth patterns of a district or cooperative demonstrate that the public and nonpublic school enrollment will increase over the minimum in the next two years; or

5 MCAR § 1.01233 Surrogate parent.

C. The district shall appoint the surrogate parent when:

1. the parent ~~or~~, guardian, or conservator is unknown or unavailable; or

2. parental rights have been terminated; or

3. the pupil has reached the age of majority, continues to be eligible for public education, and is not represented by a parent; or

4. the parent requests in writing the appointment of a surrogate parent; the request may be revoked in writing at any time.

E. A surrogate parent may be removed by majority vote of the school board. The surrogate parent must be notified of the time and place of the meeting at which a vote is to be taken and of the reasons for the proposed removal. The surrogate parent shall be given the opportunity to be heard. Removal may be for any of the following reasons:

1. failure to perform the duties required in the team meeting and IEP process and those cited in Code of Federal Regulations, title 34, section 300, a federal regulation to implement Part B of the Education of the Handicapped Act;

2. conflict of interest as referenced in Code of Federal Regulations, title 34, section 300.514 (c) (2);

5 MCAR § 1.01234 Suspension, exclusion, and expulsion.

B. ~~Dismissal. A pupil whose misconduct creates an immediate and substantial danger to persons or property may be dismissed for one day or less. The teacher, administrator, and parent, if available, shall hold an informal meeting by the next school day to determine whether the misconduct is related to the handicapping condition.~~

~~C.~~ Team meeting required. A team meeting shall be held prior to ~~a suspension,~~ exclusion~~,~~ or expulsion of a pupil. Within five school days of a suspension, a team meeting shall occur. The team shall:

~~D.~~ C. Exclusion and expulsion. A pupil may be placed, through a team meeting and the IEP, in a more restrictive alternative but shall not be excluded or expelled when the misconduct is related to the pupil's handicapping condition. When it is determined in a team meeting or a Pupil Fair Dismissal Act proceeding that a pupil's misconduct is related to the pupil's handicapping condition, then the assessment, IEP, and least restrictive alternative shall be reviewed according to the provisions of 5 MCAR §§ 1.0120-1.0129.

Repealer. 5 MCAR §§ 1.0120 A.3., A.4., ~~A.6.~~, A.7., A.8., B.1., B.2., B.3., B.4., B.5., B.6., B.7., B.8., B.9., B.10., B.11., B.12., B.13., B.14., B.17., B.18., B.19., B.20., B.21.; 5 MCAR §§ 1.0121 A.4., D.; 1.0122 ~~C.~~ ~~and~~ D.; and 1.0123 are repealed. 5 MCAR § 1.0122 C. is repealed effective for the school year begining in 1984.

Department of Corrections

Adopted Rules Governing Implementation and Operation of Community Corrections Act

The rules proposed and published at *State Register*, Volume 8, Number 2, pages 57-61, July 11, 1983 (8 S.R. 57) are adopted with the following modifications:

Rules as Adopted

11 MCAR § 2.001 Introduction.

A. Authority. Minnesota Statutes, section 401.03 provides that the commissioner of corrections promulgate rules for the implementation of Minnesota Statutes, sections 401.01 to ~~401.06~~ 401.16. The rules which follow are intended to meet that requirement.

11 MCAR § 2.004 Development of comprehensive plan.

C. Long format. At the time of initial participation under the provisions of the Community Corrections Act and every fourth year after that the comprehensive plan must be in a long format. ~~The long format plan must include the following elements:~~

~~1. mission statement;~~

~~2. administrative structure;~~

~~3. action plan;~~

~~4. service description;~~

~~5. agreement page;~~

~~6. budget on forms provided by commissioner; and~~

~~7. assurance of rules, policies, and procedures.~~

D. Short format. For each year not requiring the long format, the comprehensive plan must be in a short format ~~and include the following elements:~~

~~1. administration;~~

~~2. program changes;~~

~~3. action plan;~~

~~4. agreement page; and~~

~~5. budget on forms provided by commissioner.~~

E. ~~Alteration of format. The comprehensive plan format is subject to being altered at the discretion of the commissioner following consultation with the participating counties~~ Format forms. Both short and long forms shall be provided by the commissioner.

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Department of Public Welfare
Bureau of Social Services

Adopted Temporary Rule Governing Child Day Care Sliding Fees

The rule proposed and published at *State Register*, Volume 8, Number 5, pages 159-160, August 1, 1983 (8 S.R. 159) and Volume 8, Number 9, page 341, August 29, 1983 (8 S.R. 341) is adopted with the following modifications:

Temporary Rule as Adopted

12 MCAR § 2.164 [Temporary] Child day care sliding fee program.

C. Family eligibility for assistance.

3. Income means all monthly income before deductions received from wages or salary received by all family members age 14 or over; net income from self employment; net farm income; social security payments; dividends, interest, rent received, or royalties; General Assistance payments; pensions and annuities; unemployment compensation; alimony; child support; Veteran's pensions; or any combination of the above sources of income.

4. Application for assistance must be made in the family's county of residence.

~~3.~~ 5. Expansion of child day care sliding fee program services to other recipients will depend on additional county funding or state appropriation.

SUPREME COURT

Decisions Filed Friday, September 9, 1983

Compiled by Wayne O. Tschimperle, Clerk

C3-82-983 Reed S. MacKenzie, Appellant v. Wayne T. Belisle, Respondent. Ramsey County.

The exact amount of money owed respondent was not ascertainable without trial, and the clerk of district court did not have the authority to enter judgment pursuant to Rule 55.01(1), Minnesota Rules of Civil Procedure.

When an appeal results from the negligence of a party's counsel, counsel may be denied attorney fees and ordered to shoulder the costs of the appeal.

Reversed and remanded. Yetka, J.

C4-82-460 Dairyland Insurance Company v. Dwight Neuman and Sally Neuman, *et al.*, Charles Hansen, James Kratzke and Shirley Kratzke, d.b.a. Club 101, Marvin Peters d.b.a. Delhi Bears Den Bar, Fraternal Order of Eagles, Aerie 3421; Verna Ness, Defendant and Milwaukee Mutual Insurance Company, Appellant. Redwood County.

Under Minn. Stat. § 65B.14, subd. 3 (1982), the policy period for a policy of insurance issued for a term of less than 6 months is 6 months, and cancellation under the statute is required to terminate coverage within the 6-month term.

The renewal notice in this case is not the cancellation notice required by Minn. Stat. §§ 65B.15, subd. 2 and 65B.16 (1982).

Hansen's policy was in effect on January 26, 1979, and Dairyland is liable for any damages assessed against Hansen, to the limits of its policy liability.

Reversed. Wahl, J. Concurring Specially, Kelley, J.

C1-82-805 State of Minnesota v. John G. Tienter, Appellant. Mower County.

Defendant received a fair trial and was properly convicted of aggravated criminal damage to property and driving after revocation.

Affirmed. Wahl, J.

C7-82-1022 State of Minnesota v. Sandra L. Kirsch, Appellant. Hennepin County.

Defendant received a fair trial and was properly convicted of three counts of theft, but her sentence must be reduced from 36 months to 32 months.

Affirmed as modified. Kelley, J.

Order Filed September 1, 1983

C6-76-47366 In the Matter of the Application of Thomas K. Scallen for Reinstatement to Practice Law in the State of Minnesota. Supreme Court.

Thomas K. Scallen is hereby reinstated to practice law in the State of Minnesota, subject to rules and regulations of this court regarding such reinstatement.

Reinstated. Amdahl, C.J.

Decisions Filed Friday, September 23, 1983

Compiled by Wayne O. Tschimperle, Clerk

C8-83-178 Jody Walker, individually and as the Trustee for the Heirs of David E. Walker v. John William Kennedy, Appellant. Scott County.

A person who has provided the facilities for a party but has not "given or furnished" liquor is not liable for damages and injuries inflicted by an intoxicated minor who was a guest.

Reversed and remanded. Amdahl, C.J. Concurring specially, Scott, Simonett, Kelley and Coyne, JJ.

C2-82-1218, C5-82-1388 State of Minnesota v. Elmer M. Lalli, Appellant. Crow Wing County.

Held, contrary to defendant's contentions, there was sufficient evidence to indict him and the trial court did not err in departing durationally and dispositionally from the presumptive sentence.

Affirmed. Todd, J.

C8-82-154 David Brian Hughes v. Quarve & Anderson Company, Appellant. Olmsted County.

The trial court correctly instructed the jury that the landowner's duty of care to the 16-year-old plaintiff was governed by Restatement (Second) of Torts § 339 (1965).

The evidence is sufficient to support the jury verdict.

The Minnesota Recreational Use Statute, Minn. Stat. §§ 87.01-.03 (1982), does not apply under the facts of this case.

Affirmed. Wahl, J. Dissenting, Kelley, J.

C9-82-244, C6-82-993 H. Rosemarie Schmidt, etc. v. Kevin J. Clothier, *et al.*, Defendants; Safeco Insurance Co., intervenor, Appellant; Edward Paskoff, *et al.*, Gerald Frank Hoag; Linda Elizabeth Epperly; Minneapolis Special School District #1, intervenor and Safeco Insurance Co., intervenor, Appellant. Dakota and Hennepin Counties.

Insurance policy provisions requiring the insured to exhaust the tortfeasor's liability limits before underinsured benefits are available are void as against the policies of the Minnesota no-fault automobile insurance act, Minn. Stat. §§ 65B.41-.71 (1982).

An underinsurer is liable for underinsurance benefits for the amount of its insured's damages in excess of the underinsured tortfeasor's liability limits.

Because the underinsurer's statutory subrogation right, Minn. Stat. § 65B.49, subd. 6(e) (1978) (repealed 1980), does not arise until it has paid underinsurance benefits to its insured, release of the tortfeasor by the insured before payment of benefits destroys the underinsurer's subrogation right.

An insured must give the underinsurer written notice of a tentative settlement agreement, after which the underinsurer has 30 days in which to either acquiesce in the settlement and lose its potential right to subrogation or prevent the settlement by exchanging its draft for the amount of the settlement offer for the tendered draft of the liability insurer.

Whether the underinsurer acquiesces in the settlement or exchanges its draft for the settlement draft, it must promptly arbitrate the underinsurance claim.

Affirmed. Wahl, J. Concurring in part, dissenting in part, Todd, J., Amdahl, C.J., and Scott, J. Took no part, Coyne, J.

CX-82-1046 State of Minnesota v. Wayne Emil Abraham, Appellant. Blue Earth County.

Defendant received a fair trial and was properly found guilty of both assault with a dangerous weapon and being a felon in possession of a firearm.

Affirmed. Kelley, J.

C9-82-1457 Chemlease Worldwide, Inc. v. Brace, Inc., *et al.*, Appellants. Hennepin County.

Guarantors of lessee's obligation to make rental payments in a lease of personal property are debtors within the meaning of U.C.C. § 9-504(3) and action of the lessee did not constitute an estoppel to assert, or waiver of, the right of the guarantors to a commercially reasonable notice of sale of the collateral upon default of the lease.

When the lessor of personal property, after default by the lessee, repossessed the property and delivered it to a buyer by delivery to a carrier hired by the buyer, the sale constituted a "shipment" contract as defined in U.C.C. § 2-401(2), and the sale to the buyer takes place at the time of delivery notwithstanding that payment and transfer of the bill of sale took place at a later date.

The creditor who repossesses and sells collateral has the burden of proving that the notice of sale and the sale were commercially reasonable.

If a sale of collateral by a repossessing creditor is commercially unreasonable, the creditor has the burden of proof that a fair price was received from the sale.

Reversed and remanded. Kelley, J.

C1-82-1520 Dalco Corporation, Appellant v. Maurice Dixon and Brissman-Kennedy Inc. Hennepin County.

Trial court properly refused to consider depositions and affidavits submitted in opposition to motion for summary judgment which were submitted after the hearing but before decision on the motion.

A motion for a temporary injunction was properly denied when the court concluded there was considerable doubt whether movant would prevail on the merits and where movant had an adequate remedy at law for damages.

In a suit alleging conspiracy and unfair competition against a former employee and his subsequent employer, it was error to grant the subsequent employer's motion for summary judgment where the evidence failed to remove all doubts as to the existence of a genuine issue of material fact.

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

C6-83-230 Edward W. Novotny v. St. Paul United Methodist Church and Church Mutual Insurance Company, Relators. Workers' Compensation Court of Appeals.

The finding that nursing services furnished by employee's wife had a reasonable value of $280 a week has substantial evidentiary support.

The finding relating to employee's weekly wage for the purpose of calculating compensation due him did not apply the provisions of Minn. Stat. § 176.011, subd. 3 and 18 (1982) and is reversed.

Affirmed in part, reversed in part and remanded. Kelley, J. Took no part, Coyne, J.

STATE CONTRACTS

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

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

Office of the Governor

Notice of Request for Proposals for Services of a Federal-State Relations Consultant

The Governor's Office is seeking a consultant to provide assistance to the State of Minnesota Washington Office. The Washington Office gathers and disseminates information and interacts with administration officials so as to further Minnesota's best interests in the federal-state relationship and aid the state's participation in federal programs.

Applicants must be knowledgeable in international trade, the law, and federal-state relations. In addition, the applicants must be familiar with and accustomed to working with the current federal administration.

The projected duration of the contract is for one year and the estimated amount of the contract will not exceed thirty thousand dollars.

It has been deemed desirable to extend the proposal submission period to 5:00 p.m. on October 15, 1983. The formal request for proposal may be requested from and other inquiries may be made to:

Terry Montgomery, Chief of Staff
Governor's Office
130 State Capitol
St. Paul, MN 55155

Department of Natural Resources Forestry Division

Notice of Request for Proposals for EDP Consultant Services

The Department of Natural Resources, Forestry Division, is seeking a consultant to do a needs assessment/analysis and general system design for a forest nursery information system.

The project will require the creation of and presentation of documentation describing the informational needs of division personnel relating to the operation of the state's two forest nurseries. A second part of the project will require the presentation of a general system design containing high level system/module process flow diagrams, suggested equipment options and capabilities, and cost and time estimates to carry the project through to completion.

The projected duration of the contract is four months at an estimated cost not to exceed $25,000.

Proposals will be accepted until 5:00 p.m. on October 31, 1983. The formal RFP may be requested from and other inquiries may be made to:

Ron Rozeske
Department of Natural Resources
Forestry Division, Systems Unit
658 Cedar St. Box 44
St. Paul, MN 55155
(612) 297-3518

OFFICIAL NOTICES

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

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

State Board of Education
Department of Education
Instruction Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Education

Notice is hereby given that the State Department of Education is seeking information or opinions from sources outside the agency in preparing to amend State Board of Education rules EDU 23 B., to place a limit on the number of classes an elementary music teacher can be assigned each day, and EDU 46 D., to place a limit on the number of students a secondary music teacher can be assigned each day. The promulgation of these rules is authorized by Minnesota Statutes, section 121.11, subdivisions 7 and 12, which permits the board to adopt rules.

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

Dr. Susan Vaughan Kamla
Music Education Specialist
645 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-4075 and in person at the above address.

All statements of information and comment shall be accepted until November 1, 1983. Any written material received by the State Department of Education shall become part of the record in the event that the rules are promulgated.

State Board of Education
Department of Education
Operations Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Elementary and Secondary Curriculum Requirements

Notice is hereby given that the State Department of Education is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing Elementary and Secondary Curriculum Requirements. The promulgation of these rules is authorized by Minnesota Statutes, chapter 314, article 8, section 23, Laws of 1983, which requires the agency to establish elementary and secondary requirements which will ensure that a minimum comprehensive educational program is available to all public school students in the state.

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

Dr. Richard L. Kolowski
Department of Education
657 Capitol Square Building—550 Cedar Street
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-4060 and in person at the above address.

All statements of information and comment shall be accepted until December 1, 1983. Any written material received by the State Department of Education shall become part of the record in the event that the rules are promulgated.

Dr. Ruth E. Randall
Secretary

Department of Energy and Economic Development Community Development Division

Notice Regarding Small Cities Development Program Applications

The Department of Energy & Economic Development, Division of Community Development, announces that the closing date for the 1984 Small Cities Development Program applications is February 1, 1984. Applications and other program information can be obtained by contacting:

Robert F. Benner
Community Development Division
Department of Energy & Economic Development
940 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-2545

Minnesota Housing Finance Agency Home Improvement Division

Notice of Funding Availability for Residential Rental Energy Conservation

As announced by the Minnesota Housing Finance Agency in the *State Register* dated September 26, 1983, funds have been received from the Solar Energy and Energy Conservation Bank of the U.S. Dept. of Housing and Urban Development for the purpose of upgrading the energy efficiency of rental residential property, and are available in those communities participating in implementing the Rental Subsidy Program. In addition to those previously announced, the following communities and lenders are participating in implementing this program:

Community: City of St. Paul

Participating Lenders:

Midway National Bank
1578 University Avenue
St. Paul, MN 55104
(612) 646-2661

Western State Bank
663 University Avenue
St. Paul, MN 55104
(612) 224-1371

Additional communities participating in implementing the program will be identified in future notices. For more information on the program, contact:

Diane Sprague
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, MN 55101
(612) 296-7615

Minnesota Housing Finance Agency
Home Improvement Division

Notice of Fund Availability for Solar Bank Deferred Loans

The Minnesota Housing Finance Agency announces that funds have been received from the Solar Energy and Energy Conservation Bank of the U.S. Department of Housing and Urban Development for the purpose of providing energy financing in the form of deferred loans to homeowners residing in one to four unit buildings, and who are ineligible to receive such energy financing from other sources. Up to $5,000 is available to homeowners whose family income is below 150% of the median family income for the county of residence. The deferred loan is repaid only if the borrower sells, transfers or conveys the property, or ceases to reside in the property for a period of 10 years following the date of the loan.

Applications will be accepted by program administrators upon referral by Northern States Power Company, or such other entity as MHFA approves, beginning October 1, 1983 until such funds are expended or until August 31, 1984, whichever is earlier. Such application must include the following:

—Homeowner Application & Certifications and Administering Entity Worksheet;

—Energy Audit and Work Write-up;

—Contractor Homeowner Warranties;

—Contractor Bid(s);

—Combination Loan Repayment Agreement, Mortgage, Security Agreement, and Fixture Financing Statement;

—Credit Reviews (where applicable).

Such applications must be submitted to MHFA for final approval.

The Solar Bank Deferred Loan Program is being implemented in the Northern States Power Company Service Area through the following program administrators.

Dakota County Housing and Redevelopment Authority
East Grand Forks Housing and Redevelopment Authority
City of Faribault
Goodhue-Rice-Wabasha Citizen's Action Council, Inc.
Lakes and Pines Citizen's Action Council, Inc.
Moorhead Housing and Redevelopment Authority
Red Wing Housing and Redevelopment Authority
SEMCAC, Inc.
Housing and Redevelopment Authority of St. Cloud
City of St. Paul, Department of Planning and Economic Development
South St. Paul Housing and Redevelopment Authority
Tri County Action Programs, Inc.
Housing and Redevelopment Authority of Washington County

Future Notices of Fund Availability will identify additional service areas and program administrators.

For more information on this program contact:

Kathleen Anderson
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, MN 55101
(612) 296-8844

Minnesota Housing Finance Agency

Notice of Public Hearing on Bond Issue—1:00 p.m.

The Minnesota Housing Finance Agency will hold a public hearing pursuant to Section 103(k) of the Internal Revenue Code of 1954, as amended, on October 21, 1983, at 1:00 p.m., at the Nalpak Building, 5th Floor Conference Room, 333 Sibley Street,

Saint Paul, Minnesota, 55101, on a proposed issue of housing development bonds in an aggregate principal amount not to exceed $27,100,000 for the purpose of financing the facilities described below as residential rental projects. The general functional description of the type and use of each facility, the maximum aggregate face amount of bonds to be issued with respect to it, the developer which will initially own the facility, and its prospective location are as follows:

Description	Maximum Bond Amount	Developer	Location
New apartment building (approx. 162 units)	$ 7,600,000	Partnership of Bader, Baratz, Appelbaum, and others	Lexington Ave. and Duckwood Drive, Eagan, MN
New apartment building (approx. 88 units)	$ 3,700,000	Partnership of Gustafson, Appelbaum, and others	Southeast corner of Yankee Doodle Road and Surrey Heights Drive, Eagan, MN
New apartment building (approx. 152 units)	$ 8,500,000	Partnership of Miller Companies and others	Anderson Lakes Parkway and Center Way, abutting the Preserve Community Center and Neill Lake, Eden Prairie, MN
New apartment building (approx. 159 units)	$ 7,300,000	Partnership of Chazin and others	Southeast corner of Burnsville Parkway and Nicollet Ave., Burnsville, MN

The proceeds received by the Agency from the sale of the bonds net of costs of issuance and the establishment of reserves will be loaned to the developers for the acquisition and construction or rehabilitation of the facilities. The bonds will be payable from the loan repayments and other revenues of the agency. The State of Minnesota will not be liable thereon and the bonds will not be a debt of the state.

All persons interested will be given an opportunity to express their views. Persons desiring to speak at the hearing must so request in writing at least 24 hours before the hearing. Oral remarks by any person will be limited to 10 minutes.

September 23, 1983.

James J. Solem, Executive Director
Minnesota Housing Finance Agency

Minnesota Housing Finance Agency

Notice of Public Hearing on Bond Issue—1:30 p.m.

The Minnesota Housing Finance Agency will hold a public hearing pursuant to Section 103(k) of the Internal Revenue Code of 1954, as amended, on October 21, 1983, at 1:30 o'clock p.m., at the Nalpak Building, 5th Floor Conference Room, 333 Sibley Street, Saint Paul, Minnesota, 55101, on a proposed issue of housing development bonds in an aggregate principal amount not to exceed $8,900,000 for the purpose of financing the facilities described below as residential rental projects. The general functional description of the type and use of each facility, the maximum aggregate face amounts of bonds to be issued with respect to it, the Developer which will initially own the facility, and its prospective location are as follows:

Description	Maximum Bond Amount	Developer	Location
New apartment building (approx. 77 units)	$ 3,600,000	Crest View Lutheran Home	4444 Reservoir Blvd., Columbia Heights, MN
New apartment building (approx. 81 units)	$ 3,600,000	Partnership of Robert Casselman, Essex Corporation, and others	112th Ave. and Hanson Blvd., Coon Rapids, MN.
Rehabilitation and construction of apartment buildings, townhouses, and single family units (approx. 32 units)	$ 1,700,000	Joint Venture of Powderhorn Residents Group, Phillips Neighborhood Housing Trust, and Others	2609, 2613, 2617, 2621, 2633, 2653 Portland Ave.; and 610-12 E27th St.; and 2644-46, 2640-42, 2632-34, 2628 Oakland Ave., Minneapolis, MN

The proceeds received by the agency from the sale of the bonds net of costs of issuance and the establishment of reserves will be loaned to the developers for the acquisition and construction or rehabilitation of the facilities. The bonds will be payable from the loan repayments and other revenues of the agency. The State of Minnesota will not be liable thereon and the bonds will not be a debt of the state.

All persons interested will be given an opportunity to express their views. Persons desiring to speak at the hearing must so request in writing at least 24 hours before the hearing. Oral remarks by any person will be limited to 10 minutes.

September 23, 1983.

James J. Solem, Executive Director
Minnesota Housing Finance Agency

Minnesota Higher Education Coordinating Board

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Definition of Student Dependency

Notice is hereby given that the Minnesota Higher Education Coordinating Board is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing the definitions of student dependency.

The promulgation of these rules is authorized by Minnesota Statutes, section 136A.111.

The Minnesota Higher Education Coordinating Board requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Rose Herrera Hamerlinck
Minnesota Higher Education Coordinating Board
Suite 400—Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at 612-296-7963 and in person at the above address.

All statements of information and comment shall be accepted until October 21, 1983. Any written material received by the Minnesota Higher Education Coordinating Board shall become part of the record in the event that the rules are promulgated.

September 23, 1983

Clyde R. Ingle, Executive Director
Minnesota Higher Education Coordinating Board

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Regarding Criteria for Determining Priorities for Hazardous Waste Site Cleanup under Section 17 of the Environmental Response and Liability Act

Notice is hereby given that the Minnesota Pollution Control Agency (agency) is seeking information from sources outside the agency regarding criteria for determining priorities for hazardous waste site cleanup under section 17 of the Environmental Response and Liability Act.

The Environmental Response and Liability Act authorized the agency to establish a temporary list of priorities for cleanup. That list was published at 7 S.R. 1778, June 13, 1983. The Act also requires a permanent priority list to be established based on rules adopted by the agency. These rules must establish criteria for assigning priorities to sites based upon the relative risk or danger to public health or welfare or the environment, taking into account to the extent possible the following:

1. the population at risk;
2. the hazardous potential of the hazardous substance at the facilities;
3. the potential for contamination of drinking water supplies;
4. the potential for direct human contact;
5. the potential for destruction of sensitive ecosystems;
6. the administrative and financial capabilities of the agency; and
7. other appropriate factors.

The agency requests information or comments on how the factors listed above should be taken into account in prioritizing sites, other factors which should be used in prioritizing sites, and any other information or comments related to the prioritization of sites. Written or oral information or comments may be submitted to Dale Trippler at the address listed below or at (612) 296-7774, during regular business hours.

Dale Trippler
Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
1935 West County Road B-2
Roseville, Minnesota 55113

Information or comments will be accepted until November 10, 1983.

September 26, 1983

Sandra S. Gardebring
Executive Director

Department of Transportation

Petition of Fillmore County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Fillmore County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for the replacement of Bridge #9950 on County Road 104, 0.6 mile north of Trunk Highway 30 in Pilot Mound Township, over Money Creek.

The request is for a variance from 14 MCAR § 1.5032 H.1.d., Rules for State Aid Operations under Minnesota Statute, chapters 161 and 162 (1978) as amended, so as to permit a design speed of 35 miles per hour instead of a required design speed of 40 miles per hour.

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

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

Dated this 20th day of September, 1983

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of St. Paul for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the City Council of the City of St. Paul made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a reconstruction project on the Sibley-Jackson switchback (TH 5) which converts the present one-way to a two-way street. The limits of the project are from English and Jackson to Seventh and Sibley.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, chapters 161 and 162 (1978) as amended, so as to permit a design speed of 23 miles per hour instead of a required design speed of 30 miles per hour.

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

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

Dated this 20th day of September, 1983

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA

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

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FOR LEGISLATIVE NEWS

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

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

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

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

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