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# STATE REGISTER

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### Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 8			
24	Monday Nov 28	Monday Dec 5	Monday Dec 12
25	Monday Dec 5	Monday Dec 12	Monday Dec 19
26	Monday Dec 12	Friday Dec 16	Monday Dec 26
27	Friday Dec 16	Friday Dec 23	Monday Jan 2

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

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

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

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

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NOTICE

How to Follow State Agency Rulemaking Action in the State Register

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register 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:

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Issues 14-25, inclusive Issues 40-51, inclusive
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# PROPOSED RULES

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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.

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## Department of Agriculture Minnesota Export Finance Authority

### Proposed Rules Governing Financial Assistance for Pre-Export Credit Needs of Minnesota Exporters (3 MCAR § 1.0090-1.0100)

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

Notice is hereby given that the Minnesota Export Finance Authority proposes to adopt the above-entitled rules without a public hearing. The Board of the Minnesota Export Finance Authority has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21-14.28 (1982).

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

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982). If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

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

Authority to adopt these rules is contained in Minnesota Statutes, Section 17.105. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

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

The Export Finance Authority is authorized by Minnesota Statutes Section 17.105 to aid and facilitate the financing of exports from Minnesota. The powers of the Finance Authority may be used exclusively to meet the credit needs of exporters from the formation of a sale until shipment of the goods. The Finance Authority is authorized to, among other things, provide insurance and loan guarantees.

The proposed rules are intended to implement the provisions of Minnesota Statutes Section 17.105 as authorized by that law.

The proposed rules, if adopted, would establish the policy and procedures for the granting of loan guarantees or insurance for

exporters. The proposed rules include the requirements and procedures for application, the general terms and conditions of financial assistance, the criteria for approval of financial assistance, and requirements for loan administration.

The proposed rules will impact and benefit small business as defined in Laws of Minnesota 1983, chapter 188, section 1, because the financial assistance program is intended to benefit the smaller exporter or new-to-export business. The amount of financial assistance authorized for any one exporter is \$250,000, which directs the benefits toward the smaller scale transactions of small business. The proposed rules establish streamlined, non-burdensome procedures and terms for financial assistance, to the extent consistent with the Finance Authority's duty to determine reasonable risk and sufficient likelihood of repayment.

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

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

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

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

One free copy of this Notice and the proposed rules are available and may be obtained by contacting Mr. Heil.

November 14, 1983

Duc Q. Lam, Director  
Minnesota Export Finance Authority

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

#### **3 MCAR § 1.0090 Scope.**

Rule 3 MCAR § 1.0090-1.0100 are made pursuant to Laws of Minnesota 1983, chapter 289, section 8, to implement and establish criteria for the facilitation of export financing by the Minnesota Export Finance Authority.

#### **3 MCAR § 1.0091 Definitions.**

A. Scope. For the purposes of 3 MCAR § 1.0090-1.0100, the terms defined in this rule have the meanings given them.

B. Affiliate. Concerns are "affiliates" of each other when one concern directly or indirectly controls or has the power to control the other, or a third party controls or has the power to control both concerns.

C. Board. "Board" means the board of directors of the MEFA appointed by the governor, and the commissioner of agriculture or his designee as chairman of the board.

D. Control. "Control" may exist through management, contracting, or stock ownership. "Control" exists through stock ownership if a party has the power to control more than 50 percent of the voting stock. "Control" exists through management if the officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

E. Executive director. "Executive director" means the executive director of the MEFA designated by the commissioner of agriculture.

F. Eximbank. "Eximbank" means the Export-Import Bank of the United States.

G. Exporter. "Exporter" means a business concern, incorporated or unincorporated, which sells, leases, or proposes to sell or lease Minnesota goods or services destined for shipment, resale, or use outside the United States.

H. Financial assistance. "Financial assistance" means insurance, co-insurance, or guarantees for loans or credits extended to an exporter for pre-export credit needs, but does not include coverage of foreign political or commercial risk.

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

## PROPOSED RULES

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I. MEFA. "MEFA" means the Minnesota Export Finance Authority created by Laws of Minnesota 1983, chapter 289, section 8.

J. Minnesota goods or services. "Minnesota goods or services" means goods or services manufactured, processed, or originated in Minnesota or which contain substantial Minnesota-source components, labor, or intellectual property.

K. Pre-export. "Pre-export" means that period of time between the exporter's receipt of a purchase order and the exporter's receipt of documents confirming shipment according to the terms of trade.

L. SBA. "SBA" means the United States Small Business Administration.

### 3 MCAR § 1.0092 Availability of financial assistance from the MEFA.

A. Purpose. Financial assistance is available from the MEFA to facilitate the pre-export credit needs of exporters where credit or loans would otherwise not be made and where there is sufficient likelihood of repayment. The MEFA may not assume foreign risks in connection with financial assistance.

B. Forms of financial assistance. The MEFA may insure, co-insure, and guarantee loans or credit extended to exporters by financial institutions.

### 3 MCAR § 1.0093 Content of application.

The executive director shall prepare application forms for use by exporters or lenders in seeking financial assistance. The application forms must set forth the information necessary for the determination of eligibility and must require, among other things, a description and history of the exporter, the experience of management, financial statements, income and expense projections for the export sale, a description of collateral and other security, purchase order and proposed terms of the export sale, foreign risk coverage, and a statement by the exporter or lender identifying alternative sources of financing which have been pursued and the reasons that financing is unavailable through those sources. The executive director may require additional information necessary to a determination of the exporter's eligibility for financial assistance and reasonably related to the criteria for approval in 3 MCAR § 1.0096.

### 3 MCAR § 1.0094 Application procedure.

A. Application forms. The MEFA shall provide application forms for use by exporters or lenders seeking financial assistance. The completed application forms with all required exhibits and attachments must be submitted to the executive director.

B. Initial review by executive director.

1. Review for completeness. The executive director shall review the application for completeness and notify the applicant of any additional information required. When all required information has been received, the board, or the executive director upon delegation by the board, shall consider the application.

2. Consideration of alternative sources. If it appears to the executive director that financial assistance may be available to the applicant in whole or in part from the SBA or Eximbank or other sources, the executive director may direct the applicant to those sources. When it appears to the executive director that alternative sources have been appropriately pursued by the applicant, the board, or the executive director upon delegation by the board, shall consider the application for approval.

C. Consideration of application. The board, or the executive director upon delegation of authority from the board, shall consider the application, taking into account the purposes of Laws of Minnesota 1983, chapter 289, sections 7 and 8 and the criteria and terms of 3 MCAR §§ 1.0095 and 1.0096.

D. Approval of application. If the board, or the executive director upon delegation of authority from the board, approves the application, the executive director shall notify the applicant in writing setting forth the terms and conditions of the financial assistance approved. The executive director, together with the lender and any other private or governmental participants, shall prepare the written agreements and documents necessary to close the loan or finalize the credit, in accordance with the terms and conditions set forth in the notice of approval.

E. Denial of application. If the application is disapproved, the executive director shall notify the applicant in writing of the reasons for denial.

F. Misrepresentation by applicant. The MEFA may reject any application, may revoke any notice of approval, or may refuse to close any loan in the event that any information provided by the applicant contains a material misrepresentation or omission. Each applicant has an affirmative and continuing duty to update and correct all information provided to the MEFA or to the lender.

### 3 MCAR § 1.0095 General terms and conditions of financial assistance.

A. Permissible use of financial assistance. When the MEFA grants financial assistance to meet the financing needs of an

exporter, the financial assistance is available from the time the exporter receives a purchase order until the exporter receives documents confirming shipment according to the terms of trade in the sales transaction. Credit needs eligible for financial assistance include costs and expenses related to the acquisition or production, financing, and shipment of the goods or services.

B. Minimum loan or credit guaranteed. The MEFA shall not provide financial assistance where the principal amount of the pre-export loan or credit needed is less than \$25,000.

C. Maximum amount of financial assistance. The MEFA's net exposure for financial assistance to an exporter, including all its affiliates, may not, at any one time, exceed \$250,000.

D. Extent of participation. The MEFA may participate in loan or credit guarantees and insurance to the extent necessary and appropriate to facilitate the required financing. The MEFA may seek coparticipation in financial assistance from other private and governmental sources, including the SBA, Eximbank, Foreign Credit Insurance Association, and private insurers. In any event, the MEFA's maximum participation in loan guarantees or insurance may not exceed 90 percent of the principal amount of the loan, and the lender must remain at risk for at least ten percent of the principal amount.

E. Maturity. The maturity of a loan guaranteed or insured by the MEFA may not exceed 12 months.

F. Security. Loans must be secured by collateral of a type, amount, and value which, considered with the other criteria described in 3 MCAR § 1.0096 B., affords reasonable assurance of repayment.

G. Interest rates and fees. The lender may charge fees and a legal rate of interest on guaranteed loans, subject to the executive director's determination that the lender's fees and rate of interest are reasonable under the circumstances.

H. Fees. A guarantee fee of one to three percent of the principal balance guaranteed is payable by the lender to the MEFA. In determining the amount of the guarantee fee for a particular transaction, consideration must be given to the criteria set forth in 3 MCAR § 1.0096 B. The guarantee fee may be passed on to the exporter. The board may adjust the fee range from time to time so as to maintain adequate reserves in light of actual loss or earnings experience and to comply with any applicable treaties or law. In proposing and adopting fee range adjustments the board shall follow the procedures for amendment of rules prescribed in Minnesota Statutes, chapter 14.

I. Reporting requirements.

1. Reports by lender. The lender shall report in writing to the executive director as provided in the guarantee agreement. Reports must show the progress, repayment status, and principal balance, outstanding or undisbursed, for each loan guaranteed or insured by the MEFA.

2. Reports by exporter. The exporter shall report to the executive director immediately upon making shipment of the goods and shall provide copies of documents evidencing shipment according to the terms of trade, such as the ocean bill of lading or air waybill. If requested by the executive director, the exporter shall submit other reports or documentation reasonably related to an assessment of the exporter's compliance with Laws of Minnesota 1983, chapter 289, sections 7 and 8, 3 MCAR § 1.0090-1.0100, or the terms of the sale transaction, loan agreements, or the MEFA guarantee.

**3 MCAR § 1.0096 Criteria for approval of financial assistance.**

A. Need for financial assistance. Financial assistance will be approved by the MEFA for export credit that would not otherwise be made.

1. Exporter's resources. The MEFA shall consider whether the desired financing appears available to the applicant on reasonable terms from its own resources, such as the applicant's bank or other lender, issuing of securities, disposal of assets at a fair price, or utilization of the personal credit or resources of owners or principal shareholders of the applicant.

2. Alternative sources of assistance. The MEFA shall also consider whether the requested financial assistance appears available, in whole or in part, through other governmental sources such as the SBA or Eximbank, and the MEFA may direct the applicant to these sources or seek coparticipation from these sources as available.

B. Reasonable risk. There must be reasonable assurance, in the judgment of the board, that the credit can and will be repaid according to its terms. In making this judgment the board shall consider the following:

1. evidence of the manner, means, and security of payment by the buyer and coverage of foreign risks;
2. terms of the export sale and projected earnings from the transaction;

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3. collateral and other sources of guarantee or insurance securing the loan or credit;
4. credit history and financial condition of the applicant;
5. financial projections;
6. ability of management.

C. Eligibility of lender. The financial institution must have a continuing ability to evaluate, perform, and service the loan or credit, to make reports as required by these rules, and to collect the loan if requested by the MEFA upon default.

### 3 MCAR § 1.0097 Loan administration.

A. Servicing. The lender shall service the loan and receive all payments of principal and interest. In the event of default, the lender shall continue to service the loan if requested by the MEFA to do so.

B. Notification of nonpayment. If the exporter fails to make any payment of principal or interest on the due date, the lender shall immediately notify the exporter of the payments due. If the exporter fails to cure the nonpayment within 30 days, the lender shall notify the executive director.

### 3 MCAR § 1.0098 Quorum of the board.

A majority of the members of the board duly appointed and acting from time to time constitutes a quorum for the purpose of conducting business and exercising the powers of the MEFA, but a smaller number may adjourn from time to time until a quorum is obtained. When a quorum is in attendance, action may be taken by the board on a vote of the majority of the members present.

### 3 MCAR § 1.0099 Agency meetings.

A. Regular meetings. The date and place of regular meetings will be posted at the offices of the Minnesota Trade Office in St. Paul, Minnesota, at least five days prior to the meeting.

B. Special meetings. Special meetings of the board may be called by the chairman or by a quorum of the board for the purpose of transacting any business designated in the notice. Special meetings must be held at the offices of the Minnesota Trade Office in St. Paul, Minnesota, unless another place of meeting is designated in the notice. At any special meeting no business may be considered other than as designated in the notice, unless all of the members of the board are present at the special meeting. Notices of special meetings must be posted at the offices of the Minnesota Trade Office.

### 3 MCAR § 1.0100 Public appearances at board meetings.

A. Applicable procedures. The procedures in B. and C. govern appearances by members of the public at meetings of the board.

B. Written request for appearance. Any person who desires to appear and address the board must submit a written request to the executive director no later than two days prior to the date of the meeting.

C. Vote of the board. The board shall consider any written requests for appearance upon the convening of the meeting. A majority vote of the board members present at the meeting is required to approve any request to address the meeting. The board may limit the time or impose other conditions on the appearance.

## Department of Commerce

### Proposed Adoption of Rules Relating to the Workers' Compensation Assigned Risk Plan

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

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

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

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Alberto Quintela, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these rules is contained in Minnesota Statutes, sections 79.251, subd. 3 and 79.252, subd. 5. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch  
Commissioner of Commerce

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

#### **4 MCAR § 1.9500 Purpose and scope.**

4 MCAR §§ 1.9500-1.9505 govern administration of the workers' compensation assigned risk plan.

#### **4 MCAR § 1.9501 Authority.**

Rules 4 MCAR §§ 1.9500-1.9505 are promulgated under the authority of Minnesota Statutes, sections 79.251, subdivision 3 and 79.252, subdivision 5.

#### **4 MCAR § 1.9502 Definitions.**

Applicability.

A. Generally. For the purposes of 4 MCAR §§ 1.9500-1.9505, the terms defined in this rule have the meanings given them unless the context clearly indicates a different meaning.

B. Assigned risk plan. "Assigned risk plan" means:

1. the method to provide workers' compensation coverage to employers unable to obtain coverage through licensed workers' compensation insurance companies, established pursuant to Minnesota Statutes, sections 79.251 and 79.252; and
2. the procedures established by the commissioner to implement that method of providing coverage including administration of all assigned risk losses and reserves.

C. Commissioner. "Commissioner" means the commissioner of commerce.

D. Employer. "Employer" means the same as defined in Minnesota Statutes, section 176.011, subdivision 10.

E. Merit rating. "Merit rating" means the same as defined in Minnesota Statutes, section 79.52, subdivision 9.

F. Discount factor. "Discount factor" means the same as defined in Minnesota Statutes, section 79.52, subdivision 8.

G. Rates. "Rates" means the same as defined in Minnesota Statutes, section 79.52, subdivision 5.

H. Rating plan. "Rating plan" means the same as defined in Minnesota Statutes, section 79.52, subdivision 15.

#### **4 MCAR § 1.9503 Assigned risk coverage.**

A. Generally. Eligibility for assigned risk coverage is subject to the terms and conditions of B.-D.

B. Minimum qualifications. Any employer that (1) is required to carry workers' compensation insurance pursuant to Minnesota Statutes, chapter 176, and (2) has a current written notice of refusal to insure pursuant to Minnesota Statutes, section 79.252, subdivision 2, is entitled to coverage upon making written application to the assigned risk plan, and paying the applicable premium.

C. Disqualifying factors. An employer may be denied or terminated from coverage through the assigned risk plan if the employer:

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1. applies for coverage for only a portion of the employer's statutory liability under Minnesota Statutes, chapter 176, excluding wrap-up policies;
2. has an outstanding debt due and owing to the assigned risk plan at the time of renewal arising from a prior policy;
3. persistently refuses to permit completion of an adequate payroll audit;
4. repeatedly submits misleading or erroneous payroll information; or
5. flagrantly disregards safety or loss control recommendations. Cancellation for nonpayment of premium may be initiated by the service contractor upon 30 days' written notice to the employer pursuant to Minnesota Statutes, section 176.185, subdivision 1.

D. Occupational disease exposure. An employer having a significant occupational disease exposure, as determined by the commissioner, to be entitled to coverage shall have physical examinations made:

1. of employees who have not been examined within one year of the date of application for assignment;
2. of new employees before hiring; and
3. of terminated employees. Upon request, the findings and reports of doctors making examinations, together with x-rays and other original exhibits, must be furnished to the assigned risk plan or the Department of Labor and Industry.

#### **4 MCAR § 1.9504 Assigned risk rating plan.**

A. Generally. Employers insured through the assigned risk plan are subject to B.-E.

B. Classifications. Classifications shall be assigned according to the Basic Manual, Workers' Compensation and Employers' Liability Insurance, 1980 Edition, National Council on Compensation Insurance, with exceptions approved for Minnesota.

C. Experience modification. Rates shall be modified according to the experience rating plan contained in the Experience Rating Plan Manual for Workers' Compensation and Employers' Liability Insurance, 1980 Edition, National Council on Compensation Insurance, with exceptions approved for Minnesota. Minnesota exceptions approved for section III, rule 1, Eligibility Requirements, are revoked.

D. Small risk merit rating plan. Employers which do not qualify for the experience rating plan are subject to the small risk merit rating plan. The rules and procedures governing the small risk merit rating plan shall be the same as for the assigned risk experience rating plan, except as regards the premium modification factor. The premium modification factor for the small risk merit rating plan shall be based on the number of claims attributable to an experience period of three years commencing four years prior and ending one year prior to the date for which the rating is promulgated, excluding claims for which medical losses only are expected. The merit rating premium modification factor is as follows: zero claims, credit modification factor; one claim, no modification factor; two or more claims, debit modification factor. The amount of the modification factors shall be fixed by the commissioner simultaneously with the schedule of rates pursuant to Minnesota Statutes, section 79.251, subdivision 3.

E. Premium discount. Rates shall be modified according to a premium discount factor whereby standard premium is reduced 0.0 percent for the first \$1,000 of premium, and progressively greater percentages for the next \$4,000, for the next \$95,000, and for all premiums over \$100,000. The amount of the percentage reductions shall be fixed by the commissioner simultaneously with the schedule of rates, pursuant to Minnesota Statutes, section 79.251, subdivision 3.

#### **4 MCAR § 1.9505 Reserves.**

The commissioner and the assigned risk plan review board shall monitor and have jurisdiction over all reserves maintained for assigned risk plan losses.

## **Department of Labor and Industry Division of Workers' Compensation**

### **Proposed Amendments to Temporary Rules of the State Department of Labor and Industry governing Workers' Compensation Permanent Partial Disability Schedule**

#### **Notice of Intent to Adopt Amendments to Proposed Temporary Rules**

Notice is hereby given that the Department of Labor and Industry proposes to adopt amendments to proposed temporary rules governing the Workers' Compensation Permanent Partial Disability Schedule published in the *State Register* of October 3, 1983, on pages 562-595.

Persons interested in these amendments shall have twenty (20) days to submit comments on the proposed amendments. The

proposed amendments may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Persons who wish to submit comments should submit such comments to:

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

Authority for the adoption of these amendments is contained in Minn. Stat. § 176.105, subd. 4. As required by Minn. Stat. § 176.105, subd. 4, a public hearing was held on November 4, 1983. At that time public comment was received on the proposed temporary rules and on the proposed amendments which were made available at the hearing. In addition, the required analysis of the current permanent partial disability schedule and the required actuarial evaluation of the proposed permanent partial disability schedule have been completed. A statement of need and reasonableness, showing that the Commissioner considered the factors suggested in Minn. Stat. § 176.105, subd. 4 in developing the proposed rules and amendments, was prepared although not required. It is available from the office of the Commissioner upon request.

Upon adoption of the rules, the jurisdictional documents, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written request to:

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

A copy of the proposed amendments to the proposed temporary rules immediately follow this Notice in the *State Register*. Copies of this Notice and the proposed amendments are available and may be obtained by contacting Commissioner Steve Keefe at the above address.

November 18, 1983

Steve Keefe, Commissioner  
Department of Labor and Industry

### Temporary Rules as Proposed

#### 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~~ 1.9025 [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~~ 1.9025 [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. Unless provided otherwise, where an impairment must be rated under more than one category, the ratings must be combined as provided in Minnesota Statutes, section 176.105, subdivision 4, clause (c). 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~~ 1.9025 [Temporary] shall not be used to determine permanent partial disability.

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D. Rules of construction. The technical terms in 8 MCAR §§ ~~1.9001-1.9023~~ 1.9025 [Temporary] are defined in either 8 MCAR § 1.9002 [Temporary], or by the documents incorporated by reference in this rule. Documents are incorporated by reference only to the extent necessary for definition or to the extent specifically referenced in a schedule. 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, ~~1974~~ 1976 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 ~~now~~ known as the A.M.A. Card.
4. American National Standard Institutes, Inc., S3.1-1977 Criteria for Permissible Ambient Noise during Audiometric Testing and S3.6-1969 (R1973) Specification for Audiometers;
5. Metropolitan Life Insurance Company Height and 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-; and
11. "The Estimation of Areas of Burns," in Surgery, Gynecology and Obstetrics, by Lund and Browder, pages 352-358, volume 79, 1944. This document is referred to as Lund and Browder.

E. Severability. If any provision of these rules is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

### 8 MCAR § 1.9002 [Temporary] Definitions.

A. Scope. For the purpose of 8 MCAR §§ ~~1.9001-1.9023~~ 1.9025 [Temporary] the terms defined in this rule have the meanings given 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 § ~~1.9001-1.9023~~ 1.9025 [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 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. Banding. "Banding" means a thick, rope-like cord of hypertrophic scarring resulting from burns.

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

K. Demonstrable degenerative changes. "Demonstrable degenerative changes" means radiographic findings demonstrating the presence of degeneration of intervertebral disc or facet joints. Examples of demonstrable degenerative changes are disc space narrowing, small osteophytes, and facet joint hypertrophic changes.

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

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

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

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

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

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

T. Gross motor weakness. "Gross motor weakness" means total or partial loss as described at 8 MCAR § 1.9016 A. and B.

U. Hypertrophic scar. "Hypertrophic scar" means an elevated irregularly shaped mass of scar tissue.

~~R~~ V. 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~~ W. 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~~ X. Laminectomy. "Laminectomy" means the removal of part or all of the lamina of one vertebral segment, usually with associated disc excision.

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

~~V~~ Z. 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~~ AA. 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~~ BB. Near vision. "Near vision" means clearness of vision at the distance of 14 inches.

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

~~Z~~ DD. 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~~ EE. 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~~ FF. Preferred extremity. "Preferred extremity" means the dominant leg or arm, as for example, the right arm of a right-handed person.

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

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

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~~EE~~. II. Self cares. "Self cares" means bed activities, transfers, locomotion, dressing, personal 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~~. JJ. Spinal stenosis. "Spinal stenosis" means the narrowing of the spinal canal.

~~GG~~. KK. 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~~. LL. Spondylolisthesis grade 1. "Spondylolisthesis grade 1" means forward movement from zero to 25 percent of the vertebral body.

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

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

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

~~LL~~. PP. 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~~. QQ. 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~~. RR. 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~~. SS. 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~~. TT. Vestibular. "Vestibular" means the main division of the auditory nerve. It is the eighth cranial nerve and deals with equilibrium.

UU. Wrinkling. "Wrinkling" means small ridges on the skin formed by shrinking or contraction as a result of burns.

~~QQ~~. VV. 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~~. WW. 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~~ The maximum visual field is defined as 500 degrees. It is the sum of the degrees in the eight principal meridians from the point of fixation to the outermost limits of visual perception and defines the area in which a three millimeter white target is visible at 33 centimeters. One hundred percent visual field efficiency is that visual field which extends from the point of fixation outward 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.

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

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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
20/86.8	. . .	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 1 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 1 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:

- (a) 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.
- (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. This percentage is assigned to the injured eye or, if both eyes are injured, to the eye with the greatest impairment of central visual acuity and field vision. The eye with the greatest impairment means the eye for which the product of central visual acuity efficiency and visual field efficiency is the least. For the purpose of calculation, a value of zero percent is deemed to be one percent. For the other eye, the percentage loss of ocular motility is zero.

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, or if as a result of the injury the refractive error increases by at least one diopter of sphere or of cylinder or of both, 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.

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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
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 (R1973), 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

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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:

$$\frac{\begin{array}{l} \text{(monaural hearing} \\ 5 \times \text{loss of better ear)} \end{array} + \begin{array}{l} \text{(monaural hearing} \\ \text{loss of poorer ear)} \end{array}}{6} = \begin{array}{l} \text{Percent binaural} \\ \text{hearing loss} \end{array}$$

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:

$$\text{Right ear} = 35 \text{ decibels} - 25 \text{ decibels} = 10 \text{ decibels};$$

$$\text{Left ear} = 55 \text{ decibels} - 25 \text{ decibels} = 30 \text{ decibels};$$

c. Calculation of monaural hearing loss:

$$\text{Right ear} = 10 \times 1.5\% = 15\%$$

$$\text{Left ear} = 30 \times 1.5\% = 45\%$$

d. Calculation of binaural hearing loss:

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

### 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.

$$\text{Right ear} = 25 \text{ decibels} - 25 \text{ decibels} = 0 \text{ decibels}$$

$$\text{Left ear} = 55 \text{ decibels} - 25 \text{ decibels} = 30 \text{ decibels}$$

c. Calculation of monaural hearing loss:

$$\text{Right ear} = 0 \times 1.5 \text{ percent} = 0$$

$$\text{Left ear} = 30 \times 1.5 \text{ percent} = 45 \text{ percent}$$

d. Calculation of binaural hearing loss:

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

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.**

A. Skull depressions. 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

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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

### B. Skull fractures.

1. Basilar skull fracture with persistent spinal fluid leak, 20 percent.
2. Basilar skull fracture without cerebrospinal fluid leak, 0 percent.

### 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, 30 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~~ 3 percent;
3. Unilateral motor loss, more than 75 percent of function lost, ~~45~~ 10 percent;
4. Partial bilateral motor loss, 25 to 75 percent of function lost, ~~45~~ 10 percent;
5. Bilateral motor loss, more than 75 percent of function lost, ~~30~~ 20 percent.

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

1. A score of ~~4~~ 24 to 28 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~~ 16 to 28 on the Kenny scale, and ambulation impaired due to equilibrium disturbance, 30 percent;
3. A score of ~~2~~ 10 to 16 on the Kenny scale, 40 percent;
4. A score of ~~1 or 0~~ 0 to 10 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:
  - 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:** Spinal cord. To rate under this section, determine the disability to the lower extremities, upper extremities, respiration, urinary bladder, anorectal, and sexual functions as set forth below. The percentage of whole body disability under this section is determined by combining the disabilities under 1.-6. in the manner described at Minnesota Statutes, section 176.105, subdivision 4, clause (c).

- 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 <u>24 to 28</u> on Kenny scale, but some difficulty with digital dexterity	10	5	15

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score of <del>3 or 4</del> <u>16 to 28</u> on Kenny scale, but no digital dexterity	20	10	30
score of <del>2</del> <u>10 to 16</u> on Kenny scale	40	40	50
score of <del>1 or</del> <u>to 10</u> 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~~, confined to 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, as described in D.S.M. III, not caused by organic dysfunction ~~must be~~ and 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~~ 16 to 28 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 10 to 16 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~~ to 10 on the Kenny scale, 95 percent;

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

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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. Motor dysfunction, movement disorder, paralysis, spasticity, sensory loss, or neglect. Where these impairments are due to brain or brain stem injury, rate as provided in H.1. and 2.

8. Other impairments; impairments of respiration, urinary bladder function, anorectal function, or sexual function due to brain or brain stem injury are rated as provided in H.3.-6.

~~8.~~ 9. 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 per 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.~~ 10. 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-skeletal 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, 47.5 percent.

a. Subjective symptoms of pain not substantiated by objective clinical findings or demonstrable degenerative changes, 0 percent.

b. Pain associated with rigidity (loss of motion or postural abnormality) or chronic muscle spasm. The chronic muscle

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spasm or rigidity is substantiated by objective clinical findings but without associated demonstrable degenerative changes, 3.5 percent.

c. Pain associated with rigidity (loss of motion or postural abnormality) or chronic muscle spasm. The chronic muscle spasm or rigidity is substantiated by objective clinical findings and is associated with demonstrable degenerative changes.

(1) Single vertebral level, 7 percent.

(2) Multiple vertebral levels, 10.5 percent.

d. Pain associated with rigidity (loss of motion or postural abnormality) or chronic muscle spasm. The chronic muscle spasm or rigidity is substantiated by objective clinical findings.

(1) Spondylolisthesis grade I, no surgery, 7 percent.

(2) Spondylolisthesis grade II, no surgery, 14 percent.

(3) Spondylolisthesis grade III or IV, without fusion, 24.5 percent.

### 2. Herniated intervertebral disc, single vertebral level:

a. back and specific radicular pain present with objective neurologic findings; ~~computer~~; and X-ray or computerized axial tomography; ~~X-ray or electromyogram~~ or myelogram specifically positive; for herniated disc; and no surgery is performed for treatment, 14 percent;

b. condition treated by surgery:

(1) surgery or chemonucleolysis with excellent 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 pain, ~~14~~ 11 percent;

(3) surgery or chemonucleolysis 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, ~~24~~ 13 percent;

(4) multiple operations on low back with poor surgical results such as persisting or increased symptoms of back and leg pain, ~~28~~ 15 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~~ computerized 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~~ Spinal fusion surgery for single vertebral level with or without laminectomy, 17.5 percent. Add five percent for each additional vertebral level.

### 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 heights, 15 percent;

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e. 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~~ 10.5 percent;

~~d.~~ b. 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~~ 15 percent;

e. 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 radicular pain, with mild motor and sensory manifestations, ~~17.5~~ 12 percent;

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

~~f.~~ d. severe dislocation, ~~normal reduction with surgical fusion~~:

(1) ~~no residual motor or sensory changes~~, ~~17.5~~ normal reduction with surgical fusion, 12 percent;

(2) poor reduction with fusion, persistent radicular pain, ~~motor involvement, mild weakness and numbness~~, ~~24.5~~ 17.5 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;~~

~~e. same as b. but with gross degenerative changes consisting of narrowing of intervertebral spaces and small osteophytes at the vertebral margins, 14 percent. The spine rating is inclusive of arm symptoms except for gross motor weakness; sensory loss; and bladder, bowel, or sexual dysfunction. Bladder, bowel, or sexual dysfunction must be rated as provided in 8 MCAR § 1.9006 H. Permanent partial disability of the cervical 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 objective clinical findings or demonstrable degenerative changes, 0 percent.~~

~~b. Pain associated with rigidity (loss of motion or postural abnormality) or chronic muscle spasm. The chronic muscle spasm or rigidity is substantiated by objective clinical findings but without associated demonstrable degenerative changes, 3.5 percent.~~

~~c. Pain associated with rigidity (loss of motion or postural abnormality) or chronic muscle spasm. The chronic muscle spasm or rigidity is substantiated by objective clinical findings and is associated with demonstrable degenerative changes.~~

~~(1) Single vertebral level, 7 percent.~~

~~(2) Multiple vertebral levels, 10.5 percent.~~

~~2. Herniated intervertebral disc, single vertebral level:~~

~~a. Neck and specific radicular pain present with objective neurologic findings; and x-ray or computerized axial tomography or myelogram specifically positive for herniated disc; and no surgery is performed for treatment, 14 percent.~~

~~b. Condition treated by surgery:~~

~~(1) Surgery with excellent results such as mild neck pain, no arm pain, and no neurologic deficit, 9 percent.~~

~~(2) Surgery with average results such as mild increase in symptoms with neck motion or lifting, and mild to moderate restriction of activities related to neck and arm pain, 11 percent.~~

~~(3) Surgery with poor surgical results such as persistent or increased symptoms with neck motion or lifting, and major restriction of activities because of neck and arm pain, 13 percent.~~

(4) Multiple operations on neck with poor surgical results such as persisting or increased symptoms of neck and arm pain, 15 percent.

c. Recurrent herniated intervertebral disc, occurring to same vertebral level previously treated with surgery, 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.

d. Spinal stenosis, proven by computerized axial tomography or myelogram.

a. With myelopathy verified by objective neurologic findings, no loss of function, 14 percent.

b. Loss of function. Rate as provided in 8 MCAR § 1.9006H.

4. Fusion surgery. Anterior or posterior. Fusion of a single vertebral level with or without a laminectomy, 11.5 percent. Add five percent for each additional vertebral level.

2- 5. 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 12 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 normal reduction with surgical fusion, 12 percent;

(2) poor reduction with fusion, persistent radicular pain, ~~partial motor loss, only slight weakness and numbness,~~ 24.5 17.5 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 neurological manifestations such as persistent pain, numbness, weakness in fingers, 14 percent.~~

Thoracic spine. The spine rating is inclusive of all symptoms including radicular gross motor weakness and sensory loss, but excluding spinal cord injury. Permanent partial disability of the thoracic 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 objective clinical findings or demonstrable degenerative changes, 0 percent.

b. Pain associated with chronic muscle spasm. The chronic muscle spasm is substantiated by objective clinical findings and is associated with demonstrable degenerative changes, single or multiple level, 3.5 percent.

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### 2. Herniated intervertebral disc, symptomatic:

a. Specific radicular pain present with objective neurologic findings, and x-ray or computerized axial tomography or myelogram specifically positive for herniated disc, and no surgery is performed for treatment, 5 percent.

#### b. Condition treated by surgery:

(1) Surgery with excellent results such as mild thoracic pain, no radicular pain, and no neurological deficit, 5 percent;

(2) Surgery with poor surgical results such as persistence of increased symptoms with lifting, and major restriction of activities, 10 percent.

### 3. Fractures:

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, 10.5 percent.

b. 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, 15 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 mild motor and sensory manifestations, 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, 12 percent;

(2) Poor reduction with fusion, persistent radicular pain, motor involvement, 17.5 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 phalynx, 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 B.~~, there must be a total loss of the sensory function.

B. Sensory loss, complete:

- 1. median function at wrist, ~~32.5~~ 22.5 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;

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- 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 in the hand. 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,  $\frac{1}{2}$  of value in B.;
3. severe, 2-point discrimination at greater than 10 millimeters,  $\frac{3}{4}$  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 or motor and sensory 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.~~ Total or complete loss. Total or complete loss means that motor function is less than anti-gravity and there is complete loss of sensation. For loss to the lower extremities resulting from nerve injury, and where there is total loss of function for those particular portions of the body, the disability of the whole body is:

~~B.~~ 1. Motor loss, complete:

- ~~1.~~ a. median nerve above mid forearm, 30 percent;
- ~~2.~~ b. median nerve below mid forearm, 19 percent;
- ~~3.~~ c. radial nerve, 19 percent;
- ~~4.~~ d. ulnar nerve above mid forearm, 19 percent;
- ~~5.~~ e. ulnar nerve below mid forearm, 13.5 percent.

~~C.~~ 2. Complete motor and sensory loss:

- ~~1.~~ a. median nerve above mid forearm, 40.5 percent;
- ~~2.~~ b. median nerve below mid forearm, 35 percent;
- ~~3.~~ c. radial nerve, 27 percent;
- ~~4.~~ d. ulnar nerve above mid forearm, 21.5 percent;
- ~~5.~~ e. ulnar nerve below mid forearm, 16 percent.

~~D.~~ 3. Complete loss of motor function:

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

~~9.~~ i. thoraco dorsal, 6 percent.

4. Complete loss of function, motor and sensory:

- a. C-5 root, 11 percent;
- b. C-6 root, 12 percent;
- c. C-7 root, 11 percent;
- d. C-8 root, 13 percent.

B. Partial loss. Partial loss means that motor function is less than normal but greater than anti-gravity, and there is incomplete sensory loss. Partial loss is rated at 25 percent of the percentages assigned at A.I.-4.

**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;
- 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.

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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 of 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 fracture, 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 of 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.

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 5 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;

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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~~ nerve injury or motor and 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~~

A. Total loss. Total loss means that motor function is less than anti-gravity and there is complete loss of sensation. For loss to the lower extremities resulting from nerve injury, and where there is total loss of 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. ~~7.~~ superior gluteal, 7 percent;
- 9. ~~8.~~ sciatic, above hamstring innervation, 31 percent;
- 10. ~~9.~~ common peroneal, lateral, or external popliteal, 13 percent;
- 11. ~~10.~~ deep peroneal, above midshin, 9 percent;
- 12. ~~11.~~ deep peroneal, below midshin, anterior tibial, 2 percent;
- 13. ~~12.~~ superficial peroneal, 5 percent;
- 14. ~~13.~~ 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. ~~14.~~ sural, external saphenous, 1 percent;
- 15. L-4 nerve root, 11 percent;
- 16. L-5 nerve root, 13 percent;
- 17. S-1 nerve root, 15 percent;
- 18. Lumbosacral plexus, 40 percent.

B. Partial loss. Partial loss means that motor function is less than normal but greater than anti-gravity, and there is incomplete sensory loss. Partial loss is rated at 25 percent of the percentages assigned at A.1.-18.

**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;
- 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:

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- 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;

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## 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. pharyngeal fractures, healed, 0 percent.

## 1. 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;~~
  - e. forced expiratory volume (FEV)/forced vital capacity (FVC) ratio expressed as a percentage; and one second forced expiratory volume (FEV1), expressed as a percentage of the normal values set forth in the A.M.A. Guides, pages 69 and 71;
  - b. forced vital capacity (FVC), expressed as a percentage of the normal values set forth in the A.M.A. Guides, pages 70 and 72.

6. at least one pulmonary function test, such as a diffusing capacity study diffusing capacity studies must be performed when complaints of dyspnea continue unabated in spite of forced spirometric measurement results above the cut-off limits.

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

TABLE I

Symptoms	Forced Spirometry Measurements		Diffusing Capacity*	Percent Disability of Whole Body
	FEV <sub>1-0</sub>	FVC FEV <sub>1-0</sub> /FVC% <u>½ (FEV1 + FVC)</u>		
When dyspnea occurs, is consistent with the circumstances of activity.	(Test three times) Not less than 85 percent of normal		Not Applicable	0

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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 <del>predicted</del> <u>normal</u>	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.

C. Asthma. Asthma which is not medically controllable and which requires at least six hospitalizations in 12 months, 25 percent.

### 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.

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

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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. ¼ city block	Less than ¼ 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 chronic 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.

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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 and urinary tract schedule.

A. General. This rule 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 cystoscopy, voiding cystograms, cystometrograms; and

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

### ~~B-~~ C. 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-~~ D. 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.

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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.~~ E. 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.~~ F. 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.~~ G. 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.~~ H. Prostate and seminal vesicles.

1. Class 1, 5 percent. ~~A patient belongs in Class 4 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.~~ I. 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.

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## PROPOSED RULES

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. Impairment due to burns shall be rated under 8 MCAR § 1.9024 and not under this schedule.

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.

### 8 MCAR § 1.9024 [Temporary] Burns.

A. General. The whole body disability due to burns is not equal to the percent of body surface area which is burned. The percentage of body surface area affected must be determined according to Lund and Browder. The ratings determined under A.-D. must be combined as set forth at Minnesota Statutes, section 176.105, subdivision 4, clause (c), provided that the

maximum disability to the whole body under this schedule must not exceed 70 percent. Loss of motion or body parts except the face must be rated under the musculoskeletal schedules and must not be considered as included in a rating under this rule unless specifically provided otherwise.

B. Burns other than electrical conduction. A rating under this section is the ratings assigned by the following paragraphs combined as provided in Minnesota Statutes, section 176.105, subdivision 4, clause (c):

1. Any burn that heals within one month and leaves no hypertrophic scar, 0 percent.
2. Cold intolerance of the hands, face, or head as evidenced by the wearing of heavy gloves or additional scarves at 35 degrees Fahrenheit, 10 percent.
3. Heat intolerance is evidenced by fatigue, malaise, nausea, and an oral temperature of at least 100 degrees Fahrenheit upon exposure to an environmental temperature of 90 degrees Fahrenheit at 60 percent relative humidity, 5 percent.
4. Sensitivity to sun exposure as evidenced by the need to cover the skin or use sun screen to prevent sunburn, 10 percent.
5. Sensitivity to dust, chemical, or petroleum exposure; altered sweating; or apocrine gland dysfunction. For one or any combination of these conditions, the whole body disability is:
  - a. If the sensitivity affects less than 5 percent of the body surface area, 0 percent.
  - b. If the sensitivity affects 5 to 20 percent of the body surface area, 2 percent.
  - c. If the sensitivity affects 20 percent or more of the body surface area, 3 percent.
6. Sensory loss due to burns:
  - a. Loss of sensation on palmar surface of hands shall be rated as provided by 8 MCAR § 1.9009 C.
  - b. Sensory loss in less than 5 percent of the body surface area, 0 percent.
  - c. Sensory loss in 5 to 20 percent of the body surface area, 2 percent.
  - d. Sensory loss in more than 20 percent of the body surface area, 5 percent.

C. Electrical conduction injuries.

1. Associated sensory loss and concomitant thermal injuries must be rated as provided in A.
2. Peripheral nerve deficits must be rated as provided in the musculoskeletal schedule.

The ratings under 1. and 2. must be combined in the manner set forth at Minnesota Statutes, section 176.105, subdivision 4, clause (c).

D. Cosmetic disfigurement. This section applies to disfigurement on the face, the head, the neck, or the hands due to burns. Where there is surgery, this rating is done after correction by plastic surgery. The final rating under this schedule shall not be done until hypertrophic scarring is matured or more than 24 months after the injury. The ratings under the paragraphs of this section must be combined in the manner set forth at Minnesota Statutes, section 176.105, subdivision 4, clause (c).

1. Face. The face is the anterior head from the forehead, to and including the chin.
  - a. Loss of facial features:
    - (1) Deformity of nasal tip or deformity, thinning, or eversion of ala nasi, 5 percent.
    - (2) Loss of more than 50 percent of nasal cartilage or of both ala nasi, 25 percent.

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## PROPOSED RULES

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### b. Eyes:

- (1) Loss of one eyebrow, 2.5 percent.
- (2) Loss of two eyebrows, 5 percent.
- (3) Ectropian unaccompanied by visual impairment:
  - (a) Lower lid pulled from eye when mouth is opened and neck extended, 5 percent.
  - (b) Lower lid pulled away with no movement of face or neck, 10 percent.
  - (c) Cornea unprotected when sleeping, 15 percent.
- (4) Epiphora unaccompanied by visual impairment, 10 percent.

### c. Mouth. A rating under this paragraph is the arithmetic sum of (1)-(4).

- (1) Noncongenital microstomia or distortion affecting eating and dental hygiene, 10 percent.
- (2) Eversion of the upper lip, 7.5 percent.
- (3) Eversion of the lower lip, 7.5 percent.
- (4) Distortion of vermillion border, 10 percent.

### d. Ear. Loss of 75 percent or more of one external ear, 5 percent.

### e. Hypertrophic scarring of face in areas other than those covered in a.-d.:

- (1) Affecting only forehead above the eyebrows, 10 percent.
- (2) Affecting the lower face from eyebrows to chin, 25 percent.
- (3) Affecting both the forehead above the eyebrows and the lower face from the eyebrows to chin, 35 percent.

### f. Wrinkling of face in areas other than those covered in a.-e., one-third of percentages in e.

## 2. Head, Alopecia:

### a. Anterior hairline:

- (1) Loss of less than 20 percent of hair on anterior hairline, 0 percent.
- (2) Loss of 20 to 50 percent of hair on anterior hairline, 2 percent.
- (3) Loss of more than 50 percent of hair on anterior hairline, 3 percent.

### b. Elsewhere on head and not affecting anterior hairline:

- (1) Loss of 0 to 15 percent of hair, 0 percent.
- (2) Loss of 15 to 30 percent of hair, 1 percent.
- (3) Loss of 20 to 50 percent of hair, 2 percent.
- (4) Loss of more than 50 percent of hair, 3 percent.

The ratings under a. and b. must be combined as set forth in Minnesota Statutes, section 176.105, subdivision 4, clause (c).

3. Anterior neck. The anterior neck extends from the ear lobule anteriorly to the ear lobule and downward to mid clavicle. Disfigurement on the posterior neck from the ear lobule posteriorly to the ear lobule shall not be rated under this rule. Ratings under a. and b. shall be combined as set forth in Minnesota Statutes, section 176.105, subdivision 4, clause (c).

### a. Hypertrophic scarring or banding:

- (1) Affecting less than 10 percent of the anterior neck, 0 percent.

(2) Affecting 10 to 30 percent of the anterior neck, 10 percent.

(3) Affecting 30 to 50 percent of the anterior neck, 12 percent.

(4) Affecting more than 50 percent of the anterior neck, 15 percent.

b. Chin shelf. The chin shelf is the area from the chin backwards to the neck.

(1) Chin shelf extends less than 2 inches, 3 percent.

(2) Chin shelf extends less than 1 inch, 10 percent.

4. Hands. The hand extends from the carpus outward. Loss of body parts and loss of motion are rated in the musculoskeletal schedule.

a. Hypertrophic scarring affecting less than 30 percent of dorsum of one hand, 0 percent.

b. Hypertrophic scarring affecting 30 to 50 percent of dorsum of one hand, 3 percent.

c. Hypertrophic scarring affecting 50 percent or more of dorsum of one hand, 7 percent.

#### 8 MCAR § 1.9025 [Temporary] Pre-existing impairments.

Where a disability is subject to apportionment under Minnesota Statutes, section 176.101, subdivision 4a, the rating for the disabled condition under a category of the schedules of these rules must be reduced as provided in this rule. As used in this rule, the term disabled condition includes the pre-existing disability.

A. This section applies where the pre-existing disability has not been rated and neither B. nor C. is applicable.

1. The pre-existing disability must be rated under a category of the schedules of these rules.

2. The whole body disability rating assigned to the disabled condition of the member by the schedules of these rules must be reduced by the rating assigned to the pre-existing disability of the member in 1.

3. For example, the medical report establishes a pre-existing impairment of amputation of the index finger at the metacarpophalangeal joint. This injury is a 13.5 percent pre-existing disability to the body as a whole under 8 MCAR § 1.9008 [Temporary] A.12.a. The disabled condition is amputation of all fingers except the thumb at the metacarpophalangeal joint, a 32.5 percent disability under 8 MCAR § 1.9008 A.10. 32.5 percent less 13.5 percent gives the disability (adjusted for the pre-existing impairment) of 19 percent. Payment is made for the 19 percent disability at the rate appropriate for a 32.5 percent disability. Thus, if economic recovery benefits are paid, 19 percent is multiplied by 680 weeks; for impairment benefits, 19 percent is multiplied by \$85,000.

B. This section applies where the pre-existing disability of a member has been rated in another proceeding or state and the rating represents a percentage of disability to the whole body. The rating of the disabled condition under a category of these schedules shall be reduced by the rating assigned to the pre-existing disability of the member.

C. This section applies where the injury producing the pre-existing disability occurred prior to January 1, 1984, and the pre-existing disability has been rated under Minnesota Statutes, section 176.101, subdivision 3; or where Minnesota Statutes, chapter 176 is inapplicable and the rating represents a percentage of disability of a member.

1. From Table 1, determine the maximum whole body disability assignable to the pre-existing disability. Use Table 2 where disability to an internal organ is rated as a percentage of disability to the particular organ rather than a percentage of disability to internal organs. Where the pre-existing disability is not listed in Table 1 or Table 2, the maximum whole body disability is the maximum disability assigned to the affected member by the schedules of 8 MCAR §§ 1.9001-1.9024 [Temporary].

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# PROPOSED RULES

TABLE 1

<u>Member</u>	<u>Maximum Whole Body Disability (Percent)</u>
<u>Thumb</u>	<u>16</u>
<u>Index finger</u>	<u>11</u>
<u>Middle finger</u>	<u>9</u>
<u>Ring finger</u>	<u>4</u>
<u>Little finger</u>	<u>2</u>
<u>Great toe</u>	<u>5</u>
<u>Lesser toe</u>	<u>1</u>
<u>Hand</u>	<u>54</u>
<u>Hand and wrist</u>	<u>54</u>
<u>Arm</u>	<u>60</u>
<u>Foot</u>	<u>21</u>
<u>Foot and ankle</u>	<u>28</u>
<u>Leg</u>	<u>40</u>
<u>Eye</u>	<u>24</u>
<u>Eyes (both)</u>	<u>85</u>
<u>Hearing loss (both ears)</u>	<u>35</u>
<u>Back</u>	<u>71</u>
<u>Voice</u>	<u>70</u>
<u>Burns and skin impairments, including disfigurement</u>	<u>70</u>
<u>Internal organs, excluding brain</u>	<u>85</u>
<u>Brain</u>	<u>100</u>
<u>Head</u>	<u>20</u>

TABLE 2

<u>Member</u>	<u>Maximum Whole Body Disability (Percent)</u>
<u>Stomach</u>	<u>65</u>
<u>Pancreas</u>	<u>65</u>
<u>Colon</u>	<u>50</u>
<u>Spleen</u>	<u>0</u>
<u>Bladder</u>	<u>30</u>
<u>Sexual organs or function</u>	<u>20</u>
<u>Circulatory system</u>	<u>90</u>
<u>Heart</u>	<u>85</u>
<u>Lungs</u>	<u>85</u>
<u>Liver</u>	<u>75</u>
<u>Solitary kidney</u>	<u>10</u>
<u>Kidney, excluding solitary kidney</u>	<u>77</u>

2. Multiply the prior rating of the member's pre-existing disability by the maximum whole body disability determined in 1. Where a disputed rating has been closed out to a stipulated rating but payments were made on a different rating, the rating for purposes of this rule is the closed-out rating.

3. Subtract the percentage amount determined in 2. from the whole body disability rating assigned to the disabled condition of the member by the schedules of these rules. The remainder is the amount due for the disabled condition after apportionment for the pre-existing disability.

4. For example, a pre-1984 back injury was rated at 25 percent of the back. The whole body disability attributable to this injury is 25 percent by 71 percent equals 17.75 percent. After 1984, a second back injury is rated at 24.5 percent under these

rules (24.5 percent minus 17.75 percent equals 6.75 percent). Six and three-fourths (6.75) percent is the amount assigned to the disabled condition after apportionment.

D. Where the pre-existing disability and the subsequent permanent partial disability affect more than one member, apportionment must be determined as follows:

1. For each member, determine the percentage of whole body disability under A.-C., as appropriate.

2. Combine the percentages obtained in 1. in the manner set forth in Minnesota Statutes, section 176.105, subdivision 4, clause (c).

Effective Date. Rule 8 MCAR §§ 1.9001-~~1.9023~~ 1.9025 [Temporary] are effective January 1, 1984.

## **Board of Peace Officer Standards and Training**

### **Proposed Adoption of Rules Governing Investigation and Resolution of Misconduct Allegations**

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

Notice is hereby given that the Minnesota Board of Peace Officer Standards and Training proposes to adopt the above-entitled rule without a public hearing. The Board has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21-14.28 (1982).

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

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required the agency will proceed according to the provisions of Minnesota Statutes sections 14.13-14.20 (1982).

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

Mark K. Shields  
Board of Peace Officer Standards and Training  
333 Sibley Street, Suite 495  
St. Paul, Minnesota 55101  
(612) 296-2620

Authority for the adoption of this rule is contained in Laws of 1983, Chapter 269, sections 3-6, Minn. Stat. sections 626.843, Subd. 3(d) (1982), and 626.845 (i) (1982). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from the Board upon request.

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

A copy of the proposed rule is attached to this Notice.

Free copies of this Notice and the proposed rule are available and may be obtained by contacting the Board of Peace Officer Standards and Training.

State of Minnesota  
Mark K. Shields, Executive Director

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## PROPOSED RULES

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### Rule as Proposed (all new material)

#### 4 MCAR § 13.040 Investigation and resolution of misconduct allegations.

A. Definitions. For the purposes of this rule the terms defined have the meanings given them.

1. "Data" means personnel data as defined in Minnesota Statutes, section 13.43, subdivision 1, which is public if it falls within the categories listed in subdivision 2 of that statute.

2. "Misconduct" means an act or omission by an employee or appointee of an agency licensed by the board which may result in disciplinary action by the agency or appointing authority.

B. Scope. The board recognizes the importance of the need for each agency and appointing authority to have and to use written procedures for the investigation and resolution of allegations of misconduct. The agency and appointing authority have the responsibility to impose the disciplinary sanctions they find appropriate for misconduct that occurs. Nothing in this rule shall be interpreted or is intended to authorize the board to approve, deny, or modify in any manner sanctions which may or may not be imposed by the agency or appointing authority.

C. Development of written procedures. On or before October 1, 1984, the chief law enforcement officer shall establish written procedures for the investigation and resolution of allegations of misconduct against licensees employed or appointed by his agency. These procedures shall minimally specify:

1. the misconduct which may result in disciplinary action;
2. the process by which complaints will be investigated;
3. the sanctions which may be imposed if a complaint is sustained;
4. the appeal process for the licensee;
5. the process which will be used to notify the complainant of the investigation and disposition; and
6. the effective date of the procedures or subsequent modifications of the procedures.

D. Affirmation of compliance. The chief law enforcement officer shall affirm to the board compliance with C. no later than October 15, 1984. If an agency begins operation after October 1, 1984, the chief law enforcement officer shall affirm to the board compliance with C. no later than 15 days after the agency begins operation.

E. Copies of procedures. Copies of current written procedures governing allegations of misconduct shall be available to the public on request. Copies of written procedures governing allegations of misconduct and any subsequent modifications of the procedures shall be distributed by an agency to licensees who are employed or appointed by the agency.

F. Documentation of complaints. The chief law enforcement officer or his designee or designees shall maintain data concerning all allegations of misconduct by licensees employed or appointed by the agency according to the provisions of Minnesota Statutes, sections 15.17 and 15.171. The board may request copies of this data. The chief law enforcement officer shall supply the data and an affidavit of compliance with C.2. to the board within five days of the request, excluding Saturdays, Sundays, and legal holidays. If compliance is not possible within that time, the chief law enforcement officer shall inform the board and shall have an additional five days to comply with the request, excluding Saturdays, Sundays, and legal holidays.

G. Processing of complaints. Complaints which allege misconduct by a licensee shall be processed according to the agency's written procedures. Failure to comply with these procedures or any other provisions of this rule shall be grounds for disciplinary action against the chief law enforcement officer's license.

## Department of Labor and Industry Occupational Safety and Health Division

### Proposed Revisions to the Occupational Safety and Health Standards

#### Request for Comments

Notice is hereby given that the Department of Labor and Industry proposes to adopt the following revisions to the Minnesota Occupational Safety and Health Codes, as authorized under Minn. Stat. § 182.655 (1982), establishing or modifying the Occupational Safety and Health Standards described below. This is an action to adopt standards that have already been proposed and adopted by the Federal Occupational Safety and Health Administration.

Complete copies of the specific standard are available by writing: Occupational Safety and Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101; or by calling: (612) 297-3254.

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## PROPOSED RULES

Interested persons are hereby afforded a period of 30 days to submit written data or comments on the standards proposed. Any interested person may file with the commissioner written objections to the proposed standards stating the grounds for those objections; such person may request a public hearing on those objections.

Steve Keefe  
Commissioner of Labor and Industry

### Rules as Proposed

8 MCAR § 1.7001 Adoption of federal Occupational Safety and Health Standards by reference. The Minnesota Department of Labor and Industry Occupational Safety and Health Codes and rules are amended by incorporating and adopting by reference and thereby making a part thereof, Title 29 of the Code of Federal Regulations as follows:

Part 1910—Occupational Safety and Health Standards as published in Volume 43, No. 206 of the Federal Register on October 24, 1978 and corrected in Volume 43, No. 216 on November 7, 1978 which incorporates changes, additions, deletions and corrections made up to November 7, 1978; and subsequent changes made prior to ~~April 1, 1983~~ November 1, 1983:

—Federal Register, Vol. 48, No. 125, dated 6/28/83—“Hearing Conservation Amendment, Corrections to Final Rule.”

Part 1917—Safety and Health Standards for Marine Terminals as published in Volume 48, No. 129 of the Federal Register on July 5, 1983.

Summary of Standard: The following summary of the standards being proposed for adoption is brief; persons interested in reviewing the entire standard may obtain a copy at the address noted above.

A) “Occupational Noise Exposure, Hearing Conservation Amendment—1910.95.” Federal OSHA adopted revisions to the Hearing Conservation Amendment of the Occupational Noise Exposure Standard on March 8, 1983; those revisions were proposed for adoption by Minnesota OSHA on June 6, 1983 (7 S.R. 1723) and adopted in Minnesota on August 1, 1983 (8 S.R. 172). Federal OSHA published corrections to the revised amendment on June 28, 1983 (Federal Register, Vol. 48, dated 6/28/83, page 29687). That notice stated that as a result of the revocation of certain provisions, the amendment was renumbered and relettered to reflect these changes. The amendatory language in the final rule is being corrected to reflect OSHA’s intention to delete paragraphs (q) through (s) which were redesignated as paragraphs (n) through (p). In addition, it was necessary to make a correction to one of the provisions of Appendix E to make the Appendix consistent with the terms of 1910.95(h)(5)(ii). The second sentence in paragraph (3) of the Appendix should read: “An exhaustive calibration is required if the deviations are 15 dB or greater at any test frequency.” Paragraph (ii) of Appendix F was also corrected to read: “Subtract the values found in step (i)(B) from the value found in step (i)(A).”

By this notice, Minnesota OSHA proposes to adopt these corrections to the Hearing Conservation Amendment.

B) “Part 1917—Safety and Health Standards for Marine Terminals.” Part 1917 was adopted by Federal OSHA on July 5, 1983 as a vertical standard to apply exclusively to marine terminals; the standard is designed specifically to address hazards associated with marine cargo handling ashore. Certain sections and subparts of the General Industry Standards that will continue to apply to marine terminals have been incorporated by reference into this vertical standard. This standard is a performance-based standard; that is, it identifies a hazard and the level of control required to protect against the hazard without specifying the precise means of achieving such control. This approach allows employers greater flexibility in complying with the requirements of the standard without reducing the level of protection to employees.

The Marine Terminals Standard, Part 1917, applies to container, general cargo, roll-on roll-off, passenger, lash, menhaden, dry bulk and bulk liquid (including flammable and combustible liquid) terminals. Coverage extends to facilities on ocean coasts, the Gulf Coast, the Great Lakes and inland waterways. Coverage of Part 1917 includes all shoreside activities within a marine terminal except those which are specifically exempted in the standard. In clarifying the boundary between Part 1917 “Safety and Health Standards for Marine Terminals” and Part 1918 “Safety and Health Regulations for Longshoring” Federal OSHA has set the foot of the gangway as the limit to which Part 1918 may be applied landward; Part 1917 extends out to the ship no further than this point of the gangway.

The Marine Terminal Standard contains no additional provisions directed solely at operations in grain elevator terminals, although such terminals are covered by applicable provisions such as those for electrical equipment and powered industrial

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## PROPOSED RULES

trucks. Applicable provisions of the general industry grain elevator standard are expected to be proposed for inclusion in this Marine Terminal Standard in the future.

Part 1917 includes all shoreside activities within a marine terminal except construction activities at marine terminals, bulk liquid terminals specializing in handling of flammable and combustible liquids and fully automated bulk coal handling facilities that are contiguous to electrical power generating plants. In addition, the standard does not apply to working conditions of employees in marine terminals with respect to which the United States Coast Guard or the Office of Pipeline Safety Regulation of the Materials Transportation Bureau of the Department of Transportation exercises statutory authority.

The requirements of this standard would not apply to manufacturing and production operations which have their own docking facilities and are located within a marine terminal area; i.e., sugar refining plants, cement plants, electric power transmission facilities and smelters. These facilities are principally concerned with manufacturing rather than cargo handling and would, therefore, continue to be regulated under the General Industry Standards rather than the Marine Terminal Standard.

The Marine Terminal Standard provides guidance in defining Federal and State jurisdiction in States (including Minnesota) which did not assume enforcement responsibility for maritime industries. As a general rule, the standard sets the gate of the terminal as a clear demarcation within which Federal OSHA enforcement is virtually complete and Minnesota OSHA's jurisdiction ceases. However, Minnesota OSHA will retain responsibility for public sector (state and local government) employees working within marine terminal operations, and for any construction, production or manufacturing areas located at a marine terminal.

Part 1917 "Safety and Health Regulations for Marine Terminals" includes the following subparts:

- Subpart A—Scope and definitions.
- Subpart B—Marine Terminal Operations.
- Subpart C—Cargo Handling Gear and Equipment.
- Subpart D—Specialized Terminals.
- Subpart E—Personal Protection.
- Subpart F—Terminal Facilities.
- Subpart G—Related Terminal Operations and Equipment.

By this notice, Minnesota OSHA proposes to adopt the provisions of Part 1917.

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## 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.

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## Minnesota Energy and Economic Development Authority

### Adopted Temporary Rules for the Administration of the Energy Loan Program Under the Energy and Economic Development Authority Act

#### Temporary Rules 4 MCAR §§ 14.051-14.059 are adopted.

Pursuant to Minnesota Statutes Section 116J.923, Subd. 8, temporary rules relating to the Energy Loan Program need not be adopted in compliance with Minnesota Statute Chapter 14. These rules are effective upon adoption by the Authority and shall be effective for 360 days or until the permanent rules are adopted, whichever occurs first.

These rules were adopted at a meeting of the Authority duly and properly called and held on the 16th day of November, 1983. A quorum was present at said meeting. A majority of those present voted for Resolution 83-53, adopting said rules.

Mark B. Dayton  
Chairman, Energy and  
Economic Development Authority

### Temporary Rules

#### 4 MCAR § 14.051 [Temporary] Definitions.

A. Scope. For the purposes of 4 MCAR §§ 14.051-14.059 (Temporary) the terms defined in this rule have the meanings given them.

B. Act. "Act" means Minnesota Statutes Sections 116J.875 through 116J.926.

C. Authority. "Authority" means the Minnesota Energy and Economic Development Authority.

D. Capital Improvements. "Capital Improvements" means improvements of a capital nature including but not limited to land acquisition costs, building acquisition costs, site preparation, construction costs, architectural costs; engineering costs, equipment costs and machinery costs.

E. Commissioner. "Commissioner" means the Commissioner of the Minnesota Department of Energy and Economic Development or his or her designee.

F. Energy Development Loan. "Energy Development Loan" means a loan made by the Authority under Minnesota Statute section 116J.925 with or without the pledge of monies in the Energy Development Fund under Subd. 3.

G. Loan Recipient. "Loan Recipient" means the person or other entity who receives an energy development loan under Minnesota Statute section 116J.925.

H. Processing fees. "Processing fees" means nonrefundable fees set from time to time by the authority, which shall be set in the application. Processing fees include

- 1) application fees,
- 2) bond financing fees, and
- 3) premiums for securing bonds.

I. Project. "Project" is a capital improvement that is used in connection with a trade or business if the principal purpose of improvement is energy conservation, to reduce the usage of conventional fuels as a source of energy, or to develop Minnesota's alternative energy resources, including but not limited to insulation, boilers, furnaces, replacement burners, energy recovery equipment, energy control equipment, thermostats or the extraction, handling, transportation, conversion, processing, densification, drying or storage of a Minnesota alternative energy resource.

J. Statutory Definitions. All terms defined in the Act have the same meanings when used in 4 MCAR §§ 14.051-14.059 (Temporary).

4 MCAR § 14.052 (Temporary) Direct Energy Loan Applications. An application for an Energy Development Loan must be submitted to the commissioner on forms supplied by the commissioner. Seven copies must be submitted. No application shall be complete without the application fee as specified on the application form. The commissioner must examine each application and determine if it is complete and whether it is for a project under these rules and the Act. Those deemed not complete or not for a project shall be returned to the applicant with deficiencies noted. The Commissioner shall submit each complete application for a project to the authority for consideration.

Within 60 days of their receipt of the returned application an applicant may request the commissioner to submit the determination to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established. If the authority deems that the application is complete and for a project, the application must be evaluated under 4 MCAR § 14.053 (Temporary).

**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.

## ADOPTED RULES

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### 4 MCAR § 14.053 (Temporary) Evaluation Procedures.

An application that is deemed by the commissioner to be complete and for a project must be presented to the authority for approval or disapproval. If the authority disapproves the application, the commissioner must so notify the applicant. If the authority approves the energy development loan it must pass a resolution giving approval to the project to be financed and stating the name of the applicant, a brief description of the project, the amount of the energy development loan, the other provisions as the authority in its sole discretion deems available. The authority shall first pass a preliminary resolution if the authority intends to fund the energy development loan by issuing bonds or notes, whether or not the bonds or notes are secured by the Energy Development Fund. The preliminary resolution must not obligate the authority to issue bonds or notes or to fund any loan, but must only constitute an expression of current intention of the authority to issue bonds or notes or to fund a loan. The preliminary resolution may contain a time limit with respect to the issuance of bonds or notes, may be revoked or amended by the authority at any time prior to the final resolution of the authority without liability to the authority and may impose any conditions or requirements which the authority deems desirable. The commissioner shall notify the applicant of the authority's approval and furnish the applicant a copy of the resolution.

Upon determination by the authority that the energy development loan requested in an application which has been accepted for processing can and should be funded, the authority shall adopt a resolution approving the energy development loan. If the authority intends to fund the energy development loan by issuing bonds, the resolution must include a provision that the obligation of the authority to make the energy development loan is contingent on the ability of the authority to sell its bonds on terms which the authority, in its sole discretion, deems acceptable. In addition a resolution may contain other provisions and conditions as the authority, in its sole discretion, deems advisable.

The authority shall review and consider approval of an application for an energy development loan on the basis of effectuating the purposes of the Act, including determinations regarding the following:

- A. That the loan recipient reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan made, in accordance with the terms of the loan agreement.
- B. That the money saved or income produced by the capital improvements may reasonably be expected to exceed their total costs to the loan recipient within the greater of, the term of the energy development loan or the economic useful life of the project.
- C. That authority may reasonably expect to be able to sell the bonds if any are required for financing.
- D. That the project and its development is economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the project is reasonably assured and any feedstock availability, resource base or energy sources necessary to support the successful operation of the project is adequate.
- E. That the project will tend to facilitate a reliable supply of energy to Minnesota's households, business establishments or municipalities, tend to diminish Minnesota's dependence on imported energy sources, or serve some other energy related public purpose.
- F. That the project has a principal purpose of 1) energy conservation, 2) to reduce the usage of conventional fuels as a source of energy, or 3) to develop Minnesota's alternative energy resources.
- G. That the project satisfies the priorities and criteria of the Act.

### 4 MCAR § 14.054 (Temporary) Energy Development Loans, Limits.

The maximum principal amount of any energy development loan to be financed by the authority shall not exceed \$2.5 million.

### 4 MCAR § 14.055 (Temporary) Energy Development, Loans, Terms.

The maximum term of any energy development loan shall not exceed the average useful life of the improvement or the following limits, whichever comes first:

- A. Real Property (land or buildings): 25 years
- B. Equipment or machinery: 10 years
- C. Combination of above: Weighted average

### 4 MCAR § 14.056 Reports.

During the term of a loan, the loan recipient shall make written reports on the acquisition, construction, installation and operation of the capital improvements made with the energy development loan, to the commissioner, on a schedule determined by the Commissioner, but not less than every quarter. The commissioner shall maintain records of all loan payments made, and in the event of a late payment shall report such incident to the Authority at the next regularly scheduled meeting.

### 4 MCAR § 14.057 (Temporary) Application Content.

The Commissioner shall prepare uniform energy development loan applications forms for each program of the authority.

setting forth the information necessary for the determination of eligibility for a energy development loan under the Act and 4 MCAR § 14.051-14.059 (Temporary).

**4 MCAR § 14.058 (Temporary) Misrepresentation By Applicant.**

A. Affirmative duty. An applicant has an affirmative duty and obligation to update and correct all information provided to the authority.

B. Authority's action. If information provided to the authority by the applicant contains a material misrepresentation or omission, the authority may:

1. reject an application whether or not previously approved;
2. refuse to provide financial assistance;
3. make financial assistance provided by it immediately due and payable; or
4. revoke any preliminary or final resolution prior to the provision of financial assistance or prior to the sale of the bonds approved by it.

**4 MCAR § 14.059 (Temporary) Insurance.**

The authority may procure, acquire or pay premiums on bond or other insurance policies if such action allows a greater number of energy development loans to be made or provides some other benefit to the development of the Energy Development Loan Program, as determined by the authority.

## **Minnesota Energy and Economic Development Authority**

### **Adopted Temporary Rules for the Administration of the Energy Loan Insurance Program Under the Energy and Economic Development Authority Act**

**Temporary Rules 4 MCAR §§ 14.071-14.080 are adopted.**

Pursuant to Minnesota Statutes Section 116J.923, Subd. 8, temporary rules relating to the Energy Loan Insurance Program need not be adopted in compliance with Minnesota Statutes Chapter 14. These rules are effective upon adoption by the Authority and shall be effective for 360 days or until the permanent rules are adopted, whichever occurs first.

These rules were adopted at a meeting of the Authority duly and properly called and held on the 16th day of November, 1983. A quorum was present at said meeting. A majority of those present voted for Resolution 83-51, adopting said rules.

Mark B. Dayton  
Chairman, Energy and  
Economic Development Authority

#### **Temporary Rules**

**4 MCAR § 14.071 (Temporary) Definitions.**

A. Scope. For the purposes of 4 MCAR §§ 14.071-14.080 (Temporary) the terms defined in this rule have the meanings given them.

B. Act. "Act" means Minnesota Statutes sections 116J.88 through 116J.926.

C. Application Fee. "Application Fee" means a non-refundable fee, set from time to time by the authority which is to be submitted with each application for energy loan insurance.

D. Authority. "Authority" means the Minnesota Energy and Economic Development Authority.

E. Borrower. "Borrower" means a business which has asked a lender to make a loan for a qualified energy project.

F. Commissioner. "Commissioner" means the Commissioner of the Minnesota Department of Energy and Economic Development.

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## ADOPTED RULES

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G. Default. "Default" means the failure of the borrower to make a scheduled payment of principal and interest within 60 days of the date it is due.

H. Energy Loan Insurance. "Energy Loan Insurance" means the direct or indirect insuring, by the Authority, of a loan made by a lender for a qualified energy project, all under Minnesota Statute section 116J.924.

I. All terms defined in the Act shall have the same meanings in 4 MCAR §§ 14.071-14.080 (Temporary).

### 4 MCAR § 14.072 (Temporary) Energy Loan Insurance Applications.

Applications for energy loan insurance may only be made by a lender and shall be submitted to the commissioner on forms supplied by the commissioner. No application is complete without the application fee as specified on the application form. The commissioner shall examine each application and determine if it is complete under these rules and the act. Those deemed not complete shall be returned to the lender with deficiencies noted. The commissioner shall submit each complete application to the authority for consideration.

Within 60 days of the receipt of the returned application a lender may, request the commissioner to submit the determination to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established. If the authority deems that the application is complete, the application shall be evaluated in accordance with 4 MCAR § 14.073 (Temporary).

### 4 MCAR § 14.073 (Temporary) Evaluation Procedures.

Applications deemed complete by the commissioner must be presented to the authority for approval or disapproval. If the authority disapproves the application, the commissioner shall so notify the lender. If the authority approves the energy loan insurance it shall pass a resolution giving approval to the loan to be insured and stating the name of the lender, the name of the borrower, a brief description of the qualified energy project, the amount of the loan, the required security, the amount of insurance and other provisions as the authority in its sole discretion deems advisable. The commissioner shall notify the applicant of the authority's approval and furnish the applicant a copy of the resolution.

The authority shall review and consider approval of an application for energy loan insurance on the basis of effectuating the purposes of the Act, including determinations regarding the following:

A. That the borrower reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan made, in accordance with the terms of the loan agreement.

B. That the money saved or income produced by the qualified energy project may reasonably be expected to exceed its total costs to the borrower within the greater of, the term of the energy loan insurance or the economic useful life of the qualified energy project.

C. That the qualified energy project and its development is economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the qualified energy project is reasonably assured and any feedstock availability, resource base or energy sources necessary to support the successful operation of the qualified energy project is adequate.

D. That the qualified energy project will tend to facilitate a reliable supply of energy to Minnesota's households, business establishments or municipalities, tend to diminish Minnesota's dependence on imported energy sources, or serve some other energy related public purpose.

E. That the applicant is a business under the Act.

F. That the loan to be insured is for a qualified energy project under the Act.

G. That the qualified energy project satisfies the priorities and criteria of the Act.

### 4 MCAR § 14.074 (Temporary) Eligibility.

To be eligible for energy loan insurance under this program the lender and the borrower must conform to the following conditions:

A. The insured portion of any energy loan insured by the authority shall not exceed \$2.5 million and the maximum term of any energy loan shall not exceed the average useful life of the improvement or the following limits, whichever comes first:

- |                                       |                  |
|---------------------------------------|------------------|
| A. Real Property (land or buildings): | 25 years         |
| B. Equipment, machinery or inventory: | 10 years         |
| C. Combination of above:              | Weighted average |

B. The authority shall insure no more than 90 percent of any loan.

C. The lender shall make no provision to accelerate loan payments due to default or any other reason, without prior written approval from the Authority.

- D. The lender shall make no provision to subordinate any loan security to other liens against such property, without prior written approval from the Authority.
- E. The lender shall not acquire any preferential security, surety or insurance to protect its uninsured interest in a loan.
- F. Security shall be obtained for the full amount of the loan and shall be pro-rated between the lender and the authority.
- G. The lender shall require the borrower to adequately insure, maintain and repair all parts of the qualified energy project for the purpose of protecting the security interests of the lender and the Authority.
- H. The authority shall not be liable for delinquency charges or late fees, assessed against the borrower by the lender.
- I. The lender shall review and approve loans for qualified energy projects in accordance with generally accepted underwriting practices.
- J. The lender shall be responsible for servicing all loans it makes for qualified energy projects, either directly or by contracting with a service agent.
- K. The lender shall not sell or transfer any loan insured by the authority, without prior written approval from the authority.
- L. The lender shall, for the term of the loan insured by the authority, notify the commissioner of all principal and interest payments that are at least one week overdue. In addition the lender shall make written reports on forms provided by the Authority on the performance of the loan agreement by the borrower, for all loans insured by the authority, to the commissioner, on a schedule determined by the commissioner, but not less than annually.
- M. The aggregate principal amount of loans insured by the authority shall not at any time exceed an amount equal to the current reserves in the insurance fund multiplied by ten.
- N. The authority shall not insure any loan that carries an interest rate greater than three points over the prime interest rate at the time the application for loan insurance is made.
- O. All other things being equal, priority shall be given to those applications that allow the most leverage of the insurance fund.

#### 4 MCAR § 14.075 (Temporary) Procedures upon Default.

- A. In the event of default by the borrower on the insured loan, the lender shall file with the Commissioner, on forms supplied by the Commissioner, all claims for occurred losses within one year of the date of default.
- B. The Authority is liable for not more than the agreed percentage of the sum of the unpaid principal and the accrued interest to the date the claim is filed.
- C. In the event of default and claims by the lender arising from such default, the lender shall agree to pursue in good faith all legal rights it may have against the borrower.
- D. In the event of a default by the borrower the authority may cure default within 30 days. Amounts used to cure default shall be repaid by the borrower or deducted from any claims.
- E. If the borrower or the authority does not cure the default within 60 days, then the loan must be accelerated.
- F. Upon non-payment of the accelerated loan the lender may file a claim with the authority. The security must then be liquidated by the lender or the authority.
- G. The authority must receive a pro-rated share of all liquidation proceeds. Upon receipt, the authority shall pay the insurance claim of the lender.

#### 4 MCAR § 14.076 (Temporary) Application and Claim Forms.

- A. The commissioner shall prepare uniform energy loan insurance application forms for use by lenders setting forth the information necessary for the determination of eligibility for energy loan insurance under the act and 4 MCAR §§ 14.071-14.080 (Temporary).
- B. The commissioner shall prepare uniform energy loan insurance claim forms for use by lenders setting forth the information necessary for evaluating a claim under the act and 4 MCAR §§ 14.071-14.080 (Temporary).

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## **ADOPTED RULES**

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### **4 MCAR § 14.077 (Temporary) Prior Commitment.**

The authority may resolve to insure a loan prior to its execution or disbursement, if there is a firm commitment by the lender to make the loan upon the authority's resolution to insure. If the lender fails to enter into a loan agreement with the borrower within 90 days of the authority's resolution, the authority may revoke the resolution or reaffirm the resolution for an additional 90 day period.

### **4 MCAR § 14.078 (Temporary) Reports.**

During the term of a loan insured by the authority, the borrower shall make written reports on forms provided by the authority on the acquisition, construction, installation and operation of the qualified energy project, to the commissioner, on a schedule determined by the commissioner, but not less than annually.

### **4 MCAR § 14.079 (Temporary) Participating Lenders.**

The authority may designate a lender as a participating lender, if such lender agrees to follow the requirements of the act and 4 MCAR §§ 14.071-14.080 (Temporary) in making loans for qualified energy projects and contracts with the authority.

### **4 MCAR § 14.080 (Temporary) Misrepresentation by Applicant.**

The authority may reject an application, whether or not previously approved; may revoke a preliminary or final resolution; or may refuse to issue or revoke energy loan insurance if information provided to the authority by the applicant or the borrower contains a material misrepresentation or omission. The applicant and the borrower have an affirmative duty and obligation to update and correct all information provided to the authority.

## **Department of Health**

### **Adopted Amendments to Existing Rules of the Minnesota Merit System Governing the Compensation Plan**

The rules proposed and published at *State Register*, Volume 8, Number 8, pages 284-289, August 22, 1983 (8 S.R. 284) are adopted as proposed.

## **Minnesota Higher Education Coordinating Board**

### **Adopted Temporary Rule Governing State Scholarship and Grant-in-Aid, and Part-Time Student Grants**

The rules proposed and published at *State Register*, Volume 8, Number 11, pages 431-432, September 12, 1983 (8 S.R. 431) are adopted as proposed.

## **Minnesota Housing Finance Agency**

### **Extension of Temporary Rules Governing Income Limits for Limited Unit Developments and Eligibility for the Homeownership Assistance Fund**

Notice is hereby given that 12 MCAR §§ 3.002, 3.133 and 3.134 (temporary) which governs Income Limits for Limited Unit Developments and Eligibility for the Homeownership Assistance Fund, effective July 1, 1983 and published in the *State Register* as Adopted at Volume 8, Number 4, page 116 are being continued in effect for an additional 180 days. This continuation is in accordance with Chapter 562, 1982 Laws of Minnesota. The new expiration date for 12 MCAR §§ 3.002, 3.133 and 3.134 (temporary) will be June 25, 1984 or the date 12 MCAR §§ 3.002, 3.133 and 3.134 (temporary) are replaced by permanent rules; whichever date is earlier.

## **Minnesota Housing Finance Agency**

### **Temporary Rules Governing Energy Improvement Loan Insurance Program**

Notice is hereby given that the Minnesota Housing Finance Agency has adopted the following temporary rules for the

purpose of establishing procedures to have loans insured under the Energy Improvement Loan Insurance Program, pursuant to Subdivision 23 of Chapter 462A.05 and Chapter 462A.27 of Minnesota Statutes.

In accordance with Chapter 462A.27 of Minnesota Statutes, these temporary rules were effective commencing November 17, 1983, the date of their adoption by the Minnesota Housing Finance Agency, and will continue in effect for 360 days or until permanent rules are adopted, whichever occurs first.

December 2, 1983

James J. Solem  
Executive Director

### **Rule as Adopted (all new material)**

#### Chapter Sixteen

#### **12 MCAR § 3.180 [Temporary] Definitions.**

A. Scope. For the purposes of 12 MCAR §§ 3.180 to 3.184 [Temporary], the following terms have the meanings given them.

B. Agency. "Agency" means the Minnesota Housing Finance Agency.

C. Borrower. "Borrower" means one or more persons or legal entities.

D. Energy Improvement Loan Insurance Program. "Energy Improvement Loan Insurance Program" means a program established by Minnesota Statutes, section 462A.05, subdivision 23 to insure loans that are made by lenders to eligible borrowers to pay the costs of eligible improvements made to eligible structures.

E. Lender. "Lender" means a banking institution, savings and loan association, or other lender approved by the agency, organized under the laws of this or any other state or of the United States having an office in Minnesota.

F. Rental dwelling unit. "Rental dwelling unit" means a housing unit containing cooking, sleeping, and bathroom facilities which is occupied by a household other than the owner of the dwelling for which rent is received either in cash or in kind.

G. Insure. "Insure" means that the agency will pay to the lender a portion of defaulted loans which are insured by the Energy Improvement Loan Insurance Program, up to a maximum total amount for each lender.

#### **12 MCAR § 3.181 [Temporary] Eligible loan.**

For a loan to be insured under the Energy Improvement Loan Insurance Program, the loan must comply with 12 MCAR §§ 3.182 to 3.184.

#### **12 MCAR § 3.182 [Temporary] Eligible borrowers.**

A. Interest in property. An eligible borrower shall individually or in the aggregate, possess at least a one-third interest in either a fee title, a contract for deed, or a life estate in the property on which the structure is located.

B. Credit Review. An eligible borrower shall be a reasonable credit risk, and shall be able to pay the loan obligation, as determined by the lender that originates a loan to be insured under the Energy Improvement Loan Insurance Program.

#### **12 MCAR § 3.183 [Temporary] Eligible structures.**

A. An eligible structure shall contain one or more rental dwelling units.

B. An eligible structure shall not be in compliance with applicable energy efficiency standards.

C. Mobile homes or house trailers are not eligible structures under the Energy Improvement Loan Insurance Program.

#### **12 MCAR § 3.183 [Temporary] Eligible improvements.**

Eligible improvements are any improvements that are primarily designed to reduce energy consumption, and any structural or other directly related repairs essential to accomplish the energy conservation improvement.

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## ADOPTED RULES

### Office of the Secretary of State

#### Adopted Rules for Administrative and Automatic Election Recounts (1 MCAR §§ 2.4001-2.4012); Adopted Amendments to Rules for Voter Registration (1 MCAR §§ 2.0101-2.1101); Adopted Amendments to Rules for Preparation of the White Ballot (1 MCAR §§ 2.2101-2.2115); Adopted Amendments to Rules for Certification and Experimental and General Use of Voting Machines (1 MCAR §§ 2.3101-2.3907); Adopted Amendments to Rules for Absentee Voting and Delivery Procedures (1 MCAR §§ 2.4101-2.4205)

The rules proposed and published at *State Register*, Volume 8, Number 11, pages 435-451, September 12, 1983 (8 S.R. 435) are adopted with the following modifications:

#### Rules as Adopted

##### 1 MCAR § 2.4002 Notice.

Within 24 hours after determining that an automatic recount is required or within 48 hours of receipt of a written request for a recount and filing of a ~~bond~~ security deposit if one is required, the official in charge of the recount shall send notice to the candidates for the office to be recounted. ~~The notice may also be posted or published.~~ The notice must include the date, starting time, and location of the recount, the office to be recounted, and the name of the official performing the recount. The notice must state that the recount is open to the public, and in case of an automatic recount, that the losing candidate may waive the recount.

##### 1 MCAR § 2.4006 General procedures.

At the opening of a recount the recount official or legal advisor shall present the procedures contained in this rule for the recount. The custodian of the ballots shall make available to the recount official the precinct summary statements, the precinct boxes or containers containing the sealed envelopes of voted ballots, and any other election materials requested by the recount official. No ballots or election materials may be handled by candidates, their representatives, or members of the public. The recount official shall arrange the counting of the ballots so that the candidates ~~or~~ and their representatives may observe the ballots as they are recounted. If other election materials are handled or examined by the recount officials, the candidates and their representatives may observe them. The recount official shall ensure that public observation does not interfere with the counting of the ballots. The recount official shall prepare a summary of the recount vote by precinct.

##### 1 MCAR § 2.4007 Paper ballots.

Ballots must be recounted by precinct. The recount official shall open the sealed envelope of ballots and recount them in accordance with Minnesota Statutes, section 204C.22. If a candidate or candidate's representative disagrees with the recount official's determination of ~~how~~ whether and for whom the ballot should be counted, the ballot may be challenged. Challenges may not be automatic or frivolous and the challenger must state the basis for the challenge. The precinct name, the reason for the challenge, and the name of the candidate challenging the ballot must be marked on the back of each challenged ballot before it is placed in an envelope marked "Challenged Ballots." After the count of votes for the precinct has been determined, all ballots except the challenged ballots must be resealed in the ballot envelopes and returned with the other election materials to the ~~precinct boxes~~ custodian of the ballots. After the count of votes for all precincts has been determined, the challenged ballot envelope must be sealed and kept secure for presentation to the canvassing board.

##### 1 MCAR § 2.4008 Lever voting machines.

In precincts where lever voting machines are used, the recount official shall compare the number of votes cast for each candidate as shown on the voting machine to the number of votes for each candidate recorded by the election judges from the same voting machine. Machines must be read by precinct. Only the recount official and authorized election officials may open, read, or in any way touch or handle the voting machine. The recount official shall arrange the counting so that the candidates and their representatives may observe the recorded votes on the voting machines. Absentee paper ballots must be counted in accordance with 1 MCAR § 2.4007. After the count of votes has been determined for the precinct, the absentee ballots must be resealed in their envelope and returned with the other materials to the ~~precinct box~~ custodian of the ballots. A statement of recount results must be made for each precinct showing the machine number for each machine and the number of votes recorded for each candidate recorded on that machine.

##### 1 MCAR § 2.4009 Electronic voting systems.

In a precinct where an electronic voting system is used, the ballot cards must be recounted on the automated equipment. A

test of the program and counting equipment as provided in 1 MCAR § 2.3901 must be made immediately prior to the recount. Access to the immediate area of the automatic counter or computer is limited to the recount official and legal advisor, officials of the election jurisdiction, the candidates and their representatives, and the technical persons necessary to the operation of the counting equipment. An observation area must be provided for the public. Ballots must be recounted by precinct. Paper absentee ballots must be counted in accordance with 1 MCAR § 2.4007. A machine-produced report of recount results must be provided for each precinct. After the count of ballots for a precinct has been determined, all ballot cards and paper absentee ballots must be resealed in the ballot container and returned with the other materials to the precinct box custodian of the ballots.

**1 MCAR § 2.0301 Specifications.**

A. Printing. Voter registration cards printed for the purpose of distribution and mailing must be printed pursuant to 1.-6.:

3. ~~The ink must be red with red X's next to the line indicating the voter's name, address, month, day, and year of birth, last previous registration address, and signature. The certification must also be printed in red ink on the original voter registration card. The remainder of the card must be printed with blue ink.~~ Red ink must be used on the original card for printing the X's and the following words: "Name," "Township or City of Legal Residence," "Complete Address of Legal Residence," "Date of Birth," "Address of Your Last Registration or Check if NONE," and "Legal Signature of Voter." The certification must also be printed in red ink on the original card. The X and the words "Legal Signature of Voter" on the duplicate card must be printed in red ink. The remainder of the form must be printed in blue ink.

B. Original card. The original voter registration card must be in the following form-:

**VOTER REGISTRATION CARD. Type or print in ink.**

X Name .....	W. ....	P. ....
Last           First           Middle <u>Initial</u>	S.D. No. ....	
	<b>OFFICE USE ONLY</b>	
X Township or City of Legal Residence .....	Election Day Voter	
Township or    City    County	Registration Proof	
X Complete Address of Legal Residence (include street or rural mail route address) .....	. . . Driver's License	
.....	. . . Minn. I.D. Card	
House No. and Street or Rural Rte. No. ....	. . . Witness	
.....	. . . Prior Registration	
Apt. No. or Rural Box No.    City    Zip	. . . Ineffective Notice	
X Date of Birth .....	. . . Student I.D.	
Month    Day    Year	.....	
X Address of Your Last Registration .....	(Number if applicable)	
or		
. . . . Check if NONE	House No./Street Name or Rte./Box No. Apt. No.	
	.....	
Previous Name (If changed since last registration) only" box. ....	City            or Township            County            State            Zip	

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**ADOPTED RULES**

C. The duplicate voter registration card must be in the following form:

**DUPLICATE VOTER REGISTRATION CARD**

Sign this card—do not complete  
The information will be typed by the  
voter registration office

Name.....	Office Use Only
Township or City of Residence .....	W.....P.....
..... Township or City County	S.D. No.....
<del>Complete</del> Address of Legal Residence .....	
House Number and Street or Rural Route Number .....	
Apt. No. or Rural Box Number      City      Zip	

D. Instruction card; form. The instruction card must be in the following form:

Instructions for Voter Registration  
Read Carefully Before Registering

~~LINE~~ ITEMS INDICATED BY A RED "X" MUST BE COMPLETED BY THE REGISTRANT BEFORE THE REGISTRATION WILL BE ACCEPTED.

**1 MCAR § 2.2112 Type styles and sizes.**

The words "Put an (X) in the square opposite the name of each candidate you wish to vote for" must be printed in upper and lower case in as close to 8-point Century Bold type as practicable.

The words "STATE GENERAL ELECTION BALLOT" must be printed in upper case in as close to 18-point Franklin Gothic type as practicable.

The office and its identification must be printed in upper case in as close to 10-point Century Bold type as practicable.

The words "VOTE FOR ONE" must be printed in upper case in as close to 8-point Century Bold type as practicable.

The names of the candidates must be printed in upper case in as close to 8-point Century Bold type as practicable.

The party designation or political principle must be printed in upper and lower case in as close to 8-point Century Bold type as practicable.

The words "OFFICIAL BALLOT" on the back of the ballot must be printed in upper case in as close to 18-point ~~Cheltenham~~ Cheltenham Bold as practicable, the date in upper case in as close to 8-point Antique as practicable, and the word "Judge" in upper and lower case in as close to 10-point Caslon Old Face Italic as practicable.

**1 MCAR § 2.3703 Absentee voting, electronic voting system.**

C. Ballot labels and voting machines. Ballot labels and voting machines must be prepared as provided in 1 MCAR §§ 2.3501 C. and 2.3502. At least one voting machine must be ~~made ready~~ available for each precinct in the municipality and placed in a proper booth or voting station within the building where the office of the clerk is maintained.

**1 MCAR § 2.3801 Procedures following close of polls.**

O. Seal and certificate. The transfer case must be sealed with a ~~metal~~ seal so that it is impossible to open the case or insert or remove ballots without breaking the seal. Attached to the transfer case by the seal must be a certificate signed by the judges indicating its content, the precinct name, and the number of the ~~metal~~ seal used to seal the case. The seal number must also be recorded in the certificate of the election judges. The transfer case certificate must be in a clear plastic envelope of a type approved by the secretary of state and affixed to the case by the ~~metal~~ seal.

**1 MCAR § 2.4104 Absent voter's certificate.**

A. Form. Except as provided in D., the Absent Voter's Certificate for persons voting under Minnesota Statutes, sections 203B.04 to 203B.15 must be printed in the following form.

ABSENT VOTER'S CERTIFICATE  
OF

(legal address of absent voter)  
(print or type)

(legal address of absent voter)  
(print or type)

I swear that on election day I will meet the requirements provided by law to vote by absentee ballot.

\_\_\_\_\_  
(legal signature of voter)

I hereby certify that the above named voter exhibited the enclosed ballots to me unmarked; that in my presence and in a manner that I could not see, the voter marked the ballots and enclosed and sealed them in the ballot envelope; that if the above-named voter registered to vote by enclosing a voter registration card in the Absentee Ballot Return Envelope, then proof of residence was provided as indicated below.

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(legal signature of witness)

\_\_\_\_\_  
(print or type names of witness)

\_\_\_\_\_  
(official title if witness is an official)

\_\_\_\_\_  
(legal address if witness is an eligible voter)

FOR REGISTRATION ONLY—Indicate method used by voter to prove residence.

Method used by voter to prove residence:

Driver's License \_\_\_\_\_  
or Permit or (number)  
Receipt  
Minn. ID Card or \_\_\_\_\_  
Receipt (number)  
Registration in  
same precinct \_\_\_\_\_

Notice of Ineffective  
Registration \_\_\_\_\_  
Student ID \_\_\_\_\_  
(number)

\_\_\_\_\_  
(legal signature of registered  
voter in the precinct who  
~~swore~~ attested to residence in  
the precinct)

\_\_\_\_\_  
(legal address of registered  
voter in the precinct who  
~~swore~~ attested to residence in  
the precinct)

**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.

**ADOPTED RULES**

D. Alternative certificates. As an alternative, a county auditor may print two different versions of the absent voter's certificate. One certificate must be provided to absentee voters not previously registered to vote and must be printed as prescribed in 1 MCAR § 2.4104 A. An alternate certificate may be printed in the following form and must be provided only to absentee voters who are registered to vote at the time of application. The certificate must be printed to the specifications of C.

ABSENTEE VOTER'S CERTIFICATE  
OF

.....  
(print or type legal name of voter)

.....  
(print or type legal address of voter)

I swear that on election day I will meet the requirements provided by law to vote by absentee ballot.

.....  
(legal signature of voter)

I hereby certify that the above named voter exhibited the enclosed ballots to me unmarked; that in my presence and in such a manner that I could not see, marked the ballots and enclosed and sealed them in the ballot envelope.

.....  
(date)

.....  
(legal signature of witness)

.....  
(print or type name of witness)

.....  
(official title if witness is an official)

.....  
(legal address if witness is an eligible voter.)

1 MCAR § 2.4107 Experimental forms.

The secretary of state may provide for the experimental use of alternate forms on a trial basis.

**Department of Public Safety**

**Adopted Amendments to Existing Rules of the Minnesota Merit System Governing the Compensation Plan**

The rules proposed and published at *State Register*, Volume 8, Number 8, pages 289-292, August 22, 1983 (8 S.R. 289) are adopted as proposed.

**Department of Public Welfare**

**Adopted Amendments to Existing Rules of the Minnesota Merit System Governing the Compensation Plan**

The rules proposed and published at *State Register*, Volume 8, Number 8, pages 273-284, August 22, 1983 (8 S.R. 273) are adopted as proposed.

# OFFICIAL NOTICES

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

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

## Department of Energy and Economic Development

### Notice of Meeting

The Juvenile Justice Advisory Committee will meet on Friday, December 9, 1983 at 9:30 a.m. in Room 15, State Capitol Building, St. Paul, Minnesota.

## Ethical Practices Board

### Notice of 1984 Nonelection Year Campaign Expenditure and Contribution Limits

In accordance with Minn. Stat. §§ 10A.25, 10A.255, and 10A.27, the following nonelection year campaign expenditure and contribution limits will be applicable in calendar year 1984:

Office sought or held	Nonelection year contribution limits		Nonelection year Expenditure limits
	From individual, pol. com. or fund	From political party, in aggregate	
Governor and Lt. Governor	\$12,000	\$60,000	\$254,160
Attorney General	\$ 2,000	\$10,000	\$ 42,360
Secretary of State	\$ 1,000	\$ 5,000	\$ 21,180
State Treasurer	\$ 1,000	\$ 5,000	\$ 21,180
State Auditor	\$ 1,000	\$ 5,000	\$ 21,180
State Senator	\$ 300	\$ 1,500	\$ 6,354
State Representative*	\$ 150	\$ 750	\$ 3,177
Elective Judgeships	No limit	No limit	No limit

\* For the office of State Representative, 1984 election year campaign expenditure limits will be calculated and published by June 1, 1984, under Minn. Stat. § 10A.255.

## Health Department Bureau of Health Resources Emergency Medical Services Section

### Notice of Emergency Medical Services Licensure Application

As of December 5, 1983, a complete application for an advanced life support transportation service was submitted by Cuyuna Range District Hospital Ambulance, Crosby, Minnesota, Bill Kimbler, operator, Thomas Reek, Hospital Administrator, who now operate a basic life support transportation service in the same primary service area.

This notice is given pursuant to Minnesota Statutes 1979, Section 144.802, which requires in part that the Commissioner of Health shall publish the notice in the *State Register* at the applicant's expense; and in a newspaper in the municipality in which the service will be provided.

Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Central Minnesota Health Systems Agency, 113 Division Street, Sauk Rapids, Minnesota 56379, Mary Schmid, Executive Director, before the close of business on January 5, 1984.

After a public hearing has been held, the Health Systems Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the recommendation to the Commissioner of Health, the Commissioner shall grant or deny the license to this applicant.

## OFFICIAL NOTICES

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### **Health Department Bureau of Health Resources Emergency Medical Services Section**

#### **Notice of Emergency Medical Services Licensure Application**

As of December 5, 1983, a complete application for an advanced life support transportation service was submitted by Gold Cross-Mankato, Inc., 1005-6th Street N.W., Rochester, Minnesota (business address), 135 West Vine, Mankato, Minnesota (Base of Operation location), J. Ted Wilcox, Manager, John Perkins, President, who now operate a basic life support transportation service in the same primary service area.

This notice is given pursuant to Minnesota Statutes 1979, Section 144.802, which requires in part that the Commissioner of Health shall publish the notice in the *State Register* at the applicant's expense; and in a newspaper in the municipality in which the service will be provided.

Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Minnesota Health Systems Agency Six, 208 East Third, P.O. Box 156, Redwood Falls, Minnesota 56283, Attn: Terry Bernhardt, before the close of business on January 5, 1984.

After a public hearing has been held, the Health Systems Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the recommendation to the Commissioner of Health, the Commissioner shall grant or deny the license to this applicant.

### **Department of Labor and Industry Voluntary Apprenticeship Division**

#### **Notice of Intent to Solicit Outside Opinion**

Notice is hereby given that the State Department of Labor and Industry, Voluntary Apprenticeship Division, is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing Voluntary Apprenticeship. The promulgation of these rules is authorized by Minnesota Statutes, Section 178.041 which requires the agency to provide procedures for voluntary apprenticeship program admin.

The State Department of Labor and Industry, Voluntary Apprenticeship Division 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:

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

Oral statements will be received during regular business hours over the telephone at (612) 296-2342 and in person at the above address.

All statements of information and comment shall be accepted until January 3, 1984. Any written material received by the State Department of Labor and Industry, Voluntary Apprenticeship Division, shall become part of the record in the event that the rules are promulgated.

Steve Keefe  
Commissioner of Labor and Industry

## Minnesota Job Skills Partnership

### Notice of Board of Directors Meeting, Minnesota Job Skills Partnership Board

Minnesota Job Skills Partnership Board of Directors Meeting  
 Monday, December 12, 1983  
 1:00 p.m.–5:00 p.m.  
 Room 15 State Capitol  
 For more information, contact Monica Manning, 296-1755.

## Minnesota State Retirement System

### Notice of Board of Directors Regular Meeting

A meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, December 16, 1983 at 8:30 A.M. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

## Department of Natural Resources

### Notice of Hearing About Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Becker County

Notice is hereby given that a public hearing in the above-entitled matter pursuant to Minn. Stat. § 105.391, subd. 1 (1980) will be held in the Commissioner's Room, Courthouse, Detroit Lakes, MN, on December 13, 1983, commencing at 9:30 A.M. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Curtis Ballard, Route 1, Ogema, MN, Department of Natural Resources representative Merlyn Wesloh, 2115 Birchmont Beach Road NE, Bemidji, MN, and County Soil and Water Conservation District representative Russell Okeson, Route 2, Box 140, Detroit Lakes, MN.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minn. Stat. § 105.391 (1980) and the criteria contained in Minn. Stat. § 105.37, subs. 14 and 15 (1980). Please take notice that waters listed in para. A.2. may sometimes also be considered for designation, in the alternative, as wetlands.

#### A. PUBLIC WATERS

##### 1. Watercourses.

<u>Name</u>	<u>Section</u>	<u>From</u> <u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
+ Unnamed to C.D. 15 29		141 (Callaway)	41	26	141 (Riceville)	42

##### 2. Preliminarily designated under section 105.37, subs. 14(a)-14(h).

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
3-124: Dumbbell Lake	22,23	140 (Shell Lake)	38
3-792: Unnamed	19;24	142 (Spring Creek; Walworth)	42;43

#### B. WETLANDS

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
3-1123: Unnamed + late petition	5	140 (Hamden)	42

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69 (1982), as amended by 1983 Minnesota Laws, Chapter 247.

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minn. Stat. § 105.42, subd. 1 (1980). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available

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## OFFICIAL NOTICES

prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minn. Stat. § 105.391, subds. 10 and 12 (1980).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to

Sandra M. Fecht  
DNR—Division of Waters  
Third Floor, Space Center Building  
444 Lafayette Road  
St. Paul, MN 55101  
Telephone: 612/297-2401.

Nov. 23, 1983

Joseph N. Alexander, Commissioner  
Department of Natural Resources

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## 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.

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## Department of Administration

### Notice of Request for Proposals for Rental of Space

The Department of Administration desires proposals for the rental of approximately 99,000 usable square feet of office space, 8,000 square feet of other specialized space and 13,000 usable square feet of storage type space for the Department of Natural Resources to be located within an 8 minute driving time from the State Capitol.

Contact: Department of Administration  
Real Estate Management Division  
50 Sherburne Avenue, Room G-22  
St. Paul, Minnesota 55155  
Telephone: (612) 296-6674

Proposals must be submitted by 4:30 p.m. (CST) on Friday, December 23, 1983.

## Minnesota Zoological Garden

### Request for Proposals for Computer, Marketing, Mailing and Creative/Copy Services

#### Project Tasks:

1. Provide a computer-personalized list composed of a mix of rented subscription and mail order lists, demographic lists, and possibly exchanged lists.

2. Insure the development of one unduplicated list of prospect names through a computer based merge and purge of selected lists.
3. Develop a creative strategy based on analysis of past campaigns, current member profile, upcoming promotions, market position and the like.
4. Provide a solicitation package that includes a monarch size computer letter with double reply slip, package insert and membership decal similar to adhesive decals created for other zoo membership programs, e.g., Audubon Park.
5. Provide for all copy and creative services, mechanical artwork, materials and production and mailing services.
6. Provide a detailed final report that includes an analysis of results with recommendations for future programs. Additionally, each list used should be individually coded and analyzed for response level by zip code.
7. Responder may propose additional tasks or activities if they will substantially improve the results of the project.

CONTACT PERSON: David Bender

FINAL SUBMISSION DATE: December 26, 1983

## **State Designer Selection Board**

### **Request for Proposal for Design of Physical Education/Recreational Sports Complex**

The State Designer Selection Board has been requested to select designer for a Physical Education/Recreation Sports Complex at the University of Minnesota-Duluth, Minnesota. Design firms who wish to be considered for this project should submit proposals on or before 4:00 P.M., January 4, 1984, to George Iwan, Executive Secretary, State Designer Selection Board, Room G-10, Administration Building, St. Paul, Minnesota 55155-1495.

The proposal must conform to the following:

1. Six copies of the proposal will be required.
2. All data must be on 8½" × 11" sheets, soft bound.
3. The cover sheet of the proposal must be clearly labeled with the project number, as listed in number 7 below, together with the designer's firm name, address, telephone number and the name of the contact person.
4. The proposal should consist of the following information in the order indicated below:
  - a) Number and name of project.
  - b) Identity of firm and an indication of its legal status, i.e. corporation, partnership, etc.
  - c) Names of the persons who would be directly responsible for the major elements of the work, including consultants, together with brief descriptions of their qualifications. If the applicant chooses to list projects which are relevant in type, scale, or character to the project at hand, the person's role in the project must be identified.
  - d) A commitment to enter the work promptly and to assign the people listed in "c" above and to supply other necessary staff.
  - e) A list of design projects in process or completed in the three (3) years prior to the date of this request for agencies or institutions of the State of Minnesota, including the University of Minnesota, by the firm(s) listed in "b" together with the approximate fees associated with each project.
  - f) A section of not more than fourteen (14) faces containing graphic material (photos, plans, drawings, etc.) as evidence of the firm's qualification for the work. The graphic material must be identified. It must be work in which the personnel listed in "c" have not significant participation and their roles must be clearly described.

The proposal shall consist of no more than twenty (20) faces. Proposals not conforming to the parameters set forth in this request will be disqualified and discarded without further examination.

5. In accordance with the provisions of Minnesota Statutes, 1981 Supplement, Section 363.073; for all contracts estimated to be in excess of \$50,000, all responders having more than 20 full-time employees at any time during the previous 12 months must have an affirmative action plan approved by the Commissioner of Human Rights before a proposal may be accepted. Your proposal will not be accepted unless it includes one of the following:

- a) A copy of your firm's current certificate of compliance issued by the Commissioner of Human Rights; or
- b) A statement certifying that your firm has a current certificate of compliance issued by the Commissioner of Human Rights; or

## STATE CONTRACTS

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c) A statement certifying that your firm has not had more than 20 full-time employees in Minnesota at any time during the previous 12 months.

6. Design firms wishing to have their proposals returned after the Board's review must follow one of the following procedures:

a) Enclose a self-address stamped postal card with the proposals. Design firms will be notified when material is ready to be picked up. Design firms will have two (2) weeks to pick up their proposals, after which time the proposals will be discarded.

b) Enclose a self-addressed stamped mailing envelope with the proposals. When the Board has completed its review, proposals will be returned using this envelope.

In accordance with existing statute, the Board will retain one copy of each proposal submitted.

Any questions concerning the Board's procedures or their schedule for the project herein described may be referred to George Iwan at (612) 296-4656.

NOTE: The 1983 session of the legislature appropriated \$663,000.00 for the preparation of working drawings for the University of Minnesota-Duluth Physical Education/Recreation Sports Complex. It is the desire of the University of Minnesota that two separate designers be selected for this project—an architect and a landscape architect. In both cases, the consultants will be required to prepare in cooperation with the owner's Building Advisory Committee for the owner's approval schematic design presentation proposals, design development drawings and specifications, construction drawings and specifications for public bidding. Once funds for construction are approved, the construction phase services will include the review of shop drawings, construction observation, and the production of a set of "as-built" drawings.

Fees for both designers will be negotiated on the basis of general guidelines for similar type projects.

### 7.a) PROJECT-17-83

Physical Education/Recreational Sports Complex  
University of Minnesota-Duluth  
Architectural Design Services  
Department of Education

#### Project Description:

The project includes new construction, renovation, and equipment additions and replacements.

#### New Construction:

This includes an ice facility multi-purpose building that would include: ice sheet 200' × 85', changing space, storage, men's and women's toilets, seating for 100 spectators and six racquetball courts.

#### Renovation, Equipment Additions & Replacements:

Renovation and additions to the Physical Education Building will include:

1) Locker rooms for men and women of Physical Education/Recreational, Athletics, General Faculty and Staff, Physical Education/Athletics Faculty and Staff, Recreational Sports Staff.

2) Support space adjacent to and within the locker rooms such as: weight rooms, equipment check-out areas, laundry area, training room, first aid room, multi-purpose classroom, storage space, saunas.

3) Renovation in gymnasium will include replacement of the floor, bleachers, lighting, major baskets and divided door in PE 100-150, refinishing of the floor in PE 145 and an addition of 2,500 sq. ft. of storage space with 500 sq. ft. on the same floor.

4) Office Space—7,580 nsf.

5) Support space adjacent to the office space—approximately 2,500 nsf.

6) General and special purpose classrooms, human performance laboratory—5,500 nsf.

7) Renovation in the swimming pool area will include some miscellaneous repairs and improvements.

#### Improvements in Fieldhouse:

Improvements will include addition of storage space, bleachers for 200 seats, public address system and floor repair.

### 7.b) Project—18-83

Physical Education/Recreational Sports Complex  
University of Minnesota-Duluth  
Landscape Architect Design Services  
Department of Education

Project Description: Landscape Architect:

Outdoor development will need to accommodate the following:

- 1) Five lighted tennis courts with all-weather playing surface.
- 2) Four football fields (two regular, two touch).
- 3) One baseball field.
- 4) One track and field sports group.
- 5) Two general purpose sports fields.
- 6) Four activity areas and a fitness trail.

The running track, stadium seats and present field lights at the existing stadium are to be reconditioned.

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**SUPREME COURT****Decisions Filed Wednesday, November 23, 1983**

**Compiled by Wayne O. Tschimperle, Clerk**

**CX-83-165 Joseph P. Neuberger, Relator, v. Hennepin County Workhouse, and Employers Insurance of Wausau, Respondents, and Western Life Insurance Company, Mutual Benefit Life Insurance Company, and North American Life and Casualty Company, Intervenors.**

Where an employer is primarily responsible for the employee's failure to file a claim petition within the statute of limitations, the employer is estopped from pleading the statutory time bar against the injured worker.

Reversed and remanded. Scott, J.

**C6-82-928 State of Minnesota, Respondent, v. Audie Fox, Appellant.**

1-2. Defendant's contentions on appeal that the trial court erred in (a) its jury instruction under the peace officer statute and (b) its refusal to instruct the jury regarding third-degree murder are without merit. As to the jury instruction under the peace officer statute, defendant failed to object at trial and therefore forfeited his right to contest this issue on appeal. As to the third-degree murder instruction, the trial court did not err in refusing to give this instruction where defendant clearly intended to shoot only the particular victim who was shot.

Affirmed. Peterson, J.

**C1-83-474 Marie Meyer, Appellant, v. John Hancock Mutual Insurance Company, Respondent, Kraft, Inc., Respondent.**

Decedent retired employee, survived by plaintiff, had fulfilled the requisite years of vesting service under the terms of the employer's group life insurance policy.

Reversed. Peterson, J.

**CX-82-544 Mary Linda Pautz, natural mother and guardian of Melanie Elizabeth Pautz, a minor child, et al., Respondents, v. Cal-Ros, Inc., et al., Appellants, v. Dennis A. Pautz, Respondent.**

A liquor vendor who incurs liability pursuant to the Civil Damage Act, Minn. Stat. § 340.95, for damages on account of bodily injury sustained by a spouse, child, parent, or other dependent of an intoxicated person as a result of the wrongful conduct of the intoxicated relative is entitled to contribution from the intoxicated relative with respect to the damages for which they are commonly liable.

Reversed and remanded. Coyne, J.

Dissenting, Todd, J., Peterson, J., and Yetka, J.

# TAX COURT

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

## State of Minnesota

## Tax Court

Northern States Power Company,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

### FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGEMENT

In the Matter of an Appeal from the Commissioner's Order Dated July 13, 1982, Relating to the Ad Valorem Taxes of Appellant for the Assessments Commencing January 2, 1978.

Docket No. 3675

The above matter was heard by the Minnesota Tax Court, Judge Carl A. Jensen presiding, on October 13, 1983, at the Government Center, Minneapolis, Minnesota. A Stipulation of Facts and briefs had previously been filed. The Court heard the oral arguments of the parties.

Gary D. Blackford on Popham, Haik, Schnobrich, Kaufman and Doty, Ltd., appeared on behalf of Appellant.

C. H. Luther, Deputy Attorney General, appeared on behalf of Appellee.

### Syllabus

Noise pollution is included within the meaning of the property tax exemption contained in Minnesota Statutes 272.02(14), which reads as follows:

Real and personal property used primarily for the abatement and control of air, water, or land pollution to the extent that it is so used, other than real property used primarily as a solid waste disposal site.

### Findings of Fact

1. By application dated September 30, 1976, and supplemented August 11, 1977, Northern States Power Company (NSP) applied to the Minnesota Pollution Control Agency (MPCA) for an operating permit for its Sherburne County Generating Plant.

2. By application dated August 17, 1979, NSP applied to the Minnesota Commissioner of Revenue for an order exempting from property taxation certain induced draft fan silencers at its Sherburne County Generating Plant as "property used primarily for the abatement and control of air, water or land pollution" pursuant to the provisions of Minn. Stat. § 272.02, subd. 1(14).

3. On August 25, 1981, the MPCA issued to NSP an operating permit for the Sherburne County Generating Plant. Under Part II.A.4, the operating permit required that NSP's generating plant comply with the noise standards set forth in MPCA's Rule NPC 2.

4. Solely in order to comply with the noise standards set forth in MPCA's Rule NPC 2, NSP installed induced draft fan silencers in its Sherburne County Generating Plant. Those induced draft fan silencers were the ones for which NSP had requested property tax exemption as mentioned in paragraph 2 above.

5. On July 13, 1982, the Commissioner of Revenue issued his order denying NSP's application for property tax exemption of the induced draft fan silencers.

6. The induced draft silencers referred to in paragraph 2 above are exempt from property taxation under Minn. Stat. § 272.02, subd. 1(14), which reads as follows:

(14) Real and personal property used primarily for the abatement and control of air, water, or land pollution to the extent that it is so used, other than real property used primarily as a solid waste disposal site.

### Conclusions of Law

1. The induced draft fan silencers at Appellant's Sherburne County generating plant are declared to be exempt from property taxation and the Order of the Commissioner of Revenue dated July 13, 1982, denying the application for exemption is hereby reversed.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

November 21, 1983

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

**Memorandum**

The question involved in this appeal is whether or not certain induced draft fan silencers at Appellant's Sherburne County generating plant are included in the exemption contained in Minn. Stat. 272.02, subd. 1(14), which reads as follows:

(14) Real and personal property used primarily for the abatement and control of air, water, or land pollution to the extent that it is so used, other than real property used primarily as solid waste disposal site.

Appellant applied for the exemption on August 17, 1979, and the Commissioner issued his order of denial on July 13, 1982.

The Commissioner takes the position that the statute does not specifically include the words "noise pollution".

A simple reading of the words "air, water, or land pollution" would appear to indicate that they include all kinds of pollution. There is nothing else that can be polluted.

The Commissioner argues, however, that since the words "noise pollution" are not included that therefore noise pollution equipment is not included in the exemption.

The Commissioner contends that in order for noise pollution equipment to be included the statute would have to read "for the abatement and control of air, water, land, or noise pollution". This would not make sense since you cannot pollute noise. The exemption is given to anything that controls pollution of air, water or land.

Certainly everyone would agree that noise is a pollutant, but it is more difficult to say what it pollutes. We are inclined to think that it definitely pollutes the air since the noise is caused by sound waves in the air. Since sound waves can be transmitted in water and land, it could probably be said that noise pollutes water and land also.

The Commissioner's principal argument is based on Minn. Stat. § 116.06, which includes a definition for air pollution, land pollution and noise pollution. For some reason there is no definition for water pollution although many other words and phrases are defined.

Minnesota Chapter 116 relates to the pollution control agency. Section 116.01 states the policy of the statute as follows:

To meet the variety and complexity of problems relating to water, air and land pollution in the areas of the state affected thereby, and to achieve a reasonable degree of purity of water, air and land resources of the state consistent with the maximum enjoyment and use thereof and furtherance of the welfare of the people of the state, it is in the public interest that there be established a Pollution Control Agency.

This speaks of the purity of water, air and land and apparently is intended to be all inclusive.

The Commissioner contends that since noise pollution was added to the definitions in 116.06 sometime after the original chapter was passed that this indicates that noise pollution is not involved in the purity of water, air and land resources. We find this argument difficult to comprehend.

The Pollution Control Agency apparently has always treated noise pollution in its air pollution control permits which seems to be logical.

We interpret Minn. Stat. § 272.02, subd. 1(14) as exempting any property used primarily for the abatement and control of any kind of pollution.

The Appellant argued that it would be unconstitutional not to include noise pollution if other kinds of pollution are exempt. Although it is not necessary for this decision to make a finding on this, it does appear to us that if the legislature specifically wished to exclude noise pollution equipment, it would have the power to do so, but we do not find any intention by the legislature to so exclude noise pollution equipment from the exemption allowed.

C.A.J.

**State of Minnesota  
County of Goodhue**

Harold R. Nielsen,  
Petitioner,

v.

County of Goodhue,  
Respondent.

**Tax Court  
First Judicial District**

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER FOR JUDGMENT

File No. 30075

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, on October 31, 1983, at the County Courthouse in Goodhue County.

# TAX COURT

Franklin D. Peterson, attorney, appeared on behalf of Petitioner.

Gary Fridell, County Attorney of Goodhue County, appeared on behalf of Respondent.

## Syllabus

The costs of a part of a structure which is in the process of construction will be given substantial weight since the income approach would obviously be inappropriate and it is unlikely that there would be any comparable sales.

## Findings of Fact

1. This is an appeal from the assessor's valuation of real estate situated in the City of Kenyon, Goodhue County, Minnesota, designated as Plat 600, Parcel 4200, which is more fully described in the Exhibit A attached to the Petition.

2. The assessor placed a total value of \$194,000 on the property, which consisted of \$140,000 for an incompleated structure and \$54,000 for the land. Petitioner did not question the value placed on the land.

3. The structures when completed were to be two identical buildings containing elderly housing units.

4. The project was federally financed through the Farm Home Administration and because of this, there were certain restrictions placed on the sale of the property during the 20-year period beginning August 30, 1982.

5. The assessor valued the property on the basis of cost data obtained from Marshall-Stevens reference book. On the basis of a visual inspection of the property on February 5, 1983, and on the basis of information obtained from workmen, he concluded that the structures were between 25% and 30% complete on January 2, 1983, and to be on the safe side he used 20% of the completed cost of such a structure according to Marshall-Stevens.

6. Petitioner had purchased the land in December 1980 for \$67,000.

7. A request and authorization for payment, Exhibit 4, made by the contractor on January 5, 1983, indicated that the cost of the work completed and materials delivered to the site as of January 5, 1983, was \$226,525, which was 43% of the total project cost. The evidence indicated that some of the work completed consisted of materials delivered to the site but not yet incorporated into the structure. The principal items in this category appear to be \$45,000 for lumber, \$18,500 for plumbing and \$15,700 for wiring, making a total of \$79,200. Even if the total of these items is deducted from the completed work, the completed work would be \$147,325. No attempt was made to show what portion of these items was actually not yet incorporated into the building, but it would appear that a substantial part of these items had been incorporated into the building.

8. We find that the property had a market value on January 2, 1983, of at least \$194,000, the value placed on the property by the assessor.

## Conclusions of Law

1. The assessor's market value placed on the property as of January 2, 1983, in the amount of \$194,000 is not greater than the market value of the property and there should be no change in the assessor's value.

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

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

November 18, 1983

## Memorandum

This appeal involved the valuation of property on which there were two structures in the process of completion. The assessor had placed a value of \$194,000 on the property which consisted of \$54,000 for the land and \$140,000 as the value of two incompleated structures as of January 2, 1983.

It appears that the valuation placed on the property by the assessor was fairly conservative. Exhibit 4 was a request for partial payment by the contractor which showed that the value of the work completed as of January 5, 1983, was \$226,525 which was 43% of the total project. There was testimony to indicate that some of this value consisted of property that had been delivered to the construction site but not incorporated into the structures. Even if a very generous allowance were to be attributed to such unincorporated personal property, it would appear that the cost of that part of the structures that had been completed would be at least \$175,000 and probably over \$200,000.

Although it was not clearly indicated, it did appear that the Petitioner may have thought that only the cost of the above ground structure should be considered. Much of the completed work consisted of general requirements, grading and excavation, footings and slabs, plumbing, and other similar items. Such items are includable in the cost when the cost approach is being considered.

There are usually three approaches to value—cost, income and market value based on comparable sales. Where the structure is in the process of construction, the only reasonable basis to determine market value is on the basis of the cost of the incompleting structure on the assessment date.

C.A.J.

**State of Minnesota  
County of Hennepin**

Earl R. and Helen L. Bolier,  
Petitioners,

v.

County of Hennepin,  
Respondent.

**Tax Court  
Regular Division**

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER FOR JUDGMENT

File No. 2253

The above matter came on for hearing at the Hennepin County Government Center on November 14, 1983, before the Honorable Earl B. Gustafson, Judge of the Tax Court.

Earl R. Bolier appeared pro se.

Richard T. Todd, Assistant Hennepin County Attorney, appeared for the Respondent.

**Syllabus**

1. On an appeal from the valuation of property for assessment purposes, the assessor's values are prima facie correct and must be affirmed if no proof to the contrary is introduced.
2. A claim of unequal taxation must be supported by evidence that property in the same class and in the same taxing district has been systematically and substantially undervalued when compared with the subject property.

**Findings of Fact**

1. Petitioners have sufficient interest in the property to maintain their petition; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties hereto.
2. The subject property is the homestead of Petitioners in the City of Maple Grove at 7170 Annapolis Circle described as follows:  
Lot 14, Block 2, Timber Crest Forest, 2nd Addition, according to the recorded plat thereof. Property Identification No. 27-119-22 31 0055
3. The taxes at issue are the real estate taxes on the subject property payable in the year 1983, which Petitioners claim were assessed at a value greater than its actual or market value.
4. The assessment date in question is January 2, 1982.
5. The property was purchased in October, 1977, for a purchase price of \$79,181.
6. The assessor's estimated market value as of January 2, 1982, is \$105,000.
7. Petitioners offered no evidence regarding the market value of the subject property as of the assessment date.
8. Petitioners offered no evidence of a pattern of systematic and substantial undervaluation of other property within the same taxing district when compared to the subject property.
9. The Court finds the subject property is not assessed at greater than market value.
10. The attached Memorandum is made a part of these Findings of Fact.

**Conclusions of Law**

1. The assessor's estimated market value of \$105,000 is affirmed.

November 22, 1983

By the Court,  
Earl B. Gustafson, Judge  
Minnesota Tax Court

**Memorandum**

The subject property is the homestead of Petitioners in a new suburban residential neighborhood near Fish Lake in the City of Maple Grove, Hennepin County. The home was purchased for approximately \$80,000 in 1977. The assessor's estimated market value (EMV) as of January 2, 1982, for taxes payable in 1983 is \$105,000. Petitioner claims this value is excessive and brings this petition under Minn. Stat. Chapter 278 to have the EMV reduced.

At trial, Petitioner, Earl R. Bolier, declined to offer any opinion as to the market value of his property on the assessment date. No real estate appraiser was called and therefore the record is devoid of any evidence to rebut the prima facie validity of the assessor's EMV of \$105,000.

Respondent offered evidence that the actual market value was approximately \$115,000. The home immediately to the north of Petitioners, which he described as very similar in size and value, sold for \$124,000 in June, 1982.

The Court concludes that the actual market value in 1982 was something in excess of \$105,000 so this value should be affirmed. This Court has no authority to raise an assessor's EMV. In re *McCannel, Northwest Airlines, et al*, 301 N.W. 2d 910, 925 (Minn. 1980).

E.B.G.

**Errata**

At *State Register*, Volume 8, Number 22, November 28, 1983, page 1263, under the Department of Energy and Economic Development, Community Development Division's Adopted Rules Governing the Community Development Block Grant Program, MCAR § 1.500-1.550, insert the following:

"The rules as proposed and published at *State Register*, Volume 8, Number 13, pages 518-523, September 26, 1983 (8 S.R. 518) are adopted with the following modifications:"

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