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STATE REGISTER

STATE OF MINNESOTA



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Pages 221-284



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 | | | |
| 6 | Monday July 23 | Monday July 30 | Monday Aug 6 |
| 7 | Monday July 30 | Monday Aug 6 | Monday Aug 13 |
| 8 | Monday Aug 6 | Monday Aug 13 | Monday Aug 20 |
| 9 | Monday Aug 13 | Monday Aug 20 | Monday Aug 27 |

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

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

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

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

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NOTICE

How to Follow State Agency Rulemaking Action in the State Register

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

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

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

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

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

Table with 2 columns: Issue range and Issue number. Includes: Issues 1-13, inclusive; Issues 14-25, inclusive; Issue 26, cumulative for 1-26; Issues 27-38, inclusive; Issue 39, cumulative for 1-39; Issues 40-51, inclusive; Issue 52, cumulative for 1-52.

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

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PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

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

Department of Labor and Industry Occupational Safety and Health Division

Proposed Revisions to the Occupational Safety and Health Standards

Request for Comments

Notice is hereby given that the Department of Labor and Industry, Occupational Safety and Health Division (Minnesota OSHA), proposes to adopt the following revisions to the Minnesota Occupational Safety and Health Codes, as authorized under

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

Minnesota Statutes § 182.655 (1982) establishing, modifying or revoking the Occupational Safety and Health Standards that have already been proposed and adopted by the federal Occupational Safety and Health Administration (Federal OSHA).

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

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

Steve Keefe
Commissioner of Labor & Industry

Standards as Proposed

5205.0010 ADOPTION OF FEDERAL OCCUPATIONAL SAFETY AND HEALTH STANDARDS BY REFERENCE. The Minnesota Department of Labor and Industry, Occupational Safety and Health codes and rules are amended by incorporating and adopting by reference and thereby making a part thereof, Title 29, of the Code of Federal Regulations as follows:

Part 1910—Occupational Safety and Health Standards as published in Volume 43, No. 206 of the Federal Register on October 24, 1978 and corrected in Volume 43, No. 216 on November 7, 1978 which incorporates changes, additions, deletions, and corrections made up to November 7, 1978; and subsequent changes made prior to ~~April 1, 1984~~ July 1, 1984.

—Federal Register, Vol. 49, No. 109, dated 6/5/84—“Occupational Exposure to Lead; Effective Date of Compliance Plan Requirements for Primary and Secondary Smelting and Battery Manufacturing Industries, 1910.1025(e)(3)(ii)(B) and (E).”

—Federal Register, Vol. 49, No. 122, dated 6/22/84—“Occupational Exposure to Ethylene Oxide (1910.1047), Final Rule.”

Summary of Standards: This summary of the above standards is very brief; persons interested in reviewing the entire standard may obtain a copy at the address noted above.

A) “Occupational Exposure to Lead; Effective Date of Compliance Requirements for Primary and Secondary Smelting and Battery Manufacturing Industries.” The Occupational Exposure to Lead Standard (29 CFR 1910.1025) requires employers to reduce employee exposure to lead to the permissible exposure limit (PEL) of 50 $\mu\text{g}/\text{m}^3$, or to the lowest level feasible, through the use of engineering and work practice controls. The standard also requires that employers establish and implement a written compliance program to reduce employee exposures in accordance with the implementation schedule found in paragraph (e)(1) of the standard. The written compliance plan required in paragraph (e)(3)(ii) must include the following elements:

- (A) A description of each operation in which lead is emitted, e.g., machinery used, material processed, controls in place, crew size, employee job responsibilities, operating procedures and maintenance practices;
- (B) A description of the specific means that will be employed to achieve compliance, including engineering plans and studies used to determine methods selected for controlling exposure to lead;
- (C) A report of the technology considered in meeting the permissible exposure limit;
- (D) Air monitoring data which documents the source of lead emissions;
- (E) A detailed schedule for implementation of the program, including documentation such as copies of purchase orders for equipment, construction contracts, etc.;
- (F) A work practice program which includes items required under paragraphs (g), (h) and (i) of the standard;
- (G) An administrative control schedule required by paragraph (e)(6), if applicable;
- (H) Other relevant information.

In response to industry petitions, Federal OSHA proposed to stay the requirements of paragraph (e)(3)(ii)(B) and (E) for employers in the primary and secondary smelting and battery manufacturing industries. The stay, originally issued on June 18, 1982, was subsequently renewed until a final stay suspending the obligations of these employers was issued on December 3, 1982. The stay applied only to primary and secondary lead smelting and battery manufacturing industries and affected only paragraphs (e)(3)(ii)(B) and (E). The stay did not affect the obligation of these employers to prepare compliance plans containing elements in paragraphs (e)(3)(ii)(A), (C), (D), (F), (G), and (H). This administrative stay was adopted by Minnesota OSHA on May 30, 1983.

After implementing the stay, Federal OSHA was sued by the United Steelworkers of America which challenged the Agency's authority to issue interim and final stays on procedural and substantive grounds. That suit was filed in the U.S. Court of Appeals for the District of Columbia Circuit. The Court's order, dated April 17, 1984, vacated OSHA's stay of the requirements of

paragraphs (e)(3)(ii)(B) and (E) as of June 1, 1984. To allow employers a period of time to come into full compliance with these requirements, Federal OSHA proposed that by July 1, 1984, employers in the primary and secondary smelting and battery manufacturing industries complete compliance plans under 1910.1025(e)(3)(ii)(B) and (E) that include all information in the possession of the employer as of July 1, 1984. Under paragraph (e)(3)(iii), these compliance plans must be available to OSHA and affected employees and their representatives. By August 1, 1984, these compliance plans would have to be updated to include all information required by paragraphs (e)(3)(ii)(B) and (E).

Prior to establishing the effective dates, Federal OSHA invited comment and supporting information concerning the amount of time required for full compliance, including a discussion of the status of the development of employers' compliance plans and the impact of such related matters as participation in the cooperative assessment program and other proceedings. Commenters raised two important points. First, some affected groups indicated that logistical problems would be encountered in attempting to comply with the August 1, 1984 deadline. After reviewing the comments submitted in this regard, Federal OSHA found no new evidence indicating why the proposed deadlines could not be met. The engineering control requirements of the lead standard became effective at the Federal level on June 29, 1981; primary and secondary smelters and battery manufacturers were required to have produced written compliance plans by June 29, 1982. These same effective dates were adopted by Minnesota OSHA. The administrative stay issued on June 19, 1982 (11 days before the plans were due) further postponed their production for an additional two years. However, in order to comply with the unstayed portions of the compliance plan provisions [i.e., paragraphs (A), (C), (D), (F), (G), and (H)], affected industries should already have prepared fairly detailed written compliance plans. Therefore, these unstayed provisions have, presumably, been complied with. With this framework in place, development of a compliance plan which fully meets the requirements of paragraphs (B) and (E) should be feasible for affected employers by August 1, 1984.

The second issue raised by commenters was that the implementation of the compliance plan requirements should be integrated with the cooperative assessment programs (CAPs) already in progress. The first stage of the CAP program is the preparation of a manual of recommended control strategies on which a firm may subsequently draw in preparing plant-by-plant compliance plans; that manual will not be completed until after the August 1, 1984 deadline. The cooperative assessment program was designed to control worker exposure to lead and reflects lengthy discussions between OSHA, industry, and employees to accommodate feasibility limitations in creating a system of technical controls and work practices that will demonstrate to both OSHA and employees that an affected industry is complying with the lead standard. Such agreements were not meant to replace the 50 $\mu\text{g}/\text{m}^3$ PEL which was promulgated in 1978. Federal OSHA recognized, however, that some plants will have difficulty in achieving the PEL with engineering controls and has taken action to alleviate these problems (i.e., granting of temporary variances). Federal OSHA believes that the August 1, 1984 compliance deadline will neither undermine nor interfere with the ongoing CAPs. To the extent that the August 1, 1984 effective date may not be sufficiently flexible, Federal OSHA has determined that the best way to accommodate employers currently involved in engineering studies is to issue a field directive to provide guidance regarding the Agency's policy for enforcing paragraph (e)(3) as of August 1, 1984. Federal OSHA recognized that, while some engineering studies of longer-range control options may not be completed by August 1, some of this work may have been completed when the compliance plan stay took effect in 1982. Therefore, in the event that an employer has by August 1, 1984 initiated a study of long-term engineering control options, either of its own or through active participation in a cooperative assessment with OSHA and employee representatives, a citation for failure to meet the August 1 date will not be issued with respect to that control option, provided that the employer's compliance plan meets the guidelines described in the field directive. A draft of the field directive has been reviewed by interested parties; their comments have been considered in developing the final directive which will be issued in the near future.

By this notice, Minnesota OSHA proposes to rescind the administrative stay of paragraphs (e)(3)(ii)(B) and (E), an action identical to that of federal OSHA.

B) "Occupational Exposure to Ethylene Oxide—1910.1047." This standard establishes a permissible exposure limit for occupational exposure to ethylene oxide (EtO) of 1 part EtO per million parts of air (1 ppm) determined as an 8-hour time-weighted average concentration. The 1 ppm 8-hour limit reduces significant risk from exposure to EtO and is considered by OSHA to be the lowest level feasible. Ethylene oxide is a colorless gas with a characteristic ether-like odor also known as 1,2-epoxyethane, oxirane, and dimethylene oxide. The basis for this final standard is a determination by Federal OSHA, based on animal and human data, that exposure to ethylene oxide presents a carcinogenic, mutagenic, genotoxic, reproductive, neurologic and sensitization hazard to workers.

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

29 CFR 1910.1047 "Ethylene oxide" applies to any workplace where exposure to EtO may be found except those exempted workplaces (i.e., workplaces that process, handle or use products containing EtO where objective data show that the product cannot release EtO at or above the action level.) Employers must maintain documentation that supports the exemption. The standard provides for methods of exposure control, personal protective equipment, measurement of employee exposures, training, medical surveillance, signs and labels, material safety data sheets, regulated areas, emergency procedures and recordkeeping. An "action level" of 0.5 ppm as an 8-hour time-weighted average is established as the level above which employers must initiate certain compliance activities such as periodic employee exposure monitoring and medical surveillance. In instances where the employer can demonstrate that employee exposures are below the action level, the employer is not obligated to comply with most of the requirements set forth in this standard. Other provisions of the standard cover respiratory protection, written plans for emergency situations, communication of EtO hazards to employees, recordkeeping, and provisions for employees or their designated representatives to observe any monitoring of employee exposure to EtO that is conducted under this standard. Non-mandatory appendices are included as part of the standard to provide additional information. Appendix A provides safety data sheet information for EtO (substance identification, health hazard data, emergency first aid procedures, respirators and protective clothing, safe use/handling/storage, etc.); Appendix B provides technical guidelines for EtO (physical and chemical data; fire, explosion, and reactivity hazard data; spill, leak, and disposal procedures; monitoring and measurement procedures; and protective clothing and equipment); Appendix C provides medical surveillance guidelines; and Appendix D provides sampling and analytical methods for EtO.

Conforming revisions were also made to two existing OSHA standards. 29 CFR 1910.19 "Special provisions for air contaminants" was amended by adding paragraph (h) indicating that 1910.1047 applies to the exposure of employees to ethylene oxide in every employment and place of employment covered by sections 1910.12, 1910.13, 1910.14, 1910.15 and 1910.16. Section 1910.1000 was amended by deleting the entry "Ethylene oxide . . . 50 ppm . . . 90 mg/m³" from Table Z-1 of this section.

By this notice, Minnesota OSHA proposes to adopt 29 CFR 1910.1047 "Ethylene oxide" and the revisions to 29 CFR Part 1910.19 and 1910.1000.

Department of Human Rights

Proposed Emergency Rules Relating to Certificates of Compliance and Public Contracts

Request for Public Comment

Notice is hereby given that the Department of Human Rights has proposed the following emergency rules for the purpose of implementing the provisions of Laws of 1981, Ch. 326 Sec. 1. the certificate of compliance program. All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register*. All submissions must be in writing and addressed to:

James Robinson, Supervisor
Compliance Unit
Department of Human Rights
500 Bremer Tower
St. Paul, MN 55101

The emergency rule may be revised on the basis of comments received. Any written material received will become a part of the record and will be submitted to the Attorney General.

July 16, 1984

Kathryn R. Roberts
Acting Commissioner of Human Rights

Emergency Rules as Proposed (all new material)

CERTIFICATES OF COMPLIANCE FOR PUBLIC STATE CONTRACTS

5000.3400 [Emergency] DEFINITIONS.

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

Subp. 2. Affirmative action policy. "Affirmative action policy" means a managerial objective to eliminate all barriers to employment opportunity that are not based on specific job requirements. It refers also to the identification of such barriers in the use of action-oriented programs to advance employment opportunities for women, minorities, and qualified disabled individuals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subp. 18. Minority. "Minority" includes:

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

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

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

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

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

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

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

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

5000.3410 [Emergency] GENERAL PROVISIONS.

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

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

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

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

Subpart 1. General requirements. Under the affirmative action obligation imposed by the Human Rights Act, Minnesota Statutes, section 363.073, contractors shall take affirmative action to employ and advance in employment qualified minority, female, and disabled individuals at all levels of employment, including the executive level. Affirmative action must apply to all employment practices including the following:

- A. hiring, upgrading, demotion, or transfer;

- B. recruitment or recruitment advertising;
- C. layoff or termination;
- D. rates of pay or other forms of compensation; and
- E. selection for training, including apprenticeship.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NONCONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS

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

Subpart 1. Director. An executive of the contractor shall be appointed as director or manager of the company equal opportunity program. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. The director shall be given the necessary top management support and staffing to execute the assignment. The identity of the director or manager must appear on all internal and external communications and the company's equal opportunity programs. The responsibilities include, but are not limited to:

- A. developing policy statements, affirmative action programs, and internal and external communication techniques;
- B. assisting in the identification of problem areas;
- C. assisting line management in arriving at solutions to problems;
- D. designing and implementing audit and reporting systems that will:
 - (1) measure effectiveness of the contractor's programs;
 - (2) indicate need for remedial action; and
 - (3) determine the degree to which the contractor's goals and objectives have been attained;
- E. serving as liaison between the contractor and enforcement agencies;
- F. serving as liaison between the contractor and minority organizations, women's organizations, and community action groups concerned with employment opportunities of minorities and women; and
- G. keeping management informed of the latest developments in the entire equal opportunity area.

Subp. 2. Director responsibilities. Line responsibilities of the director or manager shall include, but not be limited to, the following:

- A. assistance in the identification of problem areas and establishment of local and unit goals and objectives;
- B. active involvement with local minority organizations, women's organizations, community action groups, and community service programs;
- C. periodic audit of training programs, hiring, and promotion patterns to remove impediments to the attainment of goals and objectives;
- D. regular discussions with local managers, supervisors, and employees to be certain the contractor's policies are being followed;
- E. review of the qualifications of all employees to ensure that minorities and women are given full opportunities for transfers and promotions;
- F. career counseling for all employees;
- G. periodic audits to ensure that each location is in compliance in areas such as:
 - (1) Posters must be properly displayed.
 - (2) All facilities, including company housing, which the contractor maintains for the use and benefit of its employees, shall be desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms, and rest rooms, they must be comparable for both sexes.
 - (3) Minority and female employees shall be afforded a full opportunity and encouraged to participate in all company sponsored educational, training, recreational, and social activities.

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

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

5000.3440 [Emergency] PROCEDURES FOR DISSEMINATING POLICY INTERNALLY AND EXTERNALLY.

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

- A. Include it in contractor's policy manual.
- B. Publicize it in company newspaper, magazine, annual report, and other media.
- C. Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.
- D. Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.
- E. Discuss the policy thoroughly in both employee orientation and management training programs.
- F. Meet with union officials to inform them of policy, and request their cooperation.
- G. Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.
- H. Publish articles covering equal employment opportunity programs, progress reports, and promotions of minority and female employees in company publications.
- I. Post the policy on company bulletin boards.
- J. When employees are featured in product or consumer advertising, employee handbooks, or similar publications both minority and nonminority men and women should be pictured.

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

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

- A. Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.
- B. Incorporate the equal opportunity clause in all purchase orders, leases, and contracts.
- C. Notify minority and women's organizations, community agencies, community leaders, secondary schools, and colleges, of company policy, preferably in writing.
- D. Communicate to prospective employees the existence of the contractor's affirmative action program and make available the elements of its program as will enable prospective employees to know of and avail themselves of its benefits.
- E. When employees are pictured in consumer or help wanted advertising, both minorities and nonminority men and women shall be shown.
- F. Send written notification of company policy to all subcontractors, vendors, and suppliers requesting appropriate action on their part.

5000.3450 [Emergency] WORKFORCE ANALYSIS, INCLUDING AVAILABILITY AND UTILIZATION ANALYSES.

Subpart 1. Workforce analysis. The affirmative action plan must include a workforce analysis including a listing of each job title as it appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department, a separate list must be provided for each work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job family, or discipline, in order of wage rate or salary range. For each job title, the total number of incumbents, the total number of male and female incumbents, and the total number of male and female incumbents in

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each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job title must be given. All job titles, including managerial job titles, must be listed.

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

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

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

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

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

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

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

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

Subp. 3. Goals. Goals must be significant, measurable, and attainable. Goals must be specific for planned results, with timetables for completion. Goals must not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., concentrated employment programs, Neighborhood Youth Corps, secondary schools, colleges, and city colleges with high minority enrollment, the state employment services, specialized employment agencies are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, welfare rights organizations, Women's Equity Action League, Talent Bank for Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro women's sororities and service groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish women's groups, Catholic women's groups, Protestant women's groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

B. Formal briefing sessions shall be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting

literature should be an integral part of the briefings. Formal arrangements shall be made for referral of applicants, follow-up with sources, and feedback on disposition of applicants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Post or otherwise announce promotional opportunities.

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

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

D. Develop and implement formal employee evaluation programs.

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

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

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

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

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

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

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5000.3490 [Emergency] INTERNAL AUDIT AND REPORTING SYSTEMS.

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

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

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

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

5000.3500 [Emergency] DISABLED INDIVIDUALS PLAN.

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

5000.3510 [Emergency] ADDITIONAL REQUIRED CONTENT OF AFFIRMATIVE ACTION PLANS.

Affirmative action plans must contain the following additional requirements:

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

5000.3520 [Emergency] CONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS.

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

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

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

The notice requirements shall take the following form:

“NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The offeror's or bidder's attention is called to the "equal opportunity clause" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

| Timetables | Goals for minority participation in each trade | Goals for female participation in each trade |
|---|--|--|
| Insert the timetables as determined pursuant to 12 MCAR § 1.053 C.1. [Temporary]. | Insert the goals as determined pursuant to 12 MCAR § 1.053 C.1. [Temporary]. | Insert the goals as determined pursuant to 12 MCAR § 1.053 C.1. [Temporary]. |

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

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

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

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

5000.3535 [Emergency] STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS.

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

"STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

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

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

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

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

(a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, shall assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

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

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

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

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

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

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

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

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

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

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

(l) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the contractor's obligations under these specifications are being carried out.

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

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

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

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

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

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

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

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

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

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

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

5000.3540 [Emergency] CONSTRUCTION CONTRACTOR AFFIRMATIVE ACTION PLANS.

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

5000.3550 [Emergency] ALL CONTRACTORS; AFFIRMATIVE ACTION PLANS FOR DISABLED INDIVIDUALS.

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

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"AFFIRMATIVE ACTION FOR DISABLED WORKERS

1. Contractor duties.

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

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

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

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

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

2. Physical and mental qualifications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Publicize it in the company newspaper, magazine, annual report, and other media.

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

(d) Schedule meetings with all employees to discuss policy and explain individual employee responsibilities.

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- (e) Discuss the policy thoroughly in both employee orientation and management training programs.
- (f) Meet with union officials to inform them of the contractor's policy, and request their cooperation.
- (g) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.
- (h) Include articles on accomplishments of disabled workers in company publications.
- (i) Post the policy on company bulletin boards, including a statement that employees and applicants are protected from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation under the Minnesota Human Rights Act.
- (j) When employees are featured in employee handbooks or similar publications for employees, include disabled employees.

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

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

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

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

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

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

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

(2) indicate need for remedial action;

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

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

(5) ensure that each location is in compliance with the Minnesota Human Rights Act and 12 MCAR § 1.053 D. [Temporary].

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

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

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

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

8. Development and execution of affirmative action programs.

(a) Job qualification requirements reviewed pursuant to 12 MCAR § 1.053 D.2 [Temporary] shall be made available to all members of management involved in the recruitment, screening, selection, and promotion process.

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

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

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

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

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

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

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

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

9. Sheltered workshops. Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified disabled individuals in the contractor's own workforce. Contracts with sheltered workshops may be included within an affirmative action program if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become qualified as "qualified disabled individual" as defined in 12 MCAR § 1.051 Q. [Temporary].

10. Determination of disability.

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

(b) Any determination of disability required pursuant to subpart 1 of this section must meet the requirements of 12 MCAR § 1.053 D.2(c) [Temporary] and must be for the purpose of affirmative action and proper job placement. Information obtained therefrom shall not be used to exclude or otherwise limit the employment opportunities of qualified disabled individuals.

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

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

12. The requirements contained in 12 MCAR § 1.053 B. and C. regarding the performance of availability and utilization analyses and the establishment of goals and timetables do not apply to disabled applicants and employees.

5000.3560 [Emergency] PROCEDURES FOR ISSUING CERTIFICATES OF COMPLIANCE.

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

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

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

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

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

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

5000.3570 [Emergency] DETERMINATION OF COMPLIANCE STATUS.

Subpart 1. General criteria for review. A contractor's compliance status shall not be based solely upon whether or not it reaches its goals or meets its timetables. A contractor's compliance status shall be determined by reviewing its compliance with

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Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency], the contents of its affirmative action plan, the extent of its adherence to the plan or the equal opportunity clauses contained in its state contracts, and its employment practices and their effects. In determining a contractor's status, the department shall also consider the extent to which a contractor has made good faith efforts to implement its affirmative action plan or the equal opportunity clauses contained in its state contracts.

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

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

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

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

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

- A. the results of an investigation of a charge of discrimination;
- B. the results of an analysis of the contractor's affirmative action plan; or
- C. the results of an on-site review of the contractor's compliance with its affirmative action plan or equal opportunity clause.

Subp. 5. Notification of deficiencies. If the department determines that a contractor has failed to adhere to its affirmative action plan or the equal opportunity clauses contained in its state contracts, that the contractor has failed to exercise good faith efforts to implement the plan or the equal opportunity clauses, or has failed to comply with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600 [Emergency], it shall notify the contractor by first-class mail identifying the nature of the deficiency and stating specifically the corrective measures necessary for eliminating the deficiency. The contractor shall have 15 days to reply to the notice of deficiency.

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

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

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

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

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

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

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

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

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

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

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

Subp. 7. Recertification. A contractor whose certificate of compliance has been suspended or revoked or who has been declared ineligible for further certificates of compliance pursuant to Minnesota Statutes, section 363.073, subdivision 2, may

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request reinstatement in a letter to the commissioner. The commissioner may grant the request if, based upon the contractor's showing, the department's file regarding the contractor's past performance, a compliance review, the recommendations of the department or a conciliation agreement the commission determines that the contractor has established and will carry out employment policies and practices that are in compliance with Minnesota Statutes, section 363.073 and with parts 5000.3400 to 5000.3600 [Emergency].

Subp. 8. Evidence of discrimination. If a compliance review indicates a violation of Minnesota Statutes, section 363.03, the commissioner may proceed to file a charge and process the matter under Minnesota Statutes, section 363.06, or part 5000.3570 [Emergency].

5000.3580 [Emergency] SUBMISSION OF COMPLIANCE REPORTS.

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

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

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

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

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

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

- A. utilizing forms and standards similar to those by federal equal employment opportunity programs;
- B. accepting forms and reports prepared for federal or local agencies where the information contained therein is sufficient for parts 5000.3400 to 5000.3600 [Emergency]; and
- C. minimizing duplication of programs and procedures.

5000.3590 [Emergency] PROCEDURES FOR COMPLIANCE REVIEW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5000.3600 [Emergency] DUTIES OF CONTRACTING STATE AGENCY.

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

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

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

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

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

Subp. 6. Contractors list from department. Every 60 days the department shall furnish state agencies with a list of currently certified contractors and contractors whose certificates of compliance have been suspended or revoked or who have been ineligible with Minnesota Statutes, section 363.073, subdivision 2.

Subp. 7. State agency's duty to provide information to department. Each contracting state agency shall provide the department with any information or assistance the department deems necessary to seek compliance with Minnesota Statutes, section 363.073 and the rules adopted under it.

Subp. 8. Copy of statute and rules to be furnished. Each contracting agency shall provide each bidder with a copy of Minnesota Statutes, section 363.073 and the rules adopted pursuant to it.

Subp. 9. Bid specifications, modifications; incorporation of statutory and rule requirements. Each contracting state agency shall include the following paragraph in all bid specifications and modifications:

“It is hereby agreed between the parties that Minnesota Statutes, section 363.073 and Minnesota Rules, parts 5000.3400 to 5000.3600 [Emergency] are incorporated into any contract between these parties based upon this specification or any modification of it. The bidder acknowledges receipt of a copy of Minnesota Statutes, section 363.073 and Minnesota Rules, parts 5000.3400 to 5000.3600 [Emergency].”

APPLICATION. During the period that parts 5000.3400 to 5000.3600 [Emergency] are effective they supercede parts 5000.0100, 5000.2500 to 5000.2700.

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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.

State Department of Education Management Assistance Division

Incorporation Into MCAR/Minnesota Rules Governing Method of Determining Training and Experience Index

Pursuant to Minnesota Statute section 124A.02, subdivision 4, the Department of Education shall incorporate into the Minnesota Code of Agency Rules (now called Minnesota Rules) the method by which the training and experience index is determined. This method is not subject to the provisions of Chapter 14, Administrative Procedure Act.

3550.0100 METHOD OF DETERMINING THE TRAINING AND EXPERIENCE INDEX COMPONENT OF THE SCHOOL FOUNDATION AID FORMULA.

Subpart 1. Teachers only. To determine the training and experience index, only the annual salary of teachers covered by the negotiated teacher salary schedule are included. Administrators and other support staff whose salaries are not covered by the negotiated teacher salary schedule are not included.

Subpart 2. Submission of teacher personnel records. By October 1 of each year, a school district shall submit to the Department of Education a school personnel record for each currently employed teacher. Data from these records shall include: annual base salary, level of training received in accredited institutions of higher education, and total years of teaching experience.

Subpart 3. Matrix. The Department of Education shall construct a matrix that classifies teachers by the level of training received in accredited institutions of higher education and by the total years of professional teaching experience.

A. The matrix shall contain 12 lanes representing different levels of training. The lanes are:

- (1) bachelor's degree;
- (2) bachelor's degree, plus 15 quarter hours;
- (3) bachelor's degree, plus 30 quarter hours;
- (4) bachelor's degree, plus 45 quarter hours;

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- (5) bachelor's degree, plus 60 quarter hours;
- (6) master's degree;
- (7) master's degree, plus 15 quarter hours;
- (8) master's degree, plus 30 quarter hours;
- (9) master's degree, plus 45 quarter hours;
- (10) master's degree, plus 60 quarter hours;
- (11) specialist degree; and
- (12) doctoral degree.

B. The matrix shall have 20 steps, each representing a year of professional teaching experience. All professional teaching experience of teachers, whether in the present district or in other school districts, shall be included in the step placement. Teachers with more than 20 years of experience shall be included in the 20th step.

Subpart 4. Statewide mean for each matrix cell. The statewide mean of salaries paid to the teachers placed in each combination of training and experience is computed. Each such computation is placed in the appropriate cell of the matrix of steps and lanes.

Subpart 5. Matrix of salary ratios. For each cell of the matrix, the ratio of the mean salary in that cell to the mean salary in the cell for teachers with no prior years of experience and only a bachelor's degree shall be computed. A matrix of these ratios is thus computed.

Subpart 6. Statistical methods for increasing ratios. The Department of Education shall use statistical methods to ensure continuously increasing ratios as cells are higher in levels of training or experience, within each degree range.

Subpart 7. Index is mean of ratios. The index for each district is the mean of the ratios for the full-time equivalent teachers in that district. An appropriate ratio is attributed to each teacher based on his or her step and lane.

Subpart 8. Biennial computation. The Department of Education shall compute the training and experience index, using the method described, during the second year of each biennium from data for the second year of the biennium. The training and experience index so calculated shall be used to determine the school districts' foundation aid for the next biennium.

Department of Energy and Economic Development

Adopted Amendments of Rules Governing the Home Energy Disclosure Program and the Minimum Energy Efficiency Standards for Residential Rental Units

The rules proposed and published at *State Register*, Volume 8, Number 30, pages 1717-1731, January 23, 1984 (8 S.R. 1717) are adopted with the following modifications:

Rules as Adopted

6 MCAR § 2.2501 Authority and purpose.

A. Authority. The department's authority to adopt these rules is contained in Minnesota Statutes, sections ~~116J.07, clause (i); 116J.08, clause (a);~~ 116J.09, clause (h); 116J.10, clause (a); and 116J.27.

B. Purpose. The purpose of 6 MCAR §§ 2.2501-2.2510 is to establish a program requiring mandatory minimum energy efficiency standards for rental buildings, procedures for energy evaluations, and the certification of evaluators.

6 MCAR § 2.2502 Definitions.

- A. Scope. For the purposes of 6 MCAR §§ 2.2501-2.2510, the following terms have the meanings given them.
- B. Accessible. "Accessible" means, for purposes of compliance with 6 MCAR § 2.2503, any area that can be made more energy efficient with the installation of program measures that are not determined to be economically infeasible and which area is exposed, without the removal of permanent parts of the structure.
- C. Department. "Department" means the Department of Energy and Economic Development.
- D. Apartment building. "Apartment building" means any structure containing dwelling units which are rented.
- E. Conditioned space. "Conditioned space" means space within a building that is heated or cooled by an energy using system.

F. Cooling degree day. "Cooling degree day" means a unit, based upon temperature difference and time, used in estimating fuel consumption and specifying nominal cooling load in summer. For any one day when the mean temperature is more than 65 degrees Fahrenheit, there exist as many cooling degree days as there are Fahrenheit degrees difference in temperature between the mean temperature for the day and 65 degrees Fahrenheit.

G. Economic feasibility. For the purpose of these rules, the test of economic feasibility is met when the savings in energy procurement costs, based on residential energy costs as certified by the commissioner in the *State Register*, or on local fuel costs, exceed the cost of acquiring and installing each standard, as amortized over the subsequent ten-year period. The costs of acquiring and installing each standard may include the costs of restoring the building to the condition that existed immediately before the standard was installed, costs to install a vapor barrier where determined necessary, and displacement costs of temporary tenant relocation where determined necessary.

H. Energy conservation measure. "Energy conservation measure" means energy-saving physical improvements to the building that are primarily designed to reduce energy consumption including, but not limited to, modifications to the building structure, the heating, ventilating, and air conditioning systems, and the lighting.

I. Caulking. "Caulking" consists of pliable materials used to reduce the passage of air and moisture by filling small gaps located at fixed joints on a building. "Caulking" includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

J. Weatherstripping. "Weatherstripping" consists of narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture when the windows and doors are closed.

K. Ceiling or attic insulation. "Ceiling or attic insulation" consists of a material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roof, the term "ceiling or attic insulation" also applies to such material used between the underside and uperside of the roof, or where technically feasible, on the uperside of the roof.

L. Wall and foundation insulation. "Wall and foundation insulation" consists of a material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

M. Floor insulation. "Floor insulation" consists of a material primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the ground beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, the term "floor insulation" also means such material installed around the perimeter of or on the slab. In the case of manufactured homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

N. Storm or thermal window. "Storm or thermal window" consists of:

1. a window or glazing material placed outside or inside an ordinary or prime window, creating an insulating air space, to provide greater resistance to heat flow than the prime window alone; or

2. a window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

O. Storm or thermal door. "Storm or thermal door" consists of:

1. a second door, installed outside or inside a prime door, creating an insulating air space;

2. a door with enhanced resistance to heat flow through the glass area created by affixing two or more sheets of glazing materials; or

3. a primary exterior door with an R-value of at least two.

P. Rim joist insulation. "Rim joist insulation" consists of a material primarily designed to resist heat flow which is installed along either side of the rim joist.

Q. Fireplace stove. "Fireplace stove" means a chimney-connected, solid fuel-burning stove having part of its fire chamber open to the room.

R. Heating degree day. "Heating degree day" means a unit, based upon temperature difference and time, used in estimating fuel consumption and specifying nominal heating load of a building in winter. For any one day, when the mean temperature is less than 65 degrees Fahrenheit, there exist as many heating degree days as there are Fahrenheit degrees difference in temperature between the mean temperature for the day and 65 degrees Fahrenheit.

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S. Positive shut-off. "Positive shut-off" means a manual shut-off device which can be utilized to produce a seal to inhibit the flow of air when a fireplace or fireplace stove is not operating. Examples are damper in fireplace, damper at top of flue, damper in connector pipe, or doors (glass or other) on fireplace or fireplace stove.

T. "R" value. "R" value means the measure of resistance to heat flow through a material or the reciprocal of the heat flow through a material expressed in British thermal units per hour per square foot per degree Fahrenheit at 75 degrees Fahrenheit mean temperature.

U. Residence. "Residence" means any dwelling let to another used for habitation during all or a portion of the months November through April. A residence may be part of a multi-unit building, multi-family dwelling, or multi-purpose building, but "residence" does not include buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools and other buildings used for educational purposes, or correctional institutions. Each dwelling unit in a rental building is a residence. A manufactured home as defined in Minnesota Statutes, section 168.011, subdivision 8, is a residence for purposes of these rules.

V. Rim joist. "Rim joist" means that part of the residential structure between the top of the foundation wall and the sub-floor immediately above the perimeter of the floor joists.

6 MCAR § 2.2503 Minimum energy efficiency standards.

A. Compliance. Under Minnesota Statutes, section 116J.27, subdivisions 1, 2, and 3, all residences constructed prior to January 1, 1976, which are renter occupied during all or a portion of the months of November through April must be in compliance with each applicable standard by the date shown in Exhibit 6 MCAR § 2.2503 A.-1., unless those standards are determined to be economically infeasible. All building owners shall initially determine the economic feasibility of these standards using the calculation procedures adopted by the department. Those determinations are subject to review and final determination by the department.

Exhibit 6 MCAR § 2.2503 A.-1. Applicable Energy Efficiency Standards from 6 MCAR § 2.2503 B.

| Type of building | Date of applicability | | |
|--|------------------------------|--|---|
| | January 1, 1980 Standards | July 1, 1983 Standards | July 1, 1985 Standards |
| Single family | 1-2 | 1-8 1, 2 or 13, 3-8 | 1, 2 or 13, and 3-12 3, 4, 5, 9, 10, 11, 12 |
| Mobile <u>Manufactured</u> home | 1-2 | 1-8 1, 2 or 13,3-8 | 1, 2, or 13, and 3-12 3, 4, 5, 9, "or 10, 11, 12 |
| 2-4 unit building | 1-2 | 1-8 1, 2 or 13, 3-8 | 1, 2, or 13, and 3-12 3, 4, 5, 9, 10, 11, 12 |
| 5-11 unit building | 1-2 | 1, 3, 5, 6, 7, 8, and 2 or 13; OR 1, 3, 15, and 2 or 13 | 1, 3, 5, 6, 7, 8, 10, 11, 12, and 2 or 13; OR 1, 3, 15, and 2 or 13 |
| 12 plus unit building | 1-2 | 1, 3, 5, 6, 7, 8, and 2 or 13; OR 1, 3, 14, and 2 or 13 | 1, 3, 5, 6, 7, 8, 10, 11, 12, and 2 or 13; OR 1, 3, 14, and 2 or 13 |

B. Enumeration. The following are the minimum energy efficiency standards for existing residences constructed prior to January 1, 1976, that are renter-occupied. The following standards shall be used as indicated in Exhibit 6 MCAR § 2.2503 A.-1.:

1. Install weatherstripping between exterior operable window sash and frames and between exterior doors and frames. Weatherstripping is not required on storm doors or storm windows.

2. Caulk, gasket, or otherwise seal accessible exterior joints between foundation and rim joist; around window and door frames; between wall and roof; between wall panels; at penetrations for utility services through walls, floors, and roofs; and at all other openings in the exterior envelope.

3. Install storm windows on all single glazed exterior window units enclosing conditioned space.

4. Install storm doors on all exterior door openings into conditioned spaces unless a single door, enclosed porch, vestibule, or other appurtenance provides a double door effect or provides an "R" value of two or more.

5. Install positive shut-offs for all fireplaces or fireplace stoves, unless an existing damper provides a positive shut-off.

6. Install insulation in accessible attics or ceilings to achieve a minimum total "R" value of the insulation of R-19. If there is insufficient space for the installation of the recommended "R" value, then the standard must be based on installing insulation to fill the available space while providing for appropriate ventilation.

7. Install insulation in all accessible rim joist areas to achieve a minimum total "R" value of the insulation of R-11. If there is insufficient space for the installation of the recommended "R" value, then the standard must be based on installing insulation to fill the available space.

8. Install insulation in or on accessible walls and floors enclosing conditioned spaces to achieve a minimum total "R" value of the insulation of R-11. If there is insufficient space for the installation of the recommended "R" value, then the standard must be based on installing insulation to fill the available space.

9. Modify the existing heating system so that it operates at a minimum steady-state efficiency of 75 percent as demonstrated through a flue gas analysis provided for in 6 MCAR § 2.2504 B.4.

10. Install insulation in all ceilings or attics between conditioned and unconditioned spaces to achieve a minimum total "R" value of the insulation R-38. If there is insufficient space for the installation of the recommended "R" value, the standard must be based on installing insulation to fill the available space while providing for appropriate ventilation.

11. Install insulation in all rim joist areas to achieve minimum total "R" value of the insulation of ~~R-11~~ R-19, unless the R-value of the existing insulation is R-11 or more. If there is insufficient space for the installation of the recommended "R" value, the standard must be based on installing insulation to fill the available space.

12. Install insulation in or on all walls and floors that enclose conditioned spaces to achieve a minimum total "R" value of the insulation of R-11. Walls must include foundation walls of basements, cellars, or crawl spaces. Insulation installed on the exterior of the foundation wall must extend down to two feet below grade level. Insulation installed on the interior or in the foundation wall must be installed from the bottom of the rim joist to the foundation slab or floor. If there is insufficient space for the installation of the recommended "R" value, the standard must be based on installing insulation to fill the available space.

13. Caulk, gasket, or otherwise seal interior joints between foundation and rim joist, around window and door frames, between wall and ceiling, at joints between wall and trim boards, at cracks on interior surfaces of walls, and at utility penetrations.

14. Install energy conservation measures that have had or are predicted to have a cumulative energy consumption savings of 25 percent. These energy conservation measures must be designated in an energy audit conducted by a registered professional engineer or architect or other person determined qualified by the department. The annual energy consumption savings of 25 percent must be based on verified energy consumption, normalized to the average number of heating degree days reported by the nearest National Oceanographic and Atmospheric Administration recording station, for any heating season from 1973-1974 to the present. The energy audit must indicate whether the building complies with standards 1, 2, or 13, and 3 of 6 MCAR § 2.2503 B. If the building is not in compliance with those standards, the predicted energy consumption savings resulting from the installation of those standards may be included in the 25 percent cumulative energy consumption savings.

15. Install energy conservation measures that have had or are predicted to have cumulative energy consumption savings of 30 percent. These energy conservation measures must be designated in an energy audit conducted by a registered

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ADOPTED RULES

professional engineer or architect or other person determined qualified by the department. The annual energy consumption savings of 30 percent must be based on verified energy consumption, normalized to the average number of heating degree days reported by the nearest National Oceanographic and Atmospheric Administration recording station, for any heating season from 1973-1974 to the present. The energy audit must indicate whether the building complies with standards 1, 2, or 13, and 3 of 6 MCAR § 2.2503 B. If the building is not in compliance with those standards, the predicted energy consumption savings resulting from the installation of those standards may be included in the 30 percent cumulative energy consumption savings.

6 MCAR § 2.2504 Conducting the evaluation.

A. Disclosure reports. All evaluators shall use a disclosure report approved by the department. Copies of completed disclosure reports must be retained by evaluators for at least five years. The reports must be available for review by the department. Copies of audits conducted by registered professional engineers, architects, or other persons qualified by the department under 6 MCAR § 2.2503 B.14. and 15. must be submitted to the department within 14 days for review ~~of~~ and approval.

B. General duties of evaluators, registered professional engineers, architects, and other approved qualified persons. Evaluators, registered professional engineers, architects, and other approved qualified persons shall estimate energy savings and installation costs of each applicable standard using the calculation procedures in 6 MCAR § 2.2510. An applicable standard is any standard which can be installed in the residence to meet the minimum energy efficiency standards in 6 MCAR § 2.2503. Evaluators, registered professional engineers, architects, and other approved qualified persons shall:

1. Inspect and take actual measurements of the building shell, and inspect the space heating, space cooling, and water heating equipment. The inspection must include all common areas and at a minimum the following number of units for the building being evaluated. The random selection of units to be included in the sample of units inspected must be done by the evaluator, registered professional engineer, architect, and other approved qualified person.

Size of building
1-5 1-4 units
5 plus units

Minimum number of units
included in inspection sample
all units
5 units + 3 percent of
total number of units
in the building

2. Base economic calculations on local fuel prices, or on those prices provided by the department, as published in the *State Register*.

3. Base economic calculations for materials and installation of measures on prices provided by the department. Prices must be made available to interested persons by:

- a. publication in the *State Register* by the department of the most recent contractors and suppliers price survey; or
- b. direct mailing by the department of the most recent price survey to certified evaluators; or
- c. if the owner contends that the prices provided by the department are not representative of actual costs that would be incurred by installing the measure to comply with the standards, the owner shall obtain at least three bids from bona fide contractors indicating the costs of installing that measure. The lowest bid must then be used in determining whether the standard is economically infeasible.

4. Base any cost and savings estimate for any applicable furnace efficiency modification to a gas or oil furnace or boiler on an evaluation of the steady-state efficiency of the heating system.

a. For oil furnaces or boilers, the steady state efficiency shall be derived by a flue gas analysis of the measured flue gas temperature and carbon dioxide content.

b. For gas furnaces or boilers, the steady state efficiency shall be derived from manufacturer's design data. If the manufacturer's design data are not available at the time of inspection, then a flue gas analysis, as described in a. must be performed.

6 MCAR § 2.2505 Presentation of evaluation and audit results. A copy of the disclosure report or audit must be provided to the owner or the owner's agent. The disclosure report or audit must, at a minimum, contain the following information:

A. An estimate of the total cost for materials and labor of installation by a contractor of each applicable standard addressed in the evaluation.

B. An estimate of the savings in energy costs which would occur during the first year from the installation of each applicable standard addressed by the evaluation.

C. An estimate of the payback period, measured in years, from the energy cost savings of each of the applicable standards installed individually.

D. A disclosure using the following language or similar language: "The procedures used to make these estimates are consistent with the department's criteria for energy evaluations. However, the actual installation costs you incur and energy cost savings you realize from installing these standards may be somewhat different from the estimates contained in this disclosure report or audit. Although the estimates are based on measurements of your building, they are also based on assumptions which may not be appropriate to your building."

E. A listing of the units of the building that were actually inspected and the date of the inspection, as described in 6 MCAR § 2.2504 B.1.b.

F. The name, address, and telephone number of the person who conducts the inspection and who completed the disclosure report or audit.

6 MCAR § 2.2506 Prohibitions ~~and exemption~~.

A. Prohibitions. The evaluator, registered professional engineer, architect, or other approved qualified person shall:

1. not recommend any supplier or contractor to any owner;
2. not endorse the use of specific brand names of materials or products, persons, firms, or contractors which may be used to meet any specific standard;
3. not make any statements relating to the standards which may be interpreted as an endorsement of any specific material or product;
4. not exclude any applicable standards in the presentation of the audit to the owner;
5. provide the owner with a written statement of any interest which he or she or his or her employer has, directly or indirectly, in the sale or installation of any energy conservation measure; and
6. not conduct an evaluation of a building in which he or she has an ownership interest or is employed (other than to conduct the evaluation) by any person having an ownership interest in the building.

B. Exemption. ~~If the building is a low rent housing project owned by a public housing agency as defined in Minnesota Statutes, section 462.421, subdivision 12, the energy audit or disclosure report provided for at 6 MCAR § 2.2504 may be provided by an officer, or employee of the agency, if the audit is conducted in accordance with Code of Federal Regulations, title 24, sections 865.301-865.310, if the procedures prescribed in 6 MCAR § 2.2504 are followed, and if the audit includes the standards provided in 6 MCAR § 2.2503. Persons conducting these audits are exempted from the certification requirements of 6 MCAR § 2.2507. However, unless the officer, or employee of the agency, meets the requirements of 6 MCAR § 2.2503 B.14. or 15., they shall not conduct an energy audit for compliance with 6 MCAR § 2.2503 B.14. or 15.~~

6 MCAR § 2.2507 Qualification procedures for evaluators.

A. Prohibition of discrimination. No person shall be denied the right to become an evaluator on the basis of race, religion, nationality, creed, sex, age or sexual preference.

B. Training.

1. Except as provided in 2. no person is eligible for certification under C. unless he or she has first participated in a training course which has been approved by the department and which covers the subject matter tested in the evaluator certification examination.
2. The following persons may take an appropriate department approved orientation session, in lieu of the requirements of 1.:
 - a. any HED evaluator certified before July 1, 1981;
 - b. any person successfully completing an approved 30 hour training course for the HED program prior to July 1, 1981;
 - c. registered architects and registered engineers with work experience in energy auditing or the design of institutional, commercial, residential or industrial buildings;

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d. any person who has six months' energy auditing experience and who has completed 25 energy audits for a nonprofit organization or regulated utility;

e. members of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the Independent Fee Appraisers, or other associations determined by the department to have applicable training requirements for their members;

f. certified evaluators for Truth in Housing Programs;

g. building officials certified by the Building Codes Division of the Minnesota Department of Administration.

C. Certification. Only those persons who satisfy all of the following conditions shall be certified:

1. All persons shall take and pass a certification examination conducted by the department. The certification examination must test for the following qualifications:

a. a general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;

b. a general understanding of residential construction terminology and components;

c. a general knowledge of the operation of the heating and cooling systems used in residential buildings, including the need and provision for combustion air;

d. a general knowledge of the different types of each applicable program measure, of the advantages and disadvantages and applications of each, and of the DOE installation standards;

e. the capability to conduct the energy evaluation including: a working knowledge of energy conserving practices, the ability to determine the applicability of each of the program measures, and proficiency in the auditing procedures for each applicable program measure established in 6 MCAR § 2.2504;

f. a working ability to calculate the steady state efficiency of furnaces or boilers; and

g. a working knowledge of building and fire codes related to the installation and safety of wood burning appliances.

2. All persons shall submit a \$50 certification fee to the department. However, no certification fee may be charged for certified municipal building officials who are directly employed by a municipality as defined in Minnesota Statutes, section 16.84, subdivision 3; or for employees of public housing agencies as defined in Minnesota Statutes, section 462.421, subdivision 12; or for employees of private nonprofit community-based organizations, or regulated utilities, when the evaluations are performed as part of the employee's normal job responsibilities. No certification fee may be charged for those persons upgrading their certification who were certified prior to July 1, 1981.

3. All persons shall provide evidence satisfactory to the department of liability and of errors and omissions insurance. The minimum value of protection in each category must be \$50,000, and the insurance must be of the "occurrence" variety where coverage is based on the date when the evaluation is made. A "claims made" policy with a reporting endorsement of at least five years is also acceptable. Coverage is not required for evaluators who are employed by municipal governments or public housing agencies and who perform evaluations as part of their normal job responsibilities. Certified evaluators who have provided a bond to the state as required by the Building Code Division of the Department of Administration are not required to obtain the protection required by this paragraph until that bond expires. In addition, each insurance policy must:

a. name the state of Minnesota as a coinsured party, and

b. be written by a corporate insurer licensed to do business in the state of Minnesota, or licensed in accordance with Minnesota Statutes, sections 60A.195 to 60A.209.

D. Certification examinations. Examinations must be conducted by the department and offered at the following times:

1. within two days after the completion of each state-sponsored training course or orientation session, or

2. once a month, until June 1982, with a minimum of two examinations per year afterward.

E. Other qualified persons. The department may certify other qualified persons to conduct evaluations pursuant to 6 MCAR § 2.2503 B.14. and 15. These persons shall be certified only if they:

1. have passed the certification examination provided at 6 MCAR § 2.2507 C.1.;

2. have paid the certification fee provided at 6 MCAR § 2.2507 C.2.;

3. have fulfilled the requirements for insurance coverage provided at 6 MCAR § 2.2507 C.3.;

4. have taken additional training that includes the following subject matter:

- a. the operation of the various types of heating systems and their controls for multifamily buildings;
- b. the operation of heating distribution systems for multifamily buildings; and
- c. retrofit strategies for improving the energy efficiency of heating and distribution systems in multifamily buildings;

and

5. have passed a certification examination which tests the qualifications needed to conduct an evaluation pursuant to 6 MCAR § 2.2503 B.14. and 15.

6 MCAR § 2.2508 Recertification of evaluators.

A. Term of certification. Certification is valid for one year.

B. Recertification procedure. Each year, each evaluator shall be recertified. The following procedures must be completed in order for an evaluator to be recertified:

1. Prior to the date of certificate expiration, the evaluator shall attend a recertification course, as required by the department. Successful completion of this course shall recertify the evaluator for the next year. Evaluators not completing the recertification course prior to the expiration date of their certification shall be recertified by completing the recertification course and successfully retaking the certification examination.

2. The recertification course requirements for evaluators must be eliminated for any particular year if the department determines that no changes were made in the program that year. Certification must then be automatically renewed.

3. Persons requesting recertification shall pay a \$25 fee to the energy division of the department.

4. This recertification must occur annually, for the life of the program.

C. Personnel from other states. Any person who is certified to conduct residential conservation service audits in another state is not required to take the training course established in 6 MCAR § 2.2507 B.1., but is required to pass the evaluator certification examination.

6 MCAR § 2.2509 Decertification of evaluators.

A.-D. [Unchanged.]

E. Wrongful acts. Certification must be revoked when reasonable evidence indicates an undisclosed conflict of interest, a violation of these rules, unethical practices, or negligent performance of duties as an evaluator. In any of these instances, the department will, if requested, provide a review to determine whether the revocation was proper. This review must consist of the following procedures:

1. The evaluator shall make a written request for a review to the department.

2. The director of the office of conservation shall determine a time to review the request. The evaluator may present testimony in person or in writing. The evaluator may present witnesses on the evaluator's behalf. Department staff may present written or oral testimony, as well as witnesses.

3. The director of the office of conservation shall make a judgment based on the information presented in the review hearing. That judgment shall be presented in writing to the evaluator within three working days of the review.

F. Failure to report. Certification must be revoked if the reports required in 6 MCAR § 2.2504 A. are not submitted to the department as required.

6 MCAR § 2.2510 Calculation procedures.

The following procedures must be the basis for calculating energy savings for each standard.

A. Energy conserving measures.

1.-3. [Unchanged.]

4. Furnace efficiency modifications.

a. Replacement furnaces or boilers.

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ADOPTED RULES

Equation #3.

$$\Delta E = E_0 \frac{1 - N_0}{N_1} \quad \Delta E + E_h \frac{1 - N_0}{N_1}$$

b.-d. [Unchanged.]

5.-21. [Unchanged.]

B. [Unchanged.]

Repealer. Rules of the Department of Administration, 2 MCAR §§ 1.16220-1.16230 are repealed.

Department of Human Rights

Notice of Extension of Emergency Rules Governing Case Processing Policies and Procedures and Restrictions on Apprenticeship Programs

Emergency rules adopted at *State Register* Vol. 8 No. 37, page 2016 on March 12, 1984, and scheduled to be effective until August 15, 1984 are hereby extended until February 11, 1985, or until permanent rules become effective, whichever occurs first.

July 16, 1984

Kathryn R. Roberts
Acting Commissioner of Human Rights

Board of Pharmacy

Adopted Rule Governing Unprofessional Conduct

The rule proposed and published at *State Register*, Volume 8, Number 46, pages 2410-2412, May 14, 1984 (8 S.R. 2410) is adopted as proposed.

OFFICIAL NOTICES

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

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

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Cosmetology Rules Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate and amend existing rules and adopt new rules governing Cosmetology Rules. Promulgation of these rules is authorized by Minnesota Statutes, sections 155A.05.

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

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Melbourne Boynton, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. (612) 296-6313.

All statements of information and comment shall be accepted until August 29, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Economic Security

Notice of Public Comment Period and Hearing on Proposed State Plan for the Minnesota Energy Assistance Program—1985

Notice is hereby given that a public comment period on the above-entitled matter will begin upon publication of this notice and will close after thirty (30) days at 4:30 p.m. Wednesday, September 5, 1984.

The 1985 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—1985. 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 |
|-------------|---|----------|------|
| Duluth | Public Library (Green Room) 520 West Superior Street | 7-9 p.m. | 8/20 |
| St. Cloud | Public Library (Room 110B) 405 West St. Germain | 7-9 p.m. | 8/20 |
| Bemidji | J.W. Smith Elementary School Auditorium 18th and Minnesota | 7-9 p.m. | 8/21 |
| Brainerd | Senior Citizens Center (Upstairs Library) 213 South 5th Street | 7-9 p.m. | 8/21 |
| Rochester | Salvation Army 20 First Avenue N.E. | 7-9 p.m. | 8/21 |
| Crookston | City Hall Council Chambers | 7-9 p.m. | 8/22 |
| Minneapolis | 319 City Hall | 7-9 p.m. | 8/22 |
| Mankato | Regional Library Auditorium 100 East Main | 7-9 p.m. | 8/22 |
| St. Paul | State Capitol First Floor—Room 118 | 2-4 p.m. | 8/23 |

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. Wednesday, September 5, 1984. All comments will be considered by the Department of Economic Security, Office of Energy Assistance.

Department of Economic Security

Outside Opinion Sought Regarding Rule Governing Services to Persons with Severe Disabilities Through Long-Term Sheltered Workshops and Work Activity Programs

Notice is hereby given that the Department of Economic Security, Division of Vocational Rehabilitation, is seeking information or opinions from sources outside the Department in preparing to adopt a rule governing services to persons with severe disabilities through long-term sheltered workshops and work activity programs.

The adoption of the rule is authorized by Minnesota Statutes, Chapter 129A, which requires the Department to develop and support sheltered workshops and work activity programs as a means of providing rehabilitation services to the severely disabled in Minnesota. The proposed rule will address application procedures, clientele served, certification standards of service,

OFFICIAL NOTICES

composition of boards of directors and grant awards in sheltered workshops and work activity programs. In addition, the proposed rule will govern grievance procedures and personnel benefits for sheltered workers and participants in work activity programs.

The estimated total cost of the proposed rule to all local bodies in the state is not expected to exceed \$100,000 annually in the next two years.

The proposed rule will have an impact on small businesses. This impact on small businesses will be considered as required by Minnesota Statutes, section 14.115.

The Department requests information and comments concerning the subject matter of the rule. Interested or affected persons or groups may submit statements of information in writing.

Written comments should be addressed to:

Roger Sorbel
Division of Vocational Rehabilitation
Third Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

Any written material received by the Department shall become part of the rule-making record to be submitted to the Administration Division of the Office of the Attorney General/Administrative Law Judge in the event that the rule is adopted.

All statements of information and comment shall be accepted until 4:30 p.m. February 1, 1985.

Roger Sorbel
Legal Technician
Division of Vocational Rehabilitation
Department of Economic Security

Housing Finance Agency

Notice of Grants Available Through State Participation in HUD Rental Rehabilitation Program

The Housing and Urban Recovery Act of 1983 enacted into law a federally funded Rental Rehabilitation Program whereby rental residential property may be rehabilitated through the use of federal funds and a building owner's matching source of funds. In conjunction with the rehabilitation of the building, tenant rent subsidies are provided to tenants residing in the building or to tenants who may be displaced due to the rehabilitation.

The Minnesota Housing Finance Agency (Agency) is the administering agency for this new U.S. Housing and Urban Development Rental Rehabilitation Program for federal non-entitlement communities within the State of Minnesota. The total amount of funding that the agency will receive for one fiscal year is \$778,700. The cities of St. Paul, Minneapolis, Duluth, and Hennepin County receive a direct allocation of dollars, and therefore, are not included within the agency's allocation. Additionally, communities that are eligible to receive assistance under Title V of the Housing Act of 1949 (communities eligible to receive assistance through programs administered by the Farmer's Home Administration) are not eligible to receive assistance through the agency under this Rental Rehabilitation Program.

The agency will administer the Rental Rehabilitation Program pursuant to the federal regulations that established the program as published in the Code of Federal Regulations; 24 CFR Part 511. The federal regulations allow the agency discretion in determining how the Rental Rehabilitation funds may be utilized and how the program shall be implemented.

The agency has established the following eligibility requirements with regard to the program:

- 1) The funds will be disbursed in the form of grants. (Maximum \$5,000 per housing unit).
- 2) To be eligible for funding the building must contain five or more housing units.
- 3) Of the communities in Minnesota that are eligible to participate, the agency will select proposals only within those communities who agree to aid the agency in implementing the Program and where a local public housing authority agrees to administer the tenant rent subsidies.

Selection of the proposals will be based on the following criteria:

The extent to which a proposal meets these identified criteria weighs positively in favor of the proposal.

- 1) The extent to which the building is currently occupied by lower income families.
- 2) The extent to which units with two bedrooms or more will be rehabilitated.
- 3) The extent to which very low income families in the proposed building are housed in substandard conditions.
- 4) The extent the building is free from serious adverse environmental and site conditions.
- 5) The extent to which the proposed rehabilitation is financially feasible, given the maximum grant per unit, prevailing interest rates, proposed rents, and market for rehabilitated units.
- 6) The extent to which displacement of existing tenants will be minimized.
- 7) The extent to which the rehabilitated units will be affordable to low and very low income families.
- 8) The extent to which the proposed rehabilitation will have a positive impact on the physical environment of the surrounding neighborhood.
- 9) The extent to which the proposed rehabilitation eliminates substandard housing and prevents the recurrence of such conditions.
- 10) The extent to which a municipality rates one proposal over another within their community.
- 11) The extent to which proposals have been selected within a variety of municipalities. (Emphasis will be placed on achieving a distribution of dollars among the participating communities.)
- 12) The extent to which the grant dollars will be utilized for physical rehabilitation versus relocation expenses and other eligible soft costs.

In compliance with federal regulations, the agency has adopted a written tenant assistance policy concerning displacement, relocation assistance, and other assistance to tenants who reside or may reside in buildings to be rehabilitated. This policy as well as additional program design details are available to the public upon request. Please contact Lynn McDaniel at (612) 296-9827 or write to Minnesota Housing Finance Agency, 333 Sibley Street, St. Paul, MN, 55101.

Minnesota Municipal Board

Outside Opinion Sought Regarding Amendments to Minnesota Municipal Board Rules, Chapter 6000, Governing Boundary Adjustments or Incorporation of Cities

Notice is hereby given that the Minnesota Municipal Board is seeking information or opinions from sources outside the agency in preparing to amend Chapter 6000, Minnesota Municipal Board Rules governing municipal boundary adjustment or municipal incorporation pursuant to Minnesota Statutes, section 14.10.

The adoption of these rules is authorized by Minnesota Statutes 414.01, Subdivision 10, which gives the Board, in order to carry out the duties and powers imposed, the power to make such rules and regulations as are reasonably necessary in accordance with the procedure prescribed in the general laws relating to departments and agencies of the state.

The estimated total cost of the proposed rules to local bodies in the state is not expected to exceed \$100,000 annually in the next two years.

The purpose of proposed amendments to the Municipal Board Rules will be to provide the public with a clearer understanding of the agency's procedures, improve the quality of data received, change the filing fees, and make the rules legally consistent with the present law.

The proposed rules will have an impact on small business the same as any other petitioner, affected property owner, or resident. This impact on small business will be considered as required by Minnesota Statutes, Section 14.115.

The Municipal Board requests information and comments concerning amendments to the Minnesota Municipal Board Rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing.

Written comments should be addressed to:

Patricia D. Lundy
Assistant Director
Minnesota Municipal Board
165 Metro Square Building
St. Paul, Minnesota 55101

OFFICIAL NOTICES

Any written material received by the Municipal Board shall become part of the rulemaking record in the event the rules are promulgated. Oral statements will be received during regular business hours over the telephone at (612) 296-2428 and in person at the above address.

All statements of information and comment shall be accepted until 4:30 p.m. August 20, 1984.

Patricia D. Lundy
Assistant Director
Minnesota Municipal Board

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 August 21, 1984.

ADVISORY TASK FORCE ON AMERICAN INDIAN LANGUAGE AND CULTURE EDUCATION PROGRAMS has 1 vacancy open for a member. Members include representatives of community groups, parents of children eligible to be served by the programs, American Indian Administrators and teachers, and persons knowledgeable in the field of American Indian language and culture education. The task force advises the Board of Education on the administration of the American Indian Language and Culture Education Act; reviews proposals and makes recommendations to the board on approval and funding of bicultural programs in Minnesota schools. Between 3 and 5 meetings per year at various sites statewide; members are reimbursed for expenses. Members are appointed by the Board of Education. For specific information contact the Advisory Task Force on American Indian Language and Culture Education Programs, 303 Capitol Square Bldg., St. Paul 55101; (612) 296-6458.

MEDICAL POLICY DIRECTIONAL TASK FORCE ON MENTAL HEALTH has 4 vacancies open for members who are experts from the field of medicine, mental health, mental retardation, or related sciences, and members from social service, rehabilitation, volunteer services, nursing, hospital administration or related fields. The task force advises the Commissioner of Human Services on mental health and public policy. Members are appointed by the Commissioner. Members receive expenses. For specific information contact the Medical Policy Directional Task Force on Mental Health, Dept. of Human Services, Centennial Bldg., St. Paul 55155; (612) 296-3058.

ADVISORY COUNCIL ON WORKERS' COMPENSATION has 1 vacancy open for a public member. The council studies workers compensation law and its administration and recommends changes where appropriate. Members are appointed by the Commissioner of Labor and Industry. Monthly meetings at Space Center Bldg. Members receive \$35 per diem plus expenses. For specific information contact the Advisory Council on Workers' Compensation, Dept. of Labor and Industry, Office of Public Affairs, Space Center Bldg., 444 Lafayette Road, St. Paul 55101; (612) 297-4373.

APPRENTICESHIP ADVISORY COUNCIL has 1 vacancy open for a public member. The council proposes occupational classifications and minimum standards for apprenticeship programs and agreements; advise the Commissioner of Labor and Industry. Members are appointed by the Commissioner. Quarterly meetings; members receive \$35 per diem plus expenses. For specific information contact the Apprenticeship Advisory Council, Dept. of Labor and Industry, Office of Public Affairs, Space Center Bldg., 444 Lafayette Road, St. Paul 55101; (612) 297-4374.

ADVISORY TASK FORCE ON THE MINNESOTA BRAILLE AND SIGHT-SAVING SCHOOL has 1 vacancy open for a professional member. The task force advises the Board of Education on the management of the Braille and Sight-Saving School in Faribault. Members are appointed by the Board of Education. Members represent various geographic regions of the state and include parents or guardians of visually impaired children. Monthly meetings in the Twin Cities or Faribault. Members receive expenses. For specific information contact the Advisory Task Force on the Minnesota Braille and Sight-Saving School, P.O. Box 308, Faribault 55021; (507) 332-3363.

ADVISORY TASK FORCE ON THE WOMAN OFFENDER IN CORRECTIONS has 1 vacancy open for a member to reflect a statewide geographical representation. The task force consults with the Commissioner of Corrections regarding choice of model programs to receive funding. Review and make recommendations to the Commissioner on matters affecting women offenders. Identify problem areas and make recommendations for problem resolution. Assist the Commissioner when and where possible in seeking improved programming for women offenders. Members are appointed by the Commissioner of Corrections. Members receive expenses, in the same manner and amount as state employees. Meetings are held the 1st Wednesday of each month at the Dept. of Corrections. For specific information contact the Dept. of Corrections, 430 Metro Square Bldg., St. Paul 55101; (612) 296-3525.

STATE CONTRACTS

WASTE MANAGEMENT BOARD has 1 vacancy open for a member who is a resident of the 8th Congressional District in accordance with boundaries existing January 1, 1980. The board evaluates and acquires sites for hazardous waste facilities; encourages private sector to develop hazardous waste facilities; develops hazardous waste management plan; reviews petitions for Solid Waste Management Districts; administers solid waste management project grants and loans. Members are appointed by the Governor and confirmed by the Senate. Bi-weekly meetings; members receive \$50 per diem plus expenses. For specific information contact the Waste Management Board, 123 Thorson Bldg., 7323 58th Ave. N., Crystal 55428; (612) 536-0816.

SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL has 1 vacancy open immediately for a member. The council advises the Commissioner of Administration on the small business procurement programs, 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, Roberta Schneider, 130 Capitol St., Paul 55155; (612) 296-0055.

MINNESOTA PROPERTY INSURANCE PLACEMENT FACILITY has 2 vacancies open immediately for one public member and one professional member. The facility administers the Fair-Plan Act to make property insurance available in urban areas. Members are appointed by the Commissioner of Commerce. Three to four meetings a year; members receive no compensation. For specific information contact the Minnesota Property Insurance Placement Facility, 12 So. 6th St., Room 1229, Mpls. 55402; (612) 338-7584.

STATE EMPLOYEES SUGGESTION BOARD has 1 vacancy open for a state employee. The board manages a state employee suggestion system for approximately 30,000 classified and unclassified state employees in order to provide tangible and intangible savings to the state, increase employee morale, and increase the safety of the employees and public. Members are appointed by the Commissioner of Administration. Members must be state officers or employees. Members receive no compensation. Monthly meetings held at the Administration Bldg. For specific information contact the State Employees Suggestion Board, 203 Administration Bldg., St. Paul 55155; (612) 296-6798.

COUNCIL ON THE AFFAIRS OF SPANISH-SPEAKING PEOPLE has 1 vacancy open for a member. Members shall be broadly representative of the Spanish-speaking community of the state. The council advises the Governor and legislature on issues affecting the Spanish-speaking community. Members are appointed by the Governor and confirmed by the Senate. Monthly meetings; members receive \$35 per diem. For specific information contact the Council on the Affairs of Spanish-Speaking People, 506 Rice St., St. Paul 55103; (612) 296-9587.

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 296-2513. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration Procurement Division

Commodities Contracts Currently Open for Bidding

| Requisition # | Item | Ordering Division | Delivery Point | Estimated Dollar Amount |
|---------------|------------------------------|--------------------------|----------------|-------------------------|
| 55-000-88931 | VTS Integral System | Services for the Blind | St. Paul | Contact buyer |
| 78-830-07057 | Radio Pagers | MN Correctional Facility | St. Cloud | Contact buyer |
| 29-000-36093 | Wiring for Telephone Service | Natural Resources | St. Paul | Contact buyer |

STATE CONTRACTS

| Requisition # | Item | Ordering Division | Delivery Point | Estimated Dollar Amount |
|-----------------------|--|----------------------------------|---------------------|-------------------------|
| 43-000-05480 | Lease/Purchase of PBX Telephone Systems | Iron Range Resources | Biwabik | Contact buyer |
| 79-000-43952 | Air Sampling Pump | Transportation | St. Paul | Contact buyer |
| 27-143-43920 | Purchase of Photocopy Machine | Hibbing Community College | Hibbing | Contact buyer |
| 02-520-44350 | Maint. EMF Sorters | Printing & Mailing | St. Paul | Contact buyer |
| 21-603-24318 | Car | Economic Security | National City, CA | Contact buyer |
| PD #1104-10053-67-260 | 1984 MN Income Tax Envelope | Revenue | St. Paul | Contact buyer |
| 04-131-24870 | Trucks | Agriculture | Minneapolis | Contact buyer |
| 78-830-07055 | Offset Press | MN Correctional Facility | St. Cloud | Contact buyer |
| Contract | Drafting Service Contract | Dept. of Public Service | | Contact buyer |
| 78-620-16514 | Water Treatment-Chemicals | Various | Various | Contact buyer |
| 78-620-16670 | Axles & Assemblies | MN Correctional Facility | Stillwater | Contact buyer |
| 27-140-43269 | Furnish & Install Fencing | Brainerd Community College | Brainerd | Contact buyer |
| 29-000-36077 | Aerial Photography | Natural Resources | St. Paul | Contact buyer |
| 79-000-43017 | Fuel Pumps | Transportation | Willmar | Contact buyer |
| 78-620-16694 | Wheels | MN Correctional Facility | Stillwater | Contact buyer |
| 78-620-16693 | Gear Boxes | MN Correctional Facility | Stillwater | Contact buyer |
| Contract | Tools: Misc. Lawn, Garden & Snow Tools | Various | Various | 5,000-10,000 |
| Contract | Rubbish Disposal | N. Hennepin Community College | | Contact buyer |
| 78-830-07089 | Cotton for Mattresses | Correctional Facility Industries | St. Cloud | Contact buyer |
| 02-307-44505 | Window Washing—Capitol Complex | Administration Plant Management | St. Paul | Contact buyer |
| 55-520-03168 | Misc Dishes | Oak Terrace Nursing Home | Minnetonka | Contact buyer |
| 26-072-08916 | Purchase of Photocopy Machine | Moorhead State University | Moorhead | Contact buyer |
| 27-157-42500 | Purchase of Photocopy Machine | Inver Hills Community College | Inver Grove Heights | Contact buyer |
| Contract | Courier Service | Education | Various | Contact buyer |
| PD #1106-10052-67-260 | 1984 Income Tax Booklets | Revenue | St. Paul | Contact buyer |
| PD #1311-00502-29-000 | GCRD In Service Folders | GCRD | St. Paul | Contact buyer |
| PD #1097-10054-67-260 | Typesetting of 1984 Minnesota Income | Revenue | St. Paul | Contact buyer |
| PD #1098-10055-67-260 | 1984 Income Tax Forms and Instructions | Revenue | St. Paul | Contact buyer |
| PD #1105-10056-67-260 | 1984 Package | Revenue | St. Paul | Contact buyer |
| 07-300-30854 | Used Cars | Public Safety | St. Paul | Contact buyer |
| 07-300-30855 etc | Used Cars | Public Safety | St. Paul | Contact buyer |
| 43-000-05481 | Radian System for 35mm Motion Picture Projection | Hibbing Community College | Hibbing | Contact buyer |

STATE CONTRACTS

| <u>Requisition #</u> | <u>Item</u> | <u>Ordering Division</u> | <u>Delivery Point</u> | <u>Estimated Dollar Amount</u> |
|----------------------|---|-------------------------------|-----------------------|--------------------------------|
| Contract | Steel Office Furniture Contract | Various | Various | Contact buyer |
| 27-151-43063 | Move of office, Classroom & Library Furniture & Equipment | Minneapolis Community College | Minneapolis | Contact buyer |
| 27-143-43914 & 15 | Purchase of Draft & Design Graphics System | Hibbing Community College | Hibbing | Contact buyer |
| 26-070-10499 | Rubbish Removal | Bemidji State University | Bemidji | Contact buyer |
| 07-300-30859 etc. | Cars | Public Safety | St. Paul | Contact buyer |

Contact the receptionist at 296-2513 for referral to specific buyers.

Attorney General's Office

Request for Proposals for Rate Design and Cost Studies for Northwestern Bell Telephone Company

Minnesota Attorney General Hubert H. Humphrey, III is soliciting proposals from qualified consultants to perform an analysis of the effect on residential telephone consumers of telecommunications competition in the inter-LATA and intra-LATA toll markets in Minnesota and a recommendation concerning the allowance of such competition, in connection with an investigation ordered by the Minnesota Public Utilities Commission. A hearing will be held on February 4, 1985 before an administrative judge.

Final submission date: August 24, 1984.

Estimated cost: \$15,000-\$25,000, depending upon scope of proposal.

Contact by telephone or in writing:

Dennis D. Ahlers
Special Assistant Attorney General
340 Bremer Tower
7th Place & Minnesota Street
St. Paul, MN 55101
(612) 297-4611

Department of Economic Security Division of Vocational Rehabilitation

Proposed Contracts—Federal Fiscal Year 1985 (Medical, Psychiatric, Psychological, and Psychometric Testing Services)

The Minnesota Department of Economic Security, Division of Vocational Rehabilitation is publishing notice that the contracts listed below are available and will be awarded for fiscal year 1985 (October 1, 1984 to September 30, 1985):

A. Notice of Proposed Contracts for Medical, Psychiatric, and Psychological Services

1. The Division of Vocational Rehabilitation is seeking an individual to function as the Chief Medical Consultant to provide services under contract as follows:

- a. Provide technical supervision and assistance, and review the work of field office medical consultants;
- b. Analyze the medical service program of the division and make recommendations for program modifications;
- c. Participate in the planning, development, and conduct of in-service training, for both medical consultants and DVR counseling supervisory staff, in the medical aspects of Vocational Rehabilitation;
- d. Assist the agency in the development of forms, procedures and other operational materials that relate to the medical program;

STATE CONTRACTS

- e. Review individual case material in order to provide advice on diagnosis, prognosis, medical implications and functional limitations resulting from disability;
- f. Represent the agency at meetings of state and local medical societies;
- g. To review and comment on individual medical plans that exceed certain specific cost limitations;
- h. Assist in the recruitment and selection of field office medical consultants.

The medical consultant will be responsible to the Assistant Commissioner for Vocational Rehabilitation with primary administrative direction coming from the Director of Client Services. The individual will be paid at a rate of \$65 per hour. The contract will require an average of 10 to 12 hours per week. Inquiries should be directed to:

William Niederloh
Director of Client Services
Division of Vocational Rehabilitation
3rd Floor Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

2. The Client Services Section is seeking to employ individuals under contract who will meet with local staff of the section in order to provide them with advice, consultation, and training on medical and psychiatric or psychological aspects affecting the rehabilitation process for specific clients and for the agency, in general. This section will be seeking at least one medical and one psychiatric or psychological contractor in each of the following locations: Bemidji, Brainerd, Duluth, Fergus Falls, Mankato, Minneapolis, Rochester, St. Cloud, St. Paul, Virginia, Willmar and Worthington. All individuals will be paid at a rate of \$40 to \$60 per hour. Most contract work will require an average of 2 to 4 hours per week. Inquiries should be directed to:

William Niederloh
Director of Client Services
Division of Vocational Rehabilitation
3rd Floor Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

B. Notice of Proposed Contract for Psychometric Testing Services

The Client Services Section is seeking a contractor who would provide psychometric testing to about 4,500 disabled clients. The testing would be provided by the contractor in approximately 50 testing locations throughout the State of Minnesota. The contractor would be required to administer any of seven psychometric tests and provide test scores, together with an interpretation of the test results, within two weeks of the testing date. Inquiries should be directed to:

William Niederloh
Director of Client Services
Division of Vocational Rehabilitation
3rd Floor Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

C. Notice for Request for Qualifications and Request for Proposal for Mobile/Onsite Medical Examination Services

The Social Security Disability Determination Services Section is seeking the services of contractors to provide qualified physicians in certain specialties (e.g., orthopedics, neurology, psychiatry) to travel to various Minnesota cities (e.g. St. Cloud, Bemidji, Duluth, Mankato) to perform consultative examinations and requested lab or x-ray studies and to provide written results of these examinations. The division's fee schedule will be used as a guide to determine compensation and fees may not exceed the division's fee maximums. Several contracts will be written. Expenditure for these contracts is not expected to exceed \$180,000. Reimbursement for mileage according to state regulations is provided. The contract period is 10/1/84 through 9/30/85.

Inquiries and request for a copy of the RFQ and RFP should be directed to:

Irene Suddard, Assistant Director, Medical Services
Disability Determination Services Section
Division of Vocational Rehabilitation
Department of Economic Security
Suite #200—Metro Square Building
Seventh & Robert Streets
St. Paul, Minnesota 55101
(612) 296-4419

All proposals or expressions of interest must be submitted to the persons named above by 4:30 p.m. August 17, 1984. Contractors will be selected from individuals expressing interest based on qualifications and appropriate experience. Documentation concerning these will be requested, if needed.

Department of Energy and Economic Development Economic Development Division

Request for Proposals to Study Alternate Financial and Organizational Plans

The Minnesota Convention Facility Commission, Economic Development Division of the Department of Energy and Economic Development, is seeking services from individuals and/or firms to study alternate financial and organizational plans relating to the proposed Minnesota Convention Facility.

The formal Request for Proposals may be obtained from and inquiries directed to:

Gerald G. Pecinovsky, Executive Director
Minnesota Convention Facility Commission
Department of Energy and Economic Development
900 American Center Building
150 E. Kellogg Boulevard
St. Paul, Minnesota 55101
612/297-1395

It is anticipated that the contract will not exceed \$40,000.00. The deadline for submission of proposals will be 4:00 p.m., August 29, 1984.

Department of Energy and Economic Development Governor's Council on Rural Development

Request for Proposals for the Planning and Implementation of a Cottage Industries Seminar

The Minnesota Department of Energy and Economic Development/Governor's Council on Rural Development (MN DEED/GCRD) is requesting proposals from qualified individuals interested in working with MN DEED/GCRD on a project to design, plan and implement a two-day seminar to enable rural entrepreneurs to learn about home-based business as a self-employment option.

The seminar will be held no later than June 30, 1985. Proposals are being requested to complete the following major activities:

- A. Program Development
- B. Coordination
- C. Management of the Seminar

It is estimated that the cost of this activity need not approach but shall not exceed \$20,000. Proposals should be received by MN DEED/GCRD no later than 4:30 p.m. Friday, Aug. 24, 1984. The formal Request for Proposals document may be requested and inquiries should be directed to:

Jane Stevenson, Program Manager
Governor's Council on Rural Development
Department of Energy and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Phone: (612) 296-3591

STATE CONTRACTS

Department of Human Services Moose Lake State Hospital

Request for Proposal for Medical Services

Consultant services to include development of an effectiveness evaluation process, design and develop a needs assessment tool and an analysis and validation of these processes in the geriatric programs through the use of pre-established data. These services must be under the direction and supervision of persons with at least a masters degree in gerontology and must be coordinated through a college-based gerontology program so that computer analysis is available and part of the services.

Services required from September 1, 1984, through June 30, 1985.

The estimated fee for these services will be \$26,000.00.

Inquiries must be received no later than August 20, 1984.

Direct inquiries to:

Frank R. Milczark
Chief Executive Officer
Moose Lake State Hospital
Moose Lake, MN 55767
(218) 485-4411, Ext. 242

Legislative Commission on Pensions and Retirement

Request for Proposals for Actuarial Services

The Legislative Commission on Pensions and Retirement, a permanent commission of the Minnesota Legislature, requests submissions of proposals from qualified consulting actuarial firms to perform annual valuations, cash flow forecasts, and cost analyses of proposed legislation for twelve (12) major public employee pension plans, to develop permanent rules for those studies, and to report to the Legislature the results of the studies with recommendations concerning proper funding of the plans. The consulting firm will provide the Commission with technical pension expertise not provided by the Commission's professional staff.

Additional information on qualifications and the specific tasks to be performed may be obtained from:

Karen Dudley, Executive Secretary
Legislative Commission on Pensions and Retirement
State Office Building
St. Paul, Minnesota 55155
Telephone: 612/296-2750

Proposals must be postmarked no later than September 7, 1984.

Metropolitan Waste Control Commission

Advertisement for Bids for Sludge Disposal Services

Sealed proposals will be received in the office of the Metropolitan Waste Control Commission, 350 Metro Square Building, 7th & Robert Streets, St. Paul, Minnesota until 10:00 a.m., Wednesday, September 26, 1984, at which time and place bids will be publicly opened and read aloud for the purpose of awarding a contract for the removal and disposal of dewatered sludge produced at the Commission's Metropolitan Wastewater Treatment Plant (Metro).

This project consists of removing a guaranteed minimum quantity of 10,000 wet ton per year of dewatered sludge from the metro plant, disposing of the sludge in accordance with applicable state, federal, and local regulations as well as obtaining all necessary permits and/or approvals. The project also consists of providing additional hauling and disposal services as needed by the commission. The project period will be up to three years starting January 1, 1985.

Note that this project was previously advertised under a different title. Since significant changes have been made in the scope of the project, potential bidders should assure themselves that they have the current contract documents as entitled below.

Potential bidders should note that prequalification proposals will be received until 4:00 p.m., Friday, August 31, 1984. Only those contractors identified by the Commission as qualified shall be invited to submit bid proposals. The prequalification criteria

to be used by the Commission along with all other information required to respond to this advertisement are available in the **CONTRACT DOCUMENTS AND AGREEMENT FOR PROCUREMENT OF SLUDGE DISPOSAL SERVICES.**

Copies of the above document may be obtained from the Metropolitan Waste Control Commission, 350 Metro Square Building, 7th & Robert Streets, St. Paul, Minnesota 55101, Attention: R. C. Polta, Telephone: (612) 222-8423.

No bids will be considered unless sealed and filed with the deputy chief administrator of the Metropolitan Waste Control Commission and accompanied by a certified check or cashier's check drawn on a national bank or trust company, or by a bid bond duly executed by the bidder as principal and having as surety thereon a company qualified to act as surety in the State of Minnesota, for not less than ten (10%) percent of the total price, payable to the Metropolitan Waste Control Commission, said bid security to be returned as hereinafter provided unless retained under the conditions stipulated herein.

No bids shall be withdrawn for a period of sixty (60) days after opening of bids. The Metropolitan Waste Control Commission reserves the right to reject any or all bids and to waive informalities.

July 23, 1984

By order of the
Metropolitan Waste Control Commission,
Mr. Louis J. Breimhurst
Deputy Chief Administrator

Metropolitan Waste Control Commission

Request for Proposals for Consulting Services to Perform an Independent Management Study

The Metropolitan Waste Control Commission, located in the Minneapolis-St. Paul area of Minnesota, is an operating agency which owns and operates the Metropolitan Disposal System servicing 101 communities scattered throughout a seven-county area. The commission was created by the 1969 Minnesota Legislature. The Metropolitan Disposal System includes 14 wastewater treatment plants and approximately 500 miles of interceptor sewer lines with numerous pumping, metering, and water quality monitoring stations throughout the system. There are nine appointed Commissioners and 930 + employees.

In the latter part of 1983, Governor Perpich appointed a commission to review the Metropolitan Waste Control Commission. The commission submitted its report in December of 1983. A major recommendation contained in the report was that an independent management study be conducted at the Metropolitan Waste Control Commission. Subsequent to the issuance of the report, a strong show of interest and support for the recommended management study has been expressed by municipalities served by the Metropolitan Waste Control Commission. In June of 1984, the Metropolitan Waste Control Commission adopted Resolution 84-243 in support of the study and established a broad-based task force charged with developing a request for proposal, receiving and reviewing proposals and recommending action to the Metropolitan Waste Control Commission, and monitoring the progress of the independent management study.

In response to their charge, the independent management study task force is seeking proposals from qualified management consultants to conduct a two-phase Management Study designed to insure efficient and economical service by the Metropolitan Waste Control Commission while maintaining compliance with all federal and state regulations. It is the intent of the Metropolitan Waste Control Commission to have the consultant and its subcontractor, if any, perform both phases of the Study; however, the commission reserves the right to specifically direct which areas will be studied in Phase II, and if other consultants will be invited to participate.

SCOPE OF THE STUDY

The focus of the management study will be to examine the internal management and structure of the Metropolitan Waste Control Commission. The study will consider the Metropolitan Waste Control Commission's operating charge and regional government relationships currently established by statute; however, minor technical legislative changes may be considered. Other external relationships and controls are extraneous to the scope of this study.

Work by the consultant will be in two phases:

PHASE I. Perform management audit of current organization for problem identification and possible legislative change identification.

STATE CONTRACTS

The audit process should encompass assessment of the agency's organizational structure, work environment, management supervisory and personnel practices, long and short-range planning, and the accounting and financial reporting systems and its system of internal accounting control. Submit interim report on Phase I, including audit summary and appropriate recommendations not contingent on Phase II activities.

PHASE II. Development of a comprehensive plan which addresses the constraints to effective performance as identified in Phase I and which includes recommendations for organizational changes which will lead to improved efficiencies in the activities performed by the Metropolitan Waste Control Commission. The comprehensive plan will include dates for accomplishing recommendations, resources required, and change analysis measurement techniques.

It is in the Metropolitan Waste Control Commission's interest that the entire project be completed in the shortest practical time.

PROPOSAL CONTENT:

The proposal should include the following, in sufficient depth or detail, to allow proper evaluation:

SECTION I—Statement of understanding of project scope and objectives

SECTION II—Description of two-phase workplan to accomplish the project objectives

SECTION III—Description of the work product to be provided in each phase of the work

SECTION IV—Description of qualifications and relevant experience of the firm and those specific consultants that will be assigned to the project. Resumes should be furnished.

SECTION V—Staffing plan for the completion of each phase of the work, including the roles and time commitment of each participant. If a subcontractor is to be used to perform any portion of the work, a complete statement as to role and qualifications of the subcontractor firm or individual must be included. There should be a statement as to the necessary resource commitment of the Metropolitan Waste Control Commission in the development of each phase of the project.

SECTION VI—A schedule of fees and reimbursement for expenses by key individuals assigned to Phase I of the project (supporting staff may be grouped into classes) with a maximum total cost for Phase I. An estimated cost for Phase II should be included.

EVALUATION CRITERIA

Proposals will be evaluated by the independent management study task force based on responsiveness to items including, but not limited to:

1. The degree of understanding of the Metropolitan Waste Control Commission's needs and objectives including statutory considerations.
2. The experience and success that the consultant has demonstrated in projects with similar scope and objectives.
3. The capability of the consultant to perform the work, including specialized services within the time limitations, taking into consideration the current and planned workload of the firm and key individuals that will be assigned to the project.
4. Evaluation of the overall completeness of the proposal including the workplan, schedule and manpower estimates, and the estimated completion dates for each phase of the project.
5. The consultant's stated requirement for the Metropolitan Waste Control Commission's resource commitment including requirements for the Metropolitan Waste Control Commission staff involvement.
6. The maximum total cost for Phase I and the estimated cost for Phase II of the project.
7. Consultants' presentation and responsiveness to the evaluation committee's interview.

In the event that there are numerous applicants for consideration for this project, there may be an initial reduction of proposers to approximately five (5) who may then be invited for an interview.

The independent management study task force reserves the right to reject any and all proposals.

The Metropolitan Waste Control Commission will enter into a contract with the successful proposer upon approval of the commission.

Six (6) copies of the proposal should be submitted to the Metropolitan Waste Control Commission by 5:00 p.m., August 31, 1984.

Inquiries and proposals should be directed to the attention of Louis J. Breimhurst at the Metropolitan Waste Control Commission, 350 Metro Square Building, Saint Paul, Minnesota 55101.

Louis J. Breimhurst
Deputy Chief Administrator

Minnesota Historical Society

Contract Available for Services for Cataloging Three-Dimensional Historical Objects

The Minnesota Historical Society will require the services of a qualified independent contractor/consultant to catalog and research three-dimensional historical artifacts with particular emphasis relating to the Society's clothing and textile collection. Other responsibilities will include but not be limited to preparing artifacts for loan, responding to reference inquiries, packing and storing of artifacts according to standard professional museum practices.

Requirements:

1. A B.A. degree in history, textiles and clothing, or related field.
2. Six months to one year experience in museum cataloging work.
3. Must have cataloged three-dimensional artifacts in a history museum.
4. Must have special emphasis on clothing and textiles background.
5. Research skills and previous experience with Chenhall's nomenclature system.
6. Familiarity with computerized museum collections records.
7. Demonstrated ability to work with the public.
8. Valid Minnesota Driver's License.

Anticipated hourly rate is approximately \$7.07 per hour. The contract period shall extend from September 1, 1984 to June 30, 1985. No benefits are included. Forty hours per week.

Qualified independent contractors/consultants should send a resume and three references to Gloria A. Thompson, Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, Minnesota 55101, no later than August 31, 1984. Call the Contract Officer at 296-8378 for further details.

Department of Natural Resources Division of Waters

Request for Proposals for Professional Services to Conduct Hydrologic/Hydraulic Study & Detailed Soil Analysis for the Restoration of Lake Isabelle, Dakota County

The Department of Natural Resources (DNR) is seeking proposals for professional services to conduct a hydrologic/hydraulic/groundwater study and detailed soil analysis for the restoration of Lake Isabelle in Dakota County. Responders will be required to submit a preliminary outline of their proposal.

The project is intended to run from August 30, 1984 to January 30, 1985.

Contact person:

Mr. Kent Lokkesmoe
Minnesota Department of Natural Resources
Metro Region Headquarters
1200 Warner Road
Saint Paul, Minnesota 55106
(612/296-7523)

Estimated cost: \$30,000

Submission deadline: 4:30 p.m. August 15, 1984.

STATE CONTRACTS

Interested persons may submit proposals to the above State contact person. The engineering consultant contractor must have experience in hydraulic, hydrologic, groundwater, soil analysis and dam/dike design. This experience should be documented in the consultant's proposal.

I. SCOPE OF PROJECT

Conduct hydraulic, hydrologic, groundwater and soil analysis to facilitate the dam/dike design for the restoration of Lake Isabelle.

II. GOALS & OBJECTIVES

The objective of this project is to facilitate the restoration of Lake Isabelle in Dakota County.

III. PROJECT TASKS

- (1) Conduct hydrologic, hydraulic and groundwater investigations to include:
 - a) the lake level for "normal" conditions and for various frequency storms (at a minimum, 5-year/24 hour and 100-year/24 hour)
 - b) the need for augmentation of lake levels or discharge of excess waters
 - c) preliminary design of the outlet structure
 - d) determination of the necessary flowage easements
 - (2) Conduct detailed soil analysis to include:
 - a) soil analysis at the lake outlet to facilitate dike location, design and stability analysis
 - b) soil/sediment analysis of lake bottom materials including quantifying spoil disposal needs (quantity and identify available options and needed easements)
 - (3) Preliminary design (sufficient to make application for the necessary permits; specifically, the DNR Dam Safety Permit) to include:
 - a) dike/dam design
 - b) outlet control works
 - c) spoil disposal options
 - (4) Reports
 - a) twelve (12) copies of the final report and plans shall be provided and one (1) camera-ready copy
- Responder may propose additional tasks or activities if they will substantially improve the results of the project.

IV. DEPARTMENT CONTACT

Prospective responders who have any questions regarding this Request for Proposal may call or write:

Kent Lokkesmoe
Minnesota Department of Natural Resources
Metro Region Headquarters
1200 Warner Road
Saint Paul, Minnesota 55106
(612/296-7523)

V. SUBMISSION OF PROPOSALS

All proposals must be sent to and received by:

Kent Lokkesmoe
Minnesota Department of Natural Resources
Metro Region Headquarters
1200 Warner Road
Saint Paul, Minnesota 55106

Proposals to be received not later than 4:30 p.m. August 15, 1984.

Late proposals will not be accepted. Submit five (5) copies of proposal. Proposals are to be sealed in mailing envelopes or packages with the responder's name and address clearly displayed on the outside. Each copy of the proposal must be signed by

an authorized member of the firm. Prices and terms of the proposals as stated must be valid for the length of the project.

VI. PROJECT COSTS

The Department has estimated that the cost of this project should not exceed \$30,000 for professional services and expenses.

VII. PROJECT COMPLETION DATE

The project will be completed by January 30, 1985 or within four (4) months from the date of project authorization.

VIII. PROPOSAL CONTENTS

The following will be considered minimum contents of the proposal:

- a) A restatement of the objectives to show or demonstrate the responder's view of the nature of the project.
- b) Identify and describe the deliverables to be provided by the responder.
- c) Outline the responder's background and experience with particular emphasis on local, state and federal government work. Identify personnel to conduct the project and detail their training and work experience. No change in personnel assigned to the project will be permitted without the approval of the state project director or manager.
- d) Responder will prepare a cost and work plan which will identify the major tasks to be accomplished and be used as a scheduling and managing tool, as well as the basis for invoicing. Plan must include method of reporting study and final product.
- e) Identify the level of the Department's participation in the project as well as any other services to be provided by the Department.

IX. EVALUATION

All proposals received by the deadline will be evaluated by representatives of the Department of Natural Resources. In some instances, an interview will be part of the evaluation process. Factors upon which proposals will be judged include, but are not limited to, the following:

- a) Expressed understanding of project objectives.
- b) Project work plan.
- c) Project cost detail.
- d) Qualifications of both company and personnel. Experience of project personnel will be given greater weight than that of the firm.

Evaluation and selection will be completed by August 30, 1984. Results will be sent immediately by mail to all responders.

State University System Office of the Chancellor

Request for Proposals for Construction Management Consultant Contract

The Chancellor's Office is seeking an architectural firm to provide assistance to the State University System in respect to the programming, planning, scheduling, construction, and administration related to the construction of capital improvement projects authorized by the Minnesota State Legislature in its 1984 session.

Responsibilities:

- Represent the universities and the Chancellor's Office in meetings with project architects, and when necessary, with contractors.
- Review drawings, specifications, and cost estimates prepared by project architects. Advise university and system officials relative to the suitability of building envelope, structural integrity, water tightness, appropriate choice and use of materials, and other pertinent factors.
- Conduct (in the company of the project architect and university officials) periodic site visits of assigned project(s) during the construction phase, and prepare written report of observations.
- Maintain project information files and prepare project status reports relative to costs, workmanship, schedules, and other factors pertinent to the satisfactory completion of assigned project(s).

STATE CONTRACTS

—Monitor provisions of the contracts, drawings, and specifications and provide written documentation of irregularities or discrepancies.

—Participate, with project architect and university officials, in final inspection of assigned construction project(s) and prepare written report of observations.

Qualifications:

The firm shall have extensive construction management experience and all individual consultants must have significant experience in operating positions related to their areas of specialization.

All construction management consultants shall hold registration as professional architects in the State of Minnesota or a graduate of an accredited architectural school with at least five years professional experience.

Terms of Employment:

The architectural firm shall furnish two qualified personnel as required to assure the timely completion of construction projects, but not less than 80 hours per week. This contract will not extend beyond completion of the projects but may be terminated on sixty days notice. Personnel furnished will, for the term of this agreement, be located at the State University System Chancellor's Office, Suite 230, 555 Park Street, St. Paul, Minnesota.

Estimated annual contract amount is \$80,000.

Firms who wish to be considered should submit proposals on or before 4:00 p.m., August 14, 1984, to David Hardin, Coordinator of Facilities Management, State University System, Suite 230, 555 Park Street, St. Paul, Minnesota 55103.

The proposals must conform to the following:

1. Two copies of the proposal will be required.
2. All data must be on 8½" × 11 sheets, soft bound.
3. The cover sheet of the proposal must be clearly labeled with the proposal name, as listed above, together with the firm name, address, telephone number and the name of the contact person.
4. The proposal should consist of the following information in the order indicated below:
 - a) Name of proposal.
 - b) Identity of firm and an indication of its legal status, i.e. corporation, partnership, etc.
 - c) Names of the persons who would be directly responsible for the major elements of the work, together with descriptions of their qualifications. If the applicant chooses to list projects which are relevant in type, scale, or character to this proposal, the person's role in the project must be identified.
 - d) A commitment to enter the work promptly and to assign the people listed in "c" above.
 - e) A section of not more than fourteen (14) faces containing graphic material (photos, plans, drawings, etc.) as evidence of the firm's qualification for the work. The graphic material must be identified. It must be work in which the personnel listed in "c" have had significant participation and their roles must be clearly described.
5. In accordance with the provisions of Minnesota Statutes, 1981 Supplement, Section 360.073; for all contracts estimated to be in excess of \$50,000, all responders having more than 20 full-time employees at any time during the previous 12 months must have an affirmative action plan approved by the Commissioner of Human Rights before a proposal may be accepted. To be accepted, a Proposal must include one of the following:
 - a) A copy of the firm's current certificate of compliance issued by the Commissioner of Human Rights; or
 - b) A statement certifying that the firm has a current certificate of compliance issued by the Commissioner of Human Rights; or
 - c) A statement certifying that the firm has not had more than 20 full-time employees in Minnesota at any time during the previous 12 months.
6. Firms wishing to have their proposals returned after the Chancellor's Office review must follow one of the following procedures:
 - a) Enclose a self-addressed stamped postal card with the proposals. Firms will be notified when material is ready to be picked up. Firms will have two (2) weeks to pick up their proposals, after which time the proposals will be discarded.
 - b) Enclose a self-addressed stamped mailing envelope with the proposals. Proposals will be returned using this envelope.

Any questions may be referred to David Hardin at (612) 296-6624.

Department of Transportation; and Willmar City Engineering Department

Contract Available for Bridge Replacement Design Engineering

The City of Willmar, Minnesota, in cooperation with the Office of State Aid, Minnesota Department of Transportation, requires the service of a qualified consultant to provide final design engineering for the replacement of the 1st Street (T.H. #71) Bridge in the City of Willmar, Minnesota, over the Burlington Northern Railroad.

The services shall consist of providing preliminary design plans, estimates, PDR, EA, final design plans, hearings (if necessary), state and federal approval, and necessary permits for construction.

Firms desiring consideration should submit their federal forms 254 and 255 within 14 days. This is not a request for a proposal.

Please send your response to:

City Engineer
City Hall, P.O. Box 755
Willmar, MN 56201
(612) 235-4202

Winona County

Request for Applications for Architectural Services

Winona County is seeking an architectural firm to design an energy efficient and cost-efficient office building with approximately 15,000 gross square feet (approximately 12,000 net square feet).

Applications submitted shall contain the following information.

- A. Provide background information regarding your firm.
- B. Indicate qualifications of personnel to be assigned to this project in the following areas:
 - Overall Design
 - Mechanical Functions
 - Structural Design
 - Interior Design
 - Landscape Design
- C. Provide example of previous projects of this nature.
- D. Include architect's fees and other related charges.
- E. Designate staff available to do inspections on site.

Deadline for submitting applications is August 14, 1984 at 5:00 p.m. Applications received after this deadline will not be considered. Based on the applications, three to six firms will be selected for interviews. The interviews will be scheduled for Friday, August 24, 1984.

Submit applications to:

C. Donald Gilomen
Executive Secretary
Winona County Courthouse
171 West Third Street
Winona, MN 55987
(507) 452-5880

The following general information is submitted regarding this project:

Initially, the building will accommodate the Department of Social Services. Design must allow for additional two or three floors to be added later. Parking is a problem and should be considered in design and cost effectiveness. Budget estimates for this project range from 1 million to 1.8 million.

Sites to be considered—the LEC parking lot, 171 West Third and the Feiten property located at Third and Washington—

120 ft. on Washington
140 ft. on Third Street

STATE CONTRACTS

The Architectural firm selected for the project will be expected to meet with the County Board's Building Committee and various building occupants to discuss space programming, special programmatic needs, and special design features.

Prior to preparing working drawings, the architect shall present preliminary drawings of the entire project and a cost estimate to the County Board. The Architect shall also prepare specifications, initiate all contract related documents such as supplemental agreements, contract change orders, if any, and approve all shop drawings and payment requests. The Architect shall submit a weekly progress report to Winona County. Finally, the Architect shall assist in providing project supervision and final inspections.

SUPREME COURT

Decisions of the Court of Appeals Filed Tuesday, July 17, 1984

Compiled by Wayne O. Tschimperle, Clerk

C4-83-1263 In Re: Estate of Chris Boysen. Genevieve Thompson, Contestant, Appellant, v. Raymond Boysen, Proponent. Dodge County.

Decedent died intestate when he revoked his last will prior to his death and did not revive an earlier will.

Reversed. Popovich, C.J.

C8-84-45 In Re: the Marriage of: LuAnn Annette Kotila, Petitioner, v. Gordon Craig Kotila, Appellant. Meeker County.

The trial court did not abuse its discretion in awarding custody of the parties' minor child to the mother.

Affirmed. Popovich, C.J.

C7-84-67 In Re: the Marriage of: Robin Flinck, Petitioner, v. Tanya Flinck, Appellant. Itasca County.

The trial court did not abuse its discretion in granting custody of the parties' two-year-old son to the father.

Affirmed. Popovich, C.J.

C2-83-1164 Charles E. Higgins, et al., v. Kay Lufi, et al., Appellants. Dakota County.

The trial court did not err in excluding expert testimony under Rule 37.02(2)(b). Minn. R. Civ. P., because of a willful refusal to obey a court order that the witness be deposed.

The trial court did not err in refusing a continuance and denying a motion for a second adverse medical examination, when the second examining physician was not scheduled as a witness and was not available to perform the examination before trial.

It is not hearsay for a witness to testify that no physician had told her that her child had any medical problems at the time of her birth.

Respondents' final argument will not be deemed so improper as to require a new trial when the other party did not object or request a curative instruction.

Affirmed. Parker, J.

C9-83-1842 Richard J. Fretschel and Patricia M. Fretschel v. John A. Burbank and Patricia A. Burbank, Appellants. Dakota County.

The doctrine of implied warranty is not applicable to sales of used realty.

Parties are not limited to the written contractual documents where it can be shown that the vendees have been led by fraud or mistake of fact to accept something different from what the contracts called for.

The trial court did not err in finding fraud or misrepresentation where appellants made a positive declaration to respondents relative to the condition of fireplaces which was, in fact, false and known by appellants to be false.

Affirmed in part, vacated in part. Parker, J.

C1-83-1205, C3-83-1206, C4-81-691 American Machine and Tool Company, Inc., v. Strite-Anderson Manufacturing Company, Appellant. Anoka County.

Course of dealing and usage of trade evidence are admissible to explain or supplement the terms of a contract. A finding of ambiguity is not a prerequisite to their admission.

The trial court did not err in admitting course of dealing evidence regarding Strite-Anderson's payment history to explain or supplement the terms of the purchase orders.

The trial court's admission of irrelevant usage of trade evidence was harmless error. The evidence was cumulative and there was other competent evidence to justify the verdict.

The trial court did not err in refusing to direct the jury that American Machine breached the delivery terms of the purchase orders where the evidence was not so one-sided as to preclude any other conclusion.

The trial court did not err in its instructions to the jury.

Affirmed. Foley, J.

C0-83-1714 In Re: the Marriage of: Kathryn Anne Scott, Petitioner, Appellant, v. William George Scott. Hennepin County.

The trial court erred in not awarding an increase in child support where the record shows a substantial increase in both the needs of the children and the net income of the non-custodial parent making the terms of the previous support order unreasonable and unfair.

Affirmed in part, reversed in part and remanded with directions. Foley, J.

CX-83-1963, C5-84-360 David Alex Bielejeski, Petitioner, Appellant, v. Commissioner of Public Safety; (CX-83-1963). State of Minnesota v. David Alex Bielejeski, Appellant, (C5-84-360). Crow Wing County.

The statutory procedures for appointment as a deputy sheriff were followed where the officer's appointment and oath were written, signed, and filed.

The State, having shown that Bureau of Criminal Apprehension procedures were followed, laid the proper foundation for admission of the breathalyzer test results.

The State did not unconstitutionally deprive the defendant of his defense by not saving the test and the reference ampoules.

Affirmed. Wozniak, J.

C5-84-231 Minnesota Licensed Practical Nurses Association, Appellant, v. Bemidji Clinic, Ltd. Beltrami County.

Where an arbitrator's award did not expressly award back pay, a later court proceeding for back pay was an action to modify the award. The plaintiff did not meet the statutory requirements for a modification of the award.

Under the award, the employee did not qualify for immediate placement as a full-time employee.

Affirmed. Wozniak, J.

C8-83-1590 Francine Tomscak, Appellant, v. Stanley G. Tomscak. Anoka County.

It was error for the trial court not to reserve the question of future maintenance where the wife had cancer and faces the possibility of a reoccurrence.

Where the parties were represented by competent counsel and they believed the terms of the stipulation to be fair, the trial court did not err in refusing to vacate that stipulation merely because one party now claims the homestead was overvalued.

Affirmed in part and reversed in part. Sedgwick, J.

C0-83-1745 Michael Lindner and Cindy Lindner, Appellants, v. Audry Lund and Paul Lund. Isanti County.

Summary judgment was improperly entered against the appellants for failing to meet the tort threshold for permanent injury under the Minnesota No-Fault Act.

Summary judgment was properly entered for failing to meet the tort threshold of 60-day disability.

Affirmed in part, reversed in part. Lansing, J.

C3-84-163 In Re: the Marriage of: Kanchan Arora, Petitioner, v. Vasu Arora, Appellant. Ramsey County.

The trial court did not abuse its discretion by finding that a failure to pay child support was willful when the appellant chose to honor his debt obligations but not his child support obligations.

The trial court did not abuse its discretion by refusing to further reduce the appellant's child support obligation.

Affirmed. Lansing, J.

C7-83-1841 Thomton, Sperry & Jensen, Ltd., Appellant, v. Marvin B. Anderson and Jane M. Anderson. Meeker County.

An attorney seeking fees from his clients may not rely on his status as holder of a promissory note to avoid his clients' defense to payment based on excessiveness. The evidence supported the jury finding that the attorney's fees were excessive.

Affirmed. Huspeni, J.

SUPREME COURT

C8-83-1637 Ernest W. Honebrink, et al., Appellants, v. Hutton and Rowe, et al. Anoka County.

Appellants did not meet their burden of proof to show that respondents had sold them an aluminum stovepipe where the evidence regarding the sale was conflicting, both parties were equally credible, and neither party had a financial record of the sale.

Affirmed. Forsberg, J.

C8-83-1363 Arthur Hedin, et al., Appellants, v. State Farm Mutual Automobile Insurance Company. St. Louis County.

An insurance company licensed to sell insurance in Minnesota is not required to "write up" uninsured motorist coverage issued in other states to the minimum required by Minnesota when their insureds are involved in accidents in Minnesota.

Affirmed. Nierengarten, J.

C8-83-1962 Victor B. Yager v. Lyndale Thompson and Deloris Thompson, Appellants. Crow Wing County.

The statutory remedy for forcible entry and unlawful detainer is not the exclusive remedy available for repossession of properties.

The granting of a temporary injunction was improper where the movant did not show likelihood of success on the merits or that the status quo would be maintained should a temporary injunction issue and where substantial harm could result from dispossession pending resolution of the case.

Reversed. Nierengarten, J.

C3-84-3 Norbert J. Terfehr, et al., and Joyce M. Klimek, et al., v. Roman Kleinfehn, Appellant. Todd County.

Placement of a steel plate in a ditch used to drain water from adjacent farmlands constituted an obstruction entitling a landowner to compensatory, but not punitive, damages from the adjacent landowner.

Affirmed. Nierengarten, J.

C6-83-1779 Kurt Dean Doughman, Appellant, v. State of Minnesota. Koochiching County.

Defendant did not carry his burden of demonstrating that his guilty plea, entered after plea negotiations, was not knowingly, intelligently, and voluntarily entered.

Affirmed. Randall, J.

C9-83-2019 Michael Hyduke, Appellant, v. David A. Grant, and Broeker, Hartfeldt, Hedges & Grant, a Partnership. Hennepin County.

In this attorney malpractice case, no genuine issue existed as to any material fact and the trial court thus properly granted respondents' motion for summary judgment.

Affirmed. Randall, J.

C3-84-373 State of Minnesota, Appellant, v. Larry Stitzel. Hennepin County.

The trial court did not err in dismissing a misdemeanor assault charge for denial of defendant's right to a speedy trial.

Affirmed. Randall, J.

C3-83-1528 In Re: the Marriage of: Jerry Lee Heard, Petitioner, v. Judith Marie Heard, Appellant. Pipestone County.

The trial court clearly erred in finding that the best interests of two children were served by the award of joint legal and divided physical custody to their parents.

There was no abuse of discretion in refusal of the trial court to award additional attorney fees for appellant.

Affirmed in part, and reversed and remanded in part. Crippen, J.

CX-83-1784 Robert Hewitt, Appellant, v. Commissioner of Public Safety. Hennepin County.

An officer's personal observation of driving conduct is not needed to demand a preliminary screening test or for implied consent testing sought because the screening test showed 0.10 or more alcohol concentration.

Affirmed. Crippen, J.

C3-83-1903 In Re: the Estate of: Wesley A. Messerschmidt. LeSueur County.

The language of Minn. Stat. § 256B.15, which is part of a legislative scheme to reduce the tax burden of furnishing medical assistance to needy persons, should be strictly construed to authorize recovery by the county only where expressly indicated.

The trial court properly disallowed a claim against the decedent's estate for medical assistance paid on behalf of the decedent's spouse, where the claim was not expressly authorized by Minn. Stat. § 256B.15.

Appellant county's claim against the decedent's estate for the recovery of funeral expenses paid on his behalf was filed within the four month period of limitations established by Minn. Stat. § 524.3-803(b)(2).

Minn. Stat. § 261.04 does not allow claims by a county against the decedent's estate for the recovery of funeral expenses previously paid on behalf of the decedent's spouse.

Affirmed in part and reversed in part. Crippen, J.

C3-83-1996 B&S Rigging & Erection, Inc., J. Howard Broderius, and Steven Yates, Appellants, v. Thomas Wydella, Dennis McCauley, and Kenneth Sipe, Sr. Ramsey County.

Officers and stockholders of an insolvent corporation are fiduciaries of the corporate assets for the benefit of creditors. They cannot prefer the claims of another corporation under their control. Preferential payments include set-offs of mutual debts.

Corporate executives who breach a fiduciary duty in preferring their claim will not be exonerated from paying wages due to employees on speculation whether the employees might have recovered assets had the preference not occurred.

Affirmed. Crippen, J.

TAX COURT

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

State of Minnesota Tax Court County of Hennepin, Regular Division

Minneapolis Northfield and Southern Railway, Inc., Petitioner, v. County of Hennepin and Commissioner of Revenue, Respondents, File No. TC-2775

Findings of Fact, Conclusions of Law and Order for Judgment

The above-entitled matter came on for hearing on April 23, 1984, before the Honorable Earl B. Gustafson, Judge of the Tax Court at Hennepin County Government Center, Minneapolis, Minnesota. Without objection, the Commissioner of Revenue was added as an additional respondent.

The issue is whether four separate parcels owned by petitioner have been properly classified by the Commissioner of Revenue as railroad nonoperating property, within the meaning of Minn. Stat. § 270.80, subd. 4 (1982), and therefore subject to local real estate taxation.

Wayne C. Serkland, attorney at law, appeared on behalf of petitioner.

Robert T. Rudy, Assistant Hennepin County Attorney, appeared on behalf of respondent County of Hennepin.

James W. Neher, Special Assistant Attorney General, appeared on behalf of respondent Commissioner of Revenue.

The Court, having heard and considered the evidence adduced at trial and having considered the post-trial briefs submitted by the parties, now makes the following:

Findings of Fact

1. Petitioner is the owner of four separate parcels of vacant property located in the City of Minneapolis and identified for tax purposes as parcel numbers: 20-029-24-13-0045; 20-029-24-42-0005; 22-029-24-33-0022; and 21-029-24-43-0007.

2. The Commissioner of Revenue has the primary jurisdiction to determine what is operating railroad property and what is nonoperating railroad property.

3. The Minneapolis City Assessor, pursuant to Minn. Stat. § 270.80, subd. 3 (1982), requested the Commissioner of Revenue to determine that the four parcels in question be classified as railroad nonoperating property for real estate taxes assessed in 1982 and payable in 1983.

TAX COURT

4. The Commissioner of Revenue granted the request of the City Assessor and classified the four parcels as railroad nonoperating property subject to local ad valorem taxation.

5. Petitioner appeals the decision of the Commissioner of Revenue contending that these four parcels should all be classified as railroad operating property pursuant to Minn. Stat. § 270.80, subd. 3 (1982).

6. The above described parcels are vacant land with no improvements or structures of any kind except an industrial spur track on the northerly 25 feet of Parcel No. 21-029-24-43-0007.

7. All of the above described parcels are part of the railroad's "right-of-way" or are immediately adjoining narrow strips of land available for other railroad uses such as storage, expansions, maintenance, access and snow removal.

8. None of these parcels are leased to third parties.

9. All of the above described parcels are railroad operating property under Minn. Stat. § 270.80, subd. 3 (1982).

Conclusions of Law

1. All of the above described parcels are railroad operating property under Minn. Stat. § 270.80, subd. 3 (1982) and therefore exempt from local ad valorem taxation.

2. The Commissioner of Revenue's determination that the above described parcels are nonoperating property is reversed, and the records of the Department of Revenue, Hennepin County and the City of Minneapolis Assessor should be changed accordingly.

3. Real estate taxes due and payable in 1983 paid by petitioner shall be refunded together with interest from the date of original payment, together with costs and disbursements herein.

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

July 16, 1984

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

ORDER FORM

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