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STATE REGISTER

STATE OF MINNESOTA

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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 9		
20	Monday Oct 29	Friday Nov 2	Monday Nov 12
21	Friday Nov 2	Friday Nov 9	Monday Nov 19
22	Friday Nov 9	Friday Nov 16	Monday Nov 26
23	Friday Nov 16	Monday Nov 26	Monday Dec 3

*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.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $3.25 per copy.

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

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

Cover graphic: *Minnesota State Capitol*, ink drawing by Ric James.

CONTENTS

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 also.

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 Rules.
- Proposed emergency rules.
- Withdrawal of proposed rules (option; not required).

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the *State Register* unless an agency requests this.)
- Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
- Notice of adoption of emergency rules.
- Adopted amendments to emergency rules (changes made since the proposed version was published).
- Extensions of emergency rules beyond their original effective date.

The OFFICIAL NOTICES section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
- Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before July 31, 1983 are published in the *Minnesota Rules 1983*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after July 31, 1983 will be included in a supplement scheduled for publication in mid-1984. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the *State Register* but are generally not published in the *Minnesota Rules 1983* due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

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

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

The listings are arranged in the same order as the table of contents of the *Minnesota Rules 1983*.

MCAR AMENDMENTS AND ADDITIONS

MINNESOTA RULES AMENDMENTS AND ADDITIONS

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Rules Governing Political Subdivision Self-Insurance Pools

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 in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. 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 twenty-five (25) 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 Richard G. Gomsrud, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, sections 471.617, subd. 2 and 471.982, subd. 2. 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 Rose Weiner 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 Richard Gomsrud, General Counsel, or Rose Weiner, Secretary at the above address.

Reynard Harp,
Deputy Commissioner
for
Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

CHAPTER 2785
DEPARTMENT OF COMMERCE
POLITICAL SUBDIVISION SELF-INSURANCE POOLS

2785.0100 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 2785.0100 to 2785.1600, the terms defined in this part have the meanings given them.

Subp. 2. Board. "Board" means a pool's board of trustees.

Subd. 3. Bylaws. "Bylaws" means the statements and organizational documents adopted by a plan that prescribe its purpose, government, and administration.

Subp. 4. Commissioner. "Commissioner" means the commissioner of the Department of Commerce.

Subp. 5. Coverage. "Coverage" means the right of a covered person or entity to benefits or indemnification provided directly or indirectly by a pool, by virtue of the coverage document.

Subp. 6. Coverage document. "Coverage document" means the document specifying the characteristics and duration of coverage provided through a pool. Characteristics of coverage include the kind of loss or benefit that the pool will reimburse, subject to specific exclusions, limitations, or deductibles.

Subp. 7. Days. "Days" means calendar days.

Subp. 8. Employee health benefit pool. "Employee health benefit pool" means a pool that covers employee health benefits, disability benefits, or both.

Subp. 9. Financial administrator. "Financial administrator" means an entity employing persons trained and experienced in money management and investments, and possessing no less than five years' experience as an organization in money management and investments with demonstrated competence.

Subp. 10. Fund year. "Fund year" means a pool's 12-month fiscal year.

Subp. 11. Member. "Member" means a political subdivision or private employer member of a pool. Reference to actions of a member include actions on behalf of the member's covered employees or other covered persons.

Subp. 12. Political subdivision. "Political subdivision," in reference to employee health benefit pools, means the same as defined in Minnesota Statutes, section 471.617, subdivision 2, and in reference to all other pools means the same as defined in Minnesota Statutes, section 471.98, subdivision 2.

Subp. 13. Pool. "Pool" means any self-insurance fund or agreement for the reciprocal assumption of risk established by or among two or more political subdivisions for coverage of their respective risks, but also includes private employers for the purpose of a public/private pool. Reference to actions of a pool include actions by the pool's designated agents.

Subp. 14. Premium. "Premium" means the amount paid or to be paid for coverage by members. Premium does not include assessments or penalties.

Subp. 15. Public/private pool. "Public/private pool" means a workers' compensation pool including as members a political subdivision and one or more private employers.

Subp. 16. Runoff pool. "Runoff pool" means a pool that no longer has authority to self-insure, but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage.

Subp. 17. Self-insure. "Self-insure" means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

Subp. 18. Service company. "Service company" means an entity licensed under Minnesota Statutes, section 60A.23, subdivision 8, and rules adopted thereunder, as a self-insurance plan administrator, or an entity named in Minnesota Statutes, section 60A.23, subdivision 8, paragraph (1), clause (a) or (b).

Subp. 19. Sponsoring association. "Sponsoring association" means a statewide nonprofit organization of political

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subdivisions that sponsors or organizes a pool, and which has as its primary purpose providing services to Minnesota political subdivisions that are not related to insurance or self-insurance.

Subp. 20. Surplus. "Surplus" means a pool's total assets minus total liabilities. Surplus includes paid-in capital and retained earnings. The amount of a pool's surplus is determined according to the instructions provided for a pool's financial statements.

Subp. 21. Workers' compensation pool. "Workers' compensation pool" means a pool that covers workers' compensation liability, employer's liability, or both.

2785.0200 PURPOSE.

Parts 2785.0100 to 2785.1600 govern the formation, operation, and dissolution of political subdivision self-insurance pools. They are intended to ensure that the financial integrity of these people is maintained, and that they are administered competently and equitably.

2785.0300 SCOPE.

The following are subject to the requirements of parts 2785.0100 to 2785.1600:

A. political subdivision self-insurance pools;

B. political subdivisions of Minnesota that form, join, or leave a self-insurance pool;

C. private Minnesota employers that form, join, or leave a self-insurance pool including a political subdivision; and

D. service companies that provide services to a pool.

2785.0400 BYLAWS.

Subpart 1. Content. Bylaws may contain any provisions that do not conflict with parts 2785.0100 to 2785.1600. Bylaws must, at a minimum, contain the following provisions:

A. the pool's name, purpose, fiscal year, and initial date of existence;

B. definitions of key terms;

C. a statement of the powers, duties, and responsibilities assigned to the board, the service company, the financial administrator, and reserved by the membership;

D. the number, term of office, and method of selection and replacement of the members of the board;

E. the procedure for calling board meetings;

F. the method of periodic selection and review of the service company and financial administrator;

G. the procedure for amending the bylaws;

H. the procedure for resolving disputes among members, which must not include submitting disputes to the commissioner;

I. the criteria for membership in the pool, including standards of financial integrity and loss experience;

J. the procedure for admitting new members to the pool;

K. the criteria for expelling members from the pool, including nonpayment of premium;

L. the procedure for withdrawal and expulsion of members from the pool, including the minimum required period of membership;

M. a statement of the coverages the pool intends to provide;

N. the procedure for adding and dropping a member's participation in a particular coverage;

O. a schedule for premium payments by members and, if applicable, their employees;

P. the procedure for changing premium rates;

Q. the procedure for levying and collecting an assessment;

R. a statement of who may have access to pool funds and for what purposes;

S. the procedure for distributing dividends, and the eligibility of past members and past covered employees for dividends; and

T. the procedure for distributing any assets remaining upon the pool's dissolution.

Subp. 2. Adoption and changes. The bylaws must be adopted in writing by all initial members. Authority to change the bylaws must reside with the membership or the board, according to the terms of the bylaws. Authority to change the bylaws may not be delegated to a contractor or other outside party. The pool must file bylaw changes with the commissioner not less than 30 days after adoption.

2785.0500 BOARD.

Subpart 1. Structure. A pool must have a board of trustees consisting of at least three persons, who must be officials or employees of the members or of the sponsoring association, if any. No member may have more than one representative on the board, unless the pool has only two members, in which case each member must have at least one representative on the board. The sponsoring association must not have majority representation on the board. No trustee may be an employee, agent, or representative of the pool's service company, financial administrator, insurer, or other person or entity under contract with the pool, except that a trustee may be an employee, agent, or representative of the sponsoring association. Trustees shall be elected by the membership, or appointed by the sponsoring association. One trustee shall be designated the chairperson. The board shall meet no less than four times annually.

Subp. 2. Duties. The board is responsible for operation of the pool. The board may delegate some or all of its responsibilities to the chairperson or other trustees between board meetings. All responsibilities of the pool not expressly delegated by the board or parts 2785.0100 to 2785.1600 are the responsibility of the board. The board shall, at a minimum, have the following responsibilities:

A. fiduciary responsibility for the pool's operation and financial condition;

B. selection, supervision, and evaluation of the service company, financial administrator, accountant, insurer, and any other contractors;

C. on the basis of the pool's overall financial condition, authorizing changes in premium, reserve, or investment practices; and declaring assessments or dividends as appropriate;

D. approving all reports concerning the pool's operations and status to the commissioner;

E. monitoring delinquent premiums, loss experience, and the financial condition of individual members; and authorizing disciplinary action or expulsion as appropriate;

F. authorizing acceptance or rejection of applications for membership;

G. as permitted by the bylaws, making or recommending changes to the bylaws for the improvement of the pool's operation and financial integrity; and

H. monitoring the pool's compliance with all statutes and rules governing its operation.

2785.0600 APPLICATION.

Subpart 1. Initial application. Two or more political subdivisions may apply to the commissioner for authority to form a self-insurance pool. One or more private employers and a political division may apply for authority to form a public/private pool, if statutorily authorized. Applications must be submitted on forms prescribed by the commissioner. Applications must be submitted not later than 60 days prior to the requested date for authority to self-insure. Applications submitted without responses to certain questions, or with responses that are inadequate, must be returned to the applicant for resubmission. Applications not returned to the applicant for resubmission within 14 days of receipt must be approved or disapproved within 60 days of receipt.

Subp. 2. Prior existing pools. Pools in existence at the time parts 2785.0100 to 2785.1600 are effective must submit their initial application for self-insurance authority no later than July 1, 1985.

Subp. 3. Renewal application. Existing plans may apply for renewal of their self-insurance authority by so indicating on their annual status report preceding expiration of their current authority. Applications must be approved or disapproved within 60 days of receipt of the status report.

Subp. 4. Merger. Two or more existing pools may apply to merge, provided the merged pool assumes all financial and regulatory obligations of the former pools. Merger applications are subject to the same requirements as prospective new pools.

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Subp. 5. Approval or disapproval. Upon approval of an application, the commissioner shall issue an order authorizing the proposed self-insurance pool. Initial authorization orders for new pools shall be effective for 27 months after the initial authorization date. Renewal authorization orders shall be for two-year periods. Approval of applications for authority to self-insure must be granted if the proposed pool conforms with:

A. all requirements of parts 2785.0100 to 2785.1600;

B. all applicable requirements of Minnesota insurance statutes and rules; as described in part 2785.0100, subpart 2;

C. Minnesota Statutes, sections 72A.19 to 72A.32; and

D. all applicable requirements of other Minnesota statutes and rules.

2785.0700 ENDING SELF-INSURANCE, RUNOFF PERIOD, AND PLAN DISSOLUTION.

Subpart 1. Ending self-insurance authority. A pool may decide to end its self-insurance authority and cease to provide coverage effective at the end of a fund year. The pool must notify the commissioner within 14 days of such a decision. A pool may not elect to end its self-insurance authority less than 45 days prior to the end of the fund year in question. Voluntary ending of self-insurance authority does not constitute pool dissolution under subpart 4.

Subp. 2. Revocation of self-insurance authority. The commissioner shall, by order, revoke the authority of a pool to self-insure upon no less than ten days' written notice if any of the following events occur or conditions develop, and if the commissioner judges them to be material:

A. failure of the pool to comply with parts 2785.0100 to 2785.1600, or with other applicable Minnesota statutes or rules;

B. failure of the pool to comply with any lawful order of the commissioner;

C. commission by the pool of an unfair or deceptive practice as defined in Minnesota Statutes, sections 72A.17 to 72A.32, or in related rules; or

D. a deterioration of the pool's financial integrity to the extent that its present or future ability to meet obligations promptly and in full is or will be significantly impaired.

Subp. 3. Runoff period. A pool shall continue to exist as a runoff after its authority to self-insure has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage. A runoff pool must continue to comply with parts 2785.0100 to 2785.1600, and with other applicable Minnesota statutes and rules. Authority to exist as a runoff plan is open-ended, and does not require renewal of authority under part 2785.0600, subpart 3.

Subp. 4. Dissolution. A pool, including a runoff pool, that desires to cease existence shall apply to the commissioner for authorization to dissolve. Applications must be approved or disapproved within 60 days of receipt. Dissolution without authorization is prohibited and void, and does not absolve a pool or runoff pool from fulfilling its continuing obligations, and does not absolve its members from assessments under part 2785.1400, subpart 3. The pool's assets at dissolution must be distributed to the members and covered persons as provided in the bylaws. Authorization to dissolve must be granted if either of the following conditions are met:

A. the pool demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

B. the pool has obtained an irrevocable commitment from a licensed insurer that provides for payment of all outstanding liabilities, and for providing all related services, including payment of claims, preparation of reports, and administration of transactions associated with the period when the pool provided coverage.

2785.0800 ADMINISTRATION.

Subpart 1. Service company. A pool must contract with a service company for services necessary to the pool's day-to-day operations, except services and responsibilities reserved to the members, the board, individual trustees, the financial administrator, the accountant, or other contractors. The service company must have expertise in and be licensed for the coverages the pool provides. Subject to the oversight of the board, the service company shall, directly or through subcontractors, provide all services directly related to the administration of coverages. These services include but are not limited to:

A. accounting and recordkeeping;

B. billing and collection of premiums and assessments;

C. claims investigation, settlement, and reserving;

D. claims payment, including claims wholly or partially subject to stop-loss insurance or member deductibles;

E. general administration;

F. loss control, safety programs, or both; and

G. underwriting.

Subp. 2. Financial administrator. A pool must contract with a financial administrator for investment of the pool's assets and other financial or accounting services. No staff member of the financial administrator may be an owner, officer, employee, or agent of the service company, or of a subcontractor of the service company.

Subp. 3. Recordkeeping. A pool must maintain within Minnesota all records necessary to verify the accuracy and completeness of all reports submitted to the commissioner under part 2785.1600. The commissioner may examine the pool's records in order to ascertain the pool's compliance with parts 2785.0100 to 2785.1600, and with other applicable statutes and rules. All records concerning claims, reserves, financial transactions, and other matters necessary for the pool's operations are the pool's property.

2785.0900 MEMBERSHIP.

Subpart 1. Availability. Pool membership is open only to political subdivisions of Minnesota, except that private employers may join a public/private pool. A pool may establish other nondiscriminatory criteria for membership. Nothing in parts 2785.0100 to 2785.1600 requires a pool to accept members that do not meet the pool's underwriting standards.

Subp. 2. Joining. New members must be admitted according to the standards and procedures specified in the bylaws. Membership is not effective before the applicant has signed a membership agreement affirming its commitment to comply with the bylaws and parts 2785.0100 to 2785.1600, including joint and several liability. The membership agreement must disclose that under the rules governing the pool, the board of trustees, or the Minnesota commissioner of commerce may order that an assessment be levied against the members, if necessary to maintain the pool's sound financial condition.

Subp. 3. Public/private pool membership. Only Minnesota domiciled employers whose primary places of employment are within 40 miles of a political subdivision pool member are eligible for membership in a public/private pool. If all political subdivisions elect to withdraw from a public/private pool, the pool's authority to self-insure is terminated simultaneously with the date of the last political division's withdrawal. As a condition of a private employer's membership in a public/private pool, the employer must furnish a surety bond in a form prescribed by the commissioner. The pool shall be the bond's obligee, conditioned on the employer's paying all premiums, penalties, and assessments when due. The bond must be maintained on file with the commissioner until the end of the period of continuing liability, or until the pool terminates, whichever occurs first. The period of continuing liability is as defined in part 2785.1400, subpart 1. The bond must provide a penalty amount no less than:

A. the greatest one-year premium paid by the member for the coverage through the pool during the past three years;

B. if the member has not belonged to the pool for one full fund year, the annual premium to be paid by the member for the first year's coverage; or

C. if the member no longer belongs to the pool, the greatest one-year premium paid by the past member during the final three years in the pool.

Subp. 4. Leaving. The membership agreement must state the procedures for leaving the pool. A member must notify the pool of its desire to withdraw not less than 30 days before the date upon which it desires to withdraw. If the board determines that the withdrawal would cause the pool to be in violation of the minimum annual premium requirement or would compromise the pool's financial integrity, the pool must notify the commissioner as required under part 2785.1100, subpart 2. Withdrawal is prohibited and void unless:

A. the member has belonged to the pool continuously for the period required by the bylaws, which shall provide for:

(1) a minimum of one complete fund year, in the case of employee health benefit pools; or

(2) a minimum of three complete fund years, in the case of all other pools; and

B. all outstanding premiums and assessments owed by the member have been paid.

Subp. 5. Expulsion. No less often than annually a pool must compare the status and experience of each member with the criteria for expulsion in the bylaws. Expulsion is subject to the procedures and requirements for voluntary withdrawal of a member, except that:

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A. a member may be expelled with outstanding premiums or assessments owing; and

B. a member may be expelled notwithstanding that the minimum term of membership has not been satisfied.

Subp. 6. Runoff pool membership. After revocation of a pool's self-insurance authority or after a pool notifies the commissioner in writing of its intent to end self-insurance authority voluntarily, no member may join, leave, or be expelled from the pool.

2785.1000 COVERAGE.

Subpart 1. Distinct pool types. Employee health benefit pools and workers' compensation pools may provide only the coverages specified in the definitions for that pool type. Other pools may not provide any of the coverages permitted for employee health benefit pools and workers' compensation pools.

Subp. 2. Coverage administration and related requirements. Pools are subject to the requirements of Minnesota statutes and rules applicable to insurance companies providing insurance in Minnesota similar to the pool's coverage. These include requirements contained in Minnesota Statutes, chapters 60A, 62A, 62E, 65A, 65B, 70A, 72A, 72C, 79, and 176, and rules adopted under these chapters, concerning:

A. filing and requesting approval for coverage documents and rates;

B. coverage document content and language;

C. mandated benefits, including coverage conversion and continuation requirements;

D. coverage administration, including notices to covered parties;

E. underwriting;

F. claim administration; and

G. other practices affecting coverage.

Subp. 3. Uniform underwriting. All coverages offered by a pool must be available according to the same underwriting standards to all members and, if applicable, to all members' employees.

Subp. 4. Continuing responsibility. Notwithstanding cancellation or termination of coverage to a particular member, ceasing to offer a particular coverage, or ending or revocation of authority to self-insure, a pool retains indefinitely all responsibilities to members and other covered persons associated with the period while coverage was in force. This responsibility ceases only after a pool dissolves under part 2785.0700, subpart 4.

2785.1100 PREMIUMS, CASH FLOW, AND DIVIDENDS.

Subpart 1. Minimum annual premium. All pools must have and maintain an annual premium volume of no less than $300,000. A pool or prospective pool may apply to the commissioner for reduction of the minimum annual premium requirement, stating the amount of reduction requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that the lesser premium volume would not compromise its financial integrity and stability.

Subp. 2. Monitoring premium volume. A pool must monitor its premium volume. If premium decreases to an annualized volume of less than $400,000, or less than 133 percent of the amount approved pursuant to subpart 1, the pool must notify the commissioner at monthly intervals of the then-current annualized premium volume, until the annualized volume exceeds $400,000. "Annualized premium volume" means the gross premiums written for the previous 12 months. If premium decreases to an annualized volume of less than $300,000, or a lesser amount if approved pursuant to subpart 1, the pool must notify the commissioner:

A. of its intent to end its self-insurance authority; or

B. of its proposal for restoring compliance with subpart 1. If the proposal is unlikely, in the commissioner's judgment, to restore compliance with subpart 1 within 90 days, or if after 90 days the pool continues to be out of compliance, the commissioner shall revoke the pool's self-insurance authority.

Subp. 3. Surplus or stop-loss advancement. A pool may protect itself from cash flow difficulties by methods including but not limited to the following:

A. establishing and maintaining a surplus consisting of funds contributed by members and the pool's retained earnings; or

B. obtaining language in the pool's stop-loss insurance policy requiring the insurer to advance funds to the pool if the policy limits have been or are likely to be exceeded. The funds may be considered an advance against the insurer's potential liability for the policy period.

Subp. 4. New pool deposit premium. As a condition for authorization to self-insure a prospective pool must submit evidence that an initial premium payment has been made. The following requirements also apply to premium payments in a pool's first year of operation:

A. For all pools except employee health benefit pools, the initial payment must equal no less than 50 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in three or more equal installments at equal intervals throughout the year.

B. For employee health benefit pools, the initial premium payment must be no less than 25 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in six or more equal installments at equal intervals throughout the year.

C. A prospective pool may apply to the commissioner for reduction of the new pool deposit premium requirement, stating the payment schedule requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that a less restrictive payment schedule would not compromise its ability to pay large claims promptly during its first year of operation. The commissioner must consider arrangements the pool has made under subpart 3 in evaluating the application.

Subp. 5. Premium payments. A pool may permit installment payments if payment is always due before premium is to be earned. A pool shall promptly take appropriate action to collect premiums, assessments, or penalties that are past due. Collection costs are the obligation of the delinquent member.

Subp. 6. Dividend procedures. A pool may declare and pay a dividend or distribution from its surplus only if:

A. the dividend would not cause the pool's surplus to be negative;

B. the pool does not have a stop-loss advancement liability or other borrowed money; and

C. for workers' compensation pools, the dividend will not be paid sooner than one year after it is declared, and at the time of payment the conditions of items A and B are fulfilled.

2785.1200 RESERVES.

A pool must establish reserves for all incurred losses, both reported and unreported, and for unearned premiums. To the extent that the amount of a loss is uncertain, the reserve must be set conservatively. As the degree of uncertainty concerning a loss is changed by new events or information, the amount of the reserve must be changed appropriately. Accounting for reserves must be as required by the financial statement forms and instructions, under part 2785.1600, subpart 2.

2785.1300 STOP-LOSS INSURANCE.

Subpart 1. Purchase and change. A pool may purchase stop-loss insurance for indemnification of a portion of its losses. If the pool determines that a stop-loss insurance policy will be terminated or modified causing a violation of subpart 2, or otherwise compromising the pool's financial integrity, the pool must notify the commissioner prior to the termination or modification taking effect. The pool must indicate what corrective action will be taken.

Subp. 2. Required stop-loss coverage. All pools except employee health benefit pools are restricted in the amount of potential liability they may retain on any one incident to ten percent of its annual premium volume during the most recent fund year, plus 20 percent of its surplus. The restriction for pools without a year's experience is based on the pool's estimated premium volume during the first full fund year. All liability in excess of the restricted amount must be assumed by a stop-loss insurer under contract with the pool and licensed to do business in Minnesota. For employee health benefit pools required to maintain individual excess stop-loss insurance under Minnesota Statutes, section 471.617, subdivision 3, the self-insured retention per person per year shall not exceed $50,000.

Subp. 3. Return of liability. No liability transferred to an insurer under subpart 2 may, directly or indirectly, be returned to a pool or a member.

2785.1400 DEFICIT AND ASSESSMENTS.

Subpart 1. Joint and several liability. Each current member is jointly and severally liable for all liabilities and expenses of the

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pool. Each past member is jointly and severally liable for all liabilities and expenses of the pool during the period of continuing liability. After the period of continuing liability, past members are no longer jointly and severally liable for the pool's liabilities and expenses, except as provided in subpart 2. The period of continuing liability for past members varies according to the type of pool, as follows:

A. for employee health benefit pools, past members continue to be jointly and severally liable for three complete fund years after leaving the pool;

B. for workers' compensation pools, past members continue to be jointly and severally liable for ten complete fund years after leaving the pool; and

C. for all other pools, past members continue to be jointly and severally liable for five complete fund years after leaving the pool.

Subp. 2. Runoff pool liability. If a pool's self-insurance authority is ended under part 2785.0700, subpart 1 or 2, members and past members continue to be jointly and severally liable for the pool's liabilities and expenses until final pool dissolution, as follows:

A. all members at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved; and

B. all past members that were jointly and severally liable under the standards of subpart 1 at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved.

Subp. 3. Correction of a deficit. If the board determines that the pool's total liabilities exceed its total assets, the board must restore a positive surplus within 90 days after the determination. A deficit may be corrected using one or more of the following types of assessments. A pool may, in a particular case, elect to assess some but not all jointly and severally liable members and past members. Methods of assessment must not exclude liable members or past members arbitrarily, or impose arbitrary amounts in relation to the amounts imposed on other members and past members. The bylaws may state what methods of assessment are preferred. The commissioner must order an assessment to correct a deficit using the procedure described in item A, if the board fails to do so when required.

A. All jointly and severally liable members and past members may be assessed proportionately to their share of the total premiums paid and owed during the assessment base period. The assessment base period at the time of a pool's self-insurance authority ending under part 2785.0700, subpart 1 or 2, shall remain the basis of assessments under this item until final pool dissolution. The assessment base period includes all completed quarters of the current fund year, and includes the following periods depending on the type of pool:

(1) for employee health benefit pools, the most recent three complete fund years;

(2) for workers' compensation pools, the most recent ten complete fund years; and

(3) for all other pools, the most recent five complete fund years.

B. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby members and past members with worse than average losses pay more than those with better loss experience.

C. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby current members pay more than past members.

D. Jointly and severally liable members and past members may be assessed accordingly to a formula stated in the bylaws, whereby members belonging to the pool in poor loss years pay more than members belonging to the pool in better loss years.

E. Jointly and severally liable members and past members may be assessed according to any formula stated in the bylaws, including combinations of items A to D, if the formula is consistent with the requirements of this part.

Subp. 4. Assessment to increase surplus. The board may assess current members in order to increase the surplus. The assessment may be made without the existence of a deficit in order to forestall a deficit, or otherwise to improve the pool's financial strength. The assessment may be calculated using any reasonable procedure, consistent with the pool's bylaws.

2785.1500 FINANCIAL INTEGRITY.

Subpart 1. Fidelity bond. All contractors and individuals who handle pool funds or who will have authority to gain access to pool funds, including board members, must be covered by a fidelity bond. The bond must cover losses from dishonesty, robbery, forgery or alteration, misplacement, or mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be $300,000 or more. The pool must purchase a fidelity bond covering the required contractors and individuals, or submit separate proof of coverage for all required contractors and individuals not covered under the plan's bond.

Subp. 2. Integrity of assets. A pool's assets:

A. must not be commingled with the assets of any member;

B. must not be loaned to anyone for any purpose or used as security for a loan, except as permitted under subpart 5 for investments;

C. must be employed solely for the purposes stated in the bylaws, and in compliance with parts 2785.0100 to 2785.1600 and related statutes; and

D. must not be considered the property or right of any member or covered person, except:

(1) for benefits under the coverage documents;

(2) for dividends declared in accordance with part 2785.1100, subpart 5; and

(3) for a portion of the assets remaining after the plan's dissolution, in accordance with part 2785.0700, subpart 4.

Subp. 3. Sources and uses of funds. A pool may expend funds for payment of losses and expenses, and for other costs customarily borne by insurers under conventional insurance policies in Minnesota. Except as provided in part 2785.1100, subpart 3, item B, a pool must not borrow money or issue debt instruments. A pool may bring legal suits to collect delinquent debts. A pool must not obtain funds through subrogation of the rights of covered persons. A pool may receive funds only from:

A. its members as premiums, assessments, or penalties;

B. its insurers or indemnitors pursuant to insurance or indemnification agreements;

C. dividends, interest, or the proceeds of sale of investments;

D. refunds of excess payments;

E. coordination of benefits with other insurance or group self-insurance coverages;

F. collection of money owed to the pool;

G. the special compensation fund under Minnesota Statutes, chapter 176, for workers' compensation pools only; or

H. indemnification under Minnesota Statutes, section 176.181, subdivision 5, for workers' compensation pools only. Public/private pools are eligible for indemnification under this part only in the amount of the public members' liability to the pool.

Subp. 4. Separate accounts. A pool may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the service company, its authorized subcontractors, or the financial administrator, as appropriate to the account's purpose. The amount in these special accounts must not exceed an amount reasonably sufficient to pay the claims or expenses for which it is established. All monetary and investment assets not in such accounts must be under the control of the pool's financial administrator.

Subp. 5. Investments. A pool's investments are subject to Minnesota Statutes, section 475.66, as regards both permitted types of investments, maturities, and depositories. In addition, a pool must not invest in securities or debt of a member, or a member's parent, subsidiary, or affiliate; or any person or entity under contract with the pool. For this purpose, the state of Minnesota is not considered a political subdivision's parent or affiliate.

Subp. 6. Monitoring financial condition. The board must regularly monitor the pool's revenues, expenses, and loss development, and evaluate its current and expected financial condition. The board must attempt in good faith to maintain or restore the pool's sound financial condition, using any means at its disposal. These means include but are not limited to adjusting premium rates, underwriting standards, dividend rates, expulsion standards, and other powers granted in parts 2785.0100 to 2785.1600 and the bylaws. If the commissioner judges that the board's actions are inadequate to maintain or restore the pool's sound financial condition, the commissioner shall, as appropriate: order an increase in the premium rates; revoke the pool's self-insurance authority; or order that an assessment be levied against the members.

2785.1600 REPORTING.

Subpart 1. Financial statements. A pool must prepare annual financial statements containing a balance sheet; a statement of revenues, expenses, and surplus; a statement of changes in financial position; and a schedule of investments. The statements must be prepared on forms and according to instructions prescribed by the commissioner. The financial statements must be

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filed with the commissioner no later than March 1 of each year, or if the pool's fund year is other than the calendar year, no later than 60 days after the end of the pool's fund year. The financial statements must be audited by an independent certified public accountant, and the auditor's report must be submitted no later than 180 days after the end of the pool's fund year. For employee health benefit pools, the first annual financial statement and every second annual financial statement thereafter must be accompanied by a statement from a qualified actuary concerning the balance sheet items that are based on actuarial assumptions and methods. The form of the actuary's statement and the scope of the actuarial review must be according to instructions prescribed by the commissioner.

Subp. 2. Quarterly reports. If the commissioner determines that a pool's financial integrity is deteriorating, to the extent that if then-current trends continue for two years or less, the pool's ability to meet obligations promptly and in full will be significantly impaired, the commissioner shall require the pool to file quarterly reports with the commissioner no later than 30 days after the end of the first, second, and third quarters of each fund year. The commissioner shall remove the requirement to file quarterly reports if the conditions warranting the requirement no longer exist. Quarterly reports must contain statements of the pool's:

A. current total cash on hand and on deposit, and total investment;

B. current total reserve for unearned and advance premiums, and total reserve for outstanding losses reported and unreported;

C. dividends declared and dividends paid during the quarter;

D. gross premiums written during the quarter;

E. losses paid during the quarter;

F. current total members; and

G. any other matters the commissioner requests that the board address.

Subp. 3. Extraordinary audits. Upon sufficient cause, the commissioner shall require a pool to investigate the accuracy of one or more entries on its financial statements or quarterly reports, and to report its findings. If necessary for the investigation's purposes, the commissioner shall require a pool to hire a qualified actuary, claims specialist, auditor, or other specialist as appropriate to the type of entry being investigated. If warranted by the investigation's findings, the commissioner shall require changes in the pool's reserving, accounting, or recordkeeping practices. These extraordinary audits are in addition to the commissioner's rights to examine self-insurance pools directly, as applicable to insurance companies under Minnesota Statutes, sections 60A.03, subdivisions 3, 5, and 6, and 60A.031. Sufficient cause includes:

A. losses that appear significantly different than losses experienced by other self-insurance pools or insurance companies for similar coverage;

B. unusual changes in the amount of entries from period to period that are not sufficiently explained by the financial statements or footnotes; or

C. other indications that a pool's financial statements may not accurately reflect the pool's status and transactions.

Subp. 4. Annual status report. No later than 60 days after the end of a pool's fund year, a pool must file with the commissioner a statement describing any changes that have occurred in the information filed with its initial application for authority to self-insure, or with the pool's most recent status report. The status report must be filed in a form and according to instructions prescribed by the commissioner.

Subp. 5. Penalty. The financial statements and status report required under subparts 1 and 4 are considered together to be a pool's annual statement. This filing and other filings required by parts 2785.0100 to 2785.1600 and related statutes are subject to Minnesota Statutes, section 72A.061, as applicable to licensed insurance companies for comparable filings.

Department of Commerce

Proposed Rules Relating to Nonrenewal of Homeowners Insurance

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, sec. 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

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 twenty-five (25) 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, sec. 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Bill Kyle, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, sec. 65A.29. 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 Richard Gomsrud, Department Counsel, 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 Richard Gomsrud, General Counsel or Rose Weiner, Secretary, at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2880.0050 APPLICABILITY.

Parts 2880.0050 to 2880.0800 do not apply to commercial dwellings or farms, nor to policies under joint underwriting agreements where one of the insurers is a township mutual.

2880.0100 DEFINITIONS.

Subpart 1. Scope. For the purpose of parts 2880.0050 to 2880.0800, the terms defined in this part have the meanings given them.

Subp. 2. Commercial dwelling. "Commercial dwelling" means a building used primarily to produce income, such as a motel, hotel, or apartment house, but does not include an owner-occupied dwelling of four units or less.

Subp. 3. Experience period. "Experience period" means the period of three years immediately preceding the insurer's nonrenewal of a policy of homeowners insurance.

Subp. 4. Multiline contract. "Multiline contract" means a single insurance contract which provides coverage for homeowners insurance and for at least one other line of insurance authorized under Minnesota Statutes, section 60A.06, subdivision 9.

Subp. 5. Nonrenewal. "Nonrenewal" means an action taken by an insurer on an existing policy, at the end of the policy period, to:

A. terminate the policy;

B. reduce the policy's coverage, unless all the existing policies and those policies to be accepted as new business by the insurer in this state will have the same coverages;

C. increase the policy's deductible, unless all existing policies and those policies to be accepted as new business in this state, by the insurer, will provide for the same higher deductible; or

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D. transfer a named insured from one rating plan to another within the same company, or from one company to another within a group of insurance companies, if the transfer results in a higher premium. A surcharge applied to a premium for a condition which increases the potential for loss, or the deletion of a claims free discount do not constitute a transfer of rating plans.

A policy of homeowners insurance written for a term longer than one year is not subject to nonrenewal until the end of the policy term even if the insurer can rerate the policy annually.

Subp. 6. Nonrenewal notice. "Nonrenewal notice" means a written notice to a named insured clearly and expressly informing the named insured of the insurer's intention not to renew the policy as of the renewal date.

Subp. 7. Policy of homeowners insurance. "Policy of homeowners insurance" means a policy providing property and liability coverage on dwellings and includes policies which are generally described as homeowners policies, mobile homeowners policies, dwelling owners policies, condominium owners policies, and tenants policies.

2880.0200 GROUNDS FOR NONRENEWAL.

No insurer shall refuse to renew a policy of homeowners insurance unless based on one or more reasons which shall be limited to the following:

A. The reasons stated for cancellation in Minnesota Statutes, section 65A.01, subdivision 3a.

B. Use of the premises for an illegal activity.

C. The termination of an agency contract, except as provided under Minnesota Statutes, section 60A.171, unless the insurer assigns the terminated agent's book of business to another agent. The insurer must transfer the policy to another agent if the insured makes a written request prior to the nonrenewal date. Notification of this right must be included in the nonrenewal notice.

D. Violations of local laws or ordinances which increase the possibility of a loss.

E. Refusal of the insured to eliminate known conditions which increase the potential for loss after notification by the insurer that the condition must be removed. Before a nonrenewal notice can be issued under this item, two written requests stating the condition to remove and the reason why the condition increases the potential for loss must be sent to the insured. The first notice must inform the insured as to any time limits for compliance. The second notice must inform the insured of the intent to nonrenew the policy if the condition is not removed.

F. A substantial change in the quality or availability of fire protection services.

G. If the insured has two or more losses during the experience period, but not to include:

(1) losses caused by natural causes including but not limited to lightning, wind, or hail; or

(2) losses for which no payment was made by the insurer; or

(3) losses for which the insurer recovers 80 percent or more of the payment through subrogation.

H. The insurer ceases to write homeowners insurance in Minnesota.

I. Failure of the named insured to provide necessary underwriting information upon written request from the insurer, provided that before a nonrenewal notice can be issued under this item, two written requests asking for the information must be sent to the insured stating the reasons why the information is necessary. The second request must inform the insured of the intent to nonrenew the policy if the information is not received.

J. If real property taxes owing on the insured property have been delinquent for two or more years and continue delinquent at the time notice of nonrenewal is issued.

K. The named insured no longer owns the property or resides at the insured location, unless the spouse resides at the insured location and retains ownership, in which event the spouse will be endorsed onto the policy as the named insured.

If an insurer has grounds to nonrenew a homeowners policy on a primary residence of a named insured, homeowners policies on secondary residences of the insured may also be nonrenewed. Grounds for nonrenewing homeowners policies on secondary residences cannot be used to nonrenew a homeowners policy on the primary residence. If an insured fails to renew the primary residence with an insurer, the insurer may nonrenew the secondary residence.

L. The reasons stated in Minnesota Statutes, section 72A.20, subdivision 13.

2880.0300 WAIVER OF PENALTIES.

If an insurer encounters a situation in which the insurer believes that the nonrenewal is not addressed by parts 2880.0050 to 2880.0800, the insurer may seek a waiver of penalties under the following procedure:

A. Notify the commissioner in writing, at least 90 days prior to the policy renewal date, by referring to this part and by stating the reasons for the proposed nonrenewal action.

B. If the commissioner determines that the situation is not covered by parts 2880.0050 to 2880.0800, but warrants a nonrenewal, the penalties in part 2880.0800 must be waived. The commissioner may decline to render an opinion.

C. The waiver of penalty decision must be retained by the insurer. A copy of the waiver of penalty decision must be returned to the commissioner by the insurer with its response to a written complaint made by the insured.

D. The commissioner's decision regarding waiver of penalties will have no bearing on the final decision as to the approval or disapproval of the nonrenewal action.

E. There is no precedential value in the commissioner's action under this part and each request must be judged on individual considerations.

2880.0400 NONRENEWAL NOTICES.

A nonrenewal notice must be on a form approved by the department of commerce and the following information must be furnished to the insured on the front of the notice:

A. The specific reasons for the termination, which if based on loss experience must include the date of the loss, the type of loss, and amount of payment.

B. A statement advising the insured of the right of complaint with wording such as: "Minnesota law and rules limit the reasons for which your homeowners insurance policy may be nonrenewed, reduced as to the limits of coverage or coverage eliminated, or for which the policy may be canceled. If you believe this termination notice is in violation of Minnesota law or rule, you may, within 30 days of receiving this notice, send a written letter of complaint to the Commissioner of Commerce."

C. A statement advising the insured of the availability of insurance from the Minnesota Property Insurance Placement Facility with wording such as: "You may be eligible to obtain insurance coverage through the Minnesota Property Insurance Placement Facility. Your agent can assist you in arranging this coverage."

The named insured cannot waive his or her right to receive a nonrenewal notice under the nonrenewal statutes and parts 2880.0050 to 2880.0800.

2880.0500 VALIDITY OF NOTICE AND NONRENEWAL.

No nonrenewal and no notice of nonrenewal of a homeowners policy is valid unless done in compliance with parts 2880.0050 to 2880.0800.

2880.0600 RECORDKEEPING.

Each insurance company shall keep a register of all nonrenewals and company initiated cancellations, except those for nonpayment of premium. The register must be retained for three years and be available to the commissioner of commerce, or a designee, during business hours at the insurance company's place of business.

2880.0700 NONRENEWAL OF MULTILINE CONTRACTS.

Nothing in parts 2880.0050 to 2880.0800 prohibits an insurance company from nonrenewing a multiline insurance contract. However, if parts 2880.0050 to 2880.0800 prevent nonrenewal of the homeowners insurance portion of the contract, then the insurance company shall issue to the named insured a policy of homeowners insurance providing coverage as included in the multiline contract.

2880.0800 PENALTIES.

Subpart 1. Generally. An insurer failing to comply with parts 2880.0050 to 2880.0800 is subject to the following penalties during each calendar year period:

A. first violation, $100;

B. second violation, $300; and

C. third and subsequent violations, $500.

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Subp. 2. Waiver. Monetary penalties will not be levied if the commissioner determines that the nonrenewal notice was based on a good faith judgment supported by evidence that was in the possession of the insurer at the time of the sending of the nonrenewal notice, or if the nonrenewal was subject to the waiver of penalty provisions in part 2880.0300.

Subp. 3. Additional penalties. Nothing contained in parts 2880.0050 to 2880.0800 prohibits the commissioner of commerce from applying additional penalties or remedies as may be imposed under Minnesota Statutes, chapter 72A.

Department of Commerce

Withdrawal of Proposed Rules Relating to Nonrenewal of Homeowner Insurance

Notice is hereby given that the Proposed Rules Relating to Nonrenewal of Homeowners Insurance published in the *State Register* on Monday, October 8, 1984 at 9 S.R. 721 to 9 S.R. 724 are hereby withdrawn. New prepared rules will be published in their stead.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce Financial Examinations Division

Proposed Rules Relating to the Operation of Commercial Banks

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Commissioner of Commerce proposes to adopt amendments to the above rules without a public hearing. The Commissioner has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 to 14.28. The amendments including repeal of certain rules are needed to respond to changes already made in state and federal law relating to banking and with particular attention to removing burdensome or unnecessary requirements.

Persons interested in these rules shall have 30 days after publication in the *State Register* to submit comments in support of or in opposition to the proposed amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Commissioner and do not result in a substantial change to the proposed language.

Unless twenty-five or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. §§ 14.14 to 14.20, and a notice of the public hearing will be published in the *State Register*.

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

David A. Shern, Deputy Commissioner
Division of Financial Examinations
Department of Commerce
500 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101
(612) 296-2135

Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

Authority for the adoption of these rules is contained in Minn. Stat. § 46.01, subdivision 2. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and which identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Deputy Commissioner upon request.

Upon adoption of the final rules without a public hearing, the proposed amendments, this notice, the statement of need and reasonableness, all written comments reviewed, 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 revise a copy of the final rules as proposed for adoption, should submit a written statement of such request to the Deputy Commissioner. Notice of the date of submission of the proposed rules to the Attorney General for review will be mailed to any person requesting to receive the notice. Copies of this notice and the proposed rules are available and may be obtained by contacting Linda Phillips, at the Department of Commerce, 500 Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101, (612) 297-2548.

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

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2675.0200 FINANCIAL STATEMENTS.

~~All unsecured loans of $500 or more in banks of less than $1,000,000 in deposits and unsecured loans of $1,000 or more in banks of $1,000,000 or more of deposits shall be supported by~~ Signed, current financial statements of the borrowers, endorsers, or guarantors~~. Such current financial information is also~~ are required on loans which the commissioner or ~~his~~ an examiner ~~considers~~ determines to be inadequately secured ~~or those which are secured by a chattel mortgage on farm livestock and/or machinery. Such~~ Financial statements ~~shall be~~ are considered current when renewed at least annually ~~as long as such loans remain unpaid at such amounts~~.

2675.0300 DELINQUENT LOANS.

Subpart 1. When delinquent. ~~Any note, including a real estate mortgage note, in the absence of a properly executed extension, will be considered past due the next day after maturity, unless subsequent interest has been received, in which case the date to which interest has been paid becomes the maturity date. If that date has gone by, the entire note becomes "B" paper, except that after six months it becomes "A" paper.~~ For the purposes of the report of examination of banks, loans, leases, and unplanned overdrafts are considered delinquent and are separated into two distinct groupings as follows:

A. "A" paper consists of all loans and leases which are six months past their maturity, or on which interest or principal is due and unpaid for six months or more, including unplanned overdrafts.

B. "B" paper consists of all other loans and leases which are 30 days, but less than six months past their maturity, or on which interest or principal is due and unpaid for a period of 30 days, but less than six months including unplanned overdrafts. An installment loan will not be considered overdue until at least two monthly payments are due. The same will apply to real estate mortgage loans, term loans, or any other loans payable on regular monthly installments of principal and/or interest.

Subp. 2. Installment loans Examples of "A" paper and "B" paper. ~~All notes due on a monthly installment basis are allowed 30 days grace and neither the principal nor payment is considered as past due, if any payment is less than 30 days overdue. However, in the event that a payment runs over 30 days delinquent, the whole principal balance becomes past due and subject to "B" classification, except that if such delinquency runs six months or more, it becomes subject to "A" classification. Interest payments will have no effect to change classification described above.~~ The following examples will illustrate the applications to "A" paper and "B" paper:

A. Single payment notes: Note dated January 2, 1984, due July 2, 1984, with interest to be paid at maturity. If unpaid, the note becomes "B" paper at close of business August 2, 1984, and "A" paper at close of business January 2, 1985.

B. Demand notes: Note dated January 2, 1984, written "due on demand." Interest will be considered to be due every six months, if not otherwise indicated in the body of the note. If interest is unpaid, this note becomes "B" paper at the close of business January 2, 1985.

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C. Installment notes: Note dated January 2, 1984, to be paid in monthly installments beginning February 2, 1984. Allowing one month grace, if the installment due on February 2, 1984, is unpaid, the balance of this note will become "B" paper at the close of business March 2, 1984, and "A" paper at the close of business on August 2, 1984.

Subp. 3. ~~Demand notes~~ Apportionment. ~~Demand notes are considered current if no longer than six months have elapsed since the date to which interest was previously paid. Such notes are considered to mature exactly six months from such a date and become past due one day thereafter, unless subsequent interest is received.~~ The overdue figure shall include the total dollar balance of the lease or loan that is not current.

For examination purposes, past due loans that are in a nonaccrual status or that are renegotiated troubled debt are to be apportioned to "A" paper or "B" paper as appropriate.

2675.0901 REAL ESTATE LOANS-DOCUMENTATION.

Each real estate secured loan file shall include the following documentation and evidence where the loan is in an amount over $7,500 or not otherwise exempt from the definition of real estate in Minnesota Statutes, section 48.19, subdivision 4:

A. An attorney's opinion, a title insurance policy, or, in the case of Torrens title property, the mortgagee's duplicate certificate of title with memorial of the bank's mortgage thereon is required on all real estate loans which shall describe the status of fee title, the validity of the bank's lien, and the position of the lien.

B. Evidence of adequate insurance coverage with loss payable clause payable to the bank shall be required for mortgages on improved property.

Written binders of insurance are acceptable evidence of insurance. No bank shall refuse to accept a binder tendered at the time of closing as evidence of any insurance coverage required as a condition of a loan agreement if the binder conforms with usual and customary conditions as to designation of loss payee and mortgagor.

C. Real estate appraisal reports are required for each mortgage. The appraisal and the reasonableness of its accuracy is the responsibility of the appraisal committee. The appraisal report and its acceptance by the appraisal committee shall be made part of the mortgage file.

2675.1100 BOND INVESTMENT RECORDS.

During the period in which such investment is carried on a bank's books, it shall be required that original invoices of bond purchases and sales be retained as a part of the records of a bank; a record be maintained of all securities bought and sold showing date of purchase or sale, interest rate, maturity, par value, description, from whom purchased, to whom sold, selling price, and where pledged or deposited for safekeeping; ~~and~~ all municipal and corporation bonds owned by a bank be supported by full credit information at the time of purchase; and every sale and every purchase will be considered a separate transaction and trades, switches and securities received under debt readjustment, as well as new purchases, must meet the requirements of these parts.

2675.1110 ELIGIBLE SECURITIES.

An obligation of indebtedness which may be purchased for its own account by a state bank, in order to come within the classification of eligible securities within the meaning of this part, must be a marketable obligation. It must be salable under ordinary circumstances with reasonable promptness at a fair value; and with respect to the particular security, there must be present one or more of the following characteristics:

A. a public distribution of the securities must have been provided for or made in a manner to protect or insure the marketability of the issue; or~~,~~

B. other existing securities of the obligor must have such a public distribution as to protect or insure the marketability of the issue under consideration; or~~,~~

C. in the case of eligible securities for which a public distribution as set forth in item A or B cannot be so provided, or so made, and which are issued by established commercial or industrial businesses or enterprises, that can demonstrate the ability to service such securities, the debt evidenced thereby must mature not later than ~~ten~~ 20 years after the date of issuance of the security and must be of such sound value or so secured as reasonably to assure its payments~~; and such securities must, by their terms, provide for the amortization of the debt evidenced thereby so that at least 75 percent of the principal will be extinguished by the maturity date by substantial periodic payments. Provided, that no amortization need be required for the period of the first year after the date of issuance of such securities~~.

2675.1130 INVESTMENT QUALITIES.

Securities, in order to be eligible for purchase by state banks, must be in the form of bonds, notes, and/or debentures, and must be of recognized investment quality. Eligible securities are those which are included among the four highest ratings of the rating services, and nonrated securities of equivalent value~~, the latter to be determined by the bond department of the Banking Division~~. With regard to the ratings, the following items shall apply:

A. to C. [Unchanged.]

2675.1140 HOLDING BONDS ON PAR OR FACE VALUE.

The statutory limitation on the amount of the eligible securities of any one obligor or maker which may be held by the bank, not otherwise exempted by Minnesota Statutes, section 48.24, subdivision 6, is to be determined on the basis of the par or face value of the securities, and not on their book value.

2675.1150 ~~WHEN~~ PURCHASE ~~PRICE MAY EXCEED PAR~~ OF ASSET AT A PREMIUM OR DISCOUNT.

~~Subpart 1. Purchase. Purchase of an eligible security at a price exceeding par is prohibited, unless the bank shall:~~

~~A. charge off the premium when the securities are placed on the books; or~~

~~B. provide, for the regular amortization of the premium paid so that the premium shall be entirely extinguished at or before the maturity of the security and the security (including premium) shall at no intervening date be carried at an amount in excess of that at which the obligor may legally redeem such security; or~~

~~C. set up a reserve account to amortize the premium, said account to be credited periodically with an amount not less than the amount required for amortization under item B.~~

~~Subp. 2. Interest and commissions. Accrued interest paid on securities must be charged to interest received. Bond commissions and all costs of sales or purchases must be charged to expense.~~

When assets are purchased at a premium or discount, a bank:

A. shall charge off the premium when the asset is placed on the books; or, provide for the regular amortization of the premium pursuant to generally accepted accounting principles; and

B. may provide for the regular accretion of the discount pursuant to generally accepted accounting principles.

2675.1180 FOREIGN BORROWERS SECURITIES.

Purchase of securities of foreign borrowers, whether private, corporate, or governmental, is prohibited with the exception of:

A. [Unchanged.]

B. bonds of the International Bank for Reconstruction and Development, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed ~~ten~~ 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the International Bank for Reconstruction and Development only by banks, trust companies, and savings banks;

C. bonds of the Inter-American Development Bank, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed ~~ten~~ 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the Inter-American Development Bank only by banks, trust companies, and savings banks; ~~and~~

D. bonds of the Asian Development Bank, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed ~~ten~~ 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the Asian Development Bank only by banks, trust companies, and savings banks; and

E. bonds of the African Development Bank, which are payable in dollars of the United States; provided however, that the total par value of such bonds held by any bank or trust company shall never exceed 20 percent of its capital and of its actual

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surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the African Development Bank only by banks, trust companies, and savings banks.

2675.2000 BANKS SELLING WITH REPURCHASE AGREEMENT.

As to repurchase agreements accompanying sales of securities, it is permissible for the bank selling securities to another to agree that the bank shall have an option or right to repurchase the securities from the buyer at a price stated or at a price subject to determination under the terms of the agreement, but in no case in excess of the market value at the time of repurchase.

Except for securities which are the direct obligation of, or obligations that are fully guaranteed as to principal and interest by, the United States government or an agency thereof, it is not permissible for the bank selling securities to another to agree that the purchaser shall have the right or the option to require the bank to repurchase said securities at a price stated or at a price subject to determination under the terms of the agreement, notwithstanding the fact that the bank may also, under such agreement have the right or option to repurchase the securities from the buyer at a price stated or at a price subject to determination under the terms of the agreement.

2675.2050 PURCHASE OF NONELIGIBLE SECURITIES PROHIBITED; DISPOSITION; EXCEPTIONS.

The purchase of securities other than eligible securities as defined in part 2675.1110 is prohibited. Any such purchase will be considered a violation of this part and the commissioner ~~of banks, in his discretion,~~ will require that any ~~such~~ noneligible security so purchased be disposed of within a reasonable length of time. No bank shall be permitted to purchase securities of business or municipal corporations that shall have undergone debt readjustment until 12 months shall have elapsed since the effective date of the readjustment. Such securities, if purchased, must also be disposed of. However, the purchase of railroad equipment trust obligations which are not in default either as to principal or interest, or both, and which are considered to be of eligible quality shall not be prohibited.

2675.2100 CASH ITEMS.

A daily record shall be maintained of all cash items for anything other than currency or coin being held over until the following day's business and not in the process of being forwarded for collection or being returned to endorsers. No checks shall be held in a bank's cash account to avoid the showing of overdrafts. ~~These daily records shall be retained for a period of at least two years.~~

2675.2110 BANKING HOUSE.

~~All new investments in banking quarters must be approved by the commissioner of banks, subject to statutory requirements, whether or not a fee interest is involved, with the exception that subsequent expenditures for improvements or remodeling need not require such approval, provided that the total such charges to this account will not increase such investments to a point where the total will exceed 40 percent of a bank's capital and surplus accounts.~~

A. Investment for banking house and premises requires no prior written approval of the commissioner pursuant to Minnesota Statutes, section 47.10, unless:

(1) the investment is in nonadjacent property, or

(2) the total investment exceeds 50 percent of the bank's capital and paid-in surplus.

B. In determining the total investment in banking premises, the net book value for land, buildings, real estate for future use, leasehold improvements, and leases capitalized according to financial accounting standard board practices are to be aggregated.

C. A bank shall maintain documentation to reflect that investments in banking premises are depreciated or amortized pursuant to generally accepted accounting principles. The documentation shall disclose the period of time the assets are expected to remain on the books, and the accepted practice used to consistently assign the cost and write down the value.

D. Investment in nonadjacent real estate to be used for future banking premises not utilized as intended within five years shall be considered other real estate unless definite plans for utilization are in process and extended time is approved by the commissioner.

E. Prior to December 31, 1985, a bank may, without obtaining approval, restate the net book value of its banking premises to reflect the original cost less any prior write down required under generally accepted accounting principles. Adequate documentation shall be maintained to substantiate any restatement of banking premises. Alternatively, a bank not restating the value of banking premises may write down the remaining net book value pursuant to generally accepted accounting principles.

2675.2130 FURNITURE AND FIXTURES, PERSONAL PROPERTY, AUTOMOBILES, AND EQUIPMENT.

Purchases capitalized in this account shall be amortized ~~at the minimum rate of ten percent annually~~ as required by generally accepted accounting principles, ~~with such exceptions~~ or a greater amount as may be ~~made~~ approved in writing by the commissioner ~~of banks~~. ~~Each such annual charge shall be based on the remaining book value at the end of each year~~ Furniture and fixtures, personal property, automobiles, and equipment used in the conduct of banking business may be acquired by purchase or lease without obtaining prior approval of the commissioner unless the seller or lessor has an existing direct or indirect interest in the management or ownership of the acquiring bank. .

2675.2140 LEASEHOLD INVESTMENT AMORTIZATION.

~~A~~ Leasehold ~~investment which has been approved by the commissioner of banks~~ investments shall be amortized ~~over the period of the lease~~ as required by generally accepted accounting principles. Leasehold investments receiving prior approval pursuant to Minnesota Statutes, section 47.10, subdivision 3, are subject to further prior approval of renegotiated and amended terms. If there is an optional clause in such lease for an additional period to be covered thereby, this shall serve to extend the amortization period to such extent. ~~In no event, however, shall the rate of amortization be less than five percent or less than four percent if the total of a bank's investment in banking quarters be more than 40 percent of its capital and surplus accounts.~~

2675.2170 OTHER REAL ESTATE.

Other real estate:

A. Any real estate acquired or owned by a bank ~~through foreclosure; conveyed to a bank as satisfaction of a debt previously contracted, or acquired by a bank in any legal manner in satisfaction of debts previously contracted~~ (1) pursuant to Minnesota Statutes, section 48.21, clauses (2) to (5); (2) not used in the business resulting from relocation of the principal office, or closing of a detached facility; or (3) abandonment of plans to use real estate acquired for future expansion, shall be designated as "other real estate." The property acquired pursuant to (1) shall be so designated from the date upon which the bank actually acquires title. Property owned pursuant to subitems (2) and (3) shall be so designated from the date the determination is made to divert or abandon as actual operating bank premises.

B. "Other real estate" ~~cannot~~ shall not be entered upon the books of a bank at an amount greater than the balance of the principal amount of the indebtedness at the time of acquisition or the remaining book value if owned. In any case, the book value of other real estate shall never exceed the estimated fair market value of the property. The fair market value shall be determined by an appraisal prepared by an independent qualified appraiser within 30 days of acquisition. The appraisal shall be made part of the other real estate file.

C. ~~A chargeoff of ten percent of the original amount at which the "other real estate" was placed on the books shall be made annually at the close of each calendar year. The chargeoff for the first calendar year of ownership shall be an amount to be arrived at by using the same percentage to the full annual chargeoff requirements as the number of months investment has been on the books is to a 12 month period~~ Reasonable attempts shall be made to dispose of other real estate by sale. The other real estate file shall be documented with disposal attempts. In no case, is depreciation required on other real estate, but it shall be removed from the books within five years after acquisition.

D. "Other real estate" sold on contract for deed ~~must~~ may be carried as ~~"other real estate" until at least 25 percent of the purchase price has been paid in cash, after which it may be transferred to loans and discounts~~ a loan at the lesser of the principal balance due on the contract, or at its present book value. Loss on sale of "other real estate" shall be recognized in the period the sale occurs. Gains on sale of other real estate shall be either accreted ratably on the same basis as repayment, or may be deferred until title is transferred to the buyer.

E. ~~It is required that a bank have an abstract of title, continued to show title in the bank on each item of "other real estate." Insurance should be obtained where necessary and taxes must be kept current if the "other real estate" is carried as an asset.~~

~~Bank must also have an attorney's opinion or equivalent evidence to show the status of its ownership as to other possible existing liens against each property~~ "Other real estate" shall be documented with an attorney's opinion or equivalent evidence

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to reflect title and all encumbrances. Adequate property and liability insurance shall be carried, and taxes shall be kept current.

2675.2200 CHARGED OFF ASSETS; DUAL CONTROL.

Subpart 1. Record. A complete record of charged off assets shall be maintained on which all recoveries shall be shown. This record shall also cite authority of directors with regard to any debts that have been compromised, and include signed compromise agreements, if it is possible to obtain them.

The original records of charged off assets shall be maintained under dual control to effect any entry subsequent to the board's charge off resolution.

Subp. 2. and 3. [See repealer.]

2675.2220 ADDITIONAL COMMON STOCK SALES.

Any bank which increases its common capital account by means of the sale of additional common stock need not carry such funds in any other bank but may carry them on its own books among demand liabilities and furnishing appropriate certificate to the commissioner ~~of banks~~ as to the total paid in.

2675.2240 DIVIDENDS.

The dividend period for the purpose of declaring dividends in accordance with ~~the provisions of~~ Minnesota Statutes, section 48.09 shall be the period commencing on January 1 and ending as of the close of business December 31 of each calendar year and the net ~~profits~~ income for each such period shall be determined from the ~~annual earnings and dividends reports~~ consolidated report of income of each bank.

The ~~Division of Banking~~ Department of Commerce will supply each bank with forms to be completed with information called for ~~by such~~. The forms ~~and returned~~ must be mailed or delivered to the commissioner ~~of banks~~ within ten days of the date of declaration of any dividend and at least 15 days prior to the proposed payment date of any dividend. The forms shall contain a statement by the commissioner ~~of banks~~ providing that if certain requirements as set forth therein are met, the bank may pay a cash dividend or dividends without specific approval of the commissioner ~~of banks~~ in the year succeeding the dividend period in such amount or amounts as will not reduce the bank's capital, surplus, undivided profits, and reserves below such requirements. Except as provided in the preceding sentence, no bank or trust compaany shall pay a cash dividend to its stockholders until written approval for ~~such~~ the dividend has been obtained from the commissioner ~~of banks~~.

~~The Division of Banking will supply forms to each bank which shall, within ten days of the date of declaration of any dividend, report to the commissioner of banks the date of declaration, the rate and amount of the dividend, and the date on which such dividend is payable~~ Declared dividends shall be deducted from undivided profits and carried on the books as another liability entitled "dividends payable." The other liability account shall be reversed upon payment or nonapproval by the commissioner.

2675.2246 CERTIFICATE OF DEPOSIT OF OTHER ~~BANKS~~ FINANCIAL INSTITUTIONS.

~~Where a bank incurs a direct liability to another bank by an issuance of a certificate of deposit, such must be carried on its books as "bills payable."~~

Where a bank makes a direct investment in a certificate of deposit of another ~~bank~~ financial institution, such investment shall not exceed its legal lending limit as provided in Minnesota Statutes, section 48.24 ~~and shall also be carried under "other assets."~~; however, this limitation shall apply only to that portion, if any, of the investment which is not insured by an agency of the United States.

2675.2250 OVERDRAFTS; OFFICERS OR EMPLOYEES.

~~Overdrafts:~~

~~A. All checks which are to be honored by a bank shall be charged to the proper account on the same or next business day after receipt.~~

~~B. Checks which are not paid because of causing overdrafts shall be returned to the proper endorser before the close of the next business day after receipt.~~

~~C. Such checks as have been referred to in item B shall at no time be carried as cash items, beyond midnight of the next business day after receipt, but returned to respective endorsers, excepting in instances where checks are cashed over the counter and there is no opportunity to return them to the endorser.~~

~~D.~~ No overdraft shall be permitted to an officer or employee of a bank with the exception of those which occur in the

ordinary course of posting and are reimbursed during the same or following business day. Overdrafts originating and disposed of in this manner shall not be construed as being in violation of Minnesota Statutes, section 48.08.

2675.2420 ~~INSURANCE COMMISSION~~ OTHER BUSINESS; EXPENSE REIMBURSEMENT AGREEMENTS.

If an officer of a bank is acting as an insurance agent ~~and such~~, acting to effect transactions in securities or the business of an insurance agency or securities broker-dealer not owned by the bank is being conducted on the banking premises, there must be an arrangement as to allocating overhead expenses or as to distribution of net earnings and ~~to~~ be included in an appropriate board resolution. The allocations may include the credit insurance income required to be turned over to the bank pursuant to Minnesota Statutes, section 47.016, or commissions.

2675.2500 DISPLAY AND REPLACEMENT COPIES.

Every bank shall display its bank charter in a prominent place in the lobby. In case of destruction or misplacement of the charter, the ~~Division of Banking~~ commissioner will supply a duplicate, upon application, ~~without~~ at the cost set out in Minnesota Statutes, section 46.131, subdivision 10.

REPEALER. Minnesota Rules, parts 2675.0700; 2675.0800; 2675.0900; 2675.0910; 2675.0920; 2675.0930; 2675.0940; 2675.0950; 2675.1160; 2675.2010; 2675.2020; 2675.2030; 2675.2060; 2675.2070; 2675.2080; 2675.2090; 2675.2120; 2675.2150; 2675.2160; 2675.2190; 2675.2200, subparts 2 and 3; 2675.2230; 2675.2290; and 2675.2410 are repealed.

Department of Energy and Economic Development

Proposed Emergency Rules Governing Energy Financial Assistance

Notice of Intent to Adopt Emergency Rules and Request for Public Comment

Notice is hereby given that the Minnesota Department of Energy and Economic Development is proposing to adopt emergency rules for the Energy Loan Insurance Program and the Energy Development Loan Program. The agency is authorized by Minnesota Statutes 116J.91 Subdivision 8 (1983 Supp) and 116J.91 Subdivision 4 (1983 Supp as amended Minnesota Laws 1984 Chapter 583 Section 17) to adopt emergency rules for the Energy Loan Insurance Program and the Energy Development Loan Program.

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency on the proposed emergency rules. With publication of this notice in the November 5, 1984 *State Register*, written comments must be received by the agency no later than 4:30 p.m. on November 30, 1984. Written comments should be sent to:

Kathryn Hahne
Energy Finance Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Blvd.
St. Paul, Minnesota 55101
Telephone: (612) 297-1391

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the agency will become part of the record in this matter.

The proposed emergency rules with any modifications adopted by the agency, will be submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the agency of such desire at the address given above. The Attorney General has ten working days to approve or disapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days upon publication of a separate notice to such effect.

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A full copy of the proposed emergency rules is available by contacting Ms. Hahne at the above address.

November 5, 1984

Mark B. Dayton, Commissioner
Department of Energy and Economic Development

Emergency Rules as Proposed (all new material)

8300.4010 [Emergency] SCOPE.

Parts 8300.4010 to 8300.4014 [Emergency] are general rules that apply to all applications for energy financial assistance made available by the authority under the act and under the energy loan program and the energy loan insurance program. Parts 8300.4020 to 8300.4038 [Emergency] specify procedures and criteria for energy financial assistance from particular programs of the authority.

8300.4011 [Emergency] DEFINITIONS.

Subpart 1. Statutory terms. The definitions in Minnesota Statutes, section 116J.88 and part 8300.0100 apply to parts 8300.4010 to 8300.4038 [Emergency].

Subp. 2. Annual total benefits. "Annual total benefits" means B_t in subpart 8 that accrue to the applicant plus the annual monetary value of outputs expected to result from the undertaking of a qualified energy project that accrue to the public at large. Outputs must be estimated in dollars based upon the most recent credible evidence available including scientific studies, economic studies, or other analyses. Outputs include the estimated value of new jobs produced; the monetary value of decreased levels of air, water, or other forms of pollution; or other avoided public costs.

Subp. 3. Annual total costs. "Annual total costs" means the annual repayments of interest plus principal for I in subpart 7 incurred by the applicant of the qualified energy project plus the annual incremental monetary costs incurred by the state through the use of appropriated money in any one or a combination of the funds administered by the authority, the economic recovery fund, or other appropriations made available to assist the qualified energy project by the legislature.

Subp. 4. Avoided public costs. "Avoided public costs" include the estimated dollar costs that could reasonably be expected to be incurred during the useful life of the qualified energy project by a unit of local, state, or federal government, if the project were not undertaken, but that will be avoided if the project is financed. Avoided public costs include the costs of siting, designing, or constructing facilities of any type necessary to comply with environmental regulations; or the costs associated with unemployment compensation, welfare benefits, or other benefits that would otherwise be paid to existing workers who would be unemployed if the qualified energy project were not undertaken.

Subp. 5. Cost effective. A qualified energy project is deemed to be cost effective if it meets any of the following criteria:

A. Internal net benefit criterion: The present value of the annual net cost savings or net revenues generated by the qualified energy project over its expected useful life is greater than the investment cost to the applicant.

B. Public net benefit criterion: The present value of the annual total benefits from the qualified energy project is greater than the present value of the annual total costs of the qualified energy project over its expected useful life.

Subp. 6. Energy financial assistance. "Energy financial assistance" means loans, loan guaranties or insurance, and any other use of funds from the energy development fund and the energy loan insurance fund as permitted by the act.

Subp. 7. Investment cost. "Investment cost" means: I = The total amount of the loan obtained by the applicant required by the qualified energy project to generate annual net cost savings or net revenues equal to B_t in subpart 8. "I" is the present value of annual repayments of the interest plus principal discounted at the rate r in subpart 8 over the term of the loan for I.

Subp. 8. Present value. "Present value" of the annual net cost savings or net revenues generated by the qualified energy project means:

$$\sum_{t=1}^{L} \frac{B_t}{(1+r)^t}$$

where

B_t = Annual net cost savings or net revenues realized by the applicant for each year t of the expected useful life of the qualified energy project. This represents annual cost savings or annual revenues net of annual operating costs excluding annual interest plus principal payments for the investment cost of the qualified energy project.

L = Expected useful life of the qualified energy project.

r = Annual rate of interest charged to the applicant on the investment cost of the qualified energy project.

Subp. 9. Project. "Project" means that which is funded or is proposed to be funded by energy financial assistance.

8300.4012 [Emergency] PROCEDURES FOR ENERGY FINANCIAL ASSISTANCE APPLICATIONS.

Subpart 1. In general. To apply for energy financial assistance from the authority, an applicant shall submit an application form to the commissioner on a form provided by the commissioner. An application must be completed, dated, and signed by an owner, general partner, or an authorized officer of the applicant. The commissioner shall follow the procedures under part 8300.4014 [Emergency].

Subp. 2. Contents. An application must contain at a minimum the following information:

A. a written history of the business entity;

B. the source and use of funds to finance the project;

C. financial statements that include a balance sheet, an operating statement, a statement of the sources and uses of funds, and footnotes to the statements if available for the following time periods:

(1) Financial statements from the previous three years, if applicable. If unaudited, the statements must be signed by an authorized financial officer of the business making application.

(2) A current quarterly financial statement that was compiled within 90 days of the date the application was submitted, if quarterly financial statements are regularly prepared.

(3) Federal tax returns filed by the business for the previous three years if applicable, if the applicant is an individual or partnership.

(4) A proforma balance sheet and income statement for the 24 months following the energy financial assistance closing that shows the financial position of the applicant and that includes the proposed financing.

D. A marketing plan that describes:

(1) the industry the business entity is in;

(2) the industry outlook for the next three to five years; and

(3) the major characteristics of the industry, names, locations, products or services provided, duration and conditions of contracts in the plan, and the percentage of annual sales volume for each major customer over the previous three years.

E. Current resumes of key personnel and signed personal financial statements dated as of the date of the application for any person who owns 20 percent or more interest in the business.

F. A resolution of support or other comparable preliminary approval from the local government unit.

G. A statement of informed consent by the individual subject regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d). If the subject of the data is a corporation, then an authorized representative shall provide a statement of informed consent in a form similar to that provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

H. Certification that the employer does not discriminate in employment.

I. Certification of business compliance with all federal, state, or local laws or regulations that affect the conduct of business in the state.

Subp. 3. Business plan. As part of the application, the applicant shall submit to the commissioner a comprehensive business plan. The business plan must include, but is not limited to, the following:

A. a management summary of the plan including:

(1) name of the business;

(2) business location and plan description;

(3) discussion of the product, market, and competition;

(4) expertise of management team;

(5) summary of financial projections;

(6) amount of energy financial assistance requested;

(7) form of and purpose for the financial assistance; and

(8) business goals;

B. a description of the company including the following:

(1) date and state of incorporation, date and state of formation of partnership, or date and state of formation of sole proprietorship;

(2) history of the company; and

(3) principals and the roles they played in the evolution of the company;

C. a market analysis including:

(1) description of the current industry status and industry trends;

(2) effects of major social, economic, technological, or regulatory trends on the industry;

(3) description of the total market, principal market participants, and their performance; and

(4) discussion of the target market and competition;

D. a description of the product or product line including:

(1) list of patents, copyrights, licenses, or statement of the proprietary interest in the product or product line;

(2) discussion of technical and legal considerations;

(3) comparisons to competitors' products or product lines; and

(4) description of research and development and future plans for research and development;

E. a description of the marketing strategy including:

(1) overall strategy;

(2) pricing policy;

(3) sales channels and terms;

(4) method of selling, distributing, and servicing product;

(5) estimated sales and market share; and

(6) advertising, public relations, and promotion;

F. the management plan including:

(1) form of business organization;

(2) board of directors composition, if applicable;

(3) officers organization chart and responsibilities; and

(4) resumes of key personnel;

G. an operating plan including:

(1) schedule of upcoming work for the next one to two years;

(2) facilities plan or planned capital improvements for the next three years;

(3) manufacturing processes; and

(4) staffing plan (number of employees);

H. a schedule indicating the completion dates for realizing the significant aspects of the business plan;

I. a discussion of the risks and problems inherent to the business plan, including both the negative factors and plans to minimize the impact of those factors; and

J. financial data including:

(1) a funding request indicating the desired financing, capitalization, use of funds, and future financing;

(2) financial statements for the past three years, if applicable;

(3) current financial statements;

(4) monthly cash flow financial projections including the proposed financing for two years; and

(5) projected balance sheets, income statement, and statement of changes in financial position for two years including the proposed financing.

8300.4013 [Emergency] COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

Subpart 1. Collateral requirements. The authority shall require collateral in accordance with generally accepted commercial lending practices as it deems necessary to protect the interests of the authority in the energy financial assistance. At a minimum, the collateral will take one or more of the following forms:

A. mortgage on real property;

B. security position on personal property;

C. security of its energy financial assistance with assets being financed by the energy financial assistance and other assets of the company to protect the interests of the state's financial participation;

D. letter of credit or equivalent instrument;

E. guarantees of affiliates of the applicant;

F. guarantees of shareholders or partners who have 20 percent or more ownership in the applicant; and

G. bond insurance or other credit enhancements.

Subp. 2. Additional information or certifications. The following additional information is required by the authority, if applicable, prior to disbursing energy financial assistance and other information that the authority in it sole discretion deems advisable for prudent financial management of authority energy financial assistance:

A. a lease agreement on property or equipment;

B. a listing of collateral, including serial numbers for machinery and equipment that will serve as collateral to the energy financial assistance;

C. certification of insurance for workers' compensation and employer's liability;

D. a statement provided by the Internal Revenue Service of tax clearance;

E. an appraisal of collateral offered to the authority for the energy financial assistance; and

F. a certificate of the insurers of all collateral that insurance is in force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the commissioner with evidence that the policy has been renewed, replaced, or is no longer required.

8300.4014 [Emergency] PROCEDURES FOR APPLICATION PROCESSING.

Subpart 1. Deadline for submission. The applicant shall submit a complete application to the commissioner by the first business day of any month in order for the authority to consider it in that month. If an application is received after the first of the month and can be reviewed by the commissioner for eligibility and financial feasibility prior to the authority agenda deadline, the authority may consider the application at the meeting in that month.

Subp. 2. Completed applications. An application is complete when the commissioner receives all required documentation and exhibits, together with the required fee, if applicable.

Subp. 3. Incomplete applications. If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the commissioner's notification to

complete the application. If the application is not completed and received by the commissioner within 60 days, the application is deemed to be rejected and the applicant shall reapply to be further considered.

Subp. 4. Review of eligibility of project and applicant. The commissioner shall review all completed applications to determine if the project and the applicant are eligible and meet the requirements of the act and any of parts 8300.4010 to 8300.4014 [Emergency] and any parts relating to the energy financial assistance for which the applicant has applied.

If the project and applicant are eligible, the commissioner shall review the application for economic feasibility as provided in subpart 6.

Subp. 5. Ineligible project or applicant. The commissioner shall notify the applicant in writing if the applicant or the project is ineligible. The applicant has 30 days from the date of the commissioner's notification to amend the application.

Upon receipt of an amended application, the commissioner shall review the amended application under subpart 4. The commissioner shall reject the amended application if the project and applicant are ineligible. If the project and applicant are eligible, the commissioner shall review the amended application for economic feasibility under subpart 6.

If the application is not amended within 30 days, the application must be rejected and will not receive any further consideration.

Subp. 6. Economic feasibility review. The commissioner shall review the application in accordance with generally accepted commercial lending practices, including the use of the standards as printed in the most current annually updated version of the Annual Statement Studies, issued by Robert Morris Associates, Philadelphia, PA.

The commissioner shall obtain any other credit information when available from private credit rating agencies including, but not limited to, Standard & Poors and Dun & Bradstreet. In accordance with generally accepted commercial lending practices, the commissioner may check personal references.

The commissioner shall determine if the applicant can generate sufficient cash flow and maintain a sound financial condition.

The commissioner shall determine if there is sufficient collateral for the energy financial assistance.

Subp. 7. Rejection of application based on economic feasibility. The commissioner shall notify the applicant in writing if the application is not economically feasible and the application is rejected.

If the application is rejected due to economic feasibility, the applicant may, within 30 days after written notification by the commissioner, request that the commissioner submit the rejected application 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 approves the application at its board meeting, the application will be treated in accordance with subpart 8.

Subp. 8. Authority evaluation procedure. Applications approved for processing 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 applicant. If the authority approves the energy financial assistance, it shall pass a preliminary or a final resolution giving approval to the project to be financed and stating the name of the owner, a brief description of the project, the maximum amount of the energy financial assistance, and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority energy financial assistance. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. If the energy financial assistance is funded by bonds, then passage of a preliminary and a final resolution as provided in subpart 9 are required before energy financial assistance is approved. Throughout this process if the authority does not extend energy financial assistance, the authority shall remain without liability to the applicant.

Subp. 9. Funding of energy financial assistance by bonds. If the authority intends to fund the energy financial assistance by issuing bonds, the authority shall first pass a preliminary resolution. The preliminary resolution does not obligate the authority to issue bonds or to fund energy financial assistance, but only constitutes an expression of current intention of the authority to issue bonds or to fund the energy financial assistance. If the authority subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant, market conditions, availability of bond issuance authority, and other financial conditions that the authority deems necessary and the authority decides to fund the financial assistance, the authority shall pass a final resolution that authorizes the issuance and sale of bonds to fund the energy financial assistance. The final resolution must specify the terms and conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, 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 that the authority deems desirable. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the authority does not extend energy financial assistance, the authority shall remain without liability to the applicant.

Subp. 10. Preparation of documents. The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the authority.

ENERGY DEVELOPMENT LOAN PROGRAM

8300.4020 [Emergency] PURPOSE.

The energy development loan program issues energy financial assistance in the form of energy loans funded by proceeds of the authority's revenue bonds that may be secured by a guarantee or insurance from the energy development fund or energy loans made directly with money in the energy development fund. Energy loans funded by the proceeds of the authority's revenue bonds must be made in accordance with parts 8300.4010 to 8300.4024 [Emergency]. Energy loans funded directly with money in the energy development fund must be made in accordance with parts 8300.4010 to 8300.4023 [Emergency] and part 8300.4025.

8300.4021 [Emergency] ELIGIBLE APPLICANTS FOR ENERGY DEVELOPMENT LOAN PROGRAM.

Any business as defined in the act is eligible to apply for an energy loan.

8300.4023 [Emergency] ELIGIBLE LOANS FOR ENERGY DEVELOPMENT LOAN PROGRAM.

Subpart 1. In general. The authority shall make energy loans to applicants in compliance with the act and parts 8300.0100 to 8300.0600 and 8300.4010 to 8300.4014 [Emergency].

Subp. 2. Purpose of loan. An energy loan must be used to provide interim or long-term financing for certain capital expenditures as provided in the act, and for expenditures that meet the requirements of federal industrial development bond laws where applicable, including:

A. acquisition costs of land, buildings, or both:

B. site preparation;

C. construction costs;

D. engineering costs;

E. costs of equipment, machinery, or both;

F. Bond issuance costs;

G. underwriting or placement fees;

H. trustee's fees;

I. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;

J. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

K. certain contingency costs;

L. interest costs during construction;

M. legal fees, including those of the authority's bond counsel; and

N. debt service reserve fund.

Working capital loans are not eligible for energy financial assistance under the energy development loan program. However, energy loans for certain finished equipment inventory that constitute qualified energy projects that are funded out of the energy development fund or the proceeds of revenue bonds issued by the authority to the extent permitted under federal tax law are permitted.

Subp. 3. Equity requirements. The maximum loan percentage of authorized project cost is 80 percent for equipment and 90 percent for other authorized costs. The authority may accept letters of credit or other credit enhancements as part of the equity contribution by the applicant.

Subp. 4. Maximum term. The maximum term of an energy loan may not exceed the average useful life of the real property, or 80 percent of the useful life of equipment or machinery or 21 years, whichever is less.

Subp. 5. Security requirements. Energy financial assistance, either for real property or equipment, must be secured as follows:

A. a mortgage or other adequate security as determined by the authority on the real property to be financed;

B. a lien or other adequate security as determined by the authority on equipment to be financed by the authority;

C. other security as determined by the commissioner to have a value at least equal to the principal amount to be financed by the authority less the value, as determined by the authority, of the security provided in items A and B, which other security shall be in the form and kind satisfactory to the authority and may consist of some or all of the following:

(1) a senior, junior, or parity lien on other assets of the applicant; or

(2) a senior, junior, or parity lien on assets of certain owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders of corporate officers and their spouses);

D. a guarantee of owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders of corporate officers and their spouses), or other related entities such as subsidiaries or parent corporations of the applicant;

E. Additional forms of security, if necessary to strengthen the authority's collateral position on the financial assistance; and

F. in addition to or in substitution for any of the items A to E, any guarantee as required by insurers of the bonds, other than the authority.

Subp. 6. Findings of public purpose. The authority shall review and consider approval of an application for an energy loan on the basis of effectuating the purposes of the act, including determinations regarding the following:

A. that the project will be economically feasible in 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 project will be cost-effective in accordance with part 8300.4011 [Emergency], subpart 5;

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 borrower is a business under the act;

F. that the qualified energy project satisfies the priorities and criteria of the act;

G. that other things being equal in the event that there are more otherwise eligible applications submitted to the authority than there is funding available to assist, the energy loan allows greater leverage of the energy development fund than other competing applications.

8300.4024 [Emergency] ENERGY LOANS FUNDED BY BONDS.

Subpart 1. In general. If the authority intends to fund an energy loan by issuing revenue bonds, it must do so in conformance with part 8300.4014 [Emergency], subpart 9 and this part. The income from bonds issued by the authority for energy loans will be subject to taxation by the federal government or exempt from taxation by the federal government. If the income from the bonds is to be subject to taxation by the federal government, the preliminary resolution must acknowledge that the bonds will be subject to applicable federal taxes.

Subp. 2. Interest rate. The authority shall set interest rates at a negotiated rate that approximates the market rate of interest for securities of equivalent value at the time the bonds are initially sold.

Subp. 3. Debt service reserve fund. In conjunction with each amount of financial assistance it extends, the authority shall establish and fund a debt service reserve fund sufficient to cover approximately 12 month's debt service. The reserve must be funded through the proceeds of the bonds to be issued and sold in conjunction with each particular amount of financial assistance extended. The interest earned on the debt service reserve fund must accrue to the benefit of the applicant. This amount must be applied to offset the principal and interest payments on an annual basis provided that the financial assistance is current.

Subp. 4. Final resolution. After the authority passes a preliminary resolution, it may pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance to the applicant, as discussed in part 8300.4014 [Emergency], subpart 9. The final resolution for an application under the program depends, in part, upon a determination that there are no adverse changes in the financial condition or key personnel of the applicant, market conditions, availability of bond issuance authority, if applicable, and other financial conditions that the authority deems necessary.

Upon passage of the final resolution, the authority shall commence to issue bonds in accordance with market conditions and the other legal conditions that govern the issuance of its bonds and notes. This issuance must be in accordance with the contents of any insurance contracts, agreements with lenders providing letters of credit, or other forms of financial assistance and other terms and conditions necessary to effectuate a bond sale. Funds will not be disbursed at the loan closing until it has been determined that there are no adverse changes in the financial condition or key personnel of the business entity applying for the financial assistance. After the bonds are issued and sold, there will be a loan closing where the funds are transferred and documents are signed in accordance with the terms of the final resolution and the respective documents.

8300.4025 [Emergency] ENERGY LOANS FUNDED DIRECTLY FROM MONEY IN THE ENERGY DEVELOPMENT FUND.

Subpart 1. In general. The authority may make energy loans funded directly from money in the energy development fund only after it has made the following determinations:

A. that the qualified energy project achieves the public purposes listed in part 8300.4023 [Emergency], subpart 6;

B. that no other sources of financing including bonds issued by the authority are available to the project in sufficient quantities or at interest rates which will not render the project economically infeasible; and

C. that a direct loan provides the best available leverage of money in the energy development loan fund.

Subp. 2. Maximum loan amount. The principal amount of energy loans made directly with money in the energy development fund must not exceed $500,000.

Subp. 3. Leverage of other money. The maximum percentage of authorized project costs which may be financed by an energy loan made directly with money in the energy development loan fund is 70 percent for equipment and 80 percent for other authorized costs as listed in part 8300.4023 [Emergency], subpart 2. The percentage of authorized project cost not eligible to be financed by the authority must be financed by one or a combination of the following other sources of funds:

A. equity in the form of cash, land, or other tangible or real property provided by the owner or investors in the project;

B. loans, letters of credit, or other sources of debt financing or insurance provided by financial institutions; or

C. grants of money, land, or other property loans from a unit of government where such grant or loan comprises no more than 50 percent of that portion of the total project cost not eligible to be financed with the energy loan.

Subp. 4. Interest rates. The interest rate of the energy loans funded directly from the energy development fund must not exceed the interest rate for a full-faith-and-credit obligation of the United States government of comparable maturity, nor be lower than five percent per annum, nor be lower than the percentage rate necessary to establish a debt service coverage ratio of 1.3 to 1, whichever of the latter two conditions is greater.

Subp. 5. Servicing of direct energy loans. The commissioner shall establish an amortization schedule and shall monitor the repayment of the principal and interest as set out in the amortization schedule. The commissioner shall monitor the terms and conditions of the contract for the energy financial assistance.

The commissioner may restructure the energy financial assistance at the request of the applicant or upon his or her own initiative if the commissioner determines that restructuring the energy financial assistance will increase the probability that the energy financial assistance will be repaid to the state.

If the applicant requests the commissioner to restructure the energy financial assistance, the commissioner shall charge the applicant a fee in the amount of one-half percent on the outstanding principal amount of the energy financial assistance.

ENERGY LOAN INSURANCE PROGRAM

8300.4030 [Emergency] SCOPE.

Parts 8300.0100 to 8300.0600; and 8300.4030 to 8300.4038 [Emergency] apply to applications for energy financial assistance

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from the energy loan insurance fund made available by the authority under Minnesota Statutes, section 116J.924. Unless otherwise specified, parts 8300.4010 to 8300.4014 [Emergency] do not apply to energy financial assistance provided by the authority under parts 8300.4030 to 8300.4038 [Emergency].

8300.4031 [Emergency] DEFINITIONS.

Subpart 1. Statutory terms. The definitions in Minnesota Statutes, section 116J.88, and parts 8300.0100 and 8300.4011 [Emergency] apply to parts 8300.4030 to 8300.4038 [Emergency].

Subp. 2. Borrower. "Borrower" means a business that submits or has submitted an application for an energy loan to a financial institution for a qualified energy project.

Subp. 3. Claim. "Claim" means a claim for reimbursement to the authority by a participating lender.

Subp. 4. 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.

Subp. 5. Energy loan insurance. "Energy loan insurance" means the direct insuring by the authority of an energy loan made by a financial institution under Minnesota Statutes, section 116J.924.

Subp. 6. Lender. "Lender" means either a participating lender or a financial institution that intends to submit an application to the authority to be a participating lender. For purposes of parts 8300.4031 to 8300.4038 [Emergency], lender is not restricted to financial institutions participating in a loans-to-lenders program.

Subp. 7. Participating lender. "Participating lender" means a financial institution that has been designated by the authority to participate in the energy loan insurance program.

Subp. 8. Participating lender's agreement. "Participating lenders agreement" means the agreement in the form prescribed by the commissioner under which a financial institution is designated as a participating lender.

8300.4032 [Emergency] APPLICATIONS FOR ENERGY LOANS SUBMITTED TO FINANCIAL INSTITUTIONS.

Subpart 1. Contents of energy loan applications. To apply for an energy loan under the energy loan insurance program, a borrower shall submit an application for an energy loan to a participating lender or a financial institution that intends to submit an application to the authority to be participating lender on a form prescribed by the commissioner. An energy loan application must be completed, dated, and signed by an owner, general partner, or an authorized officer of the borrower. The energy loan application must contain the information required under part 8300.4012 [Emergency], subparts 2 and 3.

Subp. 2. Review by financial institution. The lender to which the application from the borrower is submitted shall review each application submitted to it to determine whether or not the lender will make an insured energy loan to the borrower for the purposes specified in the application. If the lender rejects the application, it must notify both the borrower and the commissioner in writing regarding its decision. If it decides to make an insured loan subject to the availability of energy loan insurance, the lender shall apply to the authority for insurance on a form provided by the commissioner.

Subp. 3. Fee. Lenders may require borrowers to pay application fees, origination fees, or commitment fees, only if these fees are normally required of the financial institution's other customers, and only if these fees do not exceed the usual and customary charges by the financial institution for similar loans to other borrowers. Any fees charged must be reported to the commissioner.

8300.4033 [Emergency] SUBMISSION OF APPLICATIONS FOR ENERGY LOAN INSURANCE.

Subpart 1. Contents of applications by lenders for energy loan insurance. Applications for energy loan insurance must be submitted by a lender to the commissioner on forms prescribed by the commissioner that must include the name of the lender, the name of the borrower, the principal amount of the energy loan to be insured, the amount and percentage of the insurance requested, the term of the loan, the interest rate, an amortization schedule, and other terms and conditions established by the lender pursuant to generally accepted commercial lending practices. A lender's application must be completed, dated, and signed by a duly authorized officer of the financial institution seeking the insurance. The completed lender's application must be accompanied by the following additional information:

A. a copy of the entire energy loan application submitted by the borrower to the lender;

B. a certification and supporting documentation that the lender has determined that the project is economically feasible in accordance with generally accepted commercial lending practices, including the use of the standards as printed in the most current annually updated version of the Annual Statement Studies, issued by Robert Morris Associates, Philadelphia, PA;

C. a signed letter of conditional commitment from the lender to make the energy loan subject to obtaining an energy loan insurance commitment from the authority;

D. a statement of the need for energy loan insurance which specifies reasons why the lender will not make the loan without energy loan insurance;

E. an appraisal of the value of the collateral for the loan including land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, and other applicable collateral under part 8300.4013 [Emergency];

F. a statement of informed consent signed by a duly authorized officer of the financial institution regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

G. a participating lender's agreement on a form prescribed by the commissioner in accordance with part 8300.4034 [Emergency] and executed by a duly authorized officer of the financial institution if the financial institution has not been previously designated a participating lender by the authority.

Subp. 2. Review by commissioner. Upon receipt of the lender's application for insurance and a signed participating lender's agreement, the commissioner shall review the application in accordance with the procedures set forth in part 8300.4014 [Emergency], subparts 1 to 6. The commissioner shall also review the financial institution's applications and required supporting information to determine if the qualified energy project is economically feasible, technically feasible, and cost-effective.

Subp. 3. Rejection of application. If the lender's application for insurance is incomplete, the commissioner shall notify the financial institution and the borrower in writing according to part 8300.4014 [Emergency], subpart 3. If either the borrower or the financial institution applying for insurance is ineligible for any reason, the commissioner shall follow the procedures in part 8300.4014 [Emergency]. If the commissioner determines that the qualified energy project proposed in the application for an energy loan is either technically or economically infeasible, the commissioner shall notify both the borrower and the financial institution in writing of the commissioner's decision to reject the application. If the application is rejected, the borrower or the financial institution may, within 30 days after written notification by the commissioner, requires that the commissioner submits the rejected application 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 approves the application at its board meeting, the application will be treated in accordance with part 8300.4014 [Emergency], subpart 4.

Subp. 4. Authority evaluation procedure. Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval. The authority shall review and consider approval of the application on the basis of effectuating the purposes of the act, including determinations regarding the following:

A. that the project will be economically feasible in that the borrower can be reasonably 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. the project will be cost-effective in accordance with part 8300.4011 [Emergency], subpart 3;

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 of municipalities, tend to diminish Minnesota's dependence on imported energy sources, or serve some other energy related public purpose;

E. that the borrower is a business under the act;

F. that the qualified energy project satisfies the priorities and criteria of the act;

G. that other things being equal in the event that there are more otherwise eligible applications submitted to the authority than there is funding available to assist, the energy loan allows greater leverage of the energy development fund than other competing applications.

If the authority disapproves the application, the commissioner shall so notify the borrower and financial institution. If the authority approves the energy loan insurance, it shall pass a resolution giving approval to the project to be financed and stating

the name of the financial institution, the name of the borrower, a brief description of the project, the maximum amount of the financial assistance, and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority energy loan insurance. The commissioner shall notify the borrower and financial institution of the authority's approval and provide the financial institution with a copy of the resolution passed.

Subp. 5. Preparation of documents. The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the authority.

8300.4034 [Emergency] PARTICIPATING LENDERS.

Subpart 1. Eligibility. In order to be eligible to receive energy financial assistance in the form of energy loan insurance from the energy loan insurance fund, a duly authorized officer of the financial institution seeking the assistance in conjunction with an energy loan must first sign a participating lender's agreement on the form prescribed by the commissioner that sets forth the terms and conditions under which an energy loan is to be made and specifies procedures to be followed in the case of a default by the borrower. The participating lender's agreement must require the financial institution seeking designation as a participating lender, and the authority to conform to the following conditions:

A. The insured portion of any energy loans 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 21 years, whichever is less.

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

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

D. The financial institution shall make no provision to subordinate any loan security to other liens against such property, without prior written approval from the commissioner.

E. The financial institution shall not acquire any preferential security, surety, or insurance to protect its uninsured interest in a loan.

F. Security must be obtained for the full amount of the loan and must be pro-rated between the financial institution and the authority;

G. The financial institution 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 financial institution and the authority.

H. The authority shall not be liable for delinquency charges or late fees, assessed against the borrower by the financial institution.

I. The financial institution shall review and approve loans for qualified energy projects in accordance with generally accepted commercial lending practices.

J. The financial institution shall be responsible for servicing all loans it makes for qualified energy projects, either directly or by contracting with a servicing agent.

K. The financial institution shall not sell or transfer any loan insured by the authority, without prior written approval from the commissioner.

L. The financial institution 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 financial institution shall make written reports to the commissioner on forms provided by the commissioner on the performance of the loans. These reports must be made on a schedule determined by the commissioner but not less than annually.

M. The aggregate principal amount of loans insured by the authority may 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 of three points above the lender's prime interest rate for variable rate loans or two points above the interest rate of a full-faith-and-credit obligation of the United States government of comparable maturity for a fixed-rate term loan.

In the event that the lender fails to comply in good faith with the provisions of the participating lenders agreement and the lender's failure causes substantial harm to the authority, the authority may withdraw its insurance on the affected loans, remove the lender from the program without refunding any fees paid by the lender, or do both.

P. The lender agrees not to make any amendments to the loan agreement after loan closing without the prior written approval of the authority.

Q. The lender agrees to make no waivers of default without prior written approval of the authority.

R. The authority shall not insure energy loans made by the lender prior to the execution of the "Participating Lender Agreement," and the lender shall not unconditionally commit to make an insured loan nor disburse funds for an insured loan under this program without prior approval from the authority.

Subp. 2. Designation of participating lender. To designate a financial institution as a participating lender, the authority must pass a resolution designating the financial institution as a participating lender and authorizing the commissioner on behalf of the authority to execute the participating lender's agreement which has been executed by a duly authorized officer of the financial institution.

8300.4035 [Emergency] PROCEDURES UPON DEFAULT.

The authority and participating lenders shall follow the following procedures in the event of a default:

A. In the event of a default by the borrower on the insured loan, the participating lender shall file with the commissioner, on form 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 participating lender arising from such default, the participating lender shall 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 the default by making payment due to the participating lender within 30 days of the date of the default. Any payment made by the authority to cure a default by a borrower must be repaid by the borrower or deducted from any claims submitted by the participating lender in connection with a default by the borrower for whom the payment was made by the authority.

E. If the borrower or the authority does not cure the default within 60 days, then the loan must be accelerated.

F. Upon nonpayment of the accelerated loan, the participating lender may file a claim with the authority. The security must then be liquidated by the participating lender.

G. The authority shall receive a pro-rated share of all liquidation proceeds. Upon receipt, the authority shall pay the claim of the participating lender.

8300.4036 [Emergency] APPLICATION AND CLAIM FORMS.

The commissioner must prepare application forms necessary for the administration of the energy loan insurance program. The commissioner must prescribe uniform energy loan insurance claim forms for use by participating lenders.

8300.4037 [Emergency] PRIOR COMMITMENT.

The authority may resolve to insure a loan prior to its execution or disbursement, if there is a firm commitment by the participating lender to make the loan upon the authority's resolution to insure the loan. If the participating lender fails to enter into a loan agreement with the borrower within 90 days of the authority's resolution, the authority shall reaffirm the resolution for an additional 90-day period if there has been no adverse change in the financial condition of the borrower or the financial institution.

8300.4038 [Emergency] REPORTS.

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

The participating lender shall report to the commissioner any fees charged to the borrower for the energy loans within 30 days of the date on which the energy loan was closed.

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Department of Human Services
Long Term Care Rates Management

Proposed Emergency Rules Governing Rates for Intermediate Care Facilities for the Mentally Retarded

Notice of Intent to Adopt Temporary Amendments

The State Department of Human Services proposes to adopt the above-entitled temporary amendments to rules 12 MCAR § 2.05301-2.05315 [Temporary] to amend in accordance with Laws of Minnesota 1984, Chapter 640, Section 28 the temporary rules authorized by Laws of Minnesota 1983, Chapter 312.

Persons interested in these temporary amendments have until 4:30 p.m., November 30, 1984 to submit written comments. The proposed temporary 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. Written comments should be sent to:

Rosemary Chapin
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, Minnesota 55155

Upon adoption of these temporary amendments, this notice, all written comments received, and the adopted temporary rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

Notice of the date of submission of the proposed temporary amendments to the attorney general will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed temporary amendments and any modifications on the tenth working day following the date of receipt of the proposed temporary amendments from the agency.

The adopted temporary amendments will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the temporary amendments' form. Temporary amendments take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these temporary amendments shall be in effect for up to 180 days following their adoption and may be continued in effect for up to 180 additional days if the Commissioner gives notice of continuation by publishing notice in the *State Register* and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The temporary amendments shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

The purpose of the proposed temporary amendments is to clarify certain provisions of rules 12 MCAR §§ 2.05301-2.05315 [Temporary].

Rules 12 MCAR §§ 2.05301 to 2.05315 [Temporary] determine welfare per diem rates for ICF/MR facilities. The temporary amendments clarify internal rule references and provisions on accumulated depreciation, changes in interest expense, funded depreciation, interim payment rates, top management compensation, and amended cost reports.

These temporary amendments will not result in any additional state or county spending beyond the amount of funds appropriated by the legislature.

A free copy of the proposed temporary amendments may be obtained by contacting Rosemary Chapin at 612/297-1488.

Leonard W. Levine
Commissioner of Human Services

Temporary Rules as Proposed

12 MCAR § 2.05302 [Temporary] Definitions.

A.-R. [Unchanged.]

S. Historical capital costs. "Historical capital costs" means:

1. [Unchanged.]

2. for a capital asset first placed in use in the medical assistance program prior to January 1, 1984, the cost incurred to

construct or purchase the capital asset by the person or entity owning the capital asset on or before December 31, 1983, except as provided in 12 MCAR § 2.05304 [Temporary] A.1.e.d.

T.-GG. [Unchanged.]

HH. Property-related cost category. "Property-related cost category" means the grouping of property-related costs set forth in 12 MCAR § 2.05313 [Temporary] D.

II.-JJ. [Unchanged.]

KK. Rate year. "Rate year" means the facility's fiscal period as approved by the commissioner on or before December 31, 1983, except as provided in 12 MCAR § 2.05314 [Temporary] C. for which a payment rate is effective. A rate year is normally a 12-month fiscal year.

LL.-UU. [Unchanged.]

12 MCAR § 2.05302 [Temporary] Determination of property-related cost payment rate.

A. Depreciation. Allowable depreciation expense shall be determined as in 1.-11.

1. Basis for calculating depreciation. The basis for calculating depreciation shall be the historical capital cost of the capital assets determined under ~~a.-e~~ a.-d.

a.-c. [Unchanged.]

d. The historical capital cost of the capital assets shall be adjusted for a change in ownership which occurs as a result of the death or disability of a principal owner who has a 50 percent or more ownership interest in the facility. This provision does not apply where the property is transferred to a close relative or a related organization as defined in ~~12 MCAR § 2.05301~~ 12 MCAR § 2.05302 LL. Disability means the situation in which a principal owner is mentally or physically incapacitated to such a degree that he or she is unable to carry out responsibility as an owner. The adjustment shall be made pursuant to regulations in effect on December 31, 1983.

2. [Unchanged.]

3. Initial accumulated depreciation on used capital assets. The initial accumulated depreciation on used capital assets for providers entering the medical assistance program after December 31, 1983, shall be calculated using the useful life schedule in 7. and 8. starting from the later of the date of completion of construction, or the time of purchase by the current owner. In no cases shall the initial accumulated depreciation on the capital assets exceed 50 percent of the historical capital cost of the capital assets.

4.-9. [Unchanged.]

10. No depreciation shall be recaptured following a sale of an asset or termination from the medical assistance program except for transfers of ownership allowed under A.1.~~e.~~ d. Recapture of depreciation for transfers of ownership allowed under A.1.~~e.~~ d. shall be calculated according to rules and regulations in effect on December 31, 1983.

11. [Unchanged.]

B. Interest. Allowable capital loan interest expense shall be determined in accordance with 1.-7.

1.-6. [Unchanged.]

7. Changes in interest expense.

~~a.~~ Subject to the limits in 6., changes in interest expense, except increases in interest expense due to refinancing of existing capital loans or changes in ownership, shall be allowed in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred. Changes in interest expense due to refinancing of existing capital loans or changes in ownership shall be subject to the provisions in a.-f.

~~b.~~ a. Increases in interest expense due to changes in ownership or the refinancing of a capital loan, except for renegotiations of a capital loan ~~as required in the original terms of the capital loan, shall~~ allowed under b.-d., are not ~~be~~ allowable costs.

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b. Increases in interest expense due to renegotiation of a construction capital loan for a newly constructed facility are an allowable cost for the amount of the refinanced construction capital loan which does not exceed the limitation in 6.c. The interest rate on the refinanced construction capital loan shall be limited under 4.a.

c. Increases in interest expense due to refinancing of a capital loan with a balloon payment are an allowable cost for the amount of the refinanced capital loan which does not exceed the balloon payment. The interest rate on the refinanced capital loan shall be limited under 4.a. The term of the refinanced capital loan shall not exceed the remaining term of the original loan computed as though the balloon payment did not exist.

d. Increases in interest expense for a variable or adjustable rate capital loan are allowable if the effective interest rate does not exceed the limits in 4.a. For each variable or adjustable rate capital loan, the effective interest rate shall be computed by dividing the interest expense for the reporting year by the average allowable debt. The average allowable debt for each variable or adjustable rate capital loan shall be computed by dividing the sum of the allowable debt at the beginning and end of the reporting year by two. Any variable or adjustable rate capital loans which have a zero balance at the beginning or end of the reporting year shall use a monthly average over the reporting year.

~~c.~~ e. Fifty percent of the annual savings resulting from decreased interest expense due to refinancing or renegotiation of existing fixed interest rate capital loans shall be a refinancing allowance added to the property-related cost payment rate of the provider or its successor in interest. The annual savings shall be calculated by comparing the refinanced or renegotiated fixed interest rate capital loan with the original fixed interest rate capital loan to determine the savings in interest expense each year. The annual refinancing allowance shall consist of one-half of the savings realized in the reporting year. The annual refinancing allowance shall be divided by resident days to determine the refinancing allowance per diem payment. The refinancing allowance shall not apply to refinancing of capital loans with variable interest rates.

~~d.~~ f. In order to qualify for the allowance in ~~c.~~ e., the outstanding principal amount and the remaining period over which the capital loan is to be repaid must not be increased as a result of refinancing.

C. Funded depreciation. Except as provided in 12 MCAR § 2.05309 [Temporary] D., providers shall fund depreciation according to the provisions in ~~1.-5~~ 1.-9.

1.-7. [Unchanged.]

8. The amount deposited in the funded depreciation account must not exceed the amount of accumulated depreciation.

9. Funds deposited to meet the requirements of the Minnesota Housing Finance Administration shall fulfill the requirements of C.

D. [Unchanged.]

E. Property-related cost payment rate and incentives or allowances.

1. [Unchanged.]

2. The commissioner shall compute the property-related cost payment rate for facilities with more than ten beds by dividing the ~~desk audited~~ audited, property-related costs by 96 percent of licensed capacity days. For facilities with ten or fewer beds the commissioner shall use the lesser of 96 percent of licensed capacity days or resident days, except that in no case shall resident days be less than 85 percent of licensed capacity days. For newly constructed or newly established facilities the property-related cost payment rate shall be calculated according to 12 MCAR § 2.05306 [Temporary] ~~A. and B~~ A.-C.

3. [Unchanged.]

F. Energy savings incentive. The commissioner shall approve requests for exceptions to the provision of 12 MCAR §§ 2.05304 [Temporary] B.6.d. and e. and 2.05311 [Temporary] D.2. for initiatives designed to reduce the energy usage of the facility. The requests must be accompanied by an energy audit prepared by a professional engineer or architect registered in the state of Minnesota. The cost of the energy audit is an allowable operating cost. Energy conservation measures identified in the energy audit that:

~~a.~~ 1. have a payback period equal to or less than 36 months and a total cost not exceeding $1 per resident day shall be exempt from the provisions of 12 MCAR §§ 2.05304 [Temporary] B.6.d. and e. and 2.05311 [Temporary] D.2; or

~~b.~~ 2. have a payback period greater than 36 months or having a total cost in excess of $1 per resident day shall be exempt from the provisions of 12 MCAR § 2.05304 [Temporary] B.6.d. and e.

12 MCAR § 2.05306 [Temporary] Rate-setting procedures for newly constructed or newly established facilities.

A. [Unchanged.]

B. Interim payment rate settle-up. A provider may request a settle-up of its interim payment rate either at the end of the facility's first reporting year or after six months of historical cost experience. In no case shall the settle-up cost report cover less than six months. The interim payment rate shall not be in effect for more than 17 months. The settle-up payment rate shall be calculated according to 1. and 2.

1. [Unchanged.]

2. The interim payment rates established on or after January 1, 1984, shall be subject to retroactive upward or downward adjustment in accordance with 12 MCAR §§ 2.05301-2.05315 [Temporary] except that:

a. 12 MCAR ~~§~~ §§ 2.05303 [Temporary] C. and D. and 2.05304 [Temporary] B.7.c. and F. shall not apply;

b.-d. [Unchanged.]

C. First payment rate after the interim rate period. The first payment rate after the interim rate period shall be calculated according to 12 MCAR §§ 2.05301-2.05315 [Temporary] except that 12 MCAR § 2.05303 [Temporary] D. shall not apply and the calculation of resident days shall be based on the greater of an annualization of the resident days in the last three months of the interim reporting period, or the resident days for the interim reporting period.

12 MCAR § 2.05309 [Temporary] Cost limitations.

A. Top management compensation. Annual compensation for top management personnel shall be paid according to the limits in ~~1. 8~~ 1.-9.

1.-4. [Unchanged.]

5. Top management compensation shall not include~~,~~ within the limits of 2., 3., and 4. ~~and 5.,~~ the benefits of group health or dental insurance, group life insurance, pensions or profit sharing plans, or governmentally-required retirement plans, ~~or~~ paid vacations, holidays, or sick leaves~~,~~.

6. If the ~~same benefit and the same benefit level is~~ employee benefits paid to top management personnel are not provided to all or substantially all of the facility's employees at the same benefit level that portion of the employee benefits paid to top management personnel that is not provided to all or substantially all of the facility's employees shall be disallowed.

~~6.~~ 7. An individual compensated for top management services on a less than full-time basis for a facility or provider group may be compensated for other necessary services which the individual is qualified to perform. Compensation for another necessary service must be at the pay rate for that service. Documentation of the necessary service performed must be maintained according to 12 MCAR § 2.05311 [Temporary] E. ~~3.~~ and G. may be subject to licensing review by the commissioner.

~~7.~~ 8. Compensation paid to the program director for performing program director functions or to top management personnel for performing other than top management functions shall not be included in the top management compensation limitation.

~~8.~~ 9. For each full percentage difference between the previous two Octobers, the all urban consumer price index (CPI-U) for Minneapolis-St. Paul, as published by the Bureau of Labor Statistics, new series index (1967 = 100), the top management compensation per bed limitation and the dollar limitation shall be adjusted by one percent. The adjustment required by this formula shall be effective on January 1, 1985 and each January 1 thereafter.

B. [Unchanged.]

C. Investment per bed limitation. For the purposes of 12 MCAR §§ 2.05301-2.05315 [Temporary], the facility's historical capital costs shall be limited by 1.-4.

1. and 2. [Unchanged.]

3. One exception to the limitations stated in 1., is that depreciation on investments in ~~capital assets~~ additions, betterments, or newly acquired equipment shall be allowed if the investments were required to comply with the Life Safety

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Code, in United States Code, title 42, sections 442.507-442.509 as amended through December 31, 1982, or with fire safety orders of the local agency.

4. [Unchanged.]

D.-G. [Unchanged.]

12 MCAR § 2.05313 [Temporary] Reporting of costs by cost category.

The costs for routine services must be reported in cost categories A.-D.

A.-C. [Unchanged.]

D. Property-related costs. The costs listed in ~~1.-7.~~ 1.-6. are included in the property-related cost category:

1.-6. [Unchanged.]

12 MCAR § 2.05314 [Temporary] General reporting requirements and submittal procedures.

A.-H. [Unchanged.]

I. Audits and adjustments.

1. [Unchanged.]

2. Adjustments. An adjustment to a payment rate determined according to 12 MCAR §§ 2.05301-2.05315 [Temporary] shall be made according to ~~a.-h.~~ a.-i. if a desk or field audit of the facility's accounting and statistical records, cost reports, or amended cost reports identifies errors or omissions or if the commissioner approves a program staff change for the facility under Minnesota Statutes, section 252.28 and 12 MCAR § 2.185. For the purposes of this rule a program staff change is an increase or decrease in program staff due to an alteration in the individual program plans of the greater of two residents or 20 percent of the facility's residents.

a.-c. [Unchanged.]

d. ~~Providers may file an amended cost report if providers have a program change approved by the commissioner according to 12 MCAR § 2.185 which results in an increase or decrease in costs within an individual facility of at least $2,000 for the remainder of the facility's reporting year. Amended cost reports must be filed not later than 30 days after the program change which leads to the increase or decrease. No more than one amended cost report may be submitted for program changes each quarter of the facility's reporting year~~ A provider who has a program staff change approved by the commissioner which will result in an increase or decrease of program staff salary costs of at least $10,000 over the remainder of the facility's rate year must file an amendment to the cost report to adjust the facility's payment rate. The amendment to the cost report must be filed within 30 days of the date the commissioner approved the program staff change. The provider must submit a copy of the commissioner's letter approving the program staff change, a schedule of total program staff hours showing staffing changes due to the program staff change, and a breakdown of the additional program staff costs on a per hour basis with the amendment.

e. The adjustment to the payment rate made under d. may be adjusted by the commissioner if the cost of the program staff change is less than the provider projected or if the savings due to the program staff change is more or less than the savings the provider projected. No further adjustment to the payment rate shall be made if the program staff change costs more than the provider projected.

f. Amended cost reports shall consist of the corrected cost report pages resulting in the amendment and supporting documentation. The corrections or changes shall be calculated according to 12 MCAR §§ 2.05301-2.05315 [Temporary].

~~f.~~ g. If the adjustment results in a payment from the provider, payment shall be made by the provider within 120 days after the date of the written notice. If the payment rate adjustment results in a payment to the provider, the medical assistance program payment to the provider shall be made within 120 days after the date of the written notice.

~~g.~~ h. Interest charges shall be assessed on over and under payment balances after the deadlines in f. The annual interest rate charged shall be the rate charged by the commissioner of revenue for late payment of taxes, which is in effect 121 days after formal notification.

~~h.~~ i. Any changes, adjustments, or amendments which result in a reimbursement to the facility shall be subject to the limitations in 12 MCAR § 2.05305 [Temporary] C.

J. [Unchanged.]

Pollution Control Agency

Proposed Rules Governing Manifests for Transportation of Hazardous Wastes

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends, without a public hearing, to adopt amendments to the rules governing the use of manifests for the shipment of hazardous waste, Minn. Rules Parts 7045.0020, Subp. 53 and 54; 7045.0261; 7045.0302; 7045.0476; and 7045.0582. The Agency will follow the procedures set forth in Minn. Stat. §§ 14.22-14.28 (1983 Supp. as amended by 1984 Minn. Laws ch. 640).

The proposed amendments require persons who generate hazardous waste in Minnesota or who ship hazardous waste to a facility located in Minnesota to use the Minnesota manifest form. The Minnesota manifest is based on the Uniform Hazardous Waste Manifest required by the United States Department of Transportation and the United States Environmental Protection Agency and requires the information contained on that manifest plus additional Minnesota information requirements of the telephone number of the facility to which the waste is being shipped and the waste numbers for each hazardous waste specified on the manifest. The Minnesota manifest must be obtained from the Agency or the Documents Section of the Minnesota Department of Administration. One free copy of the proposed amendments may be obtained by contacting Karen Ryss at the address listed below.

Persons interested in these amendments have until 4:30 p.m. on December 5, 1984, 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 the modifications do not result in a substantial change in the proposed amendments.

Unless twenty-five or more persons submit written requests for a public hearing on the proposed amendments within the comment period, a public hearing will not be held. In the event that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. § 14.14-14.20 (1983 Supp. as amended by 1984 Minn. Laws ch. 640). If a person desires to request a public hearing, the Agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

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

Karen Ryss
Division of Solid and Hazardous Waste
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 297-1793

Authority for adoption of these rules is contained in Minn. Stat. § 116.07, subd. 4 (1983 Supp.). Additionally, the Agency has prepared a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon by the Agency to support the proposed amendments. Copies of the Statement of Need and Reasonableness and of the proposed amendments are available for review in the Agency's office in Roseville and in each of the Agency's Regional Offices:

Brainerd Regional Office
304 East River Road, Suite 3
Telephone: (218) 828-2492

Detroit Lakes Regional Office
116 East Front Street
Telephone: (218) 847-1519

Marshall Regional Office
Box 286, 1104 East College Drive
Telephone: (507) 537-7146

Duluth Regional Office
Duluth Government Services Center
Room 407
320 West 2nd Street
Telephone: (218) 723-4660

Rochester Regional Office
1200 South Broadway
Suite 140
Telephone: (507) 285-7343

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Upon adoption of the amendments by the Agency, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be sent 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 of the final adoption of the amendments, should submit a written statement of such request to Karen Ryss at the address previously stated.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (1983 Supp.), "Small Business Considerations in Rulemaking," that the proposed amendments will have no significant impact on small businesses in Minnesota. EPA and U.S. DOT regulations require the use of the Uniform Hazardous Waste Manifest or a state manifest which meets the federal requirements and preempt all inconsistent state requirements. The proposed amendments require the use of a Minnesota manifest form which meets these federal requirements. Since small businesses must use a manifest meeting federal requirements for all shipments of hazardous waste, the proposed amendments impose no additional requirements on small businesses. The Agency will be providing a limited number of such forms to all generators on an annual basis.

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

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

(b) Who spends more than $250 not including his own traveling expenses 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.

Thomas J. Kalitowski
Executive Director
Minnesota Pollution
Control Agency

Rules as Proposed

7045.0020 DEFINITIONS.

Subpart 1. to 52. [Unchanged.]

Subp. 53. Manifest. "Manifest" means the shipping document originated and signed by the generator ~~which~~ ~~contains~~ ~~the information required by~~ in accordance with part 7045.0261.

Subp. 54. Manifest document number. "Manifest document number" means the ~~serially~~ ~~increasing~~ United States EPA 12-digit identification number assigned to the generator plus a unique five-digit number assigned to the manifest by the generator for recording and reporting purposes.

Subp. 55. to 108. [Unchanged.]

7045.0261 MANIFEST DOCUMENT; GENERAL REQUIREMENTS.

Subpart 1. When required. A generator who transports or offers for transportation hazardous waste for off-site treatment, storage, or disposal must prepare a manifest before transporting the waste off-site. Generators shall use manifests in accordance with the requirements of items A to C and shall complete the manifest in accordance with the instructions on the manifest.

A. For shipments from either in-state or out-of-state to a facility located in Minnesota, the generator shall use a Minnesota manifest (Minnesota Form PQ-00371-01) and, if necessary, continuation sheets as provided in subpart 10.

B. For shipments from Minnesota to a facility located in a state (consignment state) that neither supplies nor requires the use of a manifest which is specific for that state, the generator shall use a Minnesota manifest (Minnesota Form PQ-00371-01) and, if necessary, continuation sheets as provided in subpart 10.

C. For shipments from Minnesota to a facility located in a state (consigment state) that requires the use of a manifest which is specific for that state, the generator shall use that manifest.

Subp. 2. to 6. [Unchanged.]

Subp. 7. Manifest information. ~~The hazardous waste manifest must include the following information:~~

~~A. the names, addresses, telephone numbers, and identification numbers of the generator, the designated hazardous waste facility, and an alternate facility, if any, to which the waste is being transported;~~

~~B. the name and identification number of each transporter;~~

~~C. a manifest document number, assigned by the generator in sequential order for each waste shipment;~~

~~D. the total quantity of each hazardous waste by units of weight or volume and the type and number of containers as loaded into or onto the transport vehicle;~~

~~E. The description of waste or wastes by the proper shipping name, required by regulations of the United States Department of Transportation in Code of Federal Regulations, title 49, sections 172.101, 172.202, and 172.203 (1983) if applicable; otherwise the description of the waste or wastes as listed on the Minnesota hazardous waste disclosure; and~~

~~F. signature and date blocks for the generator, the transporter, and the facility operator~~ The Minnesota manifest (Minnesota Form PQ-00371-01) is based on the Uniform National Manifest (EPA Form 8700-22) that is required under United States Department of Transportation and United States Environmental Protection Agency regulations, as contained in Code of Federal Regulations, title 40, part 262, and Code of Federal Regulations, title 49, part 172. Manifest information requirements include those required by United States Department of Transportation and United States Environmental Protection Agency regulations and consist of the numbered items on the manifest set forth in the Appendix to Code of Federal Regulations, title 40, part 262. Additional state information requirements consist of the telephone number of the designated facility and the hazardous waste numbers specified in parts 7045.0100 to 7045.0141 for each hazardous waste specified on the manifest. Manifests must include the information specified in this subpart and in the instructions on the manifest.

Subp. 8. ~~Certification~~ Availability of manifests. ~~The following certification must appear on the manifest. "This is to certify that the above-named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the United States Department of Transportation and the EPA."~~ Minnesota manifests (Minnesota Form PQ-00371-01) are available from the agency or the documents section of the Minnesota Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155.

Subp. 9. Number of copies. The manifest must consist of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records, another copy to be returned to the generator by the facility, and the required copies to be returned to the director, pursuant to parts 7045.0265; 7045.0474, subpart 2, item D; and 7045.0580, subpart 2, item D, and any additional copies required by the generator's or designated facility's state, if other than Minnesota. Copies to be returned to the director shall be sent to: Minnesota Pollution Control Agency, Solid and Hazardous Waste Division, 1935 West County Road B2, Roseville, Minnesota 55113, Attention: HWIMS.

Subp. 10. Continuation sheets. A generator using a Minnesota manifest (Minnesota Form PQ-00371-01) shall use a continuation sheet to the manifest if more than two transporters are to be used to transport the waste. A generator using a Minnesota manifest (Minnesota Form PQ-00371-01) shall use either a continuation sheet to the manifest or an additional manifest which is completed in its entirety, if more space is required for the United States Department of Transportation description and related information on the manifest. Any United States Environmental Protection Agency approved continuation sheet may be used if it is completed and copies are distributed in accordance with this part and United States Environmental Protection Agency regulations as contained in Code of Federal Regulations, title 40, part 262. A generator using a continuation sheet to a Minnesota manifest (Minnesota Form PQ-00371-01) shall enter the preprinted State Manifest Document Number of the manifest into the appropriate space on the continuation sheet, and shall attach the sheet to the manifest. Continuation sheets are not provided by the state. For shipments not requiring a Minnesota manifest (Minnesota Form PQ-00371-01), generators shall use continuation sheets in accordance with applicable consignment state requirements.

7045.0302 INTERNATIONAL SHIPMENTS; SPECIAL CONDITIONS.

Subpart 1. [Unchanged.]

Subp. 2. Procedures. When shipping hazardous waste outside the state of Minnesota to a foreign country the generator must:

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A. [Unchanged.]

B. require that the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest signed by the foreign consignee may be used for this purpose; ~~and~~

C. meet the requirements under parts 7045.0261 and 7045.0265 for the manifest except that:

(1) in place of the name, address, and identification number of the designated facility, the name and address of the foreign consignee must be used; and

(2) the generator must identify the point of departure from the United States through which the waste must ravel before entering a foreign country; and

D. use a Minnesota manifest (Minnesota Form PQ-00371-01).

Subp. 3. [Unchanged.]

Subp. 4. Manifest. When importing hazardous waste, a person must use a Minnesota manifest (Minnesota Form PQ-00371-01) and meet all requirements of parts 7045.0261 and 7045.0265 for the manifest except that:

A. and B. [Unchanged.]

7045.0476 MANIFEST DISCREPANCIES.

Subpart 1. [Unchanged.]

Subp. 2. Definition of a discrepancy. Manifest discrepancies are defined as significant or minor~~:~~ as follows:

A. Significant discrepancies include differences between the quantity or type of hazardous waste designated on the manifest or shipping paper and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are weight differences for bulk wastes greater than ten percent and any variation in piece count for batch waste, such as a difference of one drum in a truckload. Significant discrepancies in types of waste are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

B. Minor discrepancies are all other discrepancies including, but not limited to, manifests other than the required Minnesota manifest (Minnesota Form PQ-00371-01), incomplete manifests or shipping papers, manifests or shipping papers which are inconsistent, and a container or portable tank containing hazardous waste which is not properly labeled.

Subp. 3. [Unchanged.]

7045.0582 MANIFEST DISCREPANCIES.

Subpart 1. [Unchanged.]

Subp. 2. Definition of discrepancy. Manifest discrepancies are defined as significant or minor as follows:

A. [Unchanged.]

B. Minor discrepancies are all other discrepancies including but not limited to manifests other than the required Minnesota manifest (Minnesota Form PQ-00371-01), incomplete manifests or shipping papers, manifests or shipping papers which are inconsistent, and a container or portable tank containing hazardous waste which is not properly labeled.

Subp. 3. [Unchanged.]

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *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 strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after 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 emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Agriculture
Agronomy Services Division

Adopted Amendments to Rules Governing Pesticides

The rule proposed and published at *State Register*, Volume 9, Number 8, pages 365-366, August 20, 1984 (9 S.R. 365) is adopted as proposed.

Department of Commerce

Adopted Rules Governing Employee Health and Disability Joint Self-Insurance

The rules proposed and published at *State Register*, Volume 9, Number 8, pages 366-376, August 20, 1984 (9 S.R. 366) are adopted as proposed.

State Board of Education
Department of Education
Operations Division

Adopted Rules Governing Required Three-Year and Four-Year Senior Secondary School Curriculum Offerings

The rules proposed and published at *State Register*, Volume 8, Number 41, pages 2210-2213, April 9, 1984 (8 S.R. 2210) are adopted with the following modifications:

Rules as Adopted

3500.2010 REQUIRED CURRICULUM OFFERINGS FOR THREE-YEAR SENIOR SECONDARY SCHOOLS.

Subp. 2. Schedule.

Subjects	Minimum Clock Hours	Credit/Hours
Communication skills	480	4
Mathematics	360	3
Science	360	3
Social studies	360	3
One modern-classical ~~foreign~~ language	240	2
Music	240	2
Visual arts	240	2
Industrial arts	120	1
Health	60	½
Physical education in grade 10	60	½
Electives, local district choice in five subject areas	1,200	10

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.

Subp. 3. Required offerings without minimum hours. The programs in A and B must be offered to students. The number of clock hours to be devoted to each is up to the local school board. Satisfactory completion will be based on locally determined learner outcomes which are defined as knowledge, skills, or understandings that an individual student derives from a learning experience.

B. A school district must provide an information technology program to meet individual student needs. Information technology includes such things as student learning about and with one or more of the following: computers, telecommunications, cable television, interactive video, film, low power television, satellite communications, and microwave communications. Information technology may be integrated with course content of other subject areas.

3500.2110 REQUIRED CURRICULUM OFFERINGS FOR FOUR-YEAR SENIOR SECONDARY SCHOOLS.

Subp. 2. Schedule

Subjects	Minimum Clock Hours	Credit/Hours
Communication skills	600	5
Mathematics	480	4
Science	480	4
Social studies	480	4
One modern-classical ~~foreign~~ language	240	2
Music	240	2
Visual arts	240	2
Industrial arts	120	1
Health	60	½
Physical education		
in grade 9	80	⅔
in grade 10	60	½
Electives, local district choice in five subject areas	1,200	10

Subp. 3. Required offerings without minimum hours. The programs in A and B must be offered to students. The number of clock hours to be devoted to each is up to the local school board. Satisfactory completion will be based on locally determined learner outcomes which are defined as knowledge, skills, or understandings that an individual student derives from a learning experience.

B. A school district must provide an information technology program to meet individual student needs. Information technology includes such things as student learning about and with one or more of the following: computers, telecommunications, cable television, interactive video, film, low power television, satellite communications, and microwave communications. Information technology may be integrated with course content of other subject areas.

Department of Energy and Economic Development

Adopted Rules Governing Tax Credit Certification

The rules proposed and published at *State Register*, Volume 9, Number 2, pages 90-96, July 9, 1984 (9 S.R. 90) are adopted with the following modifications:

Rules as Adopted

4351.0400 CERTIFICATION AS SMALL BUSINESS ASSISTANCE OFFICE.

Subpart 1. Application. For a nonprofit corporation to be certified as a small business assistance office under Minnesota Statutes, section 290.069, subdivision 1, paragraph (a), it must submit to the commissioner an application form provided by the commissioner along with a copy of the articles of incorporation; a copy of the designation by the Internal Revenue Service that the corporation is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as amended through December ~~15~~ 31, 1983; the most recent audited financial statement; and a recent payroll abstract or the equivalent.

4351.0500 CERTIFICATION AS QUALIFIED SMALL BUSINESS.

Subpart 1. Application. For a business entity to be certified as a qualified small business under Minnesota Statutes, section 290.069, subdivision 1, paragraph (f), it must submit to the commissioner an application form provided by the

commissioner along with a copy of its three most recent individual or corporate federal income tax returns, a list of the entity's shareholders and their voting interest, a copy of the articles of incorporation and its amendments or partnership agreement if the business entity is a partnership, or a certificate of limited partnership when the business entity is a limited partnership, a recent payroll abstract or the equivalent, and any other information requested by the commissioner as reasonably needed to certify the business entity as a qualified small business.

The application must contain at a minimum the name and address of the business, the taxable year of the business, and an affirmation by an officer of the business affirming:

H. that the business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December ~~15~~ 31, 1983.

4351.0700 APPLICATION FORM FOR CERTIFICATION OF SMALL BUSINESS ASSISTANCE OFFICE.

APPLICATION FOR CERTIFICATION OF
SMALL BUSINESS ASSISTANCE OFFICE
Pursuant to Minnesota Statutes,
section 290.069, subdivision 1

Department of Energy and Economic Development

Date of application:_____

Name of business:_____

Address of business:_____

I _____ affirm that I am the _____ of the above named organization and affirm:

1. that the above named corporation is a nonprofit corporation under Minnesota Statutes, chapter 317 and is an exempt organization under section 501(c)(3) of the Internal Revenue Code, as amended through December ~~15~~ 31, 1983;

4351.0800 APPLICATION FORM FOR CERTIFICATION AS A QUALIFIED SMALL BUSINESS.

APPLICATION FOR CERTIFICATION
AS A QUALIFIED SMALL BUSINESS
Pursuant to Minnesota Statutes,
section 290.069, subdivision 1

Department of Energy and Economic Development

Date of application:_____

Name of business:_____

Address of business:_____

Primary purpose of business:_____

I _____ affirm that I am the _____ of the above named business entity and affirm:

8. that the above named business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December ~~15~~ 31, 1983.

Higher Education Coordinating Board

Adopted Rules Governing the State Scholarships and Grants-in-Aid Dependency Standards

The rules proposed and published at *State Register*, Volume 8, Number 48, pages 2515-2518, May 28, 1984 (8 S.R. 2515) are adopted with the following modifications:

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.

Rules as Adopted

4830.0400 APPLICATION DATES AND STUDENT ELIGIBILITY.

Subp. 2. Minnesota resident. "Minnesota resident" means a student whose parent or legal guardian resides in Minnesota on the date of application if the student:

"Minnesota resident" means a student who has resided in Minnesota for other than educational purposes for at least 12 consecutive months prior to becoming a full-time student, for a student who ~~establishes the circumstances~~ meets the conditions indicated in part 4830.0600, subpart 1, item B, subitem (1), (2), or (3).

4830.0600 AWARDS.

Subpart 1. Monetary awards. The amount of a scholarship or grant-in-aid financial stipend may not exceed an applicant's cost of attendance, as defined in Minnesota Statutes, section 136A.121, subdivision 6, after deducting the following:

B. A contribution by the applicant's parents, as determined by a financial need analysis. The parental contribution will be considered in determining the state award, unless~~:~~ one of the four following situations applies.

(2) The applicant is 22 years of age or older on October 1 of the state fiscal year for which aid is received, and establishes that she or he is not dependent upon parental support, based on the following ~~evidence~~ information for the applicant's parents' tax year ending during that fiscal year, and the preceding tax year:

The facts must be established by affidavit from the parents if ~~possible~~ they can be located, and by additional documentation, such as income tax returns, proof of residence, voter registration, or similar documentation that reasonably may be requested by the board or its agents and employees.

(3) The applicant is:

(a) married, and ~~meets the conditions in subitem (2), units (a), (b), and (c), in the applicant's parents' tax year ending during the state fiscal year for which aid is received~~ in the applicant's parents' tax year ending during the fiscal year for which aid is received, the parents did not and will not claim the student as an income tax exemption; the student did not and will not live with his or her parents more than six weeks; and, the parents did not and will not provide direct or indirect support worth $750 or more; or

(b) a veteran, or a single parent, or divorced, separated, or widowed, and establishes that in the applicant's parents' tax year ending during the fiscal year for which aid is received, and the preceding tax year, the parents did not and will not claim the student as an income tax exemption; the student did not and will not live with his or her parents more than six weeks; and, the parents did not and will not provide direct or indirect support worth $750 or more.

(4) The applicant is under 22 years of age on October 1 of the state fiscal year, for which aid is to be received, and the applicant has, contrary to his or her wishes, been involuntarily severed from a family relation with his or her parents and has been refused their financial support so that considering a deduction for a contribution by the applicant's parents in determining the state award would be unrealistic and cause the applicant undue hardship. To qualify for this exception, the applicant shall document to the satisfaction of the fact finding committee established in subpart 1d that an exception to a presumption of the applicant's dependence on the parents is warranted, and that the applicant meets the conditions in subitem (2), units (a), (b), and (c).

Subp. 1a. Minimum. The minimum financial stipend shall be $100.

Subp. 1b. Letter. The applicant applying under subpart 1, item B, subitem (4) shall write a letter requesting determination of eligibility to the board's manager of the scholarship and grant-in-aid program for presentation to the fact finding committee of the board. The letter must be accompanied by the following documentation:

A. an affidavit from the applicant establishing that the applicant's parents have severed relations with the applicant and have refused to provide financial support to the applicant;

B. if possible, an affidavit from the applicant's parents establishing that they have severed relations with the applicant and have refused to provide financial support to the applicant;

C. two affidavits from members of the clergy, social workers, or lawyers establishing that the applicant's parents have severed relations with the applicant and refuse to provide financial support to the applicant; and

D. additional documentation such as income tax returns, rent payments, proof of residence, or voter registration may be requested by the board or its agents and employees to establish that the applicant's parents have severed relations with the applicant and that the applicant has established a pattern of self-supporting behavior.

Subp. 1c. Appeal. The applicant may appeal an adverse determination under subpart 1, item B to the executive director of the board within ten days of receiving notification of the determination. The executive director shall review the determination and make a finding. The executive director shall, on written request of the applicant, foward the determination to the board or to an appeals committee of the board to review the case and make a finding. The applicant may appeal the latter finding in writing. Then the board must forward the contested case to the Office of Administrative Hearings.

Subp. 1d. Fact finding committee. The fact finding committee of the board shall consist of the deputy executive director of the board, one financial aid officer appointed by the board, and one student appointed by the board. The appointments will be for one year or until a successor is appointed. The deputy executive director will act as chairperson of the fact finding committee and will convene the committee as necessary. In the event the financial aid officer or the student is involved in any way in a case before the committee the involved one must be replaced by an alternate appointed by the board.

Public Utilities Commission

Adopted Rules Relating to Cogeneration and Small Power Production

The rules proposed and published at *State Register*, Volume 9, Number 1, pages 41-55, July 2, 1984 (9 S.R. 41) are adopted with the following modifications:

Rules as Adopted

7835.3200 STANDARD RATES FOR PURCHASES IN GENERAL.

For qualifying facilities with capacity of 100 kilowatts or less, standard rates apply. Qualifying facilities with capacity of more than 100 kilowatts may negotiate contracts with the utility or may be compensated under standard rates if they make commitments to provide firm power. The utility must make available three types of standard rates, described in parts 7835.3300, 7835.3400, and 7835.3500. The qualifying facility with a capacity of 100 kilowatts or less must choose interconnection under one of these rates, and must specify its choice in the written contract required in part 7835.2000. Any net credit to the qualifying facility must, at its option, be credited to its account with the utility or returned by check within 15 days of the billing date. The option chosen must be specified in the written contract required in part 7835.2000. Qualifying facilities remain responsible for any monthly service charges and demand charges specified in the tariff under which they consume electricity from the utility.

7835.3700 AMOUNT OF CAPACITY PAYMENTS; CONSIDERATIONS.

The qualifying facility which negotiates a contract under part 7835.3600 must be entitled to the full avoided capacity costs of the utility. The amount of capacity payments must be determined through consideration of:

7835.3800 FULL AVOIDED ENERGY COSTS.

The qualifying facility which negotiates a contract under part 7835.3600 must be entitled to the full avoided energy costs of the utility. The costs must be adjusted as appropriate to reflect line losses.

7835.6100 UNIFORM STATEWIDE CONTRACT.

The form of the uniform statewide contract for use between a utility and a qualifying facility having less than 40 kilowatts of capacity must be as shown in part 7835.9910.

7835.9910 UNIFORM STATEWIDE CONTRACT; FORM.

The form for the uniform statewide contract for use between a utility and cogeneration and small power production facilities having less than 40 kilowatts of capacity is as follows:

UNIFORM STATEWIDE CONTRACT FOR
COGENERATION AND SMALL POWER PRODUCTION FACILITIES

THIS CONTRACT is entered into _____, 19__, by _____
(hereafter called "Utility") and _____ (hereafter called "QF").

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.

RECITALS

The QF has installed electric generating facilities, consisting of _____ _____ _____ (Description of facilities), rated at less than 40 kilowatts of electricity, on property located at _____ _____.

The QF is prepared to generate electricity in parallel with the Utility.

The QF's electric generating facilities meet the requirements of the Minnesota Public Utilities Commission (hereafter called "Commission") rules on Cogeneration and Small Power Production and any technical standards for interconnection the Utility has established ~~under~~ that are authorized by those rules.

The Utility is obligated under federal and Minnesota law to interconnect with the QF and to purchase electricity offered for sale by the QF.

A contract between the QF and the Utility is required by the Commission's rules.

AGREEMENTS

The QF and the Utility agree:

1. The Utility will sell electricity to the QF under the rate schedule in force for the class of customer to which the QF belongs.

2. The Utility will buy electricity from the QF under the current rate schedule filed with the Commission. The QF has elected the ~~following~~ rate schedule category hereinafter indicated (select one):

_____ ~~1.~~ a. Net energy billing rate under part 7835.3300.

_____ ~~2.~~ b. Simultaneous purchase and sale billing rate under part 7835.3400.

_____ ~~3.~~ c. Time-of-day purchase rates under part 7835.3500.

5. ~~The QF will operate its electric generating facilities within the rules, regulations, and policies of the Utility. A copy of those rules, regulations, and policies is attached to this contract. This agreement does not waive the QF's right to bring a dispute before the Commission~~ The QF must operate its electric generating facilities within any rules, regulations, and policies adopted by the Utility not prohibited by the Commission's rules on Cogeneration and Small Power Production which provide reasonable technical connection and operating specifications for the QF. This agreement does not waive the QF's right to bring a dispute before the Commission as authorized by Minnesota Rules, parts 7835.4800, 7835.5800, and 7835.4500, and any other provision of the Commission's rules on Cogeneration and Small Power Production authorizing Commission resolution of a dispute.

6. The Utility's rules, regulations, and policies ~~will follow~~ must conform to the Commission's rules on Cogeneration and Small Power Production.

10. The Utility may stop providing electricity to the QF during a system emergency. The Utility will not discriminate against ~~QFs~~ the QF when it stops providing electricity or when it resumes providing electricity.

12. The QF will keep in force liability insurance against personal or property damage due to the installation, interconnection, and operation of its electric generating facilities. The amount of insurance coverage will be $_____ (The utility may not require an amount ~~not~~ greater than $300,000).

Waste Management Board

Adopted Rules Governing the Hazardous Waste Reduction Grants Program

The rules proposed and published at *State Register*, Volume 9, Number 7, pages 328-332, August 13, 1984 (9 S.R. 328) 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 Corrections

Notice of Amended Statement of Need and Reasonableness for Proposed Rules Governing Adult Halfway Houses

Notice of intent to adopt rules without a public hearing on the above rules was published in the *State Register*, Volume 9, #3, July 16, 1984, p. 152-160. The Statement of Need and Reasonableness has been amended and is available to the public in accordance with Minnesota Statutes § 14.23. To receive a copy of the Statement of Need and Reasonableness (amended) contact John McLagan, Director of Standards Development Unit, Minnesota Department of Corrections, 430 Metro Square Building, St. Paul, Minnesota 55101 or call 612/296-1312.

Department of Corrections

Notice of Amended Statement of Need and Reasonableness for Proposed Rules Governing Group Foster Homes

Notice of Intent to Adopt Rules without a public hearing on the above rules was published in the *State Register*, Volume 9 #3, July 16, 1984, p. 160-168. The Statement of Need and Reasonableness has been amended and is available to the public in accordance with Minnesota Statutes § 14.23. To receive a copy of the Statement of Need and Reasonableness (Amended) contact John McLagan, Director of Standards Development Unit, Minnesota Department of Corrections, 430 Metro Square Building, St. Paul, Minnesota 55101 or call 612/296-1312.

Department of Corrections

Notice of Meeting of Minnesota Task Force on Sexual Exploitation by Counselors and Therapists

The Minnesota Task Force on Sexual Exploitation by Counselors and Therapists will hold a public hearing on Monday, November 12, 1984 in Room 112 at the State Capitol, located between Aurora and Park in St. Paul, Minnesota.

The purpose of this hearing is to give members of the public and the professional community the opportunity to provide input to the task force on all aspects of its work, as mandated by Chapter 631, 1984 Minnesota Statutes.

The public hearing will be divided into three parts. From 9 a.m. to noon, testimony will be heard from helping professionals and representatives of professional organizations. From noon until 5 p.m., testimony will be heard from state regulatory boards and attorneys. From 5 p.m. until 9 p.m., testimony will be heard from victims, victim advocates, and other concerned members of the public. Testimony should be limited to a 15 minute presentation.

Anyone wishing to testify or desiring more information should contact Barbara Sanderson, Coordinator of the task force, at (612) 296-1306.

Department of Energy and Economic Development Energy and Economic Development Authority

Public Hearing on Proposed Project and the Issuance of Bonds Under *Minnesota Statutes*, Section 116M.01 to Section 116M.13, Inclusive—Chas. A. Bernick, Incorporated

NOTICE IS HEREBY GIVEN that the Minnesota Energy and Economic Development Authority (the "Authority"), shall meet on November 28, 1984, at 3:00 p.m. o'clock, at 900 American Center Building, 150 East Kellogg Blvd., Saint Paul, Minnesota, for the purpose of conducting a public hearing on a proposed issue of bonds (the "Bonds") under *Minnesota Statutes*, Section 116M.01 to Section 116M.13, inclusive, as amended and supplemented (the "Act"), to undertake and

finance a project on behalf of Chas. A. Bernick Incorporated d/b/a Bernick's Pepsi-Cola Bottling (the "Company"), a Minnesota corporation. Such persons as desire to be heard with reference to said issue of Bonds will be heard at this meeting.

The project to be financed consists of the construction of an approximately 9,000 square foot building for soft drink bottling and production, to be located in Waite Park, Stearns County, Minnesota (at the corner of 10th Street and Sundial Drive in Sundial Park, Waite Park, Minnesota) (the "Project"). The initial owner, operator and manager of the Project will be the Company. The estimated maximum amount of the proposed bond issue is an amount equal to $550,000. The Bonds shall be limited obligations of the Authority, and the Bonds and the interest thereon shall be payable solely from the revenue pledged to the payment thereof, except that such Bonds may be secured by a mortgage or security interest to be created by the Company if subsequently required by the Authority. In addition, the Bonds and the Project may subsequently be considered by the Authority for financial assistance to be provided by the Economic Development Fund, created and established pursuant to the Act or other applicable financial assistance of the Authority. Notwithstanding the foregoing, no holders of any such Bonds shall ever have the right to compel any exercise of the taxing powers of the State of Minnesota or any political subdivision thereof to pay the Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

A copy of the application to the Authority for approval of the Project, together with all attachments and exhibits thereto and a copy of the Authority's resolution accepting the application and accepting the Project is available for public inspection at the offices of the Authority at 900 American Center Building, 150 East Kellogg Blvd., Saint Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

October 25, 1984.

By Order of the Members of the
Minnesota Energy and Economic
Development Authority,
Mark Dayton
Commissioner, Department of Energy
and Economic Development, and
Chairman, Minnesota Energy and
Economic Development Authority

Department of Energy and Economic Development Energy and Economic Development Authority

Public Hearing on Proposed Project and the Issuance of Bonds Under *Minnesota Statutes*, Section 116M.01 to Section 116M.13, Inclusive—Computer Controlled Machines of Minnesota, Incorporated

NOTICE IS HEREBY GIVEN that the Minnesota Energy and Economic Development Authority (the "Authority"), shall meet on November 28, 1984, at 3:00 p.m. o'clock, at 900 American Center Building, 150 East Kellogg Blvd., Saint Paul, Minnesota, for the purpose of conducting a public hearing on a proposed issue of bonds (the "Bonds") under *Minnesota Statutes*, Section 116M.01 to Section 116M.13, inclusive, as amended and supplemented (the "Act"), to undertake and finance a project on behalf of Computer Controlled Machines of Minnesota, Inc. (the "Company"), a Minnesota corporation. Such persons as desire to be heard with reference to said issue of Bonds will be heard at this meeting.

The project to be financed consists of the construction of an approximately 40,000 sq. ft. manufacturing facility, to be located in Northfield, Rice County, Minnesota (street address: 1700 Cannon Road North, being Block 3, Lot 1, Northfield Riverview Industrial Park, South Highway 3, Northfield, Minnesota) (the "Project"). The initial owner, operator and manager of the Project will be the Company. The estimated maximum amount of the proposed bond issue is an amount equal to $750,000. The Bonds shall be limited obligations of the Authority, and the Bonds and the interest thereon shall be payable solely from the revenue pledged to the payment thereof, except that such Bonds may be secured by a mortgage or security interest to be created by the Company if subsequently required by the Authority. In addition, the Bonds and the Project may subsequently be considered by the Authority for financial assistance to be provided by the Economic Development Fund, created and established pursuant to the Act or other applicable financial assistance of the Authority. Notwithstanding the foregoing, no holders of any such Bonds shall ever have the right to compel any exercise of the taxing powers of the State of Minnesota or any political subdivision thereof to pay the Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

A copy of the application to the Authority for approval of the Project, together with all attachments and exhibits thereto and a copy of the Authority's resolution accepting the application and accepting the Project is available for public inspection at the offices of the Authority at 900 American Center Building, 150 East Kellogg Blvd., Saint Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove, identified, during normal business hours.

October 12, 1984.

By Order of the Members of the
Minnesota Energy and Economic
Development Authority,
Mark Dayton
Commissioner, Department of Energy
and Economic Development, and
Chairman, Minnesota Energy and
Economic Development Authority

Department of Energy and Economic Development Energy and Economic Development Authority

Public Hearing on Proposed Project and the Issuance of Bonds under *Minnesota Statutes*, Section 116M.01 to Section 116M.13, Inclusive—Litchfield Woolen Mills Co. Incorporated

NOTICE IS HEREBY GIVEN that the Minnesota Energy and Economic Development Authority (the "Authority"), shall meet on November 28, 1984, at 3:00 p.m. o'clock, at 900 American Center Building, 150 East Kellogg Blvd., Saint Paul, Minnesota, for the purpose of conducting a public hearing on a proposed issue of bonds (the "Bonds") under *Minnesota Statutes*, Section 116M.01 to Section 116M.13, inclusive, as amended and supplemented (the "Act"), to undertake and finance a project on behalf of Litchfield Woolen Mills Co. Inc. (the "Company"), a Minnesota corporation. Such persons as desire to be heard with reference to said issue of Bonds will be heard at this meeting.

The project to be financed consists of the construction of a building adjacent to its existing facility to house equipment for the processing of wool, to be located in Litchfield, Minnesota (street address: 111 East 10th Street, Litchfield, Minnesota) (the "Project"). The initial owner, operator and manager of the Project will be the Company. The estimated maximum amount of the proposed bond issue is an amount equal to $560,000. The Bonds shall be limited obligations of the Authority, and the Bonds and the interest thereon shall be payable solely from the revenue pledged to the payment thereof, except that such Bonds may be secured by a mortgage or security interest to be created by the Company if subsequently required by the Authority. In addition, the Bonds and the Project may subsequently be considered by the Authority for financial assistance to be provided by the Economic Development Fund, created and established pursuant to the Act or other applicable financial assistance of the Authority. Notwithstanding the foregoing, no holders of any such Bonds shall ever have the right to compel any exercise of the taxing powers of the State of Minnesota or any political subdivision thereof to pay the Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

A copy of the application to the Authority for approval of the Project, together with all attachments and exhibits thereto and a copy of the Authority's resolution accepting the application and accepting the Project is available for public inspection at the offices of the Authority at 900 American Center Building, 150 East Kellogg Blvd., Saint Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

October 12, 1984.

By Order of the Members of the
Minnesota Energy and Economic
Development Authority,
Mark Dayton
Commissioner, Department of Energy
and Economic Development, and
Chairman, Minnesota Energy and
Economic Development Authority

Department of Energy and Economic Development Energy and Economic Development Authority

Public Hearing on Proposed Project and the Issuance of Bonds under *Minnesota Statutes*, Section 116M.01 to Section 116M.13, Inclusive—Metro Mold and Design, Incorporated

NOTICE IS HEREBY GIVEN that the Minnesota Energy and Economic Development Authority (the "Authority"), shall meet on November 28, 1984, at 3:00 p.m. o'clock, at 900 American Center Building, 150 East Kellogg Blvd., Saint Paul, Minnesota, for the purpose of conducting a public hearing on a proposed issue of bonds (the "Bonds") under *Minnesota Statutes*, Section 116M.01 to Section 116M.13, inclusive, as amended and supplemented (the "Act"), to undertake and finance a project on behalf of Metro Mold and Design, Inc. (the "Company"), a Minnesota corporation. Such persons as desire to be heard with reference to said issue of Bonds will be heard at this meeting.

The project to be financed consists of the construction and equipping of an approximately 7,200 sq. ft. building to be used as a facility for the design and building of molds for the plastic industry, to be located in Rogers, Minnesota (street address: 21501 John Deere Lane, Rogers, Minnesota) (the "Project"). The initial owner, operator and manager of the Project will be the Company. The estimated maximum amount of the proposed bond issue is an amount equal to $260,000. The Bonds shall be limited obligations of the Authority, and the Bonds and the interest thereon shall be payable solely from the revenue pledged to the payment thereof, except that such Bonds may be secured by a mortgage or security interest to be created by the Company if subsequently required by the Authority. In addition, the Bonds and the Project may subsequently be considered by the Authority for financial assistance to be provided by the Economic Development Fund, created and established pursuant to the Act or other applicable financial assistance of the Authority. Notwithstanding the foregoing, no holders of any such Bonds shall ever have the right to compel any exercise of the taxing powers of the State of Minnesota or any political subdivision thereof to pay the Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

A copy of the application to the Authority for approval of the Project, together with all attachments and exhibits thereto and a copy of the Authority's resolution accepting the application and accepting the Project is available for public inspection at the offices of the Authority at 900 American Center Building, 150 East Kellogg Blvd., Saint Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

October 12, 1984.

By Order of the Members of the
Minnesota Energy and Economic
Development Authority,
Mark Dayton

Commissioner, Department of Energy
and Economic Development, and
Chairman, Minnesota Energy and
Economic Development Authority

Department of Finance

Notice of Maximum Interest Rate for Municipal Obligations, November, 1984

Pursuant to Minnesota Statutes, Section 475.55, Subdivision 4, Commissioner of Finance, Gordon M. Donhowe, announced today that the maximum interest rate for municipal obligations in the month of November will be twelve (12) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to thirteen (13) percent per annum.

For further information, contact:

Peter Sausen, Director
Debt Management
State of Minnesota
Department of Finance
(612) 296-8372

Metropolitan Council

Public Hearing on Amendments to the Housing Chapter of the Metropolitan Development Guide

The Metropolitan Council will hold a public hearing Thursday, November 29, at 2 p.m. in the Council Chambers, 300 Metro Square Building, 7th and Robert Sts., St. Paul, Minn. 55101, on proposed amendments to the Housing chapter of the Metropolitan Development Guide. The amendments include revisions to the Housing policy plan, the Council's housing review guidelines, a proposed Community Index and housing legislative recommendations. All interested people are encouraged to attend the hearing and offer comments. People may register to speak in advance by contacting Lucy Thompson of the Council's planning assistance staff at 291-6521. Questions on the proposed revisions should be directed to Guy Peterson of the Council's housing staff, at 291-6527. Copies of the proposed Housing chapter amendments are available free of charge from the Council's Communications Department, at 291-6464. Copies are also available for public inspection beginning October 29 at the following locations:

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

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

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

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

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

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

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

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

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

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

Sandra S. Gardebring, Chair
Metropolitan Council

Office of Secretary of State

Outside Opinion Sought Regarding Proposed Rules Relating to Uniform Commercial Code Standard Forms Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Secretary of State is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing Uniform Commercial Code Standard Forms. Promulgation of these rules is authorized by Minnesota Statutes, section 336.9-403 subd. 5.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes section 14.115, subd. 1.

The Secretary of State 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 to Cheri Mattson at the address listed below or at (612) 296-2434 during regular business hours.

Cheri Mattson
Office of the Secretary of State
180 State Office Building
St. Paul, MN 55155

All statements of information and comment shall be accepted until December 5, 1984. Any written material received by the Secretary of State shall become part of the record in the event that the rules are promulgated.

Joan Anderson Growe
Secretary of State

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.

Commodities contracts with an estimated value of $5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration Information Services Bureau

Contract Available for Technical Writing Services

The Information Services Bureau (ISB), Department of Administration, for the State of Minnesota is requesting a proposal from qualified firms to provide technical writing and documentation services.

The purpose of this request is to document the processing capabilities and computer services provided by the ISB for use by various State departments and agencies. It is intended that the progression of the computer hardware and software facilities supported by ISB be explained in past, present, and future terms with emphasis on present and future plans. Information required to accomplish this project will be provided in the form of project documents and designation of individuals to contact for information gathering and review.

The total cost of the project will not exceed $15,000.00.

Proposals for this work should include the following:

1. A narrative, or example of how the project will be accomplished delineating those activities which will be the responsibility of ISB from those of the bidder.

2. Number of and hourly rates for personnel assigned to the project.

3. An ISB option to update the document as needed.

All communications and responses associated with this request should be directed to:

Richard A. Kelly, Director
Facilities Management Division
Information Services Bureau
658 Cedar Street, Centennial Office Building
St. Paul, Minnesota 55155
(612) 296-6351

Department of Administration Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
26-176-02334	Janitorial Service Contract	Metro State University		Contact buyer
27-154-41084	Typewriters	Lakewood Community College	White Bear Lake	Contact buyer
12-600-81234, 3601	If You Don't Know Beans About Beans Cookbook	Health	St. Paul	Contact buyer
12-600-61233, 3600	WIC & You & Recipes Too	Health	St. Paul	Contact buyer
21-602-83874	Furnish & Install Van Lift & Accessories	Economic Security—Vocational Rehabilitation	Shoreview	Contact buyer
26-072-09070	Video Camera Kit	Moorhead University	Moorhead	Contact buyer
27-144-44451	Indoor Scoreboards	Itasca Community College	Grand Rapids	Contact buyer
79-000-44646	Draft Inducer	Transportation	Virginia	Contact buyer
29-000-36665	Snow Groomer Drags	Natural Resources	Various	Contact buyer
32-300-12158-59	Conwed Accoustical Dividers	Pollution Control	Roseville	Contact buyer
02-511-41488	Electric Pallet Truck	Central Stores	St. Paul	Contact buyer
27-149-42793	Purchase of Photocopy Machine	Northland Community College	Thief River Falls	Contact buyer
26-137-03006	Purchase of Terminals	Southwest State University	Marshall	Contact buyer
29-000-36831, 3398	Resident Combo (Husband & Wife) Angling License	Natural Resources	St. Paul	Contact buyer
29-000-36823, 3409	Resident Small Game Hunting License	Natural Resouarces	St. Paul	Contact buyer
29-000-36820, 3393	Non-Resident Combo Angling License	Natural Resources	St. Paul	Contact buyer
29-000-36822, 3395	Non-Resident Short Term Angling License	Natural Resources	St. Paul	Contact buyer
29-000-36829, 3396	Resident Ind. Angling License	Natural Resourses	St. Paul	Contact buyer
29-000-36819, 3392	Non-Resident Ind. Angling License	Natural Resources	St. Paul	Contact buyer

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
32-100-12085	Purchase of Controller & Memory Card	Pollution Control	Roseville	Contact buyer
Sch. 92-DF	Premium Grade No. 2 Diesel Fuel	Various	Various	Contact buyer
55-000-88931	VTS Integral System	Human Services—Services for the Blind	St. Paul	Contact buyer
79-000-44781	Liquid Calcium Chloride Dispensing System and Tank	Transportation	Various	Contact buyer
43-000-00000	Comprehensive General Liability Insurance	Iron Range Resources & Rehabilitation Board	Biwaubik	Contact buyer
Contract	Laundry Soaps, Detergents & Chemicals	Various	Various	150,000-170,000
77-000-08948	Rental of Photocopy Machines		Apple Valley	Contact buyer
29-000-36833-4-5, 3400-2-3	Stream Trout, Migratory Waterfowl & Pheasant Stamp	Natural Resources	St. Paul	Contact buyer
Contract	Snow Removal	Rainy River Community College	International Falls	Contact buyer
29-007-32725	Tree Marking Ink	Natural Resources	Grand Rapids	Contact buyer
29-001-08174	Steel "U" Posts	Natural Resources	Middle River	Contact buyer
07-500-32462	Recording Device Parts	Public Safety	St. Paul	Contact buyer
Sch. 93 Rebid	Light Heating Fuel Oil Requirements	Various	Various	Contact buyer
26-073-16918	Motorcycle Trailers	St. Cloud State University	St. Cloud	Contact buyer
26-073-16980	Power Supply	St. Cloud State University	St. Cloud	Contact buyer
07-300-32389	Modular Camera System	Public Safety	St. Paul	Contact buyer

Contact 296-6152 for referral to specific buyers.

Department of Energy and Economic Development Energy Division

Request for Proposals for Evaluation of Performance of the HVAC System in the St. Paul Retrofit House

The Energy Division has issued a request for proposals (RFP) from contractors to perform a "real time" data collection and computer similation assessing the thermal and environmental performance of the heating, ventilating and air-conditioning (HVAC) system in a St. Paul test house.

A copy of the RFP may be obtained from Charles A. Lane, Research Scientist, DEED-Energy Division, 900 American Center Building, St. Paul, MN 55101, (612) 297-2496.

The deadline for receipt of proposals is November 16, 1984. The estimated amount of the contract will not exceed $12,000.00.

SUPREME COURT

Decisions of the Supreme Court Filed Friday, October 26, 1984

Compiled by Wayne O. Tschimperle, Clerk

C2-84-865, C4-84-866 Cable Communications Board of the State of Minnesota, Petitioner; City of St. Paul, Petitioner; Continental Cablevision of St. Paul, Inc., Petitioner; v. NorWest Cable Communications Partnership; Ronald W. Wills. Court of Appeals.

An objector to confirmation of a cable franchise is not entitled to a hearing as a matter of right under the Cable Communications Act, due process principles, or Cable Communications Board Regulations.

The Cable Communications Board's use of a three-part test to determine if a matter was substantially contested within the meaning of its rule was a permissible interpretation of its existing rule and was not the improper promulgation of a new rule.

Cable Communications Board finding that objector's challenge to the St. Paul cable franchisee was not substantially contested was based upon substantial evidence, and was not arbitrary or capricious.

Reversed. Amdahl, C.J.

Took no part, Peterson, J.

C7-83-284 State of Minnesota v. Kevin James Nolan, Appellant. Wabasha County.

Fourth Amendment does not protect "open fields."

Affirmed. Peterson, J.

CX-83-263 State of Minnesota v. Michael W. Patricelli, Appellant. Washington County.

Evidence of defendant's guilt of aggravated robbery was sufficient.

Trial court correctly concluded that defendant's inculpatory statement to sheriff's deputy was not the tainted fruit of an earlier confession to a different crime made to a different officer.

Trial court did not err in refusing to sentence defendant without regard to Minn. Stat. § 609.11 (1982), the minimum term statute; defendant is entitled to credit against his sentence for pretrial time spent in jail in another county.

Affirmed as modified. Todd, J.

CX-83-988 State of Minnesota v. Robert Martin Cavegn, Appellant. Ramsey County.

Affidavit based on independent police observation of "controlled purchase" of marijuana from defendant in his apartment established probable cause warranting search of defendant's apartment and his person.

Affirmed. Todd, J.

C8-83-682 State of Minnesota v. Robert J. Deans, Appellant. Washington County.

Defendant received a fair trial and was properly found guilty of theft by swindle.

Affirmed. Wahl, J.

C3-83-976 State of Minnesota v. Marie Oka, Appellant. Ramsey County.

Defendant was properly found guilty of wrongfully obtaining welfare benefits, and sentencing court did not err in imposing and staying execution of sentence rather than staying imposition of sentence.

Affirmed. Kelley, J.

C9-83-223 State of Minnesota v. Donald James Abbot, Appellant. Sherburne County.

Evidence was sufficient to support defendant's conviction of felony murder.

Defendant's trial attorney represented him adequately and defendant received a fair trial.

Affirmed. Coyne, J.

C5-83-977 Arthur Thomas Kost, Petitioner, Appellant, v. State of Minnesota. Ramsey County.

District court properly denied petition for post-conviction relief based upon a claim of newly discovered evidence; the court also properly refused to allow petitioner to amend his petition and produce evidence on the issue of whether petitioner's trial counsel failed to represent him effectively at his trial in 1977, there being no satisfactory explanation for the failure to raise the issue in an earlier post-conviction proceeding finally decided in 1979 and no indication in the record that petitioner likely would prevail if a hearing were granted.

Affirmed. Coyne, J.

Order Filed October 18, 1984

C5-80-52031 In the Matter of the Application for the Discipline of Dennis J. Murphy, an Attorney at Law of the State of Minnesota. Supreme Court.

Reinstated. Amdahl, C.J.

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

(612) 297-3000
(toll-free # for MN:
1-800-652-9747)

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Contact: Senate Public Information Office
B29 State Capitol, St. Paul, MN 55155
(612) 296-0504

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