

86, June 16

# STATE REGISTER

STATE OF MINNESOTA



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# STATE REGISTER

## Volume 10

### Printing Schedule

#### Submission Deadlines

Vol. 10 Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
51	Monday 2 June	Monday 9 June	Monday 16 June
52	Monday 7 June	Monday 16 June	Monday 23 June
53	Monday 16 June	Monday 23 June	Monday 30 June
Vol. 11 #1	Friday 20 June	Friday 27 June	Monday 7 July

\*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, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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Contact: House Information Office  
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(612) 296-2146

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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 April 8, 1985 are published in the Minnesota Rules 1985. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 will be included in a supplement scheduled for publication in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the State Register but are generally not published in the Minnesota Rules 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 numbers and cumulative listings. 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 1985.

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## EXECUTIVE ORDERS

### Executive Order No. 86-3

#### Providing for the Establishment of an Advisory Task Force to Develop a Public Corporation

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, Minnesota recognizes the importance of new technology and innovation to future economic growth and job creation; and

WHEREAS, new technology and innovation can provide the stimulus necessary for economic development in Minnesota; and

WHEREAS, investment in applied research, involving Minnesota's colleges and universities, will contribute significantly to the development of new technology; and

WHEREAS, Minnesota would benefit from the establishment of a public corporation to direct Minnesota's efforts at applied research;

NOW, THEREFORE, I hereby order that:

1. **Establishment of an Advisory Task Force** to develop a plan for a public corporation.

There is hereby created a Governor's Advisory Task Force to design a public corporation to be known as the "Greater Minnesota Corporation."

The Task Force shall consist of no more than 15 members. To benefit from the experience of other states, four members of the Task Force shall be persons from outside the State of Minnesota.

2. **Duties of the Advisory Task Force**

The Advisory Task Force will draft a report to me, as Governor, recommending a design, organization and suggested procedures for a public corporation, to be named the "Greater Minnesota Corporation," and to include as part of that report, draft legislation which could be considered by the 1987 Legislature.

The report of this Advisory Task Force shall be submitted no later than November 15, 1986.

The report must include at least the following: proposed powers and duties; suggested operating, accounting, and grant procedures; personnel practices; investment plans; guidelines for board conduct and ethics; a two-year budget; and a five-year development plan.

In addition, the report must demonstrate what state actions would be necessary to attract private capital to the corporation. Finally, the corporation must consider the appropriateness of establishing a trust fund, utilizing the proceeds from a dedicated source of funds to establish the trust, with the corporation spending only the investment earnings annually for its purposes.

### 3. Administrative Provisions

The Director of the State Planning Agency shall provide staff support as deemed necessary for the Advisory Task Force to fulfill its duties. Other state departments or agencies are directed to provide such assistance to the Advisory Task Force as may be determined by its chair, with the approval of the Director of the State Planning Agency.

Members of the Task Force shall receive no per diem, but may be paid expenses as authorized by the Commissioner's plan adopted according to Minnesota Statutes, 1985 Supplement, Section 43A.18, Subdivision 2.

Pursuant to Minnesota Statutes, Section 4.035, this Order shall be effective fifteen (15) days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until June 30, 1987.

IN TESTIMONY WHEREOF I have set my hand this fourteenth day of May, 1986.



## PROPOSED RULES

Pursuant to Minn. Stat. of 1984, §§ 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 Jobs and Training

### Proposed Permanent Rules Relating to Centers for Independent Living

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

Notice is hereby given that the State Department of Jobs and Training (Department) proposes to adopt the above entitled rules. A copy of the proposed rules is attached to this notice.

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

## PROPOSED RULES

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The procedures for adoption of non-controversial rules will be used as set forth in sections 14.22 to 14.28. Authority for adoption of these rules is contained in Minnesota Statutes, section 129A.10 subdivision 3 (1985 Supplement).

Persons interested in these rules will have 30 days to submit comments in support or opposition to the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department.

Interested persons should submit comments to:

Roger Sorbel  
Department of Jobs and Training  
Division of Rehabilitation Services  
5th Floor, 390 North Robert Street  
St. Paul, Minnesota 55101

Unless the Department receives, within the comment period, written requests for a hearing on the proposed rules from 25 or more persons a public hearing will not be held. In the event that a public hearing is required, the Department will proceed according to the provisions of Minnesota Statutes, sections 14.131-14.20 (1984), as amended by Minnesota Laws 1985, First Special Session, Chapter 10, section 38. If a person desires to request a public hearing, the Department requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language and data relied on to support the suggested modifications.

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

A Statement of Need and Reasonableness has been prepared and is now available. A copy of this document may be obtained by contacting Mr. Sorbel at the above address.

Pursuant to Minnesota Statutes, section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Persons who wish to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

### Rules as Proposed (all new material)

#### 3300.3100 SCOPE AND PURPOSE.

Parts 3300.3100 to 3300.3350 govern the certification of centers for independent living as defined in Minnesota Statutes, section 129A.01. The purpose of a center for independent living is to enable persons with disabilities to live and function more independently in their home, family, and community. A center for independent living accomplishes this purpose by promoting consumer control, self-sufficiency, equal access, and local focus in the programming they provide to persons with disabilities.

#### 3300.3150 DEFINITIONS.

Subpart 1. **Scope.** When used in parts 3300.3100 to 3300.3350, the terms defined in this part have the meanings given them.

Subp. 2. **Center for independent living.** "Center for independent living" means a private nonprofit organization incorporated under Minnesota law and operated for the purpose of providing independent living services to persons with disabilities. The board of directors for the center for independent living is composed of community representatives, 51 percent of which must be individuals who are either severely disabled themselves or spouses or parents of persons with severe disabilities.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Jobs and Training.

Subp. 4. **Eligible applicant organization.** "Eligible applicant organization" means any private nonprofit organization that is incorporated or has applied for incorporation under Minnesota Statutes, chapter 317, which meets or intends to meet the purpose and board member criteria in subpart 2.

Subp. 5. **Independent living.** "Independent living" means the capacity of a person with a disability to manage the person's affairs, participate in day-to-day life in the community, and to fulfill a variety of social roles with as much personal control as possible.

Subp. 6. **Person with a disability.** "Person with a disability" means an individual who has a physical, mental, or psychological impairment or dysfunction that limits independent functioning in the family, community, or employment.



**3300.3200 CERTIFICATION REQUIREMENTS.**

Subpart 1. **Purpose.** The purpose of certification is to ensure that a center for independent living meets minimum requirements for operation.

Subp. 2. **Center for independent living certificate.** Certification and a valid certificate is required before the commissioner may provide funding for a center for independent living. Requirements for a certificate are the following:

A. The membership of the board of directors of a center for independent living must comply with the requirements of Minnesota Statutes, section 129A.01, paragraph (h).

B. The center for independent living must be incorporated under Minnesota Statutes, chapter 317.

C. The center for independent living must assure that individuals with severe disabilities will not be categorically denied access to full utilization of, or benefit from, any independent living service because of their severe disabilities and will not be discriminated against as provided in the Minnesota Human Rights Act, Minnesota Statutes, chapter 363.

D. The center for independent living must have a risk protection program adequate to preserve assets of the center for independent living and to compensate staff, volunteers, consumers, and the public for reasonable claims for which the center is liable.

E. Fundraising activities undertaken by the center for independent living must conform to all requirements of state law.

F. The center for independent living must be in compliance with chapter 1340 of the State Building Code which requires buildings to be accessible to persons with disabilities.

G. The center for independent living may provide any or all the independent living services described in Minnesota Statutes, section 129A.10, subdivision 1, but must at a minimum provide:

- (1) intake counseling to determine the individual's need for services;
- (2) referral and counseling service with respect to attendant care;
- (3) counseling and advocacy with respect to legal and economic rights and benefits;
- (4) housing and transportation referral and assistance; and
- (5) peer counseling.

H. The center for independent living must provide for substantial involvement by consumers in the policy direction, decision-making, service delivery, and management of the center. Substantial involvement must include the following:

- (1) periodic meetings, at least once a year, of staff and consumers or their representatives; and
- (2) periodic surveys of consumer satisfaction.

**3300.3250 CERTIFICATION PROCEDURE.**

Subpart 1. **Eligible applicant organization.** An application for certification as a center for independent living may be submitted at times the commissioner specifies by an eligible applicant organization as defined in part 3300.3150, subpart 4.

Subp. 2. **Application forms.** All applications for certification must be made on official application forms available from the Division of Rehabilitation Services in the Minnesota Department of Jobs and Training.

Subp. 3. **Reports, plans, and budgets.** When applying for certification, eligible applicant organizations must submit expenditure reports and proposed plans and budgets as required in Minnesota Statutes, section 129A.10, subdivision 4.

Subp. 4. **Time limitation.** A center for independent living certificate may not be issued for more than three years but a center for independent living may be issued a new certificate if the center complies with the certification requirement of part 3300.3200, subpart 2.

**3300.3300 TERMINATION OF CERTIFICATION AND PRELIMINARY NOTICE.**

Subpart 1. **Certification termination.** Certification of a center for independent living will be terminated when:

A. a center for independent living is not being administered in accordance with an approved annual plan and budget as required in Minnesota Statutes, section 129A.10, subdivision 4;

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## PROPOSED RULES

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- B. a center for independent living is not meeting all of the requirements of part 3300.3200; or
- C. a center for independent living is not being administered in accordance with parts 3300.3100 to 3300.3350.

Subp. 2. **Preliminary determination.** In situations governed by subpart 1, the commissioner must give written notice at least 45 days before terminating the certification of a center for independent living, except where there is imminent danger to the health or safety of consumers. The preliminary notice must state the grounds for the termination and must allow a reasonable time to remedy the noncompliance. The preliminary notice of termination of certification creates the right of appeal as provided in part 3300.3350.

Subp. 3. **Withdrawal of state funds.** Allocated state funds will be withdrawn from a center for independent living whose certification is terminated.

### 3300.3350 APPEAL.

Subpart 1. **Scope.** A center for independent living operating under a valid certificate has the right to appeal the commissioner's termination of its certification under part 3300.3300, subpart 1.

Subp. 2. **Notice of intent to appeal.** The center for independent living may appeal a preliminary determination concerning termination of certification as provided in part 3300.3300, subpart 2. The appeal must be in writing to the Division of Rehabilitation Services in the Minnesota Department of Jobs and Training. The written notice of intent to appeal must be received by the Division of Rehabilitation Services within 30 calendar days from the date that a preliminary notice of termination is sent. If the notice of intent to appeal is not received within the 30-day period, the preliminary determination of the Division of Rehabilitation Services is final. The notice of intent to appeal must state the grounds for the appeal including relevant facts and issues that could be addressed at a contested case hearing.

Subp. 3. **Informal contact.** A representative of the commissioner will contact the appellant and discuss the grounds for the appeal no more than 15 days after the Division of Rehabilitation Services receives a notice of intent to appeal. The contact by the commissioner's representative must be reduced to writing, must contain a summary of the nature and basis of the decision, and must describe the appellant's appeal rights under subpart 4.

Subp. 4. **Contested case appeal.** If an appellant has first informally discussed the appeal as provided in subpart 3 and has not been completely satisfied, the appellant may request in writing a contested case hearing before an administrative law judge as provided in Minnesota Statutes, sections 14.57 to 14.62. The contested case hearing must be initiated and conducted according to parts 1400.5100 to 1400.8500.

Subp. 5. **Proposal for decision.** When an initial decision is rendered, the administrative law judge will prepare a proposal for decision that will be recommended for the commissioner's adoption.

Subp. 6. **Decision and order.** The commissioner must notify the appellant of a final decision as provided in Minnesota Statutes, section 14.62.

Subp. 7. **Legal representation.** A party may be represented by legal counsel at any step of the appeals process.

## Department of Public Safety Office of Public Information

### Proposed Rules Governing Film Rental Fees

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

Notice is hereby given that the State Department of Public Safety is proposing to adopt the above entitled rules without a public hearing. The Commissioner of Public Safety has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow procedures set forth in Minn. Stat. Sections 14.22 through 14.28.

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

If 20 percent of the persons who will be required to pay the fee submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will be held. The written request must be specific on which rule(s) a hearing is desired. Identification of the portion of the proposed rule addressed, the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are requested. Any person requesting a public hearing should

state his or her name and address. In the event a public hearing is required, the department will proceed according to the provisions of Minn. Stat. Sections 14.131 through 14.20.

Persons who wish to submit comments or a written request for a public hearing, or persons who wish to receive a free copy of this notice and/or a free copy of the proposed rules, should address their correspondence to the address below and include the name of the rulemaking:

Harlan Olson  
Department of Public Safety  
318 Transportation Building  
St. Paul, MN 55155  
(612) 296-9754

The Department's authority to adopt the proposed rules is contained in First Special Session Laws, 1985, Ch. 10 and Minnesota Stat. § 299A.01, subd. 6. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available free from the Department of Public Safety upon request to the above address.

You are hereby advised, pursuant to Minn. Stat. Section 14.115, "Small business consideration in rulemaking," that the proposed rules may have an impact on some small businesses in Minnesota.

The newly established fees will have an impact on commercial driving schools and any other small businesses using traffic safety films from the Film Library. These rules provide for an additional expense not previously incurred by these small businesses. In developing the fee schedule, the department has kept the fees for film rental as low as possible while still meeting the legislative mandate which requires that fees be set so as to collect \$40,000 per year.

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

The department estimates that there will be some cost to local public bodies in the state to implement the rules for the two years immediately following their adoption, within the meaning of Minnesota Statutes Section 14.11, Subd. 1. The school districts in Minnesota are users of the Film Library for traffic safety films primarily for driver education classes. The cost to local school districts will not exceed \$100,000. The proposed rules provide for an annual membership for public school districts at a fee of \$750 per year.

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

Paul J. Tschida  
Commissioner of Public Safety

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

#### **7419.0100 DEFINITIONS.**

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Film library.** "Film library" means the film library staffed and funded by the Minnesota Department of Public Safety.

Subp. 3. **Films.** "Films" means 16 millimeter films and video cassettes used in the instruction of traffic safety or as support material in the instruction of traffic safety.

Subp. 4. **Traffic safety instruction.** "Traffic safety instruction" means instructional or educational programs addressing driver education, pedestrian safety, motorcycle safety, bicycle safety, defensive driving, and energy conservation in vehicles or other vehicular means of transportation.

Subp. 5. **Renter.** "Renter" means a person, group, governmental agency, or other organization requesting films from the film library.

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# PROPOSED RULES

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## 7419.0200 PURPOSE AND SCOPE.

Subpart 1. **Purpose.** The purpose of this chapter is to establish film rental fees for films in the Minnesota Department of Public Safety film library used as instructional aids in traffic safety education.

Subp. 2. **Scope.** The scope of this chapter is intended to be consistent with Minnesota Statutes, section 299A.01, subdivision 6.

## 7419.0300 FILM RENTAL.

The film library may rent films for traffic safety instruction to schools, civic groups, subdivisions and agencies of state government, commercial driver training schools, and individuals.

## 7419.0400 RENTAL FEES.

Rental fees are based on the length and age of the film. Film rates listed in this part are for color films. The fees for black and white films are 20 percent less than the fees for corresponding color films. The fees for color films are as follows:

Running Time	Film Less Than Four Years Old	Film Over Four Years Old
Less than 15 minutes	\$4.00	\$3.00
15 minutes but less than 30 minutes	5.00	4.00
30 minutes or more	5.50	4.50

An annual membership is available at a fee of \$750, that allows only public or nonpublic elementary and secondary schools located within a public school district, as a group, to rent the films for use by all or any of its individual public schools or nonpublic schools on a yearly basis from July 1 to June 30. The annual membership is subject to the conditions of parts 7419.0100 to 7419.0800 except for the regular fee schedule.

## 7419.0500 RENTAL TERMS.

Films may be rented from the film library for a period of one to five days. The renter must provide the dates when the film will be used. The film library shall mail rented films in advance of the first day of use so that the renter receives the film in time. Films returned by mail must be postmarked by the day following the date provided for the last day of use of the film. If the film requested is not available, the film library shall notify the renter and give the renter an option of renting a comparable film. If the comparable film is objectionable, the renter must notify the film library immediately. If no objection is received, the comparable film will be sent to the renter at the applicable fee, if any, under part 7419.0400.

## 7419.0600 LATE FEES.

The department shall assess late fees when a film being returned is postmarked later than the day after the date provided for the last day of use of the film. The late fee for being one to six days late is twice the initial rental fee. The late fee for being seven to 12 days late is four times the initial rental fee. The late fee will again double for each subsequent six-day period.

## 7419.0700 FILM RETURN POSTAGE.

Film return postage must be paid by the renter. Films should be insured when mailed back to the film library.

## 7419.0800 FILMS LOST OR DESTROYED.

Films lost or destroyed while in the renter's possession or while in the return mail must be replaced at the film library by the renter.

## Department of Public Safety State Patrol Division

### Proposed Rules Relating to Slow Moving Vehicle Emblems

#### Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. Section 14.14, Subd. 1a, in the above entitled matter in the Department of Transportation Building, Highway 52 North, Rochester, Minnesota, on August 20, 1986, commencing at 10:15 a.m., and continuing until all interested persons or groups have had an opportunity to be heard concerning adoption of the

proposed rules by submitting either oral or written data, statements or arguments. The hearing will be conducted by Administrative Law Judge Jon L. Lunde, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, MN 55415; telephone 341-7645. The rule hearing procedure is governed by Minn. Stat. Sections 14.02 to 14.45 and 14.48 to 14.56 and by Minn. Rules 1400.0200 to 1400.1200. Questions regarding procedure may be directed to the Administrative Law Judge at the above listed address.

As a result of the hearing process, the proposed rules may be modified. The department therefore strongly urges those who may potentially be affected by the substance of the proposed rules to participate in the hearing process. Written comments may be submitted without appearing at the hearing by mailing them to the Administrative Law Judge. Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends. This comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Any written comments submitted to the Administrative Law Judge will be available for review at the Office of Administrative Hearings. In addition, following the close of the initial comment period, interested persons and the agency will be allowed to submit responses to any new information submitted in the comments received during the initial comment period. The responses must be filed within three working days of the close of the initial comment period. Additional evidence may not be submitted during this three day period.

The department's authority to adopt the proposed rules is contained in Minnesota Statutes, Section 169.522, Subd. 1. The proposed rules relate to the establishment of an alternate Slow Moving Vehicle Emblem. A copy of the proposed rules follow this Notice.

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. Section 10A.01, Subd. 11, as an individual:

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

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

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

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the department and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all of the evidence and argument which the department anticipates presenting at the hearing, justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the department or the Office of Administrative Hearings at the cost of reproduction.

**Notice:** Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the department may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rule was adopted and filed with the Secretary of State. The notice must be given on the same day that the rule is filed. If you desire to be so notified you may so indicate at the hearing or so request of the department at any time prior to the filing of the rule with the Secretary of State.

The department estimates that there will be no cost to local public bodies in the state to implement the rules for the two years immediately following their adoption, within the meaning of Minn. Stat. Section 14.11, Subd. 1. The department anticipates that the rule will not have a direct and substantial adverse effect on agricultural land within the meaning of Minn. Stat. Section 14.11, Subd. 2.

One free copy of the proposed rules is available and may be obtained by writing to the Department of Public Safety, Slow Moving Vehicle Emblem Rules, 211 Transportation Bldg., St. Paul, MN 55155. Additional copies will be available at the hearing.

Paul J. Tschida  
Commissioner of Public Safety

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# PROPOSED RULES

## Rules as Proposed

### 7440.0100 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. Alternate SMV emblem. "Alternate SMV emblem" is the SMV emblem that may be displayed instead of the standard SMV emblem by persons who have obtained a permit to display the alternate SMV emblem from the commissioner.

Subp. 2. and 3. [Unchanged.]

Subp. 3a. Commissioner. "Commissioner" means the commissioner of public safety.

Subp. 4. to 6. [Unchanged.]

Subp. 7. ~~Slow moving vehicle~~ SMV emblem. "~~Slow moving vehicle~~ SMV emblem" means the triangular multicolored device used to identify slow moving vehicles.

Subp. 8. [Unchanged.]

### 7440.0300 DESCRIPTION OF ~~SLOW MOVING VEHICLE EMBLEM~~ SMV AND ALTERNATE SMV EMBLEMS.

Subpart 1. SMV emblem. The SMV emblem consists of a fluorescent yellow-orange triangle with a dark red reflective border. The yellow-orange fluorescent triangle provides a brightly visible daylight identification. The reflective red border defines the shape of the fluorescent triangle in daylight and appears as a hollow red triangle when illuminated by motor vehicle headlights at night.

Subp. 2. Alternate SMV emblem. The alternate SMV emblem consists of a dull black triangle with a white reflective border.

### 7440.0350 PERMIT TO DISPLAY ALTERNATE SMV EMBLEM.

Subpart 1. Conflicting beliefs. Persons who are members of a local congregation of a recognized church or religious denomination that professes principles or tenets that conflict with the display of the standard SMV emblem may apply for a permit to display the alternate SMV emblem.

Subp. 2. Application. Applications for permits to display the alternate SMV emblem must be made on an application form prescribed by the commissioner. The application must contain a statement of the conflicting religious principles or tenets on which the applicant's objection to the display of the standard SMV emblem is based.

Subp. 3. Permit use requirements. The alternate SMV emblem may be used only on animal-drawn vehicles. A person operating a vehicle displaying the alternate SMV emblem must have in possession in the vehicle a permit or copy of a permit to display the alternate SMV emblem. A permit is not transferable and may not be used by persons other than employees or immediate household members of the family of a person who has obtained a permit. The permit must be displayed to a peace officer upon request.

Subp. 4. Permit life. A permit for the display of the alternate SMV emblem is valid for a period of four years.

### 7440.0400 DESIGN STANDARDS AND SPECIFICATIONS.

Subpart 1. **Dimensional requirements.** The size shall must be as shown in part 7440.9920. Size of Backing material for portable SMV emblems shall must have the same geometric shape as the emblem and may be slightly larger in order to provide a margin of not more than one-fourth inch.

Subp. 2. **Color and reflectivity.** The design standards and specifications for color and reflectivity are:

A. The spectrophotometric color values of the yellow-orange fluorescent material shall must have a dominant wave length of ~~590-610~~ 602-610 millimicrons and a purity of ~~98~~ 84 percent before the exposure test, specified in subpart 3. The dominant wave length of the fluorescent material after the exposure test shall must not change more than ten percent.

B. The ~~dark red~~ reflective material shall have minimum intensity values at each of the angles listed in part 7440.9910, with all measurements conducted in accordance with photometric testing procedures for reflex reflectors as specified in SAE Standard, J594, Reflex Reflectors, and using 50 plus or minus five square inches of reflective material. The maximum dimension of the test surface shall not be greater than ~~1-1/2~~ 1-1/2 times the minimum dimension used on SMV and alternate SMV emblems must conform to federal specification L-S-300C, Table II, "Specific Intensity per unit Area (SIA): Minimum Reflectivity 1 Sheet and Tape," of March 20, 1979, approved by the Commissioner, Federal Supply Service, General Services Administration. Table II is incorporated by reference, is not subject to frequent change, and is located and available for copying at the Minnesota State Law Library, 117 University Avenue, Saint Paul, Minnesota 55155. Federal Specification L-S-300C is available from the General Services Administration, Business Service Center, Chicago, Illinois 60604.

C. After exposure test, specified in subpart 3, the minimum reflective intensity values for the reflective material shall not change more than 20 percent from the values specified in part 7440.9910. The size and shape of SMV and alternate SMV emblems must comply with parts 7440.9920 and 7440.9930, respectively.

Subp. 3. **Exposure.** The fluorescent, dull black, and reflective material ~~shall~~ must show no appreciable discoloration, cracking, crazing, blistering, loss of durable bond, or dimensional change after exposure to the sun at an angle of 45 degrees to horizontal and facing south per ASTM Standard D1014, Method of Conducting Exterior Exposure Tests of Paints on Steel, for ~~appropriate~~ a test period as ~~shown in part 7440.9915~~ of 12 months in southern Florida.

Subp. 4. **Backing material.** The backing material for portable SMV emblems ~~shall~~ must be 0.040 inch minimum thickness aluminum sheet, 0.08 inch or 2.0 millimeter minimum thickness rigid acrylonitrile butadiene styrene (ABS) plastic, 22 gauge (0.030 inch or 0.8 millimeter) minimum thickness mill-galvanized or coated sheet steel, or other material of equal strength, with the application surface clean and free of oil, grease, etc., so as to be receptive to a durable bond of the fluorescent and reflective materials. The backing material ~~shall~~ must be free of burrs and corners ~~shall~~ must be slightly rounded.

Subp. 5. [Unchanged.]

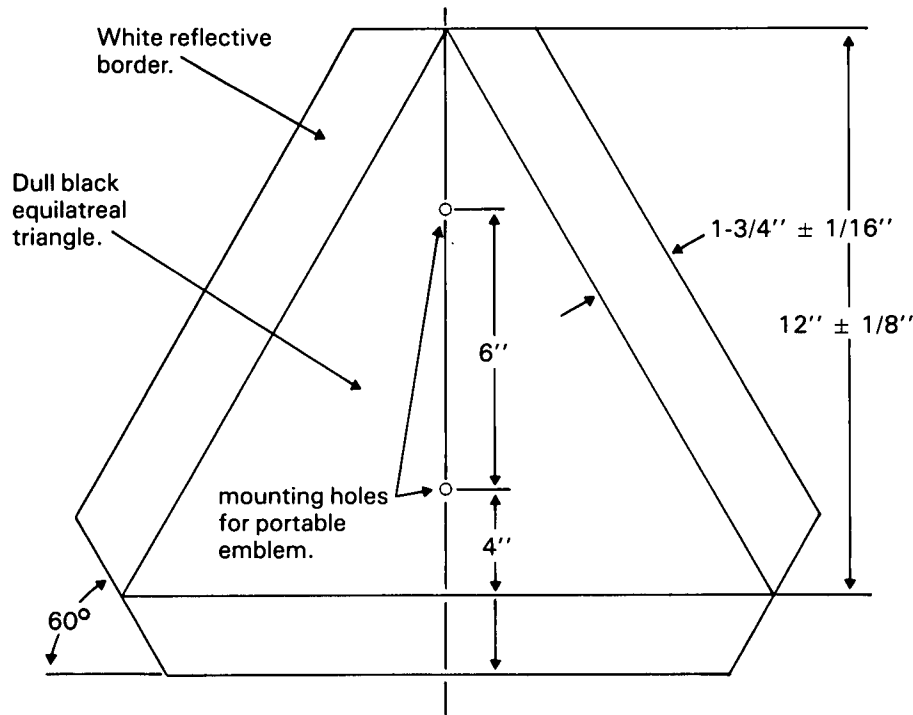
**7440.0500 STANDARDS AND SPECIFICATIONS FOR MOUNTING.**

Subpart 1. **Location.** The SMV emblem ~~shall~~ or alternate SMV emblem must be mounted point up, as shown in part 7440.9920 in a plane perpendicular to the direction of travel. It ~~shall~~ must be placed centrally at the rear of the vehicle, unobscured, and two to six feet above the ground measured to the lower edge of the emblem.

Subp. 2. **Attachment.** The SMV emblem or alternate SMV emblem may be permanently attached to the vehicle or equipment when practical. Unless the SMV emblem or alternate SMV emblem is attached directly and permanently to the vehicle, it ~~shall~~ must be mounted by using devices designed to hold the emblem in the position and location specified in ~~item A~~ subpart 1. The SMV emblem mounting device referred to in Minnesota Statutes, section 169.522 ~~shall~~ must be the socket specified in the ASAE Standard S277 current at the time of manufacture or assembly of the SMV emblem or alternate SMV emblem.

Subp. 3. [Unchanged.]

**7440.9930 ALTERNATE SMV EMBLEM.**



REPEALER. Minnesota Rules, parts 7440.9910 and 7440.9915 are repealed.

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## ADOPTED RULES

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

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

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

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

## Department of Commerce

### Adopted Rules Relating to Insurance Prelicense Education

The rules proposed and published at *State Register*, Volume 10, Number 18, pages 986-992, October 28, 1985 (10 S.R. 986) are adopted with the following modifications:

#### Rules as Adopted

##### 2725.0100 DEFINITIONS.

Subp. 8. **Sponsor.** "Sponsor" means a person offering or providing insurance education ~~and satisfying.~~ A sponsor of prelicense education must satisfy the requirements for a private vocational school as mandated by the Minnesota Department of Education.

##### 2725.0110 GENERAL REQUIREMENTS.

Subp. 4. **Credit hours.** Continuing education courses must be attended in their entirety in order for a licensee to receive full credit. Proportional credit will be given for partial attendance at a continuing education course. Sponsors may not issue certificates of compliance to students that have not attended the entire prelicensing course. Certificates of compliance may be issued to students who have completed the entire course even if the student did so by attending more than one offering of the course.

Upon completion of approved courses, students shall receive credit for the number of hours approved for the course based on one hour of credit for each hour of attendance.

~~If the number of credit hours for which a course is approved is fewer than the total number of hours of the course, the student must attend the entire course in order to receive credit for the number of approved hours.~~

The number of approved hours will include only time spent on educational activities.

The approved instructor for a continuing education course shall earn ~~three~~ one and one-half hours of continuing education credit for each one hour of instruction of approved continuing education courses.

Neither students nor instructors may earn continuing education credit for attending or instructing at any subsequent offering of the same continuing education course for three years after attending or teaching the course.

## Department of Jobs and Training

### Adopted Rules Relating to Youth Employment Opportunity

The rules proposed and published at *State Register*, Volume 10, Number 41, pages 2056-2058, April 7, 1986 (10 S.R. 2056) are adopted as proposed.

## Department of Public Safety

### Adopted Rules Relating to Preliminary Screening Breath Test Devices

The rules proposed and published at *State Register*, Volume 10, Number 34, pages 1711-1713, February 17, 1986 (10 S.R. 1711) are adopted as proposed.



# OFFICIAL NOTICES

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

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

## Department of Commerce

### Notice of Hearing on Proposed Activation of the Minnesota Joint Underwriting Association to Insure Specified Classes of Business

Notice is given that a public hearing will be held pursuant to Minnesota Statute Section 14.14, subdivision 1 (1984), in the above-entitled matter in Room 5, State Office Building, 435 Park Street, St. Paul, Minnesota 55155, on August 12, 1986 at 9:00 A.M. and continuing until all interested persons and groups have had an opportunity to be heard concerning Activation of the Minnesota Joint Underwriting Association (MJUA) to Insure Specified Classes of Business. The hearing is governed by Minnesota Statute Section 14.57-14.69 and by Minnesota Rules Parts 1400.5100-1400.8400, as amended (Amended Rules published at 9.SR.2276). Questions regarding procedure may be directed to Administrative Law Judge George Beck, 4th Floor Summit Bank Building, 310 4th Avenue South, Minneapolis, MN 55415, telephone (612) 341-7601.

The Commissioner proposes to activate the Minnesota Joint Underwriting Association for the following classes of business:

- day care providers
- foster parents
- foster homes
- developmental achievement centers
- group homes
- sheltered workshops
- citizen participation groups
- recreational facilities
- electrical inspectors
- architects
- design engineers
- asbestos abatement contractors
- environmental contractors
- volunteer guardianship providers
- directors and officers of nonprofit agencies
- crane operators
- landfills (does not include Environmental Impairment Liability Coverage)

The authority for this proceeding is found in Chapter 455 Laws of Minnesota 1986 codified as Chapter 621 of Minnesota Statutes specifically sections 40 and 41 of Chapter 455 codified as Minnesota Statutes 621.21 and 621.22. (A copy of those sections follows this notice.)

Chapter 455 Laws of Minnesota 1986 which created the Minnesota Joint Underwriting Association provides for temporary activation for 180 days by the Commissioner of Commerce. To extend the Minnesota Joint Underwriting Association's authority beyond the 180 day period a hearing must be held. Those classes of business for which the Minnesota Joint Underwriting Association was temporarily activated must prove, at that hearing, that they meet the statutory requirements for coverage by the Minnesota Joint Underwriting Association.

Among those requirements are:

- (1) That they are unable to obtain insurance through ordinary means; and
- (2) The insurance is required by statute ordinance, or otherwise required by law, and is necessary to earn a livelihood or conduct a business; and
- (3) Serves a public purpose.

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

## OFFICIAL NOTICES

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The classes of business specified in this notice must be shown to meet the statutory requirements or the Minnesota Joint Underwriting Association's authority to provide coverage to them will end after 180 days from the date the Commissioner's Notice of Activation was published in the *State Register*.

The Department strongly suggests that any persons affected by this hearing or otherwise interested in the proceedings familiarize themselves with the requirements of Chapter 455 and the contested case procedures prior to the hearing. That they take such other steps as are appropriate to protect their interests and that any questions they may have as to how to proceed or how to participate at the hearing be directed to the Administrative Law Judge prior to the hearing.

All interested or affected persons will have an opportunity to participate at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in the manner set forth in the Rules pertaining to contested cases (Minnesota Rules 1400.5100-1400.8400).

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

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

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

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

6 June 1986

Michael A. Hatch  
Commissioner of Commerce

### Minnesota Statutes:

#### Sec. 40 [62I.21] [ACTIVATION OF MARKET ASSISTANCE PLAN AND JOINT UNDERWRITING ASSOCIATION.]

At any time the commissioner of commerce deems it necessary to provide assistance with respect to the placement of general liability insurance coverage on Minnesota risks for a class of business, the commissioner shall by notice in the state register activate the market assistance plan and the joint underwriting association. The plan and association are activated for a period of 180 days from publication of the notice. At the same time the notice is published, the commissioner shall prepare a written petition requesting that a hearing be held to determine whether activation of the market assistance plan and the joint underwriting association is necessary beyond the 180-day period. The hearing must be held in accordance with section 41. The commissioner by order shall deactivate a market assistance program and the joint underwriting association at any time the commissioner finds that the market assistance program and the joint underwriting association are not necessary.

#### Sec. 41. [62I.22] [HEARING.]

**Subdivision 1. [ADMINISTRATIVE LAW JUDGE.]** The commissioner shall forward a copy of the petition to activate the market assistance plan and the joint underwriting association with respect to a class of business to the chief administrative law judge. The chief administrative law judge shall, within three business days of receipt of the copy of the petition, set a hearing date, assign an administrative law judge to hear the matter, and notify the commissioner of the hearing date and the administrative law judge assigned to hear the matter. The hearing date must be no less than 60 days nor more than 90 days from the date of receipt of the petition by the chief administrative law judge.

**Subd. 2. [NOTICE.]** The commissioner of commerce shall publish notice of the hearing in the *State Register* at least 30 days before the hearing date. The notice should be that used for rulemaking under chapter 14. Approval by the administrative law judge of the notice prior to publication is not required.

**Subd. 3. [CONTESTED CASE; REPORT.]** The hearing and all matters after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

**Subd. 4 [DECISION.]** The commissioner shall make a decision within ten days of the receipt of the administrative law judge's report.

**Subd. 5. [WAIVER OR MODIFICATION.]** If all parties to the proceeding agree, any of the requirements of this section may be waived or modified.

## **Department of Health Office of Health Systems Development**

### **Outside Opinion Sought Regarding Proposed Rules Governing Health Maintenance Organizations**

Notice is hereby given that the State Department of Health is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing health maintenance organizations. The proposed rules will identify the differences between preferred provider arrangements and health maintenance organizations; will describe the circumstances under which a preferred provider arrangement may require a certificate of authority under Minnesota Statutes Chapter 62D in order to operate; and will address other related matters.

The promulgation of these rules is authorized by Minnesota Statutes § 62D.20, which permits the commissioner of health to promulgate such reasonable rules and regulations as are necessary or proper to carry out the provisions of sections 62D.01 to 62D.29.

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

Judith M. Walker  
Alternative Delivery Systems  
Room 450  
Minnesota Department of Health  
717 Delaware Street S.E.  
Minneapolis, Minnesota 55440

Oral Statements will be received during regular business hours over the telephone at 623-5545 and in person at the above address. Any written material received by the State Department of Health shall become part of the record in the event the rules are promulgated.

30 May 1986

Sister Mary Madonna Ashton  
Commissioner of Health

## **Department of Health Bureau of Community Services**

### **Public Hearing Regarding Fiscal Year 1987 Minnesota State Plan for the Special Supplemental Food Program for Women, Infants, and Children (WIC)**

Pursuant to the requirement of regulations issued by the United States Department of Agriculture under Section 3 of Public Law 95-627 which amends Section 17 of the Child Nutrition Act of 1966, the Minnesota Department of Health will sponsor a public meeting to enable the general public to participate in the development of the Fiscal Year 1987 Minnesota State Plan for the Special Supplemental Food Program for Women, Infants and Children (WIC). Copies of the draft Plan will be available for public inspection on request.

The meeting will be held Monday, July 14 at the Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota. The meeting will begin at 1:00 p.m. in Room 100 and will conclude upon the presentation of all testimony. Persons wishing to attend and/or present testimony are requested to register in advance by July 11, 1986.

Any citizen or group may submit either written or oral testimony at the meeting. Testimony will be given on a first come, first served basis.

For further information, contact:

Minnesota Department of Health  
WIC Program  
717 Delaware Street S.E.  
P.O. Box 9441  
Minneapolis, MN 55440  
(612) 623-5115

## **Department of Labor & Industry**

### **Notice of Correction to Prevailing Wage Rates**

The highway and heavy prevailing wage rates certified on June 1, 1986 for labor classification 209—Crushing plant operator (gravel and stone) or gravel washing, crushing and screening plant operator in Scott County were certified in error.

The correct rates, effective June 5, 1986 may be obtained by contacting the State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155.

Steve Keefe, Commissioner  
Department of Labor & Industry

## **Minnesota Pollution Control Agency Solid and Hazardous Waste Division**

### **Notice of Intent to Solicit Outside Opinions Concerning Amendments to Minn. Rules Ch. 7045 Governing the Management of Hazardous Waste**

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is seeking information and opinions from sources outside the MPCA regarding possible amendments to the rules governing hazardous waste. Information and comments are being sought to aid in preparation of draft amendments.

In response to recently promulgated amendments to the United States Environmental Protection Agency (EPA) hazardous waste program, the MPCA is considering amendments to rules governing hazardous waste in the following areas:

1. Regulations pertaining to small quantity generators of hazardous waste. The amendments promulgated by EPA on March 24, 1986 (*Federal Register*, Vol. 51, pp. 10146-10176), expand the regulatory requirements for generators of between 100 kilograms and 1,000 kilograms hazardous waste per calendar month.

2. Closure, post-closure and financial responsibility requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. Amendments to the federal regulations, promulgated May 2, 1986 (*Federal Register*, Vol. 51, pp. 16422-16459), apply to both interim status and permitted facilities.

3. Listing of various wastes as hazardous, including:

—wastes from the production of ethylene dibromide (EDB) as promulgated in the February 13, 1986 *Federal Register*, Vol. 51, pp. 5327-5331.

—wastes from the production of dinitrotoluene (DNT), toluene diamine (TDA), and toluene diisocyanate (TSI) as promulgated in the October 23, 1985 *Federal Register*, Vol. 50, pp. 42936-42943.

—Spent 1,1,2-trichloroethane, benzene, 2-ethoxyethanol, and 2-nitropropane as promulgated in the February 25, 1986 *Federal Register*, Vol. 51, pp. 6537-6542.

The MPCA requests information and comments concerning the subject matter of the proposed amendments. Written or oral information or comments will be accepted until July 16, 1986. Written statements should be addressed to:

Carol Nankivel  
Minnesota Pollution Control Agency  
Solid and Hazardous Waste Division  
1935 West County Road B2  
Roseville, Minnesota 55113

Oral statements will be received during regular business hours at 612/296-7260.

## **Teachers Retirement Association**

### **Meeting Notice of the Board of Trustees**

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Wednesday, June 25, 1986, at 9:00 a.m. in Room 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota to consider employment of an Executive Director.

**Transportation Regulation Board**

**Outside Information or Opinions Sought by the Transportation Regulation Board Regarding Proposed Rules Governing Railroad Property First Refusal**

The Transportation Regulation Board (Board) has been directed to develop and implement rules relating to railroad property first refusal. House File No. 1599, Art. 14 (amending Minn. Stat. ch. 222). Under the recently enacted legislation the Board is required to resolve disputes between "lease holders" and "railroad interests" over the proper valuation of real property within a right-of-way being abandoned or sold by the railroad interest. The rule must (1) define the terms "lease holders" and "railroad interest;" (2) establish a procedure to resolve disputes; and (3) provide for the use of independent appraisers.

The Board requests information and opinions concerning the subject matter of the rule, including proposals regarding the procedures the Board should undertake to resolve disputes over the valuation of real property within a right-of-way being abandoned or sold by the railroad interest. Interested persons or groups may submit data or views on this subject matter of concern in writing. Written statements should be addressed to Jerome E. Pedersen, Rate Director, Transportation Regulation Board, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55057; telephone: (612) 296-2349. Written information, opinions and proposals must be received no later than August 12, 1986.

The Board has scheduled a meeting to take oral statements or opinions regarding this subject matter of concern. That meeting will be on Wednesday, September 3, 1986 at 1:30 p.m. in the Board's hearing room at the Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. If any interested person or organization desires to give oral comment or opinion on the subject matter of concern, they should be present at that meeting.

Any written material received by the Board shall become a part of the rule making record in the event the rule is adopted.

Dated 13 June 1986

Roger Laufenburger, Chairman  
Transportation Regulation Board

**STATE CONTRACTS**

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

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

**Department of Administration—Procurement Division**

**Contracts and Requisitions Open for Bid**

**Call 296-6152 for Referral to Specific Buyers.**

Commodity for Bid	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Move Office Equip. for MN Pollution Control	June 16, 1986	MN Pollution Control Agency	Roseville	02-310-14759
Computerized Recorder	June 16, 1986	Public Safety	St. Paul	07-300-38070
Truck (Rebid)	June 16, 1986	Natural Resources	Grand Rapids	29-002-12121
Footwear	June 16, 1986	Natural Resources	Grand Rapids	29-007-40948
Extended Campus Class Schedules	June 16, 1986	Mankato State University	Mankato	26-071-16692-381
Used Snowmobile Rebid	June 17, 1986	Natural Resources	Various	29-000-43767

## STATE CONTRACTS

Commodity for Bid	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Furnish & Install Paired Panel Partition Walls	June 17, 1986	Corrections Department	Thistledew Camp, Togo	79-000-41711, 52722
Purchase of Mail Sorting Equip.	June 17, 1986	Revenue	St. Paul	67-150-11429
Rubbish Disposal	June 17, 1986	Regional Human Services Center	Brainerd	55-304-07035, Price-Contract
4 x 2 Super Cab Type Rebid	June 17, 1986	Natural Resources	St. Paul	29-006-05091
Typesetter	June 18, 1986	Transportation	St. Paul	79-000-52677
Lounge Area Seating	June 18, 1986	North Hennepin Community College	Minneapolis	02-310-14716
Compact Utility Vehicle	June 18, 1986	Pollution Control Agency	Roseville	32-300-14289
Disc Type Brush Chipper Rebid	June 18, 1986	Transportation	Owatonna	79-382-01083
Sheet Music	June 18, 1986	Various	Various	Price-Contract
Purchase of Remittance Processing Computer System	June 19, 1986	Revenue Department	St. Paul	67-150-11428
Color Coded Folders	June 19, 1986	PERA (Public Employees Retirement Association)	St. Paul	63-000-00894
Papers, Misc. (Kraft Wrap, Tape & Cotton Twine)	June 20, 1986	Central Stores	St. Paul	Price-Contract
Purchase of Office Automation System	June 20, 1986	Higher Education Coordinating Board	St. Paul	60-000-04680
Rubber Footwear	June 20, 1986	Various	Various	Sch. 48 Price-Contract
Big Redd Incubator	June 20, 1986	Natural Resources	Glenwood	29-000-43895
Proteus Table Rebid	June 20, 1986	Rochester Community College	Rochester	27-148-48152
Infant Car Seats	June 20, 1986	Public Safety	Various	07-100-36637
Library Shelving	June 23, 1986	Minneapolis Community College	Minneapolis	27-151-47312, 27-151-47314
Telephone System	June 23, 1986	Pollution Control Agency	Roseville, MN	02-310-14761
Tables	June 23, 1986	North Hennepin Community College	Brooklyn Park	02-310-14715
Boiler	June 23, 1986	Natural Resources	St. Paul, MN	829000-44085
Drinking Water & Cooler Rental	June 23, 1986	Various State Agencies	Various	Price-Contract

## Department of Education Curriculum and Technology Section

### Request for Proposals for Evaluation Service

The Curriculum and Technology Section is seeking qualified individuals or organizations with experience in evaluating educational programs (eg. Mastery Learning), designing evaluation instruments, reviewing/analyzing data and writing reports. The person(s) providing these services will be expected to work under contract in conjunction with the Minnesota Department of Education personnel and the Mastery Learning Advisory Committee.

It is anticipated that the cost of these services to be provided during the contract period from September 15, 1986, through December 1, 1987 will be \$15,000.

The full text of the Request For Proposal is available on request. Inquiries and responses must be directed to:

Marlys Peters  
Minnesota Department of Education  
681 Capitol Square  
550 Cedar Street  
St. Paul, MN 55101

The deadline for submission of completed proposals will be the close of working day August 1, 1986.

## **Minnesota Higher Education Coordinating Board**

### **Request for Proposals for Consultant to Produce Videotape for Potential Student Loan Borrowers**

Notice is hereby given that the Minnesota Higher Education Coordinating Board plans to hire a consultant to produce a videotape for use in helping students make informed decisions about borrowing to help finance their education beyond high school. Those interested in receiving requests for proposal should contact:

Philip M. Lewenstein  
Director of Communications and Legislation  
400 Capitol Square Building  
550 Cedar St.  
St. Paul, MN 55101

Proposals will be accepted until 4 p.m., June 27.

## **Minnesota Historical Society**

### **Notice of Availability of Contract for Production and Printing of 1986-87 Educational Services Catalog**

Sealed bids for the production and printing of the 1986-87 Minnesota Historical Society Catalog of Educational Services, in accordance with specifications prepared by the Educational Resources Department of the Society, will be received until 2:00 p.m., June 25, 1986, in the office of the Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, MN 55101. The bids will be publicly opened and read aloud. Bids received after 2:00 p.m., June 25, 1986 will be returned unopened.

Each bid must be accompanied by a cash deposit, cashier's check, certified check, or bidders bond, acceptable to the Society, in an amount equal to 5 percent of the bid, payable without condition to the Minnesota Historical Society, as a guarantee that the bidder, if awarded the contract, will promptly execute such contract in accordance with the bid and will furnish the required performance bond.

Copies of the specifications may be obtained by contacting Mark Schwartz, Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, MN 55101, (612) 296-8378.

The Minnesota Historical Society reserves the right to accept or reject any or all bids and to waive any irregularities therein. Once submitted, bids may not be withdrawn.

## **Minnesota Historical Society**

### **Notice of Availability of Contract for Purchase and Installation of Carpeting at James J. Hill House**

Sealed bids for the purchase and installation of carpeting at the James J. Hill House, in accordance with specifications prepared by the Minnesota Historical Society, will be received until 2:00 p.m., June 26, 1986, in the office of the Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, MN 55101. The bids will be publicly opened and read aloud. Bids received after 2:00 p.m., June 26, 1986 will be returned unopened.

Each bid must be accompanied by a cash deposit, cashier's check, certified check, or bidder's bond, acceptable to the Society, in an amount equal to 5 percent of the bid, payable without condition to the Minnesota Historical Society, as a guarantee that the bidder, if awarded the contract, will promptly execute such contract in accordance with the bid and will furnish the required performance bond.

Copies of the specifications may be obtained by contacting Mark Schwartz, Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, MN 55101, (612) 296-8378.

The Minnesota Historical Society reserves the right to accept or reject any or all bids and to waive any irregularities therein. Once submitted, bids may not be withdrawn.

## Department of Human Services

### Notice of Request for Proposal for Prepaid Health Plans

The Department of Human Services is seeking proposals from prepaid health plans to provide health care services for General Assistance Medical Care (GAMC) recipients in St. Louis County. Prepaid plans must be organized to provide all GAMC covered services and must be able to accept financial risk. Capitation rates will be set by the department. Contracts will be awarded based on: (1) geographic accessibility of service delivery sites, (2) ability to provide service to the entire range of the GAMC population, (3) financial and risk capability, and (4) ability to meet quality assurance, grievance and service delivery standards.

The formal request for proposal which contains detailed specifications may be requested from the department. The deadline for submitting a proposal is 4:00 p.m., July 31, 1986. Three copies are required. Selection of health plans will be made in August, 1986. Please direct proposals and inquiries to:

William E. Novak  
Department of Human Services  
Space Center Building  
444 Lafayette Road  
St. Paul, Minnesota 55101  
Phone: 612/296-1725

## State Designer Selection Board

### Request for Proposal for a Design Contract for Project at the University of Minnesota-St. Paul Campus

#### To Design Professionals Registered in Minnesota:

The State Designer Selection Board has been requested to select designer for a project at the University of Minnesota-St. Paul. Design firms who wish to be considered for the project should submit proposals on or before 4:00 p.m., July 8, 1986, to George Iwan, Executive Secretary, State Designer Selection Board, Room G-10, Administration Building, St. Paul, Minnesota 55155-1495.

#### The proposal must conform to the following:

1. Six copies of the proposal are required.
2. All data must be on 8½" × 11" sheets, soft bound; the proposal shall not consist of more than 20 faces.
3. The cover sheet of the proposal must be clearly labeled with the project number, as listed in number 7 below, together with the design firm's name, address, telephone number, and the name of the contact person.
4. **Mandatory Proposal contents in sequence:**
  - a) Identity of firm and an indication of its legal status, i.e. corporation, partnership, etc. If the response is from a joint venture, this information must be provided for firms comprising the joint venture.
  - b) Names of the persons who would be directly responsible for the major elements of the work, including consultants, together with brief descriptions of their qualifications. If desired, identify roles that such persons played in projects which are relevant to the project at hand.
  - c) A commitment to enter the work promptly, if selected, by engaging the consultants, and assigning the persons named in 4b above along with adequate staff to meet the requirements of work.
  - d) A list of State and University of Minnesota current and past commissions (including total fees) under contract with the firm(s) submitting this proposal which were awarded during the three years immediately preceding the date of this Request for Proposals.
  - e) A section 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 and their roles must be clearly described. It must be noted if the personnel named were, at the time of the work, employed by other than their present firms.

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



**5. Statutory Proposal Requirements:**

In accordance with the provisions of Minnesota Statutes, 1981 Supplement, Section 363.073; for all contracts estimated to be in excess of \$50,000.00, 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. **The proposal will not be accepted unless it includes 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 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; **or**
- d) A statement certifying that the firm has an application pending for a certificate of compliance.

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

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

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

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

**7. PROJECT—7-86****Raptor Research and Rehabilitation****Program Building****University of Minnesota-St. Paul****St. Paul, Minnesota****Estimated Project Cost: \$1,100,000.00****PROJECT DESCRIPTION:**

The University of Minnesota plans to construct a Raptor Research and Rehabilitation Program Building, to be located on the St. Paul campus. The project consists of new construction of approximately 9,000 gsf plus 2,700 sf of outdoor aviaries. The estimated construction cost is approximately \$830,000.00. The major components of the project consist of:

- Surgery/Treatment and Exam Area (approximately 1,000 asf).
- Research Laboratories (approximately 1,050 asf).
- Free Flight Rooms (approximately 1,200 asf): 12 free flight rooms of various sizes to hold eagles, hawks, owls, and other raptors.
- Office/Reception/Multi-Purpose Room (approximately 1,600 asf).
- Outdoor Aviaries (approximately 2,700 asf): An outdoor eagle pen/aviary of 1,800 asf and an outdoor buteo pen/aviary of 900 asf.

The balance of the project will consist of a medical supply and equipment storage room, a necropsy area, a food preparation and storage room, cleaning and waste room, and a storeroom. Design is to be compatible with the existing buildings in the area.

Questions concerning this project may be referred to Clinton Hewitt at (612) 625-7355.

George F. Klein, Chairman  
State Designer Selection Board

# NON-STATE PUBLIC CONTRACTS

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The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector.

It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

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## Metropolitan Council of the Twin Cities Area

### Request for Sealed Bids for Lease or Lease/Purchase of a Phototypesetting System

The Metropolitan Council solicits sealed bids for the lease or lease-purchase of a phototypesetting system. Two copies of the proposal should be submitted to the Metropolitan Council, 300 Metro Square Building, 7th and Robert Streets, St. Paul, MN 55101, attention: Dick Savage, Facilities Coordinator. All proposals received by the facilities coordinator on or before 4 p.m. July 7 will be considered by the Council.

The Council specifically reserves the right to reject any or all proposals, to waive any formal requirements, to reject any provision in any proposal, to obtain new proposals, or to proceed to do the work otherwise.

The Metropolitan Council hereby notifies all proposers that businesses owned and controlled by minorities or women will be afforded maximum feasible opportunity to submit proposals, and no proposer will be subjected to discrimination on the basis of race, color, sex, age, religion, ancestry, handicap, public assistance status, marital status, national origin or political affiliation.

Questions and requests for copies of the request for sealed bids should be directed to Leigh Homstad, Publications Division, by calling (612) 291-6424.

# SUPREME COURT DECISIONS

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## Decisions Filed Friday 6 June 1986

### Compiled by Wayne O. Tschimperle, Clerk

#### **C8-84-2233 In Re the Marriage of: Daniel W. Lindsey, petitioner, Appellant v. Roseann Lindsey. Court of Appeals.**

By its express language, Minn. R. Civ. P. 60.02, is inapplicable to the modification of a final dissolution decree. Such decree may only be set aside upon a showing that the circumstances of a particular case amount to fraud upon the court and the administration of justice under *Bredemann v. Bredemann*, 253 Minn. 21, 91 N.W.2d 84 (1958).

Affirmed as modified. Amdahl, C.J.

#### **C8-85-1514 In the Matter of Jayne Fredrickson. Court of Appeals.**

Minn. Stat. § 253B.13, subd. 2 (Supp. 1985), providing indeterminate commitment for mentally retarded persons, does not violate the due process or equal protection clauses of the state and federal constitutions.

The trial court's refusal to appoint a guardian ad litem for appellant did not violate her equal protection or due process rights under the state and federal constitutions.

Reports filed by Faribault State Hospital were sufficient under Minn. Stat. § 253B.12, subd. 1 (1984).

Affirmed. Amdahl, C.J.

#### **C0-85-146 State of Minnesota v. Charles Wesley Andrews, Appellant. Ramsey County.**

The evidence is sufficient as a matter of law to support the jury's conclusion that the defendant killed the victim intentionally and with premeditation.

The defendant knowingly and intelligently waived the privilege against self-incrimination and, under the totality of the circumstances of this case, his confession was voluntary. The trial court did not err in admitting defendant's confession into evidence.

The trial court's refusal to sequester prospective jurors during voir dire was not an abuse of discretion that denied defendant a fair trial where there was no claim of a "significant possibility" that prospective jurors would have been exposed to prejudicial pretrial

publicity and where the record reflects that trial court did not restrict defense counsel's questioning of prospective jurors about exposure to such publicity.

Affirmed. Wahl, J.

**C1-85-88, C7-85-158 Mary E. Murphy, individually, and as trustee for the heirs of Gary K. Murphy, decedent, petitioner, Appellant (C1-85-88) v. Milbank Mutual Insurance Company, petitioner, Appellant (C7-85-158) and Kemper Insurance Companies, petitioner, Appellant. Court of Appeals.**

A 1977 statute requiring an insurer to offer optional uninsured coverage, which became effective during a policy period, did not require the insurer to make the mandatory offer until the policy was reissued or renewed, and endorsements added to the policy did not activate the offer requirement.

In the instance where a Minnesota vehicle had an accident in 1977 in Iowa with an Iowa vehicle having minimum liability limits less than Minnesota's, uninsured and underinsured coverage under the No-Fault Act then in effect provided for duplicative coverages but not duplicative recoveries.

Uninsured motorist coverages in a commercial fleet policy could not be stacked because, by the terms of the policy, the claimant truck driver was an insured only for the coverage of the truck he was occupying.

A denial of a petition for discretionary review of a court of appeals decision does not give that decision any more or any less precedential effect than a court of appeals decision where no petition for review was sought.

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

#### ORDERS

**C8-82-1658 In the Matter of the Application for the Discipline of Paul C. Piper, an Attorney at Law of the State of Minnesota. Supreme Court.**

Publicly reprimanded. Amdahl, C.J.

**C6-86-212 In the Matter of the Application for the Discipline of Richard A. Johnson, an Attorney at Law of the State of Minnesota. Supreme Court.**

Publicly reprimanded. Amdahl, C.J.

**C6-86-842 In the Matter of the Application for the Discipline of James E. White, an Attorney at Law of the State of Minnesota. Supreme Court.**

Suspended indefinitely. Amdahl, C.J.

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## 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—Regular Division

#### Orders Dated 5 June 1986

Docket No. 4051

**Dennis M. and Theresa R. Tack, Appellants, vs. Commissioner of Revenue, Appellee.**

The above-entitled matter was submitted to the Tax Court on a Stipulation of Facts and written briefs without oral argument. The case was assigned to Judge Earl B. Gustafson for decision.

Phillip L. Kunkel, of Moratzka, Dillon, Kunkel and Storkamp, appeared for appellants.

Thomas K. Overton, Special Assistant Attorney General, appeared for appellee.

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

**FINDINGS OF FACT**

1. Appellants are married, cash basis taxpayers who in the years 1978 and 1979 resided at R. R. #1, Box 12900, Cannon Falls, Minnesota.

2. Appellants timely filed joint Federal and Minnesota tax returns for the years 1978 and 1979.

3. Appellant Dennis M. Tack was, during the years 1978 and 1979, a pilot for Western Airlines, based in Minneapolis, Minnesota. During said years he spent approximately 90 hours (three and 3/4 days) per week away from home engaged in employment related activities on behalf of Western Airlines. His gross income from this employment was as follows:

1978	\$71,006.98
1979	\$73,740.80

4. During the years 1978 and 1979 Mr. and Mrs. Tack owned three (3) tracts of farm land located in the state of Iowa referred to as the "Floyd County Farm," the "Mitchell County Farm," and the "Howard County Farm."

5. During the years 1978 and 1979 the Howard County Farm was leased by Donald Bartels, R.R.#2, Elma, Iowa, pursuant to the terms of a written crop share lease.

6. During the years 1978 and 1979 the Mitchell County Farm was leased to Allan Schmidt, R.R.#1, Box 183, St. Ansgar, Iowa, pursuant to the terms of a written crop share lease.

7. During the years 1978 and 1979 the Floyd County Farm was leased to Everett Gisleson, R.R.#5, Box 155A, Osage, Iowa, pursuant to the terms of a written crop share lease.

8. During the years 1978 and 1979 certain pasture land located on the Howard County Farm was rented to Dick Groff pursuant to the terms of an oral cash rent lease.

9. According to the crop share leases, Mr. and Mrs. Tack were responsible for one-half of the crop production expenses and received one-half of the crops produced on the respective farms as rent.

10. In addition to such crop production expenses, Mr. and Mrs. Tack paid the tenant of the respective farms the "normal rate" for harvesting their share of the crops produced on the respective farms except for soybeans on the Mitchell County Farm. The tenant of the Mitchell County Farm was not paid for harvesting the Tacks' share of the soybeans. After harvesting a crop, the tenant hauled the Tacks' share of the crop to the elevator specified by Mr. Tack. From that point on Mr. Tack handled all matters with respect to his share of the crop.

11. Pursuant to the terms of the crop share leases, the tenants were not required to pay, and Mr. and Mrs. Tack did not receive a predetermined or fixed amount for rental of the respective farms during 1978 and 1979.

12. During 1978 and 1979 the Tacks' income from the respective farms was derived directly from, and dependent upon, the production of crops on the respective farms.

13. Mr. Tack owned and personally used the following equipment on the farms in question during the periods in question:

<u>ITEM</u>	<u>PRICE</u>	<u>ACQUIRED</u>
disc	\$ 260.00	1978
plow	140.00	1978
post hole digger	400.40	1978
tractor	6,078.80	1978
mower	509.95	1979
pick-up	6,200.00	1979

During the period in question, Mr. Tack used these items on pastures, fences and fallow areas. He also used them to build new fences, to clear land and to terrace land.

14. Farm management decisions were handled as follows: Mr. Tack met with each tenant at least twice each year, once after the fall harvest and once after the spring planting. At the post-harvest meeting the tenant would discuss with Mr. Tack his proposals for the next year's crop. The criteria for crop selection was to maximize income consistent with good farming practice. At all relevant meetings Mr. Tack concurred with the tenants' crop proposals. The tenants made more particular management decisions including such matters as seed selection, time and method of planting, chemical selection, fertilizer selection, weed control, cultivation methods and time of harvesting.

15. The gross sales, deductions and losses from the Iowa farms for the years 1978 and 1979 were as follows:

<u>YEAR</u>	<u>GROSS SALES</u>	<u>DEDUCTIONS</u>	<u>LOSSES</u>
1978	\$ 944.35	\$40,162.95	\$39,218.60
1979	29,654.18	68,780.11	39,125.93

16. On their jointly filed Minnesota income tax returns for the years in question, appellants reduced their non-farm income by the full amount of the loss derived from their leasing arrangements. They did not apply Minnesota's Farm Loss Modification Act, Minn. Stat. 1978 § 290.09, subd. 29.

17. By Orders dated July 29, 1983 and December 2, 1983, the Commissioner of Revenue applied the farm loss modification pursuant to Minn. Stat. 1978 § 290.09, subd. 29, and assessed additional Minnesota income tax plus interest against appellants.

18. The losses appellants incurred in 1978 and 1979 under their Iowa farm leases were losses "arising from a farm" under Minn. Stat. 1978 § 290.09, subd. 29 (a) and (b).

#### CONCLUSIONS OF LAW

1. The limitation on farm losses under Minn. Stat. 1978 § 290.09, subd. 29 applies in this case.
2. The Order of the Commissioner of Revenue is affirmed.

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

DATED: 5 June 1986.

BY THE COURT,  
Earl B. Gustafson, Judge  
Minnesota Tax Court

## State of Minnesota Tax Court—Regular Division

Docket No. 4335

**Karl G. Granse d/b/a K. G. Photo, Appellant, vs. Commissioner of Revenue, Appellee.**

The Minnesota Tax Court, Chief Judge Carl A. Jensen presiding, heard the above matter at the Hennepin County Government Center in Minneapolis, Minnesota, on December 19, 1985.

Bradford C. Riendeau, Attorney at Law, appeared on behalf of appellant.

Michele M. Owen, Special Assistant Attorney General, appeared on behalf of appellee.

Briefs were subsequently submitted by both parties.

#### SYLLABUS

1. Sales of photographs by professional photographers are construed to be sales of tangible personal property and are subject to sales tax.

2. The services of a professional photographer that are billed on an hourly basis are not subject to sales taxes when the purchaser of the services becomes the owner of the negatives and all rights to use the negatives and to have prints made therefrom. Any charge made for prints is subject to sales tax.

#### FINDINGS OF FACT

1. Appellant Karl G. Granse is a professional photographer with a place of business in Roseville, Minnesota.

2. Appellant Karl G. Granse specializes in family portrait and evidentiary photography.

3. Appellant does not charge his portrait customers for the sitting, preparation of proofs and one 8 × 10 inch portrait. He does charge for each additional print a customer orders.

4. Appellant testified that he retains title to and copyrights all of his photographs, and apparently contended that he has the exclusive right to dictate how the photographs supplied by him may be used by purchasers. Except as indicated below, we make no findings relative to the rights between the appellant and purchasers of his photographs.

5. Appellant takes photographs on an assignment basis for lawyers and others to be used as evidentiary material. Appellant stated that he sometimes charges on an hourly basis for such services. He is currently engaged in taking photographs for a law firm relative to asbestos cases involving state-owned buildings. Some of the exhibits were photographs of places where apparently asbestos was in use. Exhibit 8 is a letter from a law firm engaging his services and contains the following statement:

As usual, the bill for your services and one set of prints should be forwarded to our office.

There was no further testimony as to the ownership of pictures that were taken under this assignment nor was there any testimony as to how charges were to be made.

6. Appellant did not file sales tax returns and remit the sales tax due to the State of Minnesota for several periods in 1982, 1983 and 1984.

## TAX COURT

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7. On September 18, 1984, the Department of Revenue issued a Notice and Order for hearing on the proposed revocation of appellant Karl G. Granse's sales and use tax permit.

8. On December 7, 1984, a hearing was held before an Administrative Law Judge on the issue of the proposed revocation of Mr. Granse's sales and use tax permit.

9. On February 1, 1985, the Administrative Law Judge issued his Findings of Fact, Conclusions and Recommendations. He recommended that Mr. Granse's sales and use tax permit be revoked.

10. On March 13, 1985, the Commissioner of Revenue issued his Findings of Fact, Conclusions and Order for Revocation of appellant Karl G. Granse's sales and use tax permit.

11. On March 18, 1985, the Commissioner's Order for Revocation was personally served on appellant Karl G. Granse.

12. Sales of photographs by professional photographers are construed to be sales of tangible personal property and are subject to sales tax.

13. The services of a professional photographer that are billed on an hourly basis are not subject to sales taxes when the purchaser of the services becomes the owner of the negatives and all rights to use the negatives and to have prints made therefrom. Any charge made for prints is subject to sales tax.

### CONCLUSIONS OF LAW

1. Sales of photographs by professional photographers are construed to be sales of tangible personal property and are subject to sales tax.

2. The services of a professional photographer that are billed on an hourly basis are not subject to sales taxes when the purchaser of the services becomes the owner of the negatives and all rights to use the negatives and to have prints made therefrom. Any charge made for prints is subject to sales tax.

3. The Orders of the Commissioner of Revenue assessing sales taxes are hereby confirmed; however, appellant is granted 30 days to submit relevant sales figures to the Commissioner for recalculation of sales taxes that are due in the event that appellant contends that the Commissioner's sales figures considered in the light of this decision are incorrect. If there is a dispute as to what sales figures are correct, this Court adopts the determinations made or to be made by the Commissioner which shall be considered final unless appellant requests a continued hearing within 30 days of the date of this decision or within 15 days of any revised Order of the Commissioner.

4. The Commissioner of Revenue's Order dated March 13, 1985 revoking Karl G. Granse's sales and use tax permit is hereby affirmed.

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

DATED: 5 June 1986.

BY THE COURT,

Carl A. Jensen, Chief Judge  
Minnesota Tax Court

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