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STATE REGISTER

STATE OF MINNESOTA

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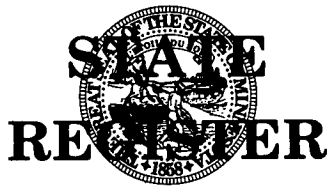
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VOLUME 9, NUMBER 24

December 10, 1984

Pages 1269-1364



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			
25	Monday Dec 3	Monday Dec 10	Monday Dec 17
26	Monday Dec 10	Friday Dec 14	Monday Dec 24
27	Friday Dec 14	Thursday Dec 20	Monday Dec 31
28	Thursday Dec 20	Thursday Dec 27	Monday Jan 7

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

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

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

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

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NOTICE

How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION 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	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
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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.

Charitable Gambling Control Board

Proposed Rules Governing Lawful Gambling

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 14.14, subd. 1, in the above-entitled matter on January 10, 1985 at Duluth City Council Chambers, City Hall, Duluth, Minnesota; on January 11, 1985 at Comstock Memorial Union, Moorhead State University, 14th Street and 6th Avenue South, Moorhead, Minnesota; and on January 12, 1985 at St. Paul Vocational-Technical Institute, 235 Marshall, St. Paul, Minnesota, commencing at 9:00 a.m. on each day and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of the proposed rules, by submitting either oral or written data, statements, or arguments. The hearing will be conducted by Administrative Law Judge George A. Beck, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, Telephone (612) 341-7601. The rule hearing procedure is governed by Minn. Stat. §§ 14.02 through 14.45 and 14.48 through 14.56, and by Minn. R. 1400.0200-1400.1200 (Minnesota Rules). Questions regarding procedure may be directed to the Administrative Law Judge at the above-listed address.

As a result of the hearing process, the proposed rules may be modified. Written comments may be submitted without appearing at the hearing by mailing them to the Administrative Law Judge. Written material may be submitted and recorded in the hearing record for five (5) working days after the public hearings end. This comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. In addition, following the close of the initial comment period, interested persons and the agency will be permitted to submit responses to any new information submitted in the comments received during the initial comment period. The responses must be filed within three (3) working days of the close of the initial comment period. Additional evidence may not be submitted during this three-day period.

The Charitable Gambling Control Board proposes to adopt rules relating to the conduct of lawful gambling by organizations and the sale and distribution of lawful gambling equipment. Authority for adoption of these rules is contained in Laws of Minnesota 1984, chapter 502, article 12, section 7, subd. 4, codified as Minn. Stat. § 349.151; subd. 4. The proposed rules are included with this notice.

Any expenditure of public monies by local public bodies resulting from the implementation of the proposed rules will not exceed \$100,000.00 for either of the first two years following passage of the rules.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, Telephone (612) 296-5148.

PROPOSED RULES

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Charitable Gambling Control Board Office and at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all the evidence and argument that the Charitable Gambling Control Board anticipates presenting at the hearings justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Board or the Office of Administrative Hearings at a minimal charge.

Pursuant to Minn. Stat. § 14.115, subd. 2, the impact on small businesses has been considered in the promulgation of the proposed rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Board's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

Notice: Any person may request notification of the date on which the Administrative Law Judge's Report will be available, after which the Board may not take any final action on the rules for a period of five (5) working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. The Board will give notice of the adoption and filing of the rules with the Secretary of State. Any person wishing to have notice of the adoption and filing may so indicate at the hearing or send a written request to the Executive Secretary of the Board.

One free copy of this notice and the proposed rules may be obtained by contacting Roger Franke, Charitable Gambling Control Board, 900-904 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, Telephone (612) 341-7676. Additional copies will be available at the door on the dates of the hearings.

Dated: November 26, 1984.

Roger Franke, Executive Secretary
Charitable Gambling Control Board

Rules as Proposes (all new material)

7860.0010 DEFINITIONS.

Subpart 1. Scope. The terms used in parts 7860.0010 to 7860.0310 have the meaning given them in this part.

Subp. 2. Active member. "Active member" means a member who has paid all his or her dues to the organization and has been a member of the organization for at least the most recent six months. If the organization does not have a dues structure, the dues portion of this definition will not apply.

Subp. 3. Bingo. "Bingo" means a game where each player has a card or board, for which a consideration has been paid, containing five horizontal rows of spaces, with each row except the central one containing five figures. The central row has four figures with the word "free" marked in the center space of the row. Bingo also includes games which are as described in this subpart except for the use of cards where the figures are not preprinted but are filled in by the players. A player wins a game of bingo by completing a preannounced combination of spaces or, in the absence of preannouncement of a combination of spaces, any combination of five spaces in a row, either vertical, horizontal, or diagonal.

Subp. 4. Bingo occasion. "Bingo occasion" means a single gathering or session at which a series of one or more successive bingo games is played.

Subp. 5. Board. "Board" means the Minnesota Charitable Gambling Control Board.

Subp. 6. Checker. "Checker" means a person who records the number of bingo cards purchased and played during each game and records the prizes awarded to the recorded cards, but does not collect the payment for the cards.

Subp. 7. Compensation. "Compensation" means wages, salaries, and all other forms of remuneration for services rendered.

Subp. 8. Deal. "Deal" means each separate package, or series of packages, consisting of one game of pull-tabs with the same serial number purchased from a distributor.

Subp. 9. Distributor. "Distributor" is a person who sells gambling equipment and supplies he or she manufactures or purchases for resale.

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

PROPOSED RULES

Subp. 10. Flare. "Flare" means the posted display, with the Minnesota registration stamp affixed, that sets forth the rules of a particular game of pull-tabs, and that is associated with a specific deal of pull-tabs, grouping of tipboards, or series of 100 paddletickets.

Subp. 11. Fraternal organization. "Fraternal organization" means a nonprofit organization which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. The term does not include college and high school fraternities and sororities.

Subp. 12. Gambling equipment. "Gambling equipment" means bingo cards and devices for selecting bingo numbers, pull-tabs, ticket jars, paddlewheels, paddletickets, and tipboards.

Subp. 13. Gambling manager. "Gambling manager" means a person who has paid all dues to an organization and has been a member of the organization for at least the most recent two years and has been designated by the organization to supervise lawful gambling conducted by it.

Subp. 14. Gross receipts. "Gross receipts" means the total amount collected by an organization from participants in lawful gambling, or from the leasing or subleasing of their site to another organization for gambling.

Subp. 15. Lawful gambling. "Lawful gambling" is the operation, conduct or sale of bingo, raffles, paddlewheels, tipboards, and pull-tabs. Lawful gambling does not include betting related to the outcome of an athletic event.

Subp. 16. Lawful purpose. "Lawful purpose" means one or more of the following:

A. benefiting persons by enhancing their opportunity for religious or educational advancement, by relieving or protecting them from disease, suffering or distress, by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded;

B. initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures;

C. lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people; or

D. improving, expanding, maintaining, or repairing real property owned or leased by an organization.

"Lawful purpose" does not include the erection or acquisition of any real property, unless the board specifically authorizes the expenditures after finding that the property will be used exclusively for one or more of the purposes specified in this clause.

Subp. 17. Leased premises. "Leased premises" means a building or portion of a building, a place of business or portion of a business place, not owned by a gambling organization or leased in its entirety by a gambling organization for the use by the organization and its members, but is leased for the purpose of conducting gambling.

Subp. 18. Master flare. "Master flare" is used in conjunction with groups of tipboards and series of 100 paddletickets. The master flare must describe the type of tipboards or paddletickets in the group or series, have a list of all the series numbers in that group and have a state registration stamp affixed to it bearing the number of the first of the tipboards or paddletickets in the group.

Subp. 19. Net receipts. "Net receipts" are gross receipts less prizes actually paid out. This is the amount upon which the gambling tax is paid.

Subp. 20. Organization. "Organization" means any fraternal, religious, veterans, or other nonprofit organization that has been in existence in Minnesota for the most recent three years.

Subp. 21. Other nonprofit organization. "Other nonprofit organization" means an organization other than a fraternal, religious or veterans organization, and whose nonprofit status is evidenced by a certificate of nonprofit incorporation or has been recognized by the Internal Revenue Code as a nonprofit organization exempt from payment of income taxes.

Subp. 22. Paddleticket. A "paddleticket" is a preprinted ticket in a series that has printed on it a series number and one or more numbers or symbols corresponding to the numbers or symbols on a paddlewheel.

Subp. 23. Paddlewheel. "Paddlewheel" means a vertical wheel marked off into equally spaced sections containing one or more numbers or symbols and which after being turned or spun, uses a pointer or marker to indicate winning chances.

Subp. 24. Profit. "Profit" means the gross receipts collected from lawful gambling, less reasonable sums necessarily and actually expended for gambling supplies and equipment, prizes, rent, and utilities used during the gambling occasions, compensation paid to members for conducting gambling, taxes imposed by Minnesota Statutes, section 349.212, and maintenance of devices used in lawful gambling.

Subp. 25. Pull-tab. "Pull-tab" means a single folded or banded ticket or a card with a face covered to conceal one or more numbers or symbols, where one or more of each set of tickets or cards has been designated in advance as a winner. "Pull-tab" also includes a ticket sold in a gambling device known as a ticket jar.

Subp. 26. Raffle. "Raffle" means a game in which a participant buys a ticket for a chance at a prize. The winner or winners are determined by a random drawing from a container holding numbers corresponding to all chances sold and which takes place at a location and date printed upon the ticket.

Subp. 27. Religious organization. "Religious organization" means a nonprofit organization, church, body of communicants, or group gathered in common membership for mutual support and edification in piety, worship, and religious observances.

Subp. 28. Series. A "series" means a group of paddletickets which group contains tickets bearing all the numbers or symbols on a paddlewheel. A series will have a stub attached that has preprinted on it a series number, the cost per paddleticket, space for the date played, a facsimile of a state registration stamp which has the distributor's license number printed in place of the series number and space for the winning number to be written in.

Subp. 29. Series number. "Series number" means the unique number preprinted by the manufacturer on a series of paddletickets.

Subp. 30. Tipboard. "Tipboard" means a board, placard, or other device marked off in a grid or columns, in which each section contains a hidden number or numbers, or other symbol, that determines the winning chances. "Tipboard" also means a board or placard to which is attached tickets, arranged in columns or rows, which tickets contain concealed numbers. When a ticket is purchased and opened, players having certain predesignated numbers can sign the board at the place indicated by the number on the ticket. When the predesignated numbers are all purchased, a seal is removed under which is a number indicating which of the predesignated numbers is the winning number. "Tipboard" also means a board or placard to which are attached tickets which contain concealed numbers. The winning number must be determined by removing a seal on the board.

Subp. 31. Veterans organization. "Veterans organization" means any congressionally chartered organization within this state, or any branch, lodge, or chapter of a nonprofit national or state organization within this state, the membership of which consists of individuals who were members of the armed services or forces of the United States.

7860.0020 PURPOSE OF ORGANIZATION.

An organization is ineligible to conduct lawful gambling if the sole purpose of that organization is to conduct lawful gambling, whether or not the organization is carrying out that purpose for one or more otherwise eligible organizations. Therefore, every organization desiring to conduct lawful gambling must manifest itself by veterans, religious, fraternal, or other nonprofit programs.

7860.0030 CLASSES OF LICENSES AND FEES.

Subpart 1. Class A; all forms of lawful gambling. Organizations obtaining a Class A license may operate bingo, raffles, paddlewheels, tipboards, and pull-tabs unless any of these forms of lawful gambling are prohibited by a city or county regulation adopted pursuant to Minnesota Statutes, section 349.213, subdivision 1. This shall be known as a Class A license.

Subp. 2. Class B; all forms of lawful gambling except bingo. Organizations obtaining a Class B license may operate raffles, paddlewheels, tipboards and pull-tabs, but not bingo, unless any of these forms of gambling are prohibited by a city or county regulation adopted pursuant to Minnesota Statutes, section 349.213, subdivision 1. This shall be known as a Class B license.

Subp. 3. Class C; bingo only. Organizations obtaining a Class C license may operate bingo only, unless prohibited by a city or county regulation adopted pursuant to Minnesota Statutes, section 349.213, subdivision 1. This shall be known as a Class C license.

Subp. 4. Fees. The following license fees are established:

- A. an annual license fee for a Class A license is \$100;
- B. an annual license fee for a Class B license is \$50; and
- C. an annual license fee for a Class C license is \$50.

License fees are not prorated or refundable.

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7860.0040 LICENSE APPLICATION.

Subpart 1. Application required. An organization desiring to obtain a state license to conduct lawful gambling must make annual application to the board on forms provided by the board.

Subp. 2. Contents of application. The application must contain the following information:

- A. the official, legal name of the organization;
- B. the business address;
- C. the business telephone number;
- D. the city or town, and county in which gambling site is located;
- E. the address of the gambling site, indicating whether the site is or is not within city or town limits;
- F. the name and title of organization's executive officers;
- G. an indication of Minnesota or Internal Revenue Service tax exempt status;
- H. an indication of the type of eligible organization;
- I. an indication of whether the applicant is chartered by parent organization;
- J. an indication of length of existence in Minnesota;
- K. the name, address, and date of birth of the gambling manager;
- L. a verification of the required fidelity bond for gambling managers;
- M. an indication of whether the organization owns or leases the gambling site;
- N. an indication of the class of license applied for;
- O. the number of active members;
- P. if incorporated, the number of the articles of incorporation and where filed;
- Q. the federal I.D. number, if any;
- R. an "authorization to inspect bank records" of the games of chance bank account of the organization;
- S. a consent that local law enforcement officers or agents of the board may enter upon the site to observe the lawful gambling being conducted and to enforce the law for any unauthorized game or practice; and
- T. such additional information as is necessary to properly identify the applicant and to ensure compliance with Minnesota Statutes, sections 349.11 to 349.22.

Subp. 3. Required attachments to application. The applicant must attach the following material to the application:

- A. a copy of any lease agreement for a gambling site; and
- B. every eligible organization must file a copy of its written internal accounting and administrative control system relative to gambling operations with the board when they first apply for a license to conduct games of chance. The original applicants of March 1, 1985, have until September 1, 1985, to comply with this requirement.

Subp. 4. Local approval. The applicant shall deliver a copy of the application to the clerk of the local governing body along with a notification that the license, if approved by the board, will become effective within 30 days unless the governing body adopts a resolution disapproving the license and so informs the board within 30 days. The clerk will sign an acknowledgement of receipt of the copy of the license application and notification.

Subp. 5. Length of license. All licenses are effective for one year from the effective date of the license.

Subp. 6. Each site licensed. A separate license must be obtained for each gambling site.

Subp. 7. Changes in application information. If any information submitted in the application changes, the organization must notify the board within ten days of the change.

7860.0050 EXCHANGE OF GAMBLING EQUIPMENT BY LICENSEE.

Licensed organizations are prohibited from exchanging pull-tabs, tipboards, or paddletickets with any other licensed organization.

7860.0060 CREDIT PLAY PROHIBITED.

All playing of lawful gambling must be on a cash basis. Cash includes checks. Credit must not be extended to any player. The consideration to play a lawful gambling must be collected in full, by cash or check, in advance of any play. No organization

shall grant a loan or gift of any kind at any time to a player. Organizations may establish policy concerning acceptance of checks, and need not accept checks. No organization shall hold checks or accept post-dated checks.

7860.0070 ADVERTISING.

Subpart 1. Not gambling expense. Advertising, although not prohibited, may not be taken as an expense against gambling proceeds. The expense for advertising shall not be paid from the general gambling bank account required in part 7860.0140.

Subp. 2. Identifying statement. Any advertising of lawful gambling at a specific site must contain a statement identifying the organization licensed to conduct gambling at that site.

7860.0080 FEDERAL INCOME TAX EXEMPTION FORMS.

Each licensed organization that files any forms with the United States Department of the Treasury that are required for organizations exempt from income tax shall retain a copy of those forms for three years.

7860.0090 LEASE AGREEMENTS.

Subpart 1. Requirements of lease. All leases for lawful gambling sites required by Minnesota Statutes, section 349.18, subdivision 1 must contain at a minimum the following information:

A. The name of grantor or lessor, whichever is applicable, who must be the legal owner of the site. If the organization is to be a sublessee, then the lessee name must also be included.

B. The name of the eligible organization.

C. The term of the agreement (must be at least one year).

D. The monetary consideration, if any.

E. A brief description of the general area being granted or leased within the building (a sketch must be attached).

F. The inclusion of the following statement with appropriate selections: "The (grantor, lessor) does hereby agree that (he, she), (his, her) spouse, and any employee or agent of the (grantor, lessor) shall not participate in the selling, distributing, conduct, assisting or playing of lawful gambling at the site herein (granted, leased)." If the organization is a sublessee, the lessee, his or her spouse, employees and agents must also be included in this statement.

G. The days of the week and hours of the day during which lawful gambling may be conducted.

Subp. 2. Renegotiated leases. Leases renegotiated at times other than license renewal time must be furnished to the board at least ten days prior to the effective date of the lease.

7860.0100 LESSOR OF GAMBLING SITE-RESTRICTIONS.

Subpart 1. Participation in gambling activity prohibited. The lessor, lessor's spouse, and any employee or agent of the lessor shall not directly or indirectly participate in the selling, distributing, conducting, assisting, or playing of lawful gambling at the site leased. If the site is a public building, this prohibition applies to the building manager and staff and all officials in a position, individually or collectively, to approve or deny the lease.

Subp. 2. Gambling not operated in conjunction with lessor's business. No lawful gambling shall be set up or otherwise operated in conjunction with the conduct of the lessor's business operations.

Subp. 3. Prohibitions apply if organization sublessee. If the organization is a sublessee, the prohibitions in subparts 1 and 2 apply to the lessee also.

7860.0110 PREMISES LEASED TO TWO OR MORE ORGANIZATIONS.

Subpart 1. Limit on number of occasions per week. There may be no more than four bingo occasions per week on a premises unless written approval is obtained from the board. One organization may have only two bingo occasions per week.

Subp. 2. Written request required. A written request to have more than four bingo occasions on premises leased to two or more organizations must be filed with the board at least 60 days prior to the time when more than four occasions are desired. The request must be made by the owner of the premises and on a form supplied by the board which will require the following information:

A. the name of the owner of the premises;

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- B. the address of the owner of the premises;
- C. the phone number of the owner of the premises;
- D. address of premises for which waiver is requested;
- E. the names, addresses, and license numbers of organizations presently leasing premises;
- F. the number of additional bingo occasions per week requested;
- G. the reasons for the necessity of more than four bingo occasions per week;
- H. a statement explaining why allowing additional bingo occasions is consistent with:
 - (1) preventing commercialization of gambling;
 - (2) insuring the integrity of operations; and
 - (3) providing for use of the net profits only for lawful purposes.

7860.0120 GENERAL ACCOUNTING RECORDS.

Subpart 1. General records. Every organization shall maintain complete, accurate, and legible general accounting records with detailed, supporting, subsidiary records sufficient to furnish information regarding all transactions pertaining to gambling. The accounting records must be sufficient to adequately reflect gross receipts, prizes, net receipts, expenses, and all other accounting transactions. The records must be retained for a period of three years from the end of the month for which the records are kept unless the organization is released by the board from this requirement as to any particular record or records.

Subp. 2. Monthly records. Every organization licensed to operate any lawful gambling activity shall keep and maintain monthly records of all the gambling activities of the organization. These records must be kept separate for each month and include all details of the following:

- A. the gross receipts from each form of lawful gambling conducted;
- B. the cost of all prizes paid out for each form of lawful gambling conducted;
- C. full details on all expenses related to each form of lawful gambling conducted;
- D. records that clearly show in detail how the profit obtained by the organization from each gambling activity was used or disbursed by that organization; and
- E. records that detail purchases of gambling equipment as to the type, quantity, and unit cost, separated by distributor.

Subp. 3. Reports filed with the board monthly. The information required in subpart 2 must be filed with the board monthly on forms prescribed by the board. This report must be filed at the same time and as part of the organization's monthly tax return.

7860.0130 METHOD OF ACCOUNTING.

Subpart 1. Cash basis method. Every organization shall determine its gross receipts on the cash basis.

Subp. 2. Exceptions. Every organization must determine its expenses on the cash basis, except:

A. Deals of pull-tabs, paddletickets and tipboards must be determined on the accrual basis. Every licensed organization shall furnish a listing of state registration stamps removed from play or otherwise disposed of during the tax return reporting period to the board.

B. The tax imposed by Minnesota Statutes, section 349.212 must be deducted on the accrual basis.

7860.0140 GENERAL GAMBLING BANK ACCOUNT.

Every organization shall maintain a separate checking account at a financial institution, located within Minnesota, for each license issued.

Every organization shall furnish to the board an "Authorization to Inspect Bank Records."

Interest income must be included in gross receipts.

All receipts from lawful gambling must be deposited in this account and all allowable gambling expenses must be paid from this account.

7860.0150 INTERNAL CONTROL.

Subpart 1. System of internal accounting and administrative controls required. In order to adequately determine its liability for taxes under Minnesota Statutes, section 349.212, and the proper determination of profit to be expended under Minnesota

Statutes, section 349.15, every organization shall establish and have available for review, a written system of internal accounting and administrative controls relative to its lawful gambling operations. The organization shall file a copy of its internal accounting and administrative control system with the board when the license application is submitted. The board may require that the organization revise its internal accounting and administrative control system if the system does not meet the internal control objectives established by the board.

Subp. 2. Accounting control system objectives. The system of accounting control relative to gambling operations must provide a plan of organization and a description of the procedures and records which are designed to provide reasonable assurance that the following objectives will be attained:

- A. that transactions are executed in accordance with management's general or specific authorization;
- B. that transactions are recorded as necessary to properly record gambling revenue, and to maintain accountability for assets;
- C. that access to assets is permitted only in accordance with management's authorization; and
- D. that the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to differences.

Subp. 3. Administrative control system. The system of administrative control relative to gambling operations must include a complete plan of organization that will provide appropriate segregation of functional responsibilities and sound practices to be followed in the performance of these duties by competent and qualified personnel. The plan of organization must be diagrammatic and narrative in describing the interrelationship of functions and the division of responsibilities upon which the system of internal control relative to gambling operations is based.

Subp. 4. Report of chief executive required. The submitted system of internal control relative to gambling operations must be accompanied by a report of the chief executive officer that the submitted system conforms in all material respects to the objectives of internal control in subpart 2.

Subp. 5. Changes in systems. Following the organization's submission of the system of internal control relative to gambling operations, if, in the judgment of the organization, a change in the submitted internal control system is required, it may be instituted. The amended version of the system of internal control shall be forwarded to the board within ten days prior to its effective date.

Subp. 6. Board action regarding changes. Should the board determine that the submitted internal control system relative to gambling operations is inadequate, the board shall give written notice to the organization of such inadequacy. Upon receipt of the notice, the organization shall take immediate steps to remedy the inadequacy and shall notify the board of the steps, including the filing of any necessary amendments to such system. Should the organization fail to remedy the inadequacy within 60 days following receipt of the notice, it shall be deemed to be in violation of these rules and shall be subject to disciplinary actions in accordance with the rules and law. The board shall publish and make available to all organizations the general guidelines it utilizes in determining the adequacy of internal control systems.

7860.0160 EXPENSES.

Subpart 1. Expenses allowed. Reasonable sums that are necessarily and actually expended for the following items, are allowed to be taken from gross receipts from lawful gambling:

- A. prizes;
- B. gambling supplies and equipment;
- C. rent;
- D. utilities used during gambling occasions;
- E. compensation paid to members for conducting gambling;
- F. taxes imposed by Minnesota Statutes, section 349.212; and
- G. maintenance of devices used in lawful gambling.

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Subp. 2. Definitions. For purposes of subpart 1:

A. Prizes mean actual cash given to winners in gambling games. Prizes also include the cost of merchandise given to winners of gambling games. Merchandise must be expensed at the actual cost to the organization.

B. Gambling supplies and equipment mean:

(1) bingo cards, devices for selecting bingo numbers, numbered bingo balls, ink dabbers, and other supplies or equipment used in the playing of bingo such as flashboards, game boards, monitoring systems, cash registers, and game programs;

(2) pull-tabs and ticket jars;

(3) paddlewheels, paddletickets, and other necessary equipment used to conduct the game of paddlewheels;

(4) tipboards;

(5) incidental office supplies such as paper, pencils, forms, and calculators;

(6) cost of printing of raffle tickets; and

(7) all sales tax paid on these items.

C. Rent means that reasonable amount of money expended pursuant to a lease of a specific premises for the purpose of conducting lawful gambling.

D. Utilities mean:

(1) the actual cost of the utilities providing heating, cooling, water, and lighting for a premise totally owned or totally leased and used exclusively for lawful gambling; or

(2) the proportion of the utilities providing heating, cooling, and lighting attributable to that portion of a totally-owned or totally-leased premises that is used for lawful gambling.

E. Compensation paid to members for conducting lawful gambling means compensation plus reasonable employer-paid benefits, and payroll taxes for employees directly engaged in conducting gambling. If the employee performs other services unrelated to gambling activities, an allocation based on hours worked in each activity must be made.

F. Taxes mean the tax on gross receipts minus prizes actually paid out.

G. Maintenance of devices used in lawful gambling means the reasonable material and labor charges for the repair and maintenance of equipment or devices used in lawful gambling.

Subp. 3. Unallowable expenses. The following may not be taken as expenses from lawful gambling receipts:

A. advertising costs (advertising does not include bingo programs distributed on site);

B. compensation to nonmember gambling employees;

C. utilities when only a portion of a building or business place is leased for gambling;

D. employer-paid bonuses or payments made to or on behalf of a gambling employee other than those specifically allowed in subpart 2, item E; and

E. decorations of the site.

7860.0170 EXPENDITURES FOR LAWFUL PURPOSES.

Subpart 1. Disbursements to be made directly to lawful purpose. All disbursements for lawful purposes must be made to the lawful purpose directly from the general gambling bank account.

Subp. 2. Report of expenditures. Every organization shall file a monthly report with the board giving a detailed explanation of the expenditures of the profits from gambling.

Subp. 3. Expenditures authorized by organization. All expenditures of profits from lawful gambling must be authorized at a regular meeting of the conducting organization and that authorization must be recorded in the official minutes. Copies of these minutes will be sent to the board upon its written request.

7860.0180 GAMBLING TAX RETURNS.

Subpart 1. Due date for filing tax returns; general rule. The tax on lawful gambling must be paid on a monthly basis and be reported on a form prescribed by the board. The gambling tax return and payment of the tax due must be postmarked or, if hand-delivered, received in the board's office on or before the last business day of the month following the month for which the report is made.

Subp. 2. Incomplete tax returns. An incomplete tax return will not be considered timely filed unless corrected and returned by the due date for filing. Delays in mailing, mail pickups, and postmarking are the responsibility of the organization.

Subp. 3. Consolidated return. Only one return shall be filed for each organization licensed by the board

Organizations operating at more than one site shall file an attachment to the tax return disclosing the operations at each site. The attachment must use the format of the tax return.

Subp. 4. Two signatures required on tax returns. Both the gambling manager and the chief executive officer of the organization or their respective designees must sign the tax return.

7860.0190 UNLICENSED BINGO.

Subpart 1. Registration required. An organization exempt under Minnesota Statutes, section 349.214 from the licensing requirements must register with the board at least 30 days prior to the bingo occasion. The registration will be on a form prescribed by the board which will include the following information:

- A. the name of organization;
- B. the address of organization;
- C. the name of person in charge of the bingo occasion and that person's phone number;
- D. the type of eligible organization;
- E. the number of years in existence in this state;
- F. the number of active members;
- G. the intended lawful use of the profits;
- H. the number of bingo occasions conducted by the organization in the present calendar year; and

I. whether the bingo occasion is to be held in connection with a county fair, the state fair, or a civic celebration. If so, the number of consecutive days the bingo will be played.

Subp. 2. Restrictions applicable to bingo exempt from licensure. The following restrictions are applicable to exempt bingo. The organization must:

- A. be a fraternal, religious, veterans, or other nonprofit organization;
- B. have been in existence in this state for at least three years;
- C. have at least 15 active members;
- D. use the profits for lawful purposes;
- E. comply with the rules concerning allowable expenses from gambling funds;
- F. use a checker;
- G. segregate its gross receipts in a separate general gambling bank account;
- H. itemize its expenditures as to payee, purpose, amount, and date of payment;

I. report to the board within five days of the bingo occasion any discrepancy of more than \$20 between the gross receipts reported by the checkers and the gross receipts determined by the recordkeeping system;

J. keep these records for three years; and

K. comply with the statutory prize limits.

7860.0200 DISTRIBUTORS.

Subpart 1. License required. No person may sell, offer for sale, or otherwise furnish gambling equipment without having obtained a distributor license.

Subp. 2. Application required. Annual application must be made for a distributor's license. The application will be on a form provided by the board, which form will include at least the following information:

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- A. the name of person responsible for completing application;
- B. the name of business;
- C. the mailing address of business;
- D. the office address if different than mailing address;
- E. the telephone number of business;
- F. the official position of person completing the application;
- G. the legal nature of applicant:
 - (1) corporation;
 - (2) partnership;
 - (3) sole proprietorship;
- H. a list of the owners, partners, officers, directors, and people in supervisory and management positions. A distributor personnel form must be completed for each of these individuals;
- I. the address of facility into which all gambling equipment and supplies is unloaded prior to sale in this state;
- J. a statement that the applicant is not a wholesale distributor of liquor or alcoholic beverages;
- K. a statement as to whether any officer, director, or other person in a supervisory or management position:
 - (1) has been convicted of a felony within the last five years or now has a felony charge pending, in any state or federal court;
 - (2) has ever been convicted in any state or federal court of a gambling-related offense;
 - (3) has ever been engaged in an illegal business; and
- L. the chief executive officer or owner shall verify the statements in the application.

Subp. 3. Distributor personnel form. The distributor personnel form noted in subpart 2 will require the following information:

- A. the name of person completing the form;
- B. the name of distributor;
- C. the address, date of birth, place of birth, and name of spouse of person completing the form;
- D. all other current occupations along with employer's name, address, type of business, and the position held within that business;
- E. the names of any organizations conducting gambling of which the person completing this form is a member;
- F. all criminal convictions, or pending criminal charges, if any, the dates of those convictions, and the location of the court imposing sentence;
- G. a list of all the places of residence in the last ten years; and
- H. information on this form shall be verified by the person completing it.

Subp. 4. Restrictions on distributorship interest. The following are the restrictions on distributorship interest:

- A. No organization that conducts lawful gambling shall be a distributor.
- B. No person who is an officer, director, manager, or gambling manager, of any organization conducting lawful gambling shall be an officer, director, shareholder, directly or indirectly, proprietor, or employee of a distributorship, nor shall the person have any direct or indirect financial interest whatsoever in such distributorship.
- C. No person who is an officer, director, shareholder, directly or indirectly, partner, or proprietor of a wholesale alcoholic beverage distributorship shall be an officer, director, shareholder, partner, proprietor, or employee of a distributorship, nor shall the person have any direct or indirect financial interest in the distributorship.
- D. No distributor or person having a direct or indirect financial interest in a distributorship shall be a lessor of premises, directly or indirectly, to an organization conducting gambling.

Subp. 5. Changes in application information. Any changes in the information submitted in the application must be filed with the board within ten days after the change.

Subp. 6. Marking and identification of equipment for gambling. The following requirements apply to the marking and identification of equipment for lawful gambling.

A. A distributor is responsible for placing a state registration stamp upon the flare of each deal of pull-tabs, each master flare for tipboards, each master flare for series of 100 paddletickets, each paddlewheel, and each device for selecting bingo numbers that is sold or otherwise disposed of. This rule does not apply to sales by distributors to out-of-state customers for use out of state or to sales between distributors for resale to an organization.

B. Consecutively-numbered registration stamps will be furnished to each distributor by the board at the cost of five cents each. The distributor shall write in a legible manner the manufacturer's game serial number in ink in the space provided on the stamp or on the master flare and affix the stamps directly to the front of the flare of a pull-tab game, the master flare for tipboards, and the master flare for series of paddletickets before making delivery to any licensed organization.

C. Flares will be furnished to the purchaser with each pull-tab deal and a master flare with each sealed grouping of tipboards or series of 100 paddletickets.

D. Each flare must fully describe the prizes and winning number, symbol, or set of symbols for a deal of pull-tabs.

E. Registration stamps shall be placed by a distributor only on items that conform to all requirements of Minnesota law and the rules of the board and shall not be placed upon items not authorized for use within Minnesota.

F. Registration stamps may be obtained only from the board by a licensed distributor. The registration stamps must be placed by the licensed distributor only on items which the distributor sells or otherwise furnishes, and must not be transferred or furnished to any other distributor.

G. No person not a licensed distributor shall obtain registration stamps from any other source, nor shall he or she affix a gambling stamp to any deal of pull-tabs, tipboards, or paddletickets.

H. In the event and at the time of a liquidation, bankruptcy, or closing of a distributorship by any other means, including a nonrenewal of a license to be a distributor, or a relinquishment of the license, the distributor shall return any and all unused state registration stamps in his or her possession to the board within five days after cessation of business.

Subp. 7. Buying from and selling only to organizations required. No distributor shall sell or otherwise make available to any organization any deals of pull-tabs, tipboards, paddlewheels, or any other gambling supplies, or related equipment unless it has first determined that the organization has a valid license issued by the board or is exempt from licensing requirements. No organization shall purchase or otherwise obtain from any distributor any deal of pull-tabs, any tipboard, paddlewheel, or any other gambling supplies or related equipment until it has first determined that the distributor selling or otherwise offering such supplies or equipment has a valid license issued by the board to sell the equipment in this state.

Subp. 8. Books and records to be kept. Each distributor shall maintain for six years records that contain the following information relative to the purchase and sale, lease, rental, or loan of gambling equipment and material.

A. Sales invoices for all gambling equipment distributed, whether by sale, lease, rental, or loan, to all gambling organizations. Gambling equipment and supplies provided to all gambling organizations at no charge must be recorded on a sales invoice. The sales invoices must be on a standard form prescribed by the board and must have the following information as a minimum:

- (1) the license number of the distributor;
- (2) the complete business name and address of the organization;
- (3) the license number of the organization;
- (4) the invoice number;
- (5) the invoice date;
- (6) the date shipped;
- (7) the quantity by deals for pull-tabs and by the number of boards for tipboards and number of series for paddletickets;
- (8) a full description of each item of equipment or supplies sold;

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- (9) registration stamp numbers;
- (10) the ideal gross receipts; and
- (11) the ideal net receipts.

B. A registration stamp number log in which the Minnesota gambling registration stamp numbers and the manufacturer's game serial numbers are recorded must be maintained on a standard form prescribed by the board.

Subp. 9. Examination of books and records. The board and its agents may examine or cause to be examined the books and records of any distributor to the extent that such books and records relate to any transaction connected to the sale of gambling equipment and materials in this state or to information that is required to be furnished to the board under the statutes and rules pertaining to gambling, and no distributor shall prohibit, interfere with, or otherwise impede such examination, but shall cooperate and assist with the examination, and provide such information as may be required.

Subp. 10. Distributors' sales to out-of-state purchasers. Gambling equipment and supplies sold by distributors to out-of-state customers for use out of state must either be shipped to the out-of-state site or the distributor must verify that the purchaser is from out of state.

Subp. 11. Delivery in-state. Gambling equipment and supplies sold for in-state use must be delivered to the gambling manager or an authorized representative.

Subp. 12. Distributors not to sell coin-operated machine or mechanical pull-tab dispensing devices. No coin-operated machine or mechanical pull-tab dispensing device shall be sold or otherwise furnished to any organization in this state.

Subp. 13. Distributors' information reports. Each distributor shall mail a copy of each sales invoice, as described in subpart 8 to the board to be received by the board by the 15th of the month following the month in which the invoice was prepared along with the registration stamp number log described in subpart 8.

Subp. 14. Rebate of purchase prices by distributor. Rebates of purchase prices or discounts allowed by a distributor must be separately stated on the original purchase invoice or separately invoiced on a credit memo referenced to the original sales invoice.

Subp. 15. Gifts from distributors prohibited. Distributors may not directly or indirectly give gifts, trips, prizes, loans of money, excluding credit, premiums, or other gratuities to gambling organizations, or their employees, other than nominal gifts, premiums, or prizes not to exceed a value of \$25 per organization, including employees, in a calendar year.

Subp. 16. Same serial number and color trim; prohibited. No distributor shall sell or furnish to any organization a deal of pull-tabs or jar tickets with the same serial number and color trim combination as a deal which that organization has previously purchased or obtained but upon which play has not been completed.

Subp. 17. Sales promotion. No distributor or representative of a distributor shall use as a sales promotion any statement, demonstration, or implication that any certain portion of a deal of pull-tabs or a tipboard contains more winners than other portions of the deal or that any deal of pull-tabs or tipboard tickets may be sold by the organization in a particular manner that would give the organization any advantage in selling more of the pull-tabs or tipboard tickets before having to pay out winners.

Subp. 18. Return of merchandise; cancellation of registration stamp. If an organization returns a purchased deal of pull-tabs, tipboards, or series of paddletickets to a distributor for whatever reason, the distributor shall void the Minnesota registration stamp and notify the board of the voiding and the reason for the voiding on a standard form prescribed by the board. The distributor shall return all voided registration stamps to the board. If the distributor resells or re-issues the item, the distributor shall place a new Minnesota registration stamp upon the flare of the deal of pull-tabs, master flare of tipboards, or paddletickets that are sold or otherwise disposed of.

Subp. 19. Must use sales invoice. No distributor shall sell, issue, or have returned a deal of pull-tabs, a tipboard, or paddleticket to or from an organization without first recording the transaction on a sales invoice.

Subp. 20. License fee. The annual distributor license fee is \$1,500.

Subp. 21. Renewal date. All distributor licenses must be renewed on March 1 of each year. There will be no proration of the license fee.

7860.0210 SPECIAL RESTRICTIONS; PULL-TABS AND TIPBOARDS.

Subpart 1. Sales. No organization, distributor, or manufacturer, or representative thereof, with knowledge or in circumstances whereunder he or she reasonably should have known, shall possess, display, put out for play, sell, or otherwise furnish to any person any deal of pull-tabs or tipboards:

A. in which the winning pull-tabs or tipboard tickets have not been completely and randomly distributed and mixed among all other pull-tabs or tipboard tickets in the deal;

B. in which the location, or approximate location, or any of the winning pull-tabs or tipboard tickets can be determined in advance of opening the pull-tabs or tipboard tickets in any manner or by any device, including but not limited to, any pattern in the manufacture, assembly, or packaging of the pull-tabs or tipboard tickets by the manufacturer, by any markings on the pull-tabs or tipboard tickets or container, or by the use of a light; or

C. which does not conform in any respect to the requirements of these rules as to manufacture, assembly, or packaging of pull-tabs and tipboards.

Subp. 2. Purchases. A distributor shall not purchase or be furnished any deal of pull-tabs, or tipboard from a manufacturer of pull-tabs or tipboards unless both of the following conditions are met:

A. the manufacturer's label or trademark has been registered with the board; and

B. each individual pull-tab or tipboard ticket manufactured has conspicuously set forth on it the name of the manufacturer or label or trademark which identifies its manufacturer.

7860.0220 REGISTRATION OF EQUIPMENT.

Subpart 1. Registration required. All gambling equipment sold, leased, rented, or loaned by a distributor to an organization must be registered with the board as follows:

A. a state registration stamp must be affixed to the flare of each deal of pull-tabs;

B. a state registration stamp must be affixed to the master flare for each sealed grouping of tipboards;

C. a state registration stamp must be affixed to the master flare for each series of 100 paddletickets and have a facsimile of the state registration imprinted on each series stub with the distributor's license number printed on the facsimile in the place of the series numbers;

D. a state registration stamp must be affixed to each bingo card that is used or intended to be used for more than one game. Disposable bingo cards do not require a registration stamp, but will be considered registered when the distributor records on the invoice the series number and card numbers sold;

E. a state registration stamp must be affixed to paddlewheels and devices for selecting bingo numbers.

Subp. 2. Registration of certain equipment. By March 1, 1985, organizations must apply for and affix registration stamps to all nonregistered gambling equipment possessed by the organization on that date in the manner specified in subpart 1.

7860.0230 BINGO.

Subpart 1. Bingo equipment to be used. The conduct of bingo must include the following items:

A. A machine or other device from which balls are withdrawn.

B. A set of 75 balls bearing the numbers 1 through 75 and the letters B, I, N, G, O. The 75 balls must be available for inspection by the players before a bingo session begins to determine that all are present and in operating condition. Each numbered ball must be essentially equal as to size, weight, shape, and balance and as to all other characteristics that may control their selection and all must be free from any defects and be present in the receptacle before each game is begun.

Subp. 2. Numbering of cards. In addition, each set of disposable bingo cards must be consecutively numbered from the first card to the last card, or from the first sheet of cards to the last sheet of cards, or be consecutively numbered through the set. Each card or sheet must have printed on its face both its individual card or sheet number, and the series number assigned by the manufacturer to that set of disposable bingo cards.

Subp. 3. Other equipment. Other equipment or devices may be used for the purpose of displaying numbers and letters called to the public, and such furniture and sound amplification systems as are necessary for the convenience and comfort of the players and the organization.

Subp. 4. Manner of conducting bingo. The conducting of a bingo game includes the following rules:

A. The organization shall post a notice on the site where bingo is played containing the rules governing the conduct of bingo.

B. All sales of bingo cards must take place upon the site immediately preceding or during the session for which the card is being sold.

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C. Bingo cards must be sold and paid for prior to the start of a specified game or specified number of games. Cards may not be sold for a game or number of games after the first number is called.

D. No organization shall reserve, or allow to be reserved, any bingo card for use by players except braille cards or other cards for use by legally blind or disabled players.

E. Legally blind players may use their personal braille cards when an organization does not provide these cards. The organization may inspect, and reject, any personal braille card. A legally blind or disabled person may use a braille card or reserved hard card in place of a purchased disposable bingo card.

F. If an organization has duplicate hard cards or disposable bingo cards in play, regardless of the series number for disposable bingo cards, the organization shall conspicuously post that fact or notify all players prior to their purchase of tickets for a game or number of games that will have duplicate bingo cards in play.

G. No two or more sets of disposable bingo cards can be used at the same time if they have identical series numbers.

H. The particular arrangement of numbers required to be covered in order to win the bingo game must be clearly described and announced to the players immediately before each game is begun.

I. Immediately following the drawing of each ball in a bingo game, the caller shall display the letter and number on the ball to the players.

J. The letter and number on the ball must be called out prior to the drawing of the next ball.

K. After the letter and number are called, the corresponding letter and number on the licensee's flashboard, if any, must be lit for player viewing.

L. No bingo game shall be conducted to include a prize determined other than by the matching of letters and numbers on a bingo card with letters and numbers called by the organization, in competition among all players in a bingo game.

M. No player shall separate a disposable bingo card when there are two or more cards on one sheet.

N. No player shall play more bingo cards than he or she actually paid for or received in free plays.

O. In the playing of bingo, no person who is not physically present on the site where the bingo game is actually conducted is allowed to participate as a player in the game.

P. A winner is determined when a specified pattern of called numbers appears on a card.

Q. Immediately upon a bingo player declaring a winning combination of letters and numbers, the winning card number shall be stated aloud by an organization employee. The winning card shall be verified by an organization employee and at least one neutral player.

R. Upon a bingo player declaring a winning bingo, the next ball out of the machine must be removed from the machine prior to shutting the machine off and must be the next ball to be called in the event the declared winning bingo is not valid.

S. No person shall engage in any act, practice, or course of operation as would operate as a fraud to affect the outcome of any bingo game.

Subp. 5. Employees and volunteers shall not play. No organization shall allow a person who works at a bingo game, whether a paid employee or a volunteer, to play in a bingo game conducted by that organization during that bingo occasion.

Subp. 6. Immediate family members prohibited. No person who is a member of the organization's gambling employee's immediate family may gamble at a site of the employee's regular place of employment during the bingo occasion which the employee is working. "Immediate family" is defined as consisting of the employee's spouse, child, parent, brother, or sister. For purposes of this subpart, the term "employee" includes a volunteer.

Subp. 7. Multiple winners. In the event that a sharing of the designated prize is required as a result of multiple winners on the last immediately called number, the following shall govern:

A. In the event that the designated prize consists of cash, the total amount of the prize must be divided equally between or among the verified winners, provided, however, that the licensee has the option of rounding fractional dollars to the higher dollar.

B. In the event that the designated prize consists of an item of tangible personal property, merchandise, or other things other than cash, the bingo licensee shall award, if the designated prize cannot be divided, substitute prizes to each verified winner; provided, however, that the substitute prizes shall, insofar as possible, be of equal value to each other.

C. Notwithstanding the foregoing, a licensee may establish minimum prizes.

Subp. 8. General bingo records. For each bingo occasion, the following records must be kept:

- A. the number of players in attendance;
- B. the total amount wagered;
- C. the total prizes, cash and non-cash, awarded;
- D. a copy of the schedule of games and their prizes; and
- E. the number and price of cards sold, by type.

Subp. 9. Checkers required. One or more checkers must be engaged for each bingo occasion. The checker or checkers must record on a form prescribed by the board the number of cards played in each game, the registration or card number of each card, and the prizes awarded to the recorded cards. Each checker must certify that the figures are correct to the best of the checker's knowledge.

Subp. 10. Gross receipts compared and discrepancies reported. The gross receipts of each bingo occasion must be compared to the checkers' records by a member of the organization who did not sell cards for the occasion. The comparison must be on a form prescribed by the board. If a discrepancy of more than \$20 is found between the gross receipts as reported by the checkers and the gross receipts determined by totaling the cash receipts, a copy of the comparison must be provided to the board within five days of the bingo occasion.

7860.0240 PULL-TABS.

Subpart 1. General. The following general rules shall apply to the game of pull-tabs:

- A. Pull-tabs must not be dispensed from any coin-operated machine or mechanical dispensing device.
- B. No player who is a member of the organization's gambling employee's immediate family may play at a site of the employee's regular place of employment during the time period the employee is working. "Immediate family" is defined as consisting of the employee's spouse, child, parent, brother, or sister. For purposes of this subpart, the term "employee" includes a volunteer.
- C. No gambling employee of the organization shall play pull-tabs at the site of his or her regular place of employment. For purposes of this subpart, the term "employee" includes a volunteer.
- D. No gambling employee of the organization shall provide any inside information to any player that would create an unfair advantage to the player related to the potential winnings of any deal of pull-tabs. For purposes of this subpart, the term "employee" includes a volunteer.
- E. No organization shall pay a player any prize unless the player redeems an actual winning pull-tab. A prize payout must not be made to any player for a lost or unredeemed pull-tab.
- F. No organization shall modify or otherwise change the flare related to a deal of pull-tabs once the deal has been received from a distributor, or use a flare that arrives in an altered or defaced condition. No pull-tab deal may be placed out for play where the value of the prizes awarded by the organization differs from the flare.

Subp. 2. Single deals. The following apply to single deal games of pull-tabs:

- A. No single deal of pull-tabs, shall be taken out of play once the deal has been offered for sale unless all the highest denomination winners have been redeemed.
- B. For all single deal games, the flare, with the state registration stamp attached, for the deal of pull-tabs in play shall be affixed to the receptacle containing that deal of pull-tabs.
- C. Separate cash banks must be maintained for each deal in order to determine the actual cash profit and cash long or short.

Subp. 3. Commingled deals. The following apply to commingled deals of pull-tabs:

- A. Single deals of pull-tabs may be commingled in one receptacle subject to all of the following provisions:

- (1) the deals are identical as to a particular type of game and as to the number of pull-tabs per game;
- (2) each deal is identified by its own flare displaying the state registration stamp and manufacturer's serial number;

and

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(3) the flares applicable to each deal are identical as to the price per ticket, the amount of prizes, and the denominations of prizes.

B. The flares of all the deals inserted for which any pull-tabs remain in play must be displayed in the immediate vicinity so that the state registration stamp with the manufacturer's serial number is visible to the players.

C. The commingled deals are placed into play and removed, at a minimum, from play at the end of each month and the reporting of the result of the games are made in the same month's tax return.

D. The organization is prohibited from putting into play deals of pull-tabs commingled in one receptacle if it is determined by the board that such a nature of play has resulted in abnormal cash shortages.

Subp. 4. Use of state registration stamp. The state registration stamp must be used as follows:

A. No deal of pull-tabs will be sold for use within this state or put out for play unless and until a registration stamp obtained from the board by a distributor containing an identifying number has been permanently and conspicuously affixed to the flare. Once affixed, the registration stamp must not be removed from the flare or tampered with by any person.

B. No organization shall change the game serial number that was written on the registration stamp by the distributor.

Subp. 5. Prize and bet limitations. Prizes and bets will be limited, awarded, and controlled in the following manner:

A. The highest denomination of winning pull-tabs must not be more than \$500.

B. Individual pull-tabs must not be sold for more than \$2.

C. All prizes from the operation of pull-tabs must be awarded in cash, merchandise, or in free plays as designated on the flare.

(1) All merchandise prizes must be displayed in full view in the immediate vicinity of the pull-tab game and the merchandise prizes must be in full view of any person prior to that person purchasing the opportunity to play.

(2) Upon a determination of a winner of a merchandise prize, the organization shall immediately remove that prize from any display and make it available to the winner.

D. No organization shall offer to pay cash in lieu of merchandise prizes which may be won.

E. When any player wins a cash prize of \$100 or greater from the play of any deal of pull-tabs, the organization shall make a record of the win as set forth in subpart 7, item D.

Subp. 6. Operation of pull-tab games. The game of pull-tabs must be operated in accordance with the following:

A. No organization shall place a deal of pull-tabs in play unless the game serial number of the deal of pull-tabs corresponds to the game serial number written on the state registration stamp. If the game serial number does not correspond to the number written on the registration stamp, the organization shall return the deal of pull-tabs to the distributor from whom the organization purchased it.

B. No organization shall purchase deals of pull-tabs that have the same game serial number, nor shall ever obtain nor possess, nor shall ever allow upon a site, a deal of pull-tabs or portion thereof, with the same serial number and color trim combinations, as any other deals of pull-tabs or portions thereof in its possession. This does not prevent an organization from retaining upon the site pull-tabs remaining from a deal removed from play for the purposes of complying with state law or rule if that organization:

(1) has defaced each pull-tab removed and retained, immediately upon removal of the pull-tabs from play;

(2) made a written record of the game serial number, color trim, and the number of pull-tabs remaining in that deal, immediately upon removing that deal from play; and

(3) the written record so made is maintained upon the site for a period of three years after the deal is removed.

C. No deal of pull-tabs will be placed out for play in the original package, box, or other container in which they were received from the distributor. When a deal of pull-tabs is received from the distributor in two or more packages, boxes, or other containers, all of the deal's pull-tabs from the respective packages, boxes, or other containers must be placed out for play at the same time.

D. No deal of pull-tabs may be placed out for play unless the cost to the player for each pull-tab is clearly posted on the flare.

E. No organization shall permit the display or operation of any pull-tab which may have in any manner been marked, defaced, tampered with or otherwise placed in a condition, or operated in a manner, which tends to deceive the public or which affects the chances of winning or losing upon the taking of any chance thereon.

F. The jar operator shall not pay a prize to any player who is redeeming a winning pull-tab that has in any manner been marked, defaced, tampered with, or otherwise placed in a condition which may tend to deceive the organization.

G. No organization shall pay a player a prize when the winning pull-tab has left the site where the deal is in play.

H. The jar operator shall deface each winning pull-tab redeemed.

I. A jar operator shall not assist players in the opening of purchased pull-tabs or jar tickets.

Subp. 7. Records. The following records must be kept of pull-tab activity:

A. The organization shall maintain the following information with regard to individual games for a period of three years from the end of the month for which the records are kept.

B. All records, reports, and receipts relating to a deal of pull-tabs in play must be retained at the site so long as the deal is in play and must be made available on demand to the board.

C. For each deal of pull-tabs the flare, with the state registration stamp affixed, together with all player redeemed opened winning pull-tabs and all unopened and unsold pull-tabs must be retained and segregated by game serial number, except that these items as they relate to commingled deals of pull-tabs are not required to be segregated by game serial number. The organization shall not open any unsold or defective pull-tabs.

D. The records of the win shall consist of one of two methods. If the pull-tab seller knows the actual name of the winner and the city in which he or she lives, the winner may legibly sign in ink the winning pull-tab with his or her real name. The legibility of the signature must be verified by the seller and the seller must initial the pull-tab and date it. If the identity of the winner is unknown, a sequentially numbered receipt shall be used and the receipt shall include at minimum the following information:

(1) The jar operator must legibly print, in ink, on the face of the receipt the following:

(a) The name of the organization's gambling site.

(b) The registration stamp number and the game serial numbers of the deal of pull-tabs from which the prize was won.

(c) The name of the game of the particular deal of pull-tabs.

(d) The date of the win represented by the date of the receipt.

(e) The amount of the cash prize won represented by the amount of the receipt.

(f) the payee's name and driver's license number, including state of license registration. This information shall be identified by the jar operator directly from the payee's driver's license. Provided, that if the payee does not have a driver's license, the jar operator must indicate the payee's full name and the correct address which will include the street address, the city, and the state, which must be taken from another form of pictured identification. It is the responsibility of the organization to determine the real identity of the player and the organization shall require such additional proof of identification from a reliable source as is necessary to properly establish the player's identity. The organization shall not pay out any prize unless and until the play has fully and accurately furnished to the organization all information required by this item to be maintained in the organization's record of the win.

(2) The receipt must be either legibly signed or initialed, in ink, by the jar operator issuing the check.

(3) The jar operator must legibly print, in ink, the receipt number on the winning pull-tab.

(4) The payee must legibly sign, in ink, the winning pull-tab.

(5) No organization shall use any other type of receipt to make a record of the win unless permission is requested of the board in writing and granted by the board. Every organization shall keep the record of all prizes awarded containing all of the information required in this item and all winning pull-tabs for a period of three years.

E. Organizations conducting the game of pull-tabs are required to prepare a detailed monthly record for each deal of pull-tabs removed from play during that month. This detailed monthly record must be recorded in a standard format prescribed by the board and must disclose for each deal of pull-tabs at a minimum, the following information:

(1) the date the record is prepared;

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- (2) the name of the recorder;
- (3) the name of each deal of pull-tabs and the number of pull-tabs in the deal;
- (4) the registration stamp number issued by the board and affixed to the flare or placed thereon;
- (5) the game serial number of each deal of pull-tabs;
- (6) the date placed out for play;
- (7) the date removed from play;
- (8) the cost to the player for each pull-tab;
- (9) the ideal gross receipts;
- (10) the ideal prizes which includes last sale;
- (11) the dollar amount of unsold and defective pull-tabs;
- (12) the actual gross receipts (calculated by the ideal gross receipts less the dollar amount of unsold and defective pull-tabs);
- (13) the actual prizes, including both cash and merchandise (calculated by the actual cost to the organization) prizes;
- (14) the actual adjusted net receipts (calculated by the actual gross receipts less the actual prizes);
- (15) the actual cash profit or loss resulting from each deal of pull-tabs removed from play;
- (16) the cash long or short stated numerically and as a percentage (calculated by the difference between the actual adjusted net receipts and the actual cash profit resulting from each deal of pull-tabs removed from play).

F. Records must provide sufficient detail to determine the actual net receipts, actual cash profit, and the cash long and short for each deal of pull-tabs.

Subp. 8. Disposal of pull-tabs. The organization shall manage and control the disposal of played deals of pull-tabs when the retention period expires. The disposal must be by a manner that will assure complete destruction such as shredding or burning.

7860.0250 TIPBOARDS.

Subpart 1. General. The following general rules apply to the game of tipboards:

- A. Every tipboard will have a serial number with that same serial number appearing on each ticket attached to the tipboard or otherwise.
- B. The tipboard will plainly have printed on it the cost per ticket, the value of the prizes for the top winning ticket and any consolation winners, the number of prizes, and the number of total tickets.
- C. No organization shall pay a player unless the player redeems an actual winning ticket. A prize will not be paid out to any player for a lost or unredeemed ticket.
- D. No organization shall modify or otherwise change the designation of prizes printed on the tipboard once the tipboard has been received from a distributor or use a tipboard that arrives in an altered or defaced condition. No tipboard may be placed out for play when the value of the prizes awarded by the organization differs from those printed on the tipboard.

Subp. 2. Use of registration stamp. The state registration stamp must be used as follows:

- A. No tipboard will be played unless the master flare for the tipboard has a state registration stamp which has been previously affixed to it by a licensed distributor.
- B. No tipboard will be played unless the serial number of the tipboard which is written on the master flare with state registration stamp attached, matches the serial number printed on the tipboard and the tipboard tickets. If the serial numbers do not correspond, the organization shall return the tipboard to the distributor from whom the organization purchased it.
- C. No organization may change the serial number written on the state registration stamp by the distributor.

Subp. 3. Cost per ticket and prize limitations. The cost per ticket and the value of the prizes will be as follows:

- A. Individual tipboard tickets will not be sold for more than \$2 each.
- B. Prizes may not have a value more than \$500 as the highest denomination winner.
- C. All prizes from the operation of tipboards must be awarded in cash or merchandise or free plays as indicated on the tipboard.
 - (1) All merchandise prizes must be displayed in full view in the immediate vicinity of the tipboard game.

(2) Upon a determination of a winner of a merchandise prize, the organization shall immediately remove that prize from any display and make it available to the winner.

D. No organization shall offer to pay cash in lieu of merchandise prizes which may be won.

Subp. 4. Tipboards with same serial number. No organization may purchase tipboards that have the same game serial number, nor shall obtain or possess, nor allow upon a site a tipboard with the same serial number and color trim combination as another tipboard in its possession.

Subp. 5. Records. The use of tipboards must be recorded in the same manner as pull-tabs, as set forth in part 7860.0240, subpart 7.

Subp. 6. Determination of winner. The winner of a tipboard game must be determined only by the number concealed under the seal.

Subp. 7. Retention of played tipboards. All played tipboards and the accompanying master flare with the state registration stamp affixed must be retained for three years following the end of the month in which that series was played and reported.

7860.0260 PADDLEWHEELS.

Subpart 1. Paddletickets must be used. The playing of paddlewheels must always be played using paddletickets.

Each series of paddletickets must have a series number preprinted on the stub and on each individual ticket. Each series must have different series number. An organization may not have two series of paddletickets with the same series number in their possession at the same time.

Each paddleticket stub must have a facsimile of the registration stamp imprinted on the stub. The facsimile must bear the license number of the distributor who sells the series.

All the paddletickets in a series must be sold prior to the spinning of the wheel. A new series of paddletickets must be sold for every spin of the wheel.

Subp. 2. Registration stamps. Each group of series of paddletickets must have a state registration stamp affixed to the master flare accompanying the group with the series numbers written in by the distributor on the space provided on the master flare.

An organization may not use paddletickets:

- A. that do not have a state registration stamp affixed to the master flare accompanying the group;
 - B. when the series number written on the master flare differs from the actual series number preprinted on the tickets;
- and
- C. when the series number preprinted on the stub does not match the series number preprinted on the individual tickets.

Subp. 3. Records. The use of paddletickets must be recorded in the same manner as for pull-tabs, as set forth in part 7860.0240, subpart 7.

Subp. 4. Retention of played paddletickets. All paddleticket stubs and the accompanying master flare with the state registration stamp affixed must be retained for a period of three years following the end of the month in which that series was played and reported.

Subp. 5. House rules. The organization must post house rules on the play of paddlewheels. One of the house rules must be that the wheel must make at least four revolutions before stopping at the winning number. If four revolutions are not made, a nonspin must be declared and the wheel must be spun again.

Subp. 6. Prize limits and betting limits. The value of the prizes and the amount of bets are limited as follows: bets may not exceed \$2 per paddleticket; and prizes may not exceed \$500 in value.

7860.0270 RAFFLES.

Subpart 1. Raffle tickets; limitations and requirements for use. Tickets for entry into a raffle must be sold or issued separately and each shall constitute a separate and equal chance to win with all other tickets sold or issued. No person may be required to obtain more than one ticket, in order to enter a raffle.

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All tickets for use in any raffle shall have a stub or other detachable section, be consecutively numbered, and be accounted for separately through the use of a log book showing to whom the tickets were given to be sold. The ticket stub or other detachable section of the ticket must bear a duplicate number corresponding to the number on the ticket and shall contain the purchaser's name, complete address, and telephone number. Both parts must be imprinted with sequential numbers commencing with the number "1" through the maximum number of tickets to be sold.

Each raffle ticket must be sold for the same price as every other raffle ticket being used for that particular raffle.

No person may be required to be present at a raffle drawing in order to be eligible for the prize drawing.

In conducting a drawing in connection with any raffle, each ticket seller shall return to the organization the stubs or other detachable section of all tickets sold. The organization shall then place each stub or other detachable section of each ticket sold into a receptacle out of which the winning tickets are to be drawn. The receptacle must be designed so that each ticket placed therein has an equal opportunity with every other ticket to be the one withdrawn.

Subp. 2. Control of raffle prizes. An organization conducting a raffle in which real or personal property prizes are to be awarded shall have paid for in full or otherwise become the owner, without lien or interest of others, of all the real or personal property prior to the drawing at which the winners of the prizes are to be determined.

Subp. 3. Disclosure of prizes and rules. The following information must be printed upon each ticket sold:

- A. the date and time of drawing;
- B. the location of the drawing;
- C. the name of the organization conducting the raffle;
- D. the license number, if any;
- E. the price of the chance; and
- F. the prize or prizes to be awarded.

Subp. 4. Records. The organization shall maintain the following records or information with regard to individual raffles for a period of three years:

- A. the current amount of proceeds received from the raffle;
- B. all allowable expenses deducted from the net receipts of a raffle; and
- C. the winning ticket stubs.

Subp. 5. Prize limitations. Prizes for a raffle may not exceed the following limits:

- A. Total prizes for raffles may not exceed a total value of \$50,000 per organization in a calendar year.
- B. Cash prizes may not exceed \$500 per day which may be awarded:
 - (1) as a single prize; or
 - (2) as the total amount of cash prizes for a single raffle; or
 - (3) as the total amount of prizes for several complete raffles, the drawings for which are conducted on the same day.
- C. Real and personal property prizes must be valued at actual market value or suggested market value, whichever is less.
- D. Cash is defined for purposes of this subpart as currency and coinage or negotiable instruments.
- E. Raffles that pre-exist November 20, 1984, must be allowed to continue after March 1, 1985, if the raffle was authorized by the local unit of government.

Subp. 6. Prizes must be awarded. All raffle prizes must be awarded on the date indicated on the raffle ticket unless a different date is approved by the board. The board shall extend the date for the drawing if:

- A. weather has caused a postponement of the event at which the drawing was to occur; or
- B. not enough tickets are sold to cover the cost of the prizes, and an extension will make a material difference. The fact that a desired level of profit will not be attained is not a basis for an extension of the date of the drawing.

7860.0280 RULES OF PLAY, ODDS, AND HOUSE PERCENTAGES.

A licensed organization must prominently post the rules of play and the odds or the house percentages on each form of lawful gambling conducted by the organization. The odds or house percentages must be displayed on the flare accompanying the deal of pull-tabs, grouping of tipboards, or series of 100 paddletickets.

This information is prominently posted if it can be readily seen by a player immediately before the player participates in the specific form of lawful gambling to which the information applies.

7860.0290 AGE RESTRICTIONS.

No person under the age of 18 may conduct or participate in playing the games of pull-tabs, tipboards, or paddlewheels.

7860.0300 STANDARDS FOR PULL-TABS AND TIPBOARD TICKETS.

Subpart 1. Standards. All pull-tabs and tipboard tickets sold in this state must conform to the following standards:

A. No operator shall put out for play, and no distributor shall sell or otherwise furnish, any deal of pull-tabs or tipboard tickets unless there is conspicuously set forth thereon a stamp, seal, or label which identifies its manufacturer and the city and state of its manufacturer.

B. Each individual pull-tab and tipboard ticket shall have conspicuously set forth thereon the name of the manufacturer or label or trademark which identifies its manufacturer. The label or trademark must be filed with the board prior to the sale of the pull-tab and tipboard ticket by a distributor to an organization.

C. Deals of pull-tabs and tipboard tickets must be manufactured, assembled, and packaged in such a manner that none of the winning pull-tab or tipboard tickets, nor the location or approximate location of any of the winning pull-tabs or tipboard tickets can be determined in advance of opening the pull-tabs or tipboard tickets in any manner or by any device, including but not limited to any pattern in manufacture, assembly, packaging, markings, or by the use of a light. Winning pull-tabs must be randomly distributed and mixed among all other pull-tabs in the deal to the state of art. The deal must be assembled and packaged with special care so as to eliminate any pattern as between deals, or portions of deals, from which the location or approximate location of any of the winning tabs may be determined. When the deal is packaged in more than one package, box, or other container, the entire deal of individual pull-tabs must be mixed in such a manner that no person can determine the position or approximate location of any of the winning pull-tabs or determine whether any one package or portion of a deal contains a larger or smaller percentage of winning pull-tabs than the balance of the deal. The packages, boxes, or other containers must not be numbered as to distinguish one from the other and have no marking other than the deal serial number. Each deal of pull-tabs and group of tipboards must contain a packing slip placed inside the package containing the name of manufacturer, serial number, date the deal or group was packaged, and the name or identification of the person who packaged the deal.

D. (1) Pull-tabs and tipboards must be constructed so that it is impossible to determine the covered or concealed number, symbol, or set of symbols, on the pull-tab or tipboard until it has been dispensed to and opened by the player, by any method or device, including but not limited to the use of a marking, variance in size, variance in paper fiber, or light.

(2) All pull-tabs, except banded and latex covered pull-tabs must be constructed using a two or three ply paper stock construction.

(3) The serial number and the name of the manufacturer or label or trademark identifying the manufacturer must be conspicuously printed on the face or cover sheet. On banded pull-tabs and tipboard tickets, the serial number and the name of the manufacturer must be printed so both are readily visible prior to opening the pull-tab or tipboard ticket.

(4) The cover sheet must be color coded when individual serial numbers are repeated and may show the consumer how to open the pull-tab to determine the symbols or numbers. The cover sheet must contain either or both perforated or clean-cut openings centered over the symbols or numbers on the back of the face sheet in such a manner as to allow easy opening by the consumer after purchase of the pull-tabs while at the same time not permitting pull-tabs to be opened prematurely in normal handling. Perforation must exist on both horizontal lines of the opening with either perforated or clean-cut on the vertical or elliptical line where the tab must be grasped for opening after bending the edge of ticket down. On latex covered pull-tabs or tipboard tickets, either the face or back of the pull tab must be color coded when individual serial numbers are repeated and may show the consumer how to remove the latex to determine the symbols or numbers. On banded pull-tabs, the band must be color coded when individual serial numbers are repeated.

(5) All pull-tabs within a single pull-tab deal must be of the same thickness.

(6) All pull-tabs within a single pull-tab deal must be uniform in length or width and not vary by more than 3/64 inch, provided that in no case shall winning pull-tabs be identifiable by visible variation in dimension.

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PROPOSED RULES

(7) All pull-tabs or tipboard tickets must be constructed to ensure that, when offered for sale to the public, the pull-tab or tipboard ticket is virtually opaque and free of security defects wherein winning pull-tabs or tipboard tickets cannot be determined prior to being opened through the use of high intensity lights or any other method.

7860.0310 DOMESTIC MANUFACTURE.

Any person manufacturing gambling equipment within the state of Minnesota shall first register the manufacturing activity with the board before selling, marketing, or otherwise distributing such equipment, in or out of state. An organization which manufactures equipment for lawful gambling for its own use shall also obtain a state registration stamp from the board for each item of equipment manufactured.

Department of Commerce

Proposed Rules Relating to Securities Regulation

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 Kris Eiden, 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, 80A.25, subd. 1; 80A.05; 80A.12, subd. 5; 80A.14, subd. 4; and 45.023. 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.

It has been determined that the rules may have an effect on small businesses. A discussion of the effect of the rules is contained in the Statement of Need and Reasonableness.

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 Rose Weiner at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2875.0150 ISOLATED SALES.

Subpart 1. [Unchanged.]

Subp. 2. Computation. For the purpose of computing the number of sales that have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (a):

A. the following sales shall be excluded if made within 48 hours of a sale to another purchaser, which other sale is included in such computation:

(1) the sale to any relative or spouse of a purchaser and any relative of such spouse, who has the same home as such purchaser; and

(2) the sale to any trust or estate in which a purchaser ~~or~~ and any of the persons related to him as specified in subitem (1) or (3) collectively have ~~100~~ more than 50 percent of the beneficial interest (excluding contingent interest); and

(3) the sale to any corporation or other organization of which a purchaser ~~or~~ and any of the persons related to him as specified in subitem (1) or (2) collectively are the beneficial owners of ~~all~~ more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

B. and C. [Unchanged.]

D. the sales to any "accredited investor" within the meaning of Code of Federal Regulations, title 17, section 230.501(a).

Subp. 3. and 4. [Unchanged.]

2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

Subpart 1. Computing. For the purpose of ~~computing~~ calculating the number of persons to whom sales have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (h):

A. the following purchasers shall be excluded:

(1) any relative or spouse of a purchaser and any relative of such spouse, who has the same home as such purchaser; and

(2) any trust or estate in which a purchaser or any of the persons related to him as specified in subitem (1) or (3) collectively have ~~100~~ percent of the beneficial interest (excluding contingent interests); and

(3) any corporation or other organization of which a purchaser or any of the persons related to him as specified in subitem (1) or (2) collectively are the beneficial owners of all the equity securities (excluding directors' qualifying shares) or equity interests; and

B. there shall be counted as one purchaser any corporation, partnership, association, joint stock company, trust, or unincorporated organization except that if such entity was organized for the specific purpose of acquiring the securities offered each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser; and, the calculation shall follow the rules for calculation in Code of Federal Regulations, title 17, section 230.501(e).

C. Clients of an investment adviser, customers of a broker-dealer, or persons with similar relationships shall be considered to be separate purchasers regardless of the amount of discretion given to the investment adviser, broker-dealer, bank trust department, or other person to act on behalf of the client, customer, or trust.

Subp. 2. [See Repealer.]

Subp. 3. to 5. [Unchanged.]

2875.0185 EFFECTIVE DATES OF STATEMENT OF ISSUER.

The exemption set forth in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h), clause (3) shall only be effective for a period of one year commencing from ten days after the date on which the statement of issuer is filed with the commissioner.

2875.1590 BANKS, SAVINGS INSTITUTIONS, AND SAVINGS AND LOAN ASSOCIATIONS; PROMOTION OR ESTABLISHMENT OF SECURITIES BROKERAGE SERVICES INVOLVING EXECUTION OF CUSTOMER PURCHASE AND SALE ORDERS.

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PROPOSED RULES

Subpart 1. License requirements. A bank, savings institution, or savings and loan association which is not licensed as a broker-dealer may effect transactions in securities for the account of others by promoting or establishing accounts for broker-dealers only if the bank, savings institution, or savings and loan association:

A. does not hold itself out to the public as a securities broker through publishing, broadcasting, distributing, or circulating any form of advertising through any type of media or any other manner;

B. contracts with a broker-dealer to promote or establish accounts for that broker-dealer and the following conditions are all met:

(1) the broker-dealer is a National Association of Securities Dealers member who is licensed in Minnesota;

(2) all determinations of suitability are made by the licensed broker-dealer;

(3) promotional or account-establishing functions are only performed by persons who are licensed as agents to the broker-dealer; and

(4) the bank, savings association, or savings and loan association has a contract with only one broker-dealer during the same period of time;

C. does not engage in investment advice or underwriting in connection with the securities activities described in this rule;

D. conducts all securities activities in a manner not exceeding the powers conferred by federal and state laws regulating banks, savings institutions, and savings and loan associations; and

E. does not receive compensation for referrals to broker-dealers whose activities are not within the scope of these rules.

Subp. 2. Employees as agents. No bank employees may be licensed as agents to more than one broker-dealer.

Subp. 3. Filing requirements. If a bank, savings institution, or savings and loan association contracts with a licensed broker-dealer to promote or establish accounts, the following information must be provided to the commissioner at least 30 days prior to the effective date of the contract:

A. the training manual to be used in the training of bank employees by the broker-dealer and a description of all other training to be provided;

B. a written description of the allocation of the following functions between the contracting parties with respect to securities transactions;

(1) opening, approving, and monitoring of accounts;

(2) extension of credit;

(3) maintenance of books and records;

(4) receipt of and delivery of funds and securities;

(5) safeguarding of funds and securities;

(6) confirmations and statements; and

(7) acceptance of orders and execution of transactions;

C. a written commitment from the bank, savings institution, or savings and loan association that the commissioner will have access to customer records of securities transactions in their possession;

D. identification of all bank, savings institution, or savings and loan association employees involved with the marketing program, a description of their functions and method of compensation, and identification of the agents of the licensed broker-dealer; and

E. a U-4 application for designated agents of the licensed broker-dealer.

2875.2410 ESCROW AGREEMENTS.

Subpart 1. Conditions of registration. As a condition of registration of securities by an issuer, restrictions on transferability of all cheap stock owned by officers, directors, or persons owning greater than ten percent of the then outstanding stock of the issuer, may be required for a period of up to three years. The restrictions on transferability may be by means of escrow of shares, legending of share certificates, or by other means, as may be determined by the commissioner upon the facts and circumstances of each case to be necessary for the protection of public investors, or by any combination of the foregoing.

Subp. 2. and 3. [Unchanged.]

2875.2490 ANNUAL SHAREHOLDERS' REPORT.

So long as a registration statement is effective, other than for industrial revenue bonds, within 150 days of the end of the fiscal year, the registrant shall distribute an annual report to all shareholders. Said annual report shall contain a balance sheet, income statement, statement of changes in financial position, all of which must be audited by an independent certified public accountant with his opinion expressed thereon, and such other information as may be necessary for complete disclosure.

2875.2500 REPORT FORM.

So long as a registration statement is effective, other than for industrial revenue bonds, the issuer shall file an annual report in such form, and containing such information as the commissioner prescribes. At a minimum, the annual report shall contain the following:

A. to T. [Unchanged.]

2875.2510 ~~ALTERNATE SEC FORM~~ REPORT FILINGS.

Subpart 1. Alternate filings. Any issuer filing annual reports under the Securities Exchange Act of 1934 may file, in lieu of the report required by part 2875.2500, a duplicate copy of the annual report filed with the Securities and Exchange Commission.

Any issuer filing reports under the Investment Company Act of 1940 may file, in lieu of the report required by part 2875.2500, a current updated prospectus as filed with the Securities and Exchange Commission or a copy of the annual report required to be filed with the Securities and Exchange Commission.

Subp. 2. Filing of annual report or prospectus. The annual report or prospectus required by parts 2875.2500 and 2875.2510 shall be filed on or prior to the 90th day (or 120th day in the case of issuers registered under the Investment Company Act of 1940) following the close of the issuer's fiscal year, except that if the information required by part 2875.2500, item S is not reasonably available at such time, such information may be filed on or before the 150th day following the close of the issuer's fiscal year.

Subp. 3. Contents regarding registration of industrial revenue bonds. So long as a registration is effective for industrial revenue bonds, as an annual report there must be filed with the commissioner financial statements of the person or persons directly liable to make payments for the purpose of paying principal and interest. Notwithstanding parts 2875.0950 and 2875.0960, unless the foregoing financial statements are otherwise audited by independent certified public accountants, the financial statements filed need not be so audited, unless required by the commissioner, but must be prepared in accordance with generally accepted accounting principles unless otherwise permitted by order.

2875.3000 MINIMUM INVESTMENT REQUIRED.

Subpart 1. [Unchanged.]

Subp. 2. Fair value of equity investment. "Fair value of the equity investment" shall mean the higher of:

A. the total of all sums irrevocably conveyed to the issuer in cash, together with the reasonable value of all tangible assets irrevocably conveyed to the issuer, and together with an evaluation by a qualified independent appraiser or other reasonable demonstration of value of intangible assets including, but not limited to, patents, licenses, technologies, trademarks, and technical or professional services contributed by the promoters, as adjusted by the retained earnings of the issuer subsequent to the dates of such conveyances, payments, or contributions; or

B. the total shareholders' equity as set forth in a certified balance sheet prepared in accordance with parts 2875.0950

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PROPOSED RULES

and 2975.0960, less the value assigned to any intangible assets which have not been independently evaluated for which no reasonable demonstration of value has been provided.

Subp. 3. and 4. [Unchanged.]

REPEALER. Minnesota Rules, parts 2875.0180, subpart 2; 2875.3920; and 2875.3930 are repealed.

Department of Economic Security

Proposed Emergency Rules Governing Registration for Employment Services Under General Assistance

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

Notice is hereby given that the Department proposes to adopt the above-entitled rules pursuant to Minnesota Statutes, section 14.30. The rules previously published in the *State Register* on August 6, 1984 (9 SR 290) are withdrawn.

The adoption of the rules is authorized by Minnesota Laws 1984, Chapter 654, Article 5, Section 34, which amended Minnesota Statutes 256D.111, subdivision 2 and requires the Commissioner to define a person who lacks work skills or training or who is unable to obtain the necessary work skills or training.

Persons interested in these rules shall have 25 days to submit comments in writing on the proposed rules.

The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed language.

After the 25-day comment period, the proposed rules as published, with any modifications, will be delivered to the Administration Division of the Office of the Attorney General for review as to its legality, and its form to the extent form relates to legality, including the issue of substantial change. Notice of the date of submission of the proposed rules to the Attorney General will be mailed to any person requesting to receive the notice.

Written comments, requests for a copy of the proposed rules and requests for notice of the date of submission to the Attorney General should be submitted to:

Donald M. Buckner
Office of Employment Initiatives
Minnesota Department of Economic Security
390 North Robert Street
St. Paul, Minnesota 55101

This notice, all written comments received, and the emergency rules, as adopted will become a part of the record in the final adoption. As required by Minnesota Statutes, sections 14.33 and 14.35, emergency rules shall take effect 5 working days after approval by the Attorney General, and will be in effect for 180 days.

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

Barbara Beerhalter
Commissioner

Emergency Rules as Proposed (all new material)

CHAPTER 3320 DEPARTMENT OF ECONOMIC SECURITY GENERAL ASSISTANCE; REGISTRATION FOR EMPLOYMENT SERVICES

3320.0005 [Emergency] PURPOSE.

Parts 3320.0005 to 3320.0030 [Emergency] clarify and provide procedures for those portions of Minnesota Statutes, section 256D.111, subdivisions 1 and 2, whose implementation are the sole responsibility of the Department of Economic Security or the joint responsibility of the Department of Economic Security and the Department of Human Services. These rules are to be read in conjunction with parts 3300.4010 to 3300.4120.

Nothing in these rules shall preclude any individual from seeking or participating in the full range of services available from the Department of Economic Security.

3320.0010 [Emergency] DEFINITIONS.

As used in parts 3320.0005 to 3320.0030 [Emergency], the words or phrases defined in part 3300.4010 have the meanings given them.

3320.0015 [Emergency] REGISTRATION FOR WORK.

As used in Minnesota Statutes, section 256D.111, subdivision 1, "registration" means the procedure through which an individual registers with the Department of Economic Security for employment services available under Minnesota Statutes, sections 256D.111, subdivision 1, and 268.14. Recipients will complete the employment application and provide work history information in consultation with department staff in a format prescribed by the department. The Department of Economic Security staff shall develop a job search process and employability development plan as in part 3300.4065. Recipients will be referred to available, suitable job openings or openings resulting from individual job development that are consistent with the recipient's experience, skills, knowledge, and abilities. Recipients will be referred to available, suitable job openings taking into consideration availability and cost of transportation, either public or private, commuting distance, and ordinary commuting patterns in the local labor market.

3320.0020 [Emergency] REGISTRATION VERIFICATION.

As used in Minnesota Statutes, section 256D.111, subdivision 1, "registration verification" means that the Department of Economic Security office will certify to the appropriate local agency whether or not the recipient has registered with the Department of Economic Security. Verification by the Department of Economic Security will be by certification of a form, listing, or other document identifying the recipient for whom verification is requested, which shall be prepared by the local agency. Names and social security numbers, if available to the local agency, shall be furnished. Verification processes other than the above are authorized if mutually agreed upon by the Department of Economic Security office and the local agency.

3320.0025 [Emergency] WORK SKILL AND TRAINING ASSESSMENT.

In accordance with Minnesota Statutes, section 256D.111, subdivision 2, clause (1), the commissioner of the Department of Economic Security shall review each recipient's work skills or training and the recipient's ability to obtain work skills or training necessary to secure employment. Recipients certified as lacking sufficient work skills or training and unable to obtain the same will be exempt from registration with the Department of Economic Security and the accompanying requirements contained in Minnesota Statutes, section 256D.111, subdivision 1 for a period of 12 months.

A finding that a recipient does not have sufficient work skills or training to secure employment in the local labor force shall be made under the following conditions:

A. as a result of conducting the employment application interview or developing the employability development plan in consultation with the recipient, the qualified person conducting the interview or preparing the plan determines the recipient is unable to meet minimal employer requirements or expectations based on a review of the recipient's work history and work habits or the recipient's exhibition of severe symptoms of a mental or emotional disability, chemical dependency, or of severely diminished functioning in areas of daily living such as personal hygiene, social skills, or personal relations; or

B. the recipient possesses neither skills nor work experience related to employment opportunities existing in the local labor market area or which exist in an area to which the recipient is willing to relocate.

3320.0030 [Emergency] EXEMPTION FROM WORK REGISTRATION.

Subpart 1. Exemptions denied. An exemption from the registration requirement shall not be made under part 3320.0025 [Emergency] if the following conditions exist:

A. a training opportunity, for which the recipient is qualified, and which would lead to the acquisition of adequate skills to obtain employment, is available to the recipient on a subsidized basis or at a cost within the recipient's means or resources; and

B. the available training is located within reasonable commuting distance in the area in which the recipient resides and public or private transportation is available, or the recipient is willing to relocate for such training; or

C. in the opinion of the commissioner of the Department of Economic Security, the recipient possesses particular qualifications or there are circumstances which positively affect their potential ability to obtain employment.

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PROPOSED RULES

Subp. 2. Aid to exempt person. A recipient who is exempt from the registration and work requirements in part 3320.0025 [Emergency] shall be offered referral to available supportive service programs for assistance in overcoming barriers to employment.

Department of Economic Security

Proposed Rules Relating to Weatherization Assistance

Notice of Intent to Adopt Rules without Public Hearing

Notice is hereby given that the Department proposes to adopt the above titled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, sections 14.21 to 14.28.

The adoption of the rules is authorized by Minnesota Statutes, §§ 268.37, Subdivision 3, which requires the Department to adopt rules necessary to administer the program.

The public is encouraged to comment on the proposed rules. The public shall have 30 days to submit comment in support of or in opposition to the proposed rules. Each comment should identify the portion of the proposed rules addressed, the reason for comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed language.

If 25 or more persons submit written requests for a public hearing within the 30-day comment period, a public hearing will be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion or the proposed rules addressed, the reason for the request, and any change proposed. In the event a public hearing is required, the Department will proceed according to the provisions of Minnesota Statutes, sections 14.14 to 14.20.

If a public hearing is not required, notice of the date of submission of the proposed rules to the Administration Division of the Office of the Attorney General for review will be mailed to any person requesting to receive the notice.

Comments, written requests for a public hearing, and requests for notice of the date of submission to the Attorney General should be submitted to:

Roger Williams
Minnesota Department of Economic Security
690 American Center Building
St. Paul, Minnesota 55101
(612) 296-5744

Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Roger Williams at the above address.

The proposed rules will have no impact on small businesses as set forth in Minnesota Statutes, section 14.115.

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

Barbara S. Beerhalter
Commissioner

Rules as Proposed

3300.1000 DEFINITIONS.

Subpart 1. to 16. [Unchanged.]

Subp. 17. [See Repealer.]

Subp. 18. [Unchanged.]

Subp. 18a. Incidental repairs. "Incidental repairs" means an item necessary for the effective performance or preservation of weatherization materials. "Incidental repairs" includes lumber used to frame or repair windows and doors that could not otherwise be caulked or weather-stripped, and protective materials, such as paint, used to seal materials installed under this program.

Subp. 19. and 20. [Unchanged.]

Subp. 21. Low-income. "Low-income" means having a total household income in relation to family size which:

A. is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget in Code of Federal Regulations, title 45, section 1060 (1981); or

B. is the basis for which cash assistance payments have been paid during the preceding 12-month period under titles IV and XVI of the Social Security Act, Statutes at Large, volume 49, page 620, chapter 531 (1935), codified in scattered sections of United States Code, volume 42 the definition of "low income" as provided by Code of Federal Regulations, title 10, section 440.3, as amended through January 27, 1984, and subject to any future amendments.

Subp. 22. to 25. [Unchanged.]

Subp. 26. and 27. [See Repealer.]

Subp. 28. to 35. [Unchanged.]

Subp. 36. Weatherization materials. "Weatherization materials" means materials used to weatherize homes as defined in Code of Federal Regulations, title 10, sections 456.101 to 456.914 (1980) amended by Federal Register, volume 45, pages 63449, 63453, 63793 (1980) part 440, Appendix A—Standards for Weatherization Materials, as provided by the Federal Register, volume 49, pages 3636 to 3638 (1984).

3300.1200 GRANT APPLICATIONS.

Subpart 1. [Unchanged.]

Subp. 2. Application. Each application must include:

- A. the name and address of the grantee responsible for administering the program;
- B. a financial schedule which indicates the monthly funding requirements based on projected production;
- C. staffing patterns for all weatherization personnel to allow local program grantees to attain production goals; and
- D. ~~a written review of the plan by the regional clearinghouse; and~~
- ~~E.~~ a statement by grantee ensuring that:

(1) no dwelling unit may be weatherized without written documentation that the unit is eligible for weatherization as provided in parts 3300.0800 to 3300.1900;

(2) there is an outreach process used to obtain applications together with a description of that process; and

(3) it will establish a priority system for client applications.

Each application must state the minimum number of dwelling units to be completed by each grantee which are to be established by the department. At the end of the contract period, the department will adjust the minimum number of dwelling units to be completed by each grantee, based on the amount of funds spent by each grantee on major weatherization repair, as provided in part 3300.1910.

Subp. 3. [Unchanged.]

Subp. 4. Department's memorandum; weatherization priorities for home types I-IV, 8-28-81. The following list of priorities is a departmental memorandum:

Weatherization deliverers will follow the priority list given below. If the particular activity listed currently exists or cannot be done, then an explanation must be made on the Retro Tech Job Sheet. If the client will not permit certain activities, then a statement with an explanation of the refusal to permit work, signed by the client, must be in the file.

Priorities

I. General Heat Waste

A. Caulk all ~~exterior~~ appropriate envelope infiltration points including:

1. Window and door frames.
2. Sill plates.

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PROPOSED RULES

3. Foundation cracks.
 4. Corners of buildings.
 5. Under door sills.
 6. Around all electrical & plumbing entrances.
 7. All other infiltration areas.
- B. Install hot water heater jackets ~~except where a vent damper is present~~.
- C. Insulate hot water pipes in accessible unheated space.
- D. Weatherstrip movable windows and doors between conditioned and unconditioned space, including basement doors, attic scuttles and knee wall entrances.
- E. Install gaskets on electrical boxes located on the interior side of exterior walls.
- F. Replace or reset broken or loose glass.
- II. All dwelling types that have a fuel oil furnace with a steady state efficiency below 75 percent will be improved to meet or exceed 80 percent steady state efficiency. Funds for this activity can be from parts 3300.1300 and 3300.1910.

III. Insulate Attic area

- A. To R-38
- B. Vent in accordance with FHA/HUD Minimum Property Standards. (~~No vapor barrier + to 150 ratio; with vapor barrier + to 300 ratio-~~)
- C. Insulate attic scuttle doors to R-30; dam access area allowing entry to attic.

~~III-~~ IV. Insulate exterior walls to minimum of R-11.

~~IV-~~ V. Insulate rim joist area to a minimum of R-19 with vapor barrier on warm side.

~~V-~~ VI. Insulate above-grade foundation walls to R-11. When insulation is applied to interior side of the foundation wall, extend insulation to a minimum of 2 feet below grade.

On crawl space, either insulate perimeter foundation wall to R-11 or floor to minimum of R-19 where freezing of pipes is not a factor.

~~VI-~~ VII. Install storm windows on single-glazed windows where storm windows are missing or existing storm windows are deteriorated beyond repair.

~~VII-~~ VIII. Install new primary doors and windows only where old ones are beyond repair and cannot be weatherstripped.

Optional Items—Only after all of the required items are completed and if maximum material limit has not been reached.

- I. Clock set back thermostats.
- II. Storm doors.

Subp. 5. Department's memorandum; mobile home priorities, 8-28-81. The following list of priorities is a departmental memorandum:

Priorities for Type V Home

I. General Heat Waste

A. Caulk all exterior envelope infiltration points including:

1. Window and door frames.
2. Corners of buildings.
3. Under door sills.
4. Around all electrical and plumbing entrances.
5. ~~Along all siding seams-~~
6. Around all "through the wall" accessories.

B. Install hot water heater jackets on electrical water heaters, or

Insulate water heater closet on gas and oil fired water heaters.

- C. Insulate hot water pipes where accessible.
- D. Replace all worn weather stripping on all moveable windows.
- E. Weatherstrip all exterior prime doors.
- F. Replace or reset broken or loose glass.

II. Insulate ceiling to maximum extent possible not to exceed R-38 and install at least two 8-inch round vents or equivalent.

III. Insulate floor to maximum extent possible not to exceed R-38.

IV. Install storm windows on those single glazed windows where the original storm is either missing or damaged beyond repair.

V. Install new prime doors and windows where existing ones are beyond repair.

Optional Items (Only after all required items are completed.)

I. Replace damaged or missing storm door.

II. Repair and tighten skirting—certify that permanent vent equaling 36 sq. in. per 25 lineal feet of skirt is installed if skirting repair is done.

3300.1300 ALLOWABLE EXPENDITURES.

Expenditures shall be limited to:

A. to H. [Unchanged.]

I. the cost, not to exceed \$150 per dwelling unit, for repair materials and repairs to the heating source necessary to make the installation of weatherization materials effective of incidental repairs;

J. to L. [Unchanged.]

M. weatherization of a building containing eligible rental dwelling units if at least 66 percent (50 percent for two and four unit buildings) of the rental units in the building are eligible dwelling units and if the landlord or landlord's agent agrees in writing that the grantee may do the weatherization work and that rents will not be raised because of the weatherization work.

All purchases in item E with an acquisition value of ~~\$300~~ \$500 or more must have written approval from the department. Purchasing must follow procedures outlined in Office of Management and Budget Circulars A-87, A-102, and A-110, as cited in part 3300.0900.

3300.1400 UNALLOWABLE EXPENDITURES.

Grant funds may not be used for any of the following purposes:

A. to weatherize a dwelling unit that has been weatherized previously with grant funds from the United States Department of Energy or state assistance under Minnesota Statutes, section 268.37 or parts 3300.0800 to 3300.1900; except as provided by part 3300.1910; or unless the dwelling unit has been damaged by fire, flood, or an act of God, and repair of the damage to weatherization materials is not paid for by insurance;

B. to weatherize a dwelling unit that is vacant or designated for acquisition or clearance by a federal, state, or local government program within 12 months from the date weatherization of the dwelling unit would be scheduled to be completed; or

C. to purchase cosmetic items, remodeling items, or a heating or cooling source.

Rules as Proposed (all new material)

3300.1910 MAJOR WEATHERIZATION REPAIR

Subpart 1. Funding. The following apply to funding for major weatherization repair:

A. This part does not apply to funds covered by the administrative rules of the United States Department of Energy.

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B. A maximum of 25 percent of an agency's weatherization grant, received pursuant to part 3300.1100, may be spent on major weatherization repair.

C. An agency may make a one-time maximum expenditure on a dwelling unit of \$3,000 for major weatherization repair.

D. Unspent major weatherization repair funds may be spent on the weatherization activities listed in part 3300.1200.

Subp. 2. Eligible dwelling units. Dwelling units scheduled to be weatherized pursuant to parts 3300.0800 to 3300.1900. Dwelling units must satisfy the following requirements:

A. The property must contain no more than two dwelling units, and at least one dwelling unit must be occupied by an owner who is eligible under part 3300.1000, subpart 21.

B. Major weatherization repair must begin prior to the expiration date on an agency's contract with the department, and must end within 30 calendar days of the contract expiration date.

C. Major weatherization repair to mobile homes is allowable if the mobile home is the applicant's primary residence, and if the applicant is the owner of the mobile home.

Subp. 3. Eligible major weatherization repair. Major weatherization repair must be permanent, be to an existing structure, and comply with all applicable health, fire prevention, building and house codes, and standards. The term includes:

A. tune-up, repair, and cleaning of furnaces and space heaters by a licensed contractor;

B. replacement of inoperable furnaces and space heaters by a licensed contractor;

C. oil burner retrofits by a licensed contractor;

D. chimney construction or improvement;

E. roof repair or replacement;

F. other structural repairs for the protection of weatherization materials listed in part 3300.1200; and

G. correction of health or safety hazards.

Subp. 4. Procedural requirements. The following apply to all major weatherization repairs:

A. During an energy audit, the energy auditor must inspect a dwelling unit to determine if major weatherization repair is needed, and complete a major weatherization repair identification form.

B. Prior to commencing any major weatherization repair, an agency must verify that an applicant is eligible under part 3300.1000, subpart 21.

C. Contracted major weatherization repair must be completed through a written competitive bid process. Bids must relate solely to improvements specified in the major weatherization repair identification form. Each bid must be a detailed and itemized description of the proposed major weatherization repair. Each bid must be signed and dated by the contractor. An inspector and the owner of the dwelling unit shall sign a completion certificate upon completion of work and prior to final payment to the contractor.

D. An agency may perform major weatherization repair. If an agency performs major weatherization repair, the agency is liable on the warranty of workmanship and materials in item E, but the department is not liable on the warranty of workmanship and materials.

E. The contractor, the agency, and the owner of the eligible dwelling unit must sign, and comply with, a warranty of workmanship and materials. A copy of the warranty of workmanship and materials must remain in the client file maintained by the agency.

REPEALER. Minnesota Rules, parts 3300.1000, subparts 17, 26, and 27; and 3300.1100, subpart 2, are repealed.

Department of Human Rights

Proposed Rules Relating to Certificates of Compliance for Public Contractors

Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Human Rights proposes to adopt the above-entitled rules without a public hearing unless twenty-five or more persons submit written requests for a public hearing. The Department has determined that the proposed changes will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 14.21-14.28.

Person interested in these rules have thirty (30) days to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. If twenty-five or more persons submit a written request for a public hearing within the thirty day comment period, a public hearing will be held. 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. The proposed rule may be modified if the modifications are supported by the data and views submitted. If a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14 to 14.18 and Laws 1984, Chapter 640, Sections 7-11.

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

James Robinson, Supervisor
Contract Compliance Services
Minnesota Department of Human Rights
500 Bremer Tower
Seventh and Minnesota Streets
St. Paul, Minnesota 55101
Telephone (612) 296-5683

The statutory authority of the Department to make the proposed rule is contained in Minnesota Statutes, section 363.074.

If adopted, the proposed rules will have an impact on small businesses within the meaning of Minnesota Statutes, section 14.115 in that they would implement the requirement contained in Minnesota Statutes, section 363.073 that any business having more than 20 full-time employees in Minnesota at any time during the previous 12 months must have an approved affirmative action plan for the employment of minority persons, women and disabled individuals to bid on or execute a contract with a state agency for goods or services in excess of \$50,000. The proposed rules specify criteria which will be used to review affirmative action plans and standards and requirements which businesses must meet in the development, submission and implementation of such plans. All expenses which businesses incur in complying with the proposed rules will be born by those businesses. Additional quantitative and qualitative impacts may result from these proposed rules which the Department is not aware of at this time. Persons are encouraged to submit comments regarding the probable impact of these proposed rules upon small businesses.

A copy of the proposed rules is attached to this notice. One additional, free copy is available from the Department upon request.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is also available from the Department upon request.

If a hearing is not required, the proposed rules, the notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted by the Department will be delivered to the Attorney General for review as to form and legality. Persons who wish to be advised of the date 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 James Robinson.

November 26, 1984

Department of Human Rights
Linda C. Johnson, Commissioner

Rules as Proposed (all new material)

CERTIFICATES OF COMPLIANCE FOR PUBLIC STATE CONTRACTS

5000.3400 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 5000.3400 to 5000.3600 the following terms have the meanings given them.

Subp. 2. Affirmative action policy. "Affirmative action policy" means a managerial objective to eliminate all barriers to

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employment opportunity that are not based on specific job requirements. It refers also to the identification of barriers in the use of action-oriented programs to advance employment opportunities for women, minorities, and qualified disabled individuals.

Subp. 3. Affirmative action program. "Affirmative action program" means a coherent set of goal-oriented management policies and procedures which implement a contractor's affirmative action policy including the contractor's self-examination of its workforce and entire employment practices and policies, availability and utilization analyses, and the establishment of goals and timetables for the correction of any underutilization of women, minorities, and qualified disabled persons identified in the self-analysis.

Subp. 4. Availability. "Availability" means the percentage of minorities and women among those persons who may reasonably be considered eligible currently or may reasonably be considered eligible during the term of the affirmative action program.

Subp. 5. Civilian labor force. "Civilian labor force" means persons 16 years old and older who are either:

- A. at work during the reference week; or
- B. with a job but not at work during the reference week.

"At work" means that the person works as a paid employee, or in his or her own business or profession, or on his or her own farm; or who works 15 or more hours as an unpaid worker on a family farm or in a family business, during the reference week.

"With a job but not at work" means any person who does not work during the reference week but who has a job or business from which he or she was temporarily absent due to illness, bad weather, industrial dispute, vacation, or personal reasons.

Members of the armed forces are not included in the civilian labor force.

Subp. 6. Commissioner. "Commissioner" means the commissioner of the Minnesota Department of Human Rights.

Subp. 7. Construction work. "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

Subp. 8. Contract. "Contract" means any agreement or modification of an agreement between a contracting agency and a business or firm for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "services," as used in this definition includes, but is not limited to the following services: utility, construction, transportation, research, insurance, and fund depository.

Subp. 9. Contractor. "Contractor" means a firm or business which has employed more than 20 full-time employees in Minnesota at any time during the previous 12 months, and which executes, holds, or submits a bid or proposal for a state contract for goods or services in excess of \$50,000.

Subp. 10. Covered state contract. "Covered state contract" means a state contract for goods or services in excess of \$50,000.

Subp. 11. Department. "Department" means the Minnesota Department of Human Rights.

Subp. 12. Deficiency. "Deficiency" means an underutilization of women, minorities, and qualified disabled employees or a failure to take corrective action to eliminate barriers to equal employment opportunity identified in the contractor's self-analysis.

Subp. 13. Disabled individual. "Disabled individual" means a person who has a physical or mental impairment which substantially limits one or more major life activity; it does not include an alcoholic or drug abuser whose current use of alcohol or drugs renders that individual a hazard to the individual or others.

Subp. 14. Good faith effort. "Good faith effort" means a reasonable effort undertaken by a contractor to accomplish the goals and implement the corrections identified in the self-analysis.

Subp. 15. Immediate labor area. "Immediate labor area" means that geographic area from which employees and applicants may reasonably commute to the contractor's establishment. The immediate labor area may include one or more contiguous cities, counties, or Standard Metropolitan Statistical Areas or parts thereof, in which the establishment is located.

Subp. 16. Life activity. "Life activity" includes communication, ambulation, self-care socialization, education, vocational training, employment, transportation, or adapting to housing. For the purpose of this item, primary attention is given to those life activities that affect employability.

Subp. 17. Minorities and women with requisite skills. "Minorities and women with requisite skills" means minorities and women who have demonstrated that they possess the skills for the job in question. For example, through performance on another job, those who have completed training or educational programs designed to provide skills for the job in question, and those who could reasonably be expected to acquire the skills within a relatively short time after placement.

Subp. 18. Minority. "Minority" includes:

- A. Blacks, persons having origins of any of the Black African racial groups not of Hispanic origin;
- B. Hispanic, persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race;
- C. Asian and Pacific Islander, persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; and
- D. American Indian or Alaskan Native, persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Subp. 19. Modification. "Modification" means an alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extension.

Subp. 20. Promotable or transferable. "Promotable or transferable" means, within the context of developing data for availability, those employees who are currently employed in a job group or groups which serve or could serve as a source from which selections are or could be made for another job group.

Subp. 21. Qualified disabled individual. "Qualified disabled individual" means a disabled individual who is capable of performing a particular job, with reasonable accommodation to his or her disability.

Subp. 22. Relevant recruitment area. "Relevant recruitment area" means the geographic area from which the contractor may reasonably recruit its employees. It is at least the area from which the contractor recruits, and may include geographic areas not contiguous with the immediate labor area.

Subp. 23. Substantially limited. "Substantially limited" means the degree that an impairment affects employability. A disabled individual who is likely to experience great difficulty in securing, retaining, or advancing in employment shall be considered substantially limited.

Subp. 24. Utilization analysis. "Utilization analysis" means a comparison of the availability of minorities and women in the immediate labor area to their presence in a contractor's workforce.

Subp. 25. Workforce analysis. "Workforce analysis" means a listing of job titles as they appear in applicable collective bargaining agreements or payroll records, not job group, ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision.

5000.3410 GENERAL PROVISIONS.

Subpart 1. Purpose. The purpose of parts 5000.3400 to 5000.3600 is to increase employment opportunities for women, minorities, and disabled individuals by requiring contractors to adopt and implement affirmative action programs approved by the commissioner.

Subp. 2. Persons regulated. Parts 5000.3400 to 5000.3600 apply to contractors:

- A. who are doing business or desire to do business with the state;
- B. who employ more than 20 full-time employees 12 months before, or any time during, performance on a state contract; and
- C. whose contract amount exceeds \$50,000 or is reasonably expected to exceed \$50,000 in any one year.

5000.3420 CRITERIA FOR APPROVAL AND IMPLEMENTATION OF AFFIRMATIVE ACTION PLANS FOR CONTRACTORS.

Subpart 1. General requirements. Under the affirmative action obligation imposed by the Human Rights Act, Minnesota Statutes, section 363.073, contractors shall take affirmative action to employ and advance in employment qualified minority,

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female, and disabled individuals at all levels of employment, including the executive level. Affirmative action must apply to all employment practices including the following:

- A. hiring, upgrading, demotion, or transfer;
- B. recruitment or recruitment advertising;
- C. layoff or termination;
- D. Rates of pay or other forms of compensation; and
- E. selection for training, including apprenticeship.

Subp. 2. Proper consideration of qualifications. Contractors shall review their personnel processes to determine whether their present procedures assure careful, thorough, and systematic consideration of the job qualifications of known minority, female, and disabled applicants and employees for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. To the extent that it is necessary to modify their personnel procedures, contractors shall include the development of new procedures for this purpose in their affirmative action plan required under this part. These procedures must be designed to facilitate a review of the implementation of this requirement by the contractor or the department.

Subp. 3. Affirmative action plan. Before submitting a bid or proposal for a covered state contract, a contractor shall prepare and maintain at each establishment an affirmative action plan which sets forth the contractor's policies, practices, and procedures in accordance with this part. This plan may be integrated into or kept separate from other affirmative action plans of the contractor.

Subp. 4. Plan review. The affirmative action plan must be reviewed and updated annually. If there are any significant changes in procedures, rights, or benefits as a result of the annual updating, those changes must be communicated to employees and applicants for employment and submitted to the department's compliance division.

Subp. 5. Identify plan coverage. The contractor shall invite all applicants and employees who believe themselves covered by Minnesota Statutes, section 363.073 and who wish to benefit under the affirmative action plan to identify themselves to the contractor. The invitation must state that the information is voluntarily provided, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with the Human Rights Act and rules adopted under the act. If a disabled applicant or employee identifies himself or herself, the contractor shall also seek their advice regarding proper placement and appropriate accommodation.

An employee shall not be precluded from informing a contractor at any future time of his or her desire to benefit under the program.

A contractor shall not be relieved of its obligation to take affirmative action with respect to those applicants or employees whose minority, female, or disabled status is known to the contractor provided that the contractor is not obligated to search the medical files of any applicant or employee to determine the existence of a disability.

A contractor shall not be relieved from liability for discrimination under the Human Rights Act.

Subp. 6. Notice. The contractor shall agree to post a notice in a conspicuous place which is available to employees and applicants for employment. The notice must be in a form prescribed by the commissioner. The notice must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified minority, female, and disabled employees and applicants for employment, and the rights of applicants and employees.

Subp. 7. Employee access to plan. The complete affirmative action plan must be available for inspection to an employee or applicant for employment upon request. The location and hours during which the program may be obtained must be posted at each facility.

Subp. 8. Equal opportunity policy statement. The contractor shall prepare and include in its affirmative action plan an equal employment opportunity policy statement.

The equal employment opportunity policy statement must indicate that the contractor is committed to the principles of equal employment opportunity, assign overall responsibility to an executive of the contractor, and provide for a reporting and monitoring procedure. The policy statement must indicate that it is the policy of the contractor to:

A. recruit, hire, train, and promote persons in all job titles, without regard to race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or age except where such status is a bona fide occupational qualification;

B. make employment decisions in a manner which will further the principles of equal employment opportunity;

C. ensure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities; and

D. ensure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company-sponsored training, education, tuition assistance, and social and recreation programs will be administered without regard to race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or age.

This statement must be signed by the chairperson of the board or the chief executive officer.

NONCONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS

5000.3430 ASSIGNMENT OF RESPONSIBILITY FOR PROGRAM TO EXECUTIVE OR TOP-MANAGEMENT OFFICIAL.

Subpart 1. Director. An executive of the contractor shall be appointed as director or manager of the company equal opportunity program. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. The director shall be given the necessary top management support and staffing to execute the assignment. The identity of the director or manager must appear on all internal and external communications on the company's equal opportunity programs. The minimum responsibilities of the director shall be the following:

- A. developing policy statements, affirmative action programs, and internal and external communication techniques;
- B. assisting in the identification of problem areas;
- C. assisting line management in arriving at solutions to problems;
- D. designing and implementing audit and reporting systems that will:
 - (1) measure effectiveness of the contractor's programs;
 - (2) indicate need for remedial action; and
 - (3) determine the degree to which the contractor's goals and objectives have been attained;

E. serving as liaison between the contractor and enforcement agencies;

F. serving as liaison between the contractor and minority organizations, women's organizations, and community action groups concerned with employment opportunities of minorities and women; and

G. keeping management informed of the latest developments in the entire equal opportunity area.

Additional responsibility in furtherance of the purposes of parts 5000.3400 to 5000.3600, beyond those enumerated herein shall be at the option of the contractor, but encouraged by the department.

Subp. 2. Director responsibilities. The minimum line responsibilities of the director or manager shall be:

A. assistance in the identification of problem areas and establishment of local and unit goals and objectives;

B. active involvement with local minority organizations, women's organizations, community action groups, and community service programs;

C. periodic audit of training programs, hiring, and promotion patterns to remove impediments to the attainment of goals and objectives;

D. regular discussions with local managers, supervisors, and employees to be certain the contractor's policies are being followed;

E. review of the qualifications of all employees to ensure that minorities and women are given full opportunities for transfers and promotions;

F. career counseling for all employees;

G. periodic audits to ensure that each location is in compliance in areas such as:

- (1) Posters must be properly displayed.

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(2) All facilities, including company housing, which the contractor maintains for the use and benefit of its employees, shall be desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms, and rest rooms, they must be comparable for both sexes.

(3) Minority and female employees shall be afforded a full opportunity and encouraged to participate in all company sponsored educational, training, recreational, and social activities.

H. supervisors shall be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results as well as other criteria; and

I. it shall be the responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

Additional responsibility in furtherance of the purposes of parts 5000.3400 to 5000.3600, beyond those enumerated herein shall be at the option of the contractor, but encouraged by the department.

5000.3440 PROCEDURES FOR DISSEMINATING POLICY INTERNALLY AND EXTERNALLY.

Subpart 1. Internal. The contractor shall disseminate its policy internally as follows:

A. Include it in contractor's policy manual.

B. Publicize it in company newspaper, magazine, annual report, and other media.

C. Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

D. Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

E. Discuss the policy thoroughly in both employee orientation and management training programs.

F. Meet with union officials to inform them of policy, and request their cooperation.

G. Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

H. Publish articles covering equal employment opportunity programs, progress reports, and promotions of minority and female employees in company publications.

I. Post the policy on company bulletin boards.

J. When employees are featured in product or consumer advertising, employee handbooks, or similar publications both minority and nonminority men and women shall be pictured.

K. Communicate to employees the existence of the contractor's affirmative action program and make available the elements of its program as will enable employees to know of and avail themselves of its benefits.

Subp. 2. External. The contractor shall disseminate its policy externally as follows:

A. Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

B. Incorporate the equal opportunity clause in all purchase orders, leases, and contracts.

C. Notify minority and women's organizations, community agencies, community leaders, secondary schools, and colleges, of company policy, preferably in writing.

D. Communicate to prospective employees the existence of the contractor's affirmative action program and make available the elements of its program as will enable prospective employees to know of and avail themselves of its benefits.

E. When employees are pictured in consumer or help wanted advertising, both minorities and nonminority men and women shall be pictured.

F. Send written notification of company policy to all subcontractors, vendors, and suppliers requesting appropriate action on their part.

5000.3450 WORKFORCE ANALYSIS, INCLUDING AVAILABILITY AND UTILIZATION ANALYSES.

Subpart 1. Workforce analysis. The affirmative action plan must include a workforce analysis including a listing of each job title as it appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department, a separate list must be provided for each work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which

an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles shall be listed by department, job family, or discipline, in order of wage rate or salary range. For each job title, the total number of incumbents, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job title must be given. All job titles, including managerial job titles, must be listed.

Subp. 2. Underutilization. An analysis of all major job groups at the facility, with explanation if minorities or women are currently being underutilized in any one or more job groups. "Job groups" means one or a group of jobs having similar content, wage rates, and opportunities. "Underutilization" means having fewer minorities or women in a particular job group than would reasonably be expected by their availability. In making the utilization analysis, the contractor shall conduct such analysis separately for minorities and women.

Subp. 3. Minority analysis. In determining whether minorities are underutilized in any job group, the contractor shall consider at least all of the following factors:

- A. the minority population of the labor area surrounding the facility;
- B. the size of the minority unemployment force in the labor area surrounding the facility;
- C. the percentage of the minority work force as compared with the total work force in the immediate labor area;
- D. the general availability of minorities having requisite skills in the immediate labor area;
- E. the availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;
- F. the availability of promotable and transferable minorities within the contractor's organization;
- G. the existence of training institutions capable of training persons in the requisite skills; and
- H. the degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

Subp. 4. Women analysis. In determining whether women are underutilized in any job group, the contractor shall consider at least all of the following factors:

- A. the size of the female unemployment force in the labor area surrounding the facility;
- B. the percentage of the female workforce as compared with the total workforce in the immediate labor area;
- C. the general availability of women having requisite skills in the immediate labor area;
- D. the availability of women having requisite skills in an area in which the contractor can reasonably recruit;
- E. the availability of women seeking employment in the labor or recruitment area of the contractor;
- F. the availability of promotable and transferable female employees within the contractor's organization;
- G. the existence of training institutions capable of training persons in the requisite skills; and
- H. the degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

5000.3460 GOALS AND OBJECTIVES ESTABLISHED BY ORGANIZATIONAL UNITS AND JOB GROUPS INCLUDING TIMETABLES FOR COMPLETION.

Subpart 1. Factors. The goals and timetables developed by the contractor must be attainable in terms of the contractor's analysis of its deficiencies and its entire affirmative action program. In establishing the size of its goals and the length of its timetables, the contractor shall consider the results which could reasonably be expected from its putting forth every good faith effort to make its overall affirmative action program work. In determining levels of goals, the contractor shall consider at least the factors listed in part 5000.3430, subpart 2, item C.

Subp. 2. Personnel relations. The contractor shall involve personnel relations staff, department and division heads, and local and unit managers in the goalsetting process.

Subp. 3. Goals. Goals must be significant, measurable, and attainable. Goals must be specific for planned results, with

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timetables for completion. Goals must not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

Subp. 4. Expansion; contraction. In establishing timetables to meet goals and commitments, the contractor shall consider the anticipated expansion, contraction, and turnover of and in the workforce.

Subp. 5. Deficiencies. Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies.

Subp. 6. Relevant percentages. Where deficiencies exist and where numbers of percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

Subp. 7. Written program. Goals and timetables, with supporting data and the analysis, must be a part of the contractor's written affirmative action program and be maintained at each establishment of the contractor.

Subp. 8. Factor analysis. Where the contractor has not established a goal, its written affirmative action program must specifically analyze each of the factors listed in part 5000.3450 and must detail its reason for a lack of a goal.

Subp. 9. Separate goals; timetables. In the event it comes to the attention of the department that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, the department may require separate goals and timetables for that minority group and may further require, where appropriate, goals and timetables by sex for each group for the job classifications and organizational units specified by the department.

Subp. 10. Support data. Support data for the required analysis and program must be compiled and maintained as part of the contractor's affirmative action program. This data must include but not be limited to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

Subp. 11. Copies. Copies of affirmative action plans or programs and copies of support data must be made available to the department upon request for the purposes as may be appropriate to the fulfillment of the department's responsibilities under the act.

5000.3470 IDENTIFICATION OF PROBLEM AREAS OR DEFICIENCIES BY ORGANIZATIONAL UNITS AND JOB GROUPS.

Subpart 1. Analysis. Paying particular attention to trainees and those categories listed in part 5000.3450, subpart 2, an in-depth analysis of the following shall be made:

- A. composition of the work force by minority group status and sex;
- B. composition of applicant flow by minority group status and sex;
- C. the total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors;
- D. transfer and promotion practices;
- E. facilities, company sponsored recreation and social events, and special programs such as educational assistance;
- F. seniority practices and seniority provisions of union contracts;
- G. apprenticeship programs;
- H. all company training programs, formal and informal;
- I. work force attitude; and
- J. technical phases of compliance, such as poster and notification to labor unions, retention of applications, or notification to subcontractors.

Subp. 2. Problem areas. If any of the following items are found in the analysis, special corrective action shall be appropriate:

- A. an "underutilization" of minorities or women in specific job groups;
- B. lateral or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees;
- C. the selection process which eliminates a significantly higher percentage of minorities or women than nonminorities or men;
- D. application or employment forms not in compliance with local, state, or federal law;
- E. position descriptions inaccurate in relation to actual functions and duties;

- F. formal or scored selection procedures that are not validated;
- G. referral ratio of minorities or women to the hiring supervisor or manager which indicates a significantly higher percentage rejected as compared to nonminority and male applicants;
- H. minorities or women excluded from or not participating in company sponsored activities or programs;
- I. de facto segregation exists at some facilities;
- J. seniority provisions that contribute to overt or inadvertent discrimination, that is, a disparity by minority group status or sex exists between length of service and types of jobs held;
- K. nonsupport of company policy by managers, supervisors, or employees;
- L. minorities or women underutilized or significantly underrepresented in training or career improvement programs;
- M. no formal techniques established for evaluating the effectiveness of equal employment opportunity programs;
- N. lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities;
- O. lack of suitable transportation, public or private, to the workplace inhibits minority employment;
- P. purchase orders do not contain equal employment opportunity clause; and
- Q. posters not on display.

5000.3480 MEASURES TO FACILITATE IMPLEMENTATION OF EQUAL EMPLOYMENT OPPORTUNITY POLICY AND AFFIRMATIVE ACTION PROGRAMS.

Subpart 1. Consistent positions. The contractor shall conduct detailed analyses of position descriptions to ensure that they accurately reflect position functions, and are consistent for the same position from one location to another.

Subp. 2. Worker specifications. The contractor shall validate worker specifications by division, department, location, or other organizational unit and by job title using job performance criteria. Special attention must be given to academic, experience, and skill requirements to ensure that the requirements in themselves do not constitute inadvertent discrimination. Specifications must be consistent for the same job title in all locations and shall be free from bias as regards to race, color, creed, religion, sex, national origin, marital status, status regarding public assistance, age, and disability except where such status is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities or women, the requirements must be professionally validated to job performance.

Subp. 3. Position descriptions. Approved position descriptions and worker specifications, when used by the contractor, must be made available to all members of management involved in the recruiting, screening, selection, and promotion process. Copies must also be distributed to all recruiting sources.

Subp. 4. Selection process evaluation. The contractor shall evaluate the total selection process to ensure freedom from bias and, thus, aid the attainment of goals and objectives.

All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes must be carefully selected and trained to ensure elimination of bias in all personnel action.

Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include, but are not limited to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where data exists suggesting that there is unfair discrimination or exclusion of minorities or women, the contractor shall analyze its unscored procedures and eliminate them if they are not objectively valid.

Subp. 5. Recruitment techniques. Suggested techniques to improve recruitment and increase the flow of minority or female applicants are as follows:

A. Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., concentrated employment programs, Neighborhood Youth Corps, secondary schools, colleges, and city colleges with high minority enrollment, the state employment services, specialized employment agencies are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, welfare rights organizations, Women's Equity Action League, Talent Bank for Business and Professional Women (including 26 women's

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organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro women's sororities and service groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish women's groups, Catholic women's groups, Protestant women's groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

B. Formal briefing sessions shall be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature shall be an integral part of the briefings. Formal arrangements shall be made for referral of applicants, follow-up with sources, and feedback on disposition of applicants.

C. Minority and female employees, using procedures similar to item B, shall be actively encouraged to refer applicants.

D. A special effort shall be made to include minorities and women on the personnel relations staff.

E. Minority and female employees shall be made available for participation in career days, youth motivation programs, and related activities in their communities.

F. Active participation in "job fairs" is desirable. Company representatives participating shall be given authority to make on-the-spot commitments.

G. Active recruiting programs shall be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

H. Recruiting efforts at all schools shall be undertaken whenever possible. Some possible programs are:

(1) technical and nontechnical co-op programs at predominantly black and women's colleges;

(2) "after school" or work-study jobs for minority youths, male and female;

(3) summer jobs for underprivileged youth, male and female;

(4) summer work-study programs for male and female faculty members of the predominantly minority schools and colleges; and

(5) motivation, training, and employment programs for the hardcore unemployed, male and female.

I. When recruiting brochures pictorially present work situations, the minority and female members of the workforce must be included, especially when brochures are used in school and career programs.

J. Help wanted advertising shall be expanded to include the minority news media and women's interest media on a regular basis.

Subp. 6. Promotion. The contractor shall ensure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

A. Post or otherwise announce promotional opportunities.

B. Make an inventory of current minority and female employees to determine academic, skill, and experience level of individual employees.

C. Initiate necessary remedial, job training, and workstudy programs.

D. Develop and implement formal employee evaluation programs.

E. Make certain "worker specifications" have been validated on job performance related criteria. Neither minority nor female employees shall be required to possess higher qualifications than those of the lowest qualified incumbent.

F. When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

G. Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system, and similar program.

H. Review seniority practices and seniority clauses in union contracts to ensure the practices or clauses are nondiscriminatory and do not have a discriminatory effect.

I. Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

J. Encourage child care, housing, and transportation programs appropriately designed to improve the employment opportunities for minorities and women.

5000.3490 INTERNAL AUDIT AND REPORTING SYSTEMS.

The contractor shall monitor records of referrals, placements, transfers, promotions and terminations at all levels to ensure that its equal employment opportunity and affirmative action policies are carried out.

The contractor shall require formal reports from the unit managers on a scheduled basis regarding the degree to which corporate or unit goals are attained and timetables are met.

The contractor shall review report results with all levels of management.

The contractor shall advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

5000.3500 DISABLED INDIVIDUALS PLAN.

An affirmative action plan shall be made for disabled individuals in accordance with 12 MCAR § 1.053 D. (Temporary).

5000.3510 ADDITIONAL REQUIRED CONTENT OF AFFIRMATIVE ACTION PLANS.

Affirmative action plans must contain the following additional requirements:

- A. development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions;
- B. formal internal and external dissemination of the contractor's policy;
- C. establishment of responsibilities for implementation of the contractor's affirmative action program;
- D. identification of problem areas (deficiencies) by organizational units and job group;
- E. establishment of goals and objectives by organizational units and job groups, including timetables for completion;
- F. development and execution of an action-oriented program designed to eliminate problems and further designed to attain established goals and objectives;
- G. design and implementation of internal audit and reporting systems to measure effectiveness of the total program;
- H. active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women; and
- I. consideration of minorities and women not currently in the workforce having requisite skills who can be recruited through affirmative action measures.

CONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS**5000.3520 COMMISSIONER SETS GOALS AND TIMETABLES.**

The commissioner, from time to time, shall issue goals and timetables for minority and female utilization which must be based on appropriate workforce, demographic, or other relevant data and which shall cover construction projects, or construction contracts performed in specific geographical areas. The goals must be applicable to each construction trade in an area covered by the contractor's entire workforce which is working in the area covered by the goals and timetables. Goals must be published as notices in the *State Register*, and must be inserted by contracting state agencies and applicants, as applicable, in the notice required by part 5000.3530.

5000.3530 NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY.

Contracting state agencies shall include the following notice in all solicitations for offers and bids on all state and state-assisted construction contracts in excess of \$50,000 to be performed in geographical areas designed by the commissioner.

The notice requirements shall take the following form:

**"NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

1. The offeror's or bidder's attention is called to the "equal opportunity clause" set forth herein.

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2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

Timetables	Goals for minority participation in each trade	Goals for female participation in each trade
Insert the timetables as determined under part 5000.3500.	Insert the goals as determined under part 5000.3500.	Insert the goals as determined under part 5000.3500.

These goals are applicable to all the contractor's construction work (whether or not it is state or state-assisted) performed in the covered area.

The contractor's compliance with Minnesota Statutes, section 363.073 and part 5000.3520 shall be based on its implementation of the equal opportunity clause, specific affirmative action obligations required by the specifications in part 5000.3540, and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, Minnesota Statutes, section 363.073 and part 5000.3520. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Compliance Division of the Minnesota Department of Human Rights within ten working days of award of any construction subcontract at any tier for construction work under the contract resulting from the solicitation. The notification must list the name, address, and telephone number of the subcontractor; employer identification number, estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this notice, and in the contract resulting from this solicitation, the "covered area" is the geographical area where the contract is to be performed. The contracting state agency shall insert the description of the geographical areas where the contract is to be performed describing the state, county, city, town, or municipality of the geographic area in the notice, and in the contract resulting from this solicitation.

5000.3535 STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS.

Each contracting state agency and each contractor shall include the following equal opportunity clause in each of its covered state and state-assisted construction contracts (and modifications, renewals, or extensions if not included in the original contract):

"STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. The contractor shall implement the specific affirmative action standards provided in paragraphs 4(a) to (o) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor shall reasonably be able to achieve in each construction trade in which it has employees in the covered area. The contractor shall make substantially uniform progress toward its goals in each craft during the period specified.

2. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Minnesota Statutes, section 363.073 of the Minnesota Human Rights Act, or the rules adopted under the act.

3. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained according to training programs approved by the Minnesota Department of Human Rights, the Minnesota Department of Labor and Industry, or the United States Department of Labor.

4. The contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications must be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, shall assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other

on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each individual. If the individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

(d) Provide immediate written notification to the commissioner of the Minnesota Department of Human Rights when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the state of Minnesota. The contractor shall provide notice of these programs to the sources compiled under (b).

(f) Disseminate the contractor's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its equal employment opportunity obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company equal employment opportunity policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's equal employment opportunity policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(h) Disseminate the contractor's equal employment opportunity policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's equal employment opportunity policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

(i) Directs its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

(k) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, such opportunities.

(l) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal

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employment opportunity policy and the contractor's obligations under these specifications are being carried out.

(m) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(n) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(o) Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's equal employment opportunity policies and affirmative action obligations.

5. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (4(a) to (o)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 4(a) to (o) of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be defense for the contractor's noncompliance.

6. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the contractor may be in violation of part 5000.3520 if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of part 5000.3520 if a specific minority group is underutilized).

7. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or age.

8. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts under the federal Executive Order 11246 or a local human rights ordinance, or whose certificate of compliance has been suspended or revoked pursuant to Minnesota Statutes, section 363.073.

9. The contractor shall carry out such sanctions for violation of these specifications and of the equal opportunity clause, including suspension, termination, and cancellation of existing contracts as may be imposed or ordered pursuant to Minnesota Statutes, section 363.073, and its implementing rules. Any contractor who fails to carry out such sanctions shall be in violation of these specifications and Minnesota Statutes, section 363.073.

10. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 4, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of Minnesota Statutes, section 363.073, its implementing rules, or these specifications, the commissioner shall proceed in accordance with part 5000.3570.

11. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Minnesota Department of Human Rights, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (for example, mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

12. Nothing provided in this part shall be construed as a limitation upon the application of other state or federal laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents."

5000.3540 CONSTRUCTION CONTRACTOR AFFIRMATIVE ACTION PLANS.

Construction contractors shall also have affirmative action plans for disabled individuals in accordance with part 5000.3550.

5000.3550 ALL CONTRACTORS; AFFIRMATIVE ACTION PLANS FOR DISABLED INDIVIDUALS.

Each state agency and each contractor shall include the following affirmative action clause in each of its covered state contracts and modifications, renewals, or extensions thereof if not included in the original contract.

"AFFIRMATIVE ACTION FOR DISABLED WORKERS.**1. Contractor duties.**

(a) The contractor shall not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(c) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes, section 363.073 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(e) The contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes, section 363.073 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

2. Physical and mental qualifications.

(a) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical or mental job qualification requirements to ensure that, to the extent qualification requirements tend to screen out qualified disabled individuals, they are job related and are consistent with business necessity and the safe performance of the job.

(b) Whenever a contractor applies physical or mental job qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion, or training, to the extent that qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion, or training, to the extent that qualification requirements tend to screen out qualified disabled individuals, the requirements shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and the safe performance of the job. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

(c) Nothing in this section shall prohibit a contractor from requiring a comprehensive medical examination prior to employment provided that the results of such an examination shall be used only in accordance with the requirements of this section. Whenever a contractor inquires into an applicant's or employee's physical or mental condition or conducts a medical examination prior to employment or change in employment status, information obtained in response to such inquiries or examination shall be kept confidential except that:

(i) supervisors and managers may be informed regarding restrictions on the work or duties of disabled individuals and regarding accommodations;

(ii) first aid and safety personnel may be informed, where and to the extent appropriate, if the condition might require emergency treatment; and

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(iii) officials, employees, representatives, or agents of the department of local human rights agencies investigating compliance with the act or local human rights ordinances shall be informed.

3. Accommodation to physical and mental limitations of employees. A contractor shall make a reasonable accommodation to the physical and mental limitations of an employee or applicant unless the contractor can demonstrate that such an accommodation would impose an undue hardship on the conduct of the contractor's business. In determining the extent of a contractor's accommodation obligations, the following factors among others may be considered: (1) business necessity and (2) financial cost and expenses.

4. Compensation. In offering employment or promotions to disabled individuals, the contractor shall not reduce the amount of compensation offered because of any disability income, pension, or other benefit the applicant or employee receives from another source.

5. Outreach, positive recruitments, and external dissemination of policy. Contractors shall review their employment practices to determine whether their personnel programs provide the required affirmative action for employment and advancement of qualified disabled individuals. Based upon the findings of such reviews, contractors shall undertake appropriate outreach and positive recruitment activities, such as those listed below. It is not contemplated that contractors will necessarily undertake all the listed activities or that their activities will be limited to those listed. The scope of a contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(a) Develop internal communication of its obligation to engage in affirmative action efforts to employ qualified disabled individuals in such a manner as to foster understanding, acceptance, and support among the contractor's executive, management, supervisory, and all other employees and to encourage such persons to take the necessary action to aid the contractor in meeting this obligation.

(b) Develop reasonable internal procedures to ensure that its obligation to engage in affirmative action to employ and promote qualified disabled individuals is being fully implemented.

(c) Periodically inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified disabled individuals.

(d) Enlist the assistance and support of recruiting sources (including state employment security agencies, state vocational rehabilitation agencies or facilities, sheltered workshops, college placement officers, state education agencies, labor organizations and organizations of or for disabled individuals) for the contractor's commitment to provide meaningful employment opportunities to qualified disabled individuals. (A list of numerous national organizations serving the disabled, many of which have state or local affiliates, is found in the "Directory of Organizations Interested in the Handicapped" published by the Committee for the Handicapped People-to-People Program, Washington, D.C.)

(e) Engage in recruitment activities at educational institutions which participate in training of the disabled, such as schools for the blind, deaf, or retarded.

(f) Establish meaningful contracts with appropriate social service agencies, organizations of and for disabled individuals, vocational rehabilitation agencies or facilities, for such purposes as advice, technical assistance, and referral to potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training, and accommodations contractors may undertake, but no such resource providing technical assistance shall have the authority to approve or disapprove the acceptability to affirmative action programs.

(g) Review employment records to determine the availability of promotable and transferable qualified known disabled individuals presently employed, and to determine whether their present and potential skills are being fully utilized or developed.

(h) Include disabled workers when employees are pictured in consumer, promotional, or help wanted advertising.

(i) Send written notification of company policy to all subcontractors, vendors and suppliers, requesting that they act in a manner consistent with the contractor's policy on affirmative action.

(j) Take positive steps to attract qualified disabled persons not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for disabled individuals described in part 5000.3480.

6. Internal dissemination of policy. A strong outreach program shall be ineffective without adequate internal support from supervisory and management personnel and other employees, who may have had limited contact with disabled persons in the past. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall adopt, implement, and disseminate this policy internally as follows:

(a) Include it in the contractor's policy manual.

- (b) Publicize it in the company newspaper, magazine, annual report, and other media.
- (c) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.
- (d) Schedule meetings with all employees to discuss policy and explain individual employee responsibilities.
- (e) Discuss the policy thoroughly in both employee orientation and management training programs.
- (f) Meet with union officials to inform them of the contractor's policy, and request their cooperation.
- (g) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.
- (h) Include articles on accomplishments of disabled workers in company publications.
- (i) Post the policy on company bulletin boards, including a statement that employees and applicants are protected from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation under the Minnesota Human Rights Act.
- (j) When employees are featured in employee handbooks or similar publications for employees, include disabled employees.

7. Responsibility for implementation. An executive of the contractor shall be designated as director or manager of company affirmative action activities under these regulations. His or her identity shall appear on all internal and external communications regarding the company's affirmative action programs. This executive shall be given necessary top management support and staff to manage the implementation of this program, including the following activities:

(a) Develop policy statements, affirmative action programs, and internal and external communication techniques. The latter techniques shall include regular discussions with local managers, supervisors, and employees to be certain the contractor's policies are being followed. In addition, supervisors shall be advised that:

(1) their work performance is being evaluated on the basis of their affirmative action efforts and results, as well as other criteria; and

(2) the contractor is obligated to prevent harassment of employees placed through affirmative action efforts.

(b) Identify problem areas in conjunction with line management and known disabled employees, in the implementation of the affirmative action plan, and develop solutions. This is particularly important for the accommodations requirements.

(c) Design and implement audit and reporting systems that will:

(1) measure effectiveness of the contractor's plan;

(2) indicate need for remedial action;

(3) determine the degree to which the contractor's objectives have been attained;

(4) determine whether known disabled employees have had the opportunity to participate in all company sponsored educational, training, recreational, and social activities; and

(5) ensure that each location is in compliance with the Minnesota Human Rights Act and part 5000.3500.

(d) Serve as liaison between the contractor and the Minnesota Department of Human Rights.

(e) Serve as liaison between the contractor and organizations of and for disabled persons, and arrange for the active involvement by company representatives in the community service programs of local organizations of and for the disabled.

(f) Keep management informed of the latest developments in the entire affirmative action area.

(g) Arrange for career counseling for known disabled employees.

8. Development and execution of affirmative action programs.

(a) Job qualification requirements reviewed under part 5000.3500 shall be made available to all members of management involved in the recruitment, screening, selection, and promotion process.

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(b) The contractor shall evaluate the total section process including training and promotion to ensure freedom from stereotyping disabled persons in a manner which limits their access to all jobs for which they are qualified.

(c) All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be carefully selected and trained to ensure that the commitments in its affirmative action program are implemented.

(d) Formal briefing sessions shall be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature shall be an integral part of the briefings. Formal arrangements shall be made for referral of applicants, follow up with sources and feedback on disposition of applicants.

(e) A special effort shall be made to include qualified disabled persons on the personnel relations staff.

(f) Disabled employees shall be made available for participation in career days, youth motivation programs, and related activities in their communities.

(g) Recruiting efforts at all schools shall include special efforts to reach disabled students.

(h) An effort shall be made to participate in work study programs with rehabilitation facilities and schools which specialize in training or educating disabled individuals.

(i) The contractor shall use all available resources to continue or establish on-the-job training programs.

9. Sheltered workshops. Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified disabled individuals in the contractor's own workforce. Contracts with sheltered workshops may be included within an affirmative action program if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become qualified as "qualified disabled individual" as defined in part 5000.3500.

10. Determination of disability.

(a) Any contractor requiring a determination of an applicant's or employee's disability may require the applicant or employee to provide medical documentation of the impairment or, in the alternative, may require the applicant or employee to undergo a medical examination at the contractor's expense.

(b) Any determination of disability required pursuant to subpart 1 of this section must meet the requirements of part 5000.3500 and must be for the purpose of affirmative action and proper job placement. Information obtained therefrom shall not be used to exclude or otherwise limit the employment opportunities of qualified disabled individuals.

(c) All medical documentation required under this section shall be based upon the American Medical Association Guides to the Evaluation of Permanent Impairment, provided that the guides shall be used only to determine the existence of impairment without regard to the degree of impairment.

11. Listing of employment openings. Contractors shall request the Minnesota Department of Economic Security to refer qualified disabled individuals for consideration under their affirmative action programs.

12. The requirements contained in part 5000.3500 regarding the performance of availability and utilization analyses and the establishment of goals and timetables do not apply to disabled applicants and employees.

5000.3560 PROCEDURES FOR ISSUING CERTIFICATES OF COMPLIANCE.

Subpart 1. Information required. All businesses or firms desiring a certificate of compliance shall submit to the department one of the following:

A. an affirmative action plan in compliance with parts 5000.3400 to 5000.3600; or

B. letters or documentation establishing their compliance with federal or local agency rules together with an affirmative action program for disabled individuals.

Subp. 2. Certificates issued. Except as provided in subpart 3, certificates of compliance shall be issued within 30 days after the department has received the information required in subpart 1.

Subp. 3. Insufficient information. A business or firm whose submission does not meet the requirements of subpart 1 shall be notified within 15 days that its submission must be revised. The notification shall state specifically how the submission fails to meet the requirements of subpart 1. Certificates of compliance shall be issued 15 days after the department has received a revised submission which complies with subpart 1.

Subp. 4. Duration of certificates. Certificates of compliance are effective for two years and shall expire after the second year has elapsed.

5000.3570 DETERMINATION OF COMPLIANCE STATUS.

Subpart 1. General criteria for review. A contractor's compliance status shall not be based solely upon whether or not it reaches its goals or meets its timetables. A contractor's compliance status shall be determined by reviewing its compliance with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600, the contents of its affirmative action plan, the extent of its adherence to the plan or the equal opportunity clauses contained in its state contracts, and its employment practices and their effects. In determining a contractor's status, the department shall also consider the extent to which a contractor has made good faith efforts to implement its affirmative action plan or the equal opportunity clauses contained in its state contracts.

Subp. 2. Determination of good faith efforts. A contractor's good faith efforts shall be determined by whether it takes prompt corrective action when it becomes aware that any of the following conditions exist with regard to its workforce:

- A. underutilization of women or minorities in any job group;
- B. minority or female employees move laterally, vertically, at a lesser rate than nonminority or male employees;
- C. a selection process eliminates minorities or women at higher rate than nonminority or male employees;
- D. preemployment inquiries and application forms do not satisfy state law requirements;
- E. descriptions of jobs do not accurately reflect functions involved;
- F. selection procedures are not valid predictors of job performance;
- G. disproportionately high rejection of women or minorities by hiring supervisors;
- H. women, minorities, and disabled individuals who are not participating in company-sponsored activities;
- I. segregation still exists at some facilities;
- J. disparities by minority group status or sex in terms of length of service and type of job held;
- K. managers, supervisors, or employees lack interest in company equal employment opportunity policies;
- L. underrepresentation of women or minorities in training or career improvement programs;
- M. techniques for evaluating effectiveness of its equal employment opportunity programs have not been established;

and

- N. inadequate display of equal employment opportunity posters.

Subp. 3. Additional factors regarding good faith efforts. Good faith efforts shall also be determined by:

- A. whether a contractor submits timely compliance review reports as required by part 5000.3580;
- B. whether a contractor permits an on-site compliance review to be conducted;
- C. whether a contractor makes available records or other information as required by parts 5000.3400 to 5000.3600; or
- D. whether a contractor implements conciliation agreements.

Subp. 4. Analysis of good faith efforts. Good faith efforts shall be analyzed by:

- A. the results of an investigation of a charge of discrimination;
- B. the results of an analysis of the contractor's affirmative action plan;
- C. the results of an on-site review of the contractor's compliance with its affirmative action plan or equal opportunity clause; or
- D. the results of an assessment of the contractor's compliance with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600.

Subp. 5. Notification of deficiencies. If the department determines that a contractor has failed to adhere to its affirmative action plan or the equal opportunity clauses contained in its state contracts, that the contractor has failed to exercise good faith efforts to implement the plan or the equal opportunity clauses, or has failed to comply with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600, it shall notify the contractor by first-class mail identifying the nature of the

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deficiency and stating specifically the corrective measures necessary for eliminating the deficiency. The contractor shall have 15 days to reply to the notice of deficiency.

Where deficiencies are found to exist, the department shall attempt to secure compliance through conciliation and persuasion unless it determines that such efforts would be unsuccessful or unproductive. Before the contractor can be found to be in compliance, the contractor shall make a specific commitment in writing to correct the deficiencies set forth in the notice. The commitment must include the precise action to be taken and dates for completion. The time period allotted must be no longer than the minimum period necessary to effect such changes. Upon approval of the commitment by the commissioner, the contractor may be considered in compliance, on condition that the commitment is faithfully kept. The contractor shall be notified that making such a commitment does not preclude future determinations of noncompliance based on a finding that the commitment is not sufficient to achieve compliance.

Subp. 6. Notification of sanctions and hearing. Where a contractor fails to respond to a notice of deficiency within 15 days or the department determines that attempts to correct the deficiencies through conciliation and persuasion have been or would be unsuccessful or unproductive, the department may impose one or more of the sanctions set forth in Minnesota Statutes, section 363.073, subdivision 2. The department shall serve the contractor with notice of the sanctions by mailing a copy thereof to the contractor by first-class mail. The sanctions shall become effective 20 days after the notice is served.

A contractor may obtain a hearing regarding the department's determination of deficiencies or any sanctions which it has imposed by filing a written request for a hearing with the department within 20 days after service of the notice of sanction. The hearing shall be a contested case proceeding pursuant to the Administrative Procedure Act, Minnesota Statutes, sections 14.57 to 14.70.

A. If a timely request for a hearing is filed, the commissioner shall issue and serve upon the contractor by certified mail a notice and order directing the contractor to appear at the hearing, at a time and place specified in the notice, and show cause why the sanctions determined by the department shall not be imposed.

B. The filing of a timely request for a hearing shall stay the enforcement of the sanctions in question until a final decision is issued or the request for a hearing is withdrawn or dismissed with prejudice. The failure of a contractor to appear at the hearing may be grounds for dismissal with prejudice.

C. The administrative law judge shall make and file with the commissioner a report stating the findings of fact, conclusions, and recommendations. The commissioner shall serve each party with a copy of the report by mail. Within 20 days after service of the report, any party including the department, may file with the commissioner and serve exceptions to the report and reasons in support of their exceptions.

D. Exceptions with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. When exception is taken to a statement of fact, a corrected statement must be incorporated. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. A reply to exceptions is not required, but may be filed by any party including the department within ten days after service of the exceptions to which reply is made along with proof of service thereof on all parties of record.

E. Exceptions and replies shall contain written arguments in support of the position taken by the party filing such exceptions or reply. An opportunity for oral argument before the commissioner or his or her designee shall be permitted if requested by a party at the time that they file their exceptions or reply, unless the commissioner in the exercise of his or her discretion, determines that oral argument is unnecessary because the facts and legal arguments could be adequately presented by the briefs and records and the decisional process would not be significantly aided by oral argument. Oral arguments shall be limited to a discussion of legal questions and a restatement of facts in evidence. No new evidence shall be received at oral arguments.

F. Within 20 days from the date of the mailing by the commissioner of the final decision or order, any party including the department, may petition for a rehearing, or for an amendment or vacation of the findings of fact, decision or order, or for reconsideration or reargument. If the petition is for a rehearing, vacation, reconsideration, or reargument, the grounds relied upon shall be specifically set forth and the claimed errors clearly stated. If the petition is for an amendment of the findings of fact, decision, or order, it shall contain the desired proposed amendments, and the reasons for it shall be clearly stated. The petition shall be served upon all parties to the proceeding. An adverse party shall have ten days from the date of the service of the petition to answer and no reply will be permitted. The commissioner may grant or deny the petition without a hearing, or in his or her discretion set a hearing thereon. Pending the decision of the commissioner on the petition, the commissioner may vacate and set aside the decision or order. No petition will extend the time of appeal from the decision or order.

G. A second petition for rehearing, amendment, or vacation of any finding of fact, decision, or order, reconsideration or reargument by the same party or parties and upon the same grounds as a former petition which has been considered and denied, will not be entertained.

Within ten days after the date that sanctions become effective, the department shall notify the state agency or state agencies which hold contracts with the affected contractor about the sanctions and make recommendations regarding whether such contracts shall be terminated pursuant to Minnesota Statutes, section 363.073, subdivision 3.

Subp. 7. Recertification. A contractor whose certificate of compliance has been suspended or revoked or who has been declared ineligible for further certificates of compliance pursuant to Minnesota Statutes, section 363.073, subdivision 2, may request reinstatement in a letter to the commissioner. The commissioner may grant the request if, based upon the contractor's showing, the department's file regarding the contractor's past performance, a compliance review, the recommendations of the department or a conciliation agreement the commissioner determines that the contractor has established and will carry out employment policies and practices that are in compliance with Minnesota Statutes, section 363.073 and with parts 5000.3400 to 5000.3600.

Subp. 8. Evidence of discrimination. If a compliance review indicates a violation of Minnesota Statutes, section 363.03, the commissioner may proceed to file a charge and process the matter under Minnesota Statutes, section 363.06 or this part.

5000.3580 SUBMISSION OF COMPLIANCE REPORTS.

Subpart 1. Construction contractors; monthly reports. Each construction contractor shall submit a monthly utilization report. The report must state for each state project during the month in question:

- A. total hours of employment on the project;
- B. total hours of employment of women;
- C. total hours of employment of minorities;
- D. total hours of training;
- E. total hours of training provided to women; and
- F. total hours of training provided to minorities.

Subp. 2. Construction contractors; semiannual reports. Construction contractors shall also submit semiannual compliance reports of their affirmative action programs for nonconstruction personnel. These compliance reports must contain the same, be submitted at the same time, and contain the same documents as required for nonconstruction contractors in part 5000.3520.

Subp. 3. Nonconstruction contractors; semiannual reports. Nonconstruction contractors shall submit semiannual compliance reports. The report must include the following data, by job, group, race, sex, and disability:

- A. total number of employment applicants;
- B. total number of applicants interviewed;
- C. total number of applicants tested;
- D. total number of applicants hired;
- E. total number of employees promoted;
- F. total number of employees demoted;
- G. total number of employees transferred;
- H. total number of employees laid off;
- I. total number of employees recalled from layoff;
- J. total number of employees terminated;
- K. total number of employees receiving company sponsored training; and
- L. total number of people employed by company.

Subp. 4. Minimizing duplication of reports. The department shall attempt to the fullest extent possible to minimize the burden of duplication of reports and efforts of federal and local contract compliance agencies by:

- A. utilizing forms and standards similar to those by federal equal employment opportunity programs;

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B. accepting forms and reports prepared for federal or local agencies where the information contained therein is sufficient for parts 5000.3400 to 5000.3600; and

C. minimizing duplication of programs and procedures.

5000.3590 PROCEDURES FOR COMPLIANCE REVIEW.

Subpart 1. Procedures for contractor evaluation. A contractor evaluation shall proceed as follows:

A. a desk audit of the contractor's affirmative action plan with special attention directed to the included workforce analysis;

B. an on-site review of those matters which still are not fully or satisfactorily addressed in the affirmative action plan and workforce analysis; and

C. where necessary, an off-site analysis of information supplied by the contractor during or pursuant to the on-site review. Contractors may reach agreement with the department on nationwide Affirmative Action Plan formats or on frequency of updating statistics.

Subp. 2. Desk audit. The department shall routinely request from state contractors within their jurisdiction affirmative action programs and supporting documentation, including the workforce analysis and support data for audit. As used throughout this part, the term "Affirmative Action Plan and supporting documentation" means the required contents of affirmative action plans, and methods of implementing those requirements set forth in part 5000.3420. "Workforce analysis" is defined as a listing of each job title as it appears in applicable collective bargaining agreements or payroll records (not job groups) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles shall be listed by department, job family, or discipline, in order of wage rates or salary ranges. For each job title, the total number of incumbents, the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job title must be given. All job titles, including all managerial job titles, must be listed.

Subp. 3. Exceptions to desk audit requirements. For preaward reviews, the desk audit need not be carried out or an abbreviated desk audit may be performed and an immediate on-site review performed. Special reports that meet the criteria in subpart 4, item C may be requested from contractors as required, for submission to the department for complaint investigations and follow-up reviews performed within one year of a full compliance review. The commissioner shall approve other special compliance reviews that effectuate the purposes of, and are consistent with the other compliance reviews described in parts to when exigent circumstances require an immediate on-site review.

Subp. 4. On-site review. On-site reviews must be conducted as follows:

A. Each contractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance reviews and inspecting and copying books, records, accounts, and other materials as may be relevant to compliance with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600. Information obtained in this manner must be used only in connection with the administration or enforcement of the Minnesota Human Rights Act and in the furtherance of the act's objectives.

B. If upon examination of an affirmative action plan and included workforce analysis for desk audit, the department finds that the material submitted does not demonstrate a reasonable effort by the contractor to meet all the requirements which are applicable under parts 5000.3420 to 5000.3600 the on-site review need not be carried out and the enforcement procedures specified in Minnesota Statutes, section 363.073 and part 5000.3570 shall be applicable. Otherwise, following a desk audit of the affirmative action plan and supporting documentation, the department shall schedule an on-site review of the establishment, provided that an on-site review need not be carried out when the department can determine that the contractor's affirmative action plan is acceptable. This determination must be based on the current desk audit and an on-site review conducted within the preceding 24 months and also must include an affirmative determination that the circumstances of the previous on-site review have not substantially changed.

C. The department shall request contractors who are scheduled for on-site reviews to have the information necessary to perform the review available on-site. Specifically, this includes:

(1) information necessary to conduct an in-depth analysis of apparent deficiencies in the contractors' utilization of women or minorities;

(2) information required for a complete and thorough understanding of data contained in or offered as support for the affirmative action plan; and

(3) information concerning matters relevant to a determination of compliance with the requirements of Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600, but not adequately addressed in the affirmative action plan.

D. The contractor shall be requested to furnish only the specific items of information which the compliance officer determines are:

- (1) necessary for conducting the review and completing the standard compliance review report; and
- (2) not contained in or able to be derived from the material submitted by the contractor.

E. In order to pursue certain issues uncovered in the compliance review, it may be necessary for the compliance officer to request certain additional information on-site even though such data have not been previously identified. The additional information must also meet the criteria in this part.

F. Where necessary, the compliance officer may take information made available during the on-site review off-site for further analysis. An off-site analysis shall be conducted where issues have arisen concerning deficiencies or an apparent violation which is only capable of being more thoroughly analyzed off-site before a determination of compliance is made.

Subp. 5. Review of contractor data. If the contractor is concerned with the confidentiality of information such as lists of employees, employee names, reasons for termination, and pay data then alphabetic or numeric coding or the use of an index of pay and pay ranges is acceptable for desk unit purposes.

The contractor shall provide full access to all relevant data on-site as required by subpart 4, item A.

The contractor shall provide all data determined by the compliance officer to be necessary for off-site analysis pursuant to subpart 4, item F. The data may only be coded if the contractor makes the code available to the compliance officer. If the contractor believes that particular information which is to be taken off-site is not relevant to compliance, the contractor may request a ruling by the supervisor of the department's compliance division who shall issue a ruling within ten days. The contractor may appeal that ruling to the commissioner within ten days. The commissioner or his or her designee shall issue a final ruling within ten days. The information in question may be withheld pending a ruling by the supervisor or if appealed, a final ruling by the commissioner and shall be considered a part of the investigatory file. Data determined to be relevant to the investigation must be submitted to the compliance officer within five days of the ruling by the supervisor, or if appealed, within five days of the final ruling of the commissioner.

Subp. 6. Employee interviews. The compliance officer shall contact, where appropriate, a reasonable number of employees for interviews as part of the on-site review of the contractor's employment practices. The number, scope, and manner of conducting the interviews must be discussed in advance with the contractor.

5000.3600 DUTIES OF CONTRACTING STATE AGENCY.

Subpart 1. Cooperation with commissioner. Each state agency shall cooperate with the commissioner in the performance of his or her responsibilities under Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600. Cooperation includes the responsibility to ensure that contractors are cognizant of their obligations under Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600.

Subp. 2. Information provided to contractors. Each state agency shall include in each contract the contractor's obligation and requirements to comply with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600, and provide documentation describing the law and rules pertaining to the law and the specific criteria by which the affirmative action plan will be approved or rejected.

Subp. 3. Information provided to department. Each contracting state agency shall provide any information which comes to its attention which indicates that a contractor is not in compliance with Minnesota Statutes, section 363.073 or any rule relating to the statute.

Subp. 4. Contract clause required. Each covered contract must contain an affirmative action clause which states the intention of the agency to carry out its responsibility for requiring affirmative action by its contractors and specific language outlining consequences for failure to implement the contractor's affirmative action plan or make a good faith effort to do so.

Subp. 5. Submission of list of bidders. The contracting agency shall submit to the department a list of prospective bidders prior to the opening of a contractor's bid to ensure compliance with Minnesota Statutes, section 363.073.

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Subp. 6. List of contractors from department. Every 60 days the department shall furnish state agencies with a list of currently certified contractors and contractors whose certificates of compliance have been suspended or revoked or who have been deemed ineligible according to Minnesota Statutes, section 363.073.

Subp. 7. State agency's duty to provide information to department. Each contracting state agency shall provide the department with any information or assistance the department deems necessary to seek compliance with Minnesota Statutes, section 363.073 and the rules adopted under it.

Subp. 8. Copy of statute and rules to be furnished. Each contracting agency shall provide each bidder with a copy of Minnesota Statutes, section 363.073 and the rules adopted pursuant to it.

Subp. 9. Bid specifications, modifications; incorporation of statutory and rule requirements. Each contracting state agency shall include the following paragraph in all bid specifications and modifications:

"It is hereby agreed between the parties that Minnesota Statutes, section 363.073 and Minnesota Rules, parts 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. The bidder acknowledges receipt of a copy of Minnesota Statutes, section 363.073 and Minnesota Rules, parts 5000.3400 to 5000.3600."

Department of Natural Resources

Proposed Rules Relating to Fees for Water Appropriation and Gas Storage Permits

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 14.14 in the above-entitled matter in Room 716, Federal Court Building, 316 North Robert (between Kellogg and Fourth), St. Paul, Minnesota, on January 10, 1985, commencing at 9:00 a.m., and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements or arguments. Statements and briefs may be submitted without appearing at the hearing by sending them to Allan Klein, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone: (612) 341-7609. The rule hearing procedure is governed by Minn. Stat. §§ 14.02 to 14.56 and Minn. Rules pts. 1400.0200 to 1400.1200. Questions regarding procedure may be directed to the administrative law judge at the above-listed address.

The proposed amendments are to Minnesota Rules parts 6115.0010-6115.0100. They implement Laws of Minnesota 1977, Chapter 446, Section 13 by establishing a schedule of permit application fees which are in addition to the basic \$30 fee. The additional fees apply to applications required under Minn. Stat. sections 105.41 (water appropriation), 105.42 (changes in protected waters), 105.535 (dams), 105.391 (waterbank), and 105.64 (uses of water in connection with mining). The additional fees are keyed to the cost of the project, the amount of shoreline affected, and the amount of fill or excavation. The minimum additional fee is \$20. Examples: The additional fee for a \$10,000 permanent dock would be \$100; for a million dollar project the fee would be \$1,250; the additional fee for placing 1,000 cubic yards of fill in a lake could be \$300. The maximum additional fee for local public agencies is \$500. Additional fees are doubled for after-the-fact permit applications. The proposed amendments contain many additional details. The amendments also create a separate section for fees for underground storage; this new section contains no substantive changes from the existing rules.

Interested persons should bear in mind that the proposed additional fees may be significantly adjusted if evidence presented at the hearing warrants such changes.

Minn. Stat. ch. 10A requires each lobbyist to register with the Minnesota 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5148.

As a result of the hearing process, the proposed amendments may be modified. Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day comment period the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during this three-day period.

Notice is hereby given that a Statement of Need and Reasonableness is available for review at the Department of Natural Resources and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed amendments.

One free copy of this notice and the proposed rules and the statement of need and reasonableness may be obtained by contacting James Cooper, Minnesota Department of Natural Resources, Division of Waters, DNR Box 32, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, attention James Cooper, (612) 296-0510.

Notice: Any person may request notification of the date on which the Administrative Law Judge's Report will be available, after which date the Department will not take any final action on the rules for five working days. Any person may request notification of the date on which the rule has been adopted and filed by the Department with the Secretary of State. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge (in the case of the Administrative Law Judge's Report) or to the Department of Natural Resources (in the case of the agency's submission to the Secretary of State).

Joseph N. Alexander
Commissioner of Natural Resources

Rules as Proposed

6115.0010 STATUTORY AUTHORITY.

The commissioner of natural resources is authorized by ~~Laws of Minnesota 1973, chapter 211~~ Minnesota Statutes, section 105.44, subdivision 10, to establish fee schedules for permit applications, field inspections, and monitoring, with regard to:

- A. ~~underground storage of gas or liquid (Minnesota Statutes, sections 84.57 to 84.621);~~
- B. ~~appropriation or use of waters of the state (Minnesota Statutes, section 105.41);~~
- C. ~~construction, change, or abandonment of any reservoir, dam, or waterway obstruction on any public water (Minnesota Statutes, section 105.42);~~
- D. ~~change in the course, current, or cross-section of any public water (Minnesota Statutes, section 105.42); and~~
- E. ~~drainage, diversion, control, or use of any waters to facilitate mining (Minnesota Statutes, section 105.64) permits required by Minnesota Statutes, chapter 105.~~

6115.0020 SCOPE.

~~The fees established in parts 6115.0010 to 6115.0100 are applicable only to the activities listed in part 6115.0010, item E.~~

The fees established in ~~these parts 6115.0010 to 6115.0100~~ shall not be imposed on any state agency as defined in ~~Minnesota Statutes, section 16.011~~, or any federal agency.

6115.0030 DEFINITIONS.

Words used in ~~these parts 6115.0010 to 6115.0100~~ have the meanings normally ascribed to them except:

A. "Appropriation of water," "waters of the state," and "public waters" have the meanings given by ~~the Laws of Minnesota 1973, chapter 315~~ Minnesota Statutes, section 105.37.

B. "Field inspection" means an on-site determination of relevant characteristics of the area involved in or affected by the proposed or permitted project.

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

PROPOSED RULES

C. "Monitoring" means checking on the status or progress of activities authorized by permit, and checking and inspecting special aspects of proposed permit applications, during construction, implementation, or after completion of permitted activities.

D. "Division" means the Division of Waters, Department of Natural Resources.

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

F. "Project cost" means the total cost of all materials, services, equipment purchase or rental, and labor expended for the portion of the project proposed in the permit application which are directly governed by protected waters permit rules, parts 6115.0150 to 6115.0280.

G. "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, sections 105.37, subdivisions 14 and 15, and 105.391, subdivision 1.

H. "Ordinary high water mark" means the boundary of protected waters as defined in Minnesota Statutes, section 105.37, subdivision 16.

I. "Shoreline" means:

(1) for water bodies other than watercourses, the lateral measurement along the contour of the ordinary high water mark; and

(2) for watercourses, the top of the bank of the channel (coincides with ordinary high water mark as defined in Minnesota Statutes, section 105.37, subdivision 16).

J. "State agency" has the meaning given in Minnesota Statutes, section 16.011.

The effective date of this rule will be March 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.

6115.0060 PERMIT APPLICATION FEES.

A \$15 fee in the form of a check or money order payable to the state treasurer shall accompany each permit application fee of \$30 shall accompany permit applications submitted under Minnesota Statutes, section 105.41, appropriation and use of water, Minnesota Statutes, section 105.535, relating to dams, Minnesota Statutes, section 105.42, relating to alterations of protected waters, Minnesota Statutes, section 105.64, relating to the drainage or diversion of water to facilitate mining, and Minnesota Statutes, section 105.391, relating to water bank.

A minimum additional permit application fee of \$20 if required by part 6115.0080 must accompany each permit application for applications submitted under Minnesota Statutes, section 105.42, relating to alterations of protected waters and Minnesota Statutes, section 105.64, relating to the drainage or diversion of water to facilitate mining. (For permit applications requiring an additional permit application fee, the minimum payment to accompany the application is \$50; a \$30 application fee plus a \$20 additional permit application fee.)

If the permit application fee does and the minimum additional permit application fee required by part 6115.0080 do not accompany the application, the applicant will be so notified, and there will be no further action taken on the application until the fee is remitted. If no fee is received within 30 days from mailing of the written notice, the commissioner shall consider the application withdrawn and no further action shall be taken on it unless the applicant submits a new application accompanied by the minimum fee.

If a project requires several permit applications, the permit application fee and minimum additional permit application fee must accompany each application. For example, if a project entails both appropriating water and changing the bed course, current, or cross-section of a lake, there shall be two applications each accompanied by the \$15 fee and two sets of fees.

The permit application fee and minimum additional permit application fee is are not returnable, whether the application is permitted, modified, or denied, unless the commissioner determines the activity does not require a permit.

Payment of all fees covered by parts 6115.0010 to 6115.0030, 6115.0060, 6115.0080 to 6115.0100, and 6115.0130 shall be made by check or money order payable to the Minnesota state treasurer. Cash cannot be accepted.

The effective date of this rule will be March 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.

PROPOSED RULES

6115.0080 ~~FIELD INSPECTION FEES~~ ADDITIONAL FEES REQUIRED BY MINNESOTA STATUTES, CHAPTER 105.

Subpart 1. Actual cost Additional permit application fees. The actual cost of a field inspection, or \$25, whichever is greater, shall be charged the applicant or permittee, if a field inspection is conducted. Actual cost is the sum of the costs of: Additional permit application fees for works affecting protected waters, authorized under Minnesota Statutes, sections 105.42 and 105.64 shall be based on estimated project cost, the amount of material deposited in or removed from the protected waters, and the amount of shoreline affected by the project. The commissioner shall make the final determination of project cost used to calculate the additional permit application fee. The additional fee shall be based on the project parameter resulting in the largest fee using the following table:

<u>PROJECT COST</u>	<u>SHORELINE AFFECTED</u>	<u>FILL-EXCAVATION</u>	<u>FEE</u>
<u>\$1 to \$10,000</u>	<u>1 to 200 feet</u>	<u>1 to 200 cubic yards</u>	<u>one percent of project cost or 50 cents per cubic yard of material or foot of shoreline; subject to a \$20 minimum.</u>
<u>\$10,001 to \$50,000</u>	<u>201 to 1,000 feet</u>	<u>201 to 1,000 cubic yards</u>	<u>\$100 plus one-half of one percent of project cost in excess of \$10,000; or 25 cents per cubic yard of material or foot of shoreline in excess of 200</u>
<u>\$50,001 to \$200,000</u>	<u>1,001 to 2,500 feet</u>	<u>1,001 to 2,500 cubic yards</u>	<u>\$300 plus 1/10 of one percent of project cost in excess of \$50,000; or 10 cents per cubic yard of material or foot of shoreline in excess of 1,000</u>
<u>greater than \$200,000</u>	<u>greater than 2,500 feet</u>	<u>greater than 2,500 cubic yards</u>	<u>\$450 plus 1/10 of one percent of project cost in excess of \$250,000 or five cents per cubic yard of material or foot of shoreline in excess of 2,500</u>

A. For channel excavation projects:

- (1) the shoreline affected is the difference in length in feet between the existing channel and the proposed channel;
- (2) the volume in cubic yards is only that material filled or excavated in existing protected waters.

B. For water level control structures, the \$20 minimum additional permit application fee withstanding, the maximum additional permit application fee to be charged will not be greater than that which would be charged for dams subject to the initial fee contained in part 6115.0520 of the dam safety rules (2.5 percent of the first \$100,000 of project cost, 1.5 percent of the next \$400,000 of project cost, 10 percent of the next \$500,000 of project cost, and 0.5 percent of project costs in excess of \$1,000,000).

C. Additional permit application fee for protection of shoreline from erosion by placement of riprap and to recover shoreland lost by erosion or other natural forces, shall be limited to \$20.

D. For projects sponsored by a public agency which is not a state or federal agency, the maximum additional permit application fee is \$500.

E. The commissioner may require on any project a cost estimate prepared by a registered professional engineer, licensed contractor, planning consultant, or other qualified professional entity. A cost estimate prepared by a qualified professional entity will be required for any project costing in excess of \$25,000. For projects costing less than \$25,000, in lieu

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PROPOSED RULES

of a cost estimate prepared by a qualified professional entity, the commissioner may determine a project cost estimate upon which the additional permit application fee is based.

F. No additional permit application fee shall be charged for any dam subject to parts 6115.0300 to 6115.0520.

G. If the department decides to issue a permit, a bill will be submitted to the applicant for the additional amount due along with a statement describing the scope of the permit to be issued. Fees are payable within 30 days of receipt; failure to pay is grounds for denying the application.

H. If the application is denied, there is no additional fee due beyond the amount required with the application.

I. The additional permit application fee for permit applications filed after the work applied for has been partially or wholly completed (except for emergency work provided for in existing permit rules and policies) shall be double the amount that would have been charged if a timely application had been filed. In the case of a belated permit application, the permit application fee and the additional permit application fee shall both accompany the application or the commissioner shall proceed to issue a restoration order pursuant to Minnesota Statutes, section 105.461. If the belated permit application is denied, all but \$70 (the application fee and double the minimum permit application fee) will be returned.

J. If a hearing is demanded and if the outcome of the hearing is a decision to issue a permit, payment of all required fees must precede issuance. The fee charged will be based on the schedules contained in this part regardless of whether a permit application has been filed.

Subp. 2. Field inspection fees. If a field inspection is conducted, field inspection fees shall be charged only for projects requiring an environmental assessment worksheet (EAW) or environmental impact statement (EIS) pursuant to Minnesota Statutes, chapter 116D and the environmental review program rules, parts 4410.0200 to 4410.7800. The fee charged will be the actual cost of the field inspection or \$25 whichever is greater. Examples of field inspection costs are:

A. state salaries, including fringe benefits and overhead, (travel and inspection time of state employees multiplied by actual hourly rates);

B. transportation to and from inspection site, laboratories and other documented travel sites, based on current state Department of Administration rates or rates specified in applicable bargaining unit agreements;

C. fair rental for any expense of purchase, rental, or repair of special equipment and supplies; and

D. living expenses away from home;

E. (inspection and consultant services contracted for by the state; and

F. laboratory expenses and analysis of data.

Field inspection fees shall not be charged for any dam subject to parts 6115.0300 to 6115.0520. Such dams are subject to the inspection fee requirements of part 6115.0520. Field inspection fees for all other water level control structures shall be charged pursuant to these rules.

The effective date of this part will be March 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 requires a later effective date.

Subp. 2. Procedures. In all cases in which a fee greater than \$25 is charged, the commissioner shall submit an itemized bill to the applicant or permittee. In the case of an applicant, a permit shall not be issued until any field inspection fee owing has been paid. In the case of a permittee, the fee is payable within 30 days of receipt; failure to pay is grounds for suspending the permit, or for taking other legal actions as required. For all field inspection fees over \$250, the applicant or permittee shall be given the opportunity to discuss all aspects of the fee, and shall be given an opportunity to appeal the fee determination.

~~Subp. 3. Applications without fees. Field inspection fees shall not normally be charged in connection with applications for:~~

A. permits for beach sanding in the beds of public waters involving placement of a six-inch or less blanket of sand covering 500 square feet or less of the bed and limited to distances of 50 feet or less along the shoreline;

B. permits for shoreline protection by riprapping of the banks of public waters using natural rock material;

C. permits for appropriation and use of groundwater for agricultural irrigation purposes; other permits for appropriation and use of groundwater in amounts not exceeding 1,000,000 gallons per day; and

~~D. permits for appropriation of surface water in amounts not exceeding 450 gallons per minute (one cubic foot per second) from specific streams having large average daily stream flow. Such streams may be designated by the commissioner.~~

~~If circumstances require a field inspection fee for one of the above proposed activities, the commissioner shall first notify the applicant. If the applicant indicates he wishes to continue the application, he shall be responsible for the field inspection costs as in subparts 1 and 2.~~

~~Field inspection fees are not refundable for any reason.~~

6115.0090 FEES FOR MONITORING ACTIVITIES.

If the project requires an environmental assessment worksheet (EAW) or environmental impact statement (EIS) pursuant to Minnesota Statutes, chapter 116D, and parts 4410.0200 to 4410.7800, the commissioner shall charge an additional fee for monitoring subject to the following:

A. Where the commissioner determines that a permitted activity requires monitoring of water or related land resources, the permit shall specify the procedures and scope of such monitoring. Actual costs of the monitoring, ~~whether conducted by state personnel or by consultants hired by the state,~~ shall be paid by the permittee in accordance with procedures set forth in the permit.

B. When the commissioner determines after the permit is issued, that there is a need for monitoring, ~~he~~ the commissioner shall notify the permittee in writing of the nature of and reasons for the monitoring, and after opportunity for hearing, shall modify the permit accordingly. The actual costs of ~~such~~ the monitoring shall be paid by the permittee.

Actual costs incurred and charged by the state are determined in the same manner as prescribed for field inspections.

The commissioner may allow the permittee to provide the monitoring service ~~himself,~~ or to employ a consultant for that purpose, subject to the right of the commissioner to charge for state costs related to private monitoring, including the costs of periodically monitoring the monitor.

Fees for monitoring activities shall not be charged for any dam subject to parts 6115.0300 to 6115.0520.

The effective date of this rule will be March 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.

Rules as Proposed (all new material)

6115.0110 ANNUAL WATER APPROPRIATION PROCESSING FEE.

Subpart 1. In general. An annual water appropriation processing fee shall be submitted for each water appropriation permit in force at any time during the year. The fees are required whether or not the permittee appropriated or used any water as authorized by permit during the year.

Subp. 2. Fee schedule. The fee shall be based on the following schedule:

- A. for irrigation permits, \$10 for each permitted 40 acres or portion thereof;
- B. for all other permits, \$5 for each permitted 10,000,000 gallons or portion thereof;
- C. the annual water appropriation processing fee shall not exceed a total fee of \$250 per permit.

Subp. 3. Billing and payment. A notice of the fees owed will be mailed to the permittee, with the reporting forms, by the commissioner.

The fee, with accompanying report, for the calendar year's appropriation or use of water, shall be sent to the commissioner no later than February 15 of the following year.

Failure to pay the fee shall be sufficient cause for terminating a permit 30 days following written notice by the commissioner.

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PROPOSED RULES

FEES FOR UNDERGROUND STORAGE OF GAS OR LIQUID IN NATURAL FORMATIONS

6115.0130 FEE SCHEDULE FOR UNDERGROUND STORAGE OF GAS OR LIQUID IN NATURAL FORMATIONS.

Subpart 1. In general. This schedule is established pursuant to Minnesota Statutes, section 84.58, subdivision 8. It provides for payment of permit application fees and additional fees for processing and analyzing the application, and issuing the permit. It also includes fees for the inspection and monitoring of activities authorized by the permit.

Subp. 2. Permit application fee. A permit application fee of \$30, check or money order, payable to the state treasurer, shall accompany each permit application for underground storage of gas or liquid.

If the fee does not accompany the application, the applicant will be so notified, and there will be no further action taken on the application until the fee is submitted.

Subp. 3. Additional fees. The permit applicant shall pay the actual costs of processing, reviewing, analyzing, and inspection necessary prior to issuing the permit and for monitoring after the permit is issued, which will include but not necessarily be limited to the cost of:

A. salaries, including fringe benefits and overhead, of state personnel based on records of actual hours, and hourly rates;

B. transportation (including travel time) of state personnel to and from the project site, laboratories, and other documented travel sites, based on current Department of Administration rates, or rates specified in applicable bargaining unit agreements;

C. living expenses away from home;

D. consultants hired by the state;

E. public hearings;

F. office operations, computer services, and supplies;

G. laboratory expenses and analysis of data; and

h. equipment purchase, rental, or repair.

Subp. 4. Refund of fees. The permit application fee for a permit application shall not be refunded for any reason, even if the application is denied or withdrawn.

Subp. 5. Billing and payment of fees. The commissioner shall submit an itemized bill to the applicant or permittee for all additional fees. Fees are payable within 30 days of receipt; failure to pay is grounds for suspending the permit or for taking other legal actions as required. In the case of an applicant, a permit shall not be issued until all fees owed have been paid.

The effective date of this part will be March 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.

REPEALER. Minnesota Rules, parts 6115.0040; 6115.0050; 6115.0070; and 6115.0100, are repealed.

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 Commerce

Adopted Rule Governing Savings Associations' Branch Offices

The rule proposed and published at *State Register*, Volume 9, Number 8, pages 377-378, August 20, 1984 (9 S.R. 377) is adopted as proposed.

Department of Energy and Economic Development Energy Division

Adopted Emergency Rules Relating to Minimum Mandatory Energy Efficiency Standards for Residential Rental Units: Definition of Good Cause; Establishment of Fine Schedule

Notice of Intent to adopt Emergency rules regarding the above-entitled matter was published in the *State Register* on August 27, 1984 (9 SR 411-412), and was mailed to all persons who had registered their names with the Department. The notice afforded interested parties 25 days in which to submit comments to the Department on the proposed rules.

The Department received two comments during that period.

After affording interested parties an opportunity to submit comments in the proposed emergency rules, and having received the sets of comments, the Commissioner makes the following:

Findings

1. The Department received a letter with comments by Mr. Walter Lieberman.
2. The comments by Mr. Lieberman related to various energy conservation measures that should and should not be required for apartment buildings.
3. That the comments provided by Mr. Walter Lieberman do not pertain to the proposed emergency rule, but rather to an earlier rulemaking which was completed on July 30, 1984 (9 SR 252-260).
4. Mr. John G. Horner of the Minnesota Multi Housing Association proposed to amend the definition of "good cause" to include installations that would be "unreasonable or impossible under the circumstances at hand."

The Department of Energy and Economic Development is required under 1984 Session Laws, Chapter 595 Section 3, to define "good cause" for use by administrative law judges in a contested case proceeding. The proposed emergency rule language establishes clear guidelines for use in those proceedings. However, the language proposed by Mr. Horner is extremely vague, to the point that an Administrative Law Judge receives little, if any, guidance on how to evaluate an owner's claim of good cause. Adoption of such discretionary language would not be consistent with the statutory directive to clearly define the term "good cause."

The examples provided by Mr. Horner to defend his proposed language are not sufficient to warrant amending the proposed rule. It is apparent in each and every allegation of non-compliance to a contested case proceeding. With the very limited resources available to the Department, this belief is unreasonable.

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ADOPTED RULES

A condominium owner actively seeking a variance from the Association to permit the necessary work to be done is obviously not going to be pursued by the Department as long as there is evidence of a good faith effort by the owner. The Department is committed to seeking compliance with the state standards, and is not interested in simply seeking hearings and assessing penalties. The Department's resources will be concentrated on those buildings where the owner is unwilling to take the necessary steps towards compliance.

The examples of considering buildings scheduled for destruction, or only temporarily on the rental market, are similarly inappropriate. A building only in the rental market for a short time will not be worth the compliance effort by the Department. In any case, the time frame for the compliance process is so long (at least 90 days before the hearing) that the unit would probably be off the market before the contested case proceeding would even begin. For buildings about to be destroyed there is even less value in using the state's resources, as the building would probably be demolished before the process was completed. Obviously, the Commissioner will use good judgment and discretion in determining whether to initiate an action, and will not do so if imminent destruction or removal from the rental market is apparent.

Finally, Mr. Horner raises specific building types such as farm buildings and resorts for consideration as good cause for exemption. Minnesota Statutes 116J.27 subd. 1 defines covered rental housing units to be only those which are normally occupied throughout the winter (November to April) and specifically exempts hotels and motels. Resorts would clearly fall within this exemption. Farm buildings which are rented are covered by these standards, so that the Commissioner does not have the authority to exempt them through a rulemaking.

5. Mr. Horner recommends amending the rule to assess the maximum fine of \$500 against a "complex situated on one or more contiguous parcels of land under common ownership."

The suggestion by Mr. Horner clarifies an ambiguity in the proposed emergency rule regarding the applicability of the maximum fine against a building, or a number of buildings in a complex. It is the Department's contention that the initial maximum penalty of \$500 and \$1000 per month after 6 months will motivate the owners of even the largest complex to make the required improvements to comply with the standards. Setting the maximum fine against a complex eliminates an inequity that would otherwise exist between a large building and a series of smaller ones, all under common ownership.

Conclusions

1. The Department gave proper notice of its intent to adopt the proposed emergency rules.
2. The Department has fulfilled the procedural requirements of Chapter 14, and all other procedural requirements of law or rule.
3. The Department has statutory authority to adopt the proposed emergency rule, and has fulfilled all other substantive requirements of the law or rule within the meaning of the Administrative Procedures Act.
4. The proposed amendment by Mr. Horner to redefine "good cause" is inappropriate and unnecessary since the Commissioner will be reasonable in bringing cases before Administrative Law Judges. The proposed amendment is therefore rejected.
5. The proposed amendment by Mr. Horner to clarify buildings complexes is reasonable and adequately support in his submission. The Department therefore adopts the amendment and modifies the proposed rule as follows:

4170.4110

B. For a building with five or more units, an immediate fine of the greater of \$10 per unit or \$100, up to a maximum of \$500. The maximum fine of \$500 is also the maximum fine for a residential complex situated on one or more contiguous parcels of land under common ownership. In addition, a fine each month of two times the amount assessed beginning 180 days after the finding of failure to show good cause, until the owner demonstrates to the administrative law judge that she or he has complied with the standards. If a person certified under chapter 4170 to conduct evaluations certifies that an owner complies with the applicable standards, the judge shall consider the certification as proof of compliance by the owner.

6. The Department has determined the need for and reasonableness of these adopted emergency rules.

Order

Notice of the Commissioner's intent to adopt the above-entitled emergency rule was published on August 27, 1984. After affording interested parties an opportunity to submit comments for 25 days after Notice, and receiving two sets of comments within the 25 day period.

NOW THEREFORE IT IS ORDERED that these emergency rules identified as Emergency Rules of the Department of Energy and Economic Development Relating to Minimum Mandatory Energy Efficiency Standards For Residential Rental

Units: Definition of Good Cause; Establishment of Fine Schedule as modified herein are adopted this 29th day of October, 1984, pursuant to Authority vested in me by Minnesota Statutes 116J.10 (a), (1983 Supp), 116J.08 (a) and Session Laws 1984, Chapter 595, Section 4.

Mark B. Dayton
Commissioner
Department of Energy and Economic
Development

The rules proposed and published at *State Register*, Volume 9, Number 9, pages 411-412, August 27, 1984 (9 S.R. 411) are adopted with the following modifications:

Emergency Rules as Adopted

4170.4110 [Emergency] FINE SCHEDULE.

If an administrative law judge finds that an owner or an owner's agent has not demonstrated good cause for failure to comply with the minimum mandatory energy efficiency standards, the judge shall assess the following penalties:

B. For a building with five or more units, an immediate fine of the greater of \$10 per unit or \$100, up to a maximum of \$500. The maximum fine of \$500 is also the maximum fine for a residential complex situated on one or more contiguous parcels of land under common ownership. In addition, a fine each month of two times the amount assessed beginning 180 days after the finding of failure to show good cause, until the owner demonstrates to the administrative law judge that she or he has complied with the standards. If a person certified under chapter 4170 to conduct evaluations certifies that an owner complies with the applicable standards, the judge shall consider the certification as proof of compliance by the owner.

Department of Health

Adopted Rules Relating to the Merit System Compensation Plan for the Department of Health

The rules proposed and published at *State Register*, Volume 9, Number 13, pages 634-639, September 24, 1984 (9 S.R. 634) are adopted as proposed.

Department of Human Services

Adopted Rules Relating to the Merit System Compensation Plan for the Department of Human Services In the Matter of the Proposed Amendments to Existing Rules Concerning the Compensation Plan and Salary Adjustments

The rules proposed and published at *State Register*, Volume 9, Number 13, pages 643-655, September 24, 1984 (9 S.R. 643) are adopted as proposed.

Department of Public Safety

Adopted Rules Relating to the Merit System Compensation Plan for the Department of Public Safety

The rules proposed and published at *State Register*, Volume 9, Number 13, pages 656-660, September 24, 1984 (9 S.R. 656) are adopted as proposed.

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.

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.

Board on Aging

Public Comment Sought on Planning and Service Area Designation for Region 7W

The Minnesota Board on Aging invites public comment on the proposed designation of "planning and service area" to the geographic area comprised of Stearns, Benton, Sherburne, and Wright Counties also known as Region 7W. According to the Older Americans Act of 1965 as amended, the Minnesota Board on Aging is required to divide the state into distinct planning and service areas (PSA) for the purpose of administering Older Americans Act funds in an efficient and effective manner. The State may designate as a planning and service area any unit of general purpose local government which has a population of 100,000 or more. The State may further designate any region within the state recognized for purposes of areawide planning which includes one or more such units when the State determines that designation of such a regional planning and service area is necessary, for and will enhance, the effective administration of the Older Americans Act. After such designation of the PSA, the Minnesota Board on Aging shall designate a public or private non-profit agency or organization as the area agency on aging for such area.

The Minnesota Board on Aging has received formal resolutions from Stearns, Benton, Sherburne, and Wright County Boards of Commissioners requesting that Region 7W be designated as a separate and distinct planning and service area. Region 7W is currently part of the Region 7 planning and service area served by the Region 7 Area Agency on Aging (East Central Regional Development Commission). Therefore, if Region 7W is given separate status as a PSA, Region 7E would also become a separate and distinct PSA.

In accordance with federal regulations governing the Older Americans Act, the Minnesota Board on Aging desires to consider the views of local elected officials, the elderly, and any other parties affected by this proposal. All comments should be in writing and sent to:

Minnesota Board on Aging
204 Metro Square Building
121 East 7th Street
St. Paul MN 55101
Attention: Ted Gredvig, Director
Program Operations
612/296-2137

All comments must be received by January 14, 1985. The MBA plans to consider action on this issue at their regular meeting on January 18, 1985.

Department of Economic Security

Notice of Public Comment Period on Proposed State Plan Amendments for the Minnesota Energy Assistance Program—1985

Notice is hereby given that a public comment period on the above-entitled matter will begin upon publication of this notice and will close after thirty (30) days at 4:30 p.m. Wednesday, January 9, 1985.

The 1985 Energy Assistance Plan describes how federal funds are used to help low-income households pay home heating bills and conserve energy. Written comments received during the comment period will be considered in the adoption of amendments to the State Plan that governs the program.

All interested or affected persons may submit written comments concerning the proposed State Plan Amendments for the Minnesota Energy Assistance Program—1985. A single copy of the State Plan Amendments may be obtained by writing to:

Allan Chapman, Acting Director
Minnesota Energy Assistance Program
690 American Center Building
150 East Kellogg Boulevard
St. Paul Minnesota 55101

Written comments will be accepted at the above address until 4:30 p.m. Wednesday, January 9, 1985. All comments will be considered by the Department of Economic Security, Office of Energy Assistance.

Department of Energy and Economic Development Energy and Economic Development Authority

Notice of Public Hearing on Proposed Project and the Issuance of Bonds Under Minnesota Statutes, Chapter 116M, Inclusive—Hydroelectric Facility, Hastings

NOTICE IS HEREBY GIVEN that the Minnesota Energy and Economic Development Authority (the "Authority"), shall meet on December 26, 1984, at 3:00 p.m., at 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul Minnesota, for the purpose of conducting a public hearing on a proposed issue of bonds (the "Bonds") under Minnesota Statutes, Chapter 116M, as amended and supplemented (the "Act"), to undertake and finance a project on behalf of the City of Hastings, Minnesota (the "City"). 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 a low-head hydroelectric facility on an existing dam owned by the Federal government (and operated and maintained by the U. S. Army Corps of Engineers), to be located in the City of Hastings, Washington and Dakota Counties, Minnesota (general description of location: at the existing Locks and Dam No. 2 on the Mississippi River in the City of Hastings, Washington and Dakota Counties, Minnesota) (the "Project"). The owner of the Project will be the City of Hastings. It is contemplated that the electricity produced by the Project will be sold to Northern States Power Company pursuant to a long-term output contract. The estimated maximum amount of the proposed bond issue is an amount equal to \$9,900,000. 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 or other security arrangements to be created by the City 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 Energy 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 Boulevard, Saint Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

December 3, 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 Health

Cancellation of Public Hearing on Proposed Rules Regarding Physician Assistants

The Minnesota Department of Health has cancelled the public hearing on the proposed rules relating to Physician Assistants. That meeting was originally scheduled for December 13, 1984. A new notice will be published.

**Department of Human Services
Health Care Programs**

End of Public Comment Period Concerning the Rule Relating to the Prospective Reimbursement System for Inpatient Hospital Services Under the Medical Assistance and General Assistance Medical Care Programs

Notice is hereby given that the Department of Human Services will end the comment period regarding the promulgation of temporary rule 12 MCAR §§ 2.05401-2.05403 into a permanent rule for prospective reimbursement of inpatient hospital services under the Medical Assistance and General Assistance Medical Care programs. The rule will be changed to reflect a diagnostic classification. Notice to solicit outside opinion appeared in the September 12, 1983 issue of the *State Register* (8 S.R. 481-482). Such comments will be reviewed up until January 1, 1985. All interested or affected persons or groups are requested to participate through statements and comments which may be made orally or in writing. Written statements may be addressed to:

Thomas JoliCoeur
Minnesota Department of Human Services
Health Care Programs
2nd Floor Space Center
444 Lafayette Road
St. Paul, Minnesota 55101

Oral statements of information and comment will be received during the regular business hours over the telephone at (612) 297-2022.

Any written material received by the Department shall become part of the hearing record.

Metropolitan Council

Regional Transit Board Public Hearing

The Regional Transit Board (RTB) will hold a public hearing in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul, Minnesota 55101, 4:30 p.m., December 17, 1984, to hear public comments on a draft Transit Interim Implementation Plan and Financial and Staffing Plan. The document will be accepted in its draft form by the Regional Transit Board at its meeting December 3, 1984. The document is a three-year work plan that states the mission, goals and policies of the RTB and establishes an interim transit service plan and development program. In addition, it outlines the financial aspects of the plan and the staffing needed to implement it. For copies, call the RTB office at 291-6640.

**County of Otter Tail
Seventh Judicial District**

Notice of Filing Fees for County Law Library

Pursuant to Minnesota Statute 140.422 the Otter Tail County Law Library Board of Trustees with the approval of the Otter Tail County Board of Commissioners announces the setting of the law library fees to be collected in the district, probate, and conciliation courts of Otter Tail County.

Civil Suits	
Plaintiff/Petitioner	\$10.00
Defendant/Respondent/Intervenor	\$10.00
Probate Courts	
Petitioner	\$10.00
Petty Misdemeanor, Misdemeanor Traffic and Criminal Convictions	
Defendant	\$5.00
Gross Misdemeanor Convictions	
Defendant	\$10.00

Felony Convictions	
Defendant	\$10.00
Conciliation Court	
Petitioner	\$0.00
Respondent	\$0.00

These fees shall be in effect on January 1, 1984.

November 20, 1984

Public Utilities Commission

Order for Hearing Regarding the Application for a Certificate of Need by Minnesota Pipe Line Company for a Large Petroleum Pipeline

Findings and Conclusions

I. Jurisdiction

The Minnesota Public Utilities Commission (the Commission) finds that a hearing is necessary in the above-entitled matter to determine whether a certificate of need should be issued to the Minnesota Pipe Line Company (the Company or the Applicant) for a large petroleum pipeline facility. The Commissioner is authorized to conduct such a hearing by Minn. Stat. § 116J.28, subd. 4 (1983 Supp.).

II. Proposed Facility

The company is proposing to construct 66.4 miles of 20-inch pipeline in five segments between Clearbrook and Pine Bend, both in Minnesota. Construction would take place in 1985 in Clearwater, Hubbard, Wadena, Morrison, Sherburne, Anoka, and Washington Counties. The segments would be constructed parallel to the existing pipeline, connecting the previously constructed loops to complete a second pipeline system. Modifications to pumping stations would include the addition of two units at all stations except Hugo, which would receive only one additional unit. The additional pipe and pumps would increase the company's pumping capacity by approximately 60,000 barrels per day.

III. Hearing Schedule

Evidentiary hearings to receive testimony from parties to the proceeding will begin at 9:30 a.m., January 23, 1985, in the Large Hearing Room, 7th Floor, American Center Building, Kellogg and Robert Streets, St. Paul, Minnesota. In addition, a series of hearings to receive testimony from members of the public who are not parties will be held at the times and locations indicated below. If additional hearing sessions are needed, they will be scheduled by the Administrative Law Judge.

2:00 p.m., January 7, 1985, Basement Meeting Room, Hubbard County Courthouse, Park Rapids, Minnesota

9:30 a.m., January 8, 1985, Meeting Room 2, Morrison County Courthouse, Little Falls, Minnesota

7:00 p.m., January 8, 1985, County Administration Building, 327 King Avenue, Elk River, Minnesota

9:30 a.m., January 9, 1985, Large Hearing Room, 7th Floor American Center Building, Kellogg and Robert Streets, St. Paul, Minnesota

IV. Procedural Outline

This hearing arises from the company's application for a certificate of need, which was submitted by the company on October 29, 1985, and was resubmitted on November 20, 1984, with certain deficiencies corrected.

The purpose of the hearing is to determine whether the applicant has justified the need for the proposed large petroleum pipeline facility.

The issues the hearing will address are set out in the applicable statutes and rules. See Minn. Stat. § 116J.28, subd. 3 (1983 Supp.) and Minnesota Rules, part 4250.1300. One issue to be considered is whether the probable direct or indirect result of the hearing would adversely affect the future adequacy, reliability or efficiency of energy supply to the Applicant, the applicant's customers, or to the people of Minnesota and neighboring states considering, among other things, the applicant's forecasts of demand, the applicant's and governmental conservation programs, and the ability of other facilities to meet projected demand. A second issue to be considered is whether a more reasonable and prudent or feasible and prudent alternative to the proposed facility can be demonstrated considering size, type, timing, construction cost, cost of energy produced, environmental effects, and reliability. The consequences of the proposed facility, or a suitable modification thereof, on overall state energy needs and the natural and socioeconomic environments also will be considered. Finally, the

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hearing process will consider whether the proposed facility would fail to comply with relevant policies, rules and regulations of other state agencies, federal agencies, and local governments.

The hearing on the petition will be conducted by an Administrative Law Judge appointed by the Chief Administrative Law Judge of the State of Minnesota. The name, address, and telephone number of the Administrative Law Judge assigned to this proceeding are as follows:

Allan W. Klein
Office of Administrative Hearings
4th Floor, Summit Bank Building
310 South 4th Avenue
Minneapolis, Minnesota 55415
612/341-7609

The hearings will be held in compliance with the applicable laws relating to the Public Utilities Commission, the Administrative Procedure Act (Minn. Stat. Ch. 14, particularly §§ 14.57-14.70), and the Rules of the Office of Administrative Hearings, Minnesota Rules, parts 1400.5100-1400.8500 (formerly 9 MCAR §§ 2.201-2.222), as well as the Rules of Practice of the Public Utilities Commission, Minnesota Rules, parts 7830.0100-7830.4400 (formerly Minn. Reg. PSC 500-521), and the Procedures Governing Certificate of Need Program for Large Energy Facilities, Minnesota Rules, parts 4210.0100-4210.3300 (formerly Minn. Reg. MEA 500-520), to the extent that they have not been superseded by the Rules of the Office of Administrative Hearings.

All of the rules cited above are available for review at the Office of Administrative Hearings and at the Public Utilities Commission. The Company's application, as well as the substantive rules applicable to this matter, Minnesota Rules, parts 4250.0100-4250.8100 (formerly 6 MCAR §§ 2.1001-2.1091), are also available for review at the Commission offices. All rules may be purchased from the State Register and Public Document Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, 612/297-3000.

There are two different ways in which persons may participate in these hearings. They can participate as members of the public, or they may participate as parties.

If a person elects to participate as a member of the public, he or she will be allowed to offer testimony and present exhibits or other evidence on the relevant issues at the public hearings listed above. A Commission employee, David L. Jacobson, has been assigned to facilitate citizen participation in the hearing process. He can be reached by mail or telephone, 780 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, 612/297-4562.

If a person elects to participate as a party, he or she must file a Petition to Intervene with the Administrative Law Judge. The contents of this document are spelled out in Minnesota Rules, parts 1400.6200 and 4210.1400, copies of which are available as described above. The petition must state how the petitioner's legal rights, duties or privileges may be determined or affected by the Commission's decision in the matter and shall set forth the grounds and purposes for which intervention is sought and shall indicate the petitioner's statutory right to intervene, if one exists. The petition must be received by the Administrative Law Judge on or before January 4, 1985, or such later date as the Administrative Law Judge may allow. However, early intervention is strongly encouraged. Copies must also be served on the Commission at the address given above, and on known parties at the time of intervention. A service list can be obtained by contacting the Administrative Law Judge.

If the Petition to Intervene is granted by the Administrative Law Judge, the person submitting it becomes a party, with certain rights and obligations not shared by persons who elect to participate as members of the public. Parties must attend prehearing conferences, and must prefile their testimony and exhibits in advance of the hearing. A party must file a Notice of Appearance with the Administrative Law Judge within 20 days of the service date of this Order, or as soon as practicable after its petition is granted. They must file briefs and exceptions in order to have the right to appear before the Commission at oral argument. Parties must have the right to obtain advance notice of witnesses and evidence, to cross-examine witnesses, to object to petitions to intervene, to request an order for depositions, to use other discovery devices and to file comments on and exceptions to proposed findings and recommendations of the Administrative Law Judge. These are some, but not all, of the differences between a party and a person participating as a member of the public. Persons desiring additional information are referred to the rules cited above.

Parties have the right to be represented by an attorney at law, by a person of their choice, or by themselves, if not otherwise prohibited as the unauthorized practice of law.

Potential intervenors shall attend the prehearing conference ordered below. Matters which may be discussed include: possible changes in the hearing schedule or procedures; stipulations in regard to foundation for testimony or exhibits; time required for parties to prepare for depositions and other discovery; and other matters that will facilitate full and fair hearings on the application.

All persons are advised that no factual information or evidence which is not part of the hearing record shall be considered by the Administrative Law Judge or by the Commission in the determination of the above-entitled matter. Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

The applicant shall file its testimony and exhibits with the Administrative Law Judge and serve twelve (12) copies on the Commission and one copy on known parties no later than December 28, 1984. Testimony and exhibits from intervenors must be filed with the Administrative Law Judge and served on the Commission (12 copies) and all parties no later than January 16, 1985, or such later date as the Administrative Law Judge may allow. Filing and service of all subsequent documents shall be handled in like manner, with dates to be determined later.

Failure of the applicant to appear at the hearing may result in denial of the application. If no person contests construction of the facility as proposed, the issues set out herein may be deemed proved by the Company and the facility may be approved as proposed. However, issuance of the certificate may be made contingent upon modifications required by the Commission.

If persons have good reason for requesting a delay of any hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the hearing. A copy of the request must be served on the Commission and all parties.

Any question concerning discovery of information should be addressed to Karl Sonneman, Special Assistant Attorney General, 780 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota, 612/296-0410. All other questions concerning this hearing should be addressed to the Administrative Law Judge.

Order

1. A contested case hearing concerning this matter shall be held, commencing with a Prehearing Conference at 2:00 p.m. on December 28, 1984, at the Large Hearing Room, 7th Floor American Center Building, Kellogg and Robert Streets, St. Paul, Minnesota.

2. The company shall facilitate in every reasonable way the investigation of the Department of Public Service. All parties shall furnish adequate responses within 10 days to all reasonable information requests from other parties.

3. Public and evidentiary hearings shall be held at the times and places indicated above. Additional hearings may be scheduled by the Administrative Law Judge if he finds them necessary.

4. The company shall publish notices of the public and evidentiary hearings in the form of newspaper display ads. at least 10 days prior to their dates of commencement, in at least one newspaper of general circulation in each county where construction would occur, and, in addition, the Sunday editions of newspapers in Minneapolis and St. Paul.

5. If an individual files a document which pertains to certificates of need for large energy facilities, that individual may be required to register with the Minnesota Ethical Practices Board under the lobbying provisions of Minn. Stat. Ch. 10A. Lobbying includes attempting to influence administrative action in certificate of need cases. An individual who is engaged for pay or authorized by another individual or association to spend money and who spends more than five hours in any month or more than \$250 in a year to influence administration action must register with the Board and report disbursements for lobbying purposes, including preparation and distribution of lobbying materials, telephone, postage, media advertising, travel, and lodging. The statute provides certain exemptions, including an exception applicable to expert witnesses delivering testimony. Any individuals who might be affected by this requirement are encouraged to telephone the Board at 612/296-1720 for additional information.

6. This order shall become effective immediately.

November 30, 1984

By Order of the Commission,
Randall D. Young
Executive Secretary

Department of Transportation

Petition of the City of Grand Rapids for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of Grand Rapids has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a reconstruction project on Fifth Street West (MSAS 112) from Fifth Avenue to Tenth Avenue.

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The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapters 161 and 162, so as to permit a street width of 64 feet instead of the required 68 feet.

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

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

November 30, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

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

Notice is hereby given that the City Council of the City of St. Paul has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a reconstruction project on Burlington Road (MSAS 260) from Springside Drive to Totem Road.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapters 161 and 162, so as to permit a design speed of 20 MPH instead of the required design speed of 30 MPH.

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

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

November 29, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of St. Paul for a Variance from State Aid Standards for Design Speed and Street Width for Como Avenue

Notice is hereby given that the City Council of St. Paul has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a reconstruction project on Como Avenue (MSAS 232 & 117) from Capitol Heights to Jessamine Avenue.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapters 161 and 162, so as to permit design speeds of 20 and 25 MPH instead of the required design speed of 30 MPH, and also street widths of 58, 64, 58 and 64 instead of the required street widths of 62, 72, 60 and 68 feet.

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

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

November 29, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

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

Notice is hereby given that the City Council of St. Paul has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a reconstruction project on the Sibley-Jackson Street switchback (TH 5) which converts the present one-way to a two-way street from Eighth and Jackson to Seventh and Sibley.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapters 161 and 162, so as to permit a design speed of 18 MPH instead of the required 30 MPH.

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

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

November 29, 1984

Richard P. Braun
Commissioner of Transportation

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
Procurement Division**

Commodities Contracts and Requisitions Currently Open for Bidding

<u>Requisition #</u>	<u>Item</u>	<u>Ordering Division</u>	<u>Delivery Point</u>	<u>Estimated Dollar Amount</u>
29-000-36894	Vertical Camera	Natural Resources	St. Paul	Contact buyer
75-200-06131	Rubbish Disposal	Veterans Home	Minneapolis	Contact buyer
Contract				
Sch 113-D	Patrol Cars	Various	Various	Contact buyer
79-000-45081	Building Materials	Transportation	N. St. Paul	Contact buyer
26-073-17124	Hanger Transport Film Processor	St. Cloud State University	St. Cloud	Contact buyer
78-620-20612	Repair & Reinstall Pump in Well—Rebid	MN Correctional Facility	Stillwater	Contact buyer
Contract	Urea-Commercial or Industrial Grade	Transportation	Duluth	\$9,000-10,000
Contract	Stainless Steel Tableware	Various State Agencies	Various	\$6,000-7,000

STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
Contract	Pre-sorting Mail by Zip Code	Public Safety/Human Services	Same	Contact buyer
78-760-01919	Freezers	MN Correctional Facility	Red Wing	Contact buyer
Sch. 127 02-515-44941	Vehicle Liability Insurance Lease/Purchase of Electronic Key Telephone System	Various Administration: State Register/Documents	Various St. Paul	Contact buyer Contact buyer
78-830-07223	Replacement Steam Traps	MN Correctional Facility	St. Cloud	Contact buyer
26-074-09751-52	EPA Analysis for Polarized Light Microscopy	Winona State University	Winona	Contact buyer
Contract 22-400-00664-4290	Lab Media Vacation Guide	Various Tourism	Various St. Paul	\$20,000-25,000 Contact buyer
22-400-00666-4376	Canoeing, Backpacking, & Hiking	Tourism	St. Paul	Contact buyer
29-000-36992-4277	'85 Minnesota Boating Guide	Natural Resources	St. Paul	Contact buyer
Contract 43-000-05832	Tape, Masking, Acetate, etc. Used Snow-grooming Vehicle	Central Stores Iron Range Resources & Rehabilitation Board	St. Paul Biwabik	\$70,000-75,000 Contact buyer
Sch 93H 21-602-83890	Heating Oil-Heavy Car	Various Vocational Rehabilitation	Various Plymouth	Contact buyer Contact buyer
79-800-RM 02-000-00000	Ready Mix Concrete Library Furniture	Transportation MN Legislative Reference Library	St. Paul St. Paul	Contact buyer Contact buyer
02-000-00000	Lateral Files	MN Legislative Reference Library	St. Paul	Contact buyer
Various Various	Poultry for Jan.-March, 1985 Meat and Meat Products for Jan. 1985	Various Various	Various Various	Contact buyer Contact buyer

Contact 296-6152 for referral to specific buyers.

Department of Administration

State Register and Public Documents Division

Request for Qualifications for Third Party Programming Services

The State Register and Public Documents Division, Minnesota Department of Administration, is seeking the services of a qualified programmer to make certain modifications to the IBM Distribution Management Accounting System (DMAS) software recently purchased by the division. DMAS modifications desired by the state include: 1) invoice printing changes, 2) establishing a book information system, programs, procedures and documentation to link into the item inquiring function, 3) establishing credit card and cash report; allowing for over/under payments, and 4) providing a method to convert data to service bureau files.

To be deemed qualified, respondents must be able to demonstrate substantial experience with the IBM System 36, successful implementation/modification of DMAS, and a record of satisfactory service to clients involving IBM System 36 and DMAS work.

It is estimated that approximately 100 hours of programming time will be required to satisfactorily complete this project at a cost not to exceed \$6,000.

Interested parties should send their quotation, a summary of relevant experience, and a list of customer references to the State Register and Public Documents Division, 117 University Avenue, St. Paul, MN 55155, not later than 4:30 p.m. on December 21, 1984.

For more information, please contact Stephen A. Ordahl, at (612) 297-2553.

Department of Energy and Economic Development Development Resources Division

Availability of Community Development Corporation Program Venture Capital Grant Funds

Pursuant to Minnesota Statutes 116J.65 (1983 Supp) and Minnesota Rules 1983 ch. 4350, the Minnesota Department of Energy and Economic Development announces it will be accepting applications from eligible Community Development Corporations for Venture Capital grant funds starting January 1, 1985. Funds shall be available until June 30 1985 or until funds are expended, whichever comes first.

Approximately \$290,000 is available in venture capital funds. No minimum or maximum grant amounts have been established.

Application packages shall be available upon request from the department after December 11, 1984.

All requests and inquiries should be directed to:

Patrick Conroy
Business Finance Specialist
Development Resources Division
Minnesota Department of Energy
and Economic Development
900 American Center Building
150 East Kellogg Blvd.
St. Paul, MN 55101
(612) 297-1304

Job Skills Partnership Board

Request for Grant Proposals for Customized Training Programs

The Minnesota Job Skills Partnership Board solicits grant proposals from educational and other non-profit organizations for customized training programs designed for specific businesses. Following are application deadline dates and Board meeting dates for 1985:

Deadline Dates
for New Grant Applications

January 18, 1985
April 19, 1985
July 19, 1985
October 18, 1985

Board Meeting Dates

February 19, 1985
May 20, 1985
August 19, 1985
November 18, 1985 (Annual Meeting)

For additional information, please call 612/296-0388.

Metropolitan Waste Control Commission

Request for Proposals for Management of Workers' Compensation Return to Work Program

Notice is hereby given that the Metropolitan Waste Control Commission is soliciting proposals for the management of a program relating to the reduction of Workers' Compensation insurance premiums through the implementation of an aggressive return to work program. The successful vendor will develop and manage the program and work directly with

STATE CONTRACTS

Metropolitan Waste Control Commission staff personnel and have complete authorization to meet with attending physicians and injured employees.

The Metropolitan Waste Control Commission has over 900 employees located in 14 wastewater treatment plants. It has labor agreements with seven unions representing over 90% of the employees. Presently the Workers' Compensation insurance is placed with a private carrier on a paid loss retro plan.

Six (6) copies of the proposal are to be submitted to the Metropolitan Waste Control Commission by 5:00 p.m., December 31, 1984. Interested parties can contact Bruce Miller at 350 Metro Square Building, St. Paul MN 55101, 222-8423 to receive a copy of the Request for Proposal.

Louis J. Breimhurst
Chief Administrator

Department of Natural Resources Division of Fish and Wildlife

Request for Proposals to Prepare a Comprehensive Status Report on Minnesota's Sandhill Crane Population

Notice is hereby given that the Department of Natural Resources intends to engage the services of a consultant to prepare a comprehensive report that summarizes the current status of our knowledge of Sandhill Cranes in Minnesota and which recommends potential management and research actions for the near future. A more detailed outline of the project tasks is available in the Request for Proposals (RFP). The formal RFP may be requested and inquiries made should be directed to:

Lee Pfannmuller
Nongame Wildlife Program
Department of Natural Resources
Box 7, 500 Lafayette Road
St. Paul, Minnesota 55146
(612-297-2276)

Proposals should be submitted no later than January 25, 1985. The estimated amount of the contract is \$5000.

Department of Transportation

Request for Applications for Bridge Design Consulting Engineers—Registered Civil and Structural

The Minnesota Department of Transportation anticipates retaining Bridge Design Consultants to design and prepare construction plans for a limited number of bridges of average complexity during 1985.

Applicants must have an office in Minnesota staffed to handle the work. Recent experience in the production of bridge plans for the State Highway System, the County State Aid Highway System, or equivalent, is required.

Eligible design firms desiring to be considered as design contractors are asked to submit a brochure or resume giving qualifications and experience to K. V. Benthin, State Bridge Engineer, 610D Transportation Building, Mn/DOT, St. Paul, Minnesota 55155. Identify personnel to conduct the work and detail their training and experience. Brochures and resumes will be received until 4:30 P.M., December 28, 1984. Qualified applicants will be contacted, and may be requested to appear at the Mn/DOT Building in St. Paul for interviews.

Names of selected firms will be retained on file with Mn/DOT for consideration during 1985.

SUPREME COURT

Decisions of the Supreme Court Filed November 30, 1984

Compiled by Wayne O. Tschimperle, Clerk

C0-83-577 Leila Streich, et al v. American Family Mutual Insurance Company, et al., Appellants. Ramsey County.

Peterson v. Iowa Mutual Insurance Co., 315 N.W.2d 601 (Minn. 1982), which allows tacking of income-loss benefits under no-fault insurance policies, is to be applied retroactively. Retroactive application does not result in unconstitutional impairment of the contract rights or denial of due process.

The trial court properly imposed 15% interest on overdue income-loss payments as mandated by Minn. Stat. § 65B.54, subd. 2 (1982).

Affirmed and remanded. Wahl, J.

Kelley, J., dissenting,

Coyne, J. took no part.

C2-83-354 In Re: the Marriage of: Helen E. McClelland, Petitioner, v. Robert Rugh McClelland, Appellant. Hennepin County.

An award of permanent spousal maintenance is not warranted by the record.

An aggregate award of child support which is not reduced as each of the minor children reaches majority lacks explanation in the trial court's findings and is reversed and remanded for reconsideration.

The trial court did not commit error in refusing to recuse for claims of bias arising during trial.

Reversed and remanded for further proceedings consistent with this opinion. Simonett, J.

Dissenting in part and concurring in part, Wahl, J. & Coyne, J.

CX-83-1591 Frost-Benco Electric Association v. Minnesota Public Utilities Commission, Petitioner, Minnesota Department of Public Service, Intervenor, Petitioner. Blue Earth County.

The Minnesota Public Utilities Commission lacks jurisdiction and authority to retrospectively regulate rates an unregulated cooperative electric utility charged its customers during a period it was not subject to Minnesota Public Utilities Commission regulations under Minn. Stat. 216B, et seq.

Reversed. Kelley, J.

C7-82-1540 Beverly Abuzzahab v. Faruk Said Abuzzahab, Appellant. Hennepin County.

Under the facts and circumstances of this marital dissolution proceeding, the trial court abused its discretion in awarding permanent spousal maintenance to the petitioner. Minn. Stat. § 518.552 (1982) and *Otis v. Otis*, 229 N.W. 2d 114 (Minn. 1980).

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

Concurring specially, Simonett, J.

Dissenting, Wahl, J. & Coyne, J.

C2-82-800 David E. Nordale and X. Kenneth Demos, Appellants, v. Alton C. Rysdahl, et al.; Great West Brokers, Inc.; Decotah Investments, etc.; Eugene Lahr. Ramsey County.

Affirmed. Per Curiam.

TAX COURT

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

State of Minnesota Tax Court

**Kakambi V. Nagaraja, Javad M. Tehrani, Majir Charmchi, Abebe Tafesse, Sue-Chih Lee,
Appellants, v. Commissioner of Revenue, Appellee, Docket Nos. 3476, 3477, 3478,
3479 and 3480.**

Findings of Fact, Conclusions of Law, and Order for Judgment on Remand from Supreme Court

The above-entitled appeals from Orders of the Commissioner of Revenue were consolidated for trial and after an evidentiary hearing and post-trial briefing, the Tax Court issued its Findings of Fact, Conclusions of Law and Order for Judgment on March 3, 1983. This decision was appealed to the Minnesota Supreme Court which has now remanded these appeals back to the Tax Court for a factual determination on the question of the appellants' domicile consistent with *Nagaraja, et al. vs. Commissioner of Revenue*, 352 N.W. 2d 373, (Minn. 1984), filed June 22, 1984.

The Court, having heard and considered the evidence adduced at the trial and having reviewed the transcript of testimony and the files and records herein, now makes the following:

Findings of Fact

1. Appellant Nagaraja became a domiciliary of Minnesota in the year 1979.
2. Appellant Tafesse became a domiciliary of Minnesota in 1979.
3. Appellants Tehrani, Charmchi and Lee did not become domiciliaries of Minnesota during any of the years in question, 1976 through 1980.

Conclusions of Law

1. Appellant Nagaraja is entitled to a "renter's credit" property tax refund under Minn. Stat. § 290A for the year 1979.
2. Appellant Tafesse is entitled to a "renter's credit" property tax refund under Minn. Stat. § 290A for the year 1979.
3. Appellants Tehrani, Charmchi and Lee are not entitled to any "renter's credit" property tax refunds under Minn. Stat. § 290A.
4. The Orders of the Commissioner of Revenue in the appeals of Kakambi V. Nagaraja and Abebe Tafesse should be modified accordingly.
5. The Orders of the Commissioner of Revenue in the appeals of Javad M. Tehrani, Majir Charmchi and Sue-Chih Lee are affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

November 26, 1984

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

State of Minnesota Tax Court County of Ramsey, Second Judicial District

**Brunswick Corporation, Appellant, v. Commissioner of Revenue, Appellee, Docket
No. 3817**

Findings of Fact, Conclusions of Law and Order for Judgment

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, on August 9, 1984 in the Courtroom of the Tax Court in St. Paul, Minnesota.

A. James Dickinson of Stringer, Courtney and Rohleder, Ltd. appeared on behalf of Appellant.

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

Briefs were subsequently submitted by the parties.

Syllabus

Ordinary income of a merged corporation that is subject to federal income taxation is subject to Minnesota income taxes in accordance with Minnesota's three-factor formula.

Findings of Fact

1. Appellant Brunswick Corporation ("Brunswick") is a Delaware corporation with its principal place of business in Chicago, Illinois. It carried on its business partly within and partly without the state of Minnesota during all of the tax years in issue, 1962 through 1977.

2. Brunswick had for years been in the bowling alley business, making and selling the wooden bowling lanes. About 1955 Brunswick's competitor in the bowling alley business introduced an automatic pinsetter. To meet that competition, in 1956 Brunswick and Murray Corp. of America formed Brunswick-Murray Automatic Pinsetter Corporation ("Pinsetter"), a Delaware corporation, to develop and market an automatic pinsetter. Originally Brunswick and Murray each owned 50% of the stock in Pinsetter. In 1957 Brunswick purchased Murray's 50% interest, so that Pinsetter became a wholly-owned subsidiary of Brunswick. On December 29, 1961, Brunswick liquidated Pinsetter and merged it into Brunswick. After the merger Brunswick continued Pinsetter's former business of manufacturing and selling automatic pinsetters to bowling alley operators as part of its continuing unitary business. (Tr. 1, p. 5, 1.11-12, p. 58, 1.8-19; Exhibit 2, pp. 3, 14-15). In the merger Brunswick acquired all of Pinsetter's assets and assumed all of Pinsetter's liabilities. Among the assets of Pinsetter were notes receivable that Pinsetter had taken from its customers when it sold automatic pinsetters for bowling alleys. Pinsetter never did any business in the state of Minnesota.

3. Prior to the 1961 merger into Brunswick, Pinsetter had borrowed funds from C.I.T. Corp. under a Financing Agreement. It had pledged the notes receivable from its customers as collateral for its indebtedness to C.I.T. Corp. Under the Financing Agreement with C.I.T. Corp., Pinsetter was required to apply payments received on the notes receivable to discharge its indebtedness to C.I.T. Corp. In consideration for C.I.T. Corp. agreeing to loan funds to its wholly-owned subsidiary, Brunswick had guaranteed all of the obligations assumed by Pinsetter under the Financing Agreement with C.I.T. Corp. When Brunswick assimilated Pinsetter's business in the merger, it assumed Pinsetter's liabilities under the Financing Agreement with C.I.T. Corp.

4. After the merger, Brunswick received payments on the notes receivable that it had acquired from Pinsetter. Those payments included deferred gross profit from the prior sale of automatic pinsetters, and also included interest on the notes.

5. Pursuant to the Financing Agreement with C.I.T. Corp., Brunswick paid over to C.I.T. Corp. the payments that it received on the notes from Pinsetter's customers until the end of 1968, when Brunswick paid the balance owing to C.I.T. Corp. by obtaining other financing at lower rates.

6. On its federal and Minnesota income tax returns for the years in issue Brunswick reported the deferred gross profit received from Pinsetter's customers as taxable gross income, and reported the interest received from Pinsetter's customers as taxable interest received. Brunswick correctly reported the amount of deferred gross profit in each note payment received to be the same percentage as Pinsetter's gross profit percentage in the original pinsetter sale for which Pinsetter received the note receivable.

7. In 1962 Brunswick paid federal income taxes on behalf of Pinsetter for the tax years 1960 and 1961 in the amount of \$16,793,501.09. In its 1962 Minnesota income tax return Brunswick claimed a deduction for those federal income taxes paid for Pinsetter's 1960 and 1961 liability. The Minnesota Commissioner of Taxation disallowed the claimed 1962 deduction for Pinsetter's 1960 and 1961 federal income tax liability, pursuant to Minn. Stat. § 290.10(9), which disallows deductions related to income-producing activities when the income (i.e., Pinsetter's) is not assignable to Minnesota. Brunswick appealed the Commissioner's disallowance to the Tax Court, which affirmed the Commissioner on October 17, 1968. *Brunswick Corporation v. Commissioner of Taxation*, Docket No. 1429.

8. Following the Tax Court's 1968 decision, in its Minnesota income tax returns for the years 1968 through 1977, Brunswick continued to report the deferred gross profit received from Pinsetter's customers as taxable gross income and to report the interest received from Pinsetter's customers as taxable interest received. However, Brunswick filed claims for refund for the tax years 1962-64, 1967-74 and 1976-77 on the basis that the deferred gross profit received from Pinsetter's customers in those years should not have been included in its apportionable income for Minnesota income tax purposes.

9. By his order dated February 15, 1983, the Commissioner of Revenue denied Brunswick's claims for refund described in paragraph 8:

TAX COURT

10. Brunswick has appealed from the Commissioner's order dated February 15, 1983, denying its claims for refund, contending that the deferred gross profits received from Pinsetter's customers in their payments on Pinsetter's notes receivable are not properly includible in Brunswick's apportionable income for Minnesota income tax purposes.

11. In the tax years 1956 through 1961 Pinsetter was in the business of selling automatic pinsetters to bowling alley operators. After Pinsetter was liquidated and merged into Brunswick on December 29, 1961, Brunswick continued Pinsetter's former business of selling automatic pinsetters to bowling alley operators. On its federal income tax returns for the tax years 1956 through 1961 Pinsetter reported each year's sales of automatic pinsetters, and on its federal and Minnesota income tax returns for the tax years 1962 through 1977, Brunswick included each year's sales of automatic pinsetters in reporting its total sales.

12. On its Minnesota income tax returns for the tax years in issue, 1962-1977, Brunswick apportioned its taxable income to Minnesota pursuant to the three-factor (property, payroll and sales) apportionment formula prescribed in Minn. Stat. § 290.19, subd. 1(1).

13. At the trial Brunswick raised a new issue, namely, that it had incorrectly calculated its Minnesota sales ratio for the purpose of determining the percentage of its income apportionable to Minnesota. It contended that the denominator of its sales ratio should be increased by the amount of Pinsetter's sales in the years 1956-61 that gave rise to deferred gross profit received in the taxable year. Brunswick used the figures in its 1962 Minnesota income tax return to illustrate its contention.

14. In its 1962 Minnesota income tax return Brunswick reported taxable gross profit of \$98,133,566 derived from three sources: (1) from 1962 Brunswick product sales, including automatic pinsetters (50,781,314); (2) deferred gross profit received in 1962 from Brunswick product sales made in the years 1957-61 (13,896,042); and (3) deferred gross profit received in 1962 from Pinsetter product sales made in the years 1956-61 (33,456,210). The following schedule shows the derivation of the taxable gross profit of \$98,133,566:

1962 Brunswick sales including pinsetters	\$253,298,501
Less: cost of goods sold	<u>146,480,131</u>
Gross profit	106,818,370
a. Uncollected 1962 sales	96,926,993
b. Gross profit ratio on uncollected sales	.47813675
Less: Uncollected 1962 gross profit (a × b)	<u>56,037,056</u>
(1) 1962 gross profit realized in 1962	50,781,314
(2) Deferred gross profit received in 1962 on Brunswick sales made in 1957-1961	13,896,042
(3) Deferred gross profit received in 1962 on Pinsetter sales made in 1956-1961	<u>33,456,210</u>
Taxable gross profit	\$ 98,133,566

15. Brunswick's 1962 sales in Minnesota were \$8,499,567. Brunswick computed its 1962 Minnesota sales ratio to be:

$$\frac{\$8,499,567 \text{ (Minnesota sales)}}{\$253,298,501 \text{ (total sales)}} = 3.3556\%$$

The apportionment formula allows a taxpayer to weight the sales ratio 70% and the property and payroll ratios 15% each. Weighting Brunswick's sales ratio of 3.3556% at 70% gives a weighted sales ratio of 2.3489%.

16. Brunswick calculated that the deferred gross profit of \$33,456,210 received in 1962 from Pinsetter's customers derived from Pinsetter sales made in the years 1956-61 in the amount of \$62,018,120.

17. Brunswick contends that the denominator in its 1962 Minnesota sales ratio should be increased by \$62,018,120 from \$253,298,501 to \$315,316,621, i.e., by the amount of 1956-61 Pinsetter sales that generated the \$33,456,210 Pinsetter deferred gross profit received in 1962. Such an increase in the denominator would reduce the unweighted sales ratio from 3.3556 percent to 2.6956 percent, and would reduce the weighted sales ratio from 2.3489 percent to 1.8869 percent. It would also result in reducing the percentage of its income apportionable to Minnesota from 2.83847 percent (per the state's audit report) to 2.6601 percent, with a corresponding reduction in its Minnesota income tax.

We find that it would be inconsistent to increase the denominator in this manner unless the denominator is also reduced by the uncollected 1962 sales. If this were done, then the numerator would also have to be reduced by the uncollected 1962 sales. This might be the most accurate method of allocation but would have to be done each year and would present very difficult

accounting problems. If this were done, it would probably not result in much change in the income attributable to Minnesota. The allocation to all states must total 100 percent each year. Under Appellant's method the allocation to all states would be less than 100 percent.

18. The Pinsetter notes receivable were employed in Brunswick's unitary business during the tax years 1962-77.
19. The Pinsetter notes receivable were not capital assets in Brunswick's hands.
20. The Minnesota sales ratio was correctly calculated on Brunswick's Minnesota income tax returns for the tax years 1962-77.

Conclusions of Law and Order for Judgment

1. Brunswick correctly included the deferred gross profits received on the Pinsetter notes receivable in its apportionable income for Minnesota income tax purposes for the tax years 1962-77.
2. Brunswick correctly calculated its Minnesota sales ratio for apportioning its taxable income for the tax years 1962-77.
3. The Commissioner's Order dated February 15, 1983, denying Brunswick's claims for refund for the tax years 1962-64, 1967-74 and 1976-77, is affirmed in its entirety.

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

December 4, 1984

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

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