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STATE REGISTER

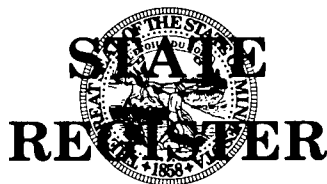
STATE OF MINNESOTA



VOLUME 10, NUMBER 8

August 19, 1985

Pages 413-496



Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 10			
9	Monday August 12	Monday August 19	Monday August 26
10	Monday August 19	Monday August 26	Monday September 2
11	Monday August 26	Friday August 30	Monday September 9
12	Friday August 30	Monday September 9	Monday September 16

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

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

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

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

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NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

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

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

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

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

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
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PROPOSED RULES

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

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

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

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

Department of Commerce

Proposed Rules Governing Discrimination Because of Blindness

Notice of Intent to Adopt Rules without a Public Hearing

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

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

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

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

Authority for the adoption of these rules is contained in Minnesota Statutes, sections 45.023 and 72A.19. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Pursuant to Minn. Laws 1983, ch. 188 codified as Minn. Stat. section 14.115, subd. 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing 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.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard G. Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101. (612)-296-5689.

A copy of the proposed rules is attached to this notice. Copies of this notice and the proposed rules are available and may be obtained by contacting Rose Weiner at the above address. (612)-296-3528.

Michael A. Hatch
Commissioner of Commerce

Rule as Proposed**2700.3200 UNFAIR AND DECEPTIVE PRACTICES.**

Subpart 1. to 10. [Unchanged.]

Subp. 11. Discrimination because of blindness. It is unfair and deceptive to discriminate between individuals of the same class by refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of blindness.

With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind are subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.

Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses his or her eyesight.

However, an insurer may exclude from coverage disabilities, consisting solely of blindness or partial blindness when the condition existed at the time the policy was issued.

Department of Commerce

Proposed Rules Relating to Cancellation of Commercial Liability Insurance

Notice of Intent to Adopt Rules without a Public Hearing

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

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

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

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

Authority for the adoption of these rules is contained in Minnesota Statutes, sections 45.023 and 72A.19. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Pursuant to Minn. Laws 1983, ch. 188 codified as Minn. Stat. section 14.115, subd. 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing 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.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard G. Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101. (612)-296-5689.

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

A copy of the proposed rules is attached to this notice. Copies of this notice and the proposed rules are available and may be obtained by contacting Rose Weiner at the above address. (612)-296-3528.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

CANCELLATION OF COMMERCIAL LIABILITY INSURANCE

2700.2400 CANCELLATION.

Subpart 1. Reason for cancellation. No insurer may cancel a policy of commercial liability insurance except for one or more of the following reasons:

- A. nonpayment of premium;
- B. the policy was obtained through material misrepresentation;
- C. actions by the insured occurring during the term of the policy that have substantially increased or substantially changed the risk insured; or
- D. refusal of the insured to eliminate known conditions that increase the potential for loss after notification by the insurer that the condition must be removed.

Subp. 2. Notice required. Before a cancellation notice may be issued under subpart 1, item C or D, a written request stating the condition requested to be removed and the reason why the condition increases the potential for loss must be sent to the insured. The notice must inform the insured as to any time limits for compliance. The time limits for compliance must be sufficient to allow the insured to comply. The notice must inform the insured of the intent to cancel the policy if the condition is not removed.

2700.2410 STATEMENT OF REASONS FOR CANCELLATION.

No notice of cancellation of a commercial liability insurance policy is effective unless the specific underwriting or other reasons for the cancellation are stated in the notice and the notice is mailed or delivered by the insurer to the named insured at least 60 days prior to the effective date of cancellation; provided, however, that when nonpayment of premium is the reason for cancellation, at least ten days' notice of cancellation shall be given. When nonpayment of premiums is the reason for cancellation, the reason must be given to the insured with the notice of cancellation.

2700.2420 REFUND OF PREMIUM ON CANCELLATION.

Cancellation of a commercial liability insurance policy pursuant to parts 2700.2400 and 2700.2410 is not effective unless any unearned premium due the insured is returned to the insured with the notice of cancellation or is delivered or sent by mail to the insured so as to be received by the insured no later than the effective date of cancellation.

Human Services Department

Proposed Rules Governing Child Support Incentive Awards

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State of Minnesota, Department of Human Services proposes to adopt the above-entitled rules without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rules is Minnesota Statutes, sections 14.01 to 14.70 and Minnesota Statutes, section 256.01, subdivision 2.

Persons interested in these rules shall have 30 days in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules and comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests by 4:30 p.m., September 18, 1985 to: Stanley M. Koich, Minnesota Department of Human Services, Office of Child Support Enforcement, 2nd Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101, telephone: 612/296-2567.

The proposed rules may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rules as noticed.

Minnesota Rules, parts 9500.1800 to 9500.1821 establish the system under which the State Office of Child Support Enforcement will pass through the entire amount of federal incentive money the state receives for amounts collected on behalf of AFDC families and non-AFDC families to county IV-D agencies based on the efficiency and effectiveness of the county child support collection programs. The purpose of these rules is to encourage county IV-D agencies to make maximum child support collections in a cost-effective manner through a financial incentive to counties according to Code of Federal Regulations, title 45, sections 302.55 to 303.52. Under these rules, county IV-D agencies are rewarded proportionately more as their collections increase and their costs decrease. The reward is in the form of money a county would otherwise have to pay as its portion of aid to families with dependent children assistance payments.

Parts included in the proposed rules are: definitions; purpose and effect; ratio determination; quarterly determination of dollar amounts; limit on quarterly determination of dollar amount of non-AFDC collections; distribution formula; adjustments; federal fiscal year 1986 and 1987 alternative incentive award determination; and redetermination of incentive awards for federal fiscal years 1986 and 1987. A copy of the rules is available for review from Stanley Koich upon request.

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

The Department estimates that the cost to all local public bodies of implementing these rules will not exceed \$100,000 in either of the first two years following the rules' adoption. A copy of the fiscal note detailing any costs to counties in implementing and administering the rule is available from Stanley Koich upon request.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules, must submit the written request to Stanley Koich.

July 31, 1985

Leonard W. Levine, Commissioner
Department of Human Services

Rules as Proposed (all new material)

CHILD SUPPORT INCENTIVE AWARD

9500.1800 DEFINITIONS.

Subpart 1. Scope. As used in parts 9500.1810 to 9500.1821, the following terms have the meanings given them.

Subp. 2. AFDC collections. "AFDC collections" means money paid by an individual to a county IV-D agency to satisfy an assignment of support obligation under Code of Federal Regulations, title 45, section 232.11, or United States Code, title 42, section 671(a)(17).

Subp. 3. Collections. "Collections" means AFDC collections and non-AFDC collections.

Subp. 4. County IV-D agency. "County IV-D agency" means the county agency responsible for child support enforcement to whom collections are paid.

Subp. 5. County IV-D costs. "County IV-D costs" means the expenditures reported quarterly by a county IV-D agency to the department for the operation of the county child support enforcement program minus amounts reported for fees, interest collected, and recovered costs.

Subd. 6. County IV-D agency quarterly incentive award. "County IV-D agency quarterly incentive award" means the amount of money determined quarterly by the department to reimburse the county for a portion of its contribution toward AFDC assistance payments.

Subp. 7. Department. "Department" means the Minnesota Department of Human Services.

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Subp. 8. Dollar amount. "Dollar amount" means the amount of money calculated according to part 9500.1811 which is used to determine a county IV-D agency's quarterly incentive award under parts 9500.1815 and 9500.1820.

Subp. 9. Federal fiscal year or FFY. "Federal fiscal year" or "FFY" means the period from October 1 of each year through September 30 of the next year.

Subp. 10. Fees. "Fees" means money paid by individuals to a county IV-D agency for child support enforcement services.

Subp. 11. Interest collected. "Interest collected" means the money collected by a county IV-D agency from the obligor which represents a charge for a late payment and which is calculated as a percent of the money owed by the obligor for a certain time period.

Subp. 12. Non-AFDC collections. "Non-AFDC collections" means the money paid by individuals to a county IV-D agency to satisfy support obligations which have not been assigned under Code of Federal Regulations, title 45, section 232.11, and United States Code, title 42, section 671(a)(17).

Subp. 13. Quarter. "Quarter" means one-fourth of the federal fiscal year with the following starting and ending dates:

- A. October 1 through December 31;
- B. January 1 through March 31;
- C. April 1 through June 30; and
- D. July 1 through September 30.

Subp. 14. Ratio. "Ratio" means the quotient of the total of a county IV-D agency's collections for a quarter divided by the total of that county IV-D agency's county IV-D costs less optional subtractions from county IV-D costs for that quarter. This total is then truncated at one decimal place.

Subp. 15. Recovered costs. "Recovered costs" means a refund paid by an individual or a governmental agency to a county IV-D agency for county IV-D costs.

Subp. 16. State's quarterly incentive award. "State's quarterly incentive award" means the grant award issued quarterly by the federal government to the department to reimburse the county for a portion of its share of AFDC assistance payments.

9500.1805 PURPOSE AND EFFECT.

Subpart 1. Purpose. The purpose of parts 9500.1800 to 9500.1821 is to encourage county IV-D agencies to make maximum child support collections in a cost effective manner through a financial incentive to counties according to Code of Federal Regulations, title 45, sections 302.55 and 303.52.

Under parts 9500.1800 to 9500.1821, county IV-D agencies are rewarded proportionately more as their collections increase and their costs decrease.

The reward the county IV-D agencies receive is in the form of money a county would otherwise have to pay as its portion of aid to families with dependent children assistance payments.

Subp. 2. Effect. Parts 9500.1800 to 9500.1821 apply to all Minnesota county human services or welfare departments. Effective October 1, 1985, the state will receive incentive payments from the federal government which will be passed through to the counties.

The extent to which a county IV-D agency is making maximum child support collections in a cost effective manner is measured by determining ratios of collections to costs for each county.

Ratios are translated into a percent and then into a dollar amount subject to certain limitations. Each county's proportionate share of the state's quarterly incentive award is then determined with adjustments to quarterly estimates made at the end of each federal fiscal year.

Parts 9500.1820 and 9500.1821 provide for an alternative award determination and redetermination formula for the first two years of the new award system to allow time for the less effective and efficient counties to improve ratios to the point that they may earn higher incentive awards under the new system.

9500.1810 RATIO DETERMINATION.

Subpart 1. Time frame. The department shall use the county IV-D costs and collections reported by a county IV-D agency to the department in a quarter to determine the ratio for that quarter.

Subp. 2. Collections credited to the county IV-D agency that makes collections on behalf of another Minnesota county IV-D agency. Each county IV-D agency shall identify collections made on behalf of another Minnesota county IV-D agency and shall credit those collections only to the county IV-D agency that makes the collection.

Subp. 3. Optional subtractions from county IV-D costs. At the option of the county IV-D agency, certain costs incurred and reported to the department in determining paternity may be subtracted from county IV-D costs. These costs are costs incurred for:

- A. drawing and shipping blood;
- B. testing and retesting blood; and
- C. human leucocyte antigen (HLA) testing.

Subp. 4. Separate ratios. The department shall determine separate ratios for AFDC and non-AFDC collections.

Subp. 5. Ratio to percent. Based on ratios determined under subparts 1 to 4, the department shall use the following schedule to determine the corresponding percent of a county IV-D agency's collections to be used in determining each county IV-D agency's dollar amounts under part 9500.1811.

Ratio	Percent
.1 or less	3.0
at least .2	3.5
.4	4.0
.6	4.5
.8	5.0
1.0	5.5
1.2	6.0
1.4	6.5
1.6	7.0
1.8	7.5
2.0	8.0
2.2	8.5
2.4	9.0
2.6	9.5
2.8 or more	10.0

9500.1811 QUARTERLY DETERMINATION OF DOLLAR AMOUNTS.

The department shall determine a county IV-D agency's quarterly AFDC dollar amount by multiplying the county's AFDC collections by the percent determined under part 9500.1810, subpart 5. The department shall determine a county IV-D agency's quarterly non-AFDC dollar amount by multiplying the county's non-AFDC collections by the percent determined under part 9500.1810, subpart 5.

9500.1812 LIMIT ON QUARTERLY DETERMINATION OF DOLLAR AMOUNT OF NON-AFDC COLLECTIONS.

The department shall limit each quarterly determination of the dollar amount of non-AFDC collections for each county IV-D agency as determined under part 9500.1811, to a percentage of its quarterly AFDC dollar amount as follows:

- A. up to 100 percent in FFY 1986 and FFY 1987;
- B. up to 105 percent in FFY 1988;
- C. up to 110 percent in FFY 1989; and
- D. up to 115 percent in FFY 1990 and thereafter.

9500.1815 DISTRIBUTION FORMULA.

The department shall determine each county IV-D agency's share of the state's quarterly incentive award for AFDC collections and each county IV-D agency's share of the state's quarterly incentive award for non-AFDC collections according to the formula in items A to F. Within 45 working days after the end of the quarter, the department shall inform each county IV-D agency of the

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determinations. The department shall add the AFDC and non-AFDC determinations for each county and pay the total amount to that county.

- A. Add all county IV-D agency quarterly AFDC dollar amounts as determined in part 9500.1811.
- B. Divide the state's quarterly AFDC incentive award by the total obtained in item A.
- C. Multiply the quotient obtained in item B by each county IV-D agency's quarterly AFDC dollar amount as determined under part 9500.1811.
- D. The product obtained in item C is the county IV-D agency's quarterly AFDC incentive award.
- E. To determine a county IV-D agency's quarterly non-AFDC incentive award, the department shall follow the steps in items A to C except that it shall use the county IV-D agency's quarterly non-AFDC dollar amounts in item A instead of AFDC dollar amounts, subject to the limitations of part 9500.1812.
- F. The county IV-D agency's quarterly incentive awards determined in items D and E are subject to the determinations in parts 9500.1817 to 9500.1821.

9500.1817 ADJUSTMENTS.

Within 30 working days after the department receives the state's quarterly incentive award for the last quarter of the federal fiscal year that adjusts the estimated federal quarterly incentive awards received by the state to the actual incentive award earned by the state under Code of Federal Regulations, title 45, section 303.52(c)(3), the department shall notify each county IV-D agency of any increase or decrease in the county IV-D agency's next quarterly incentive award. This increase or decrease must be added to or subtracted from the state's quarterly incentive award for the next quarter as determined in part 9500.1815.

9500.1820 FEDERAL FISCAL YEAR 1986 AND 1987 ALTERNATIVE INCENTIVE AWARD DETERMINATION.

For federal fiscal years 1986 and 1987, the department shall determine the yearly incentive awards for county IV-D agencies according to items A to H.

- A. Determine each county IV-D agency's yearly incentive award according to United States Code, title 42, section 658 as effective for federal fiscal year 1985.
- B. Multiply each of the amounts determined in item A by 0.80.
- C. Multiply each of the amounts in item A by 0.81.
- D. Determine an incentive award for each county according to part 9500.1817.
- E. Designate as a county IV-D agency's incentive award the higher of the results obtained under items B and D.
- F. Identify those county IV-D agency incentive awards from item E whose corresponding incentive award under item B is higher than the result obtained under item D.
- G. Identify those county IV-D agency incentive awards from item E whose corresponding incentive award in item D is higher than in item C.
- H. If a county IV-D agency's incentive award is not in item F or G, then the incentive award is the determination made in item B.
- I. No further determinations are necessary if all incentive awards are included in item F.
- J. All incentive awards must be redetermined according to part 9500.1821 if one or more incentive awards are included in item G.

9500.1821 REDETERMINATION OF INCENTIVE AWARDS FOR FEDERAL FISCAL YEARS 1986 AND 1987.

When directed by part 9500.1820, item J, the department shall make the following redeterminations.

- A. Add the incentive awards identified under part 9500.1820, items F and H. This amount equals 80 percent of what the incentive award would be if determined under the incentive award system in effect for federal fiscal year 1985.
- B. Add the incentive awards identified under part 9500.1820, item G.
- C. Add the totals obtained in items A and B.
- D. Subtract the total obtained in item C from the state's yearly incentive award.
- E. Divide the result, without regard to sign, obtained in item D by the total obtained in item B.
- F. Multiply the quotient obtained in item E by each county IV-D agency's incentive award included from item B.
- G. Add the products in item F.

H. Item G is the redetermination adjustment to be subtracted from those counties identified in item B.

I. To apply the redetermination adjustment for those counties of item A, subtract their award from part 9500.1817 from the total identified in item A. This is the amount that is to be paid to the counties.

EFFECTIVE DATE. Parts 9500.1800 to 9500.1821 are effective October 1, 1985.

Department of Labor and Industry

Proposed Rules Relating to Workers' Compensation; Independent Contractor

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Labor and Industry, Workers' Compensation Division, proposes to adopt the above-captioned rules without a public hearing. The Department has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28 (1984).

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

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period. If a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1984). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Steve Keefe
Commissioner, Department of Labor and Industry
5th Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-2342

Authority for the adoption of these rules is contained in Minn. Stat. §§ 176.041, subd. 1 and 176.83, subd. 11 (1984). A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, identifies the data and information relied upon to support the proposed rules and assesses the impact of the proposed rules on small businesses and on local public bodies has been prepared and is available from the Commissioner upon request at the above address.

The proposed rules will affect small businesses. The rules will enable small businesses to determine whether individuals providing personal services to them are employees, for whom workers' compensation coverage is required, or independent contractors, for whom coverage is not required. The rules place no additional financial burdens on small businesses as the purchase of workers' compensation coverage for employees is already required by law.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests for hearing received, and the final rules as adopted, will be delivered to the Attorney General. The rules will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the rules and the existence of a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the rules as originally proposed, or who wish to receive a free copy of the final rules as adopted, should submit a written request to the Commissioner at the above address.

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PROPOSED RULES

The text of the proposed rules follows this notice in the *State Register*. The rules establish criteria for determining whether an individual is an independent contractor for purposes of workers' compensation coverage.

One free copy of the proposed rules may be obtained by contacting Carla Mitrovich at the above address or by calling (612) 296-2342.

July 31, 1985

Steve Keefe
Commissioner, Department of
Labor and Industry

Rules as Proposed (all new material)

INDEPENDENT CONTRACTOR

5222.0010 PURPOSE.

The purpose of this chapter is to establish standards for distinguishing between an employee and an independent contractor for purposes of workers' compensation coverage under Minnesota Statutes, section 176.012, paragraph (e). For those occupations specifically discussed in parts 5222.0020 to 5222.0390, this chapter establishes a "safe harbor" for assuring either independent contractor or employee status in those occupations. Where a worker is within the scope of the definition of a part, but does not meet the safe harbor criteria for either independent contractor or employee status, the determination shall be made as described in part 5222.0400.

"Employee" as used in this chapter means a worker who is not an independent contractor. The employee safe harbor criteria are not intended to define "employee" under Minnesota Statutes, section 176.011, subdivision 9 for any purpose other than distinguishing workers who are not independent contractors.

5222.0020 ARTISANS.

Subpart 1. Definition. An artisan is a person who has been trained in a mechanical art or trade. The particular skill necessary in the work is acquired by attending a vocational school, serving an apprenticeship, or by working as a handyman or helper and learning the trade informally.

Artisans include bricklayers, blocklayers, cable installers, carpenters, electricians, roofers, siders, painters, plasterers, paperhangers, tapers, joiners, plumbers, and steamfitters.

Subp. 2. Independent contractor. An artisan is an independent contractor and not an employee if all of the following criteria are substantially met.

- A. The artisan is responsible for the final result, is free to choose the means and methods for accomplishing the result, and is not required to conform to fixed hours.
- B. The artisan is free to select others to assist in performing the job.
- C. The artisan has the opportunity of making a profit or suffering a loss and is not guaranteed a minimum income.
- D. The artisan has business expenses beyond the furnishing of tools, such as scaffolding, ladders, trucks, equipment, and advertising.
- E. The artisan has a substantial investment in facilities or equipment.
- F. The artisan holds himself or herself out to the public as being available to perform services for others.
- G. Payment for the work is on a job basis for a complete job rather than a time basis.
- H. The artisan agrees to provide lien waivers upon completion of the job.

Subp. 3. Employee. An artisan is an employee if all of the following criteria are substantially met.

- A. The artisan is hired to do the work personally and any helpers are hired, paid, and subject to control by the purchaser of the artisan's services.
- B. Work is during fixed hours established by the purchaser and on a full-time basis.
- C. The artisan is paid on an hourly, weekly, or similar rate that is independent of the amount of work completed.
- D. The artisan has no substantial investment in facilities or equipment for doing the work.

E. Materials and equipment other than hand tools are supplied by the purchaser of the artisan's services.

F. The artisan will not incur a loss or realize a profit by exercising independent judgment in hiring helpers, selecting the materials used, determining methods of work, or similar matters.

G. If the artisan does not complete the job, the artisan is not responsible for damages for noncompletion or for obtaining a replacement to complete the job.

5222.0030 BARBERS.

Subpart 1. Definition. Barbers are persons registered to practice barbering pursuant to Minnesota Statutes, chapter 154. A registered barber's apprentice is not an independent contractor.

Subp. 2. Independent contractor. A barber is an independent contractor if all of the following criteria are substantially met.

A. The barber rents a barber chair from the purported employer for a flat sum per week, month, or similar time basis.

B. All payments by customers for services are retained by the barber.

C. The barber furnishes his or her own tools, but need not furnish linens or supplies.

D. The purported employer does not have the right to control the means and manner of the barber's performance of services such as haircuts, shaves, shampoos, scalp treatments, and facial massages.

E. A written agreement between the parties provides that the barber is an independent contractor.

Subp. 3. Employee. A barber is an employee if all of the following criteria are substantially met.

A. The barber is paid on a salary basis, though tips may be retained by the barber, or the employer retains a set percentage of the money taken in by the barber's services, excluding tips.

B. The employer furnishes equipment and supplies other than razors, combs, scissors, and similar items.

C. The employer furnishes uniforms if uniforms unique to the employer are required.

D. The barber does not advertise.

E. The employer may terminate the barber's employment for noncompliance with rules including hours of work, smoking, or wasting time.

F. A written employment agreement states that the parties are not independent contractors.

G. The employer has the right to control the means and manner by which the barber performs services such as haircuts, shaves, shampoos, scalp treatments, and facial massages.

Subp. 4. Factors excluded. The fact that barber associations or unions fix hours of work or other conditions of business operation indicates neither employment nor independent contractor status. Rules prescribed with respect to sanitary conditions by the state or city health departments are not to be considered in determining independent contractor or employment status.

5222.0040 BOOKKEEPERS AND ACCOUNTANTS.

Subpart 1. Definition. A bookkeeper is an individual whose work consists substantially of some or all of the following: recording items in proper journals and on special forms, posting ledgers, balancing books, compiling reports, and otherwise keeping a complete and systematic set of records of an organization's business transactions. Accountants licensed under Minnesota Statutes, chapter 326 are bookkeepers for the purposes of this part.

Subp. 2. Independent contractor. A bookkeeper is an independent contractor if all of the following criteria are substantially met.

A. The bookkeeper rents an office or maintains one in the home.

B. The bookkeeper makes his or her services available to the public.

C. The bookkeeper's services are rendered for a number of clients and are compensated for on a fee basis.

D. The bookkeeper pays his or her own business expenses, which include the cost of equipment, materials, and helper's wages.

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E. The bookkeeper is hired to accomplish a specific result and is not subject to direction or control over the methods or means of accomplishing it.

F. The bookkeeper's services are not performed on the premises of the purchaser of the services.

Subp. 3. Employee. A bookkeeper is an employee if all of the following criteria are substantially met.

A. The bookkeeper performs services at regular intervals for a single business concern for a fixed salary.

B. The bookkeeper works on the employer's premises with the necessary supplies and office help furnished.

C. The bookkeeper does not make his or her services available to the public, and does not maintain an office of his or her own.

D. The bookkeeper works during fixed hours and enjoys the usual privileges extended by an employer to employees including paid vacations, sick benefits, or bonuses.

E. The bookkeeper's services are in connection with a system of bookkeeping or accounting adopted by the employer.

F. The bookkeeper is subject to direction and control of the employer, although he or she may not be closely supervised because of the skill required to do the work.

5222.0050 BULK OIL PLANT OPERATORS.

Subpart 1. Definition. A bulk plant operator is an individual who:

A. distributes the products of firms engaged in the oil business;

B. receives the oil products from the firm with which he or she contracts and delivers them to the retailers in his or her territory; and

C. collects money for the products from customers and forwards it to the firm.

Subp. 2. Independent contractor. A bulk oil plant operator is an independent contractor if all of the following criteria are substantially met.

A. The operator is in complete charge of the entire plant.

B. The operator's contract with an oil firm provides that the operator will:

(1) sell the firm's petroleum products on a consignment basis and account for all money collected;

(2) sell the products within a general territory at prices set by the firm;

(3) bear all expenses except freight on the products consigned;

(4) furnish trucks and other equipment; and

(5) hire, pay, and assume full responsibility for all necessary assistants.

C. The operator advertises the firms' products at his or her own expense.

D. The operator fixes the hours and days the plant remains open, and hires, pays, and controls the employees.

Subp. 3. Employee. A bulk oil plant operator is an employee if all of the following criteria are substantially met.

A. The operator does not have an investment in capital assets and is paid on a salary basis.

B. The operator is required to work fixed hours or full time.

C. The operator is included in the oil firm's employee benefits plans.

D. The operator is required to comply with instructions given by the firm.

E. The operator is not personally obligated to pay wages or does not assist in paying the truck or plant maintenance expenses.

F. The operator is hired to manage the plant on a salary basis under instructions on the method and manner of doing the work.

5222.0060 COLLECTORS.

Subpart 1. Definition. A collector is an individual who collects, accepts, or encourages payments from the customers of a business for merchandise sold or services rendered by that business.

Subp. 2. Independent contractor. A collector is an independent contractor when the criteria of item A or B is substantially met.

A. If the collector is a door-to-door or telephone collector, he or she:

- (1) is assigned a specific territory and furnished lists of people from whom to collect;
 - (2) is not required to conform to fixed hours, devote any particular amount of time to the business, or produce a minimum volume of collections;
 - (3) is required to cover the territory regularly, but works out a schedule of contacts;
 - (4) reports to the office only to turn in collections and to get new lists;
 - (5) receives a fixed percentage of the collections made, out of which are paid all expenses connected with the work;
 - (6) is not guaranteed a minimum income; and
 - (7) is free to engage in other employment, including collecting accounts for other firms.
- B. The collector accepts payment of bills from the customers of a third party on the collector's premises and:
- (1) bills can be paid at any and all times the collector's premises is open for business;
 - (2) the collector is not required to be present if someone is on the premises to receive payments;
 - (3) the collector is not required to conform to fixed hours, or to devote any particular amount of time to the third party's business, or to give preference to the third party's customers;
 - (4) the collector deposits all money collected in a bank and periodically forwards to the third party copies of bank deposit receipts, and complaint forms from customers;
 - (5) the third party furnishes the collector with the necessary business forms, postage, and stationery;
 - (6) the collector is required to purchase a surety bond;
 - (7) the third party pays a salary for the collection services or the collector may receive a percentage of the money collected;
 - (8) the collector is not trained in the work or required to follow prescribed routines; and
 - (9) the collector is free to conduct private business activities in addition to the collection services.

Subp. 3. Employee. A collector is an employee if all of the following are substantially met.

- A. The services of the collector are retained to further the employer's business.
- B. The collector is required to perform services pursuant to schedules established by the employer.
- C. The employer has first call on the collector's time and efforts.
- D. The collector has no significant business expenses or investment in the business.
- E. The collector is paid on a commission or salary basis.
- F. The employer has the right to establish the means and methods used in collecting.
- G. The employer has the right to interfere with or set the order of the services.
- H. The collector must report at the firm's office regularly for conferences, training, or instructions.
- I. The hiring of helpers or substitutes is not permitted.
- J. The grounds for termination are not limited to failure to meet production quotas.

5222.0070 CONSULTANTS.

Subpart 1. Definition. A consultant is one who confers with and advises people on matters within the particular field in which he or she specializes. The consultant has developed a peculiar knowledge or special skill of a professional or semiprofessional nature through extensive training and education or through wide experience in a particular occupation.

Subp. 2. Independent contractor. A consultant is an independent contractor if all of the following criteria are substantially met.

- A. The consultant rents an office or offices at home.

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B. The consultant advertises in newspapers or trade journals, or maintains business listings, or otherwise holds himself or herself out to the public as being available for a particular type of service.

C. The consultant is free to hire clerical help and assistants.

D. The consultant's success in the business world is dependent entirely on personal efforts and the demand by the public for the services.

E. The consultant operates under an arrangement where for a set fee technical advice or assistance is given.

F. The consultant's contract of service is for a specified period of time or specific purpose.

G. The consultant is free to work for others at the same time.

H. The consultant is not required to observe regular hours of work either at the firm's offices or at home.

I. The consultant agrees only to be available for conferences and consultations at the request of the firm or, as in some cases, to perform services on a specified minimum number of days.

J. The consultant makes no regular reports and is not required to attend regular conferences with members of the firm.

K. The consultant is not subject to control or supervision, but is given a free hand in doing work.

L. The consultant is employed to do a specific job and those who employ the consultant are interested only in the result accomplished and not in the manner and means of accomplishing it.

Subp. 3. Employee. A consultant is an employee when all the following criteria are substantially met.

A. The consultant is retained for services which further the employer's business.

B. The consultant is required to perform services personally.

C. The consultant's services are not available to the public.

D. The consultant has no investment or business expense.

E. The consultant provides recurring, rather than sporadic or infrequent, services.

F. The employer has the right of first call on the services of the consultant.

G. The consultant is required to report on the progress of assignments.

H. Either party has the right to end the relationship at any time.

I. The consultant receives a fixed salary determined on a weekly, monthly, annual, or similar basis.

J. The consultant cannot realize a profit or loss from the services.

5222.0080 DOMESTIC SERVICE.

Subpart 1. Definition. Domestic service means household services such as housecleaning, meal preparation, or invalid companionship or care.

Subp. 2. Independent contractor. A person providing domestic services is an independent contractor if all of the following criteria are substantially met.

A. The service is performed in connection with some episode in the life of the purported employer's family, such as an illness of short duration, preparation for a wedding, the birth of a child, or other episode of limited duration that indicates an engagement to accomplish a specific job.

B. The domestic is free to work for others.

C. The domestic may hire helpers to complete the job.

D. The domestic is paid on a job basis rather than an hourly basis.

Subp. 3. Employee. A person providing domestic services is an employee if all of the following factors are substantially met.

A. The parties are not members of the same household or immediate family.

B. The services are performed regularly and over a considerable period of time.

C. The domestic received at least \$500 as wages from the employer for any three-month period during the preceding 12 months. This factor is alone sufficient to establish the employment relationship under Minnesota Statutes, section 176.041, subdivision 1.

D. The domestic is not claimed as a dependent for income tax purposes.

- E. The domestic is paid on an hourly, weekly, or similar time basis.
- F. The domestic does not contribute to the employer's household expenses.

5222.0090 BABYSITTERS.

Subpart 1. Definition. Babysitters are individuals who provide childcare services to parents and are not licensed to operate day care centers under Minnesota Statutes, chapter 245.

Subp. 2. Independent contractor. A babysitter is an independent contractor if all of the following criteria are substantially met.

- A. The babysitter takes care of another's child in the babysitter's own home or other premises under the babysitter's control.
- B. The instructions given to the babysitter by the parents are general in nature, relating to matters of diet, health, rest, special foods to be given to the child, and who to contact in an emergency.
- C. The babysitter is allowed to exercise judgment on matters as to the amount of time and attention the child requires, the types of meals to serve, and the manner of coping with situations which may arise.
- D. The babysitter is free to perform household chores when the child does not require personal attention.

Subp. 3. Employee. A babysitter is an employee if all of the following criteria are substantially met.

- A. The babysitter performs childcare services in the home of the child's parents.
- B. The babysitter has been engaged to devote services exclusively to the performance of the employer's work.
- C. The babysitter is given instructions regarding such matters as the amount of time and attention the child requires, the types of meals to serve, and the manner of coping with situations that may arise.

Subp. 4. Babysitter services contracted through agencies. A babysitter is an employee of an agency in the business of supplying names of babysitters if all of the following criteria are substantially met.

- A. The agency maintains a register of names and addresses of individuals whom the agency determines are qualified to perform babysitter services. The agency advertises and otherwise holds itself out to the public as being engaged in the business of furnishing a babysitter service.
- B. The agency fixes the fee to be charged for the services and notifies the babysitter where to report and the hours to be worked.
- C. The babysitter pays the agency a specified amount or a percentage of the wages. Appearance and the performance of services must be guided by standards and rules issued by the agency.
- D. The babysitter must notify the agency when not available for an assignment and usually agrees to restrict work to that furnished by the agency.
- E. Any complaints as to the quality of the services are made by the parents to the agency, and the agency may remove the babysitter's name from its register.

5222.0100 INDUSTRIAL HOMEWORKERS.

Subpart 1. Definition. Industrial homeworkers are persons who work in their own homes or workshops on the manufacture or assembly of articles from materials supplied by the purchaser of their services. Services provided by industrial homeworkers include

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typing of envelopes and the manufacture, alteration, or finishing of gloves, slippers, bedspreads, slipcovers, pottery, boxes, toys, or similar items.

Subp. 2. Independent contractor. An industrial homemaker is an independent contractor when all the following criteria are substantially met.

- A. The homemaker works under agreements that only require the completion of assignments according to specifications and within designated times.
- B. The homemaker is furnished materials by the firm and, in accordance with a pattern or general instructions, turns out a finished product which measures up to the firm's standards.
- C. The completed products are paid for on a piecework basis.
- D. There is no requirement that the homemaker give preference to the firm's work, although the homemaker is expected to complete assignments within a specified time.
- E. The homemaker may work for others; however, in many cases, the amount of work furnished by one firm keeps the worker busy full time.
- F. Unsatisfactory work is done over without pay.
- G. Set hours of work are not prescribed by the firm, nor is the work supervised.

Subp. 3. Employee. A homemaker is an employee if all of the following criteria are substantially met.

- A. The services of the homemaker are closely integrated into the business of the firm that employs the worker.
- B. The homemaker is subject to virtually the same set of controls as employees who work on the firm's premises.
- C. The homemaker uses his or her own small hand tools, but large tools or heavy equipment is furnished by the firm.
- D. The homemaker works or is paid on an hourly basis and renders personal services of a recurring nature.
- E. The homemaker is given detailed instructions or training in the work and is required to change the work plans and the order of services when requested.
- F. Although there is usually no direct supervision over the services, the firm checks the finished product and has the right to change or direct the method of operation if the completed article is not satisfactory.
- G. The homemaker is required to report on progress periodically.
- H. The relationship is terminable by either party, with or without cause prior to completion of a project without incurring liability for damages for noncompletion.
- I. The employer may change the homemaker's work assignment.

5222.0110 INSURANCE; BRANCH MANAGERS.

Subpart 1. Definition. A branch manager is an individual who operates the branch office of an insurance company. The branch manager's responsibilities include supervision of the clerical help, aid to the soliciting agents, recruiting and training new agents for the company, servicing policies, and performing other duties as the home office may deem necessary to secure and maintain a profitable insurance business in the assigned territory.

Subp. 2. Independent contractor. A branch manager is an independent contractor if all of the criteria for a general agent independent contractor, part 5222.0120, subpart 2 are substantially met.

Subp. 3. Employee. A branch manager is an employee if all of the following criteria are substantially met.

- A. The insurance company owns or leases the office and pays all expenses connected with its operations, such as heat, light, equipment costs, and salaries of the clerical or office employees.
- B. The manager's pay consists of commissions on policies sold plus a salary for managing duties.
- C. The manager is required to keep the office open during hours specified by the company and is not permitted to handle the business of any other company.
- D. The company has the right to shift the manager from one branch office to another, enlarge or reduce the size of the territory, or terminate the services on short notice.
- E. The company has the right to appoint auxiliary or additional agents to the territory.
- F. If the branch office is also used as a collection agency for premiums, the manager is responsible for keeping proper accounts and remitting the money to the home office, and is required to purchase and keep in force a security bond of sufficient value to protect the company in case of dishonesty.

5222.0120 INSURANCE; GENERAL AGENTS.

Subpart 1. Definition. A general agent is an individual appointed by an insurance company to develop and maintain his or her own insurance business in the territory assigned by the company. The agent's contract gives the privilege of selling the company's insurance policies, of appointing and training sales agents, and of developing the territory with organizations built by the agent. The general agent is paid first-year and renewal commissions on policies sold by the agent, plus an overwriting commission on policies sold by subagents.

Subp. 2. Independent contractor. A general agent is an independent contractor if all of the following criteria are substantially met.

A. The insurance company imposes restrictions of a general nature to guarantee that the agency is operated in line with established practices and ethical standards of the industry, that the company is not misrepresented, that the public is protected from unscrupulous salespeople, and that the various state and local laws are not violated.

B. The insurance company sets general rules about the underwriting principles which govern its acceptance of applications for policies, but otherwise has no significant control over the agent's method of operating an agency.

C. The general agent owns or rents the office and pays all expenses connected with the business.

D. The general agent hires clerical workers and most working time is spent in supervising office staff, reviewing records of agents' activities, maintaining required records of money collected, and devising various means of increasing business.

E. The general agent is subject to rules about the money that the agent handles for the company, accounting records to be kept, and accounting reports to be made.

F. The general agent holds himself or herself out to the public as an independent agent, although advertisements may be previewed by the company.

G. The general agent is required to use the application forms supplied and all applications must be submitted to the home office for approval or rejection.

H. The general agent is provided with rate books and is required to abide by them.

I. The agent is not permitted to assign his or her agency interests.

J. The general agent has a substantial investment in an office, equipment, and other facilities.

K. The general agent pays transportation and business expenses.

L. Compensation is not fixed but depends on the amount of energy, skill, and ingenuity the agent applies to the management of the agency.

Subp. 3. Employee. A general agent is an employee if all of the criteria for a branch manager employee, part 5222.0110, subpart 3, are substantially met.

5222.0130 INSURANCE; BROKERS.

Subpart 1. Definition. An insurance broker is an individual engaged in the business of brokering insurance. The broker is not bound to represent a company exclusively or to devote any particular part of his or her time to a company's business. The broker represents clients by seeking to obtain, from the policies at their disposal, that policy which best meets the client's needs.

Subp. 2. Independent contractor. A broker is an independent contractor if all the following conditions are substantially met.

A. The broker has arrangements with a number of companies which enables him or her to place various lines of coverage, such as casualty, liability, life, accident, and fire.

B. The broker's compensation consists of first-year and renewal commissions on policies sold.

C. The broker has an office and selects, trains, directs, and pays helpers.

D. The broker pays expenses.

E. The broker's livelihood is dependent upon the amount of energy, time, and ingenuity applied to the work plus skill in managing assistants and investments.

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Subp. 3. Employee. A broker is an employee if all the following criteria are substantially met.

- A. The broker places insurance with only one company and is prohibited from placing coverage with other companies.
- B. The broker is paid a salary or retainer by the company in addition to commissions on policies sold.
- C. Helpers or assistants are hired by the company.
- D. The company pays expenses or provides the broker with an expense allowance.
- E. The broker must comply with company regulations regarding the daily conduct of business and may be terminated for noncompliance with any such company requirements.

5222.0140 INSURANCE; INDUSTRIAL AGENTS.

Subpart 1. Definition. An industrial agent is a person who collects premiums and solicits applications for industrial policies issued by an insurance company. After a period of training, the industrial agent is assigned a territory, commonly referred to as a "debit," within which the agent is required to collect from policyholders at their homes all weekly or monthly premiums as they become due.

Subp. 2. Independent contractor. An industrial agent is an independent contractor if the criteria for a soliciting agent independent contractor, part 5222.0150, subpart 2 are substantially met.

Subp. 3. Employee. An industrial agent is an employee if all of the following criteria are substantially met.

- A. The agent works directly out of a company's home office, a branch office, or a general agent's office.
- B. The agent is furnished desk space, telephone service, clerical and stenographic help when needed, and all necessary books, forms, and papers.
- C. The agent is required to contact all policyholders periodically and to make a record of the collection of premiums on a particular policy.
- D. The employer requires the agent to report personally to the office to deliver applications and to pay over money collected.
- E. The agent is paid a salary, or a salary plus commissions on new business written, or a percentage of the premiums collected plus commissions on new business written.
- F. The agent cannot work for others or hire helpers.
- G. The agent is required to submit reports at least weekly.
- H. The agent must comply with detailed instructions not only on the writing of insurance but on collecting and recording of insurance premiums, the payment of claims and dividends, and the handling of lapses, revivals, and transfers of policies.
- I. The working relationships with the employer are terminable on short notice and when terminated, the agent's rights in the business cease.

5222.0150 INSURANCE; SOLICITING AGENTS.

Subpart 1. Definition. A soliciting agent is an individual who contracts with insurance companies, branch managers, or general agents to solicit applications for insurance and to collect first-year premiums on the policies the agent sells.

Subp. 2. Independent contractor. A soliciting agent is an independent contractor if all of the following criteria are substantially met:

- A. Renewal commissions are paid to the agent for varying periods ranging from about six to ten years even when the agent no longer sells insurance for the company.
- B. The agent is required to comply only with the general rules and regulations of their companies. These rules and regulations deal with the handling of the business of the company, such as privileges and limitations of the companies' insurance contracts and what can and what cannot be done in securing applications for contracts. The rules and regulations outline to the agent the broad general principles to be followed in the solicitation of business, the acceptance of first premiums, and the delivery of policies. The scope and purpose of the rules and regulations is to define the limits of the agent's authority and not to control his or her time or methods of doing business.
- C. The agent's hours of work are not controlled and the agent is free to exercise judgment about the people to whom he or she tries to sell insurance and the time and manner of selling.
- D. The agent must comply with the underwriting rules of the company regarding the acceptance of risks, types of contracts, premium rates, and physical examinations of applicants.
- E. The agent is prohibited from violating the laws on rebate and misrepresentation of policies and dividends.

F. The agent is not permitted to work for competing companies except to place with them business which their own companies will not accept.

G. The agent chooses hours of work and pays business expenses, such as transportation, license fees, and advertising and entertainment costs.

H. The agent's livelihood depends on the amount of energy, time, and ingenuity applied to the work.

Subp. 3. Employee. A soliciting agent is an employee if the criteria of an industrial agent employee, part 5222.0140, subpart 3, are substantially met.

5222.0160 INSURANCE; DISTRICT MANAGERS.

Subpart 1. Definition. District managers are soliciting agents who, because of their demonstrated selling abilities, are appointed to develop insurance businesses in new or underdeveloped districts. They may be appointed by a general agent to concentrate on certain areas within the agent's territory, or they may be appointed by their companies to operate in new territories. They hold contracts to sell one or more types of insurance and to appoint subagents or local agents for the companies.

Subp. 2. Independent contractor. A district manager is an independent contractor if all of the following criteria are substantially met.

A. The manager offices at home or is given the option of using office space in the branch manager's or general agent's office, or is given an office allowance.

B. The district manager is not given exclusive franchises covering particular territories.

C. The district manager is compensated by first-year and renewal commissions on policies he or she sells plus an overwriting commission on each policy sold by the subagents he or she appoints.

D. The district manager is required to operate in accordance with established industry practices and ethical standards, but may employ personal methods of building the insurance business.

E. The district manager may engage in other business activities.

Subp. 3. Employee. A district manager is an employee if the criteria for a branch manager employee, part 5222.0110, subpart 3, are substantially met.

5222.0170 INSURANCE; FIRE AND CASUALTY SALESPEOPLE.

Subpart 1. Definition. Fire and casualty insurance salespeople solicit applications principally for fire and casualty insurance.

Subp. 2. Independent contractor. A fire and casualty insurance salesperson is an independent contractor if the following criteria are met.

A. The salesperson handles insurance for a number of companies, holds himself or herself out to the public as a broker, and generally selects those policies which best suit the clients' needs.

B. The salesperson has an office and pays the rent.

C. The salesperson owns office equipment, hires and pays all employees, and operates without supervision from any of the insurance companies.

D. The salesperson pays all expenses in connection with the business.

E. The salesperson is free to solicit when, how, if, and from whom he or she pleases, except that territory may be restricted.

F. The salesperson is compensated by a given percentage of the insurance business he or she writes and his or her solicitors, if any, write.

G. The salesperson has exclusive rights to the business he or she writes.

H. The salesperson is not held responsible if the policyholders fail to pay premiums when due, but in order to obtain commissions must collect the premiums.

I. The salesperson is not required to produce certain volumes of business and relationships with contracting parties are terminable by either party at any time.

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J. The salesperson's livelihood and success depends on the reputation established with the public, the amount of time, energy, and ingenuity applied to the work, and the amount of skill used in managing.

Subp. 3. Employee. The salesperson is an employee if the criteria for an industrial agent employee, part 5222.0140, subpart 3, are substantially met.

5222.0180 LABORERS.

Subpart 1. Definition. Laborers are people whose work usually requires strength rather than skill, such as laborers, char-women, coal hustlers, gardeners, yard maintenance workers, landscaping and planting workers, tree trimmers, handy men, janitors, odd-job men, porters, window washers, and other unskilled workers.

Subp. 2. Independent contractor. The laborer is an independent contractor if all of the following criteria are substantially met.

A. The laborer generally must use business judgment to earn a livelihood. The laborer's success or failure depends on how assistants are managed, the protection of investment through proper care of tools and equipment, and the reputation established as a result of methods of doing business.

B. The services need not be performed personally.

C. The laborer holds himself or herself out to the public as available for furnishing a certain type of service on a job basis.

D. The laborer is free to hire assistants and the assistants are the laborer's own responsibility, that is, the laborer directs them, pays them, and is liable for the payment of taxes on their wages.

E. The laborer furnishes tools.

F. The laborer obtains work by recommendation, advertising in newspapers, or maintaining a business listing in a telephone or service directory.

G. The laborer is responsible only for completion of the job within a certain time and is free to use personal methods and means for doing the work.

H. The laborer agrees to provide lien waivers upon completion of the job.

Subp. 3. Employee. A laborer is an employee if all of the following criteria are substantially met.

A. The services must be performed personally.

B. The laborer works on employer premises or at locations assigned by the employer, at specified times, and with tools and facilities furnished by the employer. The services may be provided on a permanent, recurring, or itinerant basis.

C. Pay is computed on a time rather than a lump-sum basis.

D. The employer has the right to stop the laborer on one job and start on another, to speed up or slow down the worker, and to express dissatisfaction with the work and to have it redone.

E. The laborer is not responsible for damages for noncompletion of the work. If the laborer quits prior to completing the job, the laborer is not responsible for finding a replacement.

5222.0190 MUSICIANS; GENERAL.

The status of musicians or groups in parts 5222.0190 to 5222.0210 is not affected by the fact that an American Federation of Musicians Form B Contract, to which the leader is a party, purports to make the purchaser their employer. The actual relationship, rather than the terms of the contract, controls.

5222.0200 MUSICIANS; COOPERATIVE ORCHESTRAS.

Subpart 1. Definition. A cooperative orchestra is a musical group operated on a cooperative or partnership basis. All of the members have a voice in determining the membership, the engagements to be accepted, the division of the money received, and all other phases of the orchestra's operations. By common consent of the members one of the group may be designated as a leader whose duties are to act as spokesperson for the group and to negotiate engagements in the orchestra's name. A business manager or set manager or other nonplaying member may be a member of a cooperative orchestra.

Subp. 2. Independent contractor. All the members, including the leader, of an orchestra are independent contractors if all of the following criteria are met.

A. Payment is not on an hourly basis. Proceeds from engagements are used to pay expenses and the remainder is distributed as determined by members.

B. The group is free to work for other purchasers of its services.

C. The purchaser does not have the right to discharge a member of the group, or to dictate the style or manner of playing the music.

D. The group may be liable for damages for nonperformance if it quits prior to completing its engagement with a purchaser.

Subp. 3. Employee. Members of a cooperative orchestra are employees if all the following criteria are substantially met.

A. The individuality of the orchestra is subordinated to the enhancement of the purchaser's reputation.

B. The work relationship is not short term but is of a continuing nature.

C. The purchaser has the right to discharge the leader or any of the orchestra members, to change the style or type of music, to have first call on the services, and to restrict the orchestra's outside activities.

D. The purchaser pays the members on an hourly or time basis and bears the expenses of the orchestra.

5222.0210 MUSICIAN; ORCHESTRA LEADER.

Subpart 1. Definition. An orchestra leader or union contractor is the assembler or leader of a musical group that plays music in public for compensation.

Subp. 2. Independent contractor. An orchestra leader is an independent contractor if all of the following conditions are substantially met.

A. The leader selects the members and rehearses and directs them.

B. The leader holds out to the public as being able to furnish a musical organization and enter into contracts to furnish music.

C. The leader has the primary right to control the orchestra members as to how, when, and where they work.

D. The leader is charged with all expenses the orchestra incurs, and, after paying expenses and the salaries or hourly wages of the other members, suffers a loss or realizes a profit from the undertaking.

E. The leader is paid a lump sum for an engagement.

F. The purchaser of the music deals directly with the leader.

G. The purchaser retains only such control over the leader as to ensure the attainment of the desired result, such as the privilege of making suggestions on the type or style of music and number of musicians wanted.

Subp. 3. Subcontractor. Where the leader is an independent contractor, the purchaser of music is responsible for the workers' compensation coverage of group members other than the leader under Minnesota Statutes, section 176.205, unless those members are independent contractors with respect to the leader or the purchaser.

Subp. 4. Employee. The orchestra leader or assembler and members of the musical group are employees of the purchaser of musical services if all of the following criteria are substantially met.

A. The purchaser hires a musician (usually called a union contractor) to assemble an orchestra to play at the purchaser's establishment. The purchaser specifies the number of musicians, the type of instruments, and the price per musician.

B. The assembler of the group may be the orchestra leader if the purchaser designates him or her as the leader.

C. The purchaser may accept all the musicians who have been assembled or make changes in the personnel with or without an audition.

D. The purchaser pays for the services on an hourly basis and is responsible for the business expenses of the group.

5222.0220 OUTSIDE COMMISSION SALESPEOPLE OR MANUFACTURER'S REPRESENTATIVES; GENERAL.

The following factors, taken together, are not sufficient to establish an employment relationship for an outside commission salesperson or manufacturer's representative under parts 5222.0230 to 5222.0250: territorial restrictions, fixing of sales prices and terms by the companies, the furnishing of leads, working off premises of the employer, and requirements that the salesmen investigate customers' complaints, collect delinquent accounts, and refrain from selling for competitors.

5222.0230 TRAVELING SALESPEOPLE.

Subpart 1. Definition. A traveling salesperson is associated with a manufacturer or distributor whose products the salesperson sells directly to wholesalers or retailers. The salesperson is assigned to territories and furnished with price lists and samples or descriptions of the merchandise to be sold. The salesperson is required to sell the merchandise at prices set by the firm and the firm reserves the right to accept or reject orders. The firm fills the orders by shipping directly to the customers and billing the customers

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directly. The salesperson receives compensation from the firm in the form of a percentage of the price the customers pay for the merchandise. The salesperson may be required to work full time, to not work for competitors, or to produce a certain amount of business regularly.

Subp. 2. Independent contractor. A traveling salesperson is an independent contractor if all the following conditions are substantially met.

- A. The salesperson is free to solicit when, where, and how he or she pleases.
- B. The salesperson chooses working hours and schedule of calls.
- C. The salesperson chooses his or her own means of travel and is responsible for the costs of travel.
- D. The salesperson pays his or her own expenses.

Subp. 3. Employee. A traveling salesperson is an employee if all the following conditions are substantially met.

- A. The salesperson is required to appear at or report to the firm's offices regularly.
- B. The salesperson must work during fixed hours or at certain times.
- C. The salesperson must follow and report on leads.
- D. The salesperson is required to take part in sales meetings or training courses.
- E. The salesperson is required to canvass territory at regular intervals.
- F. The firm is dependent principally on the services of traveling salespersons for the disposition of its merchandise.

5222.0240 HOUSE-TO-HOUSE COMMISSION SALESPEOPLE.

Subpart 1. Definition. A house-to-house commission salesperson sells door-to-door at retail prices to the customer. The salesperson does not purchase stock at wholesale, maintain that stock for resale, or retain the risk of loss if the stock is not sold.

Subp. 2. Independent contractor. A house-to-house commission salesperson is an independent contractor if all of the following criteria are substantially met.

- A. If assigned to territories, the salesperson is not granted exclusive rights to them.
- B. The salesperson is not required to canvass his or her territories within any specified time or to work during fixed hours or at certain times.
- C. The salesperson receives no training, is not required to follow an established routine or schedule, and devises his or her own methods and means of selling.
- D. The salesperson pays his or her own business expenses.
- E. The salesperson is not required to produce any minimum volume of business or follow leads furnished by the company.

Subp. 3. Employee. A house-to-house commission salesperson is an employee if all of the following criteria are substantially met.

- A. The salesperson works for only one company and on a full-time basis.
- B. The services of the salesperson are an important part of the company's business.
- C. Although the salesperson may not be required to report to the company's office at regular intervals, he or she often receives leads and instructions through the mail which must be followed.
- D. The salesperson is required to file regularly a report of activities with the company.
- E. The salesperson is required to canvass his or her territory regularly.
- F. The salesperson is required to attend sales meetings or take part in training courses.
- G. The salesperson may be visited by a sales manager or supervisor who instructs and helps in developing sales techniques and other matters.
- H. The salesperson is expected to produce a certain amount of business to continue the relationship.

5222.0250 HOUSE-TO-HOUSE DEALER SALESPEOPLE.

Subpart 1. Definition. A house-to-house dealer salesperson buys stocks of commodities at wholesale from a company and sells them at retail. In other respects, the dealer is similar to ordinary retail merchants and house-to-house commission salespeople.

Subp. 2. Independent contractor. A dealer is an independent contractor if all of the following criteria are substantially met.

- A. The dealer is not required to work during fixed hours or at certain times, to follow any particular routes or schedules or to report on his or her activities.
- B. The dealer keeps substantial inventories and has automobiles or trucks to deliver merchandise.
- C. The dealer may employ others.
- D. Compliance with suggestions or attendance at salesmanship meetings are optional with the dealers.
- E. The dealer is not required to solicit prospective purchasers identified by the company.
- F. The dealer chooses working hours and methods of solicitation.
- G. The dealer pays business expenses and, by selling on credit, takes a risk of loss.
- H. The dealer is dependent for a livelihood on personal efforts and ingenuity in establishing clientele and good reputations.

Subp. 3. Employee. A dealer is an employee if all of the following criteria are substantially met.

- A. The dealer must report regularly on sales, prospects, and work activities.
- B. The dealer must report regularly for sales meetings and pep talks.
- C. Although not usually required to work during hours fixed by the firm, the dealer is expected to meet a certain quota.
- D. The dealer is restricted from selling on credit and must abide by prices set by the company.
- E. Merchandise may be returned to company with no loss to the dealer.
- F. The dealer is furnished leads and required to follow-up and report.
- G. The dealer is required to concentrate on certain products listed as "specials" and follow schedules or routes worked out by the company.
- H. If sales fall off, a manager or other company representative investigates and instructs the dealer how to increase sales.
- I. Helpers may be provided by the company for dealers who maintain large volumes of sales.
- J. The relationship is terminable by either party on short notice and without liability to the employee for noncompletion.
- K. Where the dealer trains others, the dealer is paid and may be elevated to a managership.

5222.0260 AGENT DRIVERS.

Subpart 1. Definition. An agent driver is a salesperson who drives a truck in selling and delivering bread, milk, meat, beverages, laundry, dry-cleaning, or similar services. The driver may sell to consumers at retail prices or at wholesale to retailers.

Subp. 2. Independent contractor. An agent driver is an independent contractor if all of the following criteria are substantially met.

- A. The driver does not contract with the firm to render personal services but only to buy a certain amount of a firm's products regularly.
- B. The driver may hire and pay helpers or use substitutes.
- C. Although the driver may work full time, the driver does so by choice; and selects working hours.
- D. The driver selects customers, sets prices, and often sells on credit.
- E. The driver pays truck maintenance costs and other business expenses.
- F. The driver cannot return unsold products to the firm.
- G. Either party may terminate the relationship at any time without incurring liability.

Subp. 3. Employee. An agent driver is an employee if all the following criteria are substantially met.

- A. The driver is assigned a route and required to cover it at regular intervals.
- B. Helpers or substitutes are not permitted.
- C. Prices are set by the company.

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- D. The driver cannot handle competing lines.
- E. The driver is required to keep reports of sales and other matters.
- F. The driver collects from customers and turns money over to the company.
- G. The driver has no authority to determine whether sales may be made on credit.
- H. The driver reports to the company office at specified times to load trucks, return unsold goods, and report on activities as requested.
- I. The driver is required to follow leads.
- J. The driver is expected to solicit new customers and adjust complaints.
- K. The driver may quit or a firm may fire the driver on short notice, and neither is liable for damages for noncompletion.
- L. The driver receives paid vacation, sick benefits, or other similar benefits offered to nondriver employees of the firm.

5222.0270 PHOTOGRAPHERS' MODELS.

Subpart 1. Definition. A photographer's model is a professional who poses for photographs that are used for commercial purposes. The photographs are reproduced and appear in magazines, newspapers, or similar media to aid in advertising commercial products. The model is knowledgeable or trained in such subjects as the art of make-up, fashion, hairstyling, acting, and posture.

Subp. 2. Independent contractor. A photographer's model is an independent contractor if all of the following criteria are substantially met.

- A. The model engages a booking agent for a certain compensation, usually ten percent of the model's fees. The agent makes and arranges appointments for the model.
- B. Fees are fixed by the agent, usually on an hourly basis.
- C. The model reserves the right to limit the time or period of work and the right to work only during certain hours.
- D. The model releases property rights in each specific photograph that is to be used commercially.
- E. The model supplies his or her own wardrobes appropriate to the roles he or she is engaged to portray.
- F. The model is free to pose for anyone who desires his or her services.
- G. The model is not engaged on a permanent or periodic basis but solely for specific jobs and the model reserves the right to cancel bookings made by his or her agents.
- H. The creation and enactment of the roles assigned them are left to the models' own discretion and initiative.
- I. The model is free to use his or her skill and training in other fields of business activity, such as radio, movie shorts, fashion shows, and television shows.

Subp. 3. Employee. A photographer's model is an employee if all of the following criteria are substantially met.

- A. The model works for only one or two photographers or firms and is paid a salary or guaranteed minimum wage to work during fixed hours on the employer's premises.
- B. The model is required to conform to instructions or suggestions on, among others, costume, coiffure, general make-up, posture, or the position and expression to assume in an assigned role.
- C. The model is paid a salary for first call on his or her services and on a full-time basis or part-time basis.
- D. The work is performed mostly on company premises and is done in accordance with a supervisor's or manager's views on the best method of illustrating the good points of the garments or other products being modeled.
- E. Either party may terminate the relationship at any time.

5222.0280 PROFESSIONAL PERSONS.

Subpart 1. Definition. A professional is a person in an occupation that requires education equivalent to college graduation or beyond and involves compliance with professional and statutory licensing or registration standards before the individual can practice. The professional field includes architects, attorneys, certified public accountants, and engineers.

Subp. 2. Independent contractor. A professional is an independent contractor when all of the following criteria are substantially met.

- A. The professional sets up his or her own business office.
- B. The professional hires and directs assistants or helpers.
- C. The professional pays all expenses in connection with the business.

- D. The professional offers services to the public.
- E. The professional works at hours of his or her own choice.
- F. The professional is dependent for a livelihood upon the amount of time, energy, and ingenuity applied to the work.

Subp. 3. Employee. A professional is an employee if all of the following criteria are substantially met.

A. The professional subordinates activities to the interests of the employer by working under conditions that make the professional's services an integral part of another's business.

- B. The professional works when and where a firm dictates.
- C. The professional is furnished an office and office facilities, and business expenses are met by the firm.
- D. The professional is paid a fixed salary determined on a weekly, monthly, annual, or similar basis.
- E. The professional's services are subject to supervision and review.
- F. The professional cannot hire a substitute or helper.
- G. The professional may be discharged at will and has the right to terminate the relationship at any time without liability.
- H. The professional incurs no expenses nor make any investment.
- I. The relationship is continuing.

5222.0290 DOCTORS OF MEDICINE; PART-TIME SERVICES FOR INDUSTRIAL FIRMS.

Subpart 1. Definition. Doctors are persons whose work requires licensure pursuant to Minnesota Statutes, section 147.02.

Subp. 2. Independent contractor. Doctors who, in addition to their private practices, enter into arrangements with industrial firms to examine and treat the firm's employees on a part-time basis, are independent contractors if all of the following criteria are met.

A. The firm is interested in securing a medical service rather than the personal service of the doctor and an employment relationship is not contemplated under the terms of the agreement between the parties. The doctor, in effect, accepts the firm as an additional client in the doctor's private practice.

- B. The doctor has the right to leave the firm's premises during working hours if an emergency arises in private practice.
- C. The doctor has the right to send a substitute to perform the services.
- D. The doctor does not have the right to terminate the relationship on short notice.
- E. Direct supervision and control over the services were not contemplated by the parties to the agreement.

Subp. 3. Employees. Doctors described in subpart 1 are employees if all of the following criteria are substantially met.

- A. The doctor's services are materially integrated into the operating organization of the firm.
- B. The doctor performs services of a substantial nature for the firm on a regular and continuing basis.
- C. The doctor is subject to supervision and control by the firm to the extent necessary to require compliance with its general policies and procedures.
- D. The doctor is accorded the rights and privileges that the firm extends to its employees generally.

Subp. 4. Definition of factors. This subpart explains the factors listed in subpart 3.

- A. Materially integrated is determined by factors such as:
 - (1) the payment of a salary or fixed rate of pay as compared to remuneration on a fee basis;
 - (2) a contract term indicating a mutual intention to create an employer and employee relationship;
 - (3) the firm engages the services of a substitute in the event of the doctor's absence;
 - (4) the remuneration is reported as wages for social security purposes; and
 - (5) the doctor, for income tax purposes, reported the remuneration as wages.

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B. Regular and continuing basis means agreement to a schedule of definite and fixed hours of service and the requirement to follow the schedule without substantial deviation.

C. Compliance with policies and procedures exists where the methods, routines, and procedures followed by the doctor are subject to supervision. The supervision may be of varying degree and nature, for example, supervision exercised by a medical director may include somewhat detailed control over the physician's medical routines where the supervision exercised by a hospital administrator may lay less emphasis on this aspect. However, the factor of compliance is met where the physician is required to follow the employer's rules regarding the physician's methods of operation generally, including the obligation to treat assigned patients, the report the physician must submit, the priorities the physician must follow both medically and administratively, and the standards the physician must maintain regarding equipment and cleanliness.

D. Rights and privileges include vacation and sick leave with pay, holiday pay, severance pay, and pension and insurance plans.

5222.0300 REAL ESTATE AND SECURITIES SALESPEOPLE.

Subpart 1. Definition. Real estate salespeople are persons licensed as real estate salespersons under Minnesota Statutes, chapter 82. Securities salespeople are persons licensed as agents under Minnesota Statutes, chapter 80A.

Subp. 2. Independent contractor, real estate. A real estate salesperson who is a qualified real estate agent under the Internal Revenue Code of 1954, section 3508(b)(1) is an independent contractor. The Internal Revenue Code of 1954, section 3508(b)(1) is incorporated by reference as the standard to be used under this chapter. A real estate salesperson who is not a qualified real estate agent under that standard is nonetheless an independent contractor if all the following conditions are substantially met.

A. The salesperson is licensed to one broker and the cost of the license is paid by the salesperson.

B. The broker makes available to the salesperson office facilities and property listing, and assists the salesperson by giving advice and by cooperating in his or her endeavors.

C. The broker furnishes the salesperson with necessary business forms, stationery, cards, and instructs him or her in office procedures and business policies either verbally or by means of written instructions, such as sales manuals.

D. The salesperson agrees to work diligently for the broker and to conduct his or her business and regulate his or her habits so as to maintain and increase the good will and reputation of the broker.

E. The salesperson agrees not to sell for other brokers.

F. The salesperson provides his or her own transportation and pays all expenses incurred in the solicitation of business.

G. The salesperson generally reports to work daily but works no fixed number of hours.

H. Meetings are held in the broker's office on a regular basis, usually weekly, but attendance at these meetings is voluntary.

I. Sales are closed in the name of the broker.

J. The money is turned over to the broker who pays the salesperson commissions at periodic intervals.

K. The salesperson's success is primarily dependent on his or her own initiative and effort.

Subp. 3. Independent contractor, securities. A securities salesperson is an independent contractor if all the following conditions are substantially met.

A. The securities dealer engages the salesperson in the furtherance of the business.

B. The salesperson is licensed to a particular dealer.

C. The dealer furnishes the salesperson with desk space, telephone and telegraph facilities, market quotations, statistical and bookkeeping services, and clerical assistance.

D. The salesperson agrees to work diligently for the dealer and to abide by all laws, rules, and regulations under which the dealer operates the business.

E. The salesperson is not required to work fixed hours.

F. The salesperson concludes sales in the name of the dealer and pays over the money to the dealer.

G. The salesperson is paid on a commission basis at periodic intervals.

H. Under certain circumstances, the salesperson may bear a part of the losses resulting from a transaction.

I. Sales meetings are held regularly, but attendance is voluntary.

J. The salesperson's income is primarily dependent on his or her own initiative and effort.

Subp. 4. Employee. A salesperson is an employee when all of the following criteria are substantially met.

- A. the salesperson is paid a salary or guaranteed minimum wage;
- B. the employer requires fixed hours of work;
- C. the employer requires that nearly all work be done on the broker's or dealer's premises;
- D. the employer requires attendance at employer's office at specific times;
- E. the broker or dealer has the right to interrupt or set the order of services;
- F. the employer provides instruction or training in how the salesperson approaches prospects, closes sales, and works on particular problems; and
- G. the employer requires the salesperson to report on activities.

5222.0310 REGISTERED AND PRACTICAL NURSES.

Subpart 1. Definition. Registered nurses are persons licensed as such pursuant to Minnesota Statutes. Practical nurses are persons licensed as such pursuant to Minnesota Statutes.

Subp. 2. Independent contractor. A nurse is an independent contractor if:

- A. The nurse holds himself or herself out to the public as exercising an independent calling requiring specialized skills.
- B. The nurse has full discretion in administering his or her professional services. Full discretion is present even though the nurse may be subject to the supervision of the attending physician.
- C. The nurse is retained full time by the purchaser and the work relationship between the purchaser and the nurse is expected to terminate when the job is completed.
- D. The nurse is not retained full time by a purchaser and the nurse is available to others for private duty nursing.

Subp. 3. Employee. A nurse who works for a hospital, clinic, nursing home, public health agency, or as an office attendant for a private physician is an employee if all the following criteria are substantially met.

- A. The nurse works full time on the regular staff of the firm.
- B. The nurse works for a salary and follows prescribed routines during fixed hours when he or she is not available for private duty nursing.
- C. The nurse's services are integrated into the employer's business.
- D. The employer has the right to set the order of and supervise the services.

5222.0320 UNLICENSED "NURSES."

Nurses' aides, domestics, and other unlicensed individuals who continue to classify themselves as practical nurses are, in general, insufficiently trained or equipped to render professional or semi-professional "nursing." Their services are normally those expected of maids, servants, and domestics, for example, bathing the individual, combing the individual's hair, reading, arranging bedding and clothing, preparing or serving meals, and occasionally giving oral medication left in their custody. The status of these persons is determined pursuant to part 5222.0080, domestic service.

5222.0330 TAXICAB DRIVERS.

Subpart 1. Definition. Taxicab drivers are persons who offer fee for service auto transportation within a limited area.

Subp. 2. Independent contractor. A driver is an independent contractor if all of the following criteria are substantially met.

- A. The driver owns and drives his or her own cab, or leases it on a flat rate basis and pays a specified rental on a daily, weekly, or similar time basis.
- B. The driver is free to work the shift he or she chooses, and there is no control over when and where the driver works.
- C. The driver's sole compensation is the fares and tips collected from patrons.
- D. The driver is required to comply with government rules and regulations and with firm regulations that are meant to ensure proper care and handling of the cab.

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E. The driver is not required to report his or her whereabouts and is not subject to instructions on where to seek patrons.

F. If the driver leases the cab, the lessor is interested only in receiving the cab rental and, in many cases, payment for gasoline and oil that the driver is required to buy from the lessor.

G. The opportunity for profit or risk of loss rests with the driver, not the lessor.

Subp. 3. Employee. A taxicab driver is an employee if all the following criteria are substantially met.

A. The employer exercises control over the driver while the driver is in possession of the cab.

B. The driver must work during specified hours or on assigned shifts, pick up passengers on call, and report his or her whereabouts periodically.

C. The driver must account for fares collected.

D. The employer requires that the driver perform the services personally.

E. The employer gives instructions on matters of appearance, behavior, manner of seeking patrons, routes, order of services, and time off from duty.

F. Payment is in the form of a salary or salary plus a percentage of fares.

G. The driver is required to report personally and regularly or furnish written reports.

H. There are no business expenses on the part of the driver.

I. Both parties have the right to terminate the relationship at any time.

J. There is no investment or opportunity for profit or risk of loss on the part of the driver.

5222.0340 TIMBER CUTTERS AND SKIDDERS.

Subpart 1. Definition. Timber cutters or piecemakers work at felling timber with axes, two-man hand saws, or power saws. In addition to felling trees, they trim branches, cut the tree trunks into specified lengths, and sometimes peel or strip off the bark. They usually work with their own tools, such as axes, saws, and wedges. Skidders drag the logs from the place where the trees are cut to skidways or similar locations by using horses, tractors, or trucks. Skidders usually work with their own equipment.

Subp. 2. Neutral factors. Due to the nature of the work and certain customs in the field, the following factors are neutral: lack of fixed hours of work, payment on a piecework basis, ownership of small tools, and requirements that the product of the work be within overall specifications.

Subp. 3. Independent contractor. A timber cutter or skidder is an independent contractor if all of the following criteria are substantially met.

A. The worker is granted exclusive timber rights to tracts of land and legally binds himself or herself to remove all or certain parts of the timber within specified times at set prices.

B. The worker bargains for "package" jobs which he or she will do by methods of his or her own choice.

C. The worker is paid to obtain a result, which does not necessarily depend on his or her own personal services.

D. The worker is free to hire and direct others to do the work and the worker is responsible for expenses incurred in fulfilling the contract.

E. The worker supplies the necessary equipment and sometimes the tools used by the helpers.

F. The worker determines the working hours and rates of pay, and otherwise controls the helpers' working conditions.

G. The worker holds himself or herself out to the public as a contractor and sometimes holds several logging contracts at the same time.

H. The worker is in a position to make a profit or suffer a loss, depending on the management of helpers, the care of the tools and equipment, and the methods used for doing the work.

I. As long as the worker produces final results that measure up to specifications, there is no desire or legal right to interfere with the worker's methods.

Subp. 4. Employee. A timber cutter or skidder is an employee if all of the following criteria are substantially met.

A. The cutter or skidder is assigned to specific areas or strips of timberland, but the right to work in areas is not given to him or her exclusively.

B. The company assigns a number of workers to each area. They are told the kind and size of trees to cut. Trees designated to be cut because of a conservation or sustained-yield program do not indicate employment.

C. The company foreman inspects the strips periodically and, if not satisfied with the progress being made, replaces the workers with another crew.

D. The crews may be shifted from one strip to another to speed up operations and if a worker is ill or not doing satisfactory work the foreman may replace the worker.

E. The worker chooses his or her own hours of work, but is required to finish each strip within a certain time and to do so usually requires long and regular hours of work.

F. The worker is paid on a piecework basis or by the cord, but generally the company will not pay for logs that do not measure up to specifications. Keeping records of wages paid and hours worked is not indicative of employment if it is required only to ensure that the products may be shipped in interstate commerce.

5222.0350 SAWMILL OPERATORS.

Subpart 1. Definition. Sawmill operators manage sawmills. A sawmill is used to convert logs into rough lumber or other unfinished products. In sawing logs into lumber, the log is rolled onto a carriage with powerful clamps to hold it in position while it is pushed lengthwise through one or more circular or band saws. The carriage and saws are usually powered by electricity or steam. The moving of the logs into position, the sawing operation itself, and the stacking or removal of the products often require the services of a crew of workers.

Subp. 2. Independent contractor. A sawmill operator is an independent contractor if all of the following criteria are substantially met.

- A. The operator has a substantial investment because he or she owns the mill and equipment used in the work.
- B. The operator contracts to saw, or fell and saw, timber at so much per thousand feet. The operator may bind himself or herself by contract to complete the job within a set time or to produce a daily or weekly quota.
- C. The work calls for independent thought and action based on business judgment, experience, and training.
- D. The operator contracts to do a specific job, using his or her own methods. The only control over the work concerns attainment of a result of cutting and sawing of trees of a certain size and producing logs or lumber as required.
- E. The operator hires, pays, and directs his or her own crews.
- F. The operator is not required to do the work personally, but is responsible for its being done.
- G. The operator is in a position to lose or profit from management of the workers and care of the equipment.
- H. The operator is free to work for others.
- I. There is no restriction of activities so long as the sawmill turns out products that meet the overall specifications in the contract.

Subp. 3. Employee. A sawmill operator is an employee if all of the following criteria are substantially met.

- A. The purchaser of the services pays the cost of running the mill, even though the operator may own the mill.
- B. The operator may pick a crew to operate the mill, but the company pays them and can fire them for poor work.
- C. The company has the right to tell the operator what hours to work and the kind and size lumber to saw from day to day, and may require that records be kept of the amount produced and on hand daily.
- D. The mill is moved from one tract to another as the company requires.
- E. The operator may be paid a salary or pay may be computed on a piecework basis.
- F. The services are terminable by either party at any time.
- G. The operator has no business expenses nor opportunity for profit or risk of loss.
- H. The operator cannot work for others.

5222.0360 LOGGING CONTRACTORS.

Subpart 1. Definition. A contract logger is a person who has a contract to perform some or all of the tree harvesting operations; to

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cut the trees down, peel off the bark, saw them into logs of desired lengths, haul them to specified locations, and pile them at landings, yards, or storage points.

Subp. 2. Independent contractor. A contract logger is an independent contractor if all of the following criteria are substantially met.

- A. The logger is free to hire, pay, and direct his or her own crews or assistants.
- B. The logger owns his or her own tools and equipment and accomplishes the purposes of the contracts by his or her own methods or by subcontracting parts of the work.
- C. The logger is not tied down to one particular job but is free to contract with others.
- D. Bargaining for and fulfilling the terms of the contract requires business judgment, good management, and skill. The logger's success or failure in business is dependent upon his or her business judgment, management ability, and skill.
- E. The logger is retained to complete a particular job and may be liable for damages for noncompletion.

Subp. 3. Employee. A contract logger is an employee if all the following criteria are substantially met.

- A. The logger is required to perform the services personally and is not free to hire helpers.
- B. The logger is required to follow instructions about where to cut at a particular time, what trees to cut and haul first, the amount of cordage to be cut, and the number of hours to work. Contract cut limits on Department of Natural Resources permit restrictions are not evidence that this criterion has been met.
- C. The logger is not free to work for anyone else.
- D. The employer pays the logger's business expenses with the understanding that authority to supervise crews or assistants and to plan the use of the equipment belongs to the employer.
- E. The relationship is terminable on short notice by either party prior to completion of a job and there is no liability for damages for noncompletion.

5222.0370 TRUCK OWNER-DRIVERS.

Subpart 1. Definition. A truck owner-driver is any individual, partnership, or corporation (hereinafter referred to as "individual") who owns or holds a vehicle as defined in subpart 2 under a bona fide lease and who leases that vehicle together with driver services to an entity which holds itself out to and does transport freight as a for-hire or private motor carrier.

Subp. 2. Independent contractor. In the trucking industry, an owner-operator of a vehicle that is licensed and registered as a truck, tractor, or truck-tractor by a governmental motor vehicle regulatory agency is an independent contractor, not an employee, while performing services in the operation of his or her truck, if each of the following factors are substantially present.

- A. The individual owns the equipment or holds it under a bona fide lease arrangement.
- B. The individual is responsible for the maintenance of the equipment.
- C. The individual bears the principal burden of the operating costs, including fuel, repairs, supplies, vehicle insurance, and personal expenses while on the road.
- D. The individual is responsible for supplying the necessary personal services to operate the equipment.
- E. The individual's compensation is based on factors related to the work performed including a percentage of any schedule of rates or lawfully published tariff and not on the basis of the hours or time expended.
- F. The individual generally determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper.
- G. The individual enters into a contract that specifies the relationship to be that of an independent contractor and not that of an employee.

Subp. 3. Employee. An owner operator of a vehicle as defined in subpart 2 is an employee, not an independent contractor, while performing services in the operation of the individual's truck, if all of the following criteria are substantially met.

- A. The individual is paid compensation for his or her personal services:
 - (1) based solely on wage by the hour or a similar time unit that is not related to a specific job or freight movement;
 - (2) on a premium basis for services performed in excess of a specified amount of time; and
 - (3) from which FICA and income tax is withheld.
- B. The individual is treated as an employee by the firm with respect to fringe benefits offered to employees by the firm.

- C. The individual usually works defined hours.
- D. The employer requires that the individual must perform the work personally and cannot change drivers.
- E. The individual has no choice in the acceptance or rejection of a load.

F. The individual and firm have no written contract; or, if there is a written contract, it does not specify the individual's relationship with the firm as being that of independent contractor.

5222.0380 VARIETY ENTERTAINERS.

Subpart 1. Definition. A variety entertainer is a person who entertains and amuses audiences by means of acts or skits, dances, readings, feats of skill, songs, or comedy acts. The entertainer performs in the legitimate and burlesque theaters, movie houses, circuses, fairs, hotels, and night clubs.

Variety entertainers specialize in one or two types of acts. The more talented create and develop their own acts or routines and sometimes train others to help perform them. They often work in pairs or as members of troupes.

Subp. 2. Neutral factors. The status of a variety entertainer is not determined by the entertainer's entering into the form B contract of the American Federation of Musicians. This contract purports to establish an employer and employee relationship between the purchaser of the services and the entertainer. The actual relationship, rather than the terms of the contract, governs.

Subp. 3. Independent contractor. A variety entertainer is an independent contractor if all of the following criteria are substantially met.

- A. The entertainer performs acts or routines as a series of short-term engagements for a number of different operators of theaters, night clubs, restaurants, and similar establishments.
- B. The entertainer's contract, which is usually obtained through booking agents or personal representatives, specifies only the time, place, and duration of each engagement, and the pay.
- C. The entertainer furnishes his or her own music arrangements, stage props, and dress.
- D. The entertainer's act is not an integral part of another's business.
- E. The entertainer maintains a high degree of individuality and establishes a reputation based on the acceptance by the audiences for which the entertainer performs.

Subp. 4. Employee. A variety entertainer is an employee when all of the following criteria are substantially met.

- A. The entertainer is subject to supervision over the number, time, place, and length of rehearsals and performances, and as to duty and behavior, and is bound by rules and regulations to the purchaser of the services.
- B. The entertainer's variety acts may undergo considerable change in order to suit the employer's purpose. It may be shortened, lengthened, or moved from one spot to another to weld it, with others, into one complete show or to coordinate it with other activities. In that case, individuality of the performer is subordinated to the purpose of enhancing the reputation of the purchaser of the services.
- C. The entertainer's performance becomes an integral part of another's business.
- D. The entertainer is engaged on a long-term basis.
- E. The entertainer may not work for others.
- F. The entertainer has no opportunity for profit or risk of loss, must frequently work with others, and can be shifted from one place to another.
- G. The entertainer can be discharged at any time.
- H. The entertainer cannot hire helpers or substitutes.

5222.0390 SPORTS OFFICIALS.

Subpart 1. Definition. A sports official is an individual engaged to referee games of sport such as basketball, hockey, or football where the level of competition requires the sports official to be a member of or certified by an organization whose purpose is to maintain minimum standards and qualifications of sports officials.

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Subp. 2. Independent contractor. A sports official is an independent contractor if all the following conditions are substantially met.

- A. There is a written contract between the sports official and the party or association engaging the services of the sports official that states specifically that the sports official is an independent contractor.
- B. Payment to the sports official is for a set fee for each game officiated.
- C. The official is free under the terms of the contract to accept or reject assignments of any game.
- D. The sports official is not limited to exclusively officiating with the party engaging the services as a sports official.

Subp. 3. Employee. A sports official is an employee if all of the following criteria are substantially met.

- A. The official is paid on an hourly, weekly, or similar time basis.
- B. The official must work at the times and places designated by the purchaser of the official's services, and is not free to reject assignments.
- C. The official is not free to sell his or her services to other parties while working for the purchaser.
- D. The relationship is terminable at will without any liability to the official.

5222.0391 JOCKEYS.

Subpart 1. Definition. A jockey is a person who is licensed under Minnesota Statutes, chapter 240 to ride race horses for compensation as a jockey or apprentice jockey.

Subp. 2. Independent contractor. A jockey is an independent contractor with respect to the racetrack, trainer, and horse owner if all of the following criteria are substantially met.

- A. Arrangements for rides are made by the jockey or by an agent of the jockey who receives a commission from the jockey.
- B. The jockey is free to ride the horses of any stable.
- C. The jockey is free to accept or reject a call.
- D. The jockey provides his or her own saddle.
- E. The trainer instructs the jockey regarding the nature of the mount, the setup of the race, and the trainer's expectations of the running of the race. The jockey is free to disregard the instructions of the trainer, and may decide the route to be taken, the rate of speed of the horse, and similar matters regarding the running of the race.
- F. Payment is a fee paid on a per-race basis from the horseperson's account of the racetrack.

Subp. 3. Employee. A jockey is an employee of the trainer if all of the following criteria are substantially met.

- A. The jockey rides only for the employing trainer or the jockey rides for other trainers only with the permission of the employing trainer.
- B. The jockey is not free to reject the employing trainer's call.
- C. The trainer provides or pays for the jockey's saddle.
- D. The jockey is not free to disregard the instructions of the trainer regarding the running of the race except for safety reasons.
- E. The jockey is paid a salary or wage by the trainer on a time rather than per-race basis; compensation usually includes room and board, and the wage may be paid from the horseperson's account at the racetrack.

5222.0392 TRAINERS.

Subpart 1. Definition. A trainer is a person who is licensed as a trainer under Minnesota Statutes, chapter 240.

Subp. 2. Independent contractor. A trainer is an independent contractor with respect to the racetrack and to the owners if all of the following criteria are substantially met.

- A. The trainer sets a fee which covers the daily fee, and bills the owner for the day pay and any additional supplies or services incurred in the care of the horse.
- B. Tack, feed, board, and all supplies necessary for the ordinary care of the horse are provided by the trainer.
- C. The trainer has a substantial capital investment in tack, equipment, and supplies.
- D. The trainer makes all decisions regarding management of the horse while the horse is at the trainer's stable. If the trainer disagrees with instructions of the owner, the trainer is free to tell the owner to remove the horse from the trainer's care, and the owner must comply.

E. The trainer is free to stable and train the horses of other owners.

Subp. 3. Employee. A trainer is an employee of an owner if all the following criteria are substantially met.

A. The trainer is paid on a salary, wage, or similar time basis.

B. Tack, feed, board, equipment, and supplies for the care of the horse are provided by the owner.

C. The stables are owned or operated by the owner of the horses.

D. The trainer must comply with instructions of the owner regarding management of the horse, although the owner generally relies on the expertise of the trainer.

E. The trainer may stable and train the horses of others only with the permission of the employing owner.

F. The trainer's hours of work are set by the owner of the horse.

5222.0400 GENERAL CRITERIA FOR NONSPECIFIED OCCUPATIONS.

Parts 5222.0410 and 5222.0420 shall be used to determine if an individual is an independent contractor or an employee where the occupation is not defined in parts 5222.0020 to 5222.0390. Additionally, these parts provide interpretative guidance where the occupation is defined but the safe harbor criteria for that occupation are not all substantially met. Where some but not all of the safe harbor criteria are substantially met, those criteria which are substantially met shall be considered evidence of that status, and shall control where a conflicting result for that criterion is indicated by parts 5222.0410 to 5222.0420.

5222.0410 CONTROL OF METHOD AND MANNER OF PERFORMANCE.

Subpart 1. Generally. The most important factor in determining whether a person is an independent contractor is the degree of control which the purported employer exerts over the manner and method of performing the work contracted. The more control there is the more likely the person is an employee and not an independent contractor. Subparts 2 to 14 describe criteria for determining if there is control over the method of performing or executing services. The total circumstances, including the practices and the customs of the industry, must be considered to determine if control is present.

Subp. 2. Authority over individual's assistants. Control over the individual is indicated when the employing unit hires and pays the individual's assistants and supervises the details of the assistants' work.

Subp. 3. Compliance with instructions. Control is indicated when an individual is required to comply with detailed instructions about when, where, and how he or she is to work including the order or sequence in which the service is to be performed. Mere suggestions as to detail, or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally evince control. Some individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control is present if the employing unit has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the employing unit from a client or customer, do not evince control.

Subp. 4. Oral or written reports. Control is indicated if regular oral or written reports relating to the method in which the services are performed must be submitted to the employing unit. Periodic reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion of a job, or the reports are needed to determine compliance with the terms of a contract. Completion of receipts, invoices, and other forms customarily used in the particular type of business activity or required by law does not constitute written reports.

Subp. 5. Place of work. Control is indicated if work which could be done elsewhere is done on the employing units premises, especially when the work could be done elsewhere. When work is done off the premises, freedom from control is indicated except in occupations where the services are necessarily performed away from the premises of the employing unit.

Subp. 6. Personal performance. Control is indicated if the services must be personally rendered to the employing unit. Personal performance of a very specialized work, when the worker is hired on the basis of professional reputation, as in the case of a consultant known in the academic and professional circles to be an authority in the field, is a less reliable indicator of control. Lack of control is indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.

Subp. 7. Existence of continuing relationship. The existence of a continuing relationship between an individual and the person

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for whom he or she performs services indicates the existence of an employment relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the employing unit or whenever work is available.

Subp. 8. Set hours of work. The establishment of set hours of work by the employing unit indicates control. Where fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times indicates control.

Subp. 9. Training. Training of an individual by an experienced employee, by required attendance at meetings, and by other methods, indicates control, especially if the training is given periodically or at frequent intervals.

Subp. 10. Amount of time. Control is indicated where the worker must devote full time to the activity. Full time does not necessarily mean an eight-hour day or a five- or six-day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and customs in the locality. Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels the person to devote all working time to that business, or the person may not be permitted to work for anyone else.

Subp. 11. Simultaneous contracts. If an individual works for a number of persons or firms at the same time, lack of control is indicated.

Subp. 12. Tools and materials. The furnishing of tools, materials, and supplies by the employing unit indicates control over the worker. When the worker furnishes these items, lack of control is indicated. Lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

Subp. 13. Expense reimbursement. Payment by the employing unit of either the worker's approved business or traveling expenses, or both, indicates control over the worker. A lack of control is indicated when the worker is paid on a job basis and is responsible for all incidental expenses.

Subp. 14. Satisfying requirements of regulatory and licensing agencies. Control is not indicated where an employing unit is required to enforce standards or restrictions imposed by regulatory or licensing agencies.

5222.0420 INDEPENDENT CONTRACTOR OR EMPLOYEE, FACTORS TO CONSIDER.

Subpart 1. Factors. Among the factors to be considered, in addition to factors of control, when determining if services are those of an independent contractor or employee are those listed in subparts 2 to 9.

Subp. 2. Right to discharge. The right to discharge exists if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. There is no right to discharge if an independent worker produces an end result which measures up to contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative of the right to discharge. Restrictions on the right to discharge because of a contract with a labor union or with other entities are not relevant for purposes of this subpart.

Subp. 3. Availability to public. If an individual makes services available to the general public on a continuing basis, independent contractor status is indicated. An individual's services are offered to the public by, among other things:

- A. having an office and assistants;
- B. displaying a sign in front of a place of business;
- C. holding a business license;
- D. having a listing in a business directory or a business listing in a telephone directory; or
- E. advertising in a newspaper, trade journal, or magazine.

Subp. 4. Compensation on job basis. Independent contractor status is indicated by payment on a job basis rather than payment by the hour, week, or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The granting of a drawing account at stated intervals with no requirement for repayment of the excess drawn over commissions earned or the guarantee of a minimum salary indicates an employment relationship.

Subp. 5. Realization of profit or loss. Independent contractor status is indicated where an individual is in a position to realize a profit or suffer a loss as a result of his or her services. Opportunity for higher earnings from piecework or commissions does not indicate an opportunity for profit or loss. An opportunity for profit or loss is indicated by the following factors, among others:

- A. hire, direct, and pay assistants;
- B. provide own office, equipment, materials, or other facilities for doing the work;
- C. continuing and recurring financial liabilities or obligations, relating to the work;

D. profit or loss in the work depends upon the relationship of receipts to expenditures;

E. expenses incurred in connection with the work are paid by the individual;

F. specific jobs are performed for prices agreed upon in advance; and

G. performance of the services affects the individual's business reputation, and not the business reputation of those who purchase the services.

Subp. 6. Termination. The worker's right to terminate the working relationship with the purported employer at will and without incurring liability for noncompletion indicates employment. A requirement to provide notice of termination for some period in advance of the termination is not relevant for purposes of this subpart. Independent contractor status is indicated where the individual agrees to complete a specific job, is responsible for its satisfactory completion, and is liable for failure to complete the job.

Subp. 7. Substantial investment. A substantial investment by a person in facilities used in performing services for another indicates an independent contractor status. The furnishing of all necessary facilities by the employing unit indicates the absence of an independent contractor status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation, or vocation. A substantial expenditure of time or money for an individual's education is not indicative of an independent contractor status.

Subp. 8. Responsibility. If an employing unit is responsible for the negligence, personal behavior, and work actions of an individual in contacts with customers and the general public during times that services are performed for the employing unit, an employment relationship is indicated.

Subp. 9. Services fundamental to business. Employment is indicated where the services provided are necessary to the fundamental business purpose for which the organization exists.

Bureau of Mediation Services

Proposed Rules Relating to Public Employees, Labor Negotiations and Dispute Resolution

Notice of Intent to Adopt Rule Amendments without a Public Hearing

NOTICE IS HEREBY GIVEN that the Bureau of Mediation Services proposes to adopt amendments to the above entitled rules without a public hearing. The Director of the Bureau has determined that the proposed amendments to these rules are noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes §§ 14.21-14.28.

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

Unless 25 or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. The written request must be specific as to which rule(s) a hearing is desired on. Identification of the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are desired. In the event a public hearing is required, the Bureau will proceed according to the provisions of Minnesota Statutes §§ 14.13-14.20.

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

Paul W. Goldberg, Director
Bureau of Mediation Services
205 Aurora Avenue
St. Paul, Minnesota 55103

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The Bureau's authority to adopt rules is found in Minn. Stat. § 179A.04, subd. 3(f). A statement describing the need and reasonableness of the proposed amendments is available from the Bureau upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comment received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written request to the above address.

Please be advised that Minn. Stat. Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. Section 10A.01, subdivision 11 defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than \$250, not including his own 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, Minnesota 55155, telephone (612) 296-5615.

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

July 19, 1985

Paul W. Goldberg
Director
Bureau of Mediation Services

Rules as Proposed

5510.2710 NEGOTIATION NOTICE.

Subpart 1. Content of notice. A written notification of the desire to meet and negotiate an original contract, renewal of a contract, or a reopener of a contract must be served on the other party and the director. ~~The written notice shall include~~ may be served on forms available from the director or in other written format which includes the following:

A. to J. [Unchanged.]

Subp. 2. Initial agreement. The employer shall have ten days following service of a notice from an employee organization to object to the employee organization's status as exclusive representative, or to contest the appropriateness of the unit proposed to be covered by the labor contract. An objection must be made in writing to the employee organization and the director, and the director must investigate the matter pursuant to parts 5510.0110 to 5510.2310.

Subp. 3. Subsequent agreement. If a party to an existing labor contract desires to meet and negotiate a subsequent labor contract, the party shall serve written notice of the desire upon the other party to the labor contract and the director at least 60 calendar days prior to the expiration date in the existing labor contract. If a party desires to negotiate a subsequent labor contract, but has failed to provide the required 60-day notice, the party may be compelled to pay a penalty of \$10 per day for each day the notice of intent is late.

Subp. 4. Late notice penalty. A \$10-per-day penalty shall be the only penalty for late notice of a desire to negotiate a subsequent labor contract and may be imposed by the director upon request by a party adversely affected by the failure to provide timely notice or the director's own motion. A request or motion to assess a penalty shall be made in writing and served upon the director and the other party to the labor contract within ten days of the requesting party's first knowledge of the other party's desire to negotiate or, in the case of the director's own motion, within 15 days of the receipt of a request for mediation assistance involving the same parties and contract. A request from a party or motion by the director shall specify the date of first knowledge of the desire to negotiate, the expiration date of the current labor contract, and a brief statement of the adverse results or impact of the late notice. Upon receipt of a written request or after the director's own motion to assess a penalty for late notice, the director shall investigate the matter pursuant to part 5510.1910. If the director finds that the late notice did not prejudice the director or the other party, the director may waive all or a part of the penalty. The penalty shall be payable to the state of Minnesota general fund. The amount of the penalty and its waiver is not subject to appeal to the board.

5510.2810 PETITION FOR MEDIATION.

Subpart 1. and 2. [Unchanged.]

Subp. 3. Notice. Upon receiving a petition for mediation and concluding that mediation would be useful, the director ~~must~~ shall serve notice of the time and place for a mediation meeting of the exclusive representative and the employer.

Subp. 4. [Unchanged.]

Subp. 5. Mediation meetings. Joint or separate mediation meetings of the parties may be scheduled by the director. Mediation meetings are informal and must be limited by the director to matters relevant to the settlement of the dispute. The parties must continue to participate in a mediation meeting until excused by the director. Use of recording devices, stenographic records, or other recording methods is prohibited in mediation meetings.

A mediation meeting may be closed to the public by the director when, in ~~his~~ the director's judgment, closing will facilitate resolution of the dispute. In all cases a meeting will be closed only after receipt by the bureau of a valid and timely petition for mediation or after initiation of mediation by the director. The director may close a meeting to the public prior to its start or at any time during the meeting.

When the director determines that it is in the interest of resolution of a dispute, ~~he~~ the director may authorize a closed meeting of the public employer's governing body for the purpose of review and discussion of the status of negotiations and the employer's positions.

No closed meeting may be authorized unless the bureau has received a valid and timely petition for mediation or unless mediation has been initiated by the director.

No closed meeting may be authorized when the director or a representative of the director is not physically present at the meeting unless the bureau has received a timely and valid notice of intent to strike.

In the event the director determines that a closed meeting is necessary, but the director cannot be physically present at the meeting and a timely and valid notice of intent to strike has been received by the bureau, the director may authorize a closed meeting upon written notice to the governing body and exclusive representative at least 24 hours prior to the closed meeting. The written notice must include the date, time, and place of the closed meeting of the governing body and limit the purpose of the meeting to matters relevant to the dispute.

Subp. 6. [Unchanged.]

5510.2910 RENEWAL OF EXISTING CONTRACT; MEDIATION PERIOD, IMPASSE, ARBITRATION, AND STRIKE NOTICE FOR PUBLIC EMPLOYEES EXCEPT CONFIDENTIAL, ESSENTIAL, SUPERVISORY EMPLOYEES, AND PRINCIPALS AND ASSISTANT PRINCIPALS.

Subpart 1. Mediation period. Except for teachers, a 45-day mediation period commences on the day following receipt by the bureau of a petition for mediation or the day following issuance of notice that the director has initiated mediation. For teachers, a 30-day mediation period commences on the first day that a mediator first attends a mediation meeting with both parties in an effort to resolve the dispute.

Subp. 2. [Unchanged.]

Subp. 3. Expiration of mediation period. Following the expiration of the mediation period and expiration date of the labor contract, negotiations are ~~considered~~ presumed to be at impasse and either party may request to arbitrate the dispute.

Subp. 4. [Unchanged.]

Subp. 4a. Final positions. Upon notice of an agreement to arbitrate, the director shall notify the parties and direct that each party submit its final position on each item determined by the director to remain in dispute. The final positions must be in the form of the contract language desired by that party to resolve each matter in dispute and must be received by the director on or before the date specified in the director's letter.

Subp. 5. Certification of impasse to board. Following receipt of a joint request to arbitrate or receipt of an acceptance of a single-party offer to arbitrate, the director shall notify the board of the existence of an impasse. The notice ~~of impasse must contain a statement that the negotiations between the parties are at impasse;~~ will include a list of the issues determined by the director to be at impasse, and ~~any~~ the final positions submitted by the parties. The director shall advise the board whenever a party does not submit final positions within the format or time frames required by this chapter.

Subp. 6. Option of final offer arbitration. The parties may agree in writing to limit the arbitrator's authority to a final offer item-by-item or a final offer total-package award.

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PROPOSED RULES

A. In the event of ~~that an~~ agreement, the parties must file a written copy of the agreement with the bureau prior to the date upon which final positions are due, as set forth in the director's determination of impasse. If the parties do not agree to final offer arbitration, the impasse shall be decided by conventional arbitration.

B. and C. [Unchanged.]

Subp. 7. Notice of intent to strike, other than teachers.

A. and B. [Unchanged.]

C. The 30-calendar-day strike notice period commences the day following receipt by the director of the notice of intent to strike, provided:

(1) A strike shall not begin during the first ten calendar days of a strike notice period.

(2) The right to strike matures effective 12:01 a.m. of the 11th day and ~~continuing~~ continues until 12:00 midnight of the 30th day of the strike notice period; ~~the right to strike matures.~~

(3) If the bureau receives a notice of intent to strike not more than five calendar days prior to the expiration of the mediation period or 45-day teacher impasse period, the strike notice period begins the day following the expiration of the mediation period. Notices received prior to these periods are void and of no effect.

D. [Unchanged.]

E. The director ~~shall~~ may notify the parties in writing of the date of any strike notice, the date upon which the right to strike matures, and the date upon which the right to strike expires, but the notice by the director shall not alter rights established under Minnesota Statutes, section 179A.18.

Subp. 8. Notice of intent to strike, teachers.

A. A notice of intent to strike must be in writing and signed by an authorized representative of the exclusive representative. The notice must set forth the date upon which the exclusive representative believes the right to strike will mature. The date shall be subject to adjustment by the director to conform to parts 5510.2410 to 5510.3210. The notice must be served on the employer and the director by the exclusive representative.

B. A notice of intent to strike is timely when the requirements of Minnesota Statutes, section 179A.18, subdivisions 2 and 3, have been fulfilled.

C. A 25-calendar-day strike notice period commences the day following receipt by the director of a properly-served notice of intent to strike, provided:

(1) a strike shall not begin during the first ten days of a strike notice period;

(2) the right to strike matures effective 12:01 a.m. of the 11th day and continues until 12:00 midnight of the 25th day of the strike notice period; and

(3) prior to the expiration of the 25-day period, the exclusive representative and the employer may agree to extend the period up to an additional five calendar days.

D. If the 25-day period, or any proper extension, expires without a strike, the right to strike shall be terminated with respect to the current contract negotiation, except that the strike notice shall be renewed for an additional ten days, the first five days of which shall be a notice period during which no strike may occur, if all of the following conditions are satisfied:

(1) an original notice of intent to strike was provided pursuant to this part;

(2) a tentative agreement was reached during the original strike notice period or extension thereof; and

(3) the tentative agreement was rejected by either party during or after the original strike notice period.

Satisfaction of subitems (1) to (3) shall automatically renew the strike notice period. The first day of the renewal period shall be the day following expiration of the previous strike notice period or the day following rejection of the tentative agreement, whichever is later.

E. No notice of intent to strike will be accepted prior to the expiration of the mediation period and the expiration of the agreement in effect.

F. The director may notify the parties in writing of the date of any strike notice, the date upon which the right to strike matures, and the date upon which the right to strike expires, but notice by the director shall not alter rights established under Minnesota Statutes, section 179A.18.

Ethical Practices Board

Notice and Order Granting the Minneapolis Socialist Workers Campaign Committee Limited Exemption from Campaign Finance Disclosure

Official Notice

Pursuant to Minn. Stat. § 10A.20, subds. 8 and 10 and Laws of 1980, Ch. 362, Sec. 15, subd. 1(c), the Ethical Practices Board has granted a limited exemption from disclosure as set forth in its order adopted August 9, 1985. Minn. Stat. § 10A.20, subd. 10 provides that if the board receives a written objection from any party within 20 days after publication of its order in the *State Register*, the board shall hold a contested case hearing. Written objections must be filed with the Ethical Practices Board at 41 State Office Bldg., St. Paul, MN 55155 (mailing address) or Room 200 Capitol Medical Office Bldg., 590 Park St., St. Paul, MN (walk-in address). Written objections must be received by the board office not later than 12 o'clock noon, on Monday, September 9, 1985.

Order

The application of the Minneapolis Socialist Workers Campaign Committee for exemption from the campaign financing disclosure provisions of Laws of 1980, Ch. 362, Sec. 8, subd. 2(b) and (d) came duly before the Ethical Practices Board on August 9, 1985.

After having fully considered the material submitted by these committees, the Board makes the following

FINDINGS

1. The pattern of ongoing harassment of members of the Socialist Workers Party noted in the Board's exemption granted in 1982 continues into the present.

a. On December 10, 1983, a university professor who supports the party received a threatening letter. Racist, pro-Nazi, anti-Semitic letters and tape recording directed to party members received (February 18, March 28, July 15, 1984). Repeated harassing phone calls received at party office (April 11, October 25 and 31, 1984; April 15, 1985) including obscenities and reference to Communists. Party members fired by a company in Alabama included a 1984 Socialist Workers Party candidate for U.S. Congress (May 31, 1985). In Denver, Colorado, a party member was suspended from employment by a war-industry corporation after over three years of joint government-industry harassment for refusing to answer questions about her political beliefs or her personal life (April 17, 1985).

b. Repeated threats and violence toward, and vandalism and defacement of Socialist Workers Party office in St. Paul occurred May 20, 1983, to September 23, 1983; February, 1985. Socialist bookstore and campaign headquarters for a Socialist Workers Party candidate for mayor of Atlanta, Georgia, vandalized (May 12, 1985). On July 14, 1985, the Socialist Workers Party campaign offices in Seattle, Washington were subject to an arson attack.

c. April 27 and 28, 1985, right-wing demonstrators intimidated and harassed participants at public meetings in the party office in St. Paul, including attempts to identify and photograph individuals attending the meetings. Police protection was sought and received to escort participants from the meetings. The St. Paul experiences resemble escalating violence toward similar Socialist Workers Party public meetings in San Jose, California, April 25 through 28, 1985.

d. Fear of public disclosure of identification with the Socialist Workers Party continues to affect members' freedom to associate with others and to receive contributions to campaigns for Socialist Workers Party candidates.

2. No Socialist Workers Party candidate has been elected to local, state, or federal office in Minnesota. In 1982, the only Socialist Workers Party candidates for statewide office sought the office of governor and lieutenant governor. They polled 10,332 votes, .6% of the total vote cast for that office. The Socialist Workers 1982 Campaign Committees raised a total of \$9,381, made campaign expenditures of \$2,598, and reported total cash balances of \$6.00 when the committees terminated, February 24, 1983, and March 14, 1983. In 1978, Socialist Workers Party candidates for governor and lieutenant governor polled 6,287 votes, .4% of the total vote cast for that office.

CONCLUSION

The Minneapolis Socialist Workers Campaign Committee has satisfied the standard of proof imposed by Minn. Stat. § 10A.20, subds. 8 and 10.

ORDER

In accordance with Laws of 1980, Ch. 262, Sec. 15, subd. 1(c), the Minneapolis Socialist Workers Campaign Committee is hereby granted a limited exemption from the reporting requirements of Laws of 1980, Ch. 362, Sec. 8, subd. 2(b) and (d) regarding disclosure of the names, addresses, and employers of contributors.

OFFICIAL NOTICES

In lieu of these disclosure requirements, the committee shall identify and report contributions by assigning a separate number of each contributor, in correlation with each contributor, instead of listing the name, address, and employer of each contributor.

Except as specially provided in this exemption, said committee shall in all respects comply with the provisions of Laws of 1980, Ch. 362.

August 9, 1985

Mary Ann McCoy, Executive Director

Department of Health Office of Health Systems Development

Outside Opinion Sought Concerning Development of Rules Relating to Review of Health Care Equipment Loan Applications

Notice is hereby given that the Minnesota Department of Health is seeking information and opinions from sources outside the agency in preparing to promulgate permanent rules governing Department of Health review of applications for health care equipment loans.

Minnesota Laws 1985, First Special Sess., Chapter 14, Art. 8, Section 5 authorizes the Minnesota Energy and Economic Development Authority to make or participate in health care equipment loans. Approval of a loan application by the commissioner of health is a necessary prerequisite to approval of a loan by the authority. Specific criteria which must be satisfied in order for a loan application to receive Minnesota Department of Health approval are listed in the statute.

Permanent rules will be developed by the Department pertaining to procedural and informational requirements relating to Department of Health review. Promulgation of permanent rules is authorized by Minnesota Laws 1985, First Special Sess., Chapter 14, Art. 8, Section 7.

Any written material received by the Minnesota Department of Health shall become part of the rulemaking record in the event that the rules are adopted. Written statements should be addressed to:

Marianne Miller
Office of Health Systems Development
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440

Department of Human Services

Outside Opinion Sought Concerning Definition of "Related Condition"

Rules Governing Eligibility of Persons With Related Conditions For Services Provided To Persons With Mental Retardation

Notice is hereby given that the Minnesota Department of Human Services is considering language for a permanent rule establishing standards and procedures for determining if a person has a condition related to mental retardation as defined in Minnesota Statutes, section 252.27, subdivision 1 and is therefore eligible to receive services established for persons with mental retardation.

This rule is authorized by Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2; 245.825; 252.24, subdivision 2; 252.275, subdivision 6; 252.291, subdivision 5; 252.30; 256.01, subdivision 5; 256B.092, subdivision 6; and 256.501, subdivisions 2 and 10.

All interested or affected persons are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Shirley Schue
Mental Retardation Division
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at 612/297-4784.

All statements of information and comment will be accepted until further notice is given. Any written material received by the Department shall become part of the hearing record.

Board of Medical Examiners

Outside Opinion Sought Concerning a Proposed Rule Establishing Credentialing Authorities for Medical and Osteopathic Schools to be Used in Establishing Educational Standards for Licensure as a Physician or Osteopath

Notice is hereby given that the Minnesota Board of Medical Examiners is considering the adoption of a rule which will establish the Liaison Committee on Medical Education as the credentialing authority for American Medical Schools and the American Osteopathic Association as the credentialing authority for American Osteopathic Schools. Graduation from an accredited medical school is required for medical licensure in Minnesota, these two organizations will serve as the accrediting authorities for American Medical Schools.

The proposed rule is authorized by Minnesota Statute 147.01, subdivision 3, which establishes the authority for the Board of Medical Examiners to adopt rules as necessary to carry out the purposes of the Medical Practices Act, Minnesota Statute 147.01 *et. seq.*

All interested or affected persons or groups may submit information on this subject. The rule may be revised on the basis of comments received. Any written material received will become part of the record of any rule hearings held on this subject. Written or oral information and comments should be addressed to:

Arthur W. Poore, Executive Secretary,
Minnesota Board of Medical Examiners
717 SE Delaware Street, Suite 352
Minneapolis, MN 55414

Arthur W. Poore
Executive Secretary

Metropolitan Council

Metropolitan River Corridors Study Committee: Notice of Public Hearings

Under the provisions of Public Law 96-607, the U.S. Congress established the Metropolitan River Corridors Study Committee (MRCSC). The committee's charge is to study the uses and management of the Mississippi, Minnesota and St. Croix Rivers in the Metropolitan Area, with particular emphasis on recreation. The committee must complete its report by November 30, 1985, and submit it to the President, the Congress, the Governor, the Legislature and appropriate agencies and units of government.

MRCSC will conduct four public hearings on its draft report at:

- | | | |
|-----------|--------------------|--|
| 7:30 p.m. | September 9, 1985 | Stillwater Senior High School Auditorium,
523 Marsh St., Stillwater, Minnesota |
| 7:30 p.m. | September 10, 1985 | Metropolitan Council Chambers
300 Metro Square Bldg., 7th and Robert Sts.,
St. Paul, Minnesota |
| 7:30 p.m. | September 11, 1985 | Burnsville Senior High School
600 E. Hwy. 13, Burnsville, Minnesota |
| 7:30 p.m. | September 12, 1985 | Hennepin County Government Center Auditorium,
300 S. 6th St., Minneapolis, Minnesota |

Copies of the draft report and executive summary are available at:

Anoka County Library
1100 - 90th Av. NE.
Blaine, MN

Dakota County Library
1340 Wescott Rd.
Eagan, MN

Carver County Library
314 Walnut St.
Chaska, MN

Hennepin County Library
7001 York Av. S.
Edina, MN

OFFICIAL NOTICES

Ramsey County Library
2180 Hamline Av. N.
St. Paul, MN

Washington County Library
3459 Lake Elmo Av. N.
Lake Elmo, MN

St. Paul Public Library
90 Fourth St. W.
St. Paul, MN

Pierce County Library
Main St.
Elmwood, WI

St. Croix County Library
Hammond, WI

Prescott Public Library
Prescott City Hall
Prescott, WI

Scott County Library
428 S. Holmes
Shakopee, MN

Minneapolis Public Library
300 Nicollet Mall
Minneapolis, MN

Minn. Legislative Reference Library
Room 111, State Capitol Bldg.
Aurora Av.
St. Paul, MN

Polk County Library
Balsam Lake, WI

Hudson Public Library
304 Locust St.
Hudson, WI

If you have any questions regarding the draft report or the hearing schedule, please contact Mike Priesnitz, MRCSC Project Manager, at (612) 426-8634.

Metropolitan Council

1986 Work Program and Budget Public Hearing

The Metropolitan Council will hold a public hearing Thursday, September 12, 1985 at 5:00 p.m. in the Council Chambers, 300 Metro Square Building, 7th and Robert Sts., St. Paul, MN 55101, on its proposed work program and budget for 1986. The Council must decide on the work program and budget, and the amount that must be raised from property taxes to support the budget, by Oct. 1. All interested people are encouraged to attend the hearing and offer comments. People may register to speak in advance by contacting Lucy Thompson of the Council's community assistance staff at 291-6521.

Questions on the proposed budget should be directed to Alan Morris of the Council's budget staff, at 291-6446. Copies of the Proposed 1986 Work Program and Budget are available free of charge from the Council's Communications Department, at 291-6464. Copies are also available for public inspection beginning August 12 at the following locations:

Metropolitan Council Library
300 Metro Square Building
St. Paul, MN 55101

Minneapolis Public Library
Government Documents Room
300 Nicollet Mall
Minneapolis, MN 55401

St. Paul Public Library
Science and Industry Room
90 W. Fourth Street
St. Paul, MN 55102

Anoka County Library—Blaine Branch
707 Highway 10
Blaine, MN 55434

Carver County Library—Chaska Branch
314 Walnut Street
Chaska, MN 55318

Dakota County Library—Burnsville Branch
1101 W. County Rd. 42
Burnsville, MN 55337

Hennepin County Library—Southdale Branch
7001 York Avenue
Edina, MN 55435

Ramsey County Library—Roseville Branch
2180 N. Hamline Avenue
Roseville, MN 55113

Scott County Library—Shakopee Branch
235 S. Lewis Street
Shakopee, MN 55379

Washington County Library—Park Grove Branch
7520-80th Street S.
Cottage Grove, MN 55016

Sandra S. Gardebring, Chair
Metropolitan Council

Metropolitan Council

Review Schedule: Metropolitan River Corridors Study Committee Report (Draft and Final Versions)

Under the provisions of Public Law 96-607, the U.S. Congress established the Metropolitan River Corridors Study Committee (MRCSC). The committee's charge is to study the uses and management of the Mississippi, Minnesota and St. Croix Rivers in the Metropolitan Area, with particular emphasis on recreation. The committee must complete its report by November 30, 1985, and submit it to the President, the Congress, the Governor, the Legislature and appropriate agencies and units of government.

Review of Draft MRCSC Report

The Metropolitan Council will review the draft MRCSC report under the following schedule:

Aug. 26, 1985 Metropolitan Parks and Open Space Commission reviews report and staff comments on the report.

Sept. 9, 1985 Metropolitan Systems Committee considers recommended comments from the Parks and Open Space Commission.

Sept. 12, 1985 Metropolitan Council takes action on Systems Committee recommendations and submits its comments to the MRCSC.

Review of Final MRCSC Report

Section 903 of Public Law 96-607 requires the Metropolitan Council to provide the MRCSC with written comments on the MRCSC final report. The following schedule will be used to prepare those comments:

Oct. 10, 1985 MRCSC adopts final report and submits it to the Metropolitan Council.

Nov. 4, 1985 Metropolitan Systems Committee considers staff comments and forwards its recommended comments to the Council.

Nov. 14, 1985 Metropolitan Council takes action on its comments and submits them to MRCSC.

If you have any questions regarding the Council's review schedule, call Robert Mazanec of the Council's Comprehensive Planning staff at 291-6330.

Department of Public Safety State Patrol Division

Opinion Sought Regarding Proposed Rules Governing Slow Moving Vehicle Emblem Requirements

Notice is hereby given that the State Department of Public Safety is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing alternate design of the slow moving vehicle emblem for persons who, on religious grounds, object to the standard slow moving vehicle emblem.

The promulgation of these rules is authorized by Minnesota Statutes section 169.522, Subd. 1 which requires the agency to adopt standards and specifications for the design and position of mounting the slow moving vehicle emblem.

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

Major Glen Gramse
Minnesota State Patrol Division
Department of Public Safety
Room 107 Transportation Building
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone at 612-296-8052 and in person at the above address.

All statements of information and comment shall be accepted until September 25, 1985. Any written material received by the State Department of Public Safety shall become part of the rulemaking record in the event that the rules are promulgated.

Paul J. Tschida
Commissioner of Public Safety

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 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

Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
26073-18002	Outlook Tabloid	St. Cloud State University	St. Cloud	Contact buyer
26073-18000	Viewbook	St. Cloud State University	St. Cloud	Contact buyer
55000-92381 & 2	Notice of Grant & Calculation & Income Computation Sheet	Human Services	St. Paul	Contact buyer
22400-00933	Explore MN Snowmobile	Energy & Economic Development	St. Paul	Contact buyer
55103-03256	Reducing Valves & Plumbing Accessories	Human Services—Moose Lake State Hospital	Moose Lake	Contact buyer
Contract	Genuine Wisconsin Engine Repair Parts	Various	Various	\$5,000-10,000
55510-02469	Rubbish Disposal	Human Services—Ah Gwah Ching Nursing Home	Ah Gwah Ching	Contact buyer
75250-06432	Rubbish Disposal		Hastings	Contact buyer
Contract	Security Guard Uniforms	Capitol Security	St. Paul	\$15,000-20,000
Contract	Shoes, Canvas: Athletic & Casual	Various	Various	Contact buyer
27147-44060	Wood Chips—Wood Fired Boiler System	Vermillion Community College	Ely	Contact buyer
02509-46279	Memorywriter Upgrade Kits	Administration—Printing & Mailing	St. Paul	Contact buyer
Contract	Rubbish Disposal	North Hennepin Community College	Brooklyn Park	Contact buyer
42203-08705	Kardex File Folders	Labor & Industry	St. Paul	Contact buyer
Contract	Fine Papers	Various	Various	\$300,000-320,000
55-100-03296	Rubbish Disposal—Anoka State Hospital	Anoka State Hospital	Anoka	Contact buyer
26-073-18143, etc.	Video Equipment	St. Cloud State University	St. Cloud	Contact buyer
26-071-15822, etc.	Monitor/Receivers	Mankato State University	Mankato	Contact buyer
07-300-34753	Truck	Public Safety	St. Paul	Contact buyer
79-000-49180	Purchase of Toner & Developer	Transportation	St. Paul	Contact buyer

STATE CONTRACTS

<u>Requisition #</u>	<u>Item</u>	<u>Ordering Division</u>	<u>Delivery Point</u>	<u>Estimated Dollar Amount</u>
Contract	Rubbish Disposal	Faribault State Hospital	Faribault	Contact buyer
Rebid	Optical Equipment	Human Services—	St. Paul	Contact buyer
55-000-92293		Services for the Blind		
79-100-03338	Purchase of Photocopy Machine	Transportation	Duluth	Contact buyer
55-303-10975	Diapers	Faribault State Hospital	Faribault	Contact buyer
26-071-15576, etc.	Floor Maintenance Equipment	Mankato State University	Mankato	Contact buyer
Contract	Call Sequencers	Various	Various	Contact buyer
Contract	Electronic Typewriters	Various	Various	Contact buyer
Rebid Contract	Kuhn Mower Repair Parts	Various	Various	\$8,000-10,000
Rebid 07200-33756	Safety Suits	Public Safety	St. Paul	Contact buyer
26072-09487	Video Camera	Moorhead State University	Moorhead	Contact buyer
27138-47756	Move of Office Furniture & Equipment	MN Community College System	St. Paul	Contact buyer
32500-12423	Rental of Photocopy Machine	Pollution Control Agency	Roseville	Contact buyer

Contact 296-6152 for referral to specific buyers.

Department of Agriculture Minnesota Trade Office

Request for Proposals for Publicity Campaign for WorldMed '86

The Minnesota Trade Office is issuing a Request for Proposals to acquire the services of a professional public relations agency to develop and implement public relations program for WorldMed '86, International Health Care Congress. This event will be held May 7-9, 1986, at the St. Paul Civic Center in St. Paul, Minnesota.

The project costs are not to exceed \$30,000 including expenses. For more information, call Lisa Swenson, Minnesota Trade Office, (612) 297-4222. Request for Proposals are due by 4:30 p.m. on Friday, September 6, 1985. Send Proposals to:

Lisa Swenson
Minnesota Trade Office
90 West Plato Boulevard
St. Paul, Minnesota 55107

Department of Health Health Resources Division Quality Assurance and Review Section

Request for Proposals for Medical Director

The Minnesota Department of Health is requesting proposals from eligible physicians who would be able to serve as a consultant medical director for the Quality Assurance and Review Section for the period October 1, 1985 to June 30, 1986.

Qualifications for the position are: experience in the practice of geriatric medicine and long term care quality assurance; recognized standing in the professional community and other relevant professional associations; experience in working with governmental agencies and other relevant federal and state programs.

Minimum tasks include: 1) recruitment, training and supervision of review team medical consultants; 2) assisting the department in the development of rules, policies and procedures and other documents relating to medical direction in the QA&R program; 3) participate in audit and reconsideration activities of the Section; 4) represent the department when required, at contested case hearings or rule making hearings; 5) represent the department to various professional, governmental and public entities; 6) provide technical assistance as needed to the department; 7) provide regular progress reports.

STATE CONTRACTS

Candidates must respond in the form of a proposal to enter into a contract as required by the Department of Health. Maximum reimbursement for a total of 400 hours assistance will be \$25,000, which includes travel and expenses. The deadline for proposals is September 15, 1985.

Copies of the request for proposals and other information are available from:

Marian Lewis, Chief
Quality Assurance & Review Program
Minnesota Department of Health
717 Delaware Street S.E.,
P.O. Box 9441
Minneapolis, Minnesota 55440

Department of Human Services Long Term Care Management Division Request for Proposals to Study Reimbursement Mechanisms for Providers of Service to Mentally Retarded Persons That Are Based on Individual Client Needs and Resource Use

This request is for proposals to study the different mechanisms available to the Department of Human Services for reimbursing Intermediate Care Facilities for the Mentally Retarded (ICF/MR), Developmental Achievement Centers (DAC), and Waivered Service Providers based upon individual client needs and client resource use. Furthermore, the mechanism must be based on the developmental progress of people receiving these services and must be designed with incentives to encourage quality care. Finally the study must make recommendations on the implementation of a new reimbursement system.

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

The estimated cost of this project is not to exceed \$250,000. Phase 1 of the project must be completed by July 1, 1986 and include an analysis of the policy options available to the State. Phase 2 of the study must be completed by January 1, 1987 and include the final analysis and recommendations to implement the new reimbursement system. All proposals must be submitted no later than September 16, 1985. Three copies of the proposal must be submitted and sealed in a mailing envelope or package with the responders name and address clearly marked on the outside.

Each copy of the proposal must be signed by an authorized member of the firm or person making the bid. Prices and terms of the proposal as stated by the respondent must be valid for the length of the project.

For a copy of a more detailed explanation of this request for proposals, contact:

Long Term Care Management Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55101
612-297-1698

Department of Jobs and Training Request For Proposals for Operation of Dislocated Worker Program

In accordance with Laws of 1979, Chapter 336, The Minnesota Department of Jobs and Training, State Job Training Office is requesting proposals from qualified bidders to operate dislocated worker programs in the State of Minnesota. Approximately \$967,000 will be available for dislocated worker programs to operate in Federal Program Year 1985.

Request For Proposal Application is available upon request. Inquiries and request should be directed to:

Ed Retka
State Job Training Office
690 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Phone: (612) 296-7918

Proposals must be received by the State Job Training Office no later than Friday, September 6, at 4:30 p.m.

State Designer Selection Board

Request for Proposals for State Projects

TO ARCHITECTS AND ENGINEERS REGISTERED IN MINNESOTA:

The State Designer Selection Board has been requested to select designer Four Projects. Design firms who wish to be considered for this project should submit proposals on or before 4:00 p.m., September 11, 1985, to George Iwan, Executive Secretary, State Designer Selection Board, Room G-10, Administration Building, St. Paul, Minnesota 55155-1495.

The proposal must conform to the following:

1. Six copies of the proposal will be required.
2. All data must be on 8-1/2" × 11" sheets, soft bound.
3. The cover sheet of the proposal must be clearly labeled with the project number, as listed in number 7 below, together with the designer's firm name, address, telephone number and the name of the contact person.
4. The proposal should consist of the following information in the order indicated below:
 - a) Number and name of project.
 - b) Identity of firm and an indication of its legal status, i.e. corporation, partnership, etc.
 - c) Names of the persons who would be directly responsible for the major elements of the work, including consultants, together with brief descriptions of their qualifications. If the applicant chooses to list projects which are relevant in type, scale, or character to the project at hand, the person's role in the project must be identified.
 - d) A commitment to enter the work promptly and to assign the people listed in "c" above and to supply other necessary staff.
 - e) A list of design projects in process or completed in the three (3) years prior to the date of this request for agencies or institutions of the State of Minnesota, including the University of Minnesota, by the firm(s) listed in "b" together with the approximate fees associated with each project.
 - f) A section of not more than fourteen (14) faces containing graphic material (photos, plans, drawings, etc.) as evidence of the firm's qualification for the work. The graphic material must be identified. It must be work in which the personnel listed in "c" have had significant participation and their roles must be clearly described.

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

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

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

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

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

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

STATE CONTRACTS

7a) PROJECT—13-85
Bathroom Remodeling—Building, 12, 13 and 14
Oak Terrace Nursing Home
Minnetonka, Minnesota

Remodel 24 bathrooms, 8 per building, 2 on each of 4 floors, replacing fixtures, tiling walls creating tub rooms with new tubs, lifts, etc.

\$210,000.00 has been appropriated for the 1986-87 Biennium, with \$242,000.00 requested for 1988-89 and \$200,000.00 requested for 1990-1991. The project is to be carried out in three phases.

Existing bathrooms were built in the 1920's and are in need of modernizing for function, safety and privacy. Present bathrooms have tubs, water closets and lavatories in the same room without space to maneuver hoier lifts which are required for non-ambulatory patients. It is desired to create separate tub rooms and bring bathrooms up to standard.

Architectural responsibilities shall include schematic design, cost estimates, project design, preparation of construction documents, and observation of construction.

Architectural fee shall be 10% of the allocated construction cost or approximately \$58,000.00.

Oak Terrace Nursing Home contact—Maurice A. Treberg (612) 934-4100.

Division of State Building Construction contract—Richard E. Cottle (612) 297-2208.

7b) PROJECT—14-85
Fitness/Recreation Building
Bemidji State University
Bemidji, Minnesota

Project Scope: Prepare plans, specifications, and construction drawings for the construction of a fitness/recreation building.

Purpose and Type of Project: This building is intended to provide the facilities needed to support a diverse range of fitness and recreational activities which are currently not available to students due to lack of facilities and the extensive utilization of the existing physical plant.

Site: The building will be located on the Bemidji State University Campus and connected to the existing Physical Education complex situated on Nineteenth Street.

Appropriation: \$250,000.00 for the preparation of the building program, architectural plans, specifications, and construction drawings for a project with a total estimated cost of \$4,600,000.00 including fees, equipment and construction. This amount is subject to change after completion of the program and design development phases.

Program Summary: The building is expected to contain between 60,000-90,000 gross square feet of space with the exact dimensions to be determined following the architectural study. Primary objective is to merge the new construction with the existing building and to provide facilities which would accommodate some or all of the activities:

Type of Space and Activity	Number
Running Track—200 meter	1
Tennis Courts	5
Racquetball Courts	8
Archery and Target Range	1
Dance Studio	1
Wrestling Room	1
Weight Room	2
Adaptive Gymnasium	1
Locker Facilities	2
Biomechanics Lab	1
Physiology or Human Performance Lab	1
Offices, Meeting Rooms and Storage	8

There is need to give special attention to establishing program requirements and a highly cost effective approach to providing the necessary support facilities.

Candidates are urged to make an on-site visit to understand the integration of the new building within the existing facilities which will be part of the expanded complex.

Building Construction: Project design and construction must be consistent with the existing facility. The building must be energy efficient and be connected to the existing pedestrian tunnel system and accessible to the handicapped.

Architectural Responsibilities: The architect shall be responsible for such tasks as: site selection, space programming, project design, traffic flow analysis, preparation of preliminary schematics and cost estimates, and the preparation of final working drawings and specifications required for bidding.

Each phase of the work leading to construction documents will receive a comprehensive review by the State University System Chancellor's Office.

Architectural Fee: Six percent of the allocated construction cost.

Planning and Construction Schedule: As appropriation of construction funds is anticipated in the 1986 Legislative Session, planning must begin late summer of 1985, so that construction can commence in the 1986 construction season.

University Contact:

Name: Thomas A. Faecke
Address: Room 349, Duputy Hall
Bemidji, Minnesota 56601
Phone: (218) 755-2012

State University System Contact:

Name: David Hardin
Address: 555 Park Street, Suite 230
St. Paul, Minnesota 55103
Phone: (612) 296-6624

7c) PROJECT—15-85

**Asbestos Removal
Hagg-Sauer Hall
Bemidji State University
Bemidji, Minnesota**

Project Scope: Prepare plans, specifications, and construction drawings for the removal of asbestos in Hagg-Sauer Hall.

Site: Hagg-Sauer Hall is located on the Bemidji State University Campus along the shore of Lake Bemidji.

Appropriation: \$1,260,300.00 has been appropriated for the architectural plans, specifications, construction drawings, and removal of asbestos.

Program Summary: Hagg-Sauer Hall contains 82,478 gross square feet consisting of classrooms, offices, meeting rooms, lounges and a large auditorium. Remove all asbestos walls, ceilings, structural members, other.

Building Construction: The project will include the following list of tasks with any additional required work defined in the architectural study:

1. Sitework-demolition
2. Move furniture and equipment out
3. Asbestos removal
4. Lath and plaster and sprayed fireproofing
5. Acoustical treatment
6. Painting
7. Carpet replacement
8. Electrical construction
9. Mechanical and air handling system renovation
10. Move furniture and equipment in

Appropriate testing will be performed prior to, during, and after completion of the asbestos removal.

Architectural Responsibilities: The architect shall be responsible for such tasks as: project design, construction schedule and supervision, and preparation of working drawings and specifications required for bidding. The firm must have experience with medium to large scale asbestos removal, including knowledge of prevailing PCA, OSHA and Board of Health regulations, removal techniques, and materials disposal. A comprehensive set of working drawings will be required. The architect will coordinate all work with a testing firm designated by the State University System Chancellor's Office.

Architectural Fee: Eight percent of the allocated construction cost.

STATE CONTRACTS

Planning and Construction Schedule: Planning must begin late summer of 1985 so that construction can begin late spring of 1986.

University Contact:

Name: Thomas A. Faecke
Address: Room 349, Duputy Hall
Bemidji, Minnesota 56601
Phone: (218) 755-2012

State University System Contact:

Name: David Hardin
Address: 555 Park Street, Suite 230
St. Paul, Minnesota 55103
Phone: (612) 296-6624

7d) PROJECT—16-85

**Stewart Hall Renovation
St. Cloud State University
St. Cloud, Minnesota**

Project Scope: Plan, renovate, equip, and furnish Stewart Hall. (Initial appropriation funds for programming, planning and preparation of construction drawings).

Purpose and Type of Project: The renovation of this building is intended to totally renovate and upgrade the facility primarily for faculty offices and classrooms so that the space is more efficiently used. Stewart Hall was constructed in 1948 and served many purposes, ranging from the President's Office, administrative and academic support offices, Biology, Chemistry, Physics labs, shops, student dining hall and general classroom/office facilities. As the campus grew, many of the functions were moved to other buildings on campus and Stewart Hall became less efficient and functional.

Site: Stewart Hall is located in the center of the University main mall.

Appropriation: \$320,000.00 for the preparation of architectural plans and specifications for construction at an estimated cost of \$7,000,000.00.

Program Summary: (Gross 133,164—Net 91,455) Stewart Hall has a relatively low efficiency usage which is partly due to an older facility that is occupied by departments for which it was not designed. At the present time, it contains the Counseling center, Museum of Anthropology, a 1200 seat auditorium, Bookstore, Printing Services, Radio Station, as well as classrooms and faculty offices.

The building is "L" shaped and has three floors.

Building Construction: The construction will give special consideration to:

- 1) Correcting serious exterior masonry expansion problems that currently exist.
- 2) Replacement and upgrading of utilities, plumbing, electrical, and HVAC.
- 3) Removal of all asbestos, replacement of portions of the roof, replacement of all windows, and complete reconfiguration of the interior.
- 4) Correction of all fire/life and safety code deficiencies.
- 5) Improvement of lighting, acoustics, and making the building more aesthetically appealing.

Architectural Responsibilities: The architect will be responsible for all phases of this project including working with University personnel in programming and planning. The architect will also be responsible for preliminary schematics, cost estimates, project design, working drawings, bid specifications and drawings, bid evaluation, project coordination, supplemental agreements, review and approval of shop drawings and payment requests, project supervision and oversight with the University and final acceptance of the project.

Each phase of the work leading to construction documents will receive a comprehensive review by the State University System Chancellor's Office.

Architectural Fee: Six percent of the allocated construction cost.

Planning and Construction Schedule: As appropriation of construction funds is anticipated in the 1986 Legislative Session, planning must begin early fall of 1985, so that construction can commence in the 1986 construction season.

University Contact:

William Radovich, Vice President
Administrative Affairs
St. Cloud State University
St. Cloud, Minnesota 56301
Phone: (612) 255-2286

Bernard Lundstrom,
Director, Auxiliary Services
St. Cloud State University
St. Cloud, Minnesota 56301
Phone: (612) 255-2266

State University System Contact:

Name: David Hardin
Address: 555 Park Street, Suite 230
St. Paul, Minnesota 55103
Phone: (612) 296-6624

George F. Klein, Chairman
State Designer Selection Board

STATE GRANTS

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Bureau of Mediation Services**Applications Accepted for Funding Under the Minnesota Area Labor-Management Committee Grant Program**

The Bureau of Mediation Services will begin accepting applications for funding of new or existing Area Labor-Management Committee programs on September 1, 1985, pursuant to Minn. Stat. § 179.81-85 (1985).

Persons interested in applying for such funds may secure an application form and program policies by requesting them in writing from:

Paul W. Goldberg, Director
Bureau of Mediation Services
205 Aurora Avenue
St. Paul, Minnesota 55103

Applications for funding during fiscal year 1986 will be accepted until October 15, 1985.

Paul W. Goldberg
Director

SUPREME COURT DECISIONS

Decisions Filed Friday, August 9, 1985

Compiled by Wayne O. Tschimperle, Clerk

C1-83-1933, C2-84-218 Zontelli & Sons, Inc. v. City of Nashwauk, Appellant, Robert R. Wallace & Associates, and American Fidelity Fire Insurance Company, Intervenor Court of Appeals.

Under the circumstances of this case, the city, which filed a timely appeal, is liable to reimburse the contractor for the actual cost of extra work required to complete a sewer project, subject to contractual limitations; the engineering firm, which breached its duty to the city to provide satisfactory plans and specifications, is liable to indemnify the city for costs attributable to this breach of duty; and the contractor is liable to the city for uncompleted work but has not liability attributable to fault or to a failure to mitigate damages.

Reversed and remanded to the court of appeals with direction that upon remand to the district court, an amended judgment be entered consistent with this opinion. Peterson, J.

Took no part, Coyne, J.

C8-84-935 Federal Reserve Bank of Minneapolis, Relator v. County of Hennepin. Tax Court.

Because the Federal Reserve Bank Building is a special purpose building for tax valuation purposes, exclusive reliance on the reproduction cost approach to estimated market value is not clearly erroneous.

SUPREME COURT CALENDAR

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

SEPTEMBER, 1985

TUESDAY, SEPTEMBER 3, 1985

84-445 CARGILL, INC. (Attorney: Anderson, James R.) vs. HEDGE, SAM, AND HEDGE FARM INC. (Attorney: Boysen, Brian L.). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Are Respondents, who farm and have a home on property purchased on a contract for deed and who later assigned the purchasers' interest in the contract to their family farm corporation, entitled to claim a homestead exemption from execution of that property?

Does the "reverse pierce" of the corporate veil doctrine, where the corporate entity is disregarded for the benefit of shareholders, apply to the facts of this case?

84-1359 HUNT, THEODORE G. (Attorney: Dunlap, Keith, et al & Nancy Brostrom Vollertsen) vs. IBM MID-AMERICA EMPLOYEES FEDERAL CREDIT UNION (Attorney: Patterson-Restovich Law Offices). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Did the trial court err in granting summary judgment as to whether an employee's at-will employment was modified by the existence of an employee manual? [As in Appellant's Brief]

Did the trial court err in granting summary judgment on the issue of whether the employment contract was breached?

Did the trial court err in finding no cause of action on the theory of an implied covenant of good faith and fair dealing between an employer and an employee?

82-466 BEAL, JAMES V., In the Matter of the Application for the Discipline of (Attorney: Director of Lawyers Professional Responsibility and William J. Wernz); (Opposing Counsel: Allen, Fred). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Petition for Disciplinary Action.

What discipline is warranted by Respondent's conduct, which included persistent commingling and trust account violations, excessive and illegal workers' compensation fees, failure to account to a client and imposition of an improper attorney lien?

WEDNESDAY, SEPTEMBER 4, 1985

84-1035 & 84-1168 CONTINENTAL TELEPHONE CO. OF MINNESOTA INC., In the Matter of the Petition (Attorney: Maslon, Edelman, et al, and Rebecca Palmer); (Opposing Counsel: O'Hern, Thomas M., Jr., Attorney General Special Assistant). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Did the Minnesota Public Utilities Commission have a duty to seek additional evidence through further hearings when the record evidence was insufficient to allow the Commission to find that Appellant was earning a double return on its cash unreserved account?

84-1169 INTER-CITY GAS CORP., In Re: Petition of (Attorney: Briggs & Morgan and Samuel L. Hanson); (Opposing Counsel: Sonneman, Karl, Attorney General Special Assistant). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Did the Minnesota Public Utilities Commission exceed its statutory authority to set interim rates by allocating equal percentages of the general rate increase to all customers? [As in brief of Respondent, Minnesota Public Utilities Commission]

Did the Commission properly deny a refund to a customer class whose final rates were less than its interim rates, when the overall final rates authorized to the utility exceeded interim rates and no refund was required by statute?

84-875, 84-913, 84-914, 84-921 and 84-934 PEOPLE'S NATURAL GAS CO., In the Matter of the Application of (Attorney: Oppenheimer, Wolff, et al, and Elmer B. Trousdale); (Opposing Counsel: Sonneman, Karl W., Attorney General Special Assistant). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Did the Minnesota Public Utilities Commission exceed its statutory authority and erroneously set interim rates by allocating equal percentages of the general rate increase to all customers? [As in brief of Respondent, Minnesota Public Utilities Commission]

Did the Minnesota Public Utilities Commission misapply Minn. Stat. 216B.16 when it ordered equally proportioned refunds to all customers who paid interim rates? [As in brief of Respondent, Minnesota Public Utilities Commission]

THURSDAY, SEPTEMBER 5, 1985

84-831 KENNEY, HAROLD, JR., In Re: the Matter of the Appeal of (Attorney: Frauenshuh & Fahlberg); (Opposing Counsel: Van Heel, Roger, Stearns County Attorney). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Did the Stearns County Board of Adjustment have the authority to grant a variance for the renovation of a nonconforming boat-house where the renovations exceeded fifty percent of the value of the original structure?

83-1448 McCORMACK, WILLIAM EDWARD, et al (Attorney: Freeman, Gill, Egan & Keating) vs. LINDBERG, EVAN F., M.D. (Attorney: Meagher, Geer, et al, & Robert M. Frazee). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

May an expert be cross-examined through the use of a "learned treatise" recognized by another expert as authoritative?

Should an expert, otherwise qualified in the area of medical specialization at issue, be prevented from testifying about a specific procedure he personally has not performed?

Did the trial court properly permit defendant to present habit and expert testimony regarding a medical procedure?

Did the trial court adequately instruct the jury on the standard of care?

Was the evidence sufficient to support a verdict for the defendant?

MONDAY, SEPTEMBER 9, 1985

84-1540 BERNTHAL, DIANE KAY (Attorney: Cullen Law Firm and Robert J. Sorensen) vs. CITY OF ST. PAUL (Attorney: Starr, Edward P., City Attorney). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals certification & request.

Whether Minn. Stat. 466.03, subd. 2, which grants immunity from persons compensated under the Workers' Compensation Act, is constitutional and not violative of the equal protection clause.

84-964 STATE OF MINNESOTA (Attorney: Fabel, Thomas L., Deputy Attorney General) vs. ANDERSON, STEVEN TODD (Attorney: Lewis, Anne, Assistant Public Defendant). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Judgment Lincoln County.

Was the evidence sufficient to establish Appellant's guilt of two murders?

Did the trial court correctly exclude psychiatric testimony, lie detector results, graphological personality assessment, bad character testimony and correctly deny Appellant's motion for a Schwarz hearing?

SUPREME COURT CALENDAR

TUESDAY, SEPTEMBER 10, 1985

84-1291 & 84-1320 AUSTIN P. KELLER CONSTRUCTION CO., et al (Attorney: Moore, Costello & Hart and Timothy Sullivan) vs. COMMERCIAL UNION INSURANCE CO., et al (Attorney: Meagher, Geer, et al, and Robert M. Frazee). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Whether exclusionary language contained in comprehensive general liability insurance policy is valid which excludes coverage to an insured for bodily injury and property damage arising out of the insured's conduct as a joint adventurer when the joint venture is not separately named as an insured on the policy. [As in Brief of Appellant Maryland Casualty Company Insurance.]

75-45922 PAULSRUDE, LUTHER A., In the Matter of the Application for Reinstatement (Attorney: Paulsrude, Luther A.); (Opposing Counsel: Dir. of Lawyers Professional Responsibility and Wm. J. Wernz). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Petition for Reinstatement to Practice.

Petition for Reinstatement to Practice of Law.

85-473 JACKSON, THERESA (Attorney: Mahoney, Dougherty & Mahoney and Gary C. Reiter) vs. RED OWL STORES, INC. (Attorney: Chadwick, Johnson & Condon and Jeff M. Zalasky). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Worker's Compensation Court of Appeals.

Does the Commissioner of the Department of Labor and Industry have exclusive jurisdiction to determine whether a work-related injury and subsequent medical condition are medically causally related pursuant to Minn. Stat. 176.103 and 176.135?

Does an employee seeking reimbursement of medical expenses have due process or other constitutional right to have a hearing before a compensation judge on the issue of whether the condition for which medical expense was incurred is causally related to injuries which arose out of and in the course of his employment?

If the issue is submitted to the Commissioner of the Department of Labor and Industry for determination, what effect will his determination have on future claims for wage loss disability and permanent impairment do to the condition for which the medical expense was incurred?

WEDNESDAY, SEPTEMBER 11, 1985

84-436 FLORENZANO, JULIE C. (Attorney: Broeker & Grant and Samuel D. Orbovich) vs. OLSON, FREDERICK, AND BANKERS LIFE CO. (Attorney: Dorsey & Whitney and George G. Eck). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Did the trial court err in applying the Minnesota Comparative Fault Act, Minn. Stat. 604.01, to a negligent misrepresentation?

84-378 & 84-528 STATE OF MINNESOTA (Attorney: Mitchell, Alan L., St. Louis County Attorney) vs. MATTSON, JEFFREY DEAN (Attorney: Remington, Ann, Assistant Public Defender). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Was the evidence sufficient as a matter of law to support the verdict of guilty of criminal sexual conduct in the second degree?

Did substantial and compelling circumstances exist which would justify the trial court's downward durational departure from the presumptive sentencing guidelines' term of 41 months to a term of 21 months?

84-1636 HUFFER, CAROLYN LENORE (Attorney: Manahan & Partridge) vs. KOZITZA, JEFFREY SCOTT (Attorney: Lundquist, Reitan & Lundquist). 9:00 a.m. State Capitol. ORIGIN: Court of Appeals.

Is a wife's cause of action for loss of consortium terminated when an insurer settles with the injured husband?

THURSDAY, SEPTEMBER 12, 1985

84-550 BEECHAM, SARAH EDITH, In Re: Estate of (Attorney: Ruvelson & Kautzer); (Opposing Counsel: Hitchcock, Raeborn B., Attorney for Appellant Alice Beecham). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Did the trial court err in finding that the personal services rendered to claimant's mother-in-law were not gratuitous?

Did the trial court err in finding that claimant received no part of the \$600.00 monthly payment made to Respondent by decedent?

85-1329 OLDENKAMP, ROGER L., In the Matter of the Application for Discipline of (Attorney: Dir. of Lawyers Professional Responsibility and Betty M. Shaw); (Opposing Counsel: Oldenkamp, Roger L.). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Order to Cause.

NO BRIEF ON FILE.

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5510.3010 RENEWAL OF EXISTING CONTRACT; MEDIATION, IMPASSE AND ARBITRATION FOR CONFIDENTIAL, ESSENTIAL, SUPERVISORY EMPLOYEES, AND FOR PRINCIPALS AND ASSISTANT PRINCIPALS.

Subpart 1. Mediation. Upon concluding that it would be useful, mediation shall be scheduled by the director ~~upon receipt of a petition filed under part 5510.2810.~~

Subp. 2. Impasse. During mediation of the dispute, the parties, individually or jointly, may request the director to declare the negotiations at impasse. If, as a result of the request or at the director's own initiative, the director determines that further mediation efforts would not resolve the dispute, ~~he shall~~ the director may declare the negotiations to be at an impasse and notify the parties in writing of that determination. The notice by the director shall include:

- A. the date on which an impasse was declared;
- B. a list of the matters determined by the director to remain in dispute; and
- C. the date upon which final positions of the parties with respect to the matters at impasse are to be received by the director.

Subp. 3. Final offer arbitration. Except for principals and assistant principals, the parties may agree to limit the arbitrator's authority to a final offer item-by-item or a final offer total package award. If the parties do not agree to final offer arbitration, the impasse shall be decided by conventional arbitration. For principals and assistant principals, the panel shall be restricted to selecting between the final offers of the parties on each impasse item.

Subp. 4. Final positions. Final positions submitted by each party shall be in the form of the contract language desired by that party to resolve each matter in dispute. The director shall review all final positions submitted by the parties and may make additional efforts to resolve the dispute. If the final offer arbitration option is agreed to, the parties may not withdraw or amend the final positions filed with the director unless otherwise agreed to in writing by the parties. The agreement to amend may include, but is not limited to, an agreement:

- A. that an item certified to be at impasse has been dropped as an item in dispute;
- B. that an item certified to be at impasse has been settled by the parties; and
- C. to amend the submitted final positions on any or all items certified to be at impasse. Such agreement must specify the conditions and manner in which the final positions are to be amended.

Subp. 5. Certification of impasse to board. Following the date established for submission of final positions of both parties, the director shall notify the board of the existence of an impasse. The notice of impasse shall contain a statement that the negotiations between the parties are at impasse, a list of the issues determined by the director to be at impasse, and ~~any~~ the final positions submitted by the parties. The director shall advise the board whenever a party does not submit final positions within the format or time frames required by this chapter.

Subp. 6. Confidentiality of final positions. All final positions submitted to the bureau are confidential, except as otherwise provided by this chapter.

5510.3110 NEW OR DIFFERENT EXCLUSIVE REPRESENTATIVE; MEDIATION, IMPASSE, ARBITRATION, AND STRIKE NOTICE FOR PUBLIC EMPLOYEES.

Subpart 1. and 2. [Unchanged.]

Subp. 3. Mediation period. For all public employees except teachers, the 60-day or 45-day mediation period provided under part 5510.2910 commences on the day following receipt by the bureau of a petition for mediation or the day following issuance of notice that the director has initiated mediation. For teachers, the 30-day mediation period commences on the first day that a mediator first attends a mediation meeting with the parties in an effort to resolve the dispute.

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Minnesota Pollution Control Agency

Proposed Rules Relating to Environment; General Permit Fee Rule

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt, without a public hearing, rules establishing fees for air quality and water quality permits. The rules will be adopted in accordance with the provisions of Minn. Stat. § 16A.128 (1984), as amended by Minn. Laws 1985, First Special Session, ch. 13, § 101, subd. 2a., and in accordance with Minn. Stat. § 14.22-14.28 (1984), as amended by Minn. Laws 1985, First Special Session, ch. § 82.

The proposed rules are authorized by Minn. Stat. § 116.07, subd. 4d (1984), as amended by Minn. Laws 1985, First Special Session, ch. 13, § 233. The proposed rules are published below.

The Agency has prepared 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 by the Agency to support the proposed rules. Copies of the Statement of Need and Reasonableness and of the proposed rules are available and may be obtained by contacting the Agency at (612) 296-7221.

Interested persons have until 4:30 p.m. on September 20, 1985, to submit comments on the proposed rules. Comments should be submitted to:

Douglas Hall
Division of Water Quality
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7221

The proposed rules may be modified if the data and views received by the Agency before the end of the comment period warrant modification and the modification does not result in a substantial change in the proposed rules.

Unless the Agency receives, within the comment period, written requests for a hearing on the proposed rules from twenty percent of the persons who will be required to pay a fee, a public hearing will not be held. In the event that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1984), as amended by Minn. Laws 1985, First Special Session, ch. 10, § 38. If a person desires to request a public hearing, the Agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Upon adoption of the rules by the Agency Board, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rule amendments as adopted will be sent to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendments as adopted, should submit a written statement of such request to the Agency at the address previously stated.

The Agency estimates that the cost of these rules, for the two years immediately following their adoption, to all local public bodies in the state, collectively, will be approximately \$800,000. For the purposes of this estimate, "local public bodies" is defined by Minn. Stat. § 14.11 (1984) as "officers and governing bodies of the political subdivisions of the state and other officers and bodies of less than state wide jurisdiction which have the authority to levy taxes."

You are hereby advised, pursuant to Minn. Stat. § 14.115 (1984), "Small business considerations in rulemaking," that the proposed rules will affect small businesses because they will impose permit fees upon those small businesses which are required to obtain air quality and water quality permits. However, the rules do provide some consideration to small businesses by allowing small businesses and small municipal waste water treatment plants to pay the processing fee in annual installments over the life of the permit. (See Minn. Rule pt. 7002.0060).

Thomas J. Kalitowski
Executive Director

Rules as Proposed (all new material)

7002.0010 SCOPE.

Chapter 7002 applies to all persons required to obtain a permit from the Minnesota Pollution Control Agency as described in part 7001.0020 (permanent rules, scope), items C, E, F, H, I, and J.

7002.0020 DEFINITIONS.

Subpart 1. Scope. For the purposes of this chapter the terms defined in this part have the meanings given them.

Subp. 2. Agency. "Agency" means the Minnesota Pollution Control Agency.

Subp. 3. Air pollution control equipment. "Air pollution control equipment" means a device used to prevent, abate, or control air pollution.

Subp. 4. Director. "Director" means the executive director and chief executive officer of the Minnesota Pollution Control Agency.

Subp. 5. Indirect source. "Indirect source" means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a state standard.

Subp. 6. Major emission facility. "Major emission facility" means a facility having potential emissions of 100 tons per year or more of sulfur dioxide or particulate matter.

Subp. 7. National Pollutant Discharge Elimination System (NPDES). "National Pollutant Discharge Elimination System (NPDES)" has the meaning given it in part 7001.1020 (permanent rules, NPDES permits), subpart 19.

Subp. 8. Nonattainment area. "Nonattainment area" means a geographical region that has been designated by the Minnesota Pollution Control Agency as violating a state or national ambient air quality standard.

Subp. 9. State disposal system permit. "State disposal system permit" means a permit for a disposal system that may be constructed and operated without a NPDES permit.

Subp. 10. Total emission facility. "Total emission facility" means an assemblage of all emission sources on adjacent property that are under common ownership or control and that exist for a common function.

7002.0030 FEE DETERMINATION.

The agency shall calculate processing and annual fees based upon the schedule in part 7002.0100 or 7002.0110 and shall notify the permittee of the amount due prior to each payment date.

7002.0040 PAYMENT OF FEES.

A person submitting a fee shall make the fee payable to the "State Treasurer" and submit it to the Director, Division of Air Quality; or Director, Division of Water Quality, as appropriate for the type of permitted activity.

7002.0050 APPLICATION FEE.

A person who applies for a permit to construct, install, modify, or operate a facility shall submit with the application the appropriate application fee. Failure to submit the fee renders the application incomplete and the agency shall suspend processing of the application until the fee is received. Application fees are nonrefundable.

7002.0060 PROCESSING FEE.

A permittee shall pay the applicable processing fee within 30 days of issuance of the permit by the agency.

If a facility is a "small business" as defined in Minnesota Statutes, section 14.115, subdivision 1, or a municipal wastewater treatment plant with an average design flow of less than 30,000 gallons per day, the permittee may request to pay the processing fee in annual installments. Annual installments are determined by dividing the processing fee into equal annual payments based on the term of the permit. The first payment shall be made within 30 days of issuance of the permit and annually thereafter on the anniversary of issuance. A facility that qualifies as a "small business" must provide proof of that status upon application for a permit.

7002.0070 ANNUAL FEE.

All persons required to obtain a permit shall pay an annual fee for enforcement of applicable statutes and rules except as provided in parts 7002.0100 and 7002.0110. The annual fee shall be paid within 30 days of receipt of an invoice from the agency.

7002.0080 NOTIFICATION OF ERROR.

A person who thinks that a basic processing fee, additional processing fee, or annual fee for a specific facility is in error shall provide written notice of the error to the director of the Division of Air Quality or the director of the Division of Water Quality, as

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PROPOSED RULES

appropriate, along with the assessed fee. If the director of the Division of Air Quality or the Division of Water Quality finds, upon reviewing the data, that the assessed fee was in error, the overpayment shall be refunded to the permittee or credited to the permittee's account.

7002.0090 LATE PAYMENT FEE.

The permittee shall pay a late payment fee of 20 percent of the payment due for failure to make payment within 30 days of a payment date. The permittee shall pay an additional ten percent of the original payment due for each 30-day period or portion thereof that the payment is late.

7002.0100 AIR QUALITY PERMIT FEE SCHEDULE.

Subpart 1. Scope. The fees established in this part are applicable to facilities and indirect sources which require an air emission facility permit under part 7001.1210 (permit rules, air emission facility permits) or an indirect source permit under part 7001.1270 (permit rules, indirect source permits). For the purpose of this part, the terms used have the meanings given them in part 7005.0100 (air pollution control rules, definitions).

Subp. 2. Application fee. A person making application for an air emission facility permit or an indirect source permit shall submit with the application an application fee of \$50.

Subp. 3. Basic processing fees. The permittee shall pay the following basic processing fees for the applicable permit activity:

- A. \$900 for the construction of an indirect source;
- B. \$900 for the construction or reconstruction of a major emission facility;
- C. \$300 for the construction or reconstruction of an emission facility other than a major emission facility;
- D. \$300 for the modification of a major emission facility or installation of air pollution control equipment at a major emission facility;
- E. \$100 for the modification of an emission facility other than a major emission facility or installation of air pollution control equipment at an emission facility other than a major emission facility;
- F. \$450 for the reissuance of a major emission facility permit; and
- G. \$150 for the reissuance of an emission facility permit other than a major emission facility.

For purposes of this subpart, activities as described in items D and E that occur during the last year of the term of a permit will be addressed along with the reissuance of the permit for a new term. The agency shall waive the fee for items D and E and only assess a reissuance fee and applicable additional processing fees.

Subp. 4. Additional processing fees. In addition to the basic processing fees required in subpart 3, the permittee shall pay the following additional processing fees, if applicable:

- A. \$500 for a major stationary source, as defined in Code of Federal Regulations, title 40, section 51.18(j)(1)(iv), as amended through June 25, 1982, located in a nonattainment area;
- B. \$150 for an emission facility that is subject to the federal prevention of significant deterioration requirements as established in Code of Federal Regulations, title 40, section 51.24;
- C. \$50 for an emission facility that is subject to the federal new source performance standards established in Code of Federal Regulations, title 40, part 60;
- D. \$150 for an emission facility that must apply best available control technology as required under Code of Federal Regulations, title 40, section 51.24;
- E. \$250 for evaluation of air emissions containing pollutants for which no ambient air quality standard has been established under part 7005.0080 (state ambient air quality standards) and which have the potential to be injurious to human health;
- F. \$150 for dispersion modeling review; and
- G. \$150 for each performance test review.

Subp. 5. Annual fees. All persons required to obtain an air emission facility permit shall pay the following applicable annual fee:

- A. \$650 for a major emission facility; or
- B. \$150 for an emission facility other than a major emission facility.

The agency shall not charge an annual fee for an emission facility with potential emissions of a single pollutant of more than 25 tons per year but less than 50 tons per year unless the facility also discharges lead to the ambient air.

Subp. 6. General permits. The agency shall not charge processing or annual fees for permits issued as a general permit under part 7001.0210 (permit rules).

7002.0110 WATER QUALITY PERMIT FEE SCHEDULE.

Subpart 1. Major NPDES facility; definition. "Major NPDES facility" means a wastewater treatment discharger designated by the director and the regional administrator of the United States Environmental Protection Agency as part of the annual work plan that is developed in accordance with and that is subject to the public participation requirements of Code of Federal Regulations, title 40, part 35, and subject to review and approval of the agency. The agency and the United States Environmental Protection Agency shall designate the following types of facilities as major NPDES facilities unless the agency and the United States Environmental Protection Agency find that the facility does not have a potential for significantly impacting water quality:

- A. a publicly owned treatment facility with an average design flow of 1,000,000 gallons per day or more;
- B. an electrical generating facility that is not primarily standby or a peaking facility with a generation capacity of 100 megawatts or greater;
- C. a facility that is a primary industry as defined in Code of Federal Regulations, title 40, section 122.2, or other industry that discharges quantities of process wastewater, which are significant due to the volume, pollutant loading, or other discharge parameters or the character of the receiving water; or
- D. a facility with an actual or potential discharge of toxic pollutants under section 307(a)(1) of the Clean Water Act, United States Code, title 33, section 1317.

Subp. 2. Application fees. A person making application for a permit covered under part 7001.0020 (permit rules, scope), items C, E, F, and H, shall pay the following applicable application fee:

- A. \$50 for a major NPDES facility permit;
- B. \$50 for a state disposal system permit or a NPDES facility permit other than a major NPDES facility permit;
- C. \$250 for a liquid storage permit; or
- D. \$70 for a sewer extension permit.

Subp. 3. Processing fees. The permittee shall pay the following processing fees for the applicable permit activity:

- A. \$6,800 for a major NPDES facility permit;
- B. \$900 for a NPDES facility permit other than a major NPDES facility permit; or
- C. \$900 for a state disposal system permit except a sewer extension permit.

The agency shall not charge processing fees for liquid storage or sewer extension permits.

Subp. 4. Annual fees. All persons required to obtain a NPDES facility permit or a state disposal system permit shall pay the following applicable annual fees:

- A. \$2,600 for a major NPDES facility permit;
- B. \$120 for a NPDES facility permit other than a major NPDES facility permit; or
- C. \$120 for a state disposal system permit, except a sewer extension permit.

Subp. 5. General permits. The agency shall not charge processing or enforcement fees for a permit issued as a general permit under part 7001.0210 (permit rules).

EFFECTIVE DATE. Parts 7002.0010 to 7002.0110 are effective January 1, 1986.

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PROPOSED RULES

Minnesota Pollution Control Agency

Proposed Rules Relating to Hazardous Waste, Dioxins and Aliphates

Proposed Amendments to Rules Governing the Lists of Hazardous Wastes and the Management and Permitting of Hazardous Waste Facilities, Minn. Rules Pts. 7045.0127, 7045.0135, 7045.0139, 7045.0141, 7045.0219, 7045.0526, 7045.0528, 7045.0532, 7045.0534, 7045.0536, 7045.0538, 7045.0542, 7045.0552, 7001.0560, 7001.0580, 7001.0590, 7001.0600, 7001.0610, and 7001.0620.

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

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt without a public hearing, in accordance with the provisions of Minn. Stat. §§ 14.22-14.28 (1984), amendments to Minn. Rules Parts 7045.0127, 7045.0135, 7045.0139, 7045.0141, 7045.0219, 7045.0526, 7045.0528, 7045.0532, 7045.0534, 7045.0536, 7045.0538, 7045.0542, 7045.0552, 7001.0560, 7001.0580, 7001.0590, 7001.0600, 7001.0610, and 7001.0620, rules governing lists of hazardous wastes and the management and permitting of hazardous waste facilities.

The proposed rule amendments are authorized by Minn. Stat. § 116.07, subd. 4 (1984). The proposed rule amendments are published below. One free copy of the rule amendments is available on request from the Agency. Please contact the person whose name and address appears below.

The Agency has prepared a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon by the Agency to support the proposed amendments. Copies of the Statement of Need and Reasonableness and of the proposed amendments are available and may be obtained by contacting:

Karen Ryss
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 297-1793

Interested persons have until 4:30 p.m. on September 20, 1985, to submit comments on the proposed rule amendments. Comments should be submitted to Karen Ryss at the address stated above. The proposed rule amendments may be modified if the data and views received by the Agency before the end of the comment period warrant modification and the modification does not result in a substantial change in the proposed amendments.

Unless the Agency receives twenty-five written requests for a public hearing on the proposed rule amendments during the comment period, a public hearing will not be held. In the event that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1984), as amended by Minn. Laws 1985, First Special Session, ch. 10, § 38. If a person desires to request a public hearing, the Agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Upon adoption of the amendments by the Agency Board, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rule amendments as adopted will be sent to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendments as adopted, should submit a written statement of such request to Karen Ryss at the address previously stated.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (1984), "Small business considerations in rulemaking," that the proposed amendments will affect those small businesses that generate hazardous waste containing dioxin or dibenzofuran or operate facilities for the treatment, storage, or disposal of hazardous waste containing dioxin or dibenzofuran. The amendments will require additional management of these wastes because of their potential for adverse effects on human health and the environment. These additional requirements will increase the cost to generators and facility operators due to the need to treat wastes before disposal or to transport wastes to facilities where they can be acceptably managed.

Thomas J. Kalitowski
Executive Director

Rules as Proposed

7001.0560 GENERAL INFORMATION REQUIREMENTS FOR PART B OF APPLICATION.

Part B of the application must contain the following information:

A. to F. [Unchanged.]

G. A copy of the contingency plan required by part 7045.0466, including, if applicable, the specific information ~~set forth~~ in ~~part parts~~ 7045.0528, subpart 9 and 7045.0532, subpart 6.

H. to U. [Unchanged.]

7001.0580 PART B INFORMATION REQUIREMENTS FOR STORAGE OR TREATMENT TANKS.

Except as otherwise provided in part 7045.0528, subpart 1, if the applicant proposes to use tanks to store or treat hazardous waste, the applicant shall furnish the information designated in items A and B in addition to the information required by part 7001.0560:

A. [Unchanged.]

B. A description of the system to be used to contain the tank and any spills or releases of hazardous waste from the tank, demonstrating compliance with part 7045.0528, subpart 5, and where applicable, subpart 9, including at a minimum the following:

(1) to (3) [Unchanged.]

(4) provisions for preventing or managing run-on; ~~and~~

(5) the manner in which accumulated liquids can be removed to prevent overflow and can be analyzed to determine proper management of the removed liquids; and

(6) for tanks holding hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2, a description of the system to detect leaks and spills and how precipitation and run-on will be prevented from entering the detection system.

7001.0590 PART B INFORMATION REQUIREMENTS FOR SURFACE IMPOUNDMENTS.

Except as otherwise provided in part 7045.0532, subpart 1, if the applicant proposes to store, treat, or dispose of hazardous waste in surface impoundment facilities, the applicant shall submit detailed plans and specifications accompanied by an engineering report which collectively includes the following information in addition to the information required by part 7001.0560:

A. to J. [Unchanged.]

K. A waste management plan for hazardous waste F028 and treatment residues and soil contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2, describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of part 7045.0532, subpart 10. This plan must address the following items as specified in part 7045.0532, subpart 10:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials codisposed with these wastes; and

(4) the effectiveness of additional treatment, design, or monitoring techniques.

7001.0600 PART B INFORMATION REQUIREMENTS FOR WASTE PILES.

Except as otherwise provided by part 7045.0532, subpart 1, if the applicant proposes to store or treat hazardous waste in waste piles, the applicant shall furnish the information required by items A to ~~K~~ L in addition to the information required by part 7001.0560:

A. to K. [Unchanged.]

L. A waste management plan for hazardous waste F028 and treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2, describing how a waste pile that is not enclosed is or will be designed, constructed, operated, and maintained to meet the requirements of part 7045.0534, subpart 10. This submission must address the following items as specified in part 7045.0534, subpart 10:

(1) the volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

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- (2) the attenuative properties of underlying and surrounding soils or other materials;
- (3) the mobilizing properties of other materials codisposed with these wastes; and
- (4) the effectiveness of additional treatment, design, or monitoring techniques.

7001.0610 PART B INFORMATION REQUIREMENTS FOR LAND TREATMENT.

Except as otherwise provided by part 7045.0536, subpart 1, if the applicant proposes to use land treatment to dispose of hazardous waste, the applicant shall furnish the information designated in items A to H I in addition to the information required by part 7001.0560:

A. to H. [Unchanged.]

I. A waste management plan for hazardous waste F028 and treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2, describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of part 7045.0536, subpart 11. This plan must address the following items as specified in part 7045.0536, subpart 11:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

- (2) the attenuative properties of underlying and surrounding soils or other materials;
- (3) the mobilizing properties of other materials codisposed with these wastes; and
- (4) the effectiveness of additional treatment, design, or monitoring techniques.

7001.0620 PART B INFORMATION REQUIREMENTS FOR LANDFILLS.

Except as otherwise provided by part 7045.0538, subpart 1, if the applicant proposes to dispose of hazardous waste in a landfill, the applicant shall furnish the information designated in items A to I J in addition to the information required by part 7001.0560:

A. to I. [Unchanged.]

J. A waste management plan for hazardous waste F028 and treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2, describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of part 7045.0538, subpart 13. This plan must address the following items as specified in part 7045.0538, subpart 13:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

- (2) the attenuative properties of underlying and surrounding soils or other materials;
- (3) the mobilizing properties of other materials codisposed with these wastes; and
- (4) the effectiveness of additional treatment, design, or monitoring techniques.

7045.0127 RESIDUES IN EMPTY CONTAINERS AND EMPTY INNER LINERS.

Subpart 1. [Unchanged.]

Subp. 2. Empty containers or inner liners; definition. A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste in part 7045.0135, subpart 2, 3, or 4, item E, is empty if:

A. to D. [Unchanged.]

Subp. 3. Other empty containers or inner liners. A container or inner liner that has held a an acute hazardous waste identified in part 7045.0135, subpart 2, 3, or 4, item E is empty if:

A. to C. [Unchanged.]

Subp. 4. [Unchanged.]

7045.0135 LISTS OF HAZARDOUS WASTES.

Subpart 1. General. A waste is a hazardous waste if it is listed under subparts 2 to 5 unless it has been excluded from the list under part 7045.0075, subpart 2.

The basis for listing the classes or types of wastes listed in subparts 2 to 5 is indicated by employing one or more of the following hazard codes:

A. ignitable waste, (I);

- B. corrosive waste, (C);
- C. reactive waste, (R);
- D. EP toxic waste, (E);
- E. acute hazardous waste, (H); and
- F. toxic waste, (T).

The constituent which caused the agency to list the waste as an EP toxic waste (E) or toxic waste (T) in subparts 2 and 3 is identified in part 7045.0139.

Each listed hazardous waste is assigned a hazardous waste number which precedes the name of the waste. This number must be used in complying with the disclosure requirements of parts 7045.0205 to 7045.0304 and certain record keeping and reporting requirements under parts 7045.0205 to 7045.1030 and the agency's permitting procedures in chapter 7001.

The following hazardous wastes listed in subparts 2 and 3 are subject to the exclusion limits for acutely hazardous wastes established in part 7045.0219: Hazardous Waste Numbers F020, F021, F022, F023, F026, and F027.

Subp. 2. Hazardous wastes from nonspecific sources. Hazardous wastes from nonspecific sources are listed as follows:

Hazardous Waste No.	Hazardous Waste	Hazard Code
Generic:		
F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons, and sludges from the recovery of these solvents in degreasing operations	(T)
F002 to F006	[Unchanged.]	
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum	(T)
F007 to F012	[Unchanged.]	
F019	<u>Wastewater treatment sludges from the chemical conversion coating of aluminum</u>	(T)
F020	<u>Wastes, except wastewater and spent carbon from hydrogen chloride purification, from the production or manufacturing use as a reactant, chemical intermediate, or component in a formulating process of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-tri-chlorophenol.</u>	(H)
F021	<u>Wastes, except wastewater and spent carbon from hydrogen chloride purification, from the production or manufacturing use as a reactant, chemical intermediate, or component in a formulating process of pentachlorophenol, or of intermediates used to produce its derivatives.</u>	(H)
F022	<u>Wastes, except wastewater and spent carbon from hydrogen chloride purification, from the manufacturing use as a reactant, chemical intermediate, or component in a formulating process of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.</u>	(H)
F023	<u>Wastes, except wastewater and spent carbon from hydrogen chloride purification, from the production of materials on equipment previously used for the production or manufacturing use as a reactant, chemical intermediate, or component in a formulating process of tri- and tetrachlorophenols. This listing does not include wastes from equipment used only for the production or use of hexachlorophene from highly purified 2,4,5-trichlorophenol.</u>	(H)
F024	<u>Wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utiliz-</u>	(T)

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ing free radical catalyzed processes. This does not include light ends, spent filters and filter aids, spent dessiccants, wastewater, wastewater treatment sludges, and spent catalysts.

- F026** Wastes, except wastewater and spent carbon from hydrogen chloride purification, from the production of materials on equipment previously used for the manufacturing use as a reactant, chemical intermediate, or component in a formulating process of tetra-, penta-, or hexachlorobenzene under alkaline conditions. (H)
- F027** Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component. (H)
- F028** Residues resulting from the incineration or thermal treatment of soil contaminated with hazardous waste Nos. F020, F021, F022, F023, F026, and F027. (T)

Subp. 3. [Unchanged.]

Subp. 4. Discarded commercial chemical products, off-specification species, containers, and spill residues. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

A. to E. [Unchanged.]

F. The commercial chemical products or manufacturing chemical intermediates, or off-specification commercial chemical products referred to in items A, B, and D, and listed in the following table are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in part 7045.0219, subpart 1, item A. The primary hazardous properties of these materials have been indicated by the letters T (toxicity), R (reactivity), I (ignitability), and C (corrosivity). Absence of a letter indicates that the compound is listed only for toxicity. These wastes and their corresponding hazardous waste numbers are listed as follows:

Hazardous Wastes from Commercial Chemical Products

Hazardous Waste No.	Substance	Hazard Code
U001	Acetaldehyde	(I)
	to [Unchanged.]	
U185	Pentachloronitrobenzene	
U242	Pentachlorophenol	
U186	1,3-Pentadiene	(I)
	to [Unchanged.]	
U170	Phenol, 4-nitro-	
U242	Phenol, pentachloro-	
U212	Phenol, 2,3,4,6-tetrachloro-	
U230	Phenol, 2,4,5-trichloro-	
U231	Phenol, 2,4,6-trichloro-	
U137	1,10-(1,2-Phenylene)pyrene	
	to [Unchanged.]	
U162	2-Propenoic acid, 2-methyl-, methyl ester,	(I,T)
U233	Propionic acid, 2-(2,4,5-trichlorophenoxy)-	
U194	n-Propylamine	(I,T)
	to [Unchanged.]	
U015	L-Serine, diazoacetate (ester)	
U233	Silvex	
U089	4,4'-Stilbenediol, alpha,alpha'-diethyl-	
	to [Unchanged.]	
U205	Sulfur selenide	(R,T)
U232	2,4,5-T	
U207	1,2,4,5-Tetrachlorobenzene	
U208	1,1,1,2-Tetrachloroethane	
U209	1,1,2,2-Tetrachloroethane	
U210	Tetrachloroethylene	
U212	2,3,4,6-Tetrachlorophenol	

- U213 Tetrahydrofuran (I)
- to [Unchanged.]
- U121 Trichloromonofluoromethane
- ~~U230~~ ~~2,4,5-Trichlorophenol~~
- ~~U231~~ ~~2,4,6-Trichlorophenol~~
- ~~U232~~ ~~2,4,5-Trichlorophenoxyacetic acid~~
- U234 sym-Trinitrobenzene (R,T)
- to [Unchanged.]
- U200 Yohimban-16-carboxylic acid, 11, 17-di-methoxy-18-[(3,4,5-trimethoxy-benzoyl)oxy]-, methyl ester,
- U249 Zinc phosphide when present at concentrations of ten percent or less

Subp. 5. [Unchanged.]

7045.0139 BASIS FOR LISTING HAZARDOUS WASTES.

The following table lists the constituents which caused the agency to list wastes as hazardous in part 7045.0135, subparts 2 and 3. The notation "N.A." indicates the waste is hazardous because it fails the test for the characteristics of ignitability, corrosivity, reactivity, or toxicity, and the listing of a chemical name is not applicable.

Basis for Listing Hazardous Wastes

Hazardous Waste No.	Hazardous Constituents For Which Listed
F001	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons
to	[Unchanged.]
F019	Hexavalent chromium, cyanide (complexed)
F020	<u>Tetra- and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts</u>
F021	<u>Penta- and hexachlorodibenzo-p-dioxins; penta- and hexachlorodibenzofurans; pentachlorophenol and its derivatives</u>
F022	<u>Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans</u>
F023	<u>Tetra- and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts</u>
F024	<u>Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3-chloropropene), dichloropropane, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorobenzene, dichlorobenzenes, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene</u>
F026	<u>Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans</u>
F027	<u>Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts</u>
F028	<u>Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts</u>
K001	Pentachlorophenol, phenol, 2-chlorophenol, p-chlorophenols, tetrachlorophenol, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno (1,2,3,cd)pyrene, benz(a)-anthracene, dibenz(a)anthracene, acenaphthalene
to	[Unchanged.]
K106	Mercury

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7045.0141 HAZARDOUS CONSTITUENTS.

Hazardous constituents are as follows:

Acetonitrile

to [Unchanged.]

Chlorobenzilate

2-Chloro-1,3-butadiene (chloroprene)

p-Chloro-m-cresol

to [Unchanged.]

1-(p-Chlorophenyl)thiourea

3-Chloropropene (allyl chloride)

3-Chloropropionitrile

to [Unchanged.]

Hexachlorocyclopentadiene

Hexachlorodibenzo-p-dioxins

Hexachlorodibenzofurans

Hexachloroethane

to [Unchanged.]

Pentachlorobenzene

Pentachlorodibenzo-p-dioxins

Pentachlorodibenzofurans

Pentachloroethane

to [Unchanged.]

2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)

Tetrachlorodibenzo-p-dioxins not otherwise specified in this list

Tetrachlorodibenzofurans

Tetrachloroethane not otherwise specified in this list

to [Unchanged.]

Zinc phosphide

7045.0219 SPECIAL REQUIREMENTS FOR SMALL QUANTITY GENERATORS OF HAZARDOUS WASTE.

Subpart 1. Applicability; quantities. A generator is a small quantity generator subject to the requirements of subparts 2 to 6 if, in a calendar month, he generates less than:

A. a total of 1,000 kilograms of hazardous waste not listed as acute hazardous waste in part 7045.0135, subpart 2, 3, or 4, item E; and

B. a total of one kilogram of ~~commercial chemical products and manufacturing chemical intermediates having the generic names~~ acute hazardous waste listed in part 7045.0135, subpart 2, 3, or 4, item E ~~and off specification commercial chemical products or manufacturing chemical intermediates which, if they met specifications would have the generic names listed in part 7045.0135, subpart 4, item E;~~ and

C. a total of 100 kilograms of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any ~~commercial chemical products or manufacturing chemical intermediates having the generic names~~ acute hazardous waste listed in part 7045.0135, subpart 2, 3, or 4, item E, ~~or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any off specification commercial chemical products or manufacturing chemical intermediates which, if they met specification would have the generic names listed in part 7045.0135, subpart 4, item E.~~

Subp. 2. to 6. [Unchanged.]

7045.0526 USE AND MANAGEMENT OF CONTAINERS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. Containment. Requirements for containment systems are as follows:

A. to C. [Unchanged.]

D. Except as provided by item E, storage areas that store containers holding only wastes that do not contain free liquids need not have a containment system defined by item A if:

(1) the storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

(2) the containers are elevated or area otherwise protected from contact with accumulated liquid.

E. Storage areas that store containers holding wastes F020, F021, F022, F023, F026, F027, and F028 from part 7045.0135, subpart 2 that do not contain free liquids must have a containment system defined by item A.

Subp. 7. to 9. [Unchanged.]

7045.0528 TANKS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. Inspections. The following apply to inspections:

A. and B. [Unchanged.]

C. As part of the contingency plan required under parts 7045.0464 to 7045.0470, the owner or operator must specify:

(1) the procedures he or she intends to use to respond to tank spills or leakage, including procedures and timing for expeditious removal of leaked or spilled waste and repair of the tank. As required in part 7045.0452, subpart 5, item D, the owner or operator shall remedy any leak, crack, or wall thinning in violation of subpart 2, or equipment or process malfunction in violation of subpart 3, which he or she discovers during inspection; and

(2) for tanks holding wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2, the contingency plan must also include the procedures for responding to a spill or leak of these wastes from tanks into the containment system. These procedures shall include measures for immediate removal of the waste from the system and replacement or repair of the leaking tank.

Subp. 5. to 8. [Unchanged.]

Subp. 9. Special requirements for hazardous wastes F020, F021, F022, F023, F026, F027, and F028. In addition to the other requirements of subparts 1 to 8, the following requirements apply to tanks storing or treating hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2:

A. Tanks must have systems designed and operated to detect and adequately contain spills or leaks that reflect consideration of all relevant factors, including:

(1) the capacity of the tank;

(2) the volumes and characteristics of wastes stored or treated in the tank;

(3) the method of collection of spills or leaks;

(4) the design and construction materials of the tank and containment system; and

(5) the need to prevent precipitation and run-on from entering into the system.

B. As part of the contingency plan required under parts 7045.0464 to 7045.0470, the owner or operator must specify those procedures for responding to a spill or leak from the tank into the containment system that may be necessary to protect human health and the environment, including measures for immediate removal of the waste from the system and replacement or repair of the leaking tank.

7045.0532 SURFACE IMPOUNDMENTS.

Subpart 1. Scope. The requirements of subparts 2 to 9 apply. This part applies to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste, except as part 7045.0450 provides otherwise.

Subp. 2. to 9. [Unchanged.]

Subp. 10. Special requirements for hazardous wastes F020, F021, F022, F023, F026, F027, and F028. The following requirements apply to the hazardous wastes indicated:

A. Hazardous waste F020, F021, F022, F023, F026, and F027 listed under part 7045.0135, subpart 2 must not be placed in a surface impoundment.

B. Hazardous waste F028 and treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2, must not be placed in surface impoundments unless the owner or

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operator operates the surface impoundment in accordance with all applicable requirements of this part and in accordance with a management plan that is approved by the director considering the following factors:

- (1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
- (2) the attenuative properties of underlying and surrounding soils or other materials;
- (3) the mobilizing properties of other materials codisposed with these wastes; and
- (4) the effectiveness of additional treatment, design, or monitoring techniques.

C. The director shall impose additional design, operating, and monitoring requirements if the director finds that additional requirements are necessary for surface impoundments used to treat, store, or dispose of hazardous waste F028 and treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

7045.0534 WASTE PILES.

Subpart 1. Scope. The requirements of subparts 2 to 9 apply This part applies to owners and operators of facilities that store or treat hazardous waste in piles, except as part 7045.0450 provides or as otherwise provided in this subpart.

The requirements of subparts 2 to 9 this part do not apply to owners or operators of waste piles that are closed with wastes left in place. Such waste piles are subject to regulation under part 7045.0538.

The owner or operator of a waste pile that is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated is not subject to subparts 2, items A and B; 3; or part 7045.0484 if:

A. to D. [Unchanged.]

Subp. 2. to 9. [Unchanged.]

Subp. 10. Special requirements for hazardous wastes F020, F021, F022, F023, F026, F027, and F028. The following requirements apply to the hazardous wastes indicated:

A. Hazardous wastes F020, F021, F022, F023, F026, and F027 listed under part 7045.0135, subpart 2 must not be placed in waste piles.

B. Hazardous waste F028 and treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2, must not be placed in waste piles that are not enclosed as provided by subpart 1, unless the owner or operator operates the waste pile in accordance with all applicable requirements of this part and in accordance with a management plan for these wastes that is approved by the director considering the following factors:

- (1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
- (2) the attenuative properties of underlying and surrounding soils or other materials;
- (3) the mobilizing properties of other materials codisposed with these wastes; and
- (4) the effectiveness of additional treatment, design, or monitoring techniques.

C. The director shall impose additional design, operating, and monitoring requirements if the director determines that the additional requirements are necessary for piles used to store or treat hazardous waste F028 and treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

7045.0536 LAND TREATMENT.

Subpart 1. Scope. The requirements of subparts 2 to 10 apply This part applies to owners and operators of facilities that treat or dispose of hazardous waste in land treatment units except as part 7045.0450 provides otherwise.

Subp. 2. to 10. [Unchanged.]

Subp. 11. Special requirements for hazardous wastes F020, F021, F022, F023, F026, F027, and F028. The following requirements apply to the hazardous wastes indicated:

A. Hazardous wastes F020, F021, F022, F023, F026, and F027 listed under part 7045.0135, subpart 2 must not be placed in a land treatment unit.

B. Hazardous waste F028 and treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023,

F026, F027, and F028 listed under part 7045.0135, subpart 2 must not be managed at land treatment units unless the owner or operator operates the land treatment unit in accordance with all applicable requirements of this part and in accordance with a management plan that is approved by the director considering the following factors:

- (1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
- (2) the attenuative properties of underlying and surrounding soils or other materials;
- (3) the mobilizing properties of other materials codisposed with these wastes; and
- (4) the effectiveness of additional treatment, design, or monitoring techniques.

C. The director shall impose additional design, operating, and monitoring requirements if the director finds that the additional requirements are necessary for land treatment facilities used to treat or dispose of hazardous waste F028 and treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

7045.0538 LANDFILLS.

Subpart 1. Scope. The requirements of subparts 2 to 12 apply. This part applies to owners and operators of facilities that dispose of hazardous waste in landfills, except as part 7045.0450 provides otherwise.

Subp. 2. to 12. [Unchanged.]

Subp. 13. Special requirements for hazardous wastes F020, F021, F022, F023, F026, F027, and F028. The following requirements apply to the hazardous wastes indicated:

A. Hazardous wastes F020, F021, F022, F023, F026, and F027 listed under part 7045.0135, subpart 2 must not be placed in a landfill.

B. Hazardous waste F028 and treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2, must not be managed at landfills unless the owner or operator operates the landfill in accordance with all applicable requirements of this part and in accordance with a management plan that is approved by the director considering the following factors:

- (1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
- (2) the attenuative properties of underlying and surrounding soils or other materials;
- (3) the mobilizing properties of other materials codisposed with these wastes; and
- (4) the effectiveness of additional treatment, design, or monitoring techniques.

C. The director shall impose additional design, operating, and monitoring requirements if the director finds that the additional requirements are necessary for landfills used to dispose of hazardous waste F028 and treatment residues and soil contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

7045.0542 THERMAL TREATMENT.

Subpart 1. to 3. [Unchanged.]

Subp. 4. Performance standards. A thermal treatment facility thermally treating hazardous waste must be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under subpart 6 it will comply with all federal and state air quality rules and regulations and will meet the performance standards of items ~~A, B, C, and D~~ to E, whichever are applicable:

A. Except as provided in item E, a thermal treatment facility thermally treating hazardous waste must achieve a destruction and removal efficiency of 99.99 percent for each principal organic hazardous constituent designated in its permit for each waste feed.

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PROPOSED RULES

The destruction and removal efficiency (DRE) is determined for each principal organic hazardous constituent from the following equation:

$$\text{DRE} = \frac{(\text{Win} - \text{Wout})}{\text{Win}} + 100\%$$

where:

Win = Mass feed rate of one principal organic hazardous constituent in the waste stream feeding the thermal treatment process, and

Wout = Mass emission rate of the same principal organic hazardous constituent present in exhaust emissions prior to release to the atmosphere.

B. to D. [Unchanged.]

E. A thermal treatment facility thermally treating hazardous wastes F020, F021, F022, F023, F026, and F027 listed under part 7045.0135, subpart 2 must achieve a destruction and removal efficiency ("DRE") of 99.9999 percent for each principal organic hazardous constituent designated in its permit. This performance must be demonstrated on principal organic hazardous constituents that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each principal organic hazardous constituent from the equation in item A. In addition, the owner or operator of the thermal treatment facility must notify the director of the intent to burn waste F020, F021, F022, F023, F026, or F027.

Subp. 5. to 9. [Unchanged.]

7045.0552 FACILITIES GOVERNED BY INTERIM STATUS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. Restrictions. Hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part 7045.0135, subpart 2 must not be managed at facilities governed by interim status unless:

A. the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

B. the waste is stored in tanks or containers; or

C. the waste is stored or treated in waste piles that are enclosed in accordance with part 7045.0534, subpart 1 and comply with all other provisions of part 7045.0534.

Public Utilities Commission

Proposed Rules Governing the Conservation Improvement and Renewable Resource Programs

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Public Utilities Commission proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes 216B.08.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

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

Paul Schweizer
Public Utilities Commission
780 American Center Building
Kellogg and Robert Streets
St. Paul, Minnesota 55101
612/296-7125

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

These rules are designed to implement Minnesota Statutes § 216B.241 (1984) by establishing procedures to be followed by public utilities in submitting and by the Public Utilities Commission in analyzing and selecting proposals for conservation improvement programs and renewable resource pilot programs and to provide for the participation of other interested persons in developing conservation improvement programs and renewable resource pilot programs. The text of the proposed rule follows this notice.

Additional copies of the rule are available for review from Paul Schweizer at the above address upon request.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Paul Schweizer at the above address upon request. The effect on small business, the impact on agricultural land, and the cost to local public bodies for two years immediately following the adoption of the proposed rule, if any, are addressed in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the noncontroversial rule, the rule and the required supporting noncontroversial rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any persons may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, must submit the written request to Paul Schweizer at the above address.

Janet F. Gonzalez
Acting Executive Secretary
Public Utilities Commission

Rules as Proposed (all new material)

7840.0200 PURPOSE.

The purpose of this chapter is to specify procedures to be followed by public utilities in submitting, and by the Public Utilities Commission in analyzing and selecting, proposals for conservation improvement programs and renewable resource pilot programs and to provide for the participation of other interested persons in developing conservation improvement and renewable resource pilot programs.

7840.0300 SCOPE.

This chapter applies to proposals by public utilities and other interested persons for utility investments in conservation improvement and renewable resource pilot programs.

7840.0400 PROJECTS IN EFFECT.

Projects that are in effect on the effective date of parts 7840.0200 to 7840.1400 shall continue in effect for 60 days or until their expiration date, whichever occurs later.

7840.0500 CONSERVATION IMPROVEMENT PROGRAM FILING.

No later than May 1 of each year beginning in 1986, a public utility required by Minnesota Statutes, section 216B.241 to invest in a conservation improvement program shall file with the Public Utilities Commission a conservation improvement program. The filing must include:

- A. A comprehensive description of the proposed program, including a description of each project making up the program.
- B. A statement quantifying each project's objectives including an estimate of the expected cost effectiveness of the project to the utility, to the project's participants, and to the utility's customers.
- C. A statement of the anticipated percentage of use of each project among targeted residential consumer groups.
- D. A detailed budget for each project for the next year, and a projected five-year budget for the overall program. If a shorter time period is more appropriate for the five-year budget, the utility must provide reasons for that shorter time period and the projected budget for that shorter period.
- E. A detailed description of the proposed ratemaking treatment and the proposed cost recovery method.

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PROPOSED RULES

F. A description of the marketing plans for each proposed project.

G. A description of the expected effect of each project on peak and average consumption with supporting assumptions, including a computation of the costs that will be avoided or reduced by the implementation of the proposed project and an estimate of the expected revenue effects.

H. An explanation of how the proposed projects provide special consideration for renters and low income customers.

I. An explanation of how the proposed projects provide for the involvement of community energy organizations when appropriate.

J. An outline of the proposed plan for evaluating the effectiveness of the proposed project.

K. A status report on each project from the previous year's program stating the total number of customers served; the number of low income customers and the number of renters served, if applicable; the total amount spent on the project to date; the average amount spent on each customer participating in the project, if applicable; and other information as required by the Public Utilities Commission in its order approving the previous year's program.

L. Additional information that the Public Utilities Commission determines is necessary as a result of its review or evaluation of prior projects of the particular utility.

7840.0600 RENEWABLE RESOURCE PILOT PROGRAM FILING.

A public utility required by Minnesota Statutes, section 216B.241 to have a conservation improvement program shall file a proposal for a utility renewable resource pilot program upon the determination of the Public Utilities Commission that additional utility renewable resource pilot programs are needed to expand Minnesota's options for energy from renewable resources. For at least one year after authorizing a utility's renewable resource pilot program, the commission shall not require a new proposal for a renewable resource pilot program from that utility. The filing must include:

- A. a comprehensive description of the proposed program, including a description of each project making up the program;
- B. an estimate of the net energy to be produced by each project and the projected reliability of the technology which would be used;
- C. a detailed budget for each year of the project;
- D. an estimate of the potential cost effectiveness of each project;
- E. a description of the proposed ratemaking treatment and the proposed cost recovery method; and
- F. an outline of the proposed plan for evaluating the effectiveness of the proposed project.

7840.0700 EXISTING PROGRAMS; FILING.

The filing requirements for renewing existing conservation improvement program or utility renewable resource pilot program projects are the same as for newly proposed projects; however, if the Public Utilities Commission has material already on file, the utility or interested person submitting an alternative project may incorporate it by reference in its current filing.

7840.0800 NOTICE.

At the time it files its conservation improvement or utility renewable resource pilot program with the Public Utilities Commission, the public utility must provide written notice of its filing to persons who participated in the utility's last general rate case or who participated in its conservation improvement program case or utility renewable resource pilot program case during the preceding two years. The notice must state that a copy of the utility's proposed program is available for public inspection at the enumerated business office locations of the utility and at the Public Utilities Commission's office. The notice must also state that the utility will make a copy of the proposed program available to interested persons upon request.

7840.0900 COMMENT; ALTERNATIVE PROPOSALS.

The Public Utilities Commission shall allow 30 days from the date of the filing of the public utility's program for written comments on the program and the submission of alternative projects by interested persons. Proposals for alternative projects must follow the requirements of part 7840.0500 or 7840.0600 except for part 7840.0500, item K. These comments and alternative projects must be filed with the Public Utilities Commission, the Department of Public Service, the Department of Energy and Economic Development, and the utility to which they are addressed.

7840.1000 REQUEST FOR CONTESTED CASE HEARING.

Within ten days following the end of the comment period, a utility or an interested person may file a motion with the Public Utilities Commission requesting a contested case hearing on a proposed program. The motion must set forth with specificity the grounds for a hearing. The motion must be served on persons who filed comments in the proceeding. Replies may be filed within five days from the

date of service of the motion. A contested case hearing will be granted when a material, adjudicative fact is in dispute or a substantial liberty or property interest will be adversely affected.

7840.1100 RESPONSES; WRITTEN RECORD.

When a contested case hearing is not required, the Public Utilities Commission may order written responses to comments, oral argument, negotiations, settlement conferences, formal hearing, or other procedures as it deems necessary or helpful to enable it to review, analyze, and select appropriate programs under Minnesota Statutes, section 216B.241. Written papers or summaries of oral meetings for each proceeding filed with the Public Utilities Commission must also be served upon participants and will become part of the record upon which the Public Utilities Commission will decide the case.

7840.1200 DISAPPROVAL; ORDER.

If the Public Utilities Commission does not approve a program, project, or evaluation plan or modifies a program, project, or evaluation plan, it shall set forth its reasons in a written order.

7840.1300 PROPOSED PROGRAM CHANGES.

Upon its own motion or upon the motion of a utility or other person, the Public Utilities Commission may modify, expand, or terminate an existing conservation improvement program or utility renewable resource pilot program before its expiration date. The moving party must notify all participants in the affected utility's conservation improvement program case or utility renewable resource pilot program case of the motion. Interested persons must be allowed 15 days to submit comments on the proposed program changes. A change may be ordered to make a project more effective, reach more participants, reduce unnecessary or ineffective expenditures, to expand, change, or reduce the geographic area or target group that the project covers, or to change the time period during which the project would be in effect.

7840.1400 RULES OF PRACTICE.

When not in conflict with this chapter, the Public Utilities Commission's general rules of practice will also apply.

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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 Cosmetology

The rules proposed and published at *State Register*, Volume 9, Number 30, pages 1643-1649, January 21, 1985 (9 S.R. 1643) and Volume 9, Number 33, page 1782, February 11, 1985 (9 S.R. 1782) are adopted as proposed.

Department of Commerce

Adopted Rules Relating to the Comprehensive Health Insurance Association

The rules proposed and published at *State Register*, Volume 9, Number 40, pages 2146-2170, April 1, 1985 (9 S.R. 2146) are adopted with the following modifications:

Rules as Adopted

2740.3100 MINIMUM BENEFITS OF COMPREHENSIVE HEALTH INSURANCE PLANS.

Subp. 3. Benefits of qualified medicare supplement plan. Benefits of a qualified medicare supplement plan shall meet or exceed the following minimum standards.

A. The plan shall provide benefits to covered persons by supplementing medicare through provision of:

(5) coverage of 20 percent of the amount of medicare eligible expenses under part B regardless of hospital confinement and coverage of at least ~~50~~ 100 percent of the medicare calendar year part B deductible.

2740.9914 DETERMINATION OF AVERAGE SEMI-PRIVATE HOSPITAL ROOM AND BOARD LEVEL OF SURGICAL CHARGES.

~~Subpart 1. Why develop values annually. Many companies issue policies with scheduled benefits. Due to inflation the value of scheduled benefits declines each year in relation to reasonable and customary charges. It would be best if the test of actuarial equivalence would automatically adjust for inflation and thus would more accurately value these types of benefits.~~

Subp. 2. When values determined. In December of each year, the commissioner will publish the following values:

- A. the average semi-private hospital room and board (ASP value);
- B. the value of surgical charges (SURG value);
- C. the ratios of the average semi-private hospital room and board for the year to that in 1984 (ASP factor);
- D. the ratio of the value of surgical charges for the year to that in 1984 (SURG factor); and
- E. the composite ratio of medical care for the year to that in 1984 (COMP factor).

The commissioner may appoint a service agency to calculate these values on a consistent basis each year.

Subp. 3. 2. How values determined. Values will be determined as follows:

2740.9934 USE OF TABLES.

Subp. 2. Filing with commissioner. The following ~~should~~ must be sent to the commissioner:

Subp. 3. Certification by commissioner. If the documents required by subpart 2 are filed and the plan is a qualified plan by using the test of actuarial equivalence in part 2740.9949, then the plan will be deemed certified as filed. If the documents required by subpart 2 are filed and the plan is not a qualified plan by using the test of actuarial equivalence in part 2740.9949, then the plan will be qualified if, ~~and when, the commissioner certifies it as a qualified plan~~ upon certification by the commissioner.

2740.9939 UPDATE OF TABLES.

Periodically, the tables may be revised as health care costs change. ~~The commissioner may revalue the actuarial equivalence of any plan or policy at any time deemed appropriate.~~ Also, as health care costs change, a plan may automatically lose or change its qualification. Annual revaluation of plans is required. When a plan is revalued and its qualification status changes, the filing procedures in part 2740.9934 will be followed.

2740.9949 TEST FOR ACTUARIAL EQUIVALENCE FOR PLANS OTHER THAN MEDICARE SUPPLEMENT PLANS.

Subp. 2. Effect of inflation. Each year the number of points required for each qualified plan will increase due to the effects of inflation on the benefits. Particular care ~~should~~ must be taken to revalue any policy form which contains scheduled benefits or other policy forms which have different deductible or coinsurance provisions.

2740.9964 EQUIVALENT POINTS FOR BASIC AND MAJOR MEDICAL HEALTH PLANS; NOT TO BE USED FOR MEDICARE SUPPLEMENT PLANS.**Subp. 15. Major medical maximum (comprehensive and superimposed plans).**

Maximum*	Add (+) or Subtract (-)
\$ 100,000	- 27
250,000	- 12
500,000	- 7
1,000,000	- 2

The smallest maximum in a qualified plan is \$250,000. The \$100,000 maximum as provided ~~should~~ must be used in future years to help determine the reduction for a \$250,000 plan.

Subp. 18. Coordination and nonduplication of benefits (all plans).

A. The following percentage of points after deduction for deductible and coinsurance ~~should~~ must be subtracted if the policy coordinates benefits with other plans and its pricing assumes that a number of insured will have other policies in force.

- (1) with other health plans, 4.0 percent;
- (2) with no fault, 2.5 percent;
- (3) with both subitems (1) and (2), 6.5 percent; and
- (4) with neither, 0.

B. The percentage ~~should~~ must be applied to the total points after deduction for deductible and coinsurance.

Department of Energy and Economic Development Energy and Economic Development Authority

Adopted Rules Relating to Small Business Development; Pollution Control Financial Assistance

The rules proposed and published at *State Register*, Volume 9, Number 47, pages 2513-2523, May 20, 1985 (9 S.R. 2513) are adopted as proposed.

* Before entering the table, divide the maximum in the policy by the COMP factor for the year.

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ADOPTED RULES

Department of Health Division of Health Resources

Adopted Rules Relating to Physician Assistants

The rule(s) proposed and published at *State Register*, Volume 9, Number 26, pages 1404-1411, December 24, 1984 (9 S.R. 1404) are adopted with the following modifications:

Rules as Adopted

REGISTRATION OF PHYSICIAN ASSISTANTS

5600.2600 DEFINITIONS.

Subp. 8. Diagnostic order. “Diagnostic order” means a directive to perform a procedure or test, the purpose of which is to determine the cause and nature of a pathological condition or disease.

Subp. 9. Inactive status. “Inactive status” means the status of a person who has met all the qualifications of a physician assistant but does not have a physician-physician assistant agreement in force and approved by the board.

Subp. 9. 10. Physician. “Physician” means a person currently licensed in good standing as a physician or osteopath under Minnesota Statutes, chapter 147.

Subp. 10- 11. Physician assistant; registered physician assistant. “Physician assistant” or “registered physician assistant” means a person registered pursuant to parts 5600.2600 to 5600.2665 who is qualified by academic or practical training or both to provide patient services as listed in part 5600.2615 under the supervision of a supervising physician.

Subp. 11- 12. Registration. “Registration” is the process by which the board determines that an applicant has been found to meet the standards and qualifications specified in parts 5600.2600 to 5600.2665.

Subp. 12. 13. Supervising physician. “Supervising physician” means a Minnesota licensed physician who accepts full medical responsibility for the performance, practice, and activities of a physician assistant under an agreement approved by the board and pursuant to part 5600.2615. “Supervising physician” shall include “alternate supervising physician” for the purposes of parts 5600.2600 to 5600.2665.

5600.2615 SCOPE OF PHYSICIAN ASSISTANT PRACTICE.

Subpart 1. General limitation on scope of practice. Patient services must be limited to:

- A. services within the training or experience of the physician assistant;
- B. services customary to the practice of the supervising physician; and
- C. services delegated by the supervising physician.

Subp. 2. Descriptive list of allowed services. Patient services ~~may include~~ must be limited to:

5600.2620 REQUIREMENTS FOR ADEQUATE SUPERVISION.

To ensure the supervising physician assumes full medical responsibility for patient services provided by the physician assistant, the supervising physician shall instruct and direct the physician assistant in the assistant's duties, oversee and check the assistant's work, and provide general direction to the assistant. The physician assistant and supervising physician shall comply with at least the following criteria:

E. The prescribing, administering, and dispensing of legend drugs shall only be done in accordance with Minnesota Statutes, ~~chapter chapters~~ 151 and 152.

5600.2625 REQUIREMENTS FOR REGISTRATION.

Subpart 1. Requirements for registration in active status. An applicant for registration as a physician assistant in active status shall:

B. Successfully complete an examination which has been approved by the board as assessing physician assistant skills. The examination must meet the following criteria:

(5) The examination must be revised or a new form must be issued when technical advances indicate the examination should be updated to acknowledge related changes in the ~~definition~~ scope of authorized practice of a physician assistant as outlined in part 5600.2615.

Subp. 2. Requirements for registration in inactive status. An applicant for registration as a physician assistant in inactive status must meet the requirements of ~~part 5600.2625~~, subpart 1, items A and B.

A physician assistant in inactive status may apply for registration in active status when the requirements of ~~part 5600.2625,~~ subpart 1, item C are met.

5600.2635 APPLICATION PROCESS FOR APPROVAL OF AGREEMENT BETWEEN PHYSICIAN AND PHYSICIAN ASSISTANT.

Subp. 3. Contents of agreement. The agreement must include at least the following:

C. restrictions or instructions regarding the functions or practices of the physician assistant and any letters of agreement or other protocols ~~to~~ or restrictions established by or with any health care facility concerning the practice of the physician assistant when functioning in the facility, including letters of agreement made for or with pharmacists regarding the practice of the physician assistant in carrying out the directions of the physician;

5600.2650 CONTINUING EDUCATION REQUIREMENTS.

Subpart 1. Amount of education required. Applicants for reregistration must either attest to and document successful completion of at least 50 contact hours of board-approved continuing education ~~or the equivalent as described in subpart 3~~ within the two years immediately preceding reregistration, or attest to and document taking the national certifying examination within the past two years.

5600.2655 APPLICATION FEES.

Subp. 6. Surcharge. For a period of five years following the effective date of parts 5600.2500 to 5600.2665, a surcharge shall be added to each initial registration and annual registration fee. The surcharge shall be calculated by dividing the cost of adopting the rules by five to reach the amount which must be recouped each year, and then, on a yearly basis, calculate the surcharge by dividing the amount that must be recouped each year by the number of registrants and reregistrants that year.

5600.2660 PROCESS AND GROUNDS FOR DISCIPLINARY ACTION.

Subp. 2. Disciplinary options of board. The board shall refuse to grant or renew a registration, or shall suspend or revoke a registration, or use any reasonable lesser remedy against a physician assistant if the assistant:

D. performs patient service beyond the scope of practice authorized by ~~this~~ part 5600.2615;

Subp. 3. Disciplinary actions. If the board finds that a physician assistant should be disciplined pursuant to subpart 2, the board may take any one or more of the following actions:

D. administer a ~~public or private~~ reprimand;

Subp. 4. Consequences of disciplinary action. Upon the revocation or suspension, the registrant shall return to the board his or her ~~registration certificate~~ registration certificate and current renewal document.

5600.2665 PHYSICIAN ASSISTANT ADVISORY COUNCIL.

Subp. 3. Duties. The council shall:

E. receive and process complaints about applicants and registrants in accordance with Minnesota Statutes, sections 214.10 and 214.13, subdivisions 6 and 7;

F. perform disciplinary investigations; and

F- G. perform other duties authorized for the council by Minnesota Statutes, chapter 214 as directed by the board.

Board of Psychology

Adopted Rules Governing the Definition of a "Major in Psychology"

The rule proposed and published at *State Register*, Volume 9, Number 46, pages 2474 and 2475, May 13, 1985 (9 S.R. 2474) is adopted as proposed.

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

ADOPTED RULES

Department of Revenue

Adopted Rule Governing Multistate Tax Compact

The rule proposed and published at *State Register*, Volume 9, Number 37, pages 2003-2007, March 11, 1985 (9 S.R. 2003) is adopted with the following modifications:

Rule as Adopted

8017.5000 THE MULTISTATE TAX COMPACT.

Subpart 1. In general. Taxpayers who elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, are subject to the following regulations as found in Multistate Tax Commission Allocation and Apportionment Regulations, revised February 21, 1973, which is incorporated by reference. Copies of the regulations are available at the Minnesota State Law Library, 117 University Avenue, Saint Paul, MN 55155, and other law libraries. The regulations have also been printed in *State and Local Taxes*, volume 1, All States Unit, Prentice Hall, Inc., Englewood Cliffs, New Jersey. All references to Article IV refer to Minnesota Statutes, section 290.171, article IV. Taxpayers who elect to apportion their income to Minnesota pursuant to Minnesota Statutes, chapter 290, without regard to Minnesota Statutes, section 290.171, article IV, are subject to Minnesota Rules, chapter 8019.

FF. Regulation IV.18.(a), except that if combined reporting is used, the combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing, and except that "Article IV.18" is amended to read "Minnesota Statutes, section 290.171, article IV.13" and "Article IV.10 to .17" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .12";

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 Energy and Economic Development Energy and Economic Development Authority

Outside Opinion Sought Concerning a Proposed Rule Governing Health Care Equipment Loans

Notice is hereby given that the Minnesota Energy and Economic Development Authority is seeking information or opinions from interested or affected persons or groups in preparing to promulgate permanent rules governing Health Care Equipment Loans. Promulgation of these rules is authorized by M.S. Minnesota Laws 1985, Extended Session, Chapter 14, Section 18 (116M.07 Subd. 7a).

The Minnesota Energy and Economic Development Authority 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:

Terry Brown
Minnesota Energy and Economic Development Authority
900 American Center Building
140 E. Kellogg Blvd.
St. Paul, Minnesota 55101

Oral statements should be received during regular business hours over the telephone at 612/297-1981 and in person at the above address.

All statements of information and comments shall be accepted until September 1, 1985. Any written material received by the Authority shall become part of the record in the event the rules are promulgated.