

85, April 8

# STATE REGISTER

STATE OF MINNESOTA

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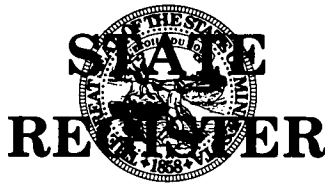
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### Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 9			
42	Monday Apr 1	Monday Apr 8	Monday Apr 15
43	Monday Apr 8	Monday Apr 15	Monday Apr 22
44	Monday Apr 15	Monday Apr 22	Monday Apr 29
45	Monday Apr 22	Monday Apr 29	Monday May 6

\*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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State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION** also.

**The PROPOSED RULES section contains:**

- Calendar of public hearings on proposed rules.
- Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
- Proposed amendments to rules already in existence in the Minnesota Rules.
- Proposed emergency rules.
- Withdrawal of proposed rules (option; not required).

**The ADOPTED RULES section contains:**

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

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

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

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

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

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
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# EXECUTIVE ORDERS

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## EXECUTIVE ORDER NO. 85-9

### Assigning Emergency Responsibilities To State Agencies; Repealing Executive Order No. 83-17, Executive Order No. 83-10

I, Rudy Perpich, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this executive order:

WHEREAS, natural and man-made disasters in major proportions have and will occur in part of the state; and,

WHEREAS, state resources may be called upon in response to these disasters; and,

WHEREAS, state agencies may be asked in part or in whole to direct these resources at the state and regional emergency operating centers,

NOW, THEREFORE, I order:

1. Each department, independent division, bureau, board, commission, and independent institution of the state government, hereinafter referred to as agencies, to prepare and disseminate to all employees appropriate plans and instructions for:

- a. the protection of personnel, equipment, supplies, and public records in a disaster,
- b. the carrying on of its normal services in a disaster,
- c. the carrying out of emergency assignments made by this Executive Order.

2. The responsibility for emergency planning shall rest with the head of each agency. Draft copies of completed plans shall be submitted to the Division of Emergency Services, Department of Public Safety, for review and coordination.

3. Each agency that is assigned specific disaster responsibilities shall designate competent agency personnel to: develop emergency plans and procedures; staff the state and regional emergency operating centers; staff disaster assistance centers and assign staff support to the regional offices of the Division of Emergency Services. These personnel shall be available for planning, training, and participating in emergency operations, and are authorized time off or compensation for services performed outside of regular working hours (except for personnel covered by the Management Plan) as the head of the agency may direct.

4. Emergency assignments are made for each agency for response to any disaster situation, as appropriate, including the complete mobilization of the state's resources.

This Executive Order repeals Executive Order No. 83-17 and Executive Order No. 83-10.

Pursuant to Minnesota Statutes 1978, Section 4.035, this executive order shall be effective 15 days after its publication in the *State Register* and after it is filed with the Secretary of State it shall remain in effect until it is rescinded by proper authority or it expires in accordance with Section 4.035.

IN TESTIMONY WHEREOF, I hereunto set my hand on this first day of March, 1985.



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**I. DEPARTMENT OF ADMINISTRATION**

Section 100 The Department of Administration shall provide architects and engineers to prepare damage assessment and damage survey reports of public buildings damaged by disaster.

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- Section 101 The Department of Administration shall administer the state self insurance program as it relates to federal disaster assistance, as set forth under P/L 93-288.
- Section 102 The Department of Administration shall manage the Administrative Services of state government in a disaster. These services include, but are not limited to, assigning administrative staff, equipment, stenographic, printing and duplicating materials and maintenance, at state and regional emergency operating centers.
- Section 103 The Department of Administration shall furnish computer services needed for emergency operations and resource management in an emergency. These services include the use of computer facilities and support staff to provide needed information on a twenty-four hour basis during and immediately following an emergency.

### **Telecommunications Division**

- Section 110 The Telecommunications Division shall serve as the Emergency Telecommunications Service and shall coordinate planning and delivery of statewide telecommunications systems and services for emergency operations, as necessary, during an emergency.
- Section 111 The Telecommunications Division shall be responsible for providing telephone operation support during exercises and emergencies in state emergency operating centers.
- Section 112 The Director of the Telecommunications Division shall be the chief of the State Communications Service.

### **II. DEPARTMENT OF AGRICULTURE**

(Where domestic animals are involved, the Board of Animal Health is responsible.)

- Section 200 The Department of Agriculture shall provide guidance for the use of agricultural land and crops affected by a disaster.
- Section 201 The Department of Agriculture, with the assistance of the Board of Animal Health, shall develop procedures for the protection of farm animals affected by a disaster.
- Section 202 The Department of Agriculture will assist in the preparation of damage estimates for the Division of Emergency Services on agricultural losses to support disaster declaration requests.
- Section 203 The Department of Agriculture is responsible for the supervision of the Food Supply Service and the protection of farm animals, land and crops, during a disaster. This supervision will be done from state and regional emergency operating centers.
- Section 204 The Department of Agriculture shall develop plans and procedures for a statewide food supply and distribution program in order to maintain adequate emergency food supplies. These plans will make provisions for the control and distribution of primary and secondary foods as prescribed by federal guidelines.
- Section 205 The Department of Agriculture is responsible for a statewide program for the decontamination and salvage of animals and crops exposed to radiation and the use of contaminated agricultural land to include decontamination methods, cultivation guidance, and types of crops to be grown.
- Section 206 The Department of Agriculture will coordinate food service activities with federal agencies that have responsibilities for food resources.
- Section 207 The Department of Agriculture shall provide personnel, that will be trained and certified by the Division of Emergency Services, to serve as hazardous materials response technicians. These technicians will respond, as requested by the Division of Emergency Services and in a timely manner, to the scene of any hazardous materials incident in the state, 24 hours per day seven days per week.
- Section 208 The Department of Agriculture is responsible for the Supervisor and coordination of resources to emergencies regarding pesticides and fertilizers in keeping with existing state statutes.

### **III. ATTORNEY GENERAL**

- Section 300 The Attorney General shall be responsible for providing legal advice and opinions for state emergency operations as chief of Legal Services at the emergency operating center.
- Section 301 The Attorney General shall perform legal advisory functions to include preparing and reviewing proclamations and special regulations as issued by the governor in a disaster.
- Section 302 The Attorney General shall provide representation at disaster assistance centers and public meetings as requested by the Division of Emergency Services, to provide consumer information to persons affected by a disaster.

### **IV. STATE AUDITOR**

- Section 400 The State Auditor shall be responsible for assuring that audits of project applications submitted by political

jurisdictions meet the audit requirements of the Office of Management and Budget (OMB) Circular A-102, Attachment P or the Single Audit Act of 1984.

Where single audits are not yet performed because of the State Auditor's phase-in schedule of such audits, as required under the Memorandum of Understanding covering the state of Minnesota's Single Audit dated April, 1983; the State Auditor is responsible for conducting audits where audits are required by OMB Circular A-102, Attachment P (or the Single Audit Act of 1984) and by the audit guidelines of the Federal Emergency Management Agency.

- Section 401 The State Auditor shall be responsible for conducting state audits for applicants of Minnesota Statutes Chapter 9.061 "The Calamity Act."

#### **V. DEPARTMENT OF COMMERCE**

- Section 500 The Department of Commerce shall provide representation at disaster assistance centers and public meetings as requested by the Division of Emergency Services, to furnish information relative to insurance claim procedures to persons affected by a disaster.
- Section 501 The Department of Commerce shall develop emergency plans and provide the necessary staff to support the state's responsibility in emergency banking and fiscal matters of the economic stabilization program as established by the Federal Reserve Bank of Minneapolis and the Federal Reserve System.

#### **VI. DEPARTMENT OF ECONOMIC SECURITY**

- Section 600 The Field Operations Division shall be responsible for coordinating and directing the use of manpower within the state during disaster operations from state and regional emergency operating centers.
- Section 601 The Unemployment Insurance Division shall prepare plans to provide unemployment assistance to eligible individuals whose unemployment results from a disaster declared under the Disaster Relief Act of 1974 (Public Law 93-288). It will also arrange for payment of benefits under regular unemployment compensation laws to eligible individuals in cases where a disaster has not been declared.
- Section 602 The Employment Programs Division will prepare plans and procedures for the use of manpower with the state during a disaster. The plan shall establish procedures for utilizing available individual skills.

#### **VII. DEPARTMENT OF EDUCATION**

- Section 700 The Department of Education shall encourage local school districts to cooperate with local government authorities to ensure the preparation of plans for the protection of school children in an emergency. These plans shall include sheltering students in schools, or evacuating them to their homes, as well as using the schools as mass care centers in support of emergency operations.
- Section 701 The Department of Education shall assist local education districts in preparing and submitting a request for financial assistance from the federal government, as appropriate, when public elementary or secondary school facilities have been damaged or destroyed by a major disaster.
- Section 702 The Department of Education, Child Nutrition Section, shall have the legal responsibility for federal government food commodities. The Department of Human Services shall be responsible for coordinating distribution of these provisions to victims in the disaster area.
- Section 703 The Department of Education should prepare plans and support a response to hazardous materials incidents in the state as requested by the Division of Emergency Services.

#### **VIII. DEPARTMENT OF EMPLOYEE RELATIONS**

- Section 800 The Department of Employee Relations will support the State Employment Services at state and regional emergency operating centers during a disaster and will assist in the development of emergency employment utilization plans.

#### **IX. DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT**

##### **Energy Division**

- Section 900 The Energy Division will develop a plan for the allocation and conservation of energy resources during energy emergencies in coordination with energy suppliers in the state. The Energy Division shall provide staff and relevant information to the Division of Emergency Services to assist in the implementation of the energy plan during an emergency.
- Section 901 The Energy Division shall develop a package of public information releases for use in an energy emergency as requested by the Division of Emergency Services.
- Section 902 The Energy Division shall develop a plan for the emergency management of all energy resources in the state during a

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disaster. The Division shall provide staff and relevant information to the Division of Emergency Services for the Energy Service.

### Economic Development Division

- Section 910 The Economic Development Division shall provide the Division of Emergency Services with an estimate of the immediate economic impact of a disaster and, where applicable, provide estimated projections of long range effects of a major disaster. This shall include the accessibility and coordination of data from and through other state agencies of a nonconfidential nature that is relevant to the disaster situation.
- Section 911 The Economic Development Division will be in charge of the essential services and be responsible for emergency industrial production, and shall prepare plans and procedures for controlling this production from state and regional emergency operating centers in coordination with the federal government.
- Section 912 The Economic Development Division shall be responsible for providing staff support to the Economic Stabilization Service in disaster operations.

### X. DEPARTMENT OF FINANCE

- Section 1000 The Department of Finance shall appoint the chief of the Fiscal Services.
- Section 1001 The Department of Finance shall develop plans and procedures for the Fiscal Services for the state of Minnesota during a disaster.

### XI. DEPARTMENT OF HEALTH

- Section 1100 The Department of Health shall establish standards, guidelines, and plans for the establishment of state, regional, and local systems of emergency care for the critically ill and injured, including training programs for emergency care physicians, nurses, ambulances, police, fire, and rescue personnel.
- Section 1101 The Department of Health, in cooperation with the office of Electronic Communications of the Technical Services Division of the Department of Transportation, shall develop a statewide emergency medical services radio communication system.
- Section 1102 The Department of Health through its emergency medical services field staff and district representatives, shall assist in the coordinating of emergency medical resources, including hospitals, blood banks and ambulance services to respond to disasters.
- Section 1103 The Department of Health shall provide assistance to local officials in conjunction with the local health agency to ensure the safety of food and water for human consumption during and immediately following a disaster.
- Section 1104 The Department of Health shall contact and secure the services of appropriate technical personnel including engineers, environmental health specialists, health physicists, and chemists in the field to meet the health needs of people in a disaster area. Such staff will be responsible for determining the safety of water supplies, food pathways, food stuffs, contamination levels in the environs and overall safety conditions prior to reoccupancy.
- Section 1105 The Department of Health shall provide engineers and environmental health specialists to prepare damage survey reports of health and public water facilities damaged by a disaster. The engineers will assist communities in determining the cost to repair or replace damaged health facilities and public water distribution systems so federal financial assistance can be requested under Public Law 93-288.
- Section 1106 The Department of Health shall be responsible for providing guidance on protective action levels and medical assistance to local health authorities in areas affected by accidents or incidents involving explosions, storage and transportation of radioactive materials and fixed nuclear facilities. They shall prepare plans and procedures to accomplish this and conduct in-service training to maintain this response capability.
- Section 1107 The Department of Health shall coordinate food service activities with federal and state agencies having responsibilities for food resources in an emergency, specifically food inspection by coordinating with hotel and restaurant inspection in mass feeding facilities.
- Section 1108 The Department of Health will assist in hazard mitigation efforts to reduce or eliminate potential hazards that endanger the citizens of the state of Minnesota.
- Section 1109 The Department of Health is responsible for statewide management of emergency health and medical services and resources during a disaster. This responsibility includes the assignments of the best qualified personnel to state and regional emergency operating centers.
- Section 1110 The Department of Health shall prepare plans and procedures for providing emergency health service during a

disaster. These plans shall include provisions for a blood donor program, disease control, sewage, and waste disposal, the handling of radioactive materials, potable water supply, and mass burial of casualties.

Section 1111 The Department of Health shall conduct an assessment of ill or injured populations using interviewing, sampling and statistical techniques in surveillance of potential epidemic conditions following a disaster.

Section 1112 The Department of Health shall prepare plans and support the response effort to a hazardous materials incident in the state as requested by the Division of Emergency Services.

#### **XII. MINNESOTA HOUSING FINANCE AGENCY**

Section 1200 The Minnesota Housing Finance Agency shall be responsible for the coordination of state and local efforts to provide temporary housing for disaster victims, in accordance with provisions in the state emergency plan.

Section 1201 The Minnesota Housing Finance Agency will coordinate home improvement grants and low cost home improvement loans available to home owners of low and moderate incomes.

Section 1202 The Minnesota Housing Finance Agency shall be responsible for coordinating emergency construction and housing activities within the state following a disaster and shall assign personnel to state and regional emergency operating centers.

Section 1203 The Minnesota Housing Finance Agency shall assign personnel to the Construction and Housing Division of the Engineering Services.

#### **XIII. DEPARTMENT OF HUMAN SERVICES**

Section 1300 The Department of Human Services shall be responsible for coordinating the provision of government commodity foods and food stamps to victims in a disaster area. Legal responsibility for government commodities is placed with the Minnesota Department of Education, Child Nutrition Section.

Section 1301 The Department of Human Services shall provide for representation at such assistance centers, as requested by the Division of Emergency Services, to receive and process applications for the Individual and Family Grant Program from disaster victims.

Section 1302 The Minnesota Board on Aging (Aging Program Division) will provide representation at the disaster assistance center and the disaster area, as deemed necessary by the Division of Emergency Services, to assist and identify elderly disaster victims.

Section 1303 The Department of Human Services will assist in hazard mitigation efforts to reduce or eliminate potential hazards that endanger the citizens of the State of Minnesota.

Section 1304 The Department of Human Services shall be responsible for preparing plans and procedures for providing congregate care with local government during an emergency. This includes providing congregate care service chiefs for state and regional emergency operating centers.

#### **XIV. DEPARTMENT OF MILITARY AFFAIRS**

Section 1400 The Department of Military Affairs shall prepare plans and procedures to support civil authorities in an emergency. As authorized by the governor, the department shall render assistance to civil authorities within the state of Minnesota to include, but not be limited to, supplemental state and local law enforcement, continuance of vital public service, rescue and communication support, the restoration of essential facilities, the prevention of loss of life and suffering, and the taking of the necessary action to assist in the restoration of civilian government, as required.

#### **XV. DEPARTMENT OF NATURAL RESOURCES**

Section 1500 The Department of Natural Resources is responsible for preparing plans and procedures for radiological, chemical, and biological monitoring of lakes, animals, forests, and grasslands in its area of jurisdiction and is responsible for assigning personnel to state and regional emergency operating centers.

Section 1501 The Department of Natural Resources is responsible for debris and wreckage removal from state waterways and forested areas subject to the availability of funds.

Section 1502 The Department of Natural Resources shall provide engineers to prepare damage survey reports of debris clearance, emergency protective measures, and damage to dikes, levees, irrigation works, drainage facilities, and public buildings in the disaster area.

#### **Waters Division**

Section 1510 The Waters Division shall be responsible for coordinating the Flood Plain Management Program and the National Flood Insurance Program in Minnesota.

## **EXECUTIVE ORDERS**

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- Section 1511 The Waters Division shall serve as deputy hazard mitigation coordinator for flood disasters. The Waters Division will be responsible for developing and disseminating the flood hazard mitigation plan, for assuring that the provisions of the plan are implemented, and for providing hazard mitigation training for disaster staff and affected local officials.
- Section 1512 The Waters Division shall assist state and local units of government in applying for grants from the federal government for the purpose of accomplishing hazard mitigation for flood damage reduction.
- Section 1513 The Waters Division shall determine the impact of emergency diking projects on the flood plain and shall recommend approval or disapproval before work begins.
- Section 1514 The Waters Division shall establish plans for the conservation and distribution of surface and underground waters in the state during emergencies.
- Section 1515 The Waters Division shall assign the state climatologist to the Intelligence Services for the reporting of weather conditions and related data as they pertain to an existing situation.

### **Enforcement Division**

- Section 1520 The Enforcement Division shall provide personnel and equipment support to the State Patrol in emergency law enforcement and traffic control operations, when requested by the Division of Emergency Services.
- Section 1521 The Enforcement Division shall prepare procedures for providing communications support in a disaster area.
- Section 1522 The Enforcement Division shall prepare plans and support the response effort to hazardous materials incidents in the state as requested by the Division of Emergency Services.

### **Forestry Division**

- Section 1530 The Forestry Division shall provide personnel and equipment support to the state Fire Marshal Division in emergency rescue operations, when requested by the Division of Emergency Services.
- Section 1531 The Forestry Division is responsible for coordinating fire suppression activities in forested and grassland areas in the state.
- Section 1532 The Forestry Division shall assist state and local governments in applying for grants from the federal government for the purpose of reimbursing expenses actually incurred by a property owner in the removal of timber damaged by a major disaster.
- Section 1533 The Forestry Division will assist local government in training for emergency fire and rescue operations in full coordination with the state Fire Marshal Division and the Vocational-Technical Education System.
- Section 1534 The Forestry Division shall be responsible for the Fire and Rescue Service in their areas of jurisdiction under the direction of the chief of the Fire and Rescue Service.

## **XVI. POLLUTION CONTROL AGENCY**

- Section 1600 The Pollution Control Agency shall, upon instructions from the office of the governor, waive, modify, or suspend the enforcement rules of the agency for areas stricken by disaster. This required action will be to relieve or expedite recovery operations to avert an even greater disaster from occurring.
- Section 1601 The Pollution Control Agency shall provide engineers to prepare damage assessment and damage survey reports of damage to public owned waste disposal systems in a disaster area.
- Section 1602 The Pollution Control Agency shall review the environmental effects of an emergency diking project and recommend approval or disapproval before work begins.
- Section 1603 The Pollution Control Agency shall prepare plans and procedures, including a notification system, for coordinating the control and cleanup of spills of polluting substances.
- Section 1604 The Pollution Control Agency shall be responsible for providing support to the Department of Health, as requested, in the detection of pollution caused by radiological, chemical, and biological agents and to prepare the appropriate plans and procedures.
- Section 1605 The Pollution Control Agency shall provide personnel, that will be trained and certified by the Division of Emergency Services, to serve as hazardous materials response technicians. These technicians will respond, as requested by the Division of Emergency Services and in a timely manner, to the scene of any hazardous materials incident in the state, 24 hours per day, seven days per week.



**XVII. DEPARTMENT OF PUBLIC SAFETY****Capitol Complex Security Division**

- Section 1700 The Capitol Complex Security Division shall be responsible for providing protection to property, and equipment in the capitol complex during an emergency and shall prepare plans and procedures to accomplish this.
- Section 1701 The Capitol Complex Security Division will provide twenty four hour security for the state emergency operating center during an emergency.
- Section 1702 The Capitol Complex Security Division will monitor 778-0800 and activate the pager, when the duty officer is on the pager and as emergency is reported, in keeping with the policy and procedures, section 5.03 of the Duty Officer Manual.

**Criminal Apprehension Division**

- Section 1710 The Criminal Apprehension Division shall be responsible for the dissemination of warnings over the Minnesota Law Enforcement Teletype Network.
- Section 1711 The Criminal Apprehension Division will provide support to the State Patrol in assisting local government with law enforcement during a disaster, in accordance with the state emergency plan.

**Division of Emergency Services**

- Section 1720 The director of the Division of Emergency Services shall serve as the state coordinating officer, and the deputy director shall serve as the deputy state coordinating officer, for all presidentially declared emergencies and/or major disasters.
- Section 1721 The director of the Division of Emergency Services shall serve as the state hazard mitigation coordinator, coordinating all hazard mitigation action requirements from the Federal Emergency Management Agency, through responsible state agencies, with local government.
- Section 1722 The Division of Emergency Services shall monitor the operations of the state portion of the National Warning System and coordinate any actions determined to be necessary to maintain service or extend coverage within the state.
- Section 1723 The Division of Emergency Services shall assist local communities in the completion of all prerequisite actions needed to construct flood protection works. The Division of Emergency Services will also help to obtain the concurrence of the Department of Natural Resources, the Department of Transportation, and the Pollution Control Agency in any project before requesting construction assistance from the U.S. Army Corps of Engineers.
- Section 1724 The Division of Emergency Services shall establish emergency procedures for receiving notifications of any type of disaster within the state and alerting state agencies to respond to these disasters.
- Section 1725 The Division of Emergency Services shall activate the state emergency operating center when any type of major disaster threatens or has occurred. Regional program coordinators shall establish an emergency operating center in or adjacent to the disaster area, as required, to coordinate field operations. The division shall notify state agencies with responsibilities in emergency operations when the state and/or regional emergency operating centers are or will be activated in order that they may provide staff.
- Section 1726 The Division of Emergency Services shall coordinate damage assessment requests for federal disaster assistance on behalf of political subdivisions and state agencies.
- Section 1727 The Division of Emergency Services shall notify all appropriate state agencies to provide representatives to the disaster assistance centers that have been established following a presidential declaration of a major disaster.
- Section 1728 The Division of Emergency Services shall assist political subdivisions in preparing and processing project applications for federal assistance in repairing and restoring essential public facilities.
- Section 1729 The Division of Emergency Services shall notify the governor and executive council when staff of other state agencies are involved in disaster operations.
- Section 1730 The Division of Emergency Services shall administer the Individual and Family Grant Program as provided under Public Law 93-288.
- Section 1731 The Division of Emergency Services will coordinate the activities of the private relief agencies as they pertain to the Foreign Disaster Relief Program and their response to major disasters.
- Section 1732 The Division of Emergency Services will implement procedures for petroleum shortages, petroleum allocation, and ensure compliance and enforcement, if necessary, of existing regulations enacted pertaining to petroleum shortages and petroleum allocation.

## **EXECUTIVE ORDERS**

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- Section 1733 The Division of Emergency Services will prepare procedures for the development of requests to the state Executive Council for financial assistance under provisions of Minnesota State Statute 9.061, the "Calamity Act."
- Section 1734 The Division of Emergency Services shall be responsible for the coordination of all emergency functions of the state and shall review all emergency plans submitted by other agencies for coordination and shall approve all such plans on behalf of the governor, except those of a military nature.
- Section 1735 The Division of Emergency Services shall prepare a comprehensive plan describing the purpose, policies, objectives, program emphasis, and legal basis for its day-to-day operations and a plan for emergency operations during a disaster that will ensure the maximum possible protection for all people. This plan shall be in consonance with federal guidance and shall serve as a guide to political subdivisions and agencies in the development of emergency plans and programs. The plan will coordinate the actions of all agencies of government to make the most efficient use of federal, state, and local resources.
- Section 1736 The Division of Emergency Services shall provide technical guidance and assistance to other agencies and political subdivisions in the preparation of their plans for pre-emergency, emergency, and recovery operations.
- Section 1737 The Division of Emergency Services shall establish procedures and coordinate federal assistance to state and local government.
- Section 1738 The Division of Emergency Services shall keep the governor and the legislature, when in session, informed of any actual or impending disaster. This warning, information, or guidance will be transmitted by the most expeditious means as required in the interest of public safety.
- Section 1739 The Division of Emergency Services shall coordinate the emergency training needs/requests of other state agencies and local government.
- Section 1740 The Division of Emergency Services shall maintain regional offices in geographical sections of the state, as provided in the Minnesota Civil Defense Act of 1951, and the state emergency plan, to reinforce emergency operations in stricken areas. These regional offices will serve as an extension of the state government to ensure continuity of government and support to all areas of the state.
- Section 1741 The Division of Emergency Services shall act as the state coordinating agency with federal agencies and others having emergency responsibilities in the area of assistance to individuals, and to the supply, conservation, and management of resources in a disaster.
- Section 1742 The Division of Emergency Services shall be responsible for the operation of state level programs in economic stabilization and assistance to the counties in establishing economic stabilization programs.
- Section 1743 The Division of Emergency Services shall be responsible for designating alternate emergency operating sites, in succession, for emergency control should the state emergency operating center become inoperable.
- Section 1744 The Division of Emergency Services shall be responsible for the operation of the Radiological Protection Service of state disaster operations. The state radiological protection officer shall be the chief of the Radiological Protection Service.

### **Fire Marshal Division**

- Section 1750 The Fire Marshal Division will assist local government in planning for emergency rescue operations, fire protection, and in obtaining fire fighting and rescue assistance in an emergency in accordance with the state emergency plan.
- Section 1751 The Fire Marshal Division will coordinate with the Vocational-Technical Education System and the Department of Natural Resources for training to local government in emergency fire and rescue operations.
- Section 1752 The Fire Marshal Division shall assign personnel to state and regional emergency operating centers as chief of the Fire and Rescue Service.
- Section 1753 The state fire marshal shall be the chief of the state Fire and Rescue Service and shall coordinate its emergency operations.
- Section 1754 The Fire Marshal Division shall prepare plans and support a response effort to hazardous materials incidents in the state as requested by the Division of Emergency Services.

### **Liquor Control Division**

- Section 1760 The Liquor Control Division shall provide support to the State Patrol Division in response to any disaster situation as required.

**State Patrol Division**

- Section 1770 The State Patrol Division is responsible for law enforcement and traffic control on all interstate and state trunk highways in an emergency.
- Section 1771 The State Patrol Division shall assist local police agencies with available resources in law enforcement and traffic control when requested by proper local authority to do so.
- Section 1772 The State Patrol Division shall act as net control for the National Warning System (NAWAS) within the state for the dissemination of a major emergency or disaster warning.
- Section 1773 The State Patrol Division shall be responsible for providing any assistance that may be required by the Capitol Complex Security Division to protect the personnel in the capitol complex during an emergency, and shall prepare plans and procedures to accomplish this.
- Section 1774 The State Patrol Division will assist in hazard mitigation efforts to reduce or eliminate potential hazards that endanger the citizens of the state of Minnesota.
- Section 1775 The chief of the State Patrol shall be the chief of the Law Enforcement Service and shall coordinate its emergency operations in the state including the assignment of personnel as law enforcement chiefs of the state and regional operating centers.
- Section 1776 The State Patrol Division shall provide guidance to local law enforcement agencies in developing their emergency plans.
- Section 1777 The State Patrol radio communication system is the state's direction and control net. The State Patrol is responsible for providing radio operators to maintain communications on the direction and control net during exercises, drills and emergencies.
- Section 1778 The State Patrol Division shall prepare plans and support the response effort to hazardous materials incidents in the state as requested by the Division of Emergency Services.

**XVIII. DEPARTMENT OF REVENUE**

- Section 1800 The Department of Revenue shall provide for representation at such assistance centers, as requested by the Division of Emergency Services, to provide guidance to disaster victims on the effects of their losses regarding state taxes.
- Section 1801 The Department of Revenue shall assist local governments and citizens certify tax losses sustained as a result of a natural disaster, if the disaster is of such magnitude as to require such information.

**Petroleum Division**

- Section 1810 The Petroleum Division shall assist the Energy Service in the management of all fuel resources within the state in an emergency and provide staff at the state and regional emergency operating centers.

**Alcohol, Tobacco, and Special Taxes Division**  
**Field Audit Division**

- Section 1820 The Alcohol, Tobacco, and Special Taxes Division, and Field Audit Division shall be assigned to the chief of the Economic Stabilization Service for assignment in compliance activities.

**Technical Services Division**  
**Office of Electronic Communication**

- Section 1830 The Office of Electronic Communications shall provide for the maintenance of radio communications system essential to operations during an emergency or disaster.
- Section 1831 The Director of Electronic Communications shall be the state radio officer.

**XIX. DEPARTMENT OF TRANSPORTATION****Aeronautics Division**

- Section 1900 The Aeronautics Division will restrict flights over disaster areas when requested by the Division of Emergency Services or other appropriate authority.

## **EXECUTIVE ORDERS**

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- Section 1901 The Aeronautics Division will coordinate flights with the Civil Air Patrol in search and rescue missions and aerial radiological monitoring.
- Section 1902 The Aeronautics Division will coordinate civilian air transportation and military air transportation in a disaster situation.
- Section 1903 The Aeronautics Division will provide personnel to prepare damage survey reports for airports and airport facilities damaged in any type of major disaster.
- Section 1904 The Aeronautics Division will provide air transportation and/or reconnaissance as required by the Division of Emergency Services in a declared disaster situation.
- Section 1905 The Aeronautics Division shall have a plan for the utilization of aircraft available for emergency operations.
- Section 1906 The Aeronautics Division is responsible for providing and coordinating the use of air transportation resources within the Transportation Service of state government at state and regional emergency operating centers during a disaster.
- Section 1907 The Aeronautics Division shall maintain current records of airport facilities, aircraft registrations, and licensed pilots that could be used to provide transportation to various parts of the state in the event of a disaster.

### **Operations Division**

- Section 1910 The Operations Division shall be responsible for the plans, supervision, direction and control of emergency engineering services in disaster operations and shall assign personnel to state and regional emergency operating centers.
- Section 1911 The Operations Division shall make available the Maintenance Construction Communications System for use as the Division of Emergency Services' command net, should the direction and control net (State Patrol radio) fail.
- Section 1912 The Operations Division shall be responsible for debris and wreckage removal from all interstate and state trunk highways and for other assistance to political subdivisions on other roadways as may be required.
- Section 1913 The Operations Division shall provide any highway clearances and waivers required to expedite the transportation of high priority materials and personnel during periods of declared emergencies, including mass relocation of the populace.
- Section 1914 The Operations Division shall determine the impact of an emergency diking project on the interstate and trunk highway system and recommend approval or disapproval of the project before work begins.
- Section 1915 The Operations Division shall provide engineers to prepare damage assessment and damage survey reports of damage to roads, streets, and highway facilities caused by a disaster.
- Section 1916 The Operations Division, working with the state Health Department, shall provide protective action and shall monitor radioactive incidents on the roadways of the state.
- Section 1917 The Operations Division will assist in hazard mitigation efforts to reduce or eliminate potential hazards that endanger the citizens of the state of Minnesota.
- Section 1918 The Operations Division shall prepare emergency highway traffic regulation plans and procedures for the regulation of highway travel during periods of emergency operations.

### **Program Management Division**

- Section 1920 The Program Management Division shall prepare plans for receiving and disseminating information to appropriate agencies concerning the shipment of chemicals, radiological substances, and other materials that are potentially hazardous.
- Section 1921 The Program Management Division shall prepare plans and procedures and be responsible for the coordination of all rail, bus, and truck transportation in the state during an emergency, including emergency transportation in the disaster area.
- Section 1922 The Program Management Division will coordinate and direct the operations of the Transportation Service during a disaster from state and regional emergency operating centers.
- Section 1923 The Program Management Division will coordinate with the Public Services Commission for emergency operations of ports and pipelines in a major emergency or disaster.
- Section 1924 The Program Management Division shall provide personnel, that will be trained and certified by the Division of Emergency Services, to serve as hazardous materials response technicians. These technicians will respond, as requested by the Division of Emergency Services and in a timely manner, to the scene of any hazardous materials incident in the state, 24 hours per day, seven days per week.

- Section 1925 The Program Management Division will assist in hazard mitigation efforts to reduce or eliminate potential hazards that endanger the citizens of the state of Minnesota.
- Section 1926 The Program Management Division shall provide guidance to local law enforcement agencies in developing their emergency plans.

#### VOCATIONAL-TECHICAL EDUCATION SYSTEM

- Section 2000 The Vocational-Technical will assist local government in training for emergency fire and rescue operations in coordination with the state Fire Marshal Division, and the Department of Natural Resources.

## **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.

## **Energy and Economic Development Department Energy and Economic Development Authority**

### **Proposed Emergency Rules Relating to Hazardous Waste; Processing Facility Loans**

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

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for the Hazardous Waste Processing Facility Loan Program. The Authority is authorized by Minnesota Statutes 116M.07 Subdivision 9 to adopt emergency rules for the Hazardous Waste Processing Facility Loan Program. The Authority, in adopting the rules, is following the procedures set forth in Minnesota Statutes, sections 14.29 to 14.36.

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency on the proposed emergency rules. Comments in support of or in opposition to the proposed emergency rules are encouraged. With publication of this notice in the April 8, 1985 *State Register*, written data or views must be received by the agency no later than 4:30 p.m. on May 3, 1985. Written comments should be sent to:

Warren Goodroad  
Energy Finance Division  
Department of Energy & Economic Development  
900 American Center Building  
150 East Kellogg Blvd.  
St. Paul, Minnesota 55101  
Telephone: (612) 297-1941

**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

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

The proposed emergency rules relate to the following matters: eligible applicants for the hazardous waste processing facility loans, procedures for loan applications and for processing, reviewing and approving applications for hazardous waste processing facility loans.

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

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

The emergency rules will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

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

March 25, 1985

Mark B. Dayton, Chairman  
Minnesota Energy & Economic Development Authority

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

#### 8300.5000 [Emergency] SCOPE AND AUTHORITY.

Parts 8300.5000 to 8300.5006 [Emergency] apply to applications for financial assistance for hazardous waste processing facilities made to the authority under Minnesota Statutes, sections 115A.162 and 116M.07, subdivision 9.

#### 8300.5001 [EMERGENCY] DEFINITIONS.

**Subpart 1. Scope.** For the purposes of parts 8300.5000 to 8300.5006 [Emergency], the following terms have the meanings given to them.

**Subp. 2. Authority.** "Authority" means the Minnesota Energy and Economic Development Authority created in Minnesota Statutes, section 116M.06.

**Subp. 3. Board.** "Board" means the Waste Management Board established in Minnesota Statutes, section 115A.04.

**Subp. 4. Chairperson.** "Chairperson" means the chairperson of the board.

**Subp. 5. Commissioner.** "Commissioner" means the commissioner of Energy and Economic Development.

**Subp. 6. Hazardous waste processing facility.** "Hazardous waste processing facility" means any real or personal property to be used for the collection or processing of hazardous waste as those terms are defined in Minnesota Statutes, section 115A.03, subdivisions 5, 13, and 25.

**Subp. 7. Hazardous waste processing facility loan or loan.** "Hazardous waste processing facility loan" or "loan" has the meaning given to it in Minnesota Statutes, section 116M.03, subdivision 15.

**Subp. 8. Private person.** "Private person" means any person, including individuals, firms, partnerships, associations, societies, trusts, private corporations, or natural persons. "Private person" includes the plural or the singular and does not include a public or governmental body.

#### 8300.5002 [Emergency] ELIGIBLE APPLICANTS FOR THE HAZARDOUS WASTE PROCESSING FACILITY LOAN PROGRAM.

Any private person proposing to develop and operate a hazardous waste processing facility is eligible to apply to the authority for a loan.

#### 8300.5003 [Emergency] ELIGIBLE PROJECT FOR HAZARDOUS WASTE PROCESSING FACILITY LOAN.

An eligible project must be a hazardous waste processing facility as defined in part 8300.5000, subpart 6.

#### 8300.5004 [Emergency] PROCEDURES FOR HAZARDOUS WASTE PROCESSING FACILITY LOAN APPLICATIONS.

**Subpart 1. In general.** To apply for assistance from the authority, an applicant shall submit an application to the commissioner on a form provided by the commissioner. An application must be completed, dated, and signed by an owner, general partner, or an

authorized officer of an applicant. The commissioner shall follow the procedures under part 8300.3014 [Emergency], subparts 2 to 7 and 9 to 11.

**Subp. 2. Contents.** Applications must comply with part 8300.3012 [Emergency], subparts 2 and 3.

Also, applications must include information necessary for certification by the board under Minnesota Statutes, section 115A.162.

**8300.5005 [Emergency] PROCEDURES FOR APPLICATION PROCESSING.**

**Subpart 1. In general.** Processing of applications must comply with part 8300.3014 [Emergency], subparts 2 to 7 and 9 to 11.

**Subp. 2. Additional review for completions.** When an application is received by the commissioner, a copy of the application will be sent to the chairperson or a designee for review. Upon receipt of the notification from the chairperson or a designee that the application is either complete or incomplete for certification by the board, the commissioner will follow the procedure under subpart 1.

**Subp. 3. Forward application to board.** Upon determination that the application is complete it will be forwarded to the board for certification pursuant to Minnesota Statutes, section 115A.162.

**8300.5006 [Emergency] REVIEW AND APPROVAL.**

**Subpart 1. Certification must be completed.** The authority may not approve an application nor make a loan to an applicant unless the application has been certified by the board.

**Subp. 2. Authority review and approval.** If the board has certified an application, the authority shall approve the application and make the loan if funds are available and if the authority finds that the following criteria are satisfied:

A. the development and operation of the hazardous waste processing facility as proposed in the application is economically feasible; and that the hazardous waste processing facility's feasibility is sufficient to allow the authority to sell the bonds as required for its financing;

B. upon review of the application, there is a reasonable expectation that the principal and interest on the loan will be fully repaid; and

C. the hazardous waste processing facility is unlikely to be developed and operated without a loan from the authority as certified to by the applicant in the application.

**Subp. 3. Authority review and disapproval.** The authority shall disapprove the application if it finds that one or more of the criteria set forth in subpart 2 have not been satisfied.

## Department of Health

### Proposed Temporary Rules Relating to Procedures For Assessment And Classification of Residents of Nursing Homes and Boarding Care Homes Participating in the Medical Assistance Program

#### Notice of Intent to Adopt a Emergency Rule

The Department of Health proposes to adopt the above-entitled emergency rules to establish procedures for the assessment and classification of residents of nursing homes and boarding care homes required to determine the operating cost payment rates for all nursing homes and boarding care homes participating in the medical assistance program under Minnesota Statutes, section 256B.41 to 256B.48. The authority to adopt these rules is contained in Minnesota Statute § 256B.431, subdivision 6. Persons interested in these rules have until April 29, 1985, to submit written comments. The proposed emergency rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in substantial change in the proposed language. Written comments should be sent to: H. Michael Tripple, Minnesota Department of Health, Division of Health Resources, P.O. Box 9441, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, Telephone Number : (612) 623-5448.

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

## PROPOSED RULES

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Upon adoption of the emergency rules by the Department of Health, the proposed emergency rules as published and any modification will be submitted to the Attorney General for review as to form and legality. Notice of the date of submission of these proposed emergency rules to the Attorney General will be mailed to any person requesting to receive such notice.

Failure of the Attorney General to approve or disapprove the rules within five working days is approval. See Minn. Stat. § 14.33 (1982). The emergency rules shall be effective five days after publication in the *State Register*. (These time periods are in accordance with the provisions of Minn. Stat. § 256B.431, Subd. 6). In accordance with Minn. Stat. § 256B.431, Subd. 6 the emergency rules shall remain in effect until June 30, 1986.

The emergency rules will not result in any increased expenditure to local public bodies. Nor will they result in a fiscal impact in excess of \$100,000 annually. See Minn. Stat. § 14.11; Subd. 1 and § 15.065.

The following information is being provided to comply with the provisions of Minn. Stat. § 144A.29, Subd. 4 which requires that each rule promulgated by the Department contain a short statement of anticipated costs and benefits to be derived from the provisions of the rule. These rules are being promulgated under authority of Minnesota Statutes § 256B.431 to implement the resident assessment procedures under the case-mix rate setting legislation.

The proposed emergency rules address the rate determination provisions enacted by the State Legislature. These rules detail the procedures which will be used in the assessment and classification of nursing home and boarding care home residents. These rules will be of benefit to the facilities licensed by the Department of Health in that a clear set of standards for the legislatively mandated assessments and resident reimbursement classifications will be established. The rules set up procedures for the annual assessment conducted by the Department's Quality Assurance and Review Section. This includes notification timelines to be followed by the Department. Procedures are also established for the review and classification of assessments completed by preadmission screening teams, and by nursing homes and boarding care homes. Again, there are notification timelines to be followed by the Department. The rules provide mechanisms for the audit of assessments performed under Department of Human Services rules. These proposed emergency rules also provide for reconsideration of classifications made by the Department and for interim classification during the pendency of the reconsideration. The final rule part provides procedures to be used at the initiation of the assessment process. This part includes dates by which the Department must notify each nursing home or boarding care home which of their residents the Department has assessments for; dates by which the home must request classification and the requirement for the classification requests; and, the date by which the Department must notify the home of the classification.

The provisions of these rules establish the procedures to be followed by the Department in reviewing the assessments completed by the facility and the preadmission screening teams.

These rules will result in minimal costs, if any, to facilities since the requirements establish administrative processes to be implemented by the Department. These procedures will benefit facilities by assuring that the assessments and classifications are processed in a timely manner.

A copy of this notice and the proposed emergency rule may be obtained by calling 623-5473.

Sister Mary Madonna Ashton  
Commissioner of Health

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

#### 4656.0010 SCOPE.

Parts 4656.0010 to 4656.0070 [Temporary] establish procedures for the assessment and classification of residents of nursing homes and boarding care homes required to determine the operating cost payment rates for all nursing homes and boarding care homes participating in the medical assistance program under Minnesota Statutes, sections 256B.41 to 256B.48 and parts 9549.0050 to 9549.0058 [Temporary].

#### 4656.0020 [Temporary] DEFINITIONS.

**Subpart 1. Applicability.** As used in parts 4656.0010 to 4656.0070 [Temporary] the following terms have the meanings given them.

**Subp. 2. Assessment form.** "Assessment form" means the form developed by the department's quality assurance and review program in effect on March 1, 1984, and used for performing resident assessments. The assessment form is incorporated by reference. It is available at Ford Law Library, 117 University Avenue, Saint Paul, MN 55155. It is available through the minitex interlibrary loan system. This form is not subject to frequent change.

**Subp. 3. Department.** "Department" means the Minnesota Department of Health.

**Subp. 4. Medical plan of care.** "Medical plan of care" means documentation signed by the resident's physician which includes the resident's primary diagnoses, secondary diagnoses, orders for treatments and medications, rehabilitation potential, rehabilitation procedures if ordered, clinical monitoring procedures and discharge potential.



**Subp. 5. Quality assurance and review or QAR.** "Quality assurance and review" or "QAR" means the program established under Minnesota Statutes, sections 144.072 and 144.0721.

**Subp. 6. Resident class.** "Resident class" means each of the 11 categories established in part 9549.0057 [Temporary].

**Subp. 7. Resident plan of care.** "Resident plan of care" for residents of nursing homes means the patient care plan specified in part 4655.6000. Resident plan of care for residents in boarding care homes means the overall plan of care as defined in Code of Federal Regulations, title 42, section 442.319 (as amended through December 31, 1984).

**4656.0030 [Temporary] ANNUAL RESIDENT ASSESSMENT.**

**Subpart 1. Annual assessment.** In accordance with Minnesota Statutes, sections 144.072 and 144.0721, the department shall conduct annual assessments of all residents in each nursing home and boarding care home participating in the medical assistance program.

**Subp. 2. Procedure for assessment.** A registered nurse and other appropriate health and social service personnel shall perform the assessment on each resident according to the QAR procedures of the department including physical observation of the resident, review of the medical plan of care, and review of the resident's plan of care and shall record the assessment on the assessment form defined in part 4656.0020 [Temporary], subpart 2.

**Subp. 3. Classification and notification.** Within 15 working days of receiving the completed assessment documents, the department must classify each resident into one of the resident classes prescribed by part 9549.0051 [Temporary], subpart 1, item F, and mail a written notice to the resident and the nursing home or boarding care home of the resident classification. The written notice must inform the resident and the nursing home or boarding care home of the opportunity to review the state's documents supporting the classification, and the right of the resident to request a reconsideration of the classification.

**4656.0040 [Temporary] REVIEW AND CLASSIFICATION OF FACILITY AND PREADMISSION SCREENING ASSESSMENTS.**

**Subpart 1. Classification.** Within 15 working days of receiving each request for classification submitted in accordance with part 9549.0058 [Temporary], the department shall classify the resident into one of the resident classes established in accordance with part 9549.0057 [Temporary] or notify the individual completing the assessment or the nursing home or boarding care home furnishing the documentation of additional information necessary for determining the classification.

**Subp. 2. Notification of classification.** Within 15 days of receiving a complete and accurate request for classification, the department shall mail a written notice to the resident and the nursing home or boarding care home of the resident's classification. The written notice must inform the resident and the nursing home or boarding care home of the right to review the department of health's documents supporting the classification and the right of the resident to request a reconsideration of the classification.

**4656.0050 [Temporary] AUDITS OF ASSESSMENTS OF NURSING HOME RESIDENTS.**

**Subpart 1. Audits required.** The department shall audit the accuracy of resident assessments performed under parts 9549.0050 to 9549.0058 [Temporary] through desk audits and on-site reviews of residents and their records. The department shall reclassify a resident that it determines to have been incorrectly assessed.

**Subp. 2. Request for reconsideration.** Within five working days of a reclassification required by subpart 1, the department shall mail a written notice to the resident and the nursing home or boarding care home of the resident's classification, the opportunity to review the Department of Health's documents supporting the classification, and the right of the resident to request reconsideration of the classification.

**4656.0060 [Temporary] REQUEST FOR RECONSIDERATION OF RESIDENT CLASSIFICATION.**

**Subpart 1. Reconsideration permitted.** A nursing home resident, or the resident's authorized representative who is dissatisfied with the classification into a resident class by the department, may request that the department reconsider the classification.

**Subp. 2. Request for reconsideration.** A nursing home resident, or the resident's authorized representative who requests reconsideration of the resident's classification, shall file the request in writing within ten working days of receiving the notice of the resident's classification. The resident shall support the request with documentation that the resident's needs at the time of the assessment were different from those identified in the assessment, or that the needs identified in the assessment require a different resident classification than that assigned by the department.

**Subp. 3. Review of requests and notification.** The department shall review the requests for reconsideration and shall affirm or

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## PROPOSED RULES

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modify the resident's classification, and notify the resident and the nursing home or boarding care home of the classification within 20 working days.

**Subp. 4. Status of initial classification.** The resident classification established by the department must be the classification that applies to the resident while the request for reconsideration is pending.

### **4656.0070 [Temporary] ASSESSMENT OF RESIDENTS ON JULY 1, 1985.**

On or before May 15, 1985, the department shall mail a notice to each nursing home or boarding care home specifying the resident classes for all residents in the home for which the department has assessment information. Each nursing home or boarding care home shall assess each resident whose name does not appear on the department's May 15, 1985, classification list under the procedures prescribed by part 9549.0058 [Temporary], subpart 3, item B. The nursing home or boarding care home shall submit a request for classification for each resident assessed by the nursing home to the department by June 1, 1985. The request for classification must include the completed assessment form and the resident's plan of care. The department shall classify each resident for whom a request for classification has been received by June 15, 1985, and notify the nursing home or boarding care home by June 20, 1985, of the classification.

## Department of Human Rights

### Proposed Rules Relating to Human Rights; Processing of Discrimination Charges

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

Notice is hereby given that the State Department of Human Rights proposes to adopt the above-entitled rule without a public hearing. The Commissioner of Human Rights has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21 to 14.28.

These rules are procedural in nature, establishing some definitions, criteria for certain dismissals (frivolous/without merit, failure to provide required information), establishing factors to be considered in reopening cases, requiring preservation of records and other such matters. For the most part, these rules have been in effect as temporary rules for the past year.

1. A 30-day comment period commencing from the date of publication of this notice is established. The Department of Human Rights encourages all interested persons to submit comments in support of or opposition to the proposed rules. Comments should be mailed to the address listed below.

2. Each comment should identify the portion of the rule addressed, the reason for the comment and any proposed change(s).

3. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, Section 14.13 through 14.20.

4. Any interested person may request a public hearing by writing to the address listed below. The request must contain the name and address of the person requesting the hearing. Any person requesting a hearing may also identify the portion of the proposed rule addressed, the reason for the hearing request and any proposed change(s) in the rule.

5. This proposed rule may be modified if the modifications are supported by the data and views submitted.

6. A Statement of Need and Reasonableness which describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule is available. Persons who wish to submit written comments, request that a public hearing be held, or request a copy of the Statement of Need and Reasonableness should contact:

Eileen Shields  
Minnesota Department of Human Rights  
500 Bremer Tower  
7th and Minnesota Street  
St. Paul Minnesota 55101  
(612) 297-2786

Authority for adoption of these rules is authorized by Minnesota Statutes, 363.05, subdivision 1 (8) (1984) which authorizes the commissioner to adopt suitable rules and regulations for effectuating the purposes of Chapter 363.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rule 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

## PROPOSED RULES

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 Eileen Shields.

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

March 15, 1985

Linda C. Johnson  
Commissioner of Human Rights

### 5000.0100 DEFINITIONS.

**Subpart 1. to 3.** [Unchanged.]

**Subp. 3a. Answer.** "Answer," as used in Minnesota Statutes, section 363.06, subdivision 8, means the respondent's initial written reply to a charge which contains information sufficient to explain the respondent's defense.

**Subp. 4. to 12.** [Unchanged.]

**Subp. 12a. EEOC.** "EEOC" means the United States Equal Employment Opportunity Commission.

**Subp. 13.** [Unchanged.]

**Subp. 13a. "HUD"** means the United States Department of Housing and Urban Development.

**Subp. 14.** [See Repealer.]

**Subp. 15. to 19.** [Unchanged.]

**Subp. 20. Would-be charge.** "Would-be charge" means written information received by the department that may become a charge of discrimination as defined in parts 5000.0100 and 5000.0400 but which lacks one or more of the required elements described in parts 5000.0100 and 5000.0400.

### 5000.0400 CHARGES.

**Subpart 1.** [Unchanged.]

**Subp. 1a. Who may file.** Any person who claims to be aggrieved by an unfair discriminatory practice may file a charge with the department. The charge of an allegedly aggrieved minor or ward must be filed by a parent or guardian.

**Subp. 1b. Time of filing.** A charge must be filed within 300 days of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's office on or before the deadline. Time is to be computed in accordance with Minnesota Statutes, sections 645.14, 645.15, and 645.151.

**Subp. 2.** [Unchanged.]

**Subp. 2a. Cross-filing with other agencies.** A charge filed with the department which alleges violation of certain anti-discrimination laws administered by EEOC or HUD will automatically be filed by the department with the administering agency.

A charge filed with EEOC or HUD may be deferred to the department. The charge is deemed filed on the date the department receives from the federal agency sufficient material for a charge to be deemed filed under part 5000.0400.

**Subp. 2b. Minneapolis and Saint Paul charges.** A charge alleging a violation occurring in Minneapolis or Saint Paul may be referred by the commissioner to the Minneapolis Department of Civil Rights or the Saint Paul Human Rights Department respectively, for investigation and recommended determination. The recommendation is subject to review by the commissioner.

**Subp. 3. to 6.** [Unchanged.]

### 5000.0510 FACT-FINDING CONFERENCE.

**Subpart 1. Call.** The department may call a conference to obtain information needed to investigate an allegation in a charge. At the conference, the parties may attempt to resolve the proceedings before a formal finding is made.

**Subp. 2. Attendance; subpoenas; tape recording.** The commissioner may require the attendance of a person at the conference by subpoena. The commissioner may restrict the attendance of others. Both the department and a party may make an audio tape recording of the conference. On request of a party, while a charge is pending the department shall duplicate its audio recording. The department shall charge a fee to cover the cost of duplication.

### 5000.0600 DETERMINATION OF UNFAIR DISCRIMINATORY PRACTICES.

**Subpart 1. Dismissal of charges.** The commissioner shall issue an order dismissing a charge when the subject matter of such

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charge falls outside the jurisdiction of the act or when the charge was filed more than ~~six months~~ 300 days after the occurrence of the alleged unfair discriminatory practice. Such order shall be a final decision of the department. A copy of an order dismissing a charge shall be served by mail upon the charging party and the respondent.

The commissioner shall issue an order dismissing a charge when he or she has determined after investigating the allegations of such charge that there is no probable cause to believe that the respondent has engaged in an unfair discriminatory practice. A copy of an order dismissing a charge following a no probable cause determination shall be served by registered or certified mail upon the charging party and the respondent within ten days of such determination. Such order shall be a final decision of the department unless an appeal is taken as provided in part 5000.0700.

**Subp. 2.** [Unchanged.]

**Subp. 3. Notice of no probable cause.** The commissioner shall serve notice of a no probable cause determination on the charging party by certified mail and by first class mail. The respondent shall be notified by first class mail.

**Subp. 4. Predetermination settlements.** Any time prior to a determination, the commissioner or a party to a charge may propose terms to settle a charge. A predetermination settlement may consist of terms similar to those authorized in part 5000.0800.

**Subp. 5. Alternative forms of dispute resolution.** In any proceeding the commissioner may use any alternative form of dispute resolution on any terms agreed to by all the parties.

### 5000.0700 APPEAL OF NO PROBABLE CAUSE DETERMINATION.

**Subpart 1. Service of notice of appeal.** A charging party against whom a determination ~~to a review board~~ by serving a written notice of appeal upon the commissioner and the respondent by hand delivery or by mail within ~~15~~ ten days after ~~service~~ receipt of notice of an order dismissing a charge.

**Subp. 2. to 7.** [See Repealer.]

### 5000.0800 CONCILIATION AND SETTLEMENT.

**Subpart 1. and 2.** [Unchanged.]

**Subp. 3. Settlement agreements.** The commissioner and a respondent may at any time enter into an agreement or stipulation to conciliate, settle, or compromise the subject matter of a charge or a complaint. Such agreement or stipulation may provide for the commissioner to waive the right to proceed against the respondent under the act and for the respondent to take such affirmative actions as may effectuate the purpose of the act. Such affirmative actions may include, but are not limited to, the payment of money damages, the hiring, reinstatement, or upgrading of an aggrieved person, or the sale or lease of real property. Any agreement entered into by the commissioner and the respondent shall be reduced to writing and shall be enforceable in the same manner as a final decision of the department. ~~A panel or examiner~~ An administrative law judge may issue an order embodying the terms of any agreement or stipulation entered into by the commissioner and a respondent. Such order shall be enforceable as a final decision of the department.

**Subp. 4.** [See Repealer.]

**Subp. 5. Monitoring.** The department shall monitor all settlement agreements. If the commissioner believes a respondent may not have complied with an agreement, the department shall notify the respondent by certified mail. The notice shall specify the part of the agreement the respondent is believed to have violated. After permitting the respondent 15 days after the receipt of the notice to respond, the commissioner may begin proceedings to enforce the settlement agreement.

### 5000.0810 REOPENING CERTAIN CASES.

**Subpart 1. Request.** A charging party may request that proceedings terminated according to part 5000.4000 or dismissed according to part 5000.2240 be reopened. The request must be in writing and must state a reason for reopening.

**Subp. 2. Respondent; notice to; information from.** The commissioner shall promptly notify the respondent by certified mail of the request. The respondent has ten days from the receipt of the notice to provide the department with pertinent information in writing on reopening the proceedings.

**Subp. 3. Considerations.** In deciding whether to reopen proceedings, the commissioner shall consider whether:

- A. the department clearly erred in closing the proceedings;
- B. the department was less than reasonably diligent in trying to find the charging party;
- C. the charging party was unavoidably prevented from providing the department with information needed to avoid terminating the proceedings;
- D. reopening the proceedings would place an unreasonable burden on the respondent; or
- E. the passage of time precludes reopening the proceedings.

**Subp. 4. Reopening without request.** After determining the department clearly erred in closing a proceeding, the commissioner may reopen the proceedings without a request.

**Subp. 5. Notice of decision.** The commissioner shall promptly notify the parties in writing of the decision.

#### **5000.1100 CLASS ACTION SUITS.**

**Subpart 1.** [Unchanged.]

**Subp. 2. Decision to maintain as class action.** After an action is brought as a class action, the ~~panel or hearing examiner~~ administrative law judge shall determine by order whether it is to be so maintained. At the discretion of the ~~panel or examiner~~ administrative law judge, such order may be a part of the final order issued in accordance with Minnesota Statutes, section 373.071. If the order is not part of the final order, it may be conditional and may be amended or altered before the decision on the merits.

**Subp. 3. Notice to members.** In any class action, prior to the hearing, the ~~panel or hearing examiner~~ administrative law judge shall direct to the members or potential members of the class the best notice practicable under the circumstances. Notice shall be reasonably certain to inform those affected, or, where conditions do not reasonably permit such notice, the form of notice shall not be substantially less likely to give notice than other of the feasible and customary substitutes. If the complaint seeks compensatory relief, the notice shall advise each member: he or she will be excluded from the class, with respect to monetary relief, if he or she so requests by a specified date, and the decision, whether favorable or not, will include all members who do not request exclusion.

**Subp. 4. Conduct of class action.** In the conduct of class actions, the ~~panel or hearing examiner~~ administrative law judge may make appropriate orders: determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; requiring a specific type of notice or other protections for the members of the class or for the fair conduct of the action; dealing with other procedural matters. The orders may be altered or amended as may be desirable from time to time, and they are not final decisions of the department.

**Subp. 5. Required approval.** A class action shall not be dismissed or compromised without the approval of the ~~panel or hearing examiner~~ administrative law judge. Notice of the proposed dismissal or compromise shall be given to all members of the class in such a manner as the ~~panel or hearing examiner~~ administrative law judge directs.

**Subp. 6. Order.** In a class action, the order issued in accordance with Minnesota Statutes, section 363.071, whether or not favorable to the class, shall include and describe those persons who are members of the class. This order is a final decision of the department and is subject to judicial review.

#### **5000.1200 ANSWER.**

A respondent shall serve an answer upon the department within 20 days after service of the complaint. The original answer, together with an attached affidavit of service, shall be filed with the ~~panel or examiner~~ administrative law judge. Failure to answer the complaint shall be deemed an admission of the allegations therein. A respondent may amend an answer at any time.

#### **5000.1300 MOTIONS AND PETITIONS.**

**Subpart 1. General provisions.** A party may assert to a ~~panel or examiner~~ an administrative law judge by motion only those claims, defenses, or other matters that are consistent with the act and parts 5000.0100 to 5000.3300. All motions, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

**Subp. 2. and 3.** [Unchanged.]

**Subp. 4. Order to comply.** When a respondent fails or refuses to comply with a final decision of the department, the commissioner may petition a district court to order the respondent to comply with the order of the department. A petition for such an order shall be made in accordance with the ~~provisions~~ of Minnesota Statutes, section 363.091.

#### **5000.2210 PRESERVATION OF RECORDS.**

**Subpart 1. While charge pending.** A respondent notified of a charge shall retain all documents related to the charge under its control. The documents must be retained until the department notifies the respondent that the charge has been resolved.

**Subp. 2. During monitoring period.** The commissioner may require as a part of a settlement agreement that the respondent retain documents related to a charge for a period of time.

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## PROPOSED RULES

Subp. 3. Retention of records. An employer, employment agency, labor organization, or an operator of an apprenticeship or other training program subject to the act must retain all applicant and employment records for one year after the records are made.

### 5000.2220 CHARGES NOT TO BE PROCESSED.

The commissioner may choose not to process: (a) a moot charge; or (b) a charge without priority which the commissioner believes does not warrant further use of department resources.

### 5000.2230 DISMISSAL OF FRIVOLOUS CHARGES.

The department may dismiss a charge the commissioner believes:

A. is illogical, fantastic, or incoherent;

B. is negated by common knowledge which the commissioner takes official notice of;

C. is brought by a charging party acting in bad faith;

D. is substantially the same as a previous charge in which no probable cause was found, and involves the same charging party but a different respondent.

### 5000.2240 DISMISSAL FOR FAILURE TO PROVIDE INFORMATION.

Subpart 1. When. The commissioner may dismiss a charge or a would-be charge for failure to provide required information:

A. when the would-be charge does not conform to part 5000.0400; or

B. when the information about a charge that the department has is insufficient to make a determination, and the charging party fails to provide:

(1) information which the charging party claims to have or knows how to obtain which may substantiate an allegation;

(2) a signed withdrawal of the charge after indicating a lack of interest in pursuing the charge;

(3) information essential to a charge that requires amending; or

(4) failure of the charging party to provide a copy of the summons and complaint after notifying the department that a civil suit has been filed.

Subp. 2. Procedure. If informal means of obtaining the information fail, the commissioner shall notify the charging party by certified and first class mail of the need for the required information and the possibility of dismissal of the charge for failure to provide required information. If the information is not delivered within 30 days of the date of notice, the commissioner may dismiss the charge.

REPEALER. Minnesota Rules, parts 5000.0100, subpart 14; 5000.0500, subpart 5; 5000.0700, subparts 2, 3, 4, 5, 6, and 7; 5000.0800, subpart 4; 5000.1400; 5000.1500; 5000.1600; 5000.1700; 5000.1800; 5000.1900; 5000.2000; and 5000.2100 are repealed.

## Department of Human Services

### Proposed Rules Relating to Licensing Fees For Day Care And Residential Facilities And Agencies

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

NOTICE IS HEREBY GIVEN that the Minnesota Department of Human Services proposes to adopt the above-entitled rules. No public hearing will be held in accordance with Minnesota Statutes, section 16A.128, subdivision 2a.

Interested persons shall have 30 days (or until May 8, 1985) to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules being 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.

Persons who wish to submit comments should submit such comments to:

Barry Stern

Rulemaking Unit

Minnesota Department of Human Services

Fourth Floor, Centennial Office Building

658 Cedar Street

St. Paul, Minnesota 55155

Telephone (612) 297-1490

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## PROPOSED RULES

The statutory authority of the Department for the proposed rules is contained in Minnesota Statutes, section 245.811, subdivision 2.

The proposed parts 9545.2000 to 9545.2040 establish procedures for the Minnesota Department of Human Services to determine and collect fees from operators of day care and residential facilities and agencies required to be licensed under Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2, known as the Public Welfare Licensing Act.

Part 9545.2000 provides definitions to words and phrases used throughout parts 9545.2000 to 9545.2040 which are necessary to ensure a clear understanding of the rule parts.

Part 9545.2010 states the applicability of the rule parts by identifying the facilities and agencies to which the rule parts do and do not apply.

Part 9545.2020 establishes the licensing fee formula for calculating the licensing fee to be charged to each facility and agency.

Part 9545.2030 establishes the payment procedure for collecting licensing fees from operators.

Part 9545.2040 establishes the procedure for requesting and granting a fee or payment waiver.

Copies of the proposed rules are now available and at least one free copy may be obtained upon request from:

Licensing Division  
Minnesota Department of Human Services  
Sixth Floor, Space Center Building  
444 Lafayette Road  
St. Paul, Minnesota 55101  
Telephone (612) 296-3971

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

The cost to local public bodies of implementing the proposed rules will not exceed \$100,000 for either of the first two years following passage of the rules.

The Department shall submit to the Attorney General the proposed rules and notice as published in the *State Register*, the rules as proposed for adoption, any written comment received by the Department and the Statement of Need and Reasonableness. On the same day that these materials are submitted to the Attorney General, the Department shall give notice to all persons who requested to be informed of this submittal. If you wish to be notified of the date of submission of the proposed rule to the Attorney General, contact Barry Stern.

March 25, 1985

Leonard W. Levine  
Commissioner of Human Services

### Rules as Proposed (all new material)

#### 9545.2000 DEFINITIONS.

**Subpart 1. Scope.** The terms used in parts 9545.2000 to 9545.2040 have the meanings given to them in this part.

**Subp. 2. Agency.** "Agency" means any individual, organization, association, or corporation which for gain or otherwise regularly provides needed social or counseling services for persons living in their own homes, or receives persons unable to remain in their own homes and places them in residential or foster care, or places persons in adoptive homes. "Agency" includes semi-independent living services (SILS) licensed under parts 9545.0500 to 9545.0660. "Agency" does not include a local welfare agency or agencies sponsored by community mental health boards pursuant to Minnesota Statutes, section 245.66.

**Subp. 3. Base fee.** "Base fee" means the portion of the licensing fee that constitutes the minimum charge to an operator regardless of the licensed capacity or number of persons served in the day care residential facility or agency.

**Subp. 4. Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

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## PROPOSED RULES

**Subp. 5. Day care facility.** "Day care facility" means any facility, public or private, which for gain or otherwise regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation, or developmental guidance on a regular basis, for periods of less than 24 hours per day, in a place other than the person's own home. "Day care facility" includes outpatient treatment programs for chemically dependent persons licensed under parts 9530.5000 to 9530.6500.

**Subp. 6. Department.** "Department" means the Minnesota Department of Human Services.

**Subp. 7. License.** "License" means a certificate issued by the commissioner authorizing the operator to give specified services for a specified period of time in accordance with the terms of the license, Minnesota Statutes, sections 245.781 to 245.812, and 252.28, subdivision 2, and the rules of the commissioner. "License" includes a provisional license issued to an operator who is temporarily unable to comply with all of the requirements for a license.

**Subp. 8. Licensed capacity.** "Licensed capacity" means the maximum number of persons permitted under the terms of a license to receive care at any one time in a day care or residential facility or agency.

**Subp. 9. Licensed capacity fee.** "Licensed capacity fee" means the portion of the licensing fee charged to an operator based on the licensed capacity of the day care or residential facility or agency.

**Subp. 10. Licensing fee.** "Licensing fee" means the fee charged to an operator by the department for issuing or renewing a license.

**Subp. 11. Licensing fee formula.** "Licensing fee formula" means the procedure used by the department to determine the licensing fee.

**Subp. 12. Operator.** "Operator" means the individual, corporation, partnership, voluntary association, or other public or private organization legally responsible for the operation of a day care or residential facility or agency.

**Subp. 13. Regularly or regular basis.** "Regularly" or "regular basis" means a cumulative total of more than 30 days within any 12-month period.

**Subp. 14. Residential facility.** "Residential facility" means any facility, public or private, which provides one or more persons with a 24-hour per day substitute for care, food, lodging, training, education, supervision, habilitation, rehabilitation, and treatment they need, but which for any reason cannot be furnished in the person's own home.

**Subp. 15. Waiver.** "Waiver" means written permission by the commissioner for an operator to depart from the provisions of parts 9545.2020 to 9545.2030.

### 9545.2010 APPLICABILITY.

**Subpart 1. Applicability.** Parts 9545.2000 to 9545.2040 establish procedures for the department to determine and collect fees for issuing and renewing licenses for day care and residential facilities and agencies. Parts 9545.2000 to 9545.2040 apply to operators of all day care and residential facilities and agencies required to be licensed under Minnesota Statutes, sections 245.781 to 245.812, and 252.28, subdivision 2, except family foster care homes licensed under parts 9545.0010 to 9545.0260 and family day care homes licensed under parts 9545.0315 to 9545.0445, which are exempt from the licensing fees established in parts 9545.2000 to 9545.2040 under Minnesota Statutes, section 245.811, subdivision 1.

### 9545.2020 LICENSING FEE FORMULA.

**Subpart 1. General formula.** Beginning July 1, 1985, the department shall charge the following annual fees for issuing and renewing licenses:

A. A base fee of \$25, increasing to \$35 beginning July 1, 1987, \$45 beginning July 1, 1989, and \$55 beginning July 1, 1991.

B. A licensed capacity fee of \$5 multiplied by the licensed capacity of each day care or residential facility or agency. The \$5 fee shall increase to \$6 beginning July 1, 1987, \$7 beginning July 1, 1989, and \$8 beginning July 1, 1991.

C. The base fee plus the licensed capacity fee is the licensing fee to be charged to each operator at the time of application for issuance or renewal of a license.

**Subp. 2. Exceptions.** The following are exceptions to the fees established in subpart 1:

A. The licensing fee for group day care centers licensed under parts 9545.0510 to 9545.0670 shall be one-half of the licensing fee in subpart 1.

B. The licensing fee for child-caring and child-placing agencies licensed under parts 9545.0750 to 9545.0830 shall be the base fee in subpart 1, item A, plus 50 cents for each adoption decree granted by a court in the previous year for a child placed in an adoptive home by the agency and 50 cents for each foster home supervised by the agency. The 50-cent fees shall increase to 60 cents beginning July 1, 1987, 70 cents beginning July 1, 1989, and 80 cents beginning July 1, 1991.



C. The licensing fee for outpatient treatment programs for chemically dependent persons licensed under parts 9530.5000 to 9530.6500 shall be the base fee in subpart 1, item A, plus 50 cents for each person served in the program in the previous year. The 50-cent fee shall increase to 60 cents beginning July 1, 1987, 70 cents beginning July 1, 1989, and 80 cents beginning July 1, 1991.

**9545.2030 LICENSING FEE PAYMENT.**

**Subpart 1. Payment procedure.** The licensing fee payment must accompany an operator's application for issuance or renewal of a license. The licensing fee shall be payable to the treasurer of the state of Minnesota and is nonrefundable.

**Subp. 2. Proration of fees.** The annual licensing fees established in part 9545.2020 shall be prorated for day care or residential facilities or agencies licensed for a period of time other than one year according to the number of months for which the license is issued or renewed.

**Subp. 3. Noncompliance.** The department shall not take any action on an operator's application until the licensing fee is paid.

**9545.2040 WAIVER.**

**Subpart 1. Written request for waiver.** An operator may request a waiver from the licensing fee formula or payment established in parts 9545.2020 to 9545.2030. The request for a waiver must be submitted to the department in writing. The request must include the following information:

- A. the section or sections of parts 9545.2020 to 9545.2030 with which the operator cannot comply;
- B. the amount of the licensing fee requested to be waived;
- C. the reasons why compliance with the specified section or sections would cause financial hardship; and
- D. documentation supporting the information in item C.

**Subp. 2. Standard for granting waiver.** A waiver may be granted only if the operator has shown that financial hardship would occur from strict compliance with parts 9545.2020 to 9545.2030.

**Subp. 3. Notice of decision.** The commissioner shall grant or deny a request for a waiver and mail a written decision to the operator within 30 days after the request for waiver is received. If the commissioner denies a request, the written decision must inform the operator of the reason or reasons for the denial.

## Department of Human Services

### Proposed Rules Relating to Relocation of Residents of Certified Nursing Homes and Certified Boarding Care Homes

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

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

Interested persons shall have 30 days (or until May 8, 1985) to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules being 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.

PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A PUBLIC HEARING WILL BE HELD ACCORDING TO MINNESOTA STATUTES, SECTIONS 14.25-14.28.

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

## PROPOSED RULES

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

Barbara Doherty  
Adult Protection  
Minnesota Department of Human Services  
Fourth Floor, Centennial Office Building  
658 Cedar Street  
St. Paul, Minnesota 55155  
Telephone (612) 296-4019

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

The statutory authority of the Department for the proposed rules is contained in Minnesota Statutes, section 144A.31, subdivision 4.

Minnesota Rules, parts 9546.0010 to 9546.0060 establish procedures that a local social service agency must follow when a long-term care facility within the county will be discharging residents as a result of the facility's closing, its loss of or change in certification, or termination of its medical assistance provider agreement. No additional personnel will be required as a result of the adoption of these rules. Local agencies are required to implement these rules only upon notification that a nursing home or certified boarding care home located in their county is about to relocate residents.

Parts 9546.0010 to 9546.0060 are proposed for adoption as permanent rules to replace 12 MCAR §§ 2.04601-2.04606 [Temporary]. The proposed permanent rules implement the recommendations of the Relocation Task Force and the expressed requirements of the Minnesota Legislature, and are substantially the same as the temporary rules. Notice of Intent to Solicit Outside Opinion was published in the *State Register* on December 17, 1984, and no comments have been received.

Parts 9546.0010 to 9546.0060 include a statement of applicability; a definition section; procedure to follow upon notification of relocation; relocation planning requirements; relocation assistance requirements; and reporting requirements.

Copies of the proposed rules are now available and at least one free copy may be obtained upon request from:

Barbara Veronen  
Department of Human Services  
Fourth Floor, Centennial Office Building  
St. Paul, Minnesota 55155  
Telephone (612) 296-2673

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

The cost to local public bodies of implementing the proposed rules will not exceed \$100,000 for either of the first two years following passage of the rules.

If no hearing is required, the Department shall submit to the Attorney General the proposed rules and notice as published in the *State Register*, the rules as proposed for adoption, any written comments received by the Department and the Statement of Need and Reasonableness. On the same day that these materials are submitted to the Attorney General, the Department shall give notice to all persons who requested to be informed of this submittal. If you wish to be notified of the date of submission of the proposed rule to the Attorney General, contact Barbara Doherty.

March 25, 1985

Leonard W. Levine  
Commissioner of Human Services

### Rules as Proposed (all new material)

#### 9546.0010 APPLICABILITY.

Parts 9546.0010 to 9546.0060 govern the services that local agencies are required to provide for the benefit of residents of facilities when there are relocations. Parts 9546.0010 to 9546.0060 must be read in conjunction with [7 MCAR § 1.801 [Temporary]] for information regarding the relocation responsibilities of facilities.

#### 9546.0020 DEFINITIONS.

**Subpart 1. Scope.** As used in parts 9546.0010 to 9546.0060, the following terms have the meanings given them.

**Subp. 2. Certification level.** "Certification level" means the level of care, whether skilled or intermediate, which a facility is certified to provide under Code of Federal Regulations, title 42, sections 442.100 to 442.112.

**Subp. 3. Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designee.

**Subp. 4. County relocation committee.** "County relocation committee" means those staff persons of the local agency designated by the county social service director to serve as the relocation committee in the responsible county.

**Subp. 5. Facility.** "Facility" means a certified boarding care home licensed under Minnesota Statutes, sections 144.50 to 144.56 and certified as an intermediate care facility as defined in United States Code, title 42, section 1396d, as amended through December 31, 1982, or a nursing home licensed under Minnesota Statutes, sections 144A.02 to 144A.10. Facilities for the mentally retarded as defined in United States Code, title 42, section 1396d(d), as amended through December 31, 1982, are excluded.

**Subp. 6. Local agency.** "Local agency" means the county or multi-county agency authorized under Minnesota Statutes, sections 393.01, subdivision 7 and 393.07, subdivision 2 as the agency responsible for providing social services.

**Subp. 7. Medical assistance.** "Medical assistance" means the program established under title XIX of the Social Security Act and Minnesota Statutes, chapter 256B.

**Subp. 8. Medicare.** "Medicare" means the health insurance program for the aged and disabled under title XVIII of the Social Security Act.

**Subp. 9. Relocation.** "Relocation" means the discharging of residents from a facility as a result of its closing, its loss of or change in certification, or termination of its medical assistance provider agreement.

**Subp. 10. Resident.** "Resident" means a person admitted to a facility.

**Subp. 11. Responsible county.** "Responsible county" means the county where the facility is located from which the residents will be discharged.

**Subp. 12. Swing bed.** "Swing bed" means a licensed bed in an acute care hospital that has approval from the Health Care Financing Administration to furnish intermediate care or skilled nursing facility services under the Medicare program, as provided under Code of Federal Regulations, title 42, sections 440.40(a) and 440.150(f).

#### **9546.0030 PROCEDURE UPON NOTIFICATION.**

The local agency and its county relocation committee shall begin the process provided in parts 9546.0040 to 9546.0060 immediately upon receipt of written notification of the need for relocation from the facility, as provided in 7 MCAR § 1.801 [Temporary], item C, subitem b.

#### **9546.0040 RELOCATION PLANNING.**

**Subpart 1. County relocation committee.** The director of the local agency in a responsible county shall designate appropriate staff as the county relocation committee. The committee must be large enough to meet its responsibilities within the time limits in parts 9546.0030 to 9546.0060. Members of the county relocation committee must be knowledgeable about the needs of residents, and the local resources available to meet those needs including medical assistance and Medicare.

**Subp. 2. Alternative resources.** The county relocation committee shall develop a procedure to identify and monitor the current availability of alternative resources which may be used when a facility's residents must be relocated. These resources must include at least the following:

A. a list of unoccupied beds in other facilities within the county and in neighboring counties; this list must contain the following information about each facility:

- (1) the name, address, and telephone number of the facility;
- (2) the certification level of the available beds;
- (3) the type of services available within the facility; and
- (4) the number of beds that are available;

B. a list of alternative placements which includes swing beds in hospitals and foster care placement;

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## PROPOSED RULES

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- C. a list of the community and in-home health and social services which may be used on a temporary basis;
- D. a list of transportation resources;
- E. a list of volunteer resources; and

F. the name, address, and telephone number of the appropriate regional ombudsman from the long-term care ombudsman program of the Minnesota Board on Aging.

### 9546.0050 RELOCATION ASSISTANCE.

**Subpart 1. Resident information.** The county relocation committee shall obtain from the facility the name of each resident to be relocated, the name, address, and telephone number of either a family member or the individual legally responsible for the resident's care, and the name and telephone number of the individual in the facility to be contacted for further information. This information must be obtained at least 60 days before the date by which relocation is to be completed.

**Subp. 2. Coordination of relocation.** The county relocation committee shall designate one of its members as a liaison to the individual in the facility responsible for coordinating the relocation. The county designee shall meet with appropriate staff from the discharging facility to coordinate the relocation assistance offered by the county relocation committee with the relocation responsibilities of the facility. This coordination must include participating, as requested, in any group meetings of residents and their families to explain the steps being taken in arranging for the relocation of residents.

**Subp. 3. Offer of assistance.** The county relocation committee shall provide a written offer of relocation assistance to each resident to be relocated and to his or her family member, and if applicable, to the person legally responsible for his or her care. The written offer of assistance must contain, at least, an explanation of the relocation services offered by the county relocation committee, and the name, address, and telephone number of the individual to contact to request further information or assistance.

**Subp. 4. Relocation services.** The county relocation committee shall arrange for or provide, as necessary, the following minimum services for residents to be relocated to ensure their placement or other alternative care:

- A. accurate and up-to-date information about the alternative arrangements for the care of the resident, including all the resources identified in part 9546.0040, subpart 2;
- B. help in choosing among the available alternatives;
- C. counseling to enable the resident to adjust to the relocation;
- D. help in preparing the resident for the actual move which includes:
  - (1) providing written information about the new facility to the resident;
  - (2) providing an opportunity for the resident to visit the new facility to learn the physical layout, meet other residents and staff, and learn about the program and activities; and
  - (3) encouraging a visit by staff and residents from the new facility to the resident before the actual relocation, if a site visit by the resident is not possible;
- E. help in arranging for necessary transportation; and
- F. assurance that someone accompanies the resident during the actual move.

**Subp. 5. Follow-up visit.** A member of the county relocation committee shall visit the resident within 30 days after the relocation. The committee member shall interview the resident or observe him or her onsite, or both, and review and discuss pertinent medical or social records with appropriate staff to:

- A. assess the adjustment of the resident to the new living environment; and
- B. recommend services or methods to meet any special needs of the resident arising out of relocation.

### 9546.0060 REPORTING.

**Subpart 1. Initial report.** The local agency shall submit a written report to the commissioner within one week after the date of receipt of the written notice of the need to relocate residents. The initial report must contain the following information:

- A. the names and phone numbers of the county relocation committee members;
- B. a description of the procedure developed to identify and monitor the availability of resources which may be used to meet the needs of the residents to be relocated; and
- C. a timetable for the completion of the relocation process.

**Subp. 2. Status reports.** During a relocation process the county relocation committee shall provide weekly status reports to the commissioner. The status reports must include the number of residents relocated during the week, the date each resident is relocated, and the new placement of each resident. The reports must also identify any problems met during the relocation process.

**Subp. 3. Summary report.** The county relocation committee shall provide a summary report to the commissioner within 60 days after the completion of a facility's relocation. The summary report must include:

- A. the number of residents relocated;
- B. the medical assistance identification number of each medical assistance recipient relocated;
- C. the date each resident was relocated;
- D. the new placement of each resident;
- E. the status of each resident at the time of the follow-up visit; and
- F. the identification of problems met during the relocation process.

## Department of Human Services

### Proposed Temporary Rules Relating to Nursing Home Payment Rate Determination

#### Notice of Intent to Adopt Temporary Rules

The State Department of Human Services proposes to adopt the above-entitled temporary rules to implement Laws of Minnesota 1984, chapter 641, section 22, subdivision 6 and Minnesota Statutes, section 256B.431, subdivision 6.

Persons interested in these rules have until 4:30 p.m. on April 29, 1985, to submit written comments. The proposed temporary 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. Written comments should be sent to:

Rosemary Chapin  
Department of Human Services  
Sixth Floor, Space Center  
444 Lafayette Road  
St. Paul, Minnesota 55101

After consideration of all comments received, the Department of Human Services shall submit the temporary rules as published, with any modifications, this notice, and all written comments received to the Attorney General.

The Attorney General shall review the proposed temporary rule, with any modifications, as to its legality, review its form to the extent the form relates to legality and shall approve or disapprove the rule and any modifications within five working days.

The approved rule shall also be certified by the Revisor of Statutes.

The Department of Human Services shall not implement the temporary rules until a report on the proposed rules has been presented to the Senate Health and Human Services Committee and the House of Representatives Health and Welfare Committee. The rules are effective five days after publication in the *State Register*.

The temporary rules adopted under the provision of Laws of Minnesota 1984, chapter 641, section 22, subdivision 6 and Minnesota Statutes, section 256B.431, subdivision 6, shall have the force and effect of law and remain in effect until June 30, 1986, unless otherwise superseded by rule.

The Department of Human Services' authority for adoption of these rules is found in Laws of Minnesota 1984, chapter 641 and Minnesota Statutes, section 256B.41, 256B.21, 256B.431, subdivisions 1, 2 c, and 6.

The purpose of the proposed rules is to implement a case mix reimbursement system which bases nursing home operating costs payments on the condition and needs of residents in each home. This system entails ongoing assessment of resident needs to determine to which of eleven payment classifications each resident belongs. For purposes of establishing these prospective payment rates, operating costs are divided into two parts; "care related" and "other operating" costs. Separate limitations and incentives are established for each of these two parts.

This rule will impact the operating costs payment rate for nursing homes licensed under Minnesota Statutes, chapter 144A or boarding care facilities licensed under Minnesota Statutes, section 144.50 to 144.58 participating in the Medical Assistance Program.

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## PROPOSED RULES

The rule contains parts including:

- scope;
- definitions;
- establishment of geographic groups;
- allocation of fringe benefits and payroll taxes, and raw food costs;
- determination of the allowable historical operating costs per diems;
- determination of the operating cost adjustment factors and limits;
- determination of the operating cost payment rate;
- determination of the interim and settle-up operating costs payment rates;
- resident classes and class weight; and
- resident assessment.

Procedures for assessment and classification of residents by the Minnesota Department of Health in accordance with parts 9549.0050 to 9549.0059 [Temporary] are found in proposed Minnesota Rules, parts 4656.0001 to 4556.0006 [Temporary].

The fiscal impact of this rule is approximately budget neutral. The rule will not result in additional state or county spending in excess of \$100,000 annually beyond the amount of funds appropriated by the legislature.

A free copy of the proposed temporary rule may be obtained by contacting Mary Ann Bredesen, Department of Human Services, Space Center, 444 Lafayette Road, 6th Floor, St. Paul, Minnesota 55101.

March 25, 1985

Leonard W. Levine  
Commissioner of Human Services

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

#### DEPARTMENT OF HUMAN SERVICES NURSING HOME PAYMENT RATE DETERMINATION [Temporary]

##### 9549.0050 [Temporary] SCOPE.

Parts 9549.0050 to 9549.0059 [Temporary] establish procedures for determining the operating cost payment rates for all nursing homes participating in the medical assistance program. Parts 9549.0050 to 9549.0059 [Temporary] are effective for rate years beginning on or after July 1, 1985. Procedures for assessment and classification of residents by the Department of Health in accordance with parts 9549.0050 to 9549.0059 [Temporary] are found in parts 4656.0010 to 4656.0070.

##### 9549.0051 [Temporary] DEFINITIONS.

**Subpart 1. Applicability.** As used in parts 9549.0050 to 9549.0059 [Temporary], the following terms have the meanings given them.

**Subp. 2. Assessment form.** "Assessment form" means the form developed by the Department of Health Quality Assurance and Review Program which was in effect on March 1, 1984, and used for performing resident assessments. The assessment form is incorporated by reference. It is available at Ford Law Library, 117 University Avenue, Saint Paul, Minnesota 55155. It is available through Minitex interlibrary loan system. This form is not subject to frequent change.

**Subp. 3. Base year.** "Base year" means the reporting year ending September 30, 1984.

**Subp. 4. Case mix index.** "Case mix index" means the sum of the results obtained by multiplying the number of residents in each resident class in each home by the weights listed in part 9549.0058 [Temporary].

**Subp. 5. Case mix operating costs.** "Case mix operating costs" means the operating costs listed in part 9549.0040, subpart 5, as proposed in *State Register*, Volume 9, page 1716, February 4, 1985, and the portion of fringe benefits and payroll taxes allocated to the nursing services cost category in accordance with part 9549.0053.

**Subp. 6. Case mix score.** "Case mix score" means the case mix index divided by the total number of residents in each home.

**Subp. 7. Medical plan of care.** "Medical plan of care" means documentation signed by the resident's physician which includes the resident's primary diagnoses, secondary diagnoses, orders for treatment and medications, rehabilitation potential, rehabilitation procedures if ordered, clinical monitoring procedures, and discharge potential.

**Subp. 8. Other care related operating costs.** "Other care related operating costs" means the operating costs listed in part

9549.0040, subpart 6, as proposed in *State Register*, volume 9, page 1716, February 4, 1985, and the portion of fringe benefits and payroll taxes allocated to the other care related cost category in accordance with part 9549.0053 and the cost of food.

**Subp. 9. Other operating costs.** "Other operating costs" means the operating costs listed in part 9549.0040, subparts 1, 2, 3, 4, and 7, and the portion of fringe benefits and payroll taxes allocated to each of these operating costs categories in accordance with part 9549.0053, excluding the cost of food.

**Subp. 10. Quality assurance and review of QAR.** "Quality assurance and review" or "QAR" means the program established under Minnesota Statutes, sections 144.072 and 144.0721.

**Subp. 11. Resident class.** "Resident class" means each of the 11 categories established in part 9549.0058 [Temporary].

**Subp. 12. Resident plan of care.** "Resident plan of care" for residents of nursing homes not licensed as boarding care homes means the patient care plan specified in part 4655.6000. "Resident plan of care" for residents of nursing homes licensed as boarding care homes means the overall plan of care as defined in Code of Federal Regulations, title 42, section 442.319, as amended through December 31, 1984.

**Subp. 13. Standardized resident days.** "Standardized resident days" means the sum of the number of resident days in the nursing home in each resident class multiplied by the weight for that resident class listed in part 9549.0058 [Temporary]. For the rate years beginning on July 1, 1985, and July 1, 1986, standardized resident days must be determined in accordance with part 9549.0054 [Temporary], subparts 1 and 2.

#### **9549.0052 [Temporary] ESTABLISHMENT OF GEOGRAPHIC GROUPS.**

The commissioner shall classify Minnesota nursing homes according to their geographic location as indicated in subparts 1 to 3.

**Subpart 1. Group 1.** All nursing homes in Beltrami, Big Stone, Cass, Chippewa, Clearwater, Cottonwood, Crow Wing, Hubbard, Jackson, Kandiyohi, Lac Qui Parle, Lake of the Woods, Lincoln, Lyon, Mahnomon, McLeod, Meeker, Morrison, Murray, Nobles, Pipestone, Redwood, Renville, Rock, Swift, Todd, Yellow Medicine, and Wadena counties must be placed in geographic group 1.

**Subp. 2. Group 2.** All nursing homes in counties other than the counties listed under subparts 1 and 3 must be placed in geographic group 2.

**Subp. 3. Group 3.** All nursing homes in Aitkin, Anoka, Carlton, Carver, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis, Scott, and Washington counties must be placed in geographic group 3.

#### **9549.0053 DETERMINATION AND ALLOCATION OF FRINGE BENEFITS AND PAYROLL TAXES, AND FOOD COSTS.**

**Subpart 1. Fringe benefits and payroll taxes.** Fringe benefits and payroll taxes must be allocated to case mix, other care-related costs, and other operating costs according to items A to D.

A. Fringe benefits and payroll taxes must be allocated to case mix operating costs in the same proportion to salaries reported under part 9549.0040, subpart 5, as proposed in *State Register*, volume 9, page 1716, February 4, 1985.

B. Fringe benefits and payroll taxes must be allocated to other care-related costs in the same proportion to salaries reported under part 9549.0040, subpart 6, as proposed in *State Register*, volume 9, page 1716, February 4, 1985.

C. Fringe benefits and payroll taxes must be allocated to other operating costs in the same proportion to salaries reported under part 9549.0040, subparts 1, 2, 3, 4, and 7, as proposed in *State Register*, volume 9, page 1716, February 4, 1985.

D. For any nursing home which has not separately reported each salary component of an operating cost category, the commissioner shall determine the fringe benefits and payroll taxes to be allocated under this subpart according to subitems (1) and (2).

(1) The commissioner shall determine the ratio of allowable salaries in each cost category to total allowable salaries in all cost categories for all nursing homes separately reporting allowable salaries in each cost category.

(2) The nursing home's total allowable fringe benefits and payroll taxes must be multiplied by each ratio determined in subitem (1) to determine the amount of payroll taxes and fringe benefits allocated to each cost category for each nursing home under item D.

**Subp. 2. Determination of food costs.** For any nursing home which has not separately reported the cost of food under part 9549.0040, subpart 1, as proposed in *State Register*, volume 9, page 1716 (February 4, 1985), the commissioner shall determine the food costs according to items A and B.

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## PROPOSED RULES

A. The commissioner shall determine the average ratio of food costs to the total dietary costs for all nursing homes that separately reported food costs.

B. The nursing home's total allowable dietary costs must be multiplied by the ratio determined in item A to determine the food costs for that nursing home.

### **9549.0054 [Temporary] DETERMINATION OF THE ALLOWABLE HISTORICAL OPERATING COSTS PER DIEMS.**

The commissioner shall annually review and adjust the operating costs incurred by the nursing home during the reporting year preceding the rate year to determine the nursing home's actual allowable historical operating costs. The review and adjustment must comply with the provisions of parts 9549.0010 to 9549.0080, as proposed in *State Register*, volume 9, page 1716 (February 4, 1985).

**Subpart 1. Standardized resident days for rate year beginning July 1, 1985.** For the rate year beginning on July 1, 1985, each nursing home's standardized resident days must be determined according to items A to H.

A. The commissioner shall select the two most recent QAR assessments completed prior to April 1, 1985. If only one QAR assessment is available, the commissioner shall compute the standardized resident days in accordance with item I.

B. For each of the two QAR assessments selected in item A, the medical assistance case mix index must be the sum of the number of medical assistance residents in each resident class multiplied by the weight for that resident class listed in part 9549.0058 [Temporary].

C. The medical assistance case mix index for each QAR assessment determined in item B must be divided by the total number of medical assistance residents in order to compute the medical assistance case mix score.

D. The average monthly change in the medical assistance case mix score must be computed by subtracting the most recent medical assistance case mix score from the previous medical assistance case mix score and dividing the result by the number of months between the two QAR assessments dates. For any partial calendar month, the commissioner shall count as a full month any period of more than 14 days and shall disregard periods of 14 days or less.

E. The average medical assistance case mix score must be determined by subtracting from the most recent medical assistance case mix score, the product of the average monthly change in the medical assistance case mix score times the number of months from April 1, 1984, to the date of the most recent QAR assessment. For a partial calendar month, the commissioner shall count as a full month the period of more than 14 days, and shall disregard periods of 14 days or less.

F. The commissioner shall compute the private pay adjustment ratio in accordance with subitems (1) to (3).

(1) Using the method described in item C, compute the private pay case mix score for private paying residents for each nursing home whose most recent QAR assessment included assessments of private paying residents.

(2) Compute a ratio by dividing the private pay case mix score in subitem (1) by the medical assistance case mix score in item C for that QAR assessment.

(3) Compute the private pay adjustment ratio by determining the average of all ratios determined in subitem (2).

G. The commissioner shall determine the private pay average case mix score for each nursing home by multiplying the private pay adjustment ratio determined in item F, subitem (3) times the average medical assistance case mix score determined in item E.

H. The commissioner shall compute the standardized resident days in accordance with subitems (1) to (3).

(1) Multiply the private pay resident days during the reporting year by the average private pay case mix score as determined in item G.

(2) Multiply the medical assistance resident days during the reporting year by the average medical assistance case mix score as determined in item E.

(3) The standardized resident days must be the sum of subitems (1) and (2).

I. If only one QAR assessment is available, the commissioner shall compute the standardized resident days in accordance with subitems (1) to (3).

(1) The case mix index must be the sum of the number of residents in each class multiplied by the weight for that resident class listed in part 9549.0058 [Temporary].

(2) The case mix score must be computed by dividing the case mix index in subitem (1) by the total number of residents.

(3) The case mix score must be multiplied by the total number of resident days during the reporting year to determine the standardized resident days.



**Subp. 2. Standardized resident days for rate year beginning July 1, 1986.** For the rate year beginning on July 1, 1986, each nursing home's standardized resident days must be determined in accordance with items A to C.

A. The resident days in each resident class for the months of July, August, and September 1985, must be multiplied by 3.9674 to determine the annualized resident days.

B. For each resident class, the annualized resident days determined in item A, must be multiplied by the weight for that resident class listed in part 9549.0058 [Temporary].

C. The amounts determined in item B must be summed to determine the nursing home's standardized resident days for the reporting year.

**Subp. 3. Allowable historical case mix operating cost standardized per diem.** The allowable historical case mix operating cost standardized per diem must be computed by dividing the allowable historical case mix operating cost by the standardized resident days determined in subpart 1 and 2.

**Subp. 4. Allowable historical other care related operating cost per diem.** The allowable historical other care related operating cost per diem must be computed by dividing the allowable historical other care related operating costs by the greater of resident days or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period, except that a nursing home that is certified to provide a skilled level of care and that has an average length of stay of 180 days or less in their skilled level of care must divide the allowable historical other care related operating costs by the greater of resident days or 80 percent of the number of licensed beds multiplied by the number of days in the reporting period.

**Subp. 5. Allowable historical other operating cost per diem.** The allowable historical other operating cost per diem must be computed by dividing the allowable historical other operating costs by the greater of resident days or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period, except that a nursing home that is certified to provide a skilled level of care and that has an average length of stay of 180 days or less in their skilled level of care must divide the allowable historical other operating costs by the greater of resident days or 80 percent of the number of licensed beds multiplied by the number of days in the reporting period.

**9549.0055 [Temporary] DETERMINATION OF THE OPERATING COST ADJUSTMENT FACTORS AND LIMITS.**

**Subpart 1. Annual adjustment factors.** The annual adjustment factors must be determined according to items A and B.

A. The annual adjustment factor for the case mix and other care-related operating costs must be established according to subitems (1) to (4).

(1) The components and indices for the case mix and other care related operating costs adjustment factor must be as specified in the following table.

**CASE MIX AND CARE RELATED COMPONENTS AND INDICES**

Component	Weight	Index
Salaries	.7347	Average hourly earnings of employees in nursing and personal care facilities (SIC 805).
Benefits	.1107	Difference between movements in compensation and wages and salary index components of the Employment Cost Index for Service Workers.
Supplies and Drugs	.0363	Consumer Price Index for nonprescription medical equipment and supplies
Food	.1183	Producer Price Index for consumer foods.
<b>TOTAL</b>	<b>1.0000</b>	

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(2) The average price index for the reporting year must be computed by multiplying the weight for each component contained in subitem (1) by the average index for that component for the reporting year and adding the products.

(3) The average forecasted price index for the rate year immediately following the reporting year must be computed by multiplying the weight for each component contained in subitem (1) by the average forecasted index for that component for the rate year and adding the products.

(4) The adjustment factor for the case mix and other care related operating costs must be computed by dividing the amount computed in subitem (3) by the amount computed in subitem (2).

B. The annual adjustment factor for the other operating costs must be established according to subitems (1) to (4).

(1) The components and indices for the other operating cost adjustment factor must be as specified in the following table.

## OTHER OPERATING COSTS COMPONENTS AND INDICES

Component	Weight	Index
Utilities	.1099	Producer Price Index for natural gas (80 percent); and Producer Price Index for commercial power in west north central state (20 percent). This index is incorporated by reference.
Salaries	.5864	Average hourly earnings of employees in nursing and personal care facilities (SIC 805). This index is incorporated by reference.
Benefits	.0799	Difference between movements in compensation and wages and salaries index components of the Employment Cost Index for Service Workers. This index is incorporated by reference.
Additional Professional Services	.1107	Employment Cost Index for wages and salaries of professional and technical workers. This index is incorporated by reference.
Additional Miscellaneous Service Purchases	.0322	Consumer Price Index for maintenance and repair services. This index is incorporated by reference.
Miscellaneous Purchases (Commodities)	.0809	Consumer Price Index for maintenance and repair commodities. This index is incorporated by reference.
TOTAL	<u>1.0000</u>	

(2) The average price index for the reporting year must be computed by multiplying the weight for each component contained in subitem (1) by the average index value for that component for the reporting year and adding the products.

(3) The average forecasted price index for the rate year immediately following the reporting year must be computed by multiplying the weight for each component contained in subitem (1) by the forecasted average index values for that component for the same rate year and adding the products.

(4) The adjustment factor for the other operating costs must be computed by dividing the amount computed in subitem (3) by the amount computed in subitem (2).

**Subp. 2. Limits.** For each geographic group established in part 9549.0052 [Temporary] the operating costs limits must be determined according to items A to F. No redetermination of the operating costs limits shall be made due to audit adjustments or appeal settlement.

A. The commissioner shall compute 115 percent of the median of the array of the allowable historical case mix related operating cost per diems for the base year.

B. The commissioner shall compute 115 percent of the median of the array of the allowable historical other care related operating cost per diems for the base year.

C. The total care related operating cost limit for each resident class must be determined by multiplying the amount determined in item A by the weight for each resident class and adding the amount determined in item B.

D. The commissioner shall disallow any portion of the general and administrative cost category, exclusive of fringe benefits and payroll taxes that exceeds 15 percent of the allowable expenditures in all operating cost categories except fringe benefits, payroll taxes, and general and administrative.

E. The other operating costs limits must be determined in accordance with subitems (1) to (3).

(1) For geographic group in 9549.0052 [Temporary], the commissioner shall group all hospital attached nursing homes, all nursing homes with an average length of stay of 180 days or less in their skilled nursing level of care, and nursing homes licensed on May 1, 1983, by the commissioner to provide residential services for the physically handicapped under parts 9570.2000 to 9570.3600.

(2) For each geographic group in part 9549.0052 [Temporary], the commissioner shall group all nursing homes not included in subitem (1).

(3) The other operating cost limit for each group established in subitems (1) and (2) must be 105 percent of the median of the array of the allowable historical other operating cost per diems for each nursing home in the group for the base year.

F. The commissioner may establish a different base year once within a five-year period.

**Subp. 3. Incorporations by reference.** The references for the indices specified in this part are listed in items A to D, and are available through the Minitex interlibrary loan system. The references in items A to D are subject to frequent change.

A. The index for average hourly earnings of employees in nursing and personal care facilities is published monthly in "Employment and Earnings," Bureau of Labor Statistics, United States Department of Labor. (SIC 805) Standard Industrial Code 805 is the code used for employees in nursing and personal care facilities in this publication.

B. The Employment Cost Index for Service Workers and the Employment Cost Index for wages and salaries of professional and technical workers are published monthly in "Current Wage Developments," Bureau of Labor Statistics, United States Department of Labor.

C. The Consumer Price Index for nonprescription medical equipment and supplies and the Consumer Price Index for maintenance and repair commodities are published in the "Monthly Labor Review," Bureau of Labor Statistics, United States Department of Labor.

D. The Producer Price Index for consumer foods, the Producer Price Index for natural gas, and the Producer Price Index for commercial power in west north central states are published monthly in "Producer Prices and Price Indices," Bureau of Labor Statistics, United States Department of Labor.

#### **9549.0056 [Temporary] DETERMINATION OF THE OPERATING COST PAYMENT RATE.**

**Subpart 1. Nonadjusted case mix and other care related payment rate.** For each nursing home, the nonadjusted case mix and other care related payment rate for each resident class must be determined according to items A to D.

A. The nursing home's allowable historical case mix operating cost standardized per diem established in part 9549.0054 [Temporary], subpart 3, must be multiplied by the weight for each resident class listed in part 9549.0058 [Temporary].

B. The allowable historical other care related operating cost per diem established in part 9549.0054 [Temporary], subpart 4, must be added to each weighted per diem established in item A.

C. If the amount determined in item B for each resident class is below the limit for that resident class and group established in part 9549.0055 [Temporary], subpart 2, item C, the nursing home's nonadjusted case mix and other care related payment rate must be the amount determined in item B for each resident class.

D. If the amount determined in item B for each resident class is at or above the limit for that resident class and group established in part 9549.0055 [Temporary], subpart 2, item C, the nursing home's nonadjusted case mix and other care related payment rate must be set at the limit.

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**Subp. 2. Adjusted prospective case mix and other care related payment rate.** For each nursing home, the adjusted prospective case mix and other care related payment rate for each resident class must be the nonadjusted case mix and other care related payment rate multiplied by the case mix and other care related adjustment factor determined in part 9549.0055 [Temporary], subpart 1, item A.

**Subp. 3. Nonadjusted other operating cost payment rate.** The nonadjusted other operating cost payment rate must be determined according to items A and B.

A. If the allowable historical other operating cost per diem determined in part 9549.0054 [Temporary], subpart 5, is below the limit for that group established in part 9549.0055 [Temporary], subpart 2, item E, subitem (3), the nursing home's nonadjusted other operating cost payment rate must be the allowable historical other operating cost per diem.

B. If the allowable historical other operating cost per diem determined in part 9549.0054 [Temporary], subpart 5, is at or above the limit for that group established in part 9549.0055 [Temporary], subpart 2, item E, subitem (3), the nursing home's nonadjusted other operating cost payment rate must be set at that limit.

**Subp. 4. Adjusted prospective other operating cost payment rate.** The adjusted prospective other operating cost payment rate must be determined according to items A and B.

A. If the nursing home's nonadjusted other operating cost payment rate is below the limit for that group established in part 9549.0055 [Temporary], subpart 2, item E, subitem (3), the nursing home's adjusted prospective other operating cost payment rate must be the nonadjusted other operating cost payment rate determined in subpart 3, item H, multiplied by the other operating cost adjustment factor determined in part 9549.0055 [Temporary], subpart 1, item B, plus an efficiency incentive equal to the difference between the limit in part 9549.0055 [Temporary], subpart 2, item E, subitem (3), and the nonadjusted other operating cost payment rate in subpart 3 up to maximum of two dollars.

B. If the nursing home's nonadjusted other operating cost payment rate is at or above the limit for that group established in part 9549.0055 [Temporary], subpart 2, item E, subitem (3), the nursing home's adjusted prospective other operating cost payment rate must be the nonadjusted other operating cost payment rate determined in subpart 3, item B, multiplied by the other operating cost adjustment factor determined in part 9549.0055 [Temporary], subpart 1, item B.

**Subp. 5. Total operating cost payment rate.** The nursing home's total operating cost payment rate must be the sum of the adjusted prospective case mix and other care related payment rate determined in subpart 2 and the adjusted other operating cost payment rate determined in subpart 4.

### 9549.0057 [Temporary] DETERMINATION OF THE INTERIM AND SETTLE-UP OPERATING COST PAYMENT RATES.

To receive an interim payment rate, a nursing home must comply with the requirements and is subject to the conditions of part 9549.0060, subpart 14, items A to C. The commissioner shall determine interim and settle-up operating cost payment rates for a newly constructed nursing home, or one with a capacity increase of 50 percent or more according to subparts 1 and 2.

**Subpart 1. Interim operating cost payment rate.** For the rate year or portion of an interim period beginning on or after July 1, 1985, the interim total operating cost payment rate must be determined according to parts 9549.0050 to 9549.0059 [Temporary], except that:

A. Each nursing home must project its anticipated resident days for each resident class. The anticipated resident days for each resident class must be multiplied by the weight for that resident class as listed in part 9549.0058 [Temporary] to determine the anticipated standardized resident days for the reporting period.

B. The commissioner shall use anticipated standardized resident days in determining the allowable historical case mix operating cost standardized per diem.

C. The commissioner shall use the anticipated resident days in determining both the allowable historical other care related operating cost per diem and the allowable historical other operating cost per diem. Ninety percent of licensed beds multiplied by the number of days in the reporting period must not be used in determining these per diems.

D. The annual adjustment factors determined in part 9549.0055 [Temporary], subpart 1, must not be applied to the nursing home's allowable historical per diems as provided in part 9549.0056 [Temporary], subparts 2 and 4.

E. The limits established in part 9549.0055 [Temporary], subpart 2, items C and E, must be increased by ten percent.

F. The efficiency incentive in part 9549.0056 [Temporary], subpart 4, item A, must not apply.

**Subp. 2. Settle-up operating cost payment rate.** The settle-up total operating cost payment rate must be determined according to items A to C.

A. The settle-up operating cost payment rate for a nursing home which commenced construction before July 1, 1985, is determined under 12 MCAR § 2.05014 [Temporary] for the interim period before July 1, 1985.

B. The settle-up operating cost payment rate for a nursing home which commenced construction after June 30, 1985, or whose interim reporting period included a period of time after that date must be determined for the portion of that interim period occurring after June 30, 1985, as in parts 9549.0050 to 9549.0059 [Temporary].

- (1) The standardized resident days occurring after July 1, 1985, must be annualized for the interim reporting period.
- (2) The commissioner shall use the annualized standardized resident days in determining the allowable historical case mix operating cost standardized per diem.
- (3) The commissioner shall use the actual resident days in determining both the allowable historical other care related operating cost per diem and the allowable historical other operating cost per diem. Ninety percent of licensed beds multiplied by the number of days in the reporting period must not be used in determining these per diems.
- (4) The annual adjustment factors determined in part 9549.0055 [Temporary], subpart 1, must not be applied to the nursing home's allowable historical per diems as provided in part 9549.0056 [Temporary], subparts 2 and 4.
- (5) The limits established in subpart 1, item E, must be the limits for the settle-up reporting period occurring after July 1, 1985.
- (6) The efficiency incentive in part 9549.0056 [Temporary], subpart 4, item A, must not apply.

C. For the nine-month period following the settle-up reporting period, the total operating cost payment rate must be determined according to item B except that the efficiency incentive in part 9549.0056 [Temporary], subpart 4, item A, shall apply. **9549.0058 [Temporary] RESIDENT CLASSES AND CLASS WEIGHTS.**

**Subpart 1. Resident classes.** Each resident must be classified according to items A to E based on the assessments performed under part 9549.0059 [Temporary] on the assessment form.

A. Each nursing home resident or applicant must be assessed as dependent in an activity of daily living or ADL according to the following table:

ADL	Dependent if Score At or Above
Dressing	2
Grooming	2
Bathing	4
Eating	2
Bed mobility	2
Transferring	2
Walking	2
Toileting	1

B. Each nursing home resident assessed as dependent in fewer than four of the ADL's in item A must be defined as Low ADL. Each resident assessed as dependent in four through six of the ADL's in item A must be defined as Medium ADL. Each resident assessed as dependent in seven or eight of the ADL's in item A must be defined as High ADL.

C. Each resident must be defined as special nursing according to subitems (1) and (2).

(1) the resident is assessed to require tube feeding; or

(2) the resident is assessed to require clinical monitoring including evening and night shifts plus one or more of the following special treatments on the assessment form:

- (a) oxygen and respiratory therapy;
- (b) ostomy care;
- (c) care of dressings;
- (d) skin care;

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- (e) IV therapy;
- (f) drainage tubes;
- (g) blood transfusions; or
- (h) hyperalimentation.

D. Each resident must be defined as having a neuromuscular condition if the resident is assessed to have one or more of the diagnoses coded to the following categories according to the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM), as published by the Commission on Professional and Hospital Activities, 1968 Green Road, Ann Arbor, Michigan (1978). This publication is incorporated by reference. This is available through the Minitex interlibrary loan system. This is not subject to frequent change.

- (1) diseases of nervous system excluding sense organs (320-359);
- (2) cerebrovascular disease (430-438);
- (3) fracture of skull (800-804), excluding cases without intracranial injury;
- (4) intercranial injury, excluding those with skull fracture (850-854);
- (5) fracture of vertebral column with spinal cord injury (806);
- (6) spinal cord injury without evidence of spinal bone injury (952); or
- (7) injury to nerve roots and spinal plexus (953).

E. Each resident must be defined as having a behavioral condition if the resident's assessment score is three or more for behavior on the assessment form.

F. The commissioner shall establish resident classes based on the definitions in items A to E and according to subitems (1) to (11).

- (1) Class A. Low ADL, and not defined behavioral condition, and not defined special nursing.
- (2) Class B. Low ADL, and defined behavioral condition, and not defined special nursing.
- (3) Class C. Low ADL, and defined special nursing.
- (4) Class D. Medium ADL, and not defined behavioral condition, and not defined special nursing.
- (5) Class E. Medium ADL, and defined behavioral condition, and not defined special nursing.
- (6) Class F. Medium ADL, and defined special nursing.
- (7) Class G. High ADL, and scoring less than three on the eating ADL in item A, and not defined special nursing, and not defined behavioral condition on assessment form.
- (8) Class H. High ADL, and scoring less than three on eating ADL in item A, and defined behavioral condition, and not defined special nursing.
- (9) Class I. High ADL, and scoring three or four on eating ADL in item A, and not defined special nursing, and not defined neuromuscular condition.
- (10) Class J. High ADL, and defined neuromuscular condition, and scoring three or four on the eating ADL in item A, and not defined special nursing.
- (11) Class K. High ADL, and defined special nursing.

**Subp. 2. Class weights.** The commissioner shall assign weights to each resident class established in subpart 1, item F, according to items A to K.

- A. Class A, 1.00;
- B. Class B, 1.30;
- C. Class C, 1.64;
- D. Class D, 1.95;
- E. Class E, 2.27;
- F. Class F, 2.29;
- G. Class G, 2.56;
- H. Class H, 3.07;

- I. Class I, 3.25;
- J. Class J, 3.53;
- K. Class K, 4.12.

**9549.0059 [Temporary] RESIDENT ASSESSMENT.**

**Subpart 1. Assessment of nursing home applicants and newly admitted residents.** Each nursing home applicant or newly admitted resident shall be assessed for the purpose of determining the applicant's or newly admitted resident's class according to items A to I.

A. Each county preadmission screening team or hospital screening team under contract with the county must assess all nursing home applicants for whom preadmission screening is required by Minnesota Statutes, section 256B.091, and any applicant for whom a preadmission screening is not required but who voluntarily requests such a screening in accordance with Minnesota Statutes, section 256B.091, except as provided in subitems (1) and (2).

(1) The public health nurse of the county preadmission screening team or the RN case manager shall assess a nursing home applicant, if the applicant was previously screened by the county preadmission screening team and the applicant is receiving services under the Alternative Care Grants program defined in part 9505.2340 or under the medical assistance program.

(2) A nursing home applicant whose admission to the nursing home is for the purpose of receiving respite care services under the Alternative Care Grants program or under the medical assistance program need not be reassessed more than once every six months for the purpose of computing resident days under part 9549.0054 [Temporary], subpart 2, if the applicant has been classified by the Department of Health within the prior six-month period. In this case, the resident class established by the Department of Health within the prior six-month period may be the resident class of the applicant.

B. Each nursing home must assess each applicant or newly admitted resident for whom a preadmission screening is not required by Minnesota Statutes, section 256B.091, or is not requested voluntarily in accordance with Minnesota Statutes, section 256B.091. For purposes of this item, a newly admitted resident includes a resident who moves to a section of the nursing home which is licensed differently than the section from which the resident came or a resident who has been transferred from another nursing home. Each assessment must be performed by the registered nurse who signs the assessment form.

C. The assessment required by this subpart must be performed within ten working days before or ten working days after the date the applicant is admitted to the nursing home.

D. The nursing home must perform the assessment for any resident who is required to be assessed by the preadmission screening team under item A and who has received a prior preadmission screening and for whom the assessment required under this subpart has not been performed by the preadmission screening team within ten working days before or ten working days after the date the applicant is admitted to the nursing home. The nursing home must perform the assessment and submit the forms to the Department of Health within 15 working days after admission.

E. A registered nurse performing the assessment must sign the assessment form.

F. The assessment of each applicant or newly admitted resident must be based on the QAR procedures of the Department of Health, and must be recorded on the assessment form defined in part 9549.0051 [Temporary], subpart 2.

G. The preadmission screening team or hospital screening team under contract with the county must provide the completed assessment form to the nursing home, and provide a copy to the Department of Health, within five working days following the assessment.

H. Each assessment completed in accordance with items A to G and a completed medical plan of care must be submitted to the Department of Health by the nursing home as a request for classification within ten working days after admission or after the assessment, whichever is later.

I. The resident class for nursing home applicants or newly admitted residents must be effective on the date of admission to the nursing home.

**Subp. 2. Assessment of residents for July 1, 1985, rate year.** For the July 1, 1985, rate year only, each nursing home must assess each resident whose name does not appear on the Department of Health's May 15, 1985, classification list under the procedures prescribed by subpart 3, item B. The nursing home must submit a request for classification for each resident assessed by

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the nursing home to the Department of Health by June 1, 1985. The request for classification must include the completed assessment form and the resident's plan of care. For any resident admitted after June 1, 1985, the procedure outlined in subpart 1 must be followed.

**Subp. 3. Semi-annual assessment by nursing homes.** Semiannual assessments of residents by the nursing home must be completed in accordance with items A to E.

A. A nursing home must assess each of its residents no earlier than 170 days and no later than 190 days after the date of the most recent QAR assessment.

B. A registered nurse shall perform the assessment on each resident according to QAR procedures established by the Department of Health including physical observation of the resident, review of the medical plan of care, and review of the resident's care plan, and shall record the assessment on the assessment form defined in part 9549.0051 [Temporary], subpart 2. The registered nurse performing the assessment shall sign the assessment form.

C. Within five working days of the completion of the nursing home's semiannual resident assessments, the nursing home must forward to the Department of Health requests for classification for all residents assessed for the semiannual assessment. These requests must include the assessment forms, the resident plans of care, and the nursing home's daily census for the date on which the assessments were completed including an explanation of any discrepancy between the daily census and the number of assessments submitted. The nursing home must provide further information to the Department of Health if the Department of Health requests it in order to determine a resident's classification.

D. Any change in resident class due to a semi-annual assessment must be effective as of the first day of the month following the date of the Department of Health's classification.

E. For the rate year beginning July 1, 1985, only, a nursing home must assess residents according to subitems (1) to (4).

(1) In July 1985, the nursing home must assess all residents whose most recent QAR assessments were performed in October or November 1984.

(2) In August 1985, the nursing home must assess all residents whose most recent QAR assessments were performed in December 1984, or January 1985.

(3) In September 1985, the nursing home must assess all residents whose most recent QAR assessments were performed in February or March 1985.

(4) For residents assessed according to subitems (1) to (3), the nursing home must submit a request for classification for each resident assessed including the assessment form and a copy of the resident's plan of care to the Department of Health no later than the end of the calendar month when the assessments are required. The nursing home must provide further information to the Department of Health if requested by the Department of Health in order to determine a resident's classification. For each assessment performed in subitems (1) to (3), the resident classification determined by the Department of Health shall remain in effect until an assessment is performed under subpart 4 or 5.

**Subp. 4. Change in classification due to annual assessment by Department of Health.** Any change in resident class due to an annual assessment by the Department of Health's QAR team will be effective as of the first day of the month following the date of the Department of Health's assessment.

**Subp. 5. Assessment upon return to the nursing home from a hospital.** Residents returning to a nursing home after hospitalization must be assessed according to items A to C.

A. A nursing home must assess any resident who has returned to the same nursing home after a hospital admission. The assessment shall occur no more than five working days after the resident returns to the same nursing home.

B. A registered nurse shall perform the assessment on each resident according to QAR procedures established by the Department of Health, including physical observation of the resident, review of the medical plan of care, and review of the resident's plan of care, and shall record the assessment on the assessment form defined in part 9549.0051 [Temporary], subpart 2. The registered nurse who performs the assessment shall sign the assessment form. Within five working days of the completion of the assessment, the nursing home must forward to the Department of Health a request for a classification for any resident assessed upon return to a nursing home after a hospital admission. This request must include the assessment form, the hospital discharge summary, and the resident's plan of care. Upon request, the nursing home must furnish the Department of Health with further information when required in order to determine a resident's classification.

C. Any change in resident class due to an assessment provided under this subpart must be effective as of the date the resident returns to the nursing home from the hospital.

**Subp. 6. Change in resident class due to audits of assessments of nursing home residents.** Any change in resident class due to a reclassification required by part 4656.0060 must be effective as of the first day of the month following the date of the Department of Health's classification.



**Subp. 7. Change in resident class due to request for reconsideration of resident classification.** Any change in a resident class due to a request for reconsideration of the classification must be made in accordance with items A and B.

A. The resident classification established by the Department of Health must be the classification that applies to the resident while any request for reconsideration under part 4546.0060 is pending.

B. Any change in a resident class due to a reclassification under part 4546.0060 must be effective as of the date of the assessment for which a reconsideration was requested.

**Subp. 8. Reconsideration of resident classification.** Any request for reconsideration of a resident classification must be made pursuant to the procedures set forth in part 4546.0060.

## **Waste Management Board**

### **Proposed Rules Relating to Development Grants for Waste Processing and Collection Facilities**

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

Notice is hereby given that the Minnesota Waste Management Board proposes to adopt the above-entitled rules without a public hearing. The Waste Management Board 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 14.22 to 14.28.

Persons interested in these rules have 30 days to submit comments in support of or in opposition to the proposed rules. The Board encourages public comment on these proposed rules. Each comment should identify the portion of the proposed rule addressed by the comment, the reason for the comment, and any change that is 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.

If twenty-five (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 be held. Persons requesting a hearing are encouraged to identify the reasons for their request, the portion of the proposed rules that the hearing should address, and proposed changes. In the event a public hearing is required, the Board will proceed according to the provisions of Minnesota Statutes Section 14.14 to 14.20.

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

Jerry Johnson  
123 Thorson Building  
7323 - 58th Avenue North  
Crystal, MN 55428  
(612) 536-0816

Authority to adopt rules for hazardous waste processing facility grants is contained in Minnesota Statutes Section 115A.06 Subd. 2 and 115A.156. The Board is authorized by these sections to adopt rules for the administration of hazardous waste processing facility grants. The grants are intended to help determine the feasibility of developing and operating specific types of commercial facilities and services for processing hazardous waste. Accordingly, the proposed rules include eligibility criteria, information which shall be included in an application, procedures for initial review of applications, procedures and criteria for evaluating grant applications, provisions related to the awarding of grants and required content of grant agreements.

Authority to adopt rules for hazardous waste processing facility loans is contained in Minnesota Statutes Sections 115A.06 Subd. 2 and 115A.162. The Board is authorized by these sections to adopt rules to administer the certification of hazardous waste processing facility loan applications received by the Minnesota Energy and Economic Development Authority. The loans are intended to fund the construction of hazardous waste processing facilities or services. The proposed rules include provisions for initial application review, evaluation of loan applications and certification of loan applications.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, 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

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# PROPOSED RULES

of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Johnson. Persons who wish to receive a copy of the rules as adopted should also request a copy from Mr. Johnson.

March 22, 1985

Robert G. Dunn, Chairman  
Waste Management Board

## Rules as Proposed (all new material)

### 9200.6000 SCOPE AND AUTHORITY.

Parts 9200.6000 to 9200.6011 govern the administration of development grants for waste processing and collection facilities and services as provided under Minnesota Statutes, section 115A.156, and certification of hazardous waste processing facility loan applications received by the energy and economic development authority, and forwarded to the board for certification under Minnesota Statutes, section 115A.162 and 116M.07, subdivision 9.

### 9200.6001 DEFINITIONS.

**Subpart 1. Scope.** For the purposes of parts 9200.6000 to 9200.6011, the following terms have the meanings given them unless the context requires otherwise.

**Subp. 2. Authority.** "Authority" means the Minnesota Energy and Economic Development Authority created in Minnesota Statutes, section 116M.06.

**Subp. 3. Board.** "Board" means the Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

**Subp. 4. Chairperson.** "Chairperson" means the chairperson of the board.

**Subp. 5. Collection.** "Collection" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 5.

**Subp. 6. Commercial.** "Commercial" means that the facility or service referred to is established and permitted to sell waste collection or processing services to generators other than the owner and operator of the facility or services.

**Subp. 7. Commissioner.** "Commissioner" means the commissioner of energy and economic development.

**Subp. 8. Generator.** "Generator" means a person who produces a hazardous waste.

**Subp. 9. Hazardous waste.** "Hazardous waste" means those wastes identified and listed in parts 7045.0100 to 7045.0141.

**Subp. 10. Loan.** "Loan" means a hazardous waste processing facility loan as defined in Minnesota Statutes, section 116M.03, subdivision 15.

**Subp. 11. Person.** "Person" means a natural person or a corporation, association, operation, firm, partnership, trust, or other form of organization.

**Subp. 12. Processing.** "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

**Subp. 13. Proposal.** "Proposal" means the work that is intended to be conducted with the grant funds.

**Subp. 14. Service.** "Service" means work done or duty performed for others.

## HAZARDOUS WASTE PROCESSING FACILITY GRANTS

### 9200.6002 ELIGIBILITY CRITERIA.

**Subpart 1. Eligible applicants.** The following are eligible to apply for a development grant:

A. a person who proposes to develop and operate specific commercial collection or processing facilities or services to serve generators of hazardous waste in the state;

B. an association of two or more Minnesota generators who propose to develop and operate specific commercial collection and processing facilities or services to serve generators of hazardous waste in the state.

**Subp. 2. Eligible proposals.** Proposals for the following types of work which are preliminary to the development and operation of specific types of commercial facilities and services for collecting or processing hazardous waste are eligible:

A. market assessment, including generator surveys;

B. conceptual design and preliminary engineering;

C. financial and business planning necessary to address sources of funding, financial security, liability, pricing structure, and related matters required for the development and proper operation of a facility or service;

D. environmental impact and site analysis, preparation of permit applications, and environmental and permit reviews;

E. analysis of methods to overcome identified technical, institutional, legal, regulatory, market, or other problems in developing or operating a facility or service; and

F. analysis of other factors affecting development, operation, and use of the proposed facility or service.

**Subp. 3. Eligible costs.** Eligible costs are limited to the costs of conducting studies, analyses, or other work consistent with subpart 2.

**Subp. 4. Ineligible costs.** Grant money awarded through this program may not be spent for capital improvements or equipment.

**Subp. 5. Matching funds.** To be eligible to receive a grant under this program a recipient must agree to provide matching funds as specified in part 9200.6007.

**Subp. 6. Multiple proposals for a facility or service.** Proposals for more than one grant for the same facility or service are eligible only if the proposals concern different aspects of the development or operation of the facility or service.

#### **9200.6003 GRANT APPLICATION.**

An applicant must submit an application in the form specified by the board. An application must include the following information:

A. A detailed description of the proposal, including primary tasks, the schedule for completion of the work, and a statement of the amount which the applicant expects to contribute to the cost of the proposal.

B. A description of the applicant's financial, managerial, and technical ability to carry out the work described in the proposal, including the applicant's experience in carrying out similar work, and any work for which the applicant expects to use consultant assistance.

C. A description of the applicant's financial, managerial, and technical ability to develop and operate the proposed facility or service.

D. A statement whether the applicant is planning to apply for future grants under this program, or has applied or is planning to apply for a hazardous waste processing facility loan administered by the Minnesota Energy and Economic Development Authority.

E. Information which addresses the evaluation factors in Minnesota Statutes, section 115A.156, subdivision 3, and those factors listed in part 9200.6006 in sufficient detail to enable the board to adequately evaluate the proposal.

#### **9200.6004 APPLICATION PROCESS.**

**Subpart 1. Deadline.** The board will solicit applications by notification in the *State Register*. The board may set reasonable deadlines for submission of applications.

**Subp. 2. Limited solicitation of applications.** The board may limit its solicitation of applications to particular types of proposals, facilities, or services based upon:

A. the board's evaluation of the results of previous studies of hazardous waste processing and reduction proposals and opportunities in Minnesota; and

B. any board determination of the types of processing facilities or services recommended for development in the state.

#### **9200.6005 INITIAL APPLICATION REVIEW.**

**Subpart 1. Application review.** The chairperson or a designee shall review all applications.

**Subp. 2. Eligibility and documentation review.** The chairperson or a designee shall review each application to determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the proposal specified in the application, and the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to determine whether:

A. the proposal is feasible at the costs indicated in the application;

B. the applicant has the financial, managerial, and technical ability and experience to carry out the proposal;

C. the applicant has the financial, managerial, and technical ability to develop and operate the proposed facility or service;

and

**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

D. the proposal adequately addresses the evaluation factors listed in part 9200.6006.

**Subp. 3. Notice of determination.** Within 14 days after receiving the application, the chairperson shall notify each applicant of the chairperson's determinations. If the chairperson determines that the applicant, project, and costs are eligible and that the supporting documentation is adequate, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.6006. If the chairperson determines that any costs or any part of the proposal is not eligible or that the documentation in the application is inadequate, the application must be returned with a statement of the reasons for rejecting the application. The applicant has 14 days after receipt of the rejection to correct the inadequacies. If the inadequacies are corrected within the time allowed, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.6006.

### 9200.6006 EVALUATION OF PROPOSALS.

**Subpart 1. Evaluation schedule.** Within 60 days after the application is considered final, the board shall evaluate the proposal and set a date for action.

**Subp. 2. Evaluation factors.** In evaluating each proposal the board shall consider the following factors:

- A. The factors listed in Minnesota Statutes, section 115A.156, subdivision 3.
- B. The importance of the proposal to the eventual development and operation of the proposed facility or service.
- C. The likelihood that the proposed facility or service will be developed.
- D. The results of any previous proposal for which the applicant received a grant under this program.
- E. The consistency of the proposal with any board determination of the types of processing facilities or services recommended for development in the state.
- F. Whether an applicant is an association of two or more Minnesota generators. In considering this factor, the board may give preference to an association of two or more Minnesota generators if the board determines that the association significantly contributes to cooperation among generators in solving hazardous waste management problems.

### 9200.6007 AWARD OF GRANTS.

**Subpart 1. General procedure.** The board shall award grants for those proposals which in the board's judgment will be the most beneficial in improving hazardous waste management in the state, based upon its evaluation of the factors identified in part 9200.6006.

**Subp. 2. Amount of grants.** The board shall determine the amount of a grant based on a review of the factors identified in this part and based upon the availability of funds. No grant may exceed \$50,000.

**Subp. 3. Matching funds required.** A recipient other than an association of generators in the state shall agree to provide at least 50 percent of the cost of the proposal. An association of two or more generators in the state shall agree to provide at least 20 percent of the cost of the proposal.

**Subp. 4. Multiple grants for same facility or service.** The board may award more than one grant for the development of the same facility or service only if the board finds that results of previous proposals for that facility or service justify additional work on other aspects of its development or operation.

### 9200.6008 GRANT AGREEMENT.

**Subpart 1. Grant contents.** The board and a grant recipient shall enter into a grant agreement. The grant agreement must:

- A. Establish the term of the grant. Unless otherwise determined by the board, all grants awarded under this part will have a maximum of one year.
- B. Provide that the recipient is authorized to enter into contracts to complete the work specified in the agreement.
- C. Identify the product of the proposal and provide that the results of all studies, analyses, or other work performed under this agreement are made available to the board. The grant agreement may include provisions for classifying certain information provided by the grantee as nonpublic pursuant to the board's authority under Minnesota Statutes, section 115A.06, subdivision 13, and the Minnesota Data Practices Act, Minnesota Statutes, chapter 13.

**Subp. 2. Cancellation of grants.** The grant is subject to cancellation by the board if the proposed work is not completed in accordance with the terms and conditions of the grant agreement, including time schedules, unless the chairperson determines that variances from the respective agreements are in order.

**Subp. 3. Termination.** The board may terminate the work under an agreement upon 30 days notice if it determines that the proposal is no longer feasible. A request for termination may be initiated by either the board or a grant recipient. The procedure for determining that a proposal is not feasible shall be specified in the grant agreement.

**Subp. 4. Disbursement.** The board shall disburse grants in accordance with the payment schedule set out in the grant agreement. At the discretion of the board, this may include a phased disbursement or final holdback of a percentage of funds.

**Subp. 5. Return of unspent funds.** Upon completion of the proposal, cancellation of the grant, or termination of the work under a grant agreement shall return the state's share of the unspent funds. The procedure for determining the amount of funds to be returned shall be specified in the grant agreement.

#### **HAZARDOUS WASTE PROCESSING FACILITY LOANS**

##### **9200.6009 INITIAL APPLICATION REVIEW.**

**Subpart 1. Transmittal from commissioner.** Upon receipt from the commissioner of a copy of a hazardous waste processing facility loan application, the chairperson or a designee shall review the application for eligibility and adequacy of documentation.

**Subp. 2. Eligibility and documentation review.** The chairperson or a designee shall review each application to determine the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to make the determination required for certification and if it provides sufficient information to address the certification factors.

**Subp. 3. Notification of eligibility.** Within 14 days after receiving a copy of the application, the chairperson or designee shall notify the commissioner of the determination of eligibility and adequacy of documentation. The notice shall state the additional information needed by the board to determine whether the application will be certified.

##### **9200.6010 EVALUATION OF LOAN APPLICATIONS.**

**Subpart 1. Evaluation schedule.** The board will begin to review the application upon receipt of an application determined by the commissioner to be complete.

**Subp. 2. Certification factors.** In addition to determining whether the requirements of part 9200.6011, subpart 2, have been satisfied, the board shall consider the following factors in evaluating whether a loan application will be certified and in determining the share of capital costs that must be provided by the applicant:

- A. the types and quantities of hazardous waste that will be handled by the facility or service;
- B. the types and quantities of residuals produced by the facility or service and their final disposition;
- C. the number of generators that are served by the facility or service;
- D. the extent to which the facility will serve the needs of smaller businesses that generate hazardous waste;
- E. whether an applicant has received a grant from the board to undertake feasibility studies for the proposal. In considering this factor, the board may give preference to an applicant who has received a grant from the board and successfully, completed the feasibility studies for which the grant was awarded;
- F. the applicant's managerial and technical experience for developing and operating the proposed facility or service, including past operating experience with similar facilities and services;
- G. the results of previous studies of hazardous waste processing and waste reduction proposals and opportunities in Minnesota, including a comparison of the applicant's market assessment with market information previously available to the board;
- H. any board determination of the types of processing facilities or services recommended for development in the state;
- I. the availability of funds from the authority or other funding sources.

**Subp. 3. Request for additional information.** If the board finds that additional information is required to complete its evaluation, the board may request in writing that the applicant provide the necessary information. The board shall notify the commissioner of this request. If the information is not provided within 30 days, the application will be deemed rejected and no longer considered for certification by the board. The board shall notify the commissioner if an application is rejected under this subpart.

##### **9200.6011 CERTIFICATION.**

**Subpart 1. Conditions for certification.** The board may certify a loan application only if it determines that:

- A. the applicant has demonstrated that the proposed facility or service is technically feasible;
- B. the applicant has made a reasonable assessment of the market for the services offered by the proposed facility or service;

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## PROPOSED RULES

C. the applicant has agreed to provide funds for the proposed facility in an amount equal to at least 25 percent of the capital cost of the facility excluding land acquisition cost;

D. the applicant has agreed to pay the cost of any land acquisition necessary to develop the facility;

E. the facility will contribute in a significant way to achievement of the policies and objectives of the board's draft hazardous waste management plan, in particular, the reduction of the need for and practice of hazardous waste disposal.

**Subp. 2. Matching funds.** As a condition of its certification and based on its consideration of the certification factors, the board may require an applicant to agree to provide funds in excess of 25 percent of the capital cost of the facility excluding land acquisition cost.

**Subp. 3. Notification to commissioner.** The chairperson shall notify the applicant and the commissioner in writing of the board's decision regarding certification of the loan application, and the percentage of matching funds required if more than 25 percent. The board in its notice shall state the basis for its decision including any reason for the decision which is based on a certification factor under part 9200.6010, subpart 2.

## 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.

## Office of Administrative Hearings

### Adopted Rules Relating to Rulemaking Procedures of the Office of Administrative Hearings; and Adopted Rules Relating to Contested Case Hearings

The rules proposed and published at *State Register*, Volume 9, Number 17, pages 794-816, October 22, 1984 (9 S.R. 794) are adopted with the following modifications:

#### Rules as Adopted

##### 1400.0250 SIZE OF MATERIALS.

All materials submitted to the administrative law judge or chief administrative law judge in a rulemaking proceeding, except the draft of the proposed or adopted rules prepared by the revisor of statutes, handwritten comments from members of the public and ~~illustrative~~ exhibits, must be on standard size 8-1/2-inch by 11-inch paper.

##### 1400.0300 INITIATION OF HEARING.

**Subpart 1. Filing documents. Assigning administrative law judge.** Any agency desiring to initiate a rule hearing pursuant to Minnesota Statutes, sections 14.14 to 14.20, shall first file with the chief administrative law judge or a designee ~~the following documents:~~ a description of the subject matter of the upcoming rulemaking proceeding and a request for the assignment of an administrative law judge. Within ten days of receipt of the request, the chief administrative law judge shall assign an administrative law judge to preside over the proceeding.

**Subp. 1a. Filing documents.** Prior to giving notice of the hearing, the agency shall file with the chief administrative law judge, or the administrative law judge who will preside over the proceeding, the following documents:

A. A copy of the proposed rule or rules, with a certification of approval as to form by the revisor of statutes attached.

B. An order for hearing that shall contain the following: a proposed time, date, and place for the hearing to be held; a statement that the notice of hearing shall be given to all persons who have registered with the agency for that purpose, and a statement that the

notice of hearing shall be published in the *State Register*, and the signature of the person authorized to order a hearing. If a board is ordering the hearing, the person signing the order must be so authorized and a document of authority must be attached to the order for hearing.

C. The notice of hearing proposed to be issued that shall contain the following:

- (1) A proposed time, date, and place for the hearing to be held.
- (2) A statement that all interested or affected persons will have an opportunity to participate.
- (3) A statement or a description of the subjects and issues involved. If the proposed rules are not included with the notice of hearing, then the notice must clearly indicate the nature and extent of the proposed rules, and a statement shall be included announcing the availability and the means of obtaining upon request at least one free copy of the proposed rules.
- (4) A citation to the agency's statutory authority to adopt the proposed rules.
- (5) A statement describing the manner in which interested persons may present their views and advising persons that the proposed rule may be modified as a result of the hearing process.
- (6) A statement advising interested persons that lobbyists must register with the state Ethical Practices Board, which statement shall read as follows:

Minnesota Statutes, chapter 10A requires each lobbyist to register with the state Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11 as any individual:

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

(b) who spends more than \$250, not including traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

(7) A statement that written ~~comments~~ material may be submitted and recorded in the hearing record for five working days after the public hearing ends, a statement that the comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing, a statement that the comments received during the comment period shall be available for review at the office of administrative hearings, and a statement that the agency and interested persons may respond in writing within three business days after the submission period ends to any new information submitted; ~~provided that~~. No additional evidence may be submitted during the three-day period.

(8) A separate paragraph which shall read as follows:

Notice: Any person may request notification of the date on which the administrative law judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. Any person may request notification of the date on which the ~~rule was~~ rules were adopted and filed with the secretary of state. The notice must be ~~given~~ mailed on the same day that the ~~rule is~~ rules are filed. If you ~~desire want~~ to be so notified you may so indicate at the hearing or ~~so send a request of~~ in writing to the agency at any time prior to the filing of the ~~rule~~ rules with the secretary of state.

(9) A separate paragraph ~~with~~ which shall read as follows:

Notice is hereby given that a statement of need and reasonableness is now available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed ~~rule or~~ rules. Copies of the statement of need and reasonableness may be ~~obtained from~~ reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

**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

(10) If required by Minnesota Statutes, section 14.11, subdivision 1, a statement relating to the expenditure of public money by local public bodies.

(11) If ~~required by the agency elects to comply with~~ Minnesota Statutes, section 14.115, subdivision 4, by following paragraph (a) of the statute, a statement that the ~~rule proposed rules~~ will have an impact on small business and either a designation description of the probable quantitative and qualitative impact of the proposed ~~rule rules~~ upon small business or a reference to where additional information can be obtained.

(12) If required by Minnesota Statutes, section 14.11, subdivision 2, a statement that the ~~rule proposed rules~~ may have a direct and substantial adverse effect on agricultural land as defined in Minnesota Statutes, section 17.81, subdivisions 2 and 3.

(13) A statement that the rule hearing procedure is governed by Minnesota Statutes, sections 14.14 to 14.20 and by parts 1400.0200 to 1400.1200 and a statement that questions about procedure may be directed to the administrative law judge.

(14) A blank space for the addition of the name, office address, and telephone number of the administrative law judge who will be assigned to conduct the hearing.

D. A statement by the agency of the number of persons expected to attend the hearing and the estimated length of time that will be necessary for the agency to present its evidence at the hearing.

E. A statement of need and reasonableness complying with part 1400.0500.

F. A statement by the agency ~~documenting its consideration of giving~~ indicating whether it intends to provide discretionary additional public notice of the proposed rules, authorized by Minnesota Statutes, section 14.14, subdivision 1a, and the extent of any such discretionary additional notice to be given.

**Subp. 2. ~~Appointing administrative law judge~~ Scheduling a hearing.** Within ten days of receipt of the aforementioned documents, ~~the chief administrative law judge shall appoint an administrative law judge to preside at the hearing, and~~ the administrative law judge shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected interests and shall advise the agency as to whether or not the proposed notice of hearing is proper as required by Minnesota Statutes, section 14.50.

### 1400.0400 NOTICE OF HEARING.

The notice of hearing shall be given pursuant to Minnesota Statutes, section 14.14, subdivision 1a. The agency shall include in the notice of hearing, as published, the name, office address, and telephone number of the administrative law judge ~~appointed assigned~~ pursuant to part 1400.0300, subpart 2 1.

### 1400.0500 STATEMENT OF NEED AND REASONABLENESS.

**Subpart 1. Contents.** Each agency desiring to adopt rules shall prepare a statement of need and reasonableness which shall be prefiled pursuant to part 1400.0300, subpart 1. The statement of need and reasonableness must contain a summary of all of the evidence and argument which is anticipated to be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed ~~rule or rules~~, including citations to any statutes or case law anticipated to be relied upon, citations to any economic scientific, or other manuals or treatises anticipated to be utilized at the hearing or included in the record, and a list of any witnesses to be called by the agency to testify on its behalf, together with a summary of the testimony to be elicited from witnesses solicited to testify on behalf of the agency. The statement need not contain evidence and argument in rebuttal of evidence and argument presented by the public.

The statement of need and reasonableness must also contain the following:

A. a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

B. a determination of whether there are less costly methods or less intrusive methods, as respects affected persons, for achieving the purpose of the proposed rule;

C. a description of the short term or long term consequences of the rules, if adopted;

D. if required by Minnesota Statutes, section 13.04, subdivision 3, a description of why any public, private, or confidential data on individuals authorized by the rule to be collected and stored, or any private or confidential data on individuals authorized by the rule to be used and disseminated is necessary for the administration and management of programs specifically authorized by the legislature, local governing body, or mandated by the federal government; If applicable, a statement complying with:

E. if required by (1) Minnesota Statutes, section 14.115, a statement relating to the agency's consideration of the factors enumerated in Minnesota Statutes, section 14.115, subdivision 2;

F. if required by (2) Minnesota Statutes, sections 14.11, subdivision 2, and 17.80 to 16.84, a description of the possible adverse effect on agricultural land, stating the alternatives the agency considered to avoid or reduce the effect and indicating why it chose to proceed with the proposed adoption of the rule;



**G.** if required by (3) Minnesota Statutes, sections 115.43, subdivision 1, and 116.07, subdivision 6, a statement regarding the agency's consideration of economic factors as the same shall affect the feasibility and practicability of the proposed rule;

**H.** if required by (4) Minnesota Statutes, section 144A.29, subdivision 4, a description of the anticipated costs and benefits of the proposed rule;

**I. B.** if required by Minnesota Statutes, section 16A.128, subdivision 1, the approval of the commissioner of finance if the rule modifies proposed rules modify a fee charged; and

**J. C.** a statement complying with the requirements of any other law or rule prescribing in any manner the matters to be included in the statement of need and reasonableness or which the agency is required by law or rule to consider in the adoption of a rule.

To the extent that an agency is proposing amendments to existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.

**Subp. 2. Specificity.** The statement shall be prepared with sufficient specificity so that interested persons will be able to fully prepare any testimony or evidence in favor of or in opposition to the rules as proposed. Presentation of evidence or testimony, other than bona fide rebuttal, not summarized in the statement of need and reasonableness may result in the administrative law judge, upon proper motion made at the hearing by any interested person, recessing the hearing to a future date in order to allow all interested persons an opportunity to prepare testimony or evidence in opposition to the newly presented evidence or testimony. The recess shall be for a period not to exceed 25 calendar days, unless the 25th day is a Saturday, Sunday, or legal holiday, in which case, the next succeeding working day shall be the ~~maximum~~ last date for the resumed hearing.

**Subp. 3. Verbatim agency presentation.** If the agency desires, the statement of need and reasonableness may contain the verbatim affirmative presentation by the agency and, provided that copies are available for review at the hearing, may be introduced as an exhibit into the record as though read. In such instance, agency personnel or other persons thoroughly familiar with the proposed rules and the agency's statement shall be available at the hearing for questioning by the administrative law judge and other interested persons or to briefly summarize all or a portion of the statement of need and reasonableness if requested by the administrative law judge.

#### **1400.0600 DOCUMENTS TO BE PREFILED.**

At least 25 days prior to the date and time of the hearing, the agency shall file with the administrative law judge assigned to the hearing copies of the following documents if not previously filed:

- A. the notice of hearing as mailed;
- B. the agency's certification that the mailing list required by Minnesota Statutes, section 14.14, subdivision 1a, which was used for the hearing, was accurate and complete;
- C. an affidavit of mailing of the notice to all persons on the agency's list;
- D. an affidavit of additional notice if such discretionary notice was given pursuant to Minnesota Statutes, section 14.14, subdivision 1a;
- E. the petition requesting a rule hearing, if one has been filed pursuant to Minnesota Statutes, section 14.09;
- F. all materials received following a notice made pursuant to Minnesota Statutes, section 14.10, together with a copy of the *State Register* containing the notice or a photocopy of the pages of the *State Register* on which the notice was published;
- G. the names of agency personnel who will represent the agency at the hearing, together with the names of any other witness solicited by the agency to appear on its behalf;
- H. a copy of the *State Register* in which the notice and proposed rules or rule amendments were published or a photocopy of the pages of the *State Register* on which the notice and proposed rules were published.

#### **1400.0700 ADMINISTRATIVE LAW JUDGE DISQUALIFICATION.**

The administrative law judge shall withdraw from participation in a rulemaking proceeding to which he or she has been assigned if, at any time, he or she deems himself or herself disqualified for any reason. Upon the filing in good faith by an affected person of an affidavit of prejudice against the administrative law judge, the chief administrative law judge shall determine the matter as a part of the record provided that the affidavit shall be filed no later than five working days prior to the date set for hearing.

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# ADOPTED RULES

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## 1400.0800 CONDUCT OF HEARINGS.

**Subpart 1. Statutory proceedings.** All hearings held pursuant to Minnesota Statutes, sections 14.14 to 14.20, shall proceed substantially in the following manner.

**Subp. 2. Registration of participants.** All persons intending to present evidence or ask questions shall register with the administrative law judge prior to the presentation of evidence or questions by ~~writing~~ legibly printing their names, addresses, telephone numbers, and the names of any individuals or associations that the persons represent in connection with the hearing on a register to be provided by the administrative law judge. Persons may indicate to the administrative law judge in writing their desire to be informed of the date on which the administrative law judge's report will be available ~~and~~ Persons may indicate to the agency, in writing, if they want to be informed of the date on which the agency adopts the final ~~rule~~ rules, if it does so, and files the ~~rules~~ rules with the secretary of state.

**Subp. 3. Notice of procedure.** The administrative law judge shall convene the hearing at the proper time and shall explain to all persons present the purpose of the hearing and the procedure to be followed at the hearing. The administrative law judge shall notify all persons present that the record will remain open for five working days following the hearing, or for a longer period not to exceed 20 calendar days if ordered by the administrative law judge, for the receipt of written statements concerning the proposed ~~rule~~ rules ~~and that these statements will be available for review at the administrative law judge's office~~. The administrative law judge must also notify all persons present that, within three business days after the close of the submission period, any person, including the agency, may respond in writing to any new information submitted, provided that additional evidence may not be submitted during the three-day period, and that such responses ~~must~~ will be included in the rulemaking record.

**Subp. 4. Registration of lobbyists.** The administrative law judge shall advise the persons present of the requirements of Minnesota Statutes, chapter 10A concerning the registration of lobbyists.

**Subp. 5. Agency representatives.** The agency representatives and any others who will be presenting the agency position at the hearing shall identify themselves for the record.

**Subp. 6. ~~Proposed rule~~ Copies of proposed rules.** The agency shall make available copies of the proposed ~~rule~~ rules at the hearing.

**Subp. 7. Exhibits.** The agency shall introduce as exhibits the documents required to be filed with the administrative law judge or the chief administrative law judge pursuant to parts 1400.0300, subpart 1, items D, A, B, and E; and 1400.0600.

**Subp. 8. Showing.** The agency shall make its affirmative presentation of facts showing the need for and the reasonableness of the proposed ~~rule~~ rules and shall present any other evidence it deems necessary to fulfill all relevant, substantive, and procedural statutory or regulatory requirements. Pursuant to part ~~1400.5000~~ 1400.0500, subpart 3, the agency may rely on its statement of need and reasonableness for the affirmative presentation of facts required by this subpart, and it may also present oral evidence subject to part 1400.0500, subparts 1 and 2.

**Subp. 9. Opportunity for questions.** Interested persons shall be given an opportunity to address questions to the agency representatives or witnesses or to interested persons making oral statements. Agency representatives may question interested persons making oral statements. Such questioning may extend to an explanation of the purpose ~~of~~ or intended operation of ~~a~~ the proposed ~~rule~~ rules, or a suggested modification, or may be conducted for other purposes if material to the evaluation or formulation of the proposed ~~rule~~ rules.

**Subp. 10. Opportunity for presenting statements and evidence.** Interested persons shall be given an opportunity to present oral and written statements and evidence regarding the proposed ~~rule~~ rules.

**Subp. 11. Questioning by administrative law judge.** The administrative law judge may question all persons, including the agency representatives.

**Subp. 12. Further agency evidence.** The agency may present any further evidence that it deems appropriate in response to statements made by interested persons. Upon such presentation by the agency, interested persons may respond thereto.

**Subp. 13. Powers of administrative law judge.** Consistent with law, the administrative law judge shall be authorized to do all things necessary and proper to the performance of the foregoing and to promote justice, fairness, and economy, including but not limited to the power to preside at the hearing, administer oaths or affirmations when deemed appropriate, hear and rule on objections and motions, question witnesses where deemed necessary to make a complete record, rule on the admissibility of evidence and strike from the record objectionable evidence, ~~and~~ limit repetitive or immaterial oral statements and questioning, and determine the order of making statements and questions.

## 1400.0850 RECEIPT OF WRITTEN MATERIALS.

The administrative law judge shall allow written materials to be submitted and recorded in the hearing record for a period of five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if he or she so orders. The agency and all interested persons must be allowed to review the comments received during the comment period and must be allowed three

business days after the submission period ends to respond in writing to any new information submitted. During this three-day period, the agency may also indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during the three-day period. The written response responses must be included in the rulemaking record.

**1400.0900 HEARING RULEMAKING RECORD.**

The hearing record shall be closed upon the last date for receipt of written responses filed pursuant to Minnesota Statutes, section 14.15, subdivision 1.

The rulemaking record shall include:

- A. all documents enumerated in parts 1400.0300, subpart 1, and 1400.0600;
- B. copies of all publications in the *State Register* pertaining to the rules;
- C. all written petitions, requests, submissions, or comments received by the agency, the administrative law judge, or the chief administrative law judge pertaining to the rules substance and jurisdiction of the rulemaking proceeding;
- D. the official transcript of the hearing if one was prepared, or the tape recording of the hearing if a transcript was not prepared;
- E. the report of the administrative law judge;
- F. the report of the chief administrative law judge, if any;
- G. the ~~rule~~ rules in the form last submitted to the administrative law judge;
- H. the agency's order adopting the ~~rule~~ rules;
- I. the revisor of statutes certificate approving the form of the ~~rule~~ rules; and
- J. a copy of the adopted ~~rule~~ rules as filed with the secretary of state.

**1400.0950 AVAILABILITY OF TRANSCRIPT; USE OF COURT REPORTERS.**

A transcript of a rulemaking hearing will be made upon the request of the agency, the attorney general, the chief administrative law judge, or any interested person. If the transcript is prepared at the request of an interested person, that person shall pay for the cost of the preparation of the original and one copy; ~~the original being filed with the administrative law judge.~~ Otherwise, the agency shall pay for the cost of the original and any copies it requires. Any interested person may purchase a copy of a transcript once the original has been ordered by another person. The cost for the preparation of a transcript or a copy of a transcript shall be determined by contract between the Office of Administrative Hearings and nongovernmental court reporters or persons providing transcription services. When a transcript has been prepared, the original shall be filed with the Office of Administrative Hearings and be forwarded to the agency with the official record upon the issuance of the administrative law judge's report. When a transcript has been ordered or prepared subsequent to the issuance of the administrative law judge's report, the original shall be filed with the Office of Administrative Hearings and forwarded to the agency as soon as the Office of Administrative Hearings has completed its recordkeeping requirements. The use of court reporters to keep the record of the hearing is governed by Minnesota Statutes, section 14.52.

**1400.1000 REPORT OF ADMINISTRATIVE LAW JUDGE.**

**Subpart 1. No substantial change.** Subsequent to the close of the record, the administrative law judge shall make a report pursuant to Minnesota Statutes, section 14.50. If the report contains findings that the rules as last proposed by the agency prior to the close of the record are needed and reasonable and are not substantially changed from those which were published in the *State Register*, and that the agency has fulfilled the relevant substantive and procedural requirements imposed on the agency by rule or law, the administrative law judge shall file the original of said report, together with the complete record of the proceedings, with the agency. Both the agency, if authorized by statute, and the Office of Administrative Hearings shall make a copy of the report available to any interested person upon request at a reasonable charge.

**Subp. 2. Substantial change.** If the administrative law judge's report contains findings that the rules as last proposed by the agency prior to the close of the record are substantially changed from those which were published in the *State Register*, or that the agency has failed to demonstrate the need or reasonableness of the rules, or has not fulfilled the relevant substantive and procedural requirements imposed on the agency by rule or law, he or she shall submit the report, together with the complete record of the

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## ADOPTED RULES

proceedings, to the chief administrative law judge for review pursuant to Minnesota Statutes, sections 14.15 and 14.16.

**Subp. 3. Chief administrative law judge's review.** Upon receipt of a report from the administrative law judge, the chief administrative law judge shall complete his or her review and submit a report, along with the complete record and the report of the administrative law judge, to the agency within ten calendar days.

### 1400.1100 SUBSTANTIAL CHANGE.

**Subpart 1. Substantial change prohibited.** An agency may not adopt a rule that is substantially different from the proposed rule contained in the published notice of proposed rule adoption with a modification which the chief administrative law judge has determined, pursuant to part 1400.1100, subpart 2, would constitute a substantial change. However, an agency may terminate a rulemaking proceeding and commence a new rulemaking proceeding for the purpose of adopting a substantially different rule. Nothing in this subpart shall prevent the agency from proceeding with the adoption of portions of the rules which have not been found to be defective.

**Subp. 2. Determination of substantial change.** In determining whether the a proposed final rule or rule as adopted is substantially different, the administrative law judge or the chief administrative law judge shall consider the extent to which it affects classes of persons not represented who could not have reasonably been expected to comment on the proposed rules at the rulemaking hearing, or goes to a new subject matter of significant substantive effect, or makes a major substantive change that was not raised by the original notice of hearing in such a way as to invite reaction at the hearing, or results in a rule fundamentally different in effect from that contained in the notice of hearing.

### 1400.1200 RULE ADOPTION.

**Subpart 1. Finding of no defect by administrative law judge.** If the administrative law judge finds, pursuant to part 1400.1000, that there are no defects in the proposed rules and proposed modifications, the agency shall, if it adopts the rules in accordance with the recommendations of the administrative law judge, obtain the approval of the revisor of statutes as to the form of the rules, file two copies of the rules as approved by the revisor of statutes with the secretary of state, and publish notice of adoption of the rules in the *State Register*.

**Subp. 2. Agency adoption of changes not recommended by administrative law judge.** If the agency proposes to adopt the rules with changes other than as recommended by the administrative law judge, the agency shall submit a copy of the rules as initially proposed, a copy of the agency's findings and order adopting rules, and a copy of the rules as proposed to be adopted, showing the changes, to the chief administrative law judge for a determination as to substantial change between the final proposed rules and the proposed rules published in the *State Register*, pursuant to Minnesota Statutes, sections 14.15, subdivision 3, and 14.16. The chief administrative law judge may require the agency to submit the entire all or a portion of the rulemaking record if necessary for a proper determination regarding substantial change.

**Subp. 3. Finding of defect in proposed rules.** If the administrative law judge finds a defect in the proposed rules and the chief administrative law judge approves the finding of a defect by the administrative law judge, the chief administrative law judge must advise the agency of the actions that will correct the defect found. The agency shall either take the actions prescribed by the chief administrative law judge to correct any defects in the proposed rules or withdraw those portions of the rules, unless the defect found relates to the required showing of need and reasonableness of the proposed rules. With respect to defects found relating to the required showing of need and reasonableness of the proposed rules, the agency may alternatively proceed under Minnesota Statutes, section 14.15.

**Subp. 4. Revisor of statutes approval of changes in proposed rule.** No agency shall adopt in its findings and order adopting rules any change in a rule as initially published in the *State Register*, whether proposed by the agency or recommended by the administrative law judge or required by the chief administrative law judge without first obtaining from the revisor of statutes an approval as to the form of the proposed change to the rule as initially published in the *State Register*.

**EFFECTIVE DATE.** These rules apply to all rulemaking hearings initiated pursuant to part 1400.0300 after the effective date of the rules.

## Rules as Adopted

### CONTESTED CASE HEARINGS

#### 1400.5100 DEFINITIONS.

**Subpart 1. Administrative law judge or judge.** "Administrative law judge" or "judge" means the person or persons assigned by the chief administrative law judge pursuant to Minnesota Statutes, section 14.50 to hear the contested case.

~~Subpart 1a~~ **Subp. 2. Agency, claimant agency.** "Agency" or "claimant agency" means the state or public agency asserting a claim to a tax refund or for whom a contested case hearing is being conducted.

**Subp. 1b 3. Chief judge.** "Chief judge" means the chief administrative law judge of the Office of Administrative Hearings.

**Subp. 1e 4. Conference contested case.** "Conference contested case" means a contested case hearing which falls within one or more of the following categories:

A. a matter in which there is no disputed issue of material fact;

B. a matter in which there are one or more disputed issues of material facts, if the matter involves only:

(1) a monetary amount of not more than \$5,000;

(2) a disciplinary sanction against a public employee which does not involve discharge from employment, a demotion, or a suspension for more than 30 days;

(3) a disciplinary action against a licensee or permittee which does not involve a revocation or a withdrawal of the authority previously granted, a suspension for more than 90 calendar days, or the involuntary amendment of the license or permit; or

(4) an action involving the amendment, at the request of the licensee or permittee, of an existing license or permit; or

C. is conducted pursuant to the procedures in parts 1400.5100 to 1400.8300 through agreement of the parties. It also means cases conducted pursuant to the Minnesota Revenue Recapture Act, Minnesota Statutes, sections 270A.01 to 270A.12.

**Subp. 1d 5. Formal contested case.** "Formal contested case" means a contested case hearing which is required to be heard under Minnesota Statutes, chapter 14, and which does not qualify as a conference contested case.

**Subp. 1e 6. Office.** "Office" means the Office of Administrative Hearings.

**Subp. 2 7. Party.** "Party" means each person named as a party by the agency in the notice of and order for hearing, or persons granted permission to intervene pursuant to part 1400.6200. The term "party" shall include the agency except when the agency participates in the contested case in a neutral or quasi-judicial capacity only.

**Subp. 3 8. Person.** "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit, or agency other than a court of law.

**Subp. 4 9. Service; serve.** "Service" or "serve" may be accomplished by either delivering a document to an individual in person, or by leaving a document at the person's home with someone of suitable age and discretion who resides in the same house, or by mailing the document to the person by first class United States mail means personal service or, unless otherwise provided by law, service by first class United States mail or a licensed overnight express mail service, postage prepaid and addressed to the party at his or her last known address. An affidavit of service shall be made by the person making the service. Service by mail or licensed overnight express mail service is complete upon placing the item to be served in the mail or delivering it to the authorized agent of the express mail service. Personal service may be accomplished by either delivering a document to the person or by leaving a document at the person's home or place of business with someone of suitable age and discretion who resides in the same house or who is located at the same business address of the person to be served.

If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution.

Postage shall be prepaid. Mail to a person other than a state agency shall be addressed to the last known address of the person. Agencies of the state of Minnesota may also deposit the document with the Central Mailing Section, Publications Division, Department of Administration, addressed as above.

#### **1400.5200 SCOPE; CONVERSION OF CONTESTED CASE.**

The procedures in parts 1400.5100 to 1400.8400 shall govern all contested cases required to be conducted by the office and under Minnesota Statutes; chapter 14. The procedures in parts 4100.8510 to 1400.8613 shall govern all cases conducted pursuant to the Revenue Recapture Act, Minnesota Statutes, sections 270A.01 to 270A.12 and shall also be utilized in those cases where the parties agree to use them.

At any point in a contested case hearing the judge may convert the contested case from one type to another if the conversion is appropriate, is in the public interest, and does not substantially prejudice the rights of any party. A conversion of a contested case of one type to another may be effected only upon notice to all parties to the original case. To the extent feasible and consistent with the rights of parties and the requirements of parts 1400.5100 to 1400.8400 pertaining to the new contested case, the record of the original case must be used in the new case.

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After a contested case is converted from one type to another, the judge shall give additional notice to parties as is necessary to satisfy the requirements of parts 1400.5100 to 1400.8400 pertaining to the new case; dispose of the matters involved without further hearings or proceedings if sufficient hearings have already been held to satisfy the requirements of parts 1400.5100 to 1400.8400 pertaining to the new contested case; and conduct any additional hearings or proceedings necessary to satisfy the requirements of parts 1400.5100 to 1400.8400 pertaining to the new contested case.

### ~~1400.5250 WAIVER.~~

~~Upon request of all parties, the administrative law judge shall waive or modify any of these rules, provided that such waiver or modification does not conflict with any provision of Minnesota Statutes, sections 14.48 to 14.70 or 270A.01 to 270A.12.~~

### 1400.5275 DOCUMENTS FILED.

Forms, documents, or written materials prepared specifically for and used or filed in contested proceedings before the office must be on standard size 8-1/2-inch by 11-inch paper.

### 1400.5300 REQUEST FOR ADMINISTRATIVE LAW JUDGE.

Any agency desiring to order a contested case hearing shall first file with the chief judge or designee a request for assignment of a judge together with the notice of and order for hearing proposed to be issued which shall include, unless the agency requests the judge to set a hearing at a later date, a proposed time, date, and place for the hearing. ~~The agency shall also indicate whether the case is to be set as a formal or a conference contested case.~~

~~If the agency is not sure whether the case is a formal or conference contested case, it shall request a determination by the chief judge at the time it requests the assignment. Subject to the provisions for conversion of a contested case from one form to another as provided in part 1400.5200, the case shall be set based on the determination by the chief judge. The chief judge shall maintain a public file of all determinations made pursuant to this paragraph.~~

### 1400.5400 ASSIGNMENT OF ADMINISTRATIVE LAW JUDGE.

Within ten days of the receipt of a request pursuant to part 1400.5300, the chief judge shall assign a judge to hear the case. Unless the chief judge or designee has already agreed with the agency, the judge shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected persons. In cases where the hearing is to be set at a later time, the judge shall advise the agency on the location and time for the hearing when appropriate. In offering this advice, the judge shall consider the location of known parties, witnesses, and other participants so as to maximize convenience and minimize costs. After reaching agreement with the chief judge or designee, or upon receiving advice from the judge, the agency shall issue the notice of and order for hearing, unless the substantive law requires it to be issued otherwise.

### 1400.5500 DUTIES OF ADMINISTRATIVE LAW JUDGE.

Consistent with law, the judge shall perform the following duties:

- A. grant or deny a demand for a more definite statement of charges;
- B. grant or deny requests for discovery including the taking of depositions;
- C. receive and recommend action upon requests for subpoenas where appropriate and consistent with part 1400.7000;
- D. hear and rule on motions;
- E. preside at the contested case hearing;
- F. administer oaths and affirmations;
- G. grant or deny continuances;
- H. examine witnesses where deemed necessary to make a complete record;
- I. prepare findings of fact, conclusions, and recommendations or a final order where required by law;
- J. make preliminary, interlocutory, or other orders as deemed appropriate;
- K. recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot or for other reasons;
- L. permit testimony, upon the request of a party or upon his or her own motion to be prefiled in whole or in part where the prefiling will expedite the conduct and disposition of the case without imposing an undue burden on any party;
- M. do all things necessary and proper to the performance of the foregoing;
- N. in his or her discretion, perform such other duties as may be delegated by the agency ordering the hearing; and

O. grant or deny a request to substitute the use of initials for proper names in the hearing record or in findings of fact, conclusions, and recommendations or order.

**1400.5600 NOTICE AND ORDER FOR HEARING.**

**Subpart 1. Commencing a contested case.** A contested case is commenced, subsequent to the assignment of a judge, by the service of a notice of and order for hearing by the agency.

**Subp. 2. Contents of notice and order.** Unless otherwise provided by law, a notice of and order for hearing, which shall be a single document, shall be served upon all parties and shall contain, among other things, the following:

A. The time, date, and place for the hearing or a prehearing conference, or a statement that the matter has been referred to the office and that a hearing or prehearing time, date, and place will be set by the judge;

B. Name, address, and telephone number of the judge;

C. A citation to the agency's statutory authority to hold the hearing and to take the action proposed;

D. A statement of the allegations or issues to be determined together with a citation to the relevant statutes or rules allegedly violated- ~~If a debt arises from more than one event or transaction, each event or transaction shall be noted or which control the outcome of one case;~~

E. Notification of the right of the parties to be represented by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law;

F. A citation to parts 1400.5100 to 1400.8400, to any applicable procedural rules of the agency, and to the contested case provisions of Minnesota Statutes, chapter 14 and notification of how copies may be obtained;

G. A brief description of the procedure to be followed at the hearing;

H. A statement advising the parties to bring to the hearing all documents, records, and witnesses they need to ~~present~~ support their position;

I. A statement that subpoenas may be available to compel the attendance of witnesses or the production of documents, referring the parties to part 1400.7000 relating to subpoenas;

J. A statement advising the parties of the name of the agency official or member of the attorney general's staff to be contacted to discuss informal disposition pursuant to part 1400.5900 along with an explanation of the types of informal disposition which the agency might consider, or discovery pursuant to parts 1400.6700 and 1400.6800;

K. ~~In formal contested cases,~~ A statement advising the parties that a notice of appearance must be filed with the judge within 20 days of the date of service of the notice of and order for hearing if a party intends to appear at the hearing unless the hearing date is less than 20 days from the issuance of the notice of and order for hearing;

L. A statement advising existing parties that failure to appear at the hearing may result in the allegations of the notice of and order for hearing being taken as true, or the issues set out being deemed proved, and a statement which explains the possible results of the allegations being taken as true or the issues proved; and

M. A statement advising the parties that if ~~nonpublic~~ not public data is admitted into evidence it may become public unless a party objects and asks for relief under Minnesota Statutes, section 14.60, subdivision 2.

**Subp. 3. Service.** Unless otherwise provided by law, the notice of and order for hearing ~~in a formal contested case~~ shall be served not less than 30 days prior to the hearing ~~and not less than 20 days for a conference contested case~~. Provided, however, that a shorter time may be allowed, where it can be shown to the chief judge that a shorter time is in the public interest and that interested persons are not likely to be prejudiced.

**Subp. 4. Publication.** Where the agency participates in the hearing in a neutral or quasi-judicial capacity, the notice of and order for hearing shall be published as required by law or as ordered by the agency, and copies of the notice of and order for hearing may be mailed by the agency to persons known to have a direct interest.

**Subp. 5. Amendment.** At any time prior to the close of the hearing, the agency may file and serve an amended notice of and order for hearing, provided that, should the amended notice and order raise new issues or allegations, the parties shall have a reasonable time to prepare to meet the new issues or allegations if requested.

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**Subp. 6. Alternative documents and procedures.** With the prior written concurrence of the chief judge, an agency may substitute other documents and procedures for the notice of and order for hearing provided that the documents and procedures inform actual and potential parties of the information contained in subpart 2.

### **1400.5700 NOTICE OF APPEARANCE FOR FORMAL CONTESTED CASES.**

Each party intending to appear at a ~~formal~~ contested case hearing shall file with the judge and serve upon all other known parties a notice of appearance which shall advise the judge of the party's intent to appear and shall indicate the title of the case, the agency ordering the hearing, the party's current address and telephone number, and the name, office address, and telephone number of the party's attorney or other representative. The notice of appearance shall be filed with the judge within 20 days of the date of service of the notice of and order for hearing, except that, where the hearing date is less than 20 days from the commencement of the contested case, the notice of appearance shall not be necessary. The failure to file a notice may, in the discretion of the judge, result in a continuance of the hearing if the party failing to file appears at the hearing. A notice of appearance form shall be included with the notice of and order for hearing for use by the party served.

### **1400.5800 RIGHT TO COUNSEL.**

Parties may be represented by an attorney throughout the proceedings in a contested case, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law.

### **1400.5900 CONSENT ORDER, SETTLEMENT, OR STIPULATION.**

Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings. Parties may enter into these agreements on their own or may utilize the mediation procedures in part 1400.5950 or the settlement conference procedures in part 1400.6550.

### **1400.5950 MEDIATION.**

**Subpart 1. Definition.** "Mediation" is a voluntary process where parties to a dispute jointly explore and resolve all or a part of their differences with the assistance of a neutral person. The mediator's role is to assist the parties in resolving the dispute themselves. The mediator has no authority to impose a settlement ~~on the parties against their will.~~

**Subp. 2. Office to provide.** The office will provide mediation services to any state agency, court, or political subdivision ~~either prior to or subsequent to the initiation of a rulemaking or in a~~ contested case proceeding or other contested matter other than labor relation disputes which are within the jurisdiction of the Bureau of Mediation Services. For purposes of this part only, "agency" means either a state agency, court, or political subdivision of the state.

**Subp. 3. Initiating mediation.** Mediation may be initiated in the following ways:

A. Prior to the initiation of a ~~rulemaking or~~ contested case proceeding, an agency may propose mediation by filing a written request for mediation services with the chief judge. ~~In contested case proceedings,~~ A copy of the request shall be served upon all persons whom the agency would name as parties in the notice of and order for hearing.

B. Subsequent to the initiation of a ~~rulemaking or~~ contested case proceeding, the agency, a party to a contested case, or the judge assigned to the ~~rulemaking or~~ contested case may propose that the case be mediated by filing a request for mediation services with the chief judge. A copy of the request must be served upon the agency, the judge, and all parties. ~~In rulemaking proceedings, persons who can show they will be directly affected by the rules may also request mediation.~~

C. Upon receipt of a request for mediation, the chief judge or designee shall contact, either orally or in writing, the agency and all parties or directly affected persons to determine whether they are willing to participate in mediation. No matter shall be ordered for mediation if the agency, any party, or directly affected person is opposed.

D. If the chief judge determines that no party, directly affected person, or the agency is opposed to mediation, the chief judge shall appoint a mediator and issue an order for mediation, which shall set forth:

- (1) the name, address, and telephone number of the mediator; and
- (2) a date by which the mediator must initiate the mediation proceedings.

The order shall be served upon the agency, the parties, or directly affected persons, and the judge assigned to the contested case or rulemaking proceeding, if any.

E. The mediator must initiate the mediation proceedings by contacting the agency and each party or directly affected person no later than the date set forth in the order for mediation.

**Subp. 4. Confidentiality.** The mediator shall not communicate, either directly or indirectly, regarding any facts or issues in the mediation with any person not participating in the mediation unless authorized to do so by the parties to the mediation.

**Subp. 5. Termination.** The mediation process shall terminate when any party, any directly affected person, or the agency announces its unwillingness to continue mediation; or the parties and the agency sign a settlement agreement setting forth the resolution of the disputed issues.



Upon termination, the mediator shall either forward the signed settlement agreement to the agency or the judge, if applicable, for appropriate action; or inform the agency or the judge, if applicable, that the mediation has been terminated without agreement.

**Subp. 6. Admissibility.** Any offers to compromise or evidence of conduct or statements made during mediation are not admissible.

**Subp. 7. Unsuccessful mediation.** The person appointed to mediate a dispute shall not be assigned to hear any portion of the case should mediation terminate unsuccessfully.

#### **1400.6000 DEFAULT.**

The agency or the judge, where authorized, may dispose of a contested case adverse to a party which defaults. Upon default, the allegations of or the issues set out in the notice of and order for hearing or other pleading may be taken as true or deemed proved without further evidence. A default occurs when a party fails to appear at a hearing or fails to comply with any interlocutory orders of the judge.

#### **1400.6100 TIME.**

**Subpart 1. Computation.** In computing any period of time prescribed by parts 1400.5100 to 1400.8400 or the procedural rules of any agency, the day of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday.

**Subp. 2. Extra time: service by mail.** Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon the party, or whenever service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period. In the event an agency chooses to utilize the Central Mailing Section, Publications Division, Department of Administration, four days shall be added to the prescribed period.

#### **1400.6200 INTERVENTION IN PROCEEDINGS AS PARTY.**

**Subpart 1. Petition.** Any person not named in the notice of hearing who desires to intervene in a contested case as a party shall submit a timely written petition to intervene to the judge and shall serve the petition upon all existing parties and the agency. Timeliness will be determined by the judge in each case based on circumstances at the time of filing. The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case; shall show how the petitioner may be directly affected by the outcome and or that petitioner's participation is in the public interest authorized by statute, rule, or court decision; shall set forth the grounds and purposes for which intervention is sought; and shall indicate petitioner's statutory right to intervene if one should exist. The agency may, with the consent of the judge, and where good reason appears therefor, specify in the notice of and order for hearing or prehearing the final date upon which a petition for intervention may be submitted to the judge.

**Subp. 2. Objection.** Any party may object to the petition for intervention by filing a written notice of objection with the judge within seven days of service of the petition if there is sufficient time before the hearing. The notice shall state the party's reasons for objection and shall be served upon all parties, the person petitioning to intervene and the agency. If there is insufficient time before the hearing for a written objection, the objection may be made orally at the hearing.

**Subp. 2a. Hearing on petition.** ~~In formal contested cases,~~ Where necessary to develop a full record on the question of intervention, the judge shall conduct a hearing on the petition to determine specific standards that will apply to each category of intervenor, and to define the scope of intervention.

**Subp. 3. Order.** The judge shall allow intervention upon a proper showing pursuant to subpart 1 unless the judge finds that the petitioner's interest is adequately represented by one or more parties participating in the case. An order allowing intervention shall specify the extent of participation permitted the intervenor and shall state the judge's reasons. An intervenor may be allowed to:

A. file a written brief without acquiring the status of a party;

B. intervene as a party with all the rights of a party; or

C. intervene as a party with all the rights of a party but limited to specific issues and to the means necessary to present and develop those issues.

**Subp. 4. By agency in a neutral capacity.** Where the agency participates in the hearing in a neutral or quasi-judicial capacity, the agency staff, or a portion of the agency staff, may petition to intervene under the rule.

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**Subp. 5. Participation by public.** The judge may, in the absence of a petition to intervene, nevertheless hear the testimony and receive exhibits from any person at the hearing, or allow a person to note that person's appearance, or allow a person to question witnesses, but no person shall become, or be deemed to have become, a party by reason of such participation. Persons offering testimony or exhibits may be questioned by parties to the proceeding.

### 1400.6350 CONSOLIDATION OF CASES.

**Subpart 1. Standards for consolidation.** Whenever two or more separate contested cases present substantially the same issues of fact and law, that a holding in one case would affect the rights of parties in another case, that consolidating the cases for hearing would save time and costs, and that consolidation would not substantially prejudice any party, the cases may be consolidated for hearing under this part.

**Subp. 2. Agency consolidation.** Subject to a motion for severance as provided in subpart 7, prior to referring cases to the office for hearing an agency may consolidate two or more cases for hearing.

**Subp. 3. Service of petition.** A party requesting consolidation shall serve a petition for consolidation on all parties to the cases to be consolidated, on the agency if the agency is not a party, and shall file the original with the judge assigned to the cases, together with a proof of service showing service as required herein. Any party objecting to the petition shall serve and file their objections within ten calendar days following service of the petition for consolidation.

**Subp. 4. Determination of petition.** When more than one judge is assigned to the cases which are the subject of the petition for consolidation, the petition will be determined by the judge assigned to the first case submitted to the office.

**Subp. 5. Order.** Upon determining whether cases should be consolidated, the judge shall serve a written order on all parties and the agency, if the agency is not a party. The order shall contain, among other things, a description of the cases for consolidation, the reasons for the decision, and notification of a consolidated prehearing conference if one is being scheduled.

**Subp. 6. Stipulations.** Nothing contained in this part shall be deemed to prohibit parties from stipulating and agreeing to a consolidation which shall be granted upon submission of a written stipulation, signed by all parties, to the judge. A judge may consolidate two or more cases presently pending before that judge on the judge's own motion, applying the standards in subpart 1.

**Subp. 7. Petition for severance.** Following receipt of a notice of or order for consolidation, any party may petition for severance by serving it on all other parties and the agency, if the agency is not a party, and filing it with the judge at least seven business days prior to the first scheduled hearing date. If the judge finds that the consolidation will prejudice the petitioner, the judge shall order the severance or other relief which will prevent the prejudice from occurring.

### 1400.6400 ADMINISTRATIVE LAW JUDGE DISQUALIFICATION.

The judge shall withdraw from participation in a contested case at any time if he or she deems himself or herself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the chief judge shall determine the matter as a part of the record provided the affidavit shall be filed no later than five days prior to the date set for hearing.

### 1400.6500 PREHEARING CONFERENCE.

**Subpart 1. Purpose.** The purpose of the prehearing conference is to simplify the issues to be determined, to consider amendment of the agency's order if necessary, to obtain stipulations in regard to foundation for testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, to determine the extent of and deadlines for the completion of any discovery, to establish hearing dates and locations if not previously set, to determine whether the issues in the case are susceptible to mediation, to consider such other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

**Subp. 2. Procedure.** Upon the request of any party or upon his or her own motion, the judge may, in his or her discretion, hold a prehearing conference prior to each contested case hearing where the amount in controversy exceeds \$1,000. The judge may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the judge. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the judge.

### 1400.6550 SETTLEMENT CONFERENCE.

**Subpart 1. Purpose.** A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing as in part 1400.6500, subpart 1.

**Subp. 2. Scheduling.** Upon the request of any party or the judge, the chief judge shall assign the case to another judge for the purpose of conducting a settlement conference. Unless both parties and the judge agree, a unilateral request for a settlement

conference will not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the judge. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference. Where mediation between the parties has previously occurred, a settlement conference will not be ordered unless all parties agree.

**Subp. 3. Procedures at conference.** All parties shall attend or be represented at a settlement conference. Parties or their representatives attending a settlement conference shall be prepared to participate in meaningful settlement discussions ~~and must have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.~~

**Subp. 4. Preconference discussions.** The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

**Subp. 5. Information provided.** At the settlement conference, the parties shall be prepared to provide the information and to discuss all matters required by part 1400.6500, subpart 1.

**Subp. 6. Orders.** If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the judge presiding over the settlement conference shall issue an order confirming and approving, if necessary, those matters agreed upon. The order is binding on the judge who is assigned to hear the case.

#### **1400.6600 MOTIONS.**

Any application to the judge for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions provided for in parts 1400.5100 to 1400.8400 shall be served on all parties, the agency, if it is not a party, and the judge. The written motion shall advise other parties that should they wish to contest the motion they must file a written response with the judge and serve copies on all parties, within five ten working days after it is received. If any party desires a hearing on the motion, they shall make a request for a hearing at the time of the submission of their motion or response. A response shall set forth the nonmoving party's objections. A hearing on a motion will be ordered by the judge ~~only in formal contested cases~~ and only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. All orders on such motions, other than those made during the course of the hearing, shall be in writing and shall be served upon all parties of record and the agency if it is not a party. In ruling on motions where parts 1400.5100 to 1400.8400 are silent, the judge shall apply the Rules of Civil Procedure for the District Court for Minnesota to the extent that it is determined appropriate in order to promote a fair and expeditious proceeding.

#### **1400.6700 DISCOVERY.**

**Subpart 1. Witnesses; statement by parties or witnesses.** Each party shall, within ten days of a demand by another party, disclose the following:

A. The names and addresses of all witnesses that a party intends to call at the hearing. All witnesses unknown at the time of said disclosure shall be disclosed as soon as they become known.

B. Any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements. Any party unreasonably failing upon demand to make the disclosure required by this subpart may, in the discretion of the judge, be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

**Subp. 2. Discovery of other information.** ~~In formal contested case proceedings,~~ Any means of discovery available pursuant to the Rules of Civil Procedure for the District Court of Minnesota is allowed. If the party from whom discovery is sought objects to the discovery, the party seeking the discovery may bring a motion before the judge to obtain an order compelling discovery. In the motion proceeding, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant the discovery. In ruling on a discovery motion, the judge shall recognize all privileges recognized at law.

**Subp. 3. Noncompliance.** Upon the failure of a party to reasonably comply with an order of the judge made pursuant to subpart 2, the judge may make a further order as follows:

A. an order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order;

**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

B. an order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

**Subp. 4. Protective orders.** When a party is asked to reveal material considered to be proprietary information or trade secrets, that party shall bring the matter to the attention of the judge, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

**Subp. 5. Filing.** Copies of a party's request for discovery as well as the responses to those requests and copies of discovery depositions shall not be filed with the office unless otherwise ordered by the judge or unless they are filed in support of any motion or unless they are introduced as evidence in the hearing.

### 1400.6800 REQUESTS FOR ADMISSION OF FACTS OR OPINIONS.

A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least 15 days prior to the hearing, and it shall be answered in writing by the party to whom the request is directed within ten days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to make a written answer within ten days will result in the subject matter of the request being deemed admitted unless it can be shown that there was a justifiable excuse for failing to respond.

### 1400.6900 DEPOSITIONS TO PRESERVE TESTIMONY.

Upon the request of any party, the judge may order that the testimony of any witness be taken by deposition to preserve that witness' testimony in the manner prescribed by law for depositions in civil actions. The request shall indicate the relevancy of the testimony and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause ~~and that the issues or amounts in controversy warrant expenditure of the time and costs of the deposition.~~

### 1400.7000 SUBPOENAS.

**Subpart 1. Written request.** Requests for subpoenas for the attendance of witnesses or the production of documents, either at a hearing or for the purpose of discovery, shall be made in writing to the judge, shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought, shall identify any documents sought with specificity, shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena.

**Subp. 2. Service.** A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the District Courts of Minnesota unless otherwise provided by law. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. The person serving the subpoena is not required to make proof of service by filing the subpoena with the judge. However, a filing with an affidavit of service will be required with the motion of a party seeking an order imposing sanctions for failure to comply with any subpoena issued under parts 1400.5100 to 1400.8400.

**Subp. 3. Objection to subpoena.** Any person served with a subpoena who has an objection to it may file an objection with the judge. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The judge shall cancel or modify the subpoena if it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and whether or not there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers, or other tangible things.

### 1400.7050 SANCTIONS IN DISCRIMINATION CASES.

**Subpart 1. Precomplaint procedure.** If, at any time prior to the issuance of a complaint in any matter pending before the Minnesota Department of Human Rights, the ~~department on behalf of the~~ charging party or the respondent believes that the other is intentionally and frivolously delaying any precomplaint proceedings, it may petition the chief judge for an order imposing sanctions. For the purpose of this subpart, a respondent is any person against whom a charge has been filed. The sanctions and the procedures are as follows:

A. A party requesting the imposition of sanctions shall file a petition with the chief judge which shall include proof that a copy of the petition has been served on the other party.

B. A petition for the imposition of sanctions shall state, with specificity, the acts of the other party which are alleged to be intentional and frivolous delay; the sanctions requested; whether an oral hearing is requested; and shall include sworn affidavits of persons having first-hand knowledge of the alleged acts.

C. The party against whom sanctions are sought shall have ~~five~~ ten working days following receipt of the petition to file an

objection to the petition. The objection shall respond to each alleged act of delay with specificity; shall include sworn affidavits of persons having first-hand knowledge of the alleged acts; and shall state whether an oral hearing is requested. Objections are timely filed only if received by the office at or before 4:30 p.m. of the  ~~fifth~~  tenth working day. The objection shall include proof that it was served on the other party.

D. Upon receipt of a petition and objection under this part, the chief judge shall either determine the matter or assign it to a judge for determination. If either party has requested an oral hearing, it shall be conducted no earlier than ten calendar days following the receipt of a notice of the hearing.

E. Intentional and frivolous delay occurs when a party deliberately delays proceedings for immaterial, meritless, trivial, or unjustifiable reasons. In determining whether intentional and frivolous delay has occurred, the judge shall also give consideration to the number of issues and amount of damages in controversy, any pattern of similar acts by the party,  ~~the department's existing caseload, statutory priorities for the investigation and processing of charges,~~ and effects of the delay.

F. If it is determined that intentional and frivolous delay has occurred, the judge shall enter an order requiring the offending party to cease and desist from the act; compelling cooperation in all phases of the proceedings; or imposing any other sanctions, other than fines, deemed necessary to compel expeditious cooperation and completion of the investigation.

G. In the event the investigation results in a finding of probable cause and issuance of a complaint, the determination of intentional and frivolous delay and compliance with any orders issued under item F shall be taken into consideration in awarding damages and attorney's fees, where applicable.

**Subp. 2. Procedure during proceedings.** If during the pendency of a contested case before the office either the  ~~department charging party~~ or the respondent believe that the other is intentionally and frivolously delaying the proceedings,  ~~# they~~  they may bring a motion before the judge by following the procedures in part 1400.6600. If the judge determines, using the criteria in subpart 1, item E, that intentional and frivolous delay has occurred, the judge shall issue an order containing any of the following:

- A. that the party shall cease and desist from the acts;
- B. compelling cooperation during further pendency of the case;
- C. dismissing any or all charges or defenses to charges, whichever may be appropriate;
- D. foreclosing the testimony of specified witnesses or the presentation of evidence on specified issues;
- E. that the delay will be taken into consideration in awarding damages or attorney's fees; or
- F. any sanctions available in civil cases in the district courts of Minnesota.

#### THE HEARING

##### 1400.7100 RIGHTS AND RESPONSIBILITIES OF PARTIES.

**Subpart 1. Generally.** All parties shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses.

**Subp. 2. Necessary preparation.** A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party. In cases where the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the judge or as agreed upon at a prehearing conference.

**Subp. 3. Responding to orders.** If the judge orders that parties do an act or not do an act, the parties shall comply with the order. If a party objects to an order, the objection shall be stated in advance of the order as part of the record. If the party had no advance knowledge that the order was to be issued, any objection shall be made as part of the record as soon as the party becomes aware of the order.

**Subp. 4. Copies.** The judge shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the judge shall simultaneously send a copy to all other parties; provided, however, that this requirement shall not apply to requests for subpoenas.

**Subp. 5. Representation by attorney.** A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

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## ADOPTED RULES

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### 1400.7150 RIGHTS AND RESPONSIBILITIES OF NONPARTIES.

**Subpart 1. Offering evidence.** With the approval of the judge, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the judge.

**Subp. 2. Questioning witnesses.** The judge may allow nonparties to question witnesses if deemed necessary for the development of a full and complete record.

### 1400.7200 WITNESSES.

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon the judge's own motion, the judge shall exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

### 1400.7300 RULES OF EVIDENCE.

**Subpart 1. Admissible evidence.** The judge shall ~~may~~ admit all evidence which ~~logically tends to prove or disprove an important fact~~ possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The judge shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

**Subp. 2. Evidence part of record.** All evidence to be considered in the case, including all records and documents in the possession of the agency or a true and accurate photocopy, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

**Subp. 3. Documents.** Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the judge or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised as to the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy in lieu of the original.

**Subp. 4. Official notice of facts.** The judge may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

**Subp. 5. Burden of proof.** The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard. A party asserting an affirmative defense shall have the burden of proving the existence of the defense by a preponderance of the evidence. In employee disciplinary actions, the agency or political subdivision initiating the disciplinary action shall have the burden of proof.

**Subp. 6. Examination of adverse party.** A party may call an adverse party or a managing agent, or employees or an officer, director, managing agent, or employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate that party by leading questions and contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party. The adverse party may be examined by that party's counsel upon the subject matter of that party's examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

### 1400.7400 HEARING RECORD.

**Subpart 1. Content.** The judge shall maintain the official record in each contested case until the issuance of the judge's final report, at which time the record, except for the audiomagnetic recordings of the hearing, shall be sent to the agency.

The record in a contested case shall contain all pleadings, motions, and orders; evidence offered or considered; offers of proof, objections, and rulings thereon; the judge's findings of fact, conclusions, and recommendations; all memoranda or data submitted by any party in connection with the case; and the transcript of the hearing, if one was prepared.

**Subp. 2. Transcript.** The verbatim record shall be transcribed if requested by the agency, a party, or in the discretion of the chief judge. If a transcription is made, the chief judge shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge. The charge shall be set by the chief judge, subject to the approval of the commissioner of finance, and all money received for transcripts shall be payable to the state treasurer and shall be deposited in the Office of Administrative Hearings' account in the state treasury. In cases where the transcript is prepared by nongovernmental sources, the charge to the parties and the agency shall be the same as the source charges the office.

### 1400.7500 CONTINUANCES.

Requests for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for continuance of the hearing shall be made in writing to the judge and shall be served upon all parties of record and the agency if it is not a party. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance. A request for a continuance filed within five business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained.

“Good cause” shall include: death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties provided that it is shown that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the case and the parties and the judge have agreed to a new hearing date, or, the parties have agreed to a settlement of the case which has been or will likely be approved by the final decisionmaker.

“Good cause” shall not include: intentional delay; unavailability of counsel or other representative due to engagement in another judicial or administrative proceeding unless all other members of the attorney’s or representative’s firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness’ testimony can be taken by deposition; and failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the judge shall either order the additional testimony be taken by deposition or continue the hearing to a future date and oral notice on the record shall be sufficient.

A continuance shall not be granted when to do so would prevent the case from being concluded within any statutory deadline.

#### **1400.7600 CERTIFICATION OF MOTIONS TO AGENCY.**

No motions shall be made directly to or be decided by the agency subsequent to the assignment of a judge and prior to the completion and filing of the judge’s report unless the motion is certified to the agency by the judge. No motions will be certified ~~in conference contested cases~~ or in cases where the judge’s report is binding on the agency. Uncertified motions shall be made to and decided by the judge and considered by the agency in its consideration of the record as a whole subsequent to the filing of the judge’s report. Any party may request that a pending motion or a motion decided adversely to that party by the judge before or during the course of the hearing, other than rulings on the admissibility of evidence or interpretations of parts 1400.5100 to 1400.8400, be certified by the judge to the agency. In deciding what motions should be certified, the judge shall consider the following:

- A. whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or
- B. whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or
- C. whether or not the delay between the ruling and the motion to certify would adversely affect the prevailing party; or
- D. whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or
- E. whether it is necessary to promote the development of the full record and avoid remanding; or
- F. whether the issues are solely within the expertise of the agency.

#### **1400.7700 ADMINISTRATIVE LAW JUDGE’S CONDUCT.**

The judge shall not communicate, directly or indirectly, in connection with any issue of fact or law with any person or party including the agency concerning any pending case, except upon notice and opportunity for all parties to participate. When these rules authorize communications contrary to this part, the communications shall be limited to only those matters permitted by these rules. The judge may respond to questions relating solely to procedures for the hearing without violating this part.

#### **1400.7800 CONDUCT OF HEARING.**

In the absence of a specific provision ~~to the contrary~~ mandating or permitting a closed hearing, all contested case hearings are open to the public. Unless the judge determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

- A. The judge shall open the hearing by reading the title of the case, briefly stating the facts as alleged in the notice and order for hearing which give rise to the hearing, including, where applicable, the amount of any monetary claim made by any party.
- B. After opening the hearing, the judge shall, unless all parties are represented by counsel or are otherwise familiar with the procedures, state the procedural rules for the hearing including 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

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(1) All parties may present evidence and argument with respect to the issues and cross-examine witnesses. At the request of the party or the attorney for the party whose witness is being cross-examined, the judge may make such rulings as are necessary to prevent repetitive or irrelevant questioning and to expedite the cross-examination, to the extent consistent with disclosure of all relevant testimony and information.

(2) All parties have a right to be represented by an attorney at the hearing.

(3) The rules of evidence in part 1400.7300, subpart 1.

C. Any stipulations, settlement agreements, or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

D. The party with the burden of proof may make an opening statement. All other parties may make statements in a sequence determined by the judge.

E. After any opening statements, the party with the burden ~~persuasion~~ proof shall begin the presentation of evidence unless the parties have agreed otherwise or the administrative law judge determines that requiring another party to proceed first would be more expeditious and would not jeopardize the rights of any other party. It shall be followed by the other parties in a sequence determined by the judge.

F. ~~In conference contested cases, testimony may be given in narrative fashion by witnesses rather than by question and answer format.~~

G. Cross-examination of witnesses shall be conducted in a sequence and in a manner determined by the judge to expedite the hearing while ensuring a fair hearing. At the request of a party whose witness is being cross-examined, the judge shall make rulings as are necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

H. ~~G.~~ Any party may be a witness or may present other persons as witnesses at the hearing. All evidentiary testimony presented to prove or disprove a fact at issue shall be under oath or affirmation.

I. ~~H.~~ When all parties and witnesses have been heard, opportunity shall be offered to present oral final argument, in a sequence determined by the judge. ~~In formal contested cases,~~ Final argument may, in the discretion of the judge, be in the form of written memoranda or oral argument, or both. Final argument need not be recorded, in the discretion of the judge. Written memoranda may, in the discretion of the judge, be submitted simultaneously or sequentially and within time periods as the judge may prescribe.

J. ~~I.~~ After final argument, the hearing shall be closed unless a continuance has been ordered under part 1400.7500. If continued, it shall be either: continued to a certain time and day, announced at the time of the hearing and made a part of the record; or continued to a date to be determined later, which must be upon not less than five days' written notice to the parties.

K. ~~J.~~ The record of the contested case proceeding shall be closed upon receipt of the final written memorandum, transcript, if any, or late filed exhibits which the parties and the judge have agreed should be received into the record, whichever occurs latest.

### 1400.7900 PARTICIPATION BY AGENCY.

An agency which is a party to a contested case may only participate in the hearing by the giving of testimony and through its designated representative or counsel. Where the agency is not a party and participates in the hearing in a neutral or quasi-judicial capacity, the agency head or a member of the governing body of the agency or designee may engage in examination of witnesses as the judge deems appropriate.

### 1400.8000 DISRUPTION OF HEARING.

**Subpart 1. Cameras.** Television, newsreel, motion picture, still, or other cameras, and mechanical recording devices may be operated in the hearing room during the course of the hearing after permission is obtained from the judge and then only pursuant to any conditions the judge may impose to avoid disruption of the hearing.

**Subp. 2. Other conduct.** Pursuant to and in accordance with Minnesota Statutes, section 624.72, no person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of the hearing. In the event of interference, disruption, or threat, the judge shall read this subpart to those persons causing such interference or disruption and thereafter proceed as deemed appropriate, which may include ordering the disruptive person to leave or be removed from the hearing.

### 1400.8100 ADMINISTRATIVE LAW JUDGE'S REPORT.

**Subpart 1. Based on record.** No factual information or evidence which is not a part of the record shall be considered by the judge or the agency in the determination of a contested case.



**Subp. 2. Administrative notice.** The judge and agency may take administrative notice of general, technical, or scientific facts within their specialized knowledge in conformance with Minnesota Statutes, section 14.60.

**Subp. 3. Completion and distribution.** Following the close of the record, the judge shall make a report pursuant to Minnesota Statutes, section 14.50, and, upon completion, a copy of the report shall be served upon all parties by personal service, by first class mail, or by depositing it with the Central Mailing Section, Publications Division, Department of Administration.

**1400.8200 AGENCY DECISION.**

Following receipt of the judge's report, the agency shall proceed to make its final decision in accordance with Minnesota Statutes, sections 14.61 and 14.62 and shall serve a copy of its final order upon the office by first class mail.

**1400.8300 RECONSIDERATION OR REHEARING.**

Once a judge has issued a report, unless that report is binding on the agency, the judge loses jurisdiction to amend the report except for clerical or mathematical errors. Unless the report is a final order, binding on the agency, petitions for reconsideration or rehearing must be filed with the agency. An agency Where the judge's decision is binding on the agency, a petition for reconsideration or rehearing shall be filed with the judge. A notice of and order for rehearing shall be served on all parties in the same manner prescribed for the notice of and order for hearing provided that the judge may permit service of the notice and order for rehearing less than 30 days prior to rehearing ~~or 20 days in conference contested cases.~~ The rehearing shall be conducted in the same manner prescribed for a hearing.

**REPEALER.** Minnesota Rules, parts 1400.6300, ~~and 1400.8500, 1405.5100, 1405.5200, 1405.5300, 1405.5400, 1405.5500, 1405.5600, 1405.5700, 1405.5800, 1405.5900, 1405.6000, 1405.6100, 1405.6200, 1405.6300, 1405.6400, 1405.6500, 1405.6600, 1405.6700, 1405.6800, 1405.6900, 1405.7000, 1405.7100, 1405.7200, and 1405.7300~~ are repealed.

**RENUMBER.** Renumber the Minnesota Rules in column A as column B.

<u>A</u>	<u>B</u>
<u>1405.5100</u>	<u>1400.8510</u>
<u>1405.5200</u>	<u>1400.8520</u>
<u>1405.5300</u>	<u>1400.8530</u>
<u>1405.5400</u>	<u>1400.8540</u>
<u>1405.5500</u>	<u>1400.8550</u>
<u>1405.5600</u>	<u>1400.8560</u>
<u>1405.5700</u>	<u>1400.8570</u>
<u>1405.5800</u>	<u>1400.8580</u>
<u>1405.5900</u>	<u>1400.8590</u>
<u>1405.6000</u>	<u>1400.8600</u>
<u>1405.6100</u>	<u>1400.8601</u>
<u>1405.6200</u>	<u>1400.8602</u>
<u>1405.6300</u>	<u>1400.8603</u>
<u>1405.6400</u>	<u>1400.8604</u>
<u>1405.6500</u>	<u>1400.8605</u>
<u>1405.6600</u>	<u>1400.8606</u>
<u>1405.6700</u>	<u>1400.8607</u>
<u>1405.6800</u>	<u>1400.8608</u>
<u>1405.6900</u>	<u>1400.8609</u>
<u>1405.7000</u>	<u>1400.8610</u>
<u>1405.7100</u>	<u>1400.8611</u>
<u>1405.7200</u>	<u>1400.8612</u>
<u>1405.7300</u>	<u>1400.8613</u>

**EFFECTIVE DATE.** These rules apply to all contested cases initiated pursuant to part 1400.5300 after the effective date of the rules.

**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

## Department of Human Services

### Health Care Services Division

#### Adopted Rules Governing Hospital Admission Certification

The rules proposed and published at *State Register*, Volume 9, Number 20, pages 1027-1033, November 12, 1984 (9 S.R. 1027) are adopted with the following modifications:

#### Rules as Adopted

##### 9505.0500 DEFINITIONS.

**Subp. 14. Inpatient hospital service.** "Inpatient hospital service" means a service provided under the supervision of a physician and furnished in a hospital for the care and treatment of a recipient ~~who occupies a bed and stays in the hospital for one night or more.~~ The inpatient hospital service may be furnished by a hospital, physician, or a vendor of an ancillary service prescribed by a physician that may be paid for under medical assistance or general assistance medical care.

**Subp. 17. Medical record.** "Medical record" means the information required in part 9505.1800, subpart 3.

**Subp. 18. Medical review agent.** "Medical review agent" means the representative of the commissioner who is authorized by the commissioner to make decisions about admission certifications, concurrent reviews, continued stay reviews, and retrospective reviews.

**Subp. 18, 19. Medically necessary.** "Medically necessary" means an inpatient hospital service that is consistent with the recipient's diagnosis ~~and~~ or condition, and under the criteria in part 9505.0540 cannot be provided on an outpatient basis.

**Subp. 19, 20. Medicare.** "Medicare" means the federal health insurance program for the aged and disabled under title XVIII of the Social Security Act.

**Subp. 20, 21. Physician.** "Physician" means a person licensed to provide services within the scope of the profession as defined in Minnesota Statutes, chapter 147.

**Subp. 21, 22. Physician adviser.** "Physician adviser" means a physician who practices in the specialty area of the recipient's primary diagnosis or a specialty area related to the primary diagnosis.

**Subp. 22, 23. Prior authorization.** "Prior authorization" means the prior approval for medical services by the department as required under applicable rules and regulations adopted by the commissioner.

**Subp. 23, 24. Readmission.** "Readmission" means admission for an inpatient hospital service for the same diagnosis or a related condition or the treatment of a condition which grew out of the previous diagnosis which occurs within seven days of a prior discharge of the recipient from a hospital.

**Subp. 24, 25. Recipient.** "Recipient" means a person who has applied to the local agency and has been determined eligible for the medical assistance or general assistance medical care program.

**Subp. 25, 26. Reconsideration.** "Reconsideration" means a review of a denial or withdrawal of admission certification according to part 9505.0520, subpart 9.

**Subp. 26, 27. Retrospective review.** "Retrospective review" means a review conducted after inpatient hospital services are provided to a recipient. The review is focused on determining the medical necessity of the admission, the medical necessity of any inpatient hospital services provided, and whether all medically necessary inpatient hospital services were provided.

##### 9505.0520 INPATIENT ADMISSION CERTIFICATION.

**Subp. 3. Admitting physician responsibilities.** The admitting physician who seeks medical assistance or general assistance medical care program payment for an inpatient hospital service to be provided to a recipient shall:

C. Provide the following information when applicable:

- (1) surgeon's name and medical assistance provider number;
- (2) expected date of surgery; and
- (3) affirmation that a second surgical opinion and prior authorization have been received.

**Subp. 4. Hospital responsibilities.** A hospital that seeks medical assistance or general assistance medical care program payment for inpatient hospital services provided to a recipient shall:

B. In an emergency admission, inform, by phone, the medical review agent of the emergency admission and provide the information required in subpart 3, items B and C, if applicable, within 48 hours of the emergency admission exclusive of weekends

and holidays ~~and, if required under parts 9505.5000 to 9505.5030 [Emergency], initiate the procedures for prior authorization and second surgical opinion.~~ If the hospital fails to notify the medical review agent within 48 hours excluding weekends and holidays, the hospital shall submit, at its own expense, a copy of the complete medical record to the medical review agent within 30 days after the recipient's discharge. Failure to submit the record within the 30 days shall result in denial of the certification number.

**Subp. 5. Retroactive eligibility.** A hospital may seek admission certification for a person found retroactively eligible for medical assistance or general assistance medical care program benefits after the date of admission. The hospital shall inform the admitting physician of the admission certification number of a retroactively eligible recipient. An admitting physician and a hospital shall not seek admission certification for a person whose application for the medical assistance or general assistance medical care program is pending. The medical review agent may require the hospital to submit, at its own expense, a copy of the complete medical record to substantiate the medical necessity of the admission. Failure to submit a requested record within 30 days of the request shall result in denial of admission certification.

**Subp. 6. Medical review agent responsibilities.** The medical review agent shall:

H. notify the admitting physician and the ~~quality assurance director of the hospital~~ person responsible for the hospital's utilization review, by phone, of a reconsideration decision within 24 hours of the decision, exclusive of weekends and holidays; and

I. mail a written notice of the reconsideration decision to the admitting physician, the ~~quality assurance director of the hospital~~ person responsible for the hospital's utilization review, and the department within five days of the determination, exclusive of weekends and holidays.

**Subp. 7. Ineligibility to serve as physician adviser.** A physician shall not be eligible to serve as a physician adviser if:

D. the physician ~~has a financial interest in the medical practice of the admitting physician~~ can obtain a financial benefit from the admission of the recipient.

**Subp. 8. Procedure for admission certification.** The procedure for admission certification shall be as in items A to H.

H. If the second physician adviser ~~determines is~~ unable to determine that the admission is ~~not~~ medically necessary, the medical review agent shall deny the admission certification and shall not issue a certification number.

**Subp. 9. Reconsideration.** The admitting physician or the hospital may request reconsideration of a decision to deny or withdraw an admission certification. The admitting physician or the hospital shall submit the request in writing to the medical review agent within 30 days of the date of receipt of the letter denying or withdrawing admission certification. Upon receipt of the request, the medical review agent shall appoint at least three physician advisers, none of whom shall have been involved previously in the procedure for the recipient's admission certification, to hear the reconsideration. The reconsideration may be conducted by means of a telephone conference call. The admitting physician or the hospital may submit additional facts at their own expense to support the request for admission certification. The physician advisers may seek additional facts and medical advice as necessary to decide whether the admission is medically necessary. The reconsideration shall be completed within 30 days of the receipt of the request. Any party may appeal the determination of the physician advisers according to the contested case provisions of Minnesota Statutes, chapter 14, by filing a written notice of appeal with the commissioner within 20 days of the date of receipt of the notice of the determination.

**Subp. 10. Medical record review and determination.** The medical review agent shall be authorized to conduct a concurrent, continued stay, or retrospective review of a recipient's medical record to determine whether the admission was medically necessary, whether the inpatient hospital services were medically necessary, whether a continued stay will be medically necessary, or whether all medically necessary services were provided. The procedure for concurrent, continued stay, and retrospective reviews shall be as in items A to D.

D. If a physician adviser determines that the recipient's admission was not medically necessary, that the recipient's continued stay will not be medically necessary, or that all medically necessary services were not provided, the medical review agent shall withdraw the previously issued certification number and shall notify the admitting physician and hospital by telephone within 24 hours of the determination and by written notice mailed within 24 hours.

**Subp. 11. Consequences of withdrawal of admission certification.** If the medical review agent determines that the admission was not medically necessary or that all medically necessary inpatient hospital services were not provided or that some or all of the inpatient hospital services were not medically necessary, the department shall withdraw the certification number and may take action as specified in items A to E.

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

## ADOPTED RULES

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D. If the admission was not medically necessary or the medical record does not adequately document that the admission was medically necessary, the department may seek to recover payments made to physicians and other vendors of inpatient hospital services under parts 9505.1750 to 9505.2150.

### Department of Revenue Alcohol, Tobacco and Special Taxes

#### Adopted Rules Relating to Solid Waste; Metropolitan Area Operators' Fees

The rules proposed and published at *State Register*, Volume 9, Number 25, pages 1370-1373, December 17, 1984 (9 S.R. 1370) are adopted with the following modifications:

##### Rules as Adopted

##### METROPOLITAN SOLID WASTE LANDFILL FEE

###### 8121.0200 DEFINITIONS.

The terms in parts 8121.0100 to 8121.0500 have the meanings given in the rules of the Pollution Control Agency and in Minnesota Statutes, chapters 115A, 116, 290, and 473. Terms of special significance to these parts are:

D. "Rolloffs" means the common solid waste industry-wide standard applied to ~~an open top,~~ a movable container capable of being temporarily attached to a truck chassis, used primarily for transporting solid waste to a landfill or disposal site. ~~These vehicles are known to the industry as "noncompactor" vehicles.~~

###### 8121.0300 DETERMINATION OF FEE.

**Subp. 2. Basis for calculation.** An operator of a facility that weighs waste may allow haulers to elect the method to be used for calculation of the fee on the haulers' vehicles.

A hauler making the election is to do so annually, prior to January 1, by notifying the landfill operator of the method for calculation of the fee to be used.

Haulers may elect a method to apply to the entire fleet or the election may be done on a vehicle by vehicle basis.

All invoices must indicate the method selected for the vehicles identified on the invoice.

The commissioner will approve identifiers to be attached to all vehicles which will allow the operator to easily determine the basis for calculation of the fee.

If an election is not made by January 1, an operator will calculate the fee based on the ~~weight of the undesignated vehicle~~ same basis as the tipping fee is calculated.

On or before February 1 of each year, operators shall submit to the commissioner the list of elections made by all haulers.

**Subp. 3. Exception.** Upon request of a hauler, the landfill operator may calculate the fee for rolloffs on a load by load basis. Each invoice is to reflect the basis for the calculation of the fee. The tipping fee and state fee are to be calculated on the same basis.

###### 8121.0500 EXEMPTIONS.

**Subp. 3. Operating waste.** When solid waste that is accepted at a mixed municipal solid waste facility is not disposed of in the body of the facility, but is to be used in the operation of the facility, ~~for example, daily or final cover, lining material, and road bed,~~ the solid waste may be exempt from the amount of fee charged. The generator of waste qualifying for this exemption must first obtain approval of the Minnesota Pollution Control Agency as to the suitability of the material for the intended use.

# 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 Economic Security

### Public Comment Period and Hearings on Proposed State Plan for the Minnesota Energy Assistance Program—1986

Notice is hereby given that a public comment period on the above-entitled matter will begin upon publication of this notice and will close after sixty (60) days at 4:30 p.m. Friday, June 7, 1985.

The 1986 Energy Assistance Plan describes how federal funds are used to help low-income households pay home heating bills and conserve energy. Comments received at public hearings and during the comment period will be considered in the development of the State Plan that governs the program.

All interested or affected persons will have an opportunity to comment concerning the proposed State Plan for the Minnesota Energy Assistance Program—1986. A single copy of the State Plan may be obtained by writing to:

Alan Chapman, Acting Director  
Minnesota Energy Assistance Program  
690 American Center Building  
150 East Kellogg Boulevard  
St. Paul, Minnesota 55101

Notice is hereby given that public hearings on the above-entitled matter will be held at:

City	Hearing Site and Address	Time	Date
St. Paul	State Office Building Room 300 North 435 Park Street	7-9 p.m.	5/14
Crookston	Public Library—Meeting Room 120 North Ash	7-9 p.m.	5/14
Grand Rapids	Blandin Foundation Auditorium 100 Pokegama Avenue North	7-9 p.m.	5/15
Fergus Falls	Ottertail County Gov. Service Bldg. 505 South Court	7-9 p.m.	5/15
St. Cloud	City Hall Council Chambers	7-9 p.m.	5/16
Mankato	Nichols Office Building Third Floor—Conference Room 410 Jackson	7-9 p.m.	5/16

Oral and written testimony may be submitted at the hearing. In addition, written testimony will be accepted at the above address until 4:30 p.m., Friday, June 7, 1985. All comments will be considered by the Department of Economic Security, Office of Energy Assistance.

## State Board of Education Department of Education Management Effectiveness Division

### Outside Opinion Sought Regarding Proposed Rules Governing School Bus Transportation and Related Topics

Notice is hereby given that the State Board of Education is seeking information or opinions from sources outside the agency in preparing rules governing 1) Standards for Aid, 2) Operation of School Buses, 3) Pupil Transportation Safety Education Program

## OFFICIAL NOTICES

and 4) Design of School Transportation Equipment Standards. The adoption of these rules is authorized by Minnesota Statutes Section 169.45.

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

Gerald Pavek  
Minnesota Department of Education  
942 Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-2839 and in person at the above address.

All statements of information and comments shall be accepted until June 3, 1985. Any written material received by the State Board of Education shall become part of the record in the event that the rules are amended.

Daniel Skoog  
Assistant Commissioner  
Management Effectiveness Division

## Department of Energy and Economic Development Financial Management Division

### Availability of Issuance Authority in Competitive Pool

Pursuant to Minn. Laws 1984, ch. 582 § 17, subd. 2, to be codified as 474.20, the Department gives notice that the amount of Industrial Development Bond issuance authority available in the competitive pool as of April 5, 1985, is \$125,000.00, and will be available to qualifying Industrial Development Bond issuers submitting qualification criteria applications by March 20, 1985. Pursuant to Minn. Laws 1984, ch. 582 § 16, to be codified as 474.19, non-entitlement issuers must submit an application, a preliminary resolution, an application deposit and any other supporting documents required.

Balance of Competitive Pool on March 5, 1985—\$6,385,000.00,

Add:

Unused Entitlement Allocations as of August 31, 1984:	\$ N/A
Returned Allocations:	\$ None
Total Pool Available as of March 21, 1985:	\$6,385,000.00

Allocations awarded from the Competitive Pool during the month ending April 5, 1985, are:

<u>Issuer</u>	<u>Project</u>	<u>No. of Pts.</u>	<u>Amount</u>
City of Sleepy Eye	Grocery/restaurant	12	\$1,650,000.00
City of Lake City	Industrial expansion	10	2,500,000.00
City of Detroit Lakes	Grocery	9	1,430,000.00
City of Nisswa	Conference Center	8	550,000.00
City of Norwood	Automotive Repair Facility	8	130,000.00

Total Allocations Awarded:	\$ 6,260,000.00
Amount of Issuance Authority Available as of April 5, 1985	<u>\$ 125,000.00</u>

## Metropolitan Council

### Notice of Review Schedule: Draft Environmental Impact Statement—Ramsey/Washington Waste-to-Energy Project

Ramsey and Washington Counties have proposed construction of a municipal solid waste processing facility that would produce refuse-derived fuel and recover other materials at a site in Newport, Minnesota. The facility would be designed to process more

than 1,000 tons of waste daily. The EIS describes and evaluates the proposed project, several locational alternatives, technological alternatives, and a no-build alternative as well as sociological and environmental implications.

The following is a tentative schedule for review of the EIS document:

March 28	Release of Draft EIS
April 8	Notice of Draft Availability—publication in EQB Monitor
April 23	Public Meeting—Draft EIS
May 3	Comment Period Closes—Draft EIS
May 7	Adequacy Review—Waste Management Advisory Committee
May 15	Adequacy Review—Environmental Resources Committee
May 23	Metropolitan Council Adequacy Determination—Final EIS
June 10	Notice of Adequacy—publication in EQB Monitor

This schedule is tentative and subject to change. A public meeting notice has been published. If you have any questions regarding the schedule or the EIS document, please call Wayne Nelson (291-6406) or Karen Harrington (291-6409) or the Metropolitan Council's Environmental Planning Staff.

## **Pollution Control Agency Division of Water Quality**

### **Action on Amendments to Metropolitan Council 208 Plan (Part 1) and Recommendation for Certification by the Governor**

The Twin Cities Metropolitan Council has submitted amendments to its "Water Resources Management Development Guide/Policy Plan" (Part 1 208) on sewage treatment and handling for the Seven County Metropolitan area to the Minnesota Pollution Control Agency (MPCA). In accordance with federal requirements the MPCA has 120 days to review and approve the Metropolitan Council's Plan. The MPCA will review the Council's 208 Plan at the May 28, 1985 Board meeting. After approval of the Plan by the MPCA Board and subsequent certification by the Governor the Plan will be forwarded to the U.S. Environmental Protection Agency.

Further notices will be made regarding MPCA Board action on the Plan and the Governor's certification.

Copies of the Metropolitan Council's 208 Part 1 Plan are on file at the MPCA (contact Don Smith (612) 296-7211) and the Metropolitan Council (John Harrington (612) 291-6324).

Thomas J. Kalitowski  
Executive Director

## **Office of the Secretary of State**

### **Notice of Vacancies in Multi-Member State Agencies**

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, 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 April 30, 1985

MINNESOTA RACING COMMISSION has 3 vacancies open for members. Prescribed qualifications include: Minnesota resident for 5 years before appointment; no more than five members may belong to the same political party; pertinent background and experience; appointees must file a \$100,000 faithful performance bond. The commission licenses persons to operate racetracks, conduct horse racing, conduct pari-mutual wagering on horse racing, prescribes taxes and license fees, and establishes a Minnesota breeders' fund. Members are appointed by the Governor and confirmed by the Senate. Terms are staggered; members receive \$35 per diem. Members must file with EPB. For specific information contact the Minnesota Racing Commission, 312 Central Avenue, Suite 400, Mpls 55416; (612) 341-7555.

WATER WELL CONTRACTORS AND EXPLORATORY BORERS ADVISORY COUNCIL has 2 vacancies open for one water well contractor from Northeastern Minnesota and one exploration member. The council advises the Department of Health on licensing water well contractors and explorers and on administering the Water Well Construction Code and on rules pertaining to explorers and exploratory boring. Members are appointed by the Commissioner of Health. Quarterly meetings at Department of Health. Members receive \$35 per diem plus expenses. For specific information contact the Water Well Contractors and Exploratory Borers Advisory Council, 717 Delaware St. S.E., Mpls 55440; (612) 623-5338.

## OFFICIAL NOTICES

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**ADVISORY TASK FORCE ON THE MINNESOTA BRAILLE AND SIGHT-SAVING SCHOOL** has 7 vacancies open for members. The task force advises the Board of Education on the management of the Braille and Sight-Saving School in Faribault. Members represent various geographic regions of the state and include parents or guardians of visually impaired children, two representatives from groups representing visually impaired individuals and a staff person from the school. Members are appointed by the Board of Education and receive expenses. Monthly meetings in the Twin Cities or Faribault. For specific information contact the Advisory Task Force on the Minnesota Braille and Sight-Saving School, Carl Johnson, P.O. Box 308, Faribault 55021; (507) 332-3363.

**ADVISORY TASK FORCE ON THE MINNESOTA SCHOOL FOR THE DEAF** has 12 vacancies open for members. The task force advises the Board of Education on the management of the School for the Deaf. Members represent various geographic regions of the state and include parents or guardians of hearing impaired children, two representatives of groups representing hearing impaired individuals and a staff person from the School for the Deaf. Members are appointed by the Board of Education and receive expenses. Monthly meetings in the Twin Cities or Faribault. For specific information contact the Advisory Task Force on the Minnesota School for the Deaf, Carl Johnson, P.O. Box 308, Faribault 55021; (507) 332-3363.

**CABLE COMMUNICATIONS BOARD** has 1 vacancy open for a public member. The board establishes rules and standards for cable communications in the state; approves service territories; provides consultant services; represents the state before the federal communications commission. Members are appointed by the Governor and confirmed by the Senate. Members must file with EPB. Members may not be employed by or have financial interest in any cable communications company or subsidiaries. No more than 4 members may be of the same political party. Monthly meetings; members receive \$35 per diem plus expenses. For specific information contact the Cable Communications Board, 500 Rice St., St. Paul 55103; (612) 296-2545.

**SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL** has 1 vacancy open for a member. The council advises the Commissioner of Administration on the small business procurement program, reviews complaints from vendors and reviews compliance reports. Members are appointed by the Governor. Members receive no compensation. For specific information contact the Small Business Procurement Advisory Council, 112 Administration Bldg., St. Paul 55155; (612) 297-4412.

**MINNESOTA ACADEMIC EXCELLENCE FOUNDATION** has 1 vacancy open for a member. The foundation promotes academic excellence in Minnesota public schools through a public-private partnership (a nonprofit organization). Members are appointed by the Governor. For specific information contact the Minnesota Academic Excellence Foundation, 550 Cedar St., Capitol Square Bldg., St. Paul 55101; (612) 296-2358.

**ASSIGNED RISK PLAN REVIEW BOARD** has 5 vacancies open for 3 insured holding workers compensation policies issued by the Assigned Risk Plan and 2 representatives of licensed workers' compensation insurance companies. The board is required to audit the reserves established for individual cases and the total book of business arising under workers' compensation policies and contracts of coverage issued pursuant to M.S. §§ 79.25 and 79.252; to monitor the Assigned Risk Plan's operations; and to make recommendations periodically to the Commissioner of Commerce, the Governor and the legislature for improvement in the operation of the Assigned Risk Plan. Members are appointed by the Commissioner of Commerce. Term of office is 3 years; meetings held at variable times at the Commerce Dept. Hearing Room. For specific information contact the Assigned Risk Plan Review Board, 500 Metro Sq. Bldg., St. Paul 55101; (612) 297-4017.



# STATE CONTRACTS

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

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

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

## Department of Administration Procurement Division

### Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
26-072-09240, 7100	Prospectus	Moorhead State University	Moorhead	Contact buyer
04-371-26854, 6969 78-550-04773	MN Agricultural Statistics Air Cleaners	Agriculture MN Correctional Facility—Industries	St. Paul Lino Lakes	Contact buyer Contact buyer
79-050-16204 32-100-12417	Lumber, Roofing Material Purchase of Rainbow Computers	Transportation Pollution Control Agency	Various Roseville	Contact buyer Contact buyer
Contract 79-800-02720 78-550-04845	Fire Extinguishers Poly Film Sheeting Electric Convection Oven	Various Transportation MN Correctional Facility	Various Willmar Lino Lakes	\$20,000-\$25,000 Contact buyer Contact buyer
79-000-46717 & 46711	Purchase of Engineering Copiers	Dept. of Transportation	Brainerd & Mankato	Contact buyer
79-000-46713 27-151-43148	Electronic Balance Microscope	Transportation Minneapolis Community College	St. Paul Minneapolis	Contact buyer Contact buyer
26-072-09231	Oscilloscope	Moorhead State University	Moorhead	Contact buyer
26-071-14986	Gas Analyzer	Mankato State University	Mankato	Contact buyer
07-300-33274	Auto Carousel	Public Safety—Bureau of Criminal Apprehension	St. Paul	Contact buyer
26-070-10951	Satellite Television Receiving System	Bemidji State University	Bemidji	Contact buyer
Contract 78-620-20720, etc.	Specialty Gases Athletic Supplies	Various MN Correctional Facility	Various Stillwater	Contact buyer Contact buyer
30-000-15060 78-620-20770	Purchase of Terminals Garage Liability Insurance	State Planning Agency MN Correctional Facility	St. Paul Stillwater	Contact buyer Contact buyer
Various	Meat & Meat Products for the Month of May, 1985	Various	Various	Contact buyer
55-303-10673 79-500-02826 79-500-02829 55-303-10674	Drying Tumbler Epoxy Material Joint Filler Fiberglass Laundry Trucks	Faribault State Hospital Transportation Transportation Faribault State Hospital	Faribault Minneapolis Minneapolis Faribault	Contact buyer Contact buyer Contact buyer Contact buyer

## STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
80-300-03178-79	Purchase of Computer System	Public Service	St. Paul	Contact buyer
29-000-37718	Lumber	Natural Resources	Rochester	Contact buyer
02-110-45559	Lease/Purchase of Photocopy Machine	Administration	St. Paul	Contact buyer
79-000-46739	Surveying Equipment	Transportation	St. Paul	Contact buyer
26-071-15003	Electronic Supplies	Mankato State University	Mankato	Contact buyer
Contract	Commercial Film, Paper & Chemicals	Various	Various	\$25,000-\$35,000
22-400-00810	Purchase of Photocopy Machine	Tourism	St. Paul	Contact buyer
79-900-00270	Pintle Hooks & Fenders	Transportation	St. Paul	Contact buyer
78-550-04842	Furnish & Install Dishwasher	MN Correctional Facility	Lino Lakes	Contact buyer
Rebid 29-000-37259 & etc.	Boat Trailers	Natural Resources	Various	Contact buyer
07-100-6758, 33549	Motorcycle Outdoor Board	Transportation—Outdoor Advertising	Various	Contact buyer

Contact 296-6152 for referral to specific buyers.

## Department of Human Services

The Surveillance and Utilization Review Section (SURS), Health Care Programs Division, is seeking proposals from computer service bureaus for the processing of several jobs within the SURS II data processing subsystem.

Processing consists of sorting Medical Assistance claims, statistically analyzing data, and printing resulting reports, using the existing SURS II programming software. Contractor will receive claims on a tape medium, consisting of 10-15 million variable length records (400-700 characters each). Because of Federal reporting requirements there is limited flexibility in run completion, contractor will have approximately 3-4 weeks to print the reports once the tapes are submitted. Reports are produced once each fiscal quarter. Size of each run varies so that the cost of each run is based on actual system use, historically 85-95% of cost is CPU time.

Contract period will run from July 1, 1985 to June 30, 1987. Estimated contract ceiling \$475,000.00.

Current processing is done on an IBM 3033-S with MVS SP1.3 operating system and IBM 3350 disks. On this system run time is approximately 25-35 CPU hours each quarter. Disk usage is approximately 1500 cylinders for a group of six tapes (4 million records) during the large sort. Multiple sort and merge steps may be necessary to sort the entire input file, averaging 12-18 record tapes.

Proposals must include the following charges for comparative purposes:

- 1) CPU (per hour)
- 2) Tape Mounts (per reel)
- 3) Tape Access (100 Excp's)
- 4) Disk Access (100 Excp's)
- 5) Disk Storage (Megabytes per day)
- 6) Local Line Printed (1 copy, 1000 lines)
- 7) Programmer/Analyst (per hour)

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

Additional information on the SURS II programs is available by contacting:

William Hassinger  
 Information Services Coordinator  
 Surveillance and Utilization Review Section  
 444 Lafayette Road, P.O. Box 64208  
 St. Paul, Minnesota 55164  
 (612) 297-1101

Proposals will be accepted until 4:00 p.m., April 30, 1985.

## **Pollution Control Agency Division of Water Quality**

### **Availability of Contract and Request for Proposals for Contractual Services to Perform Recovery, Removal or Remedial Actions Regarding Spills and Small Scale Hazardous Substances Removal or Remedial Actions**

The Minnesota Pollution Control Agency (MPCA) is seeking proposals from contractors qualified in various specialized areas of pollutant response and cleanup of hazardous substances, pollutants or contaminants that may cause pollution of the waters of the state or present potential health or safety concerns for the public. The MPCA desires to contract with these qualified parties for services during fiscal year 1986. No actual work or payment is guaranteed pursuant to the contract, but services such as the removal, storage, sampling and analysis, transportation and disposal of hazardous substances, pollutants or contaminants are anticipated to be needed as a result of pollutant releases or threatened releases that may cause pollution of the waters of the state or present potential health or safety concerns for the public.

The duration of the contract with qualified parties is twelve (12) months with an execution date anticipated for July 1, 1985. Funding for this contract will be provided by Federal funds obtained by the State through Title 1, Section 106, Federal Water Pollution Control Act, as amended and the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B (1984 Supp.). The contract, in an amount up to \$60,000, may include more than one responsive qualified party and the Agency reserves the right to limit the number of parties to the contract. If necessary, this contract may be amended to provide additional funds.

Request for the RFP document, which describes the requirements necessary for the contract, and inquiries should be directed to:

Mr. Pat Mader  
Enforcement Section  
Division of Water Quality  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, Minnesota 55113

The deadline for receipt of completed proposals is 5:00 p.m. on Wednesday, May 1, 1985. Proposals should be submitted to the attention of the above MPCA contact person. Late submittals will not be accepted.

March 27, 1985

Thomas J. Kalitowski  
Executive Director

### **Request for Proposal Spills and Hazardous Substances Response Contract for Fiscal Year 1986**

#### **I. Goals, Objectives, and Overview of Project**

A. The Minnesota Pollution Control Agency (MPCA) is issuing a Request for Proposal (RFP) for the services of contractors qualified in various specialized areas of pollutant response and cleanup of hazardous substances, pollutants, or contaminants that may cause pollution of the waters of the state or present potential health or safety concerns to the public.

B. The MPCA desires to contract with qualified parties for services during Fiscal Year 1986 (July 1, 1985 through June 30, 1986). The contract entered into as a result of this RFP, in an amount up to \$60,000, may include more than one responsive qualified party. The funds for this project will be provided by Federal funds obtained by the State through Title 1, Section 106, Federal Water Pollution Control Act, as amended or the Minnesota Environmental Response and Liability Act, Minn. Stat. Chapter 115B (1984). If necessary, the contract(s) entered into as a result of this RFP may be amended to provide additional funds.

C. No actual work or payment is guaranteed pursuant to the contract entered into as a result of this RFP, but services are anticipated to be needed as a result of pollutant releases or threatened releases and the removal, storage, sampling and analysis, transportation and disposal of hazardous substances, pollutants or contaminants that may cause pollution of the waters of the State or present potential health or safety concerns to the public.

D. This RFP is submitted for review and consideration by individuals or firms engaged in providing contracting services. Interested persons must submit completed proposals by 5:00 p.m., Wednesday, May 1, 1985. State contracts will be awarded in accordance with Minnesota Statutes, Chapters 15 and 16.

E. The MPCA reserves the right to limit the number of parties to the contract entered into as a result of this RFP and to reject

# STATE CONTRACTS

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any or all of the parties responding, and the MPCA reserves the right to cancel the solicitation if cancellation is considered to be in the MPCA's best interest.

## II. Scope of Work

All of the following contractual services are required of a contractor before a contractor or that individual or firm will be considered for the contract entered into as a result of this RFP.

A. Capability to perform on-site investigations of spills, releases or threatened releases of hazardous substances, pollutants, or contaminants that may cause pollution of the waters of the State or present potential health or safety concerns to the public.

B. Capability to perform or have a subcontract with another firm to perform surface water cleanup of spills, releases or threatened releases of hazardous substances, pollutants, or contaminants that may cause pollution of the waters of the State or present potential health or safety concerns to the public.

C. Capability to perform soil borings or have a subcontract with another firm. Capable of performing soil borings.

D. Capability to install ground water monitoring wells or have a subcontract with another firm capable of installing ground water monitoring wells.

E. Capability for ground water cleanup and monitoring or have a subcontract with another firm capable of ground water cleanup and monitoring.

F. Capability to respond to hazardous substances, pollutant or contaminant spills, releases or threatened releases including re-packaging of leaking barrels or other containers. The contractor shall have the proper equipment to protect its employees when conducting on-site cleanup and shall provide proper training for those employees.

G. Capability to do analytical testing for metals, acid/base neutral compounds, volatiles, and general chemistry parameters or have a subcontract with another qualified laboratory to do such testing. The laboratory must have a Quality Assurance/Quality Control program that will be approved by the MPCA Director.

H. Capability to transport hazardous substances, pollutants or contaminants or have a subcontract with another firm capable of transporting hazardous substances, pollutants or contaminants.

I. Capability to dispose of hazardous substances, pollutants or contaminants or have a subcontract with another firm capable of disposing of hazardous substances, pollutants or contaminants.

J. Capability for immediate response within 12 hours anywhere in the State of Minnesota.

K. Capability to write and submit detailed reports on all activities performed and provide itemized costs for all activities.

L. Have available or have a subcontract with another firm for vacuum truck cleanup.

M. Have a 24-hour answering service.

N. Have current certificates of insurance certifying coverage for general liability with minimum amounts of \$500,000 per incident with an annual aggregate of at least \$1,000,000 exclusive of legal defense costs, for bodily injury and property damage liability combined.

O. Knowledge of and capability to obtain all necessary permits and comply with all Federal, State, and local laws and regulations.

## III. Project Costs.

The contract costs entered into as a result of this RFP shall not exceed a total of \$60,000. If necessary, any contract entered into as a result of this RFP may be amended to provide additional funds. Funding for the contract entered into as a result of this RFP will be provided by Federal funds obtained by the State through Title 1, Section 106, Federal Water Pollution Control Act, as amended or the Minnesota Environmental Response and Liability Act, Minn.Stat. Chapter 115B (1984).

## IV. Project Start and Completion Date

The contract(s) entered into as a result of this RFP shall be for services during Fiscal Year 1986; from July 1, 1985 through June 30, 1986.

## V. Preparation of Proposal

### A. General Comments

1. The format of the proposal shall be arranged according to the headings and subheadings listed below (B.1-6). Pages shall be numbered.

2. The cost proposal must be submitted in a separate, detachable, unclassified form so that the technical proposal can be evaluated solely upon the basis of its engineering merit, independent of dollar value.

**B. Components of Proposal**

1. **Organizational Support and Experience**—This section of the proposal shall contain at least the following information:

- a. A brief description of the firm's overall capabilities, history and overall organizational structure.
- b. Location of the firm's headquarters and local facilities.
- c. A summary of overall staffing capabilities current to April, 1985, (i.e., Standard Form 254) (July 1975) prescribed by GSA Federal Procedures Regulation 41 CFR 1-16.803).
- d. Name and telephone number of the person designated by the firm(s) to answer questions about the proposal.
- e. Documentation which clearly shows the proposer's experience in similar activities. For any previous projects listed include the name of project and client, and a brief project description.
- f. Multiplier used for determining rates with a breakdown of overhead and profit.
- g. A financial statement that will specify the proposer's ability to carry forth any required scope of work anticipated throughout Fiscal Year 1986.
- h. A detailed explanation of the way in which the proposer would be available locally on a day to day basis during any contract entered into as a result of this RFP to discuss, inform, and interact with the MPCA. Progress tracking and reporting procedures should be proposed.
- i. Affirmative action requirements (see Section IX.E.). The proposer must acknowledge affirmative action requirements in the RFP response.
- j. Other pertinent information.

2. A detailed Health and Safety Plan as defined in Appendix A. Include a discussion of experience in providing safety procedures for previous projects.

3. Description of sampling and analytical approach, including techniques, detection limits, and a detailed Quality Assurance/Quality Control (QA/QC) Plan as defined in Appendix B. Include a discussion of experience providing QA/QC Plans for other projects.

4. **Technical Proposal**—The technical proposal shall contain a detailed proposal outlining the procedures to be undertaken in the performance of the tasks set forth in the RFP's scope of work (Section II) and include but not necessarily be limited to:

—Detailed narrative list of the task and subtasks to be performed and the technical approach to be taken with each (if possible, follow the format established in Section II);

—Resumes of key personnel assigned to the contract, showing their function during any contract entered into as a result of this RFP, relevant experience, and professional background.

**5. Technical Approach**

Describe the technical approach to any contract entered into as a result of this RFP. It should clearly demonstrate that the proposer understands the requirements for and the technical problems inherent in the end objectives. All of the technical factors cannot be detailed in advance, but the technical proposal must express how the proposer intends to comply with the scope of work and a full explanation of the techniques and procedures the proposer intends to follow.

Include any preliminary layouts, sketches, diagrams, other graphic representations, calculations, and other data that is considered to be necessary for an adequate presentation, justification, or understanding of the proposed technical approach.

As part of the technical approach, include information on how subcontracting will be carried out, what type of insurance program the proposer has available, and how the laboratory quality assurance program and the safety program will be carried out.

**6. Cost Proposal**

The cost proposal should be specific, complete in every detail, and separate from the technical proposal. To reduce subsequent requests to proposers for additional data in support of cost estimates, the following basic information is required as part of all cost proposals:

a. The cost proposal should detail the costs which will be billed to the state for the performance of service. The cost proposal shall detail the rate structure for laboratory analyses.

b. The cost proposal should outline the rates which the proposer will bill the state in the event that services are performed. Those costs should be stated in terms of labor, equipment, and supplies. In proposing laboratory rates, the proposer shall specify the rate structure by compound and by type of sample (soil, water). In proposing labor rates, the proposer should state the category of labor, the functions performed, the base hourly rate, and premium rates. A statement of overhead and general and administrative costs should accompany the mark-up on the base labor rates.

## STATE CONTRACTS

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- c. The proposer must specify under what circumstances premium pay will be made.
- d. Costs for use or rental of equipment should be presented in a listing. This listing should contain the following information.
  - Description of the equipment item including capacity, manufacturer, and model;
  - The function of the item where not implied in its description;
  - The basis of charges, i.e., hours used, miles traveled, its operator's time, etc.;
  - The unit cost per item;
  - The total number of units available per location; and,
  - Standby rates charged for equipment on location and not in use.

### VI. Evaluation of Proposal.

All proposals received by the deadline will be evaluated by representatives of the Minnesota Pollution Control Agency.

Factors upon which proposals will be judged include, but are not limited to, the following:

A. Pass/Fail. Proposers who fail to satisfactorily demonstrate experience and expertise in any of the following items (as they relate to any contract entered into as a result of this RFP) will be immediately dropped from further consideration.

—Remedial Investigation and Remedial Actions regarding hazardous substances, pollutant, or contaminant spills, releases or threatened releases.

—Health and Safety Plan (see Appendix A); and,

—Laboratory QA/QC (see Appendix B).

B. Proposers who satisfactorily pass the above will then be judged on the following items. Of primary importance are:

—Technical proposal and approach;

—Staffing capabilities;

—Financial capabilities;

—Ability to work in a cold weather climate;

—Familiarity with Minnesota laws and regulations;

—Local availability;

—Background and experience, particularly local, State, and Federal government work, as it relates to similar projects; and

—Mechanism for informing/interacting with MPCA during the project;

C. Proposal evaluation and selection of semi-finalists will be completed by May 31, 1985. All proposers will receive written notification of the results. If needed, interviews of the semi-finalists will be conducted at the MPCA during the first week of June 1985. Contractor final selection will be completed by June 15, 1985. All semi-finalists will receive written notification of the outcome.

Please Note: Once the contractor(s) has(have) been selected, contract negotiations will commence. The contract(s) effective date, entered into as a result of this RFP, is anticipated for July 1, 1985.

### VII. Submission of Proposal

A. Four (4) copies of the completed proposals must be sent to:

Pat Mader  
Enforcement Section  
Division of Water Quality  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, Minnesota 55113

and received by:

not later than 5:00 p.m., Wednesday, May 1, 1985.

B. Late submittals will not be accepted. Submittals are to be sealed in mailing envelopes or packages with the proposer's name and address clearly written on the outside. Each copy of the proposal must be signed, in ink, by an authorized member of the firm.

C. All submittals become the property of the State of Minnesota and will be subject to the provisions of the Minnesota Government Data Practices Act [Minn. Stat. Ch. 13 (1984)].

1. This Act makes data received by state agencies public unless it is demonstrated that the data is classified as nonpublic, private, or confidential by specific provisions of the Act or by a temporary classification from the Commissioner of Administration under Minnesota Statute § 13.06 (1984).

2. Hourly rates of persons to be employed on the proposed project, and similar financial data, are deemed public data.

3. Information on laboratory techniques and other technical processes will be deemed public data unless the firm provides a written statement explaining the applicability of the "trade secret information" provision and the MPCA Director determines that the provision does apply.

#### **VIII. Department Contact**

A. Prospective proposers who have any questions regarding this RFP may write or call:

Pat Mader  
Enforcement Section  
Division of Water Quality  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, Minnesota 55113  
(612) 296-7755

B. Please note: Other department personnel will not discuss any contract entered into as a result of this RFP with proposers before the submittal deadline unless directed to do so by Mr. Mader.

#### **IX. General Contract Information**

##### **A. Obligation**

This RFP does not obligate the state to complete the contract entered into as a result of this RFP, and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

##### **B. Rejection of Proposals**

The MPCA reserves the right to reject any or all proposals or to award a contract for only a part of the work if deemed to be in the best interest of the state to do so. The MPCA's authorized agent shall have authority to award orders or contracts to the vendor best meeting specifications and conditions.

##### **C. Liability**

The contractor agrees to indemnify and save and hold the state, its agents and employees harmless from any and all claims or causes of action arising from the contractor's performance of the contract entered into as a result of this RFP by the contractor or the contractor's agents or employees. This clause shall not be construed to bar any legal remedies the contractor may have for the state's failure to fulfill its obligations pursuant to a contract entered into as a result of this RFP.

##### **D. Cancellation of Contract**

The state reserves the right to cancel any contract entered into as a result of this RFP, provided written notice has been given to the contractor at least thirty (30) days prior to the proposed cancellation date. The state can also exercise authority to remove a contractor from the job for substandard performance.

##### **E. Affirmative Action**

In accordance with the provisions of Minnesota Statutes, Section 363.073 (1984) for all contracts estimated to be in excess of \$50,000, all proposers having more than 20 full-time employees in Minnesota at any time during the previous twelve 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:

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

##### **F. Workers' Compensation**

The contractor will be required to submit acceptable evidence of compliance with workers' compensation insurance

## STATE CONTRACTS

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coverage requirements prior to execution of any contract entered into as a result of this RFP.

### G. Ownership of Material

Ownership of all data, material, and documentation originated and prepared for the state pursuant to any contract entered into as a result of this RFP shall belong exclusively to the state, and as such, will be subject to the provisions of the Minnesota Government Data Practices Act [Minn. Stat. Ch. 13, 1984].

### H. Document Release

The contractor and all subcontractors shall obtain prior approval from the MPCA authorized agent prior to the release of any data, documents, opinions or other information or the making of any communication to any other persons or the public relative to work under any contract entered into as a result of this RFP.

### I. Records

The contractor must maintain accounting records and other evidence pertaining to costs incurred on any project and to make the records available to the State, the Comptroller General of the United States, or any of their duly authorized representatives, at all reasonable times during any contract period and until authorized by the MPCA.

### J. Litigation Responsibilities

It is anticipated that the contractor may be called upon to provide factual and expert witness(es) on behalf of the state or political subdivisions of the State in lawsuits against the parties found to be responsible for contamination. The contractor will agree to provide consultations and serve as a trial witness(es) on issues relating to the subject matter of a contract entered into as a result of this RFP. The hourly rates for such work shall be at the same multiplier as the other work carried out under a contract entered into as a result of this RFP. Certain reports or other work may be undertaken at the direction of government attorneys. Such work shall constitute trial preparation and may not be disclosed without the prior consent of those attorneys.

### K. Prime Contractor Responsibilities

The selected contractor will be required to assume responsibility for all services under the contract entered into as a result of this RFP whether or not that contractor produces them. Further, the State will consider the selected contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract entered into as a result of this RFP. If any part of the work is to be subcontracted, the prime contractor(s) must provide complete description of work subcontracted and descriptive information about subcontractor's organization and capabilities. The State reserves the right to approve or disapprove all subcontractors. The contractor is totally responsible for adherence by the subcontractor to all provisions of the contract entered into as a result of this RFP.

### L. Subcontracting

The prime contractor shall advise the MPCA's authorized agent and receive approval before subcontracting any work services, materials, supplies, or equipment under the contract to any other person, company, corporation, firm, organization, or agency not identified in the proposal submitted in response to this RFP. At the time of bidding for additional subcontracting work, the selected contractor shall submit a schedule of subcontractors, the type of work performed, and other pertinent data so as to qualify the subcontractors' capabilities. Prime contractors cannot be used as subcontractors.

### M. Assignment

The selected contractor will be prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of any contract, entered into as a result of this RFP, or its rights, title, or interest therein or its power to execute such agreement to any other person, company, or corporation without the previous consent and approval in writing by the authorized agent of the MPCA.

### N. Antitrust

The selected contractor shall assign to the State any and all claims for overcharges as to goods and/or services provided in connection with a contract entered into as a result of this RFP resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State.

### O. Continuity of Services

The selected contractor shall provide phase-in phase-out (PIPO) training to permit the State or another contractor to continue, extend or expand the services provided by a contract entered into as a result of this RFP. The terms of such PIPO services are as follows: After written notification from the MPCA's authorized agent, contractor shall provide PIPO services for a period lasting no longer than sixty (60) days after a contract entered into as a result of this RFP expires or is terminated. After notification, contractor agrees to negotiate in good faith with a successor in determining the nature and extent of PIPO services required to allow the successor to efficiently perform the continued, extended or expanded work. Such negotiations shall result in a mutually acceptable detailed plan for PIPO operations, which plan shall describe a training program and specify a date for shifting the responsibility to the successor for each division of work set forth in the plan. The plan shall be subject to the approval of the MPCA's authorized agent.



The selected contractor shall provide sufficient experienced personnel during the PIPO period to ensure that the services called for by the contract entered into as a result of this RFP are maintained at a high level of proficiency. The selected contractor shall be reimbursed for all reasonable PIPO costs. PIPO costs are those costs accruing within the agreed period after contract expiration which result from PIPO operations.

**P. Insurance**

The selected contractor shall carry general liability insurance coverage with minimum limits of \$500,000 per incident, with an annual aggregate of at least one million dollars (\$1,000,000) per incident, exclusive of legal defense costs, for bodily injury and property damage liability combined, and containing the provision that the insurance shall not be cancelled or amended in any way adverse to the MPCA for any reason after thirty (30) days notice is given to the MPCA. These insurance limits are not to be construed as maximum limits. The contractor is solely responsible for determining the appropriate amount of insurance they should carry for any injuries or damages that may result from the implementation of any contract entered into as a result of this RFP. The contractor shall, prior to commencement of work under a contract entered into as a result of this RFP, provide the MPCA with current certifications of insurance for the coverage required herein.

**Appendix A. Protection of Health and Safety**

**A. Introduction**

1. The nature of the work to be performed may be inherently hazardous.

**B. Responsibilities**

1. The contractor shall be responsible for the protection of health and safety of employees, agents and the general public throughout all phases of any project undertaken pursuant to the contract entered into as a result of this RFP.

2. The contractor shall also be responsible for reasonable protection of any work site property from additional environmental damage.

**C. Minimum Components of Health and Safety Plan**

1. The health and safety plan should include: specific objectives; assignment of responsibilities; personal protective requirements to prevent exposure due to inhalation, skin absorption, ingestion, and eye contact; description of personnel safety training program; air monitoring, as appropriate; work practices, decontamination procedures; emergency response procedures; employee medical surveillance program; site security measures to restrict access.

2. At a minimum, all Federal, State and local statutes, regulations, and ordinances regarding health and safety must be satisfied.

3. The safety plan should be designed to prevent injury or illness from occurring to the on-site workers, field investigators, or the general public, as well as to prevent additional environmental damage.

**Appendix B. Quality Assurance Requirements**

The completed proposal must include a complete Quality Assurance/Quality Control (QA/QC) Plan for all environmental measurements that may be made during the course of any contract entered into as a result of this RFP. The QA/QC Plan shall include at a minimum the following elements:

**I. General**

General information should include a description of the types of projects that may be encountered under any contract entered into as a result of this RFP, staff and laboratory organization and assignments, and the individuals responsible for implementing the QA/QC requirements.

**II. Budgeting**

Budget information should include costs identified with instituting and maintaining a sufficient level of QA/QC to document the precision and accuracy of the data and to ensure that data are complete, representative and comparable. (As a general rule, the QA/QC costs should not exceed 15% of the total budget.)

**III. Specific Plan**

The QA/QC Plan shall present, in specific terms, the policies, organization, objectives, functional activities, and specific QA/QC activities designed to achieve the data quality goals of any contract entered into as a result of this RFP.

Each of the sixteen items below must be included in the QA/QC Plan:

- (1) Title page with provision for approval signatures
- (2) Table of contents

# STATE CONTRACTS

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- (3) Project description
- (4) Project organization and responsibility
- (5) QA objectives for measurement data in terms of detection limits, precision, accuracy, completeness, representativeness and comparability
- (6) Sampling procedures
- (7) Sample custody
- (8) Calibration procedures and frequency
- (9) Analytical procedures
- (10) Data reduction, validation and reporting
- (11) Internal quality control checks and frequency
- (12) Performance and system audit and frequency
- (13) Preventive maintenance procedures and schedules
- (14) Specific routine procedures to be used to assess data precision, accuracy and completeness of specific measurement parameters involved
- (15) Corrective action
- (16) Quality assurance reports to management

#### IV. QA/QC Audit

Proposers may be required to permit on-site QA/QC audits as part of the preaward evaluation or during the period of any contract entered into as a result of this RFP.

#### V. QA/QC Performance Evaluation Studies

Performance evaluation studies will be part of any contract entered into as a result of this RFP.

## Department of Transportation

### Request for Proposals for Counseling Services

The Minnesota Department of Transportation is accepting proposals for a professional psychologist to provide professional counseling service to employees. The contractor will conduct training courses for supervisors and managers in the appropriate techniques used in motivating recalcitrant employees as well as providing guidance to employees who may be suffering emotional trauma associated with potential layoffs or career changes necessitated by reduced program activity.

The contractor must possess:

1. A doctorate in psychology.
2. A license as a professional psychologist.
3. 4 years experience in the practice of clinical psychology.
4. Experience as a professional counselor with an employer of 1,000 or more employees ranging from managers and professionals to trade persons, technicians, and clerks.
5. Experience as a chemical dependency counselor.
6. Familiarity with State government regulations and operations.
7. Knowledge of and ability to conduct management training and development courses.

A contract for the requested services will commence July 1, 1985 and terminate on June 30, 1987. The compensation limit during the contract period is \$33,000.00 per year with payment not to exceed \$33.00 per hour. Payments will be made monthly for the hours listed on the monthly report. Services are to be rendered by the individual or persons possessing the doctorate in psychol-

ogy. Services are to be provided to Mn/DOT employees at least 3 days in each work week. If two or more qualified applicants wish to submit a combined proposal they may do so provided that the total contract amount will not exceed \$33,000.00 per year.

Qualified professionals should submit their resumes and work plan proposals not later than April 29, 1985, to:

Roger W. Durbahn  
Assistant Personnel Director  
Minnesota Department of Transportation  
315 Transportation Building  
Saint Paul, Minnesota 55155

R. P. Braun, Commissioner

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**SUPREME COURT****Decisions Filed Friday, March 29, 1985**

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

**C6-83-907 Marvis Stensland v. County of Faribault, Appellant. Faribault County.**

The trial court properly denied the county's motion for a directed verdict at the close of the plaintiff's case.

The county board acted in unreasonable disregard of the responsibilities and duties of the office in setting the salary of the county recorder.

The trial court erred in establishing a reasonable minimum salary for the county recorder.

Affirmed in part, reversed in part, remanded. Wahl, J.

**C5-84-746 Progressive Casualty Insurance Company, Appellant, v. William Kraayenbrink, Jr., Donald C. Gathje, et al., State Farm Insurance Company. Court of Appeals.**

Upon consideration of a motion to dismiss an appeal for nonjurisdictional defect of failure to timely file a brief, the court should weigh the factors set out in Boom v. Boom, 361 N.W. 2d 34 (Minn. 1985) to determine if dismissal is appropriate.

Reversed and remanded. Wahl, J.

Concurring specially, Kelley, J.

**C0-84-573 Steven Paul Barlow v. Commissioner of Public Safety, Appellant. Court of Appeals.**

The trial court lacks authority, either by statute or under its inherent powers, to require the Commissioner of Public Safety to expunge from his records the revocation of respondent's driving privilege which was subsequently rescinded.

Reversed. Simonett, J.

**C7-83-1774 State of Minnesota v. Mitchell Peirce, Appellant. Hennepin County.**

Defendant's warrantless arrest was with probable cause and defendant's Miranda rights were not violated.

The trial court properly found, under either a clear-and-convincing or a preponderance-of-the-evidence standard, that the defendant by his own misconduct had waived his right of confrontation.

Defendant was properly denied use immunity for defense witnesses he wished to call.

The trial court's instruction on aiding and advising was not erroneous, there was sufficient corroboration for the accomplice's testimony, and the evidence is sufficient to sustain the first-degree murder conviction.

Affirmed. Simonett, J.

**Order Filed March 18, 1985**

**C1-85-43 In Re: Allegation Concerning the Honorable Michael J. Haas. Supreme Court.**

Publicly censured. By the Court.

# **SUPREME COURT**

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## **Order Filed March 20, 1985**

**C1-85-480 In the Matter of the Application of the Discipline of David M. Watson, an Attorney at Law of the State of Minnesota. Supreme Court.**

Publicly reprimanded. Amdahl, C.J.

## **Order Filed March 21, 1985**

**CX-85-370 In the Matter of the Application for the Discipline of Thomas M. Polt, an Attorney at Law of the State of Minnesota. Supreme Court.**

Suspended. Amdahl, C.J.

## ORDER FORM

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## FOR LEGISLATIVE NEWS

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

### SENATE

**Briefly/Preview**—Senate news and committee calendar; published weekly during legislative sessions.

**Perspectives**—Publication about the Senate.

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

### HOUSE

**Session Weekly**—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

**This Week**—weekly interim bulletin of the House.

Contact: House Information Office  
Room 8 State Capitol, St. Paul, MN 55155  
(612) 296-2146

Legislative Reference Library

Room 111 Capitol

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