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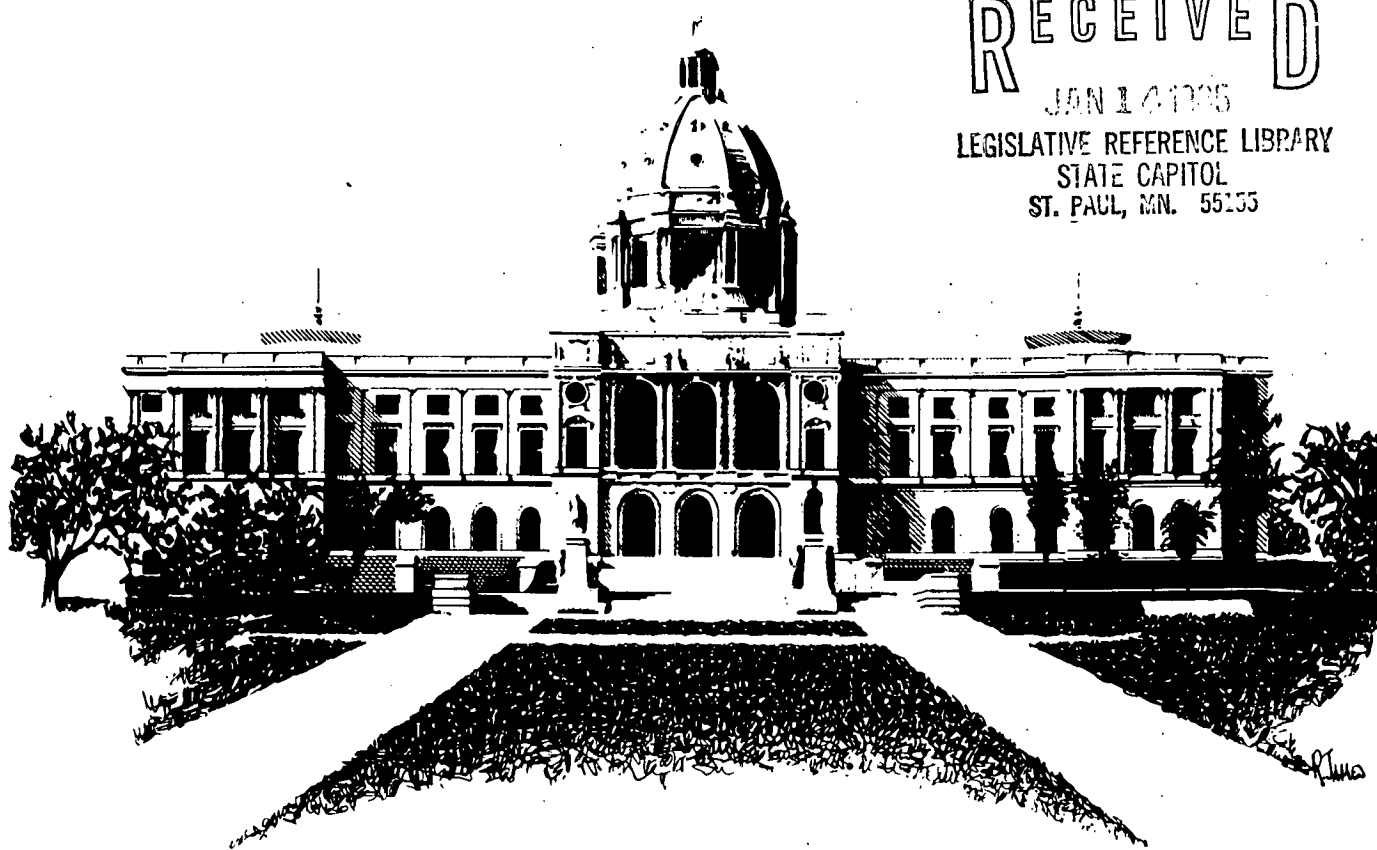
STATE REGISTER

STATE OF MINNESOTA

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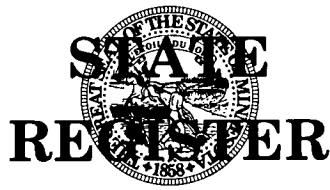
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VOLUME 9, NUMBER 29

January 14, 1985

Pages 1589-1636



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			
30	Monday Jan 7	Monday Jan 14	Monday Jan 21
31	Monday Jan 14	Monday Jan 21	Monday Jan 28
32	Monday Jan 21	Monday Jan 28	Monday Feb 4
33	Monday Jan 28	Monday Feb 4	Monday Feb 11

*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
Issues 27-38, inclusive	

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

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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.

Department of Agriculture Planning Division Soil and Water Conservation Board

Proposed Amendments to the Soil and Water Conservation Board's Cost Share

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to amend the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28 (1982).

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

Unless 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any proposed change. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982).

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

Authority to adopt these rules is contained in Minnesota Statutes, Section 40.036, Subds. 3 and 4. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available upon request from Mr. Heil.

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

The Soil and Water Conservation Board is authorized by Minnesota Statutes, Section 40.036, Subds. 3 and 4 to adopt rules specifying procedures and criteria for allocating funds to districts for cost sharing contracts.

The proposed amendments to the cost-share program rules were required by the legislature in 1982 to direct available cost-share program funds to priority areas of the state. Changes were also made to insure that Soil and Water Conservation Districts plan and implement priority cost-share programs in a manner consistent with state soil and water resource priorities and statewide resource plans.

PROPOSED RULES

The proposed amendments will not impact small business as defined in Minnesota Statutes, Section 14.115, because these rules relate to the local administration of a state program.

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

December 26, 1984

Jim Nichols
Commissioner of Agriculture

Rules as Proposed

8400.0100 DEFINITIONS.

Subpart 1. Scope. For purposes of parts 8400.0100 to 8400.2900, the following definitions in this part, in addition to those in Minnesota Statutes, chapter 30, shall apply.

Subp. 1a. Adequately protected. "Adequately protected" means that soil erosion and other factors that influence the sustained productive use of the resource base are within acceptable limits, which are achieved through the use of soil and water conservation practices. With respect to soil erosion, the loss may not exceed "T."

Subp. 2. [Unchanged.]

Subp. 3. Annual plan. "Annual plan" means a plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9, and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Planning Plans published by the state board. That publication is subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 4. Approved practice. "Approved practice" means a soil and water conservation practice which qualifies for state cost-sharing and which has been approved by the state board.

Subp. 5. Area conservationist. "Area conservationist" means the area conservationist of the USDA Soil Conservation Service.

Subp. 6. Assigned SCS Soil Conservation Service personnel. "Assigned SCS Soil Conservation Service personnel" means the district conservationist or USDA Soil Conservation Service personnel designated by the area conservationist to provide need and performance certification to the program.

Subp. 7. [See Repealer.]

Subp. 7a. Class I-IV soil. "Class I-IV soil" means soil generally suitable for field crop production according to United States Department of Agriculture Handbook No. 210, "Land Capability Classification" (Washington, D.C., September, 1961). That publication is not subject to frequent change, is available at the St. Paul Public Library, and is incorporated by reference. Soil in Class I has few limitations that restrict their use while Class IV soil has very severe limitations that require very careful management.

Subp. 8. Comprehensive plan. "Comprehensive plan" means a long-range plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9 and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 8a. Descriptive maps. "Descriptive maps" means computer-generated maps prepared by the land management information center of the State Planning Agency and provided to districts depicting high priority wind and water erosion and sedimentation areas. These maps are a tool for the district to identify high priority problem areas. These maps can and should be supplemented by the district as needed to more accurately reflect high priority erosion and sedimentation problems.

Subp. 9. District. "District" means a soil and water conservation district organized under the provisions of Minnesota Statutes, chapter 40.

Subp. 10. District board. "District board" means the five supervisors of a district authorized to carry out the functions of the district under Minnesota Statutes, chapter 40.

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. 11. District conservationist. "District conservationist" means the district conservationist of the USDA Soil Conservation Service.

Subp. 12. District cooperator. "District cooperator" means a land occupier who has requested the assistance of a district in controlling conservation problems. ~~Such~~ The request must be formalized by the signing of a district cooperator's agreement provided by the state board and approved by the district board.

Subp. 13. District technician. "District technician" means a district employee or county employee assigned to the district who possesses expertise in the design and application of soil and water conservation practices. ~~He shall perform under the technical supervision of the district conservationist or other assigned SCS personnel.~~

Subp. 14. Enduring practice. "Enduring practice" means a soil and water conservation practice which is designed for an effective life ~~in excess of ten years or more~~.

Subp. 14a. Feedlot model. "Feedlot model" means the analytical model contained in "An Evaluation System To Rate Feedlot Pollution Potential," publication no. ARM-NC-17, of the Agricultural Research Service of the United States Department of Agriculture (Peoria, Illinois, April 1982), designed for programmable hand-held calculators and used to determine the pollution potential rating of an animal feedlot. That publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 15. Field Office Technical Guide. "Field Office Technical Guide" means the document providing ~~all~~ standards and specifications ~~necessary~~ for technical requirements of soil and water conservation practices as provided by the USDA Soil Conservation Service and adopted by the district board.

Subp. 16. [Unchanged.]

Subp. 16a. High priority erosion problems. "High priority erosion problems" means areas where erosion from wind or water is occurring on Class I-IV soils equal to or in excess of $2 \times T$ tons per acre per year or any area within 300 feet of a water course or within 1,000 feet of a water basin or wetland eroding by water in excess of T tons per acre per year. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Erosion problems occurring on nonshoreland areas in excess of T but less than $2 \times T$ tons per acre per year are classified as secondary priority.

Subp. 16b. High priority water quality problems. "High priority water quality problems" means areas where sediment, nutrients, chemicals, or other pollutants discharge to Department of Natural Resources designated protected waters or to a sinkhole or ground water so as to impair their quality or usefulness, including high priority feedlots and sedimentation problems.

"High priority feedlots" means feedlots where the pollution potential rating from the feedlot model is greater than or equal to one which is discharging pollutants to Department of Natural Resources designated protected waters or to a sinkhole or shallow soils overlying fractured or cavernous bedrock or within 100 feet of a water well. Feedlots not meeting these criteria are not eligible for cost-sharing assistance except as provided in part 8400.2600, subpart 3.

"High priority sedimentation problems" means areas within 300 feet of a water course or 1,000 feet of a water basin or wetland where the water erosion rate exceeds three tons per acre per year or areas where the districts can show that sediment delivery occurs from a watershed or direct conveyance structure such as a storm sewer or paved outlet channel discharging to these waters. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Sedimentation problems not meeting these criteria are not eligible for cost-sharing assistance.

Subp. 17. [See Repealer.]

Subp. 18. Land occupier. "Land occupier" means ~~any~~ a person, firm, or corporation, including the governments of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the state, who ~~shall be in possession of any~~ possess lands lying within a district organized under the provisions of Minnesota Statutes, chapter 40, whether as owner, lessee, renter, tenant, or otherwise, including, during the life of a practice, successors of a land occupier who received a cost-share payment. This definition also includes the federal government.

Subp. 19. Nonproduction practice. "Nonproduction practice" means a soil and water conservation practice which is installed or applied to control soil erosion; ~~reduce sediment yield; or sedimentation or to protect or improve water quality.~~ Practices installed or applied primarily to bring land into production or to increase the short-term productivity are ~~excluded~~ not eligible for cost-sharing.

Subp. 20. [Unchanged.]

Subp. 20a. Protected water. "Protected water" means those water basins, water courses, and wetlands, as defined in

PROPOSED RULES

Minnesota Statutes, section 105.37, on the inventory of public waters and wetlands under Minnesota Statutes, section 105.391, subdivision 1, and identified on a protected waters and inventory map available in a county auditor's office.

Subp. 20b. Registered professional engineer. "Registered professional engineer" means a person who practices professional engineering within the meaning of Minnesota Statutes, sections 326.02 to 326.15, and who performs technical professional services such as, but not limited to, the planning, designing, or inspecting of the construction of erosion, sediment control, or water quality protection or improvement measures. A registered professional engineer may be designated by a district board and may use criteria in a recognized technical procedure to design, install, and certify practices which qualify for state cost-sharing.

Subp. 20c. Shallow soils overlying fractured or cavernous bedrock. "Shallow soils overlying fractured or cavernous bedrock" means areas where the soil depth or texture in conjunction with the condition of the bedrock will not provide treatment of agricultural waste sufficient to protect groundwater quality. Determination of these areas is made on an individual project basis by assigned Soil Conservation Service personnel or a registered professional engineer. Actual determination may be done by the district technician.

Subp. 20d. Sinkhole. "Sinkhole" means a depression or hole in the earth's surface caused by dissolving of underlying limestone; drainage is through joints and fractures in underlying bedrock.

Subp. 21. Soil and water conservation practice. "Soil and water conservation practice" means those structural and or vegetative practices applied to the land for the purpose of controlling soil erosion, sediment, agricultural waste, or other water pollutants.

Subp. 22. [Unchanged.]

Subp. 22a. Special project. "Special project" means a conservation project including but not limited to a demonstration project, accelerated watershed or water quality project, long-term conservation agreement, planning technique, or nonstructural erosion or sediment control or water quality protection or improvement measure. Special projects may address nonshoreland secondary priority erosion problems and are submitted to the state board according to "Guidelines for Special Projects" published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 23. State board. "State board" means the state Soil and Water Conservation Board as defined created in Minnesota Statutes, chapter 40 section 40.03.

Subp. 24. [See Repealer.]

Subp. 25. T. "T" means soil loss tolerance which is the maximum level of soil erosion that will permit a high level of crop productivity to be sustained economically and indefinitely. In Minnesota, "T" ranges from one to five tons per acre per year depending on the particular soil characteristics. "T" values for Minnesota soils are provided in the Field Office Technical Guide.

Subp. 26. $2 \times T$. " $\frac{1}{4} \times T$ " means soil erosion at the rate of two times T.

8400.0200 AUTHORITY.

Minnesota Statutes, chapter 40, authorizes the state Soil and Water Conservation Board, in cooperation with the soil and water conservation districts, to administer a program of cost-sharing with land occupiers on the installation of soil and water conservation practices. Parts 8400.0100 to 8400.2900 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to districts, and standards and guidelines which the district boards shall include in all cost-sharing contracts use in allocating funds to land occupiers.

8400.0300 ESTABLISHING APPROVED PRACTICES.

The state board, in consultation with the districts, shall maintain a list of practices which are eligible for cost-share funds and a schedule of maximum rates. The list shall be is contained in parts 8400.2000 to 8400.2700 and the schedule in parts 8400.2800 and 8400.2900. Changes to the list and schedule shall must be made in the manner provided by the rulesmaking provisions of pursuant to Minnesota Statutes, chapter 14.

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

8400.0400 CRITERIA FOR APPROVED PRACTICES.

Practices approved by the state board must meet the following criteria in items A to C.

A. Their primary purpose must be the control of soil erosion, ~~sediment~~ or sedimentation, or protection or improvement of water quality.

B. They must be enduring in nature. All practices cost-shared under this program ~~shall~~ must be designed for a minimum effective life of ten years.

C. They must be nonproduction practices.

8400.0600 ALLOCATION OF FUNDS.

Subpart 1. Comprehensive plan. Before the state board can allocate cost-share funds to a district it must first approve the district's comprehensive plan, including its most recent amendment and the annual work plan which includes the application for needed cost-share funds. The plans must be in a format required by the state board.

Subp. 2. [See Repealer.]

Subp. 3. Review criteria. The state board shall review all district applications for cost-share funds with respect to the following criteria:

A. the extent of high priority erosion or water quality problems in the district as outlined in the district comprehensive and annual plans;

B. priorities for the control of soil erosion, ~~sediment, or other water pollutants~~ or water quality problems as established in the program plan of the state board;

C. historical success of the district in applying soil and water conservation practices;

D. availability of cost-share funds from other sources; and

E. readiness of the district to effectively ~~utilize~~ use the funds.

The state board shall review all district applications for special project funds with respect to criteria established in the most recent version of the Guidelines for Special Projects published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 4. Grants. Following review and approval of the annual and comprehensive plans, the state board shall ~~provide grants to the districts for the purpose of cost-sharing with land occupiers for the application of approved practices~~ allocate to districts in the form of grants at least 70 percent of the cost-sharing funds available statewide for conservation practices to address high priority erosion or water quality problems. At least 50 percent of the cost-sharing funds available statewide must be allocated for conservation practices to control high priority erosion problems. Up to 20 percent of the cost-sharing funds available statewide may be used to control high priority water quality problems. The remaining cost-share funds may be allocated by the board to districts for technical and administrative assistance or special projects. Technical and administrative assistance grants shall be based on the extent of high priority erosion and water quality problems in each district and the demonstrated interest of the district in identifying and addressing those problems. Technical and administrative assistance grants may be used for controlling secondary priority nonshoreland erosion problems.

8400.0700 MONITORING.

For the purpose of monitoring the progress of the program and ~~utilization~~ use of funds, the state board shall receive from each district ~~quarterly reports by October 15, January 15, and April 15, and an annual report of the year's accomplishments by July 15~~ a date deemed reasonable by the state board. The state board may require ~~such~~ additional special reports ~~as may be~~ deemed necessary by the state board to monitor the cost-sharing program. The reports ~~shall~~ must be on forms provided by the state board.

8400.0900 ADMINISTRATION OF FUNDS.

Following receipt of grant funds from the state board, ~~the respective districts shall be~~ a district is responsible for administration of the funds in accordance with ~~the provisions of~~ Minnesota Statutes, chapter 40 and all other applicable laws. The district board ~~shall have the authority to~~ may make all decisions concerning ~~utilization~~ use of these funds ~~within the rules established herein~~ in accordance with parts 8400.0100 to 8400.2900.

As a condition to receiving grant funds from the state board, the district shall ensure compliance ~~of~~ with the maintenance provisions of part 8400.1700 and Minnesota Statutes, chapter 40 by monitoring all cost-share contracts made with land occupiers.

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Prior to considering any applications from land occupiers for cost-share assistance, the district board shall establish the cost-share or flat rates for practices to be installed under the program, which ~~shall~~ may not exceed the maximum rates established by the state board. This decision shall be based on the following factors:

A. the extent of high priority erosion or water quality problems in the district as outlined in the district comprehensive and annual plans;

B. advice of technical experts familiar with the district;

C. cost-share rates currently in effect under the agricultural conservation program administered by the United States Agricultural Stabilization and Conservation Service and other assistance programs;

D. district priorities as established in the districts' comprehensive and annual plans; and

E. cost-share funds available.

8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.

Land occupiers seeking assistance under this program shall apply to the districts on forms provided by the state board and available from the district office. Each application ~~shall~~ must be filled out in its entirety. The application must be signed by the land occupier and if the land occupier is not the owner it must also bear the owner's signature. Applications must be submitted not later than June 1 to be considered for cost-sharing from the funds available for the current fiscal year ~~beginning July 1~~. After initial priority screening by the district board, assigned SCS Soil Conservation Service personnel ~~shall be~~ or a registered professional engineer are responsible for making a determination of need and cost estimate. Actual determination of need and cost estimate may be done by the district technician. Additional information on the desired practice which may be required by the district board in its consideration of the application shall be included.

8400.1100 GROUP PROJECT.

A situation may arise where the cooperation of several land occupiers is required to solve a conservation problem. The district may share the cost of such a group project ~~provided that~~ if all of the land occupiers are eligible as individuals and the ~~practice or practices~~ practices satisfy the criteria of the program. The land occupiers must reach agreement on the ~~a~~ division of payments. ~~The~~ and designate a group spokesperson ~~shall~~. The spokesperson must be identified on the application group cooperator agreement and shall file ~~the form~~ all forms with the district, and ~~shall~~ negotiate all project details with the district. Checks for the district share of the practice shall be issued to the group members based on the division of payment plan prepared by the group.

8400.1200 LAND IN MORE THAN ONE DISTRICT.

If ~~the~~ a project involves land in more than one district, application ~~shall~~ must be made to the district containing the most land ~~affected~~ benefited by the practice.

8400.1300 CRITERIA FOR DISTRICT BOARD REVIEW.

Criteria for district board review:

A. The applicant must be a district cooperator.

B. The ~~desired~~ requested practice needed to solve the problem must be on the list of approved practices.

C. The primary purpose of the ~~desired~~ requested practice must be the control of soil erosion, ~~reduction of sediment delivery or sedimentation~~, or the protection or improvement of water quality. In cases where the primary purpose is questionable, the district board shall make a determination of the acceptability of the application. Additionally, the district board shall make determination of the need for supplemental practices to protect any practice installed under this program. ~~e.g.,~~ such as fencing of water impoundment structures. If the district board determines that supplemental practices are necessary, it shall authorize cost-sharing for their installation.

D. The ~~desired~~ requested practice must be consistent with district plans and priorities.

E. The practice must be maintained by the land occupier, who ~~shall be~~ is responsible for operation and maintenance of practices applied under this program.

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F. Priority consideration shall be given to land occupiers or groups of land occupiers who demonstrate the ability to meet matching requirements. Cost-sharing funds may not be used for repair of practices installed solely with private or federal cost-sharing funds.

G. The practice must comply with the ~~specifications~~ technical requirements of the Field Office Technical Guide. For practices not included in the Field Office Technical Guide, other recognized technical procedures may be used to design, install, and certify practices.

8400.1400 DISTRICT APPROVAL.

Subpart 1. General. After completion of a priority determination and cost estimate, the district board shall either approve or deny the application. If it is approved, the district board shall instruct the chairman or acting chairman to sign the application. Once it is signed, the application becomes the contract between the district and land occupier and serves as the authorization for work to proceed on the practice. Practices begun prior to district approval are ineligible for financial assistance. If it is denied, the district board shall notify the land occupier in writing within 30 days after board action of the reason for denial of the application. Changes in any provisions of the contract shall be are subject to review and approval of by the district board.

Subp. 2. High priority problems. In order to ensure compliance with part 8400.0600, subpart 4, the district board shall approve only those applications that involve the high priority problems for which they received funds. The district board may allocate high priority water quality funds for high priority erosion projects, but not the converse.

8400.1405 STARTING AND COMPLETION DEADLINES.

Subpart 1. Time limit; cancellation. Projects not started within 18 months after district board approval must be canceled unless an amendment to the project has been approved by the district board. Projects not completed within two calendar years after initial approval must be canceled.

Subp. 2. Partial payment. In cases where weather or other unanticipated circumstances beyond the control of the land occupier, force postponement of certification of completion until the following construction season, the state board or its authorized representative may authorize a district board to issue a partial payment for the work that has been completed. The following conditions must be met before the state board or its authorized representative will consider authorizing a partial payment:

- A. The anticipated completion date will be in compliance with subpart 1.
- B. The completed work meets the requirements of part 8400.1300, item G.
- C. The state board's authorized representative must review the work and concur in the payment decision.

Subp. 3. Payment conditions. If the state board of its authorized representative authorizes a partial payment under subpart 2, the following conditions apply:

- A. Payment percentages must comply with part 8400.2800.
- B. The balance of the project must be paid by the district board upon the satisfactory completion of the total project.
- C. All expenses incurred in correcting damage caused to the project by virtue of its incompleteness must be borne by the land occupier.
- D. Land occupiers receiving partial payments must complete the project within a time deemed reasonable by the district board.
- E. Land occupiers not completing partially paid projects are violating part 8400.1700 and shall be directed to return the amount of financial assistance received.

F. Partial payment authorizations shall not be construed as precedent setting. Every request will be considered by the state board or its authorized representative on its own merits.

Subp. 4. Denial. If the state board or its authorized representative denies a request for partial payment under subpart 2, the district board shall be notified within 30 days of the reasons for denial of the request.

8400.1500 DISTRICT RECORDS.

The district shall maintain a current ledger of all cost-share contracts on forms provided by the state board. The ledger shall must specify the land occupiers with whom the district has contracted, the practices involved, the status of construction, and a

total of funds encumbered. ~~The district shall monitor all cost-sharing contracts to insure compliance with the provisions of part 8400.0900. Districts having funds which are unencumbered by December 1 of each program period shall be required to return those funds to the state board for reallocation, if the state board has determined the funds are of significant amount and there is another district that has greater need for them.~~

8400.1600 PAYMENTS.

Subpart 1. Construction of practice. Construction of practices ~~shall~~ must be monitored by the district board to ensure compliance with ~~the specifications in the Field Office Technical Guide part 8400.1300, item G.~~ Upon completion, assigned ~~SCS Soil Conservation Service personnel or a registered professional engineer shall certify whether or not the practice has been satisfactorily performed, including a certification that the practice meets the requirements of the Field Office Technical Guide part 8400.1300, item G.~~ No ~~such~~ certification shall be made until all specifications have been satisfied. Exceptions must be in accordance with part 8400.1405, subpart 2. Upon certification of completion, the land occupier shall contact the district for payment and shall present ~~all receipts for cost~~ documentation of all costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. 2. In-kind services. In-kind services provided by the land occupier such as, but not limited to, earth work, seedbed preparation, and seeding ~~can~~ may be credited toward the land occupier's share of the total cost of the practice. The district board shall determine whether charges for ~~such~~ in-kind services are practical and reasonable.

Subp. 3. Actual cost differing from estimated cost. In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the approved percentage of the estimated cost, except when an amendment to the cost-share ~~agreement contract~~ has been approved. Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to increase the ~~practice units and/or~~ estimated cost, or to postpone the starting or completion date of the practice. ~~Such~~ These changes must be approved by the supervisors in advance of completion of the work with an amendment to the cost-share ~~agreement contract~~ covering the changes. Amendments may not be authorized for providing final cost-sharing percentages in excess of the originally approved percentage or additional money for projects that were knowingly underfunded at the time of approval. Amendments may not be authorized after final approval of payment has been made on the original contract. Where the actual cost is less than the estimated cost, the district shall only share the approved percentage of the actual cost of the practice. The district board shall review the receipts or invoices provided by the land occupier to determine the actual cost of the practice. When the district determines that all claims are practical and reasonable, it shall authorize issuance of a check for the district share of the practice. ~~Where~~ If the district board determines that certain claims are not justified, it shall notify the land occupier in writing of the unjustified claims within 30 days. The district board shall then authorize the issuance of a check for the district share of the justified claims.

8400.1700 MAINTENANCE.

The land occupier is responsible for operation and maintenance of practices applied under this program to ensure that their conservation objective is met and the effective life of ten or more years is achieved. Should the land occupier fail to maintain ~~such the practices or willfully remove them~~ during their effective life, the land occupier ~~shall be~~ is liable for the amount of financial assistance received for their installation. The district board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice. The land occupier ~~shall is not be held~~ is not be held liable for cost-share assistance received ~~provided if~~ the failure was caused by reasons beyond the land occupier's control, or if soil and water conservation practices are applied at the land occupier's expense which provide equivalent protection of the soil and water resources. In no case shall a district provide cost-share assistance to a land occupier for the reapplication of practices which were removed by the land occupier during their effective life or failed due to improper maintenance.

8400.1800 APPEALS.

~~In cases where~~ If a land occupier feels he has been treated unfairly, he may request that the district board review its decision. Should the land occupier and the district board reach an impasse, the land occupier may petition in writing for a hearing before the state ~~Soil and Water Conservation~~ board. If it grants the hearing, which shall be informal, the state board or a referee appointed by it shall hear all testimony offered, and shall accept written testimony for ten days after the hearing. The referee, if one is used, shall report his findings and recommendation to the state board, which shall within 60 days of the hearing date make its decision on the appeal, upholding, reversing, or amending the decision of the district board.

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8400.1950 VARIANCES.

If a district board feels that a particular requirement of parts 8400.0100 to 8400.2900 prevents an erosion or sedimentation control or water quality project from being installed, a request for a variance may be filed with the director of the state board. The request must be in writing and contain:

- A. the name and address of the district board making the request and the signature of the district chairperson;
- B. the nature of the variance being sought, including an identification of the applicable rule from which the variance is sought, the time period for which it is sought, and the reason for seeking the variance;
- C. a statement of alternatives for dealing with the installation of the affected project if the variance is not granted; and
- D. a statement of the effects on applicable natural resources and the public if the variance is granted.

Variance requests must be submitted to the director at least 30 days prior to the state board meeting at which the variance is requested to be heard. Within 45 days after the meeting, the state board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance will not be granted if it is in conflict with any statute. The state board may grant a variance upon such conditions as it may prescribe.

If a variance has been granted by the state board, the district board holding the variance may file with the state board at any time a written request for modification or amendment of the variance. The request for modification or amendment, and the state board's consideration of the request, shall comply with requirements of this part.

8400.2000 APPROVED PRACTICE: EROSION CONTROL STRUCTURES.

Subpart 1. Definition. "Erosion control structure" means a structure such as, but not limited to, ~~grade stabilization structures, floodwater retarding structures, and or~~ multipurpose dams designed to stabilize the grade or control head cutting in natural or artificial channels; provide temporary storage of floodwater, control the release rate of water providing downstream channel stability, or impound water.

Subp. 2. Purpose. The purpose of an erosion control structure is to control soil erosion ~~and sediment~~ or to protect or improve water quality. An erosion control structure may provide multiple benefits including, but not limited to, water supply for livestock, recreation, flood control, channel stability, wildlife habitat, and fire prevention.

Subp. 3. Applicability. ~~This practice applies to~~ Erosion control structures may be used on any lands where ~~such structures~~ they are necessary for the control of soil erosion ~~and sediment~~ or water quality protection or improvement.

Subp. 4. Policies. Cost-sharing is authorized:

~~A. only on for the construction of~~ erosion control structures that provide for reduction of soil erosion or ~~sediment pollution-~~ water quality protection or improvement;

~~Cost-sharing may be authorized B.~~ for the installation of livestock watering facilities in conjunction with erosion control structures only if ~~such the~~ facilities are necessary for the proper management and protection of the structure as determined by the district board-;

~~Cost-sharing may be authorized C.~~ for permanent fencing of an erosion control structure as determined by the district board-;

~~Cost-sharing may be authorized D.~~ for tree and shrub plantings adjacent to the structure and seeding required necessary to stabilize ~~the an erosion control structure-~~ and adjacent critical areas, including, whenever possible, ~~the district board shall encourage~~ the use of those species that provide wildlife habitat and visual enhancement-;

~~Cost-sharing may be authorized E.~~ for erosion control structures which provide multiple benefits ~~provided if~~ the primary benefit is soil erosion ~~and sediment~~ control- or water quality protection or improvement;

~~Cost-sharing is authorized F.~~ for temporary materials and seedings necessary to properly stabilize an erosion control structure during construction; and

G. for erosion control dams and ponds provided that if a minimum of 50 percent of the contributing drainage area above the proposed project is adequately treated or treatment is being applied protected.

8400.2100 APPROVED PRACTICE: STRIPCROPPING.

Subpart 1. Definition. "Stripcropping" ~~shall mean~~ means the development and application of a cropping system for a farming unit which provides for planting row crops with the contour where practicable and incorporates alternate strips of row crops, close sown crops, ~~and~~ sod crops, or fallow.

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Subp. 2. Purpose. The purpose of stripcropping is to establish a system of farming with contour or field stripcropping to ~~reduce wind and water control soil erosion and sediment pollution~~ or protect or improve water quality. Stripcropping may provide additional benefits to wildlife.

Subp. 3. Applicability. ~~This practice applies to~~ Stripcropping may be used on any lands where stripcropping it is necessary for the control of soil erosion and sediment or water quality protection or improvement.

Subp. 4. Policies. Cost-sharing ~~may be is~~ authorized for ~~all costs associated with the delineation of strips and removal of obstructions~~ a per acre rate not to exceed \$11 whether solely state cost-shared or in combination with federal cost-sharing.

8400.2200 APPROVED PRACTICE: TERRACES.

Subpart 1. Definition. "Terrace" means an earth embankment, or a combination ridge and channel constructed across the slope at the required spacing.

Subp. 2. Purpose. Terraces are constructed to:

- A. reduce erosion;
- B. reduce sediment content in runoff water;
- C. intercept and conduct surface runoff at a nonerosive velocity to a stable outlet;
- D. prevent gully development; and
- E. reduce flooding; or
- F. protect or improve water quality.

Terraces may provide additional benefits by creating wildlife habitat and retaining runoff for moisture conservation.

Subp. 3. Applicability. ~~This practice applies to~~ Terraces may be used on any lands where terraces they are needed for the control of soil erosion and sediment or water quality protection or improvement.

Subp. 4. Policies. Cost-sharing is authorized:

A. for construction necessary to properly establish the terraces, including earthwork, material, and seedings if necessary;

Cost sharing is authorized B. for temporary materials and seedings necessary to properly stabilize terraces during construction; and

C. for tile systems necessary to for the establishment and operation of the terraces, including the outlet which shall be limited to 300 feet below the last terrace in a system.

8400.2300 APPROVED PRACTICE: DIVERSIONS.

Subpart 1. Definition. "Diversion" means a channel with a supporting ridge on the lower side constructed across the slope.

Subp. 2. Purpose. The purpose of ~~this practice~~ a diversion is to divert water away from erosive areas to ~~sites~~ areas where it can be used or disposed of safely. Diversions may provide additional benefit to wildlife.

Subp. 3. Applicability. ~~This practice applies to sites~~ A diversion may be used where:

A. runoff from higher lying areas is eroding cropland, pastureland, or farmsteads, or is needed to support conservation practices such as terraces or stripcropping in the control of erosion or runoff sedimentation;

B. surface and shallow subsurface flow is damaging sloping upland or contaminating ground or surface water; or

C. it is required as a part of a pollution abatement system, or to control erosion and runoff or sedimentation on urban or developing areas and construction sites.

Subp. 4. Policies. Cost-sharing is authorized:

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- A. for tile systems necessary for the establishment and operation ~~of erosion control practices such as~~ of diversions; ~~Cost-sharing is authorized~~ B. for construction necessary to properly establish the diversions including earthwork, materials, and seedings ~~necessary to properly stabilize this practice;~~
- C. for temporary materials and seedings necessary to properly stabilize diversions during construction; and
- D. for permanent fencing of diversions as determined by the district board.

8400.2400 APPROVED PRACTICE: STORMWATER CONTROL SYSTEMS.

Subpart 1. Definition. "Stormwater control system" means a practice or system of components practices such as, but not limited to, grassed waterways, diversions, water and sediment control structures, basins, and grade stabilization structures, culverts, channels, and floodways installed to convey storm runoff to a constructed or natural outlet in a nonerosive manner. This practice does not apply to areas for which when the primary purpose is drainage to expand or improve crop production or making the cropping system more convenient.

Subp. 2. Purpose. The purpose of this a stormwater control system of elements is to provide a means of regulating and/or or removing runoff to protect the area from flood damage and control erosion; and to prevent pollution of watersheds, lakes, and streams or protect or improve water quality. Additional benefit may be provided through creation of wildlife habitat.

Subp. 3. Applicability. The provisions of this system of elements to convey runoff apply to A stormwater control system may be used on all lands by utilizing using vegetative and mechanical protection or structural measures for control of erosion and pollution or protection or improvement of water quality.

Subp. 4. Policies. Cost-sharing is authorized:

A. For the construction of practices required in a complete stormwater control system. Such These practices shall include, but are not limited to: channel lining, chutes, drop spillways a lined waterway or outlet, detention ponds, vegetative filter strips, protective outlets, sod waterways, permanent sod cover, fencing, and permanent vegetation including trees, shrubs, and grasses. At least 80 percent of the contributing drainage area above grassed waterways on land owned or controlled by the applicant, must be adequately protected.

~~Cost-sharing is authorized~~ B. For tile systems necessary for the establishment and operation of ~~erosion control practices such as~~ stormwater control systems, including the outlet, which is limited to 300 feet below the end of the waterway.

~~Cost-sharing is authorized~~ C. For temporary materials and seedings necessary to properly stabilize this practice a stormwater control system during construction.

D. For permanent fencing of stormwater control systems as determined by the district board.

8400.2500 APPROVED PRACTICE: FIELD WINDBREAKS.

Subpart 1. Definitions. "Field windbreak" means a strip or belt of trees, shrubs, or grass barriers established within or adjacent to a field.

Subp. 2. Purpose. The primary purpose of a field windbreaks windbreak is to reduce wind erosion. Additional benefits may be gained from: the protection of crops, livestock, and wildlife; increased moisture conservation by controlling snow deposition; and to beautify beautification and otherwise enhance enhancement of the landscape.

Subp. 3. Applicability. This practice applies Field windbreaks may be used in or around open fields which need protection against wind damage to soils erosion. Additional benefit benefits may be realized from the creation of wildlife habitat.

Subp. 4. Policies. Cost-sharing is authorized for land site preparation, planting materials, planting, chemicals for weed control, and other applicable costs necessary to establish the system a field windbreak. The land occupier shall be is responsible for controlling competitive vegetation for two years following planting and shall must bear the cost of control.

Cost-sharing is prohibited for plantings installed primarily for farm beautification, protection of buildings or livestock, energy conservation, or other uses where erosion control is not the primary purpose.

8400.2600 APPROVED PRACTICE: ANIMAL WASTE CONTROL SYSTEMS.

Subpart 1. Definition. "Animal waste control system" means a planned agricultural waste management system to contain and manage liquid and solid wastes including runoff from concentrated animal waste (feedlot) areas with ultimate disposal in a manner which does not degrade soil or water resources. This practice includes systems for safe disposal of livestock wastes through use of soil and plants.

Subp. 2. Purpose. Agricultural waste management systems are used to manage wastes in rural areas in a manner which

prevents or minimizes degradation of soil and water resources and protects public health and safety. ~~Such~~ These systems are planned to preclude discharge of pollutants to surface or ground water and, to the fullest practicable extent, recycle wastes through soil and plants.

Subp. 3. Applicability. ~~This practice applies to Animal waste control systems may be used in any animal confinement area; any part of which is located within 300 feet of a stream or 1,000 feet of a lake or to an animal confinement area identified as a pollution problem by the district board, and/or Minnesota Pollution Control Agency.~~

For other requests for this practice, the district may refer the request to Minnesota Pollution Control Agency for a priority needs determination for which the feedlot evaluation model has been applied and a potential pollution hazard has been determined to exist or where the land occupier was cited by the Minnesota Pollution Control Agency or other situations where that agency determines there is a potential pollution hazard.

Subp. 4. Policies. Cost-sharing is authorized for:

A. All structures and vegetative practices permanent shrubs, trees, or grasses necessary to store animal wastes or control stormwater runoff from animal confinement areas including storage facilities, diversions, waste storage pond ponds, and waterways. A complete system, controlling discharge of runoff from animal confinement areas to waters of the state, will be is required.

Cost-sharing is authorized for B. Tile systems necessary for the establishment and operation of a an animal waste control system.

Cost-sharing is authorized for C. Temporary materials and seedings necessary to properly establish a stabilize an animal waste control system during construction.

Cost-sharing is authorized for D. Permanent fencing necessary to protect a system of an animal waste control system as determined by the district board.

Cost-sharing is prohibited on any costs normally incurred in the management of an animal confinement area. This ~~shall include~~ includes buildings, yards, permanent or portable pumps, tank wagons, etc loaders, stackers, and similar items.

Holding tanks, collection basins, waste conveying pipe, and other animal waste storage facilities are eligible for cost-sharing ~~provided if~~ provided if the district board determines that they are necessary to protect water quality and ~~also provided that if~~ the entire system needed to control pollution is installed.

A holding tank which will become an integral part of a building is eligible for cost-sharing provided if there is no other feasible alternative available for controlling pollution. The district board, with technical review completed by technicians available to it, shall make the final decision concerning the cost-sharing eligibility of such a system. For purposes of determining the cost-share payment, the cost of the building foundation and the cost of the building ~~are is~~ not eligible for cost-sharing. The cost attributable to the foundation shall be represented by the top four feet of the storage tank walls.

~~Equipment utilized in the handling or transfer of animal waste is ineligible for cost-sharing, except that animal waste conveying pipe from point of generation to the storage facility shall be eligible for cost-sharing.~~

8400.2700 APPROVED PRACTICE: CRITICAL AREA STABILIZATION.

Subpart 1. Definition. "Critical area stabilization" means planting permanent vegetation such as trees, shrubs, vines, grasses, or ~~legumes~~ legumes or placing rock cover on sites subject to severe erosion. ~~It does not include tree planting primarily for wood products~~ highly erodible or severely eroded sites or in areas where vegetation is needed to protect or improve water quality.

Subp. 2. Purpose. The purpose of critical area stabilization is to provide permanent vegetative or rock cover to stabilize the soil, ~~to protect from wind and water control erosion; reduce damage from sediment and runoff to downstream areas or to protect or improve water quality.~~ Additional benefit may be gained by improving wildlife habitat and ~~the enhancement of enhancing~~ natural beauty.

Subp. 3. Applicability. ~~This practice applies~~ Critical area stabilization may be used on sediment-producing, highly erodible,

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or severely eroded areas ~~(including urban areas)~~ or in areas where vegetation is needed to protect or improve water quality, such as, but not limited to, ~~dams, dikes, abandoned mine spoil, levees, channels, waterways, terrace backslopes construction sites,~~ and denuded or gullied areas where vegetation is difficult to establish.

Subp. 4. Policies. Cost-sharing for stabilizing ~~roadside, streambed, and streambank,~~ lakeshore erosion is authorized only ~~when it is a part of a larger stabilization project,~~ and roadside areas must be addressed with the approved practice in part 8400.2705.

Cost-sharing is authorized for:

- A. earthwork, materials, seed, and seeding seedings and other associated costs necessary to stabilize the area;
- B. temporary materials and seedings necessary to stabilize the area during construction; and
- C. permanent fencing of the area as determined by the district board.

8400.2705 APPROVED PRACTICE: STREAMBANK, LAKESHORE, AND ROADSIDE STABILIZATION.

Subpart 1. Definition. "Streambank, lakeshore, and roadside stabilization" means stabilizing and protecting streambank, lakeshore, and roadside areas against erosion by vegetative or structural means.

Subp. 2. Purpose. The purpose of streambank, lakeshore, and roadside stabilization is to control erosion or protect or improve water quality.

Subp. 3. Applicability. Streambank, lakeshore, and roadside stabilization may be used on eroding or sediment producing areas on streambank, lakeshore, or roadside sites where vegetative or structural measures are needed to correct the problem.

Subp. 4. Policy. Cost-sharing is authorized for:

- A. earthwork, materials, seed, and seedings necessary to stabilize the area;
- B. temporary materials and seedings necessary to stabilize the area during construction; and
- C. permanent fencing of the area as determined by the district board.

Permanent fencing may be used as the sole remedy if it is determined by the district board to be the most practical solution, except that fencing of property boundaries and roads is ineligible for cost-sharing.

Subp. 5. Cost-sharing limit. Cost-sharing may not exceed 50 percent of total eligible project costs.

8400.2800 MAXIMUM RATES.

The maximum percent of the total cost of a practice installed to control a high priority erosion or water quality problem that may be funded by state cost-share funds is 75 percent. ~~Where state and federal moneys are cost-shared on the same project, their combined amount shall not exceed 75 percent of the total cost of the project except where a flat rate is authorized.~~ The maximum percent of the total cost of a practice installed to control a secondary priority nonshoreland erosion problem that may be funded by state cost-share funds is 50 percent except where a flat rate is authorized. State cost-share funds may be matched with federal money or other state funds. The combined state and federal amount may not exceed the maximum rates in this part or part 8400.2705, subpart 5.

REPEALER. Minnesota Rules, parts 8400.0100, subparts 7, 17, and 24; and 8400.0600, subpart 2 are repealed.

EFFECTIVE DATE. These rules are effective July 1, 1985.

Department of Commerce

Proposed Rules Governing Credit Unions

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, sections 14.21 to 14.28. These rules were published previously in the *State Register* on October 22, 1984 (9 SR 816).

PROPOSED RULES

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

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 Allyn R. Long, Assistant Commissioner, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-2750. Any person requesting a public hearing should state her/his name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request and any change proposed and to send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 46.01, subd. 2. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request by contacting Linda Phillips at the above address.

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. If a hearing is not required, notice of the date of submission of the proposed rules to the Attorney General for review will be mailed to any person requesting to receive the notice. 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 Linda Phillips, 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 Linda Phillips at the above address.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Proposed Rules Governing Filing Fees for insurance Policy Rates and Forms

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. Although no changes have been made in the rules, they are being republished as they appeared in the *State Register* (9 SR 1018) due to a procedural calculation.

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 Donald Peterson,

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

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, section 60A.14, subdivision 1(c). Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

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

A copy of the proposed rules is attached to this notice. Copies of this notice and the proposed rules are available and may be obtained by contacting Rose Weiner at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2605.0100 SCOPE OF AUTHORITY.

Parts 2605.0100 to 2605.0400 apply to all licensed insurers and rate service, data service, or other organizations that make insurance policy form or rate filings required by statute. They are adopted pursuant to authority granted under Minnesota Statutes, sections 45.023 and 60A.14, subdivision 1, paragraph (c), clause (14).

2605.0200 FILING FEES FOR CASUALTY AND PROPERTY INSURANCE.

A \$10 filing fee applies to the following filing of rates, rules, policies, or endorsements relating to casualty or property insurance:

A. Rates and rules pertaining to the same kind or line of insurance and submitted together are subject to a single filing fee.

B. Policy forms and endorsements pertaining to the same kind of insurance and submitted together are subject to a single filing fee.

C. Simultaneous identical filings by other insurers within a group or fleet of companies are subject to separate filing fees.

D. Deviations from, including effective date change, or nonadoption of, rate service or data service organization filings are subject to filing fees.

E. Policy forms, endorsements, and rate filings made by the Minnesota Automobile Insurance Plan or the FAIR Plan are subject to filing fees.

F. The following kinds of worker's compensation filings:

- (1) schedule of rates;
- (2) rate deviation;
- (3) schedule rating plans;
- (4) dividend plans;
- (5) policy forms;
- (6) endorsements; and
- (7) retrospective rating plans.

2605.0300 LIFE AND HEALTH INSURANCE.

A \$10 filing fee applies to each filing of policy forms, contracts, riders, endorsements, certificates, applications, or rates as further specified in items A to H.

A. If a single policy or contract filing includes riders, endorsements, applications, or other forms designed to be issued or used in direct connection with that policy or contract, a single fee applies to that filing.

B. Related endorsements, riders, applications, or other forms submitted as a single filing, when the policy or contract is not being filed, are subject to one filing fee.

C. Each rate filing or rate revision is subject to a filing fee.

D. Group insurance policy filings, including related certificates, applications, or other forms are subject to a single filing fee.

F. Filings made by the Minnesota Comprehensive Health Association are subject to filing fees.

F. When an insurer or the Minnesota Comprehensive Health Association fails to respond to an objection or inquiry within 90 days, a resubmission is required if action by the Department of Commerce is subsequently requested. An additional filing fee is required for the resubmission.

2605.0400 PROVISIONS APPLICABLE TO ALL POLICY FORM AND RATE FILINGS.

The provisions in items A to L apply to all insurance policy form and rate filings required by statute.

A. A multipurpose form which can be used with more than one kind of policy, is subject to one filing fee.

B. Filings made to comply with law changes are subject to filing fees.

C. Filings made solely to change a company name or officer signature, correct printing errors, or make editorial changes are subject to filing fees.

D. Filings made for the sole purpose of withdrawing forms or rates are not subject to filing fees.

E. Exhibits and supporting data are not subject to filing fees.

F. Subsequent correspondence initiated by the Department of Commerce relating to a specific filing does not require a separate fee, nor does any amended rate or form resulting from the correspondence.

G. Filing fees are not refundable.

H. In unusual situations not specifically covered by parts 2605.0100 to 2605.0400, the application or nonapplication of a filing fee will be determined by the commissioner of commerce.

I. A filing consisting of a policy form, an application, and for endorsements are subject to a filing fee of \$10.

J. Rates and rules submitted together with the filing described in item A are subject to an additional \$10 filing fee, for a total of \$20.

K. A group of three companies submitting identical filings are subject to a \$10 filing fee for each company for a total of \$30.

L. A filing for nonadoption or only changing the effective date of a prior rate service organization filing are subject to a \$10 filing fee. If the same filing also includes three endorsements replacing those filed on their behalf by the rate service organization, the filing fee remains the same.

Department of Commerce

Proposed Rules Relating to Subdivided Land

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.

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

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

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

Authority for the adoption of these rules is contained in Minnesota Statutes, section 83.38. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

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

2810.3200 BLANKET ENCUMBRANCES.

The subdivider shall not sell lots, units, parcels, or interests within a subdivision subject to a blanket encumbrance unless one or more of the following conditions are met:

A. and B. [Unchanged.]

C. A bond, cash, or certified check, ~~or irrevocable bank letter of credit issued by a bank authorized to do business in this state~~ is furnished to the commissioner in the name of the state for the benefit and protection of purchasers of the lots, units, parcels, or interest, in such amount and subject to terms as approved by the commissioner. The bond shall be executed by a surety company authorized to do business in this state and which has given consent to be sued in this state. The bond or agreement accompanying the cash, or certified check, ~~or irrevocable bank letter of credit~~ shall provide for the return of ~~moneys money~~ paid or advanced by any purchaser, on account of purchase of any lot, unit, parcel, or interest if the title contracted for is not delivered and a full release from each blanket encumbrance is not obtained. If it is determined that the purchaser by reason of default or otherwise, is not entitled to the return of the ~~moneys money~~, or any portion thereof, then the bond, cash, or certified check, ~~or irrevocable letter of credit~~ may be released by the commissioner in the amount of ~~moneys money~~ to which the purchaser of a lot, unit, parcel, or interest is not entitled.

D. and E. [Unchanged.]

2810.9930 FORMAT OF PUBLIC OFFERING STATEMENT.

1. to 21. [Unchanged.]

22. State whether the subdivider offers a resale program for those purchasers who wish to resell their lot. Yes or No. _____. State how the purchaser will resell his lot in the absence of such a program. List any factors which may limit or affect the purchaser's ability to resell his lot.

~~The purchaser's reference to financial statements and the signature lines should be added to the format, as follows:~~

~~PURCHASER SHOULD CAREFULLY REVIEW THE ATTACHED FINANCIAL STATEMENTS OF THE SUBDIVIER (SEE EXHIBIT A).~~

Signatures of the Senior Executive Officer of the Subdivider:

(Title)

(Date)

Minnesota addendum.

PROPOSED RULES

In addition to the information required above, Public Offering Statements authorized for use in the State of Minnesota shall include the following:

1. A statement whether the subdivider holds any options to purchase adjacent properties, and if so, a description of such options and the location and zoning of the adjacent properties.

2. A statement indicating whether there is as of the date of registration an existing market for resale of any properties sold pursuant to this offering.

3. The material terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, a statement of the subdivider's efforts to remove such lien or encumbrance, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands.

4. ~~(a) PURCHASER SHOULD CAREFULLY REVIEW THE ATTACHED FINANCIAL STATEMENTS OF THE SUBDIVIDER (SEE EXHIBIT A).~~

(b) A financial statement of the subdivider as of the end of the subdivider's most recent fiscal year, audited by an independent certified public accountant should be attached hereto as Exhibit A; and, if the fiscal year end of the subdivider is in excess of 90 days prior to the date of filing the application, a financial statement, which may be unaudited, as of a date within 90 days of the date of application should be attached to this as Exhibit B.

(c) All registration statements filed with the Commissioner shall include a manually signed and dated consent of the accountant to the use of his name and his report in the public offering statement.

5. ALL SIGNATURES REQUIRED BY THESE RULES MUST BE MANUAL SIGNATURES.

6. 5. The name, principal address and telephone number of the subdivider and of its offices and agents in this state.

7. 6. A statement asserting that the subdivision is in compliance with federal, state and local environmental quality standards. If the subdivision is not in compliance, a listing of the steps to be taken, if any, to insure compliance.

2810.9940 FORMAT FOR REGISTRATION OF SUBDIVIDED LANDS BY NOTIFICATION.

File No. _____
Date Approved _____
Date Denied _____
Examiner _____
Commissioner _____

REGISTRATION OF SUBDIVIDED LANDS BY NOTIFICATION

Minnesota Statutes, section 83.23

This form is to be prepared and filed pursuant to Minnesota Statutes, section 83.23 and mailed to:

State of Minnesota
Department of Commerce
Registration and Licensing Division
5th Floor, Metro Square Bldg.
Saint Paul, Minnesota 55101

1. to 7. [Unchanged.]

8. State the condition of title to the land to be subdivided, including, but not limited to, a statement reflecting all encumbrances, deed restrictions, and covenants applicable to the title and state the condition of the title as recorded as of a date 30 days prior to the filing of this application. THE STATEMENTS REQUIRED BY THIS PARAGRAPH MUST BE AUTHORIZED BY A LICENSED PRACTICING AN ATTORNEY WHO IS NOT A SALARIED EMPLOYEE, PARTNER, OFFICER, OR DIRECTOR OF THE SUBDIVIDER OR AN AGENT OF THE SUBDIVIDER, AND THE ATTORNEY SHALL CERTIFY AS PART OF THE STATEMENT THAT THE ATTORNEY ENJOYS SUCH A STATUS; LICENSED TO PRACTICE IN THE STATE IN WHICH THE LAND TO BE SUBDIVIDED IS LOCATED OR BY A TITLE INSURANCE COMPANY ACCEPTABLE TO THE COMMISSIONER.

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

9. to 15. [Unchanged.]

16. Attach an irrevocable appointment of the commissioner to receive service of any lawful process, any civil proceeding arising under this act against the subdivider, or his personal representative, in accordance with part 2810.9920.

THE SUBDIVIDER CONSENTS TO PERMIT INSPECTION OF THE LOTS, PARCELS, UNITS OR INTERESTS TO BE OFFERED AND FURTHER TO PERMIT INSPECTION OF ITS BOOKS, RECORDS, ACCOUNTS, AND FILES BY THE COMMISSIONER OF COMMERCE OR HIS DESIGNEE WITH REFERENCE TO THE SALE OF THE SUBDIVIDED LANDS DESCRIBED HEREIN, AND AGREES TO PROVIDE THE COMMISSIONER WITH SUCH ADDITIONAL INFORMATION WITH RESPECT TO THE SALE OF THESE SUBDIVIDED LANDS AS HE MAY REQUIRE.

The undersigned certifies that he has read the contents of the above form and the exhibits appended hereto and certifies that he has personal knowledge of the contents hereof and knows the responses set forth are true and accurate.

Dated this _____ day of _____

SUBDIVIDER

BY ITS _____

Subscribed and sworn to before me this _____ day of _____

A \$100 fee must be filed with this application. Make check payable to Treasurer, State of Minnesota.

Department of Economic Security

Proposed Rules Governing Fees Charged to Qualified Rehabilitation Consultants and Approved Vendors for Rehabilitation Services

Notice of Withdrawal of Proposed Rules

Notice is hereby given that the Department of Economic Security has withdrawn the above-entitled proposed rules (MN Rules 3325.0010-.0040) which were published in the *State Register* on Monday, October 15, 1984 (9 S.R. 762).

Barbara Beerhalter
Commissioner

Department of Energy and Economic Development Energy and Economic Development Authority

Proposed Emergency Rules Relating to the Technology Product Loan Program

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for the Technology Product Loan Program. The agency is authorized by Minnesota Statutes 116M.03, subdivision 4, to adopt emergency rules for its financial assistance programs. This notice supercedes the notice published at *State Register*, Volume 9, #28, pages 1544-48, on January 7, 1985 [SR 1544].

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency in support of or in opposition to the proposed emergency rules, and comments are encouraged. Any comments received in response to the January 7, 1985 notice will become part of the record in this matter. With publication of this notice in the January 14, 1985, *State Register*, written comments must be received by the agency no later than 4:30 p.m. on February 8, 1985. Written comments should be sent to:

Rosemary T. Fruehling, Director
Office of Software/Courseware
Technology Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612-297-1554

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

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

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days, although the proposed emergency rules may be continued in effect for an additional period of up to 180 days if the agency publishes a separate notice to such effect in the *State Register* and mails the same notice to all persons on the agency's list to receive notice of rulemaking proceedings. The proposed rules were published at *State Register*, Volume 9, #28, on pages 1544-48 [SR 1544].

A free copy of the proposed emergency rules is available by contacting Dr. Fruehling at the above address.

January 14, 1985

Mark B. Dayton, Commissioner of Energy
and Economic Development Department and
Chairman of the Minnesota Energy and
Economic Development Authority

Higher Education Coordinating Board

Proposed Rules Relating to State Scholarships and Grants; Adding Eligible Schools

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Higher Education Coordinating Board proposes to adopt the above-entitled rules without a public hearing. The Executive Director 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 14.21-14.28 (1982).

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

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 14.13-14.15 (1982).

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

Rose Herrera Hamerlinck
Minnesota Higher Education
Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
612/296-7963

Authority for the adoption of these rules is contained in Minnesota Statutes section 136A.111 (1982). 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 from Rose Herrera Hamerlinck, Higher Education Coordinating Board, upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for

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

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 Herrera Hamerlinck, Higher Education Coordinating Board.

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 Herrera Hamerlinck at the above address.

December 27, 1984

David A. Longanecker
Executive Director
Minnesota Higher Education
Coordinating Board

Rule as Proposed

4830.0300 ELIGIBLE SCHOOLS.

Subpart 1. Annual list. Annually the board shall adopt by resolution a list of schools at which a state scholarship or grant-in-aid may be used. Schools may be added to the list by the board anytime during the school year.

Subp. 2. [Unchanged.]

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

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

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

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Energy and Economic Development Energy and Economic Development Authority

Adopted Rules Governing School Energy Conservation Investment Loans

The rules proposed and published at *State Register*, Volume 9, Number 17, pages 822-826, October 22, 1984 (9 S.R. 822) are adopted with the following modifications:

Rules as Adopted

8300.2503 MAXIMUM LOAN AMOUNT.

To assure equitable statewide distribution of loan funds, given that loans will be issued on a first-come-first-served basis, the authority shall establish three equal allocations of the \$30 million appropriated to this program to be divided among small, medium, and large school districts. Small districts are defined as having less than 900 students and four classroom buildings or less. Small districts are eligible for up to \$250,000 per district. Large districts are defined as having greater than 5,000 students or more than ten classroom buildings. Large districts are eligible for up to \$1,000,000 per district. All other districts are defined as medium school districts and are eligible for up to \$500,000 per district. Cooperative vocational centers and any

other eligible educational facilities that are not included in school districts are limited to \$250,000. If less than 33 percent of any of the three allocations is used within six months from the effective date of parts 8300.2500 to 8300.2509, the authority may redistribute ~~funds~~ that fund equally among the three allocations.

8300.2506 LOAN APPROVAL.

Subpart 1. Authority approval. The authority shall approve loans that comply with parts 8300.2502 to 8300.2505, on a first-come-first-served basis based ~~as~~ on the order in which eligible and complete loan applications are received by the authority. If eligible and complete loan applications received at the same time cannot all be funded due to lack of available funds, the authority shall approved loans so that each affected application receives an equal percentage of the eligible loan amount request.

Department of Energy and Economic Development Minnesota Energy & Economic Development Authority

Emergency Adopted Rules Relating to General Procedures, Small Business Development Loan Program, and Minnesota Fund Loans

The rules proposed and published at *State Register*, Volume 9, Number 17, pages 826-834, October 22, 1984 (9 S.R. 826) are adopted with the following modifications:

Emergency Rules as Adopted

8300.3011 [Emergency] DEFINITIONS.

Subpart 1. Statutory terms. The definitions in Minnesota Statutes, sections 116J.88 and 472.03 and part 8300.0100 apply to parts 8300.3010 to 8300.3035 [Emergency].

Subp. 2. Project. "Project" means that which is funded or secured or is proposed to be funded or secured by financial assistance.

8300.3012 [Emergency] PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS.

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

A. a written history of the business ~~entity~~;

D. A marketing plan that describes:

(1) the industry the ~~project~~ applicant is in;

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

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

(4) the duration and conditions of the applicant's contracts currently in place; and

(5) the percentage of annual sales volume for each major customer over the previous three years.

F. A resolution of support or other comparable preliminary approval from the local government unit with respect to the project to be financed or secured with financial assistance.

H. Certification that the employer does not discriminate in employment in a manner contrary to applicable federal or state laws and regulations.

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

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

ADOPTED RULES

A. a management summary of the plan including:

- (7) form of and purpose for the financial assistance; ~~and~~
- (8) purpose for undertaking the project; and
- (9) business goals;

8300.3013 [Emergency] COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

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

E. guarantees or other assurances of repayment of affiliates of the applicant or other interested parties with respect thereto;

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

G. bond insurance or other credit enhancements; and

H. assignments of leases or rents on property or equipment.

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

8300.3014 [Emergency] PROCEDURES FOR APPLICATION PROCESSING.

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

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

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

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

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

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

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

The commissioner shall determine if there is sufficient collateral for the financial assistance. The submission of the application by the commissioner to the authority at a board meeting shall be deemed conclusive evidence that the commissioner has made the determinations required pursuant to this subpart.

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

If the application is rejected due to economic feasibility, the applicant may, within 30 days after written notification by the commissioner, request that the commissioner submit the rejected application to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established.

If so submitted, the authority ~~approves~~ must evaluate the application at its board meeting, the application will be treated in accordance with subpart 9.

Subp. 8. Findings of public purpose for small business and business loans. In addition to the economic feasibility review in

subpart 6, the applicant must certify that the project assists in fulfilling the purposes of the act, including the applicable preferences and priorities in Minnesota Statutes, section 116J.89, ~~including, but not limited to~~ or one or more of the following criteria.

G. If the financial assistance shall have the effect of a transfer of employment from one area of the state to another, ~~the authority shall determine~~ that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state.

Subp. 9. Authority evaluation procedure. Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval. If the authority disapproves the application, the commissioner shall so notify the applicant. If the authority approves the financial assistance, it shall pass a preliminary or a final resolution giving approval to the project to be financed and stating in either the preliminary or final resolution or combination of both the name of the owner; a brief description of the project; the maximum amount of the financial assistance; bonds to be issued or the maximum amount of the loan to be made or the maximum amount of the loan to be guaranteed or insured, whichever is applicable; and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority financial assistance. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. If the financial assistance is funded by bonds, then passage of a preliminary and a final resolution as provided in subpart 10 are required before financial assistance is approved. Throughout this process if the authority does not extend financial assistance, the authority shall remain without liability to the applicant.

Subp. 10. Funding of financial assistance by bonds. If the authority intends to fund the financial assistance by issuing bonds, the authority shall first pass a preliminary resolution. The preliminary resolution must not obligate the authority to issue bonds or to fund financial assistance, but must only constitute an expression of current intention of the authority to issue bonds or to fund the financial assistance. If the authority subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant, market conditions, availability of bond issuance authority, and other ~~financial~~ conditions that the authority deems necessary and the authority decides in accordance with generally accepted commercial lending practices to fund the financial assistance, the authority shall pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance. The final resolution must specify the terms and conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the authority at any time prior to the final resolution of the authority without liability to the authority, and may impose any conditions or requirements that the authority deems desirable. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the authority does not extend financial assistance, the authority shall remain without liability to the applicant.

8300.3022 [Emergency] ELIGIBLE LOANS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

Subp. 3. Size of eligible loans. The principal amount of any financial assistance in the form of bonds to be financed by the authority may be greater than \$250,000, but may not exceed the maximum amount permitted to be loaned to an eligible small business as defined in the act for the total value of eligible items listed in subpart 2.

Subp. 4. Equity requirements. The maximum loan percentage of the project costs for equipment is 75 percent and for all other authorized expenses is 80 percent. Instead of an equity contribution, the authority shall accept adequate collateral to serve as an equity requirement which if contributed to the financial assistance would make the maximum loan percentage of the project costs for equipment equal 75 percent and for all other authorized expenses equal 80 percent. The authority may require a lower loan to project percentage based upon the economic feasibility of the application. The authority may accept letters of credit or other credit enhancements as part of the equity contribution by the applicant.

Subp. 7. Security requirements. Financial assistance, either for real property or equipment, must be secured as follows with the best available security including one or more of the following:

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

- (1) a senior, junior, or parity lien on other assets of the applicant; or
- (2) a senior, junior, or parity lien on assets of certain owners, officers, and affiliated persons of the applicant

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

ADOPTED RULES

(including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses)-; or

~~D.~~ (3) a guarantee of owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses), or other related entities such as subsidiaries or parent corporations of the applicant-; or

~~E.~~ (4) additional forms of security, if necessary to strengthen the authority's collateral position on the financial assistance.

~~F.~~ D. In addition to or in substitution for any of the items A to ~~E~~ C, any guarantee or other collateral or security, as required by insurers or other providers of collateral or security with respect to the bonds, other than the authority, or as required by the authority in accordance with generally accepted commercial lending practices.

8300.3023 [Emergency] DEBT SERVICE RESERVE FUND FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

In conjunction with each amount of financial assistance it extends, the authority shall establish and fund a debt service reserve fund sufficient to cover approximately 12 months' debt service or such lesser amount to ensure the tax exempt status of interest on the bonds if such bonds are intended to be tax exempt. The reserve must be funded through the proceeds of the bonds to be issued and sold in conjunction with each particular amount of financial assistance extended. The interest earned on the debt service reserve fund must accrue to the benefit of the applicant except to the extent necessary to ensure the tax exempt status of the interest on the bonds if such bonds are intended to be tax exempt. This amount must be applied to offset the principal and interest payments on an annual basis or to redeem bonds prior to maturity provided the financial assistance is current.

8300.3024 [Emergency] FINAL RESOLUTION FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

After the authority passes a preliminary resolution, the authority may pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance to the applicant, both as discussed in part 8300.3014, subpart 10. The final resolution for an application under the program depends, in part, upon a determination that there are no adverse changes in the financial condition or key personnel of the applicant, market conditions, availability of bond issuance authority, and other ~~financial~~ conditions that the authority deems necessary in accordance with generally accepted commercial lending practices.

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

8300.3030 [Emergency] PURPOSE FOR MINNESOTA FUND LOANS.

The Minnesota Fund loan program issues business loans for fixed-asset financing for new and existing businesses. The authority shall make business loans for fixed asset financing for new and existing businesses from the Minnesota Fund in compliance with the act, Minnesota Statutes, chapter 472, as now in effect, and as amended from time to time and parts 8300.3010 to 8300.3014 [Emergency] and 8300.3030 to 8300.3035 [Emergency]. Under the act, Minnesota Statutes, section 472.11, subdivision 8, the local unit of government must pass and file a resolution in support for the project which stipulates the project's economic benefits to the local community.

8300.3031 [Emergency] ELIGIBILITY OF PROJECT FOR MINNESOTA FUND LOANS.

An applicant for financial assistance from the Minnesota Fund established under Laws of Minnesota 1984, chapter ~~582~~ 583, section ~~42~~ 36, shall submit to the commissioner an application form approved by the authority. The amount applied for cannot exceed 20 percent of the eligible project costs. The applicant shall provide the commissioner with written verification that an amount at least equal to ten percent of the eligible project costs has been or will be committed by the applicant or local development agency to the project. The applicant shall provide the commissioner with a written commitment from the lender who provides the 70 percent financing. The project must meet the requirements of the act, Minnesota Statutes, chapter 472, as now in effect and as amended from time to time and parts 8300.3010 to 8300.3014 [Emergency] and 8300.3030 to 8300.3035 [Emergency]. If the money to be loaned is from a source other than the Minnesota Fund, then the eligibility criteria required by the source will be imposed.

8300.3033 [Emergency] INTEREST RATE FOR MINNESOTA FUND LOANS.

The interest rate of financial assistance from the Minnesota Fund is ~~five~~ three percentage points below a full faith and credit obligation of the United States government of comparable maturity, as of five working days before closing or the authority shall set interest rates at a negotiated rate after reviewing market rates and comparable sources of financing available to the applicant at the time the financial assistance is extended.

APPLICATION. Until their expiration, Minnesota Rules, parts 8300.3010 to 8300.3035 [Emergency] supercede the following permanent parts: 8300.1500, 8300.1600, 8300.1700, 8300.1800, 8300.1900, 8300.2100, and 8300.2200, whenever a conflict in meaning appears in parts 8300.0100 to 8300.2200 and parts 8300.3000 to 8300.3004 [Emergency]. For any project for which an application for financial assistance has been submitted to the commissioner prior to the effective date of parts 8300.3010 to 8300.3035 [Emergency], the application need not comply with part 8300.3012 [Emergency], subparts 2 and 3.

Department of Labor and Industry**Adopted Rules Governing Workers' Compensation; Medical Fees**

The rule(s) proposed and published at *State Register*, Volume 9, Number 20, pages 1035-1036, November 12, 1984 (9 S.R. 1035) is adopted as proposed.

OFFICIAL NOTICES

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

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

**Department of Human Services
Mental Retardation Division****Outside Opinion Sought Concerning Proposed Rules Governing Grants to County Boards for Semi-Independent Living Services (SILS) for Persons with Mental Retardation**

Notice is hereby given that the Minnesota Department of Human Services is seeking information or opinions from sources outside the agency in preparing to promulgate permanent rules to replace 12 MCAR §§ 2.02001 to 2.02011 (Temporary), also known as Rule 20 (Temporary), governing grants to county boards for semi-independent living services for persons with mental retardation. The rules establish procedures for implementing a statewide system of semi-independent living services to assist county boards in reducing the utilization of intermediate care services in state hospitals and community residential facilities for persons with mental retardation. The promulgation of permanent rules is authorized by Minnesota Statutes, section 252.275, subdivision 6.

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

The Minnesota Department of Human Services requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing.

Written statements should be addressed to:

Mary Jo Verschay
Mental Retardation Division
Department of Human Services
Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received over the telephone at 612/297-4982 between the hours of 9 a.m. and 4 p.m.

All statements of information and comment shall be accepted until further notice. Any written material received by the Department of Human Services shall become a part of the rule file in the event that the rules are promulgated.

Department of Human Services Professional Services Section

Outside Opinion Sought Concerning Rules Governing Prior Authorization for Health Services and Second Surgical Opinion as a Condition for MA and GAMC Reimbursement

Notice is hereby given that the Minnesota Department of Human Services is seeking information or opinions from sources outside the agency in preparing to promulgate new rules to replace Minnesota Rules, parts 9505.5000 to 9505.5030 (Emergency) establishing the procedures for prior authorization of health services and the requirement of a second surgical opinion as conditions of reimbursement to providers of health services for recipients of medical assistance and general assistance medical care. The promulgation of these rules is authorized by Minnesota Statutes, Section 256.991.

These rules establish standards and criteria for deciding which medical assistance and general assistance medical care services require prior authorization and for deciding whether a second medical opinion is required for an elective surgery. The rules also establish procedures for the prior authorization and second surgical opinion programs.

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

Ann Grossman
Department of Human Services
Professional Services Section
2nd Floor—Space Center Building
444 Lafayette Road
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 297-2380.

All statements of information and comment will be accepted until further notice is given. Any written material received by the Minnesota Department of Human Services shall become a part of the record in the event that the rules are promulgated.

Pollution Control Agency Solid and Hazardous Waste Division

Outside Opinions Sought Concerning Proposed Amendments to Minnesota Hazardous Waste Rules Governing the Regulation of High pH Waste Which is Reused or Recycled

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is seeking information and opinions from sources outside the MPCA regarding possible amendments to portions of the Minnesota hazardous waste rules, governing

waste having a pH greater than 12.5 which is recycled or reused. Rules being considered for possible amendment include Minn. Rules parts 7045.0120, 7045.0125 and 7001.0520.

Consideration is being given to either exempting waste having a high pH which is recycled or reused from regulation under the hazardous waste rules provided specific conditions are met, or including specific requirements for the reuse/recycle of high pH waste meeting specific conditions. Conditions could include pH level, irritative properties, and reporting and other management requirements.

The MPCA requests information and comments concerning the subject matter of the proposed amendments. Written or oral information or comments will be accepted until February 4, 1985. Written statements should be addressed to: Karen A. Ryss, Minnesota Pollution Control Agency, Solid and Hazardous Waste Division, 1935 West County Road B2, Roseville, Minnesota 55113. Oral statements will be received during regular business hours at 612/297-1793.

January 7, 1985

Michael Robertson
for
Thomas J. Kalitowski
Executive Director

Pollution Control Agency Solid and Hazardous Waste Division

Outside Opinion Sought Regarding Amendments to Minnesota Rules Parts 7001.0650, 7045.0135 and 7045.0214 Governing the Management of Hazardous Waste

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is seeking information and opinions from sources outside the MPCA regarding the amendment of the above captioned rules to incorporate recent amendments to the United States Environmental Protection Agency's hazardous waste regulations. The MPCA is considering the following amendments:

—Minn. Rules part 7045.0135, subpart 4, items E and F would be amended to change the hazard class under which warfarin and zinc phosphide are listed. Waste products containing either warfarin at concentrations of 0.3 percent or less, or zinc phosphide at concentrations of 10 percent or less would be listed as hazardous wastes instead of the present listing as acutely hazardous wastes.

—Minn. Rules part 7045.0214, subpart 3 would be amended to exclude waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry from regulation as a hazardous waste providing the material does not exhibit any characteristics of a hazardous waste.

—Minn. Rules part 7001.0650, subpart 3 would be amended to include a provision to allow the owner or operator of a hazardous waste facility 30 days to respond to a notice that part A of the permit application is deficient and cure or explain the alleged part A deficiency.

—The MPCA requests information and comments concerning the subject matter of the proposed amendments. Written or oral information or comments will be accepted until January 28, 1985. Written statements should be addressed to: Karen A. Ryss, Minnesota Pollution Control Agency, Solid and Hazardous Waste Division, 1935 West County Road B2, Roseville, Minnesota 55113. Oral statements will be received during regular business hours at 612/297-1793.

January 7, 1985

Michael Robertson
for
Thomas J. Kalitowski
Executive Director

Department of Public Safety Driver and Vehicle Services Division

Outside Opinion Sought Regarding Proposed Revision of Rules of the State Department of Public Safety Governing Deputy Registrars

Notice is hereby given that the State Department of Public Safety is seeking information or opinions from sources outside

OFFICIAL NOTICES

the agency in preparing to amend existing rules governing deputy registrars, Minnesota Rules 7406.0100 to 7406.0600, including but not limited to statutory changes allowing incorporation.

The promulgation of these rules is authorized by Minnesota Statutes section 168.33, which authorizes the Commissioner of Public Safety to appoint deputy registrars and for cause discontinue such appointments.

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

Marlene Swanson
Room 161 Transportation Building
John Ireland Boulevard
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone at 612-296-2001 and in person at the above address.

All statements of information and comment shall be accepted until February 15, 1985. Any written material received by the State Department of Public Safety shall become part of the rulemaking record in the event that the rules are promulgated.

Paul J. Tschida
Commissioner of Public Safety

Office of the Secretary of State

Notice of Unscheduled Vacancies in Multi-member State Agencies

Notice is hereby given to the public that unscheduled vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0497, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is February 5, 1985.

COUNCIL FOR THE HANDICAPPED has 1 vacancy open for a member. The council advises the Governor, legislature, service providing agencies, and the public on the needs and potentials of people with physical, mental or emotional disabilities. Members are appointed by the Governor. Bi-monthly meetings; members receive \$35 per diem plus expenses. For specific information contact the Council for the Handicapped, Suite 208, Metro Square Bldg., St. Paul 55101; (612) 296-6785.

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS has 1 vacancy open for a public member. The board licenses administrators of nursing homes, board/care homes and mental retardation facilities; conducts studies of nursing home administration; approves continuing education programs for administrators; investigates complaints and allegations of rule violations. Members are appointed by the Governor. Members must file with EPB. Quarterly meetings; members receive \$35 per diem. For specific information contact the Board of Examiners for Nursing Home Administrators, 717 Delaware St. S.E., Mpls. 55414; (612) 623-5406.

State Planning Agency Human Services Division Developmental Disabilities Program

Announcement of Meeting of Institutional Care and Economic Impact Planning Board

The next meeting of the Institutional Care and Economic Impact Planning Board will be held on Friday, January 18, 1985 from 10:00 a.m. to 12:00 noon in Conference Rooms A and B of Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. The meeting is open to the public but seating is limited.

For additional information contact:

Colleen Wieck, Executive Director
Developmental Disabilities Program
(612) 296-9964

Teachers Retirement Association

Meeting Notice, Board of Trustees

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Thursday, February 4, 1985, at 9 a.m. in Room 302, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota to consider matters which may properly come before the Board.

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

Office Space Wanted for the Department of Corrections

The Dept. of Administration desires proposals for rental of approx. 18,075 usable sq.ft. of office space, & approx. 600 usable sq.ft. of storage space for the Dept. of Corrections. Close proximity to the State Capitol Complex is desired. Contact the Dept. of Admin., Real Estate Mgmt Div., 50 Sherburne Ave., Rm G-22 St. Paul MN 55155 (612) 296-6674. Proposals must be submitted by 4:30 p.m. (CST) on Friday, February 15 1985.

Department of Administration Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
07-100-32994, 07-100-32872	Infant/Child Car Safety Seats	Public Safety	Various	Contact buyer
29-000-37217	Fish Feed	Natural Resources	Lanesboro, 55949	Contact buyer
78-620-20660	Structural Tubing	MN Correctional Facility	Stillwater	Contact buyer
79-000-46275	Purchase of Photocopy Machine	Transportation	St. Paul	Contact buyer
02-110-45385	Purchase of Photocopy Machine	Administration	St. Paul	Contact buyer
78-830-07336	Dishwasher	MN Correctional Facility	St. Cloud	Contact buyer

STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
REBID Sch 113-D	Patrol Cars	Various	Various	Contact buyer
21-200-09106, 4689	DVR Overview 1984	Economic Security	St. Paul	Contact buyer
02-430-44556	PBX Telephone System	Administration	St. Paul-Stillwater	Contact buyer
79-000-46039, etc.	Self Propelled Road Brooms	Transportation	Various	Contact buyer
78-830-07318	Lavatories & Flush Valves	MN Correctional Facility	St. Cloud	Contact buyer
26-071-14848, 14848	Purchase of Photocopy Machine	Mankato State University	Mankato	Contact buyer
32-100-12287	Conwed Accoustical Panels	Pollution Control	Roseville	Contact buyer
12-600-4957-8-9- 81453-4-5	Food for the Preschooler Volume I, II, III	Health	Minneapolis	Contact buyer
26-071-14732 Rebid	Motomatic Control System Lab	Mankato State University	Mankato	Contact buyer

Contact 296-6152 for referral to specific buyers.

Department of Economic Security State Job Training Office

Request for Proposals for Conversion of Data System for Use in Minnesota

The Minnesota Department of Economic Security, State Job Training Office is requesting proposals for the conversion of the Washington State Job Training Partnership Act (JTPA) Client Tracking System for use in Minnesota.

The JTPA Legislation mandates that such a system be installed and maintained for each State.

Approximately \$100,000.00 will be available to fund the conversion project.

Request for Proposal applications are available upon request.

Inquiries and requests should be directed to:

Joan Bodelson
Information Services
390 North Robert Street
St. Paul, Minnesota 55101
(612) 296-9195

Request for Proposal Applications will be accepted until 4:00 P.M., Wednesday, January 30, 1985.

Department of Energy and Economic Development Energy Division Alternative Energy Engineering

Request for Proposals for Development of Fiber Fuel Burner Equipment Information

Proposals are requested from a mechanical or chemical engineer/s to work with the Energy Division of the Minnesota Department of Energy and Economic Development (MN-DEED), other State agencies, the fiber fuel industry, fiber fuel users, and another contractor, on a project to develop a fiber fuel Buyers' Guide for existing burner equipment.

The objective of this program is to provide the users of fiber fuel burners with consumer information.

Specifically, the engineer will:

- Visit completed installations and report on their economics and design.
- Report potential safety problems in the installations.

—Report on the fiber fuel burning costs associated with auditing, feasibility, burner purchase, installation, operation, and maintenance.

—Obtain economic data for the determination of return on investment and payback.

—Obtain information about how the installation was financed.

Funding for this study has been provided by MN-DEED.

The work scope and project are outlined in the RFP document.

The formal RFP may be requested and inquiries should be directed to:

S. Michael Holly
Alternative Energy Engineer
Minnesota Department of Energy and Economic Development
Energy Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul Minnesota 55101

It is anticipated that the activity to accomplish these services will not exceed a total cost to the State of \$4,000. The deadline for submission of completed proposals will be 4:30 p.m., February 13, 1985.

This notice does not obligate the State to complete the project. The State reserves the right to cancel this solicitation if it is considered to be in the best interest of the State.

Department of Energy and Economic Development Energy Division Alternative Energy Engineering

Request for Proposals for Development of a Fiber Fuel Burner Equipment Buyers' Guide

Proposals are requested from a mechanical or chemical design engineer/s to work with the Energy Division of the Minnesota Department of Energy and Economic Development (MN-DEED), other State agencies, the fiber fuel industry, fiber fuel users, and another contractor, on a project to develop a fiber fuel Buyers' Guide for existing burner equipment.

The objective of this program is to provide the users of fiber fuel burners with consumer information.

Specifically, it will:

—Describe capital cost problems encountered in different fiber fuel burning installations.

—Describe how costs can be minimized in the areas of auditing, feasibility, burner purchase, installation, operation, and maintenance through good initial buying habits.

—Describe how to purchase a fiber fuel burning installation that is safe.

—Evaluate engineering designs of different fiber fuel burners for cost minimization.

—Describe the payback and other economics of past conversions.

—List financing options.

Funding for this study has been provided by MN-DEED.

The work scope and project are outlined in the RFP document.

The formal RFP may be requested and inquiries should be directed to:

S. Michael Holly
Alternative Energy Engineer
Minnesota Department of Energy and Economic Development
Energy Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

STATE CONTRACTS

It is anticipated that the activity to accomplish these services will not exceed a total cost to the State of \$10,000. The deadline for submission of completed proposals will be 4:30 p.m., February 13, 1985.

This notice does not obligate the State to complete the project. The State reserves the right to cancel this solicitation if it is considered to be in the best interest of the State.

Hennepin County Department of Environment and Energy

Request for Submission of Qualifications and Proposals for Monitoring Air Quality in Downtown Minneapolis Area

Notice is hereby given that Hennepin County is requesting submission of qualifications and proposals from prospective consultants to monitor the air quality in the downtown Minneapolis area in connection with the County's planned 1000-ton-per-day waste-to-energy facility.

Proposals are to be submitted February 12, 1985, with interviews to be held February 27, 1985. Firms interested in receiving a complete Request for Qualifications and Proposals should contact:

Mr. Warren K. Porter, P.E.
Project Manager
Hennepin County Dept. of Environment and Energy
Room A-1603 Government Center
Minneapolis, Minnesota 55487-1630
Phone: 612-348-6848

Housing Finance Agency Home Improvement Division

Notice of Funding Availability for Residential Rental Energy Conservation

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

Community: Minneapolis
Participating Lenders:

Suburban National Bank
300 Prairie Center Drive
Eden Prairie, MN 55344
(612) 941-7100

St. Anthony National Bank
2401 Lowry Avenue N.E.
Minneapolis, MN 55418
(612) 781-6991

Minneapolis Community Development Agency
331 Second Avenue South, Suite 600
Minneapolis, MN 55401
(612) 348-2511

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

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

Department of Labor and Industry State Employees' Workers' Compensation Fund

Request for Proposals for Discount Pricing System on Volume Referrals from Rehabilitation Firms

The Minnesota State Employees' Workers' Compensation Fund is requesting proposals for bids for rehabilitation firms to submit a discount pricing system concerning volume referrals for rehabilitation services. An action plan encompassing tasks for QRC services with a design for timely completion of all referrals as requested.

Respondents should have prior experience in doing similar projects for government or private industry.

This request for proposals does not obligate the State to complete the project and the State reserves the right to cancel solicitation if it is considered to be in its best interest.

Questions and submission of proposals should be directed to Denise Fleury, Director of State Employees' Workers' Compensation Fund, 444 Lafayette Road, St. Paul, Minnesota 55101, telephone (612) 296-1093.

January 3, 1985

Department of Labor and Industry State Employees' Workers' Compensation Fund

Request for Proposals for Pilot Project to Design and Implement Workers' Compensation Cost Control Plan for State Agencies—Rehabilitation, Ergonomics, and Safety Industrial Hygiene

The Minnesota State Employees' Workers' Compensation Fund is requesting proposals for a pilot project(s) for selected state agencies for early intervention and containment for workers' compensation claims. The project goal is design and implementation of a permanent systematic plan for individual state agencies to control workers' compensation costs based on early intervention and rehabilitation, early return to work, modern principles of ergonomics and safety industrial hygiene.

Respondents should have prior experience in doing similar projects for government or private industry.

This request for proposals does not obligate the State to complete the project and the State reserves the right to cancel solicitation if it is considered to be in its best interest.

The Department has estimated that the cost of the project(s) should not exceed \$20,000.00 for each pilot project.

Questions and submission of proposals should be directed to Denise Fleury, Director of State Employees' Workers' Compensation Fund, 444 Lafayette Road, St. Paul, Minnesota 55101, telephone (612) 296-1093. All proposals must be received not later than February 15, 1985, at 2:00 P.M. Late proposals will not be accepted.

Department of Public Safety Communications Advisory Committee

Request for Proposals for Radio Communications Project Planning and Project Management Assistance

The Department of Public Safety is seeking a qualified consultant to assist in the development of a consolidated dispatch center in the Twin Cities metropolitan area.

The purpose of this project is to examine the practicality of combining five radio communication systems into a single, joint dispatch system. The result of this project will be an improved radio communications system that provides a higher quality of service to its users, an improved work environment for its operators, and an integrated management structure.

STATE CONTRACTS

The contract will be for four months and scheduled to end May 31, 1985. Estimated cost of the project is up to \$40,000. The deadline for submission of proposals is February 4, 1985.

Details are contained in a Request for Proposal. Copies of the Request for Proposal may be obtained by contacting:

Ken Bentfield
Criminal Justice Information System
Bureau of Criminal Apprehension
Minnesota Department of Public Safety
1246 University Avenue
St. Paul, Minnesota 55104
612-296-2252

Ramsey County

Request for Proposals for a Classification and Job Evaluation Study

Ramsey County is seeking proposals for the development of a new classification and job evaluation system for the County in order to comply with the 1984 Local Government Pay Equity Act for Minnesota political subdivisions. Ramsey County has 3500 employees in 27 departments plus a Medical Center with 2500 employees. Two proposals are sought; one covering all Ramsey County employment including the Medical Center, one for Ramsey County employment excluding the Medical Center.

Offerors will be asked to describe how they would meet the following objectives:

To develop a classification plan.

To develop a classification evaluation system based on a set of criteria which are not sex-biased, which are consistent with State law, and which allow for a single scale against which all jobs are measured.

To develop alternate strategies to integrate the evaluation results of the newly developed plan into the current compensation system.

To provide a classification and job evaluation system that is an ongoing tool so that as classes change or are created, the system can be applied to adequately measure the work value of the new or changed class.

Those interested in receiving a complete Request for Proposal should contact Donald E. Mead, Ramsey County Civil Service Administrator, Room 1845 Court House, St. Paul, Minnesota, 55102, by January 21, 1985.

State Designer Selection Board

Request for Proposals for State Projects

TO ARCHITECTS AND ENGINEERS REGISTERED IN MINNESOTA:

The State Designer Selection Board has been requested to select designer for two projects for the Department of Military Affairs. Design firms who wish to be considered for this project should submit proposals on or before 4:00 P.M., February 6, 1985, to George Iwan, Executive Secretary, State Designer Selection Board, Room G-10, Administration Building, St. Paul, Minnesota 55155-1495.

The proposal must conform to the following:

1. Six copies of the proposal will be required.
2. All data must be on 8½" × 11" sheets, soft bound.
3. The cover sheet of the proposal must be clearly labeled with the project number, as listed in number 7 below, together with the designer's firm name, address, telephone number and the name of the contact person.
4. The proposal should consist of the following information in the order indicated below:
 - a) Number and name of project.
 - b) Identify of firm and an indication of its legal status, i.e. corporation, partnership, etc.
 - c) Names of the persons who would be directly responsible for the major elements of the work, including consultants, together with brief descriptions of their qualifications. If the applicant chooses to list projects which are relevant in type, scale, or character to the project at hand, the person's role in the project must be identified.

d) A commitment to enter the work promptly and to assign the people listed in "C" above and to supply other necessary staff.

e) A list of design projects in process or completed in the three (3) years prior to the date of this request for agencies or institutions of the State of Minnesota, including the University of Minnesota, by the firm(s) listed in "b" together with the approximate fees associated with each project.

f) A section of not more than fourteen (14) faces containing graphic material (photos, plans, drawings, etc.) as evidence of the firm's qualification for the work. The graphic material must be identified. It must be work in which the personnel listed in "c" have had significant participation and their roles must be clearly described.

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

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

- a) A copy of your firm's current certificate of compliance issued by the Commissioner of Human Rights; or
- b) A statement certifying that your firm has a current certificate of compliance issued by the Commissioner of Human Rights; or
- c) A statement certifying that your firm has not had more than 20 full-time employees in Minnesota at any time during the previous 12 months.

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

- a) Enclose a self-addressed stamped postal card with the proposals. Design firms will be notified when material is ready to be picked up. Design firms will have two (2) weeks to pick up their proposals, after which time the proposals will be discarded.
- b) Enclose a self-addressed stamped mailing envelope with the proposals. When the Board has completed its review, proposals will be returned using this envelope.

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

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

7a) PROJECT—2-85

**Bulk Fuel Storage & Dispensing Facility
Camp Ripley
Little Falls, Minnesota**

Project Description:

A) **General:** The proposed project consists of a petroleum, oil, and lubricant (POL) Storage and Dispensing facility to include seven 50,000 gallon, above-ground, steel tanks surrounded by security fencing and with security lighting. The facility will include a 400 square foot building to house the POL office and control room. Another block building, 220 square feet in size, will be constructed to house four filter separators and product receiving/dispensing pumps. All utility connections are included in this construction.

B) **Site Location:** Camp Ripley, Little Falls, Minnesota.

C) **Project Details:** The POL Storage and Dispensing Facility will consist of seven 50,000 gallon above-ground steel tanks for gasoline (MOGAS), diesel fuel (DF), jet engine fuel (JP-4) and heating fuel storage complete with necessary piping and valves. Facility will include a 400 square foot concrete masonry block building with slab on grade concrete floor. The building will be completely winterized and will be designed with mechanical equipment that will utilize the most economical source of energy available at the proposed location. The structure will provide office space, latrine with shower, and control equipment for POL products. Construction of an impermeable spill basin with dike is also included. Additionally, a second block building will be included that will be utilized to shelter four filter separators and product receiving/dispensing pumps. All utility connections are included in this construction.

D) **Estimated Project Construction Cost:** \$632,000.00.

Work to be Performed by the Designer: The work basically includes: acquisition of the topographic survey and soil test

STATE CONTRACTS

borings; the design of the complete facility; the preparation of required drawings, specifications and allied documents to include bidding documents for same; preside at bid opening; the handling of contract documents; the general supervision of the construction work for the owner; assistance in the preparation of supplemental agreements; review and approval of shop drawings and payment requests; assistance in final acceptance of the work.

Designers Fee for the Work: Government established at 6.1% of the construction cost of the work. This may appear lower than normal, but in fulfilling this contract, the Designer will be carrying out basic plan designs furnished by the owner. Preliminary work by the Designer will be minimal insofar as trial designs and presentations are concerned. The preliminary drawings for the work will be basically the final working drawings, partially completed. The work does not involve the Corps of Engineers in any way. The specification format will be the Designer's normal for commercial work, tailored for the project. We have experienced no difficulty in the past in engaging Designers for this type of work under this fee schedule.

7b) PROJECT—3-85

**National Guard Armory
Minneapolis, Minnesota**

Project Description:

A) **General:** The proposed project consists of a 33,017 square foot building, a 38,313 square foot enclosed military vehicle storage facility, a 40' x 40' bituminous and concrete helipad, 4112 square yards of bituminous privately dispensing system, 835 linear feet of security fencing and flag pole.

B) **Site Location:** Minneapolis, Minnesota.

C) **Project Details:** Single story facility will have concrete block walls faced with brick on the building exterior, slab on grade concrete floors, interior walls painted exposed block, assembly hall roof system, wood roof deck supported by laminated wood purlins supported by laminated wood beams, balance of roof systems steel deck supported by steel joists, metal doors and door frames, both wood and metal windows (depending on type and location), ceilings exposed wood deck (assembly hall), with balance of ceilings fire rated suspended, hot water heat utilizing No. 2 oil fired boilers. Construction to be in accordance with State of Minnesota Building and Energy Codes plus all other applicable codes and standards. This building is similar to typical school construction. Basic room areas include an assembly hall, offices, classrooms, storage areas, arms vaults, kitchen, firing range, locker rooms, washrooms, mechanical rooms and custodial rooms. Also included is a 38,313 square foot enclosed military vehicle storage facility utilizing concrete block walls with brick exterior, built-up roof and concrete floor.

D) **Estimated Project Construction Cost:** \$2,954,000.00.

Work to be Performed by the Designer: The work basically includes: acquisition of the topographic survey and soil test borings; the design of the complete facility; the preparation of required drawings, specifications and allied documents to include bidding documents for same; preside at the bid openings; the handling of contract documents; the general supervision of the construction work for the owner; assistance in the preparation of supplemental agreements; review and approval of shop drawings and payment requests; assistance in final acceptance of the work.

Designer's Fee for the Work: Government established at 5.5% of the construction cost of the work. This may appear lower than normal, but in fulfilling this contract, the Designer will be carrying out basic plan designs furnished by the owner. Preliminary work by the Designer will be minimal insofar as trial designs and presentations are concerned. The preliminary drawings for the work will be basically the final working drawings, partially completed. The work does not involve the Corps of Engineers in any way. The specification format will be the Designer's normal for commercial work, tailored for the project. We have experienced no difficulty in the past in engaging Designers for this type of work under this fee schedule.

NOTE: The designer for each of these projects will work directly with the Department of Military Affairs Facilities Management Officer, Major Wayne A. Johnson, Camp Ripley, Little Falls, Minnesota (telephone (612) 632-6631, extension 315). All questions relative to these projects should be referred directly to him.

John D. Nagel, Chairman
State Designer Selection Board

**Board of Vocational-Technical Education
Department of Economic Security
State Job Training Office****Request For Proposals For JTPA—Education Coordination Services For Special Needs Groups**

The State Board of Vocational-Technical Education and the State Job Training Office are seeking proposals to provide job training services to individuals having identified special needs. These individuals could include youth and/or adults who are handicapped, women, recovering chemically dependents, minorities, displaced homemakers, veterans or older workers (age 55 and over). All proposals should be jointly developed by local Job Training Partnership Act (JTPA) service delivery area agencies and local education agencies. Proposals must also include input from special needs, community agencies. The training services, which will be provided under contract, are outlined in the Request For Proposals (RFP). In addition, bidder's conferences and grant writing workshops will be conducted on January 22 in Rochester, January 29 in New Ulm, January 31 in Eveleth, February 5 and 12 in the metro area and February 14 in Detroit Lakes. The purpose of these meetings will be to provide training in grant writing, to discuss the RFP process and to answer any questions. For further information on these meetings or on the proposal application, contact Steve Frantz (612/296-3597) or Kay Tracy (612/296-6064). The formal RFP should be requested from:

Art Vadnais
State Board of Vocational-Technical Education
552 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-3753

A total of \$434,856 is available statewide for funding of these proposals. Proposals should be presented to the local JTPA service delivery area administrator by Friday, March 15, 1985 for review and approval by the local Private Industry Council. Proposals must be received by Art Vadnais at the above address by 4:30 on Monday April 15, 1985.

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
County of Marshall, Regular Division****Bennie Hanson, Appellant, v. Commissioner of Revenue, Appellee, Docket No. 4075****Findings of Fact, Conclusions of Law, and Order for Judgment Dated January 3, 1985**

The above-entitled matter came on for hearing before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, on October 18, 1984, in the Marshall County Courthouse in Warren, Minnesota.

This is an appeal from an Order of the Commissioner of Revenue dated February 3, 1984, assessing a penalty and interest against the Appellant for late filing of his 1981 Minnesota income tax return. The only issue is whether or not penalty and interest should be assessed against the Appellant.

Appellant, Bennie Hanson, appeared pro se. Ronald E. Hunter, Special Assistant Attorney General, appeared on behalf of Appellee.

From the evidence adduced at the trial and from the files and records herein, the Court now makes the following;

Findings of Fact

1. Appellant was a resident of Minnesota, married, and a cash-basis calendar year taxpayer during 1981.
2. On or about February 26, 1982, Appellant had his 1981 Minnesota income tax return prepared for filing, reflecting a combined taxable income of \$58,838, and an unpaid tax liability of \$7,244. On or about February 26, 1982, Appellant wrote a personal check for the total amount owed, \$7,244.
3. Appellant intentionally did not mail or otherwise deliver either his tax return or his personal check to the Commissioner of Revenue before the due date of April 15, 1982. Appellant was aware of the deadline for filing his 1981 return and readily admits that he chose not to file the return on time. He did not request an extension of time and does not dispute the accuracy of the return.
4. In 1969 the Appellant became embroiled in a dispute with Home Lumber Company about the suitability of building materials supplied by that company pursuant to Appellant's order. Appellant refused to pay for what he considered unsuitable materials and the company brought suit in Pennington County District Court. Two trials were held. A verdict favorable to the Appellant was rendered in the first trial. Upon motion of the company, however, a new trial was ordered. At the second trial, Appellant's counter claim was dismissed and the second trial resulted in a verdict in excess of \$7,000 against the Appellant. Appellant contacted numerous attorneys and public officials attempting to have the judgment reversed, but was unsuccessful in doing so. He contacted the Office of the Attorney General and requested help in getting the judgment reversed. However, the Attorney General's Office refused to intervene on his behalf.
5. Because the Attorney General's Office refused to represent him, the Appellant contends that the State refused to afford him the protection that he felt he was entitled to. He contended that his only recourse was to fail to pay the taxes. His implied contention seems to be that the Tax Court ought to direct the Attorney General's Office to represent him in an unrelated matter in the district court of Pennington County.
6. Appellant filed his 1981 income tax return at or about the same time that he filed his 1982 income tax return—sometime between February 28, 1983 and March 10, 1983. Appellant's bank statement indicates that Appellant's personal check for the 1981 tax liability was honored by Appellant's bank on March 10, 1983.
7. When the Department of Revenue became aware of Appellant's delinquent 1981 return, which was mistakenly treated as a timely filed 1982 return, the Commissioner issued an order dated February 3, 1984 assessing a 25 percent late filing penalty with interest thereon pursuant to Minn. Stat. § 290.53, subd. 2. The Order assessed a penalty of \$1811.00 plus \$730.29 interest for a total of \$2541.29.
8. Appellant filed a protest of the assessment with the Commissioner of Revenue. The Commissioner denied Appellant's request for abatement of the penalty and interest on April 13, 1984.
9. The attached Memorandum is hereby made a part of these Findings of Fact.

Conclusions of Law

1. The Appellant has not sustained the burden of showing a valid excuse for not filing or paying his 1981 income taxes on time.
 2. The Order of the Commissioner of Revenue must be affirmed.
- LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

January 3, 1985

By the Court,
John Knapp, Chief Judge
Minnesota Tax Court

State of Minnesota Tax Court

**Donald E. and Shirley Wiese, Appellants, v. Commissioner of Revenue, Appellee,
Docket No. 3975**

Findings of Fact, Conclusions of Law, and Order for Judgment Dated January 4, 1985

The above-entitled matter came before the Minnesota Tax Court on a written Stipulation of Facts and was submitted to Judge Earl B. Gustafson for decision.

Robert B. Fering and Mitchell H. Cox, of Wiese and Cox, Ltd., appeared for Appellants.

Amy Eisenstadt, Special Assistant Attorney General, appeared for Appellee.

The Court, having considered the arguments and briefs of counsel and upon all of the files and records herein, now makes the following:

Findings of Fact

1. On September 15, 1981, Appellants Donald and Shirley Wiese filed their 1980 Minnesota income tax return. As part of their return, they filed a Form M-1MT (Computation of Minimum Tax). This form was completed in accordance with the accompanying instructions and resulted in a Minnesota alternative minimum tax of \$10,773 and a Minnesota regular tax of \$18,244.
2. On July 2, 1982, Appellants filed a claim for refund alleging an overpayment of their 1980 Minnesota income tax in the amount of \$10,095. According to the refund claim, Appellants' Minnesota income tax liability was \$18,922, composed of Minnesota alternative minimum tax in the amount of \$677, and Minnesota regular tax in the amount of \$18,244.
3. Appellants' refund claim was denied pursuant to the Order of the Commissioner of Revenue dated July 22, 1983.
4. In determining their Minnesota alternative minimum tax in their refund claim, Appellants calculated a "regular federal tax as adjusted." This was calculated by adding 10 percent of their total capital gain to their federal taxable income and applying the tax taken from the federal tax tables. The "regular federal tax as adjusted" was subtracted from the amount computed under the alternative minimum tax formula, to determine an "adjusted federal minimum tax" in the amount of \$1,692.
5. On the 1980 federal income tax return filed with the Internal Revenue Service, Appellants were required to determine their federal tax from Schedule TC because they used income averaging.
6. If Appellants had used Schedule TC to determine the "federal tax as adjusted" in their refund claim, their "regular tax as adjusted" would have been \$40,886 and their "adjusted federal minimum tax," would have equaled \$21,160.

Conclusions of Law

1. Minn. Stat. § 290.091 provides that 50 percent of a taxpayer's capital gains shall be considered as a tax preference item for purposes of the Minnesota alternative minimum tax.
2. Minn. Stat. § 290.091 provides that the Minnesota alternative minimum tax shall equal 40 percent of the taxpayer's federal minimum tax liability.
3. Appellant's original 1980 Minnesota income tax return filed September 15, 1981 correctly states their income tax liability for that year.
4. The Order of the Commissioner of Revenue denying Appellants' claim for refund is affirmed.

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

January 4, 1985

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

ORDER FORM

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