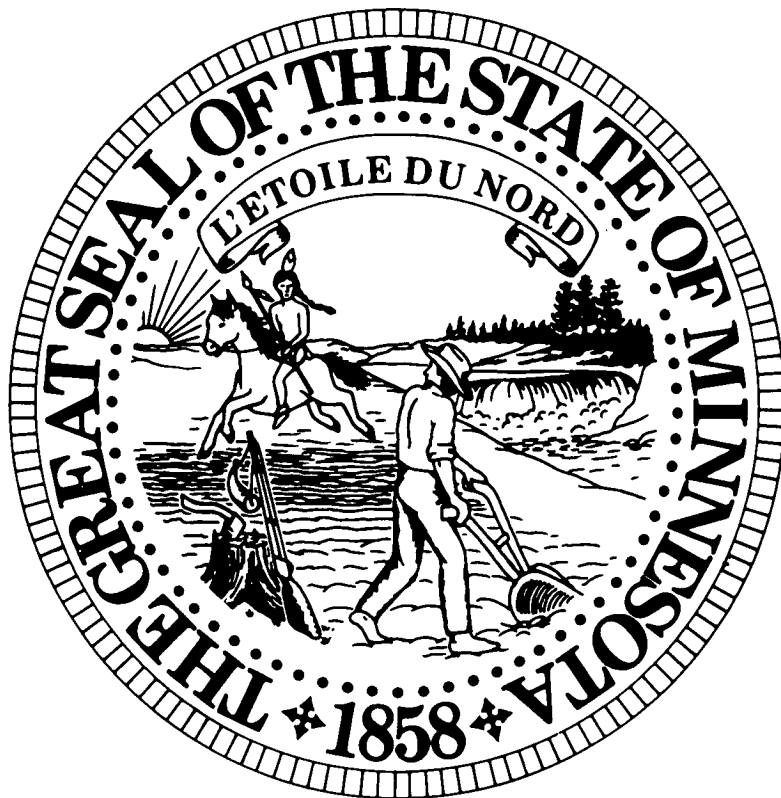


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The Minnesota
**State
Register**

Department of Administration—Print Communications Division



Rules edition
Published every Monday

30 July 1990

Volume 15, Number 5

Pages 249-328

State Register

Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive and commissioners' orders, proposed and adopted rules, official notices, state and non-state contracts, contract awards, grants, supreme court decisions, and a monthly calendar of cases to be heard by the state supreme court.

A *Contracts Supplement* is published every Thursday and contains additional state contracts and advertised bids, and the most complete source of state contract awards available in one source.

Printing Schedule and Submission Deadlines

Vol. 15 Issue Number	*Submission deadline for Adopted and Proposed Rules, Commissioners' Orders**	*Submission deadline for Executive Orders, Contracts, and Official Notices**	Issue Date
5	Monday 16 July	Monday 23 July	Monday 30 July
6	Monday 23 July	Monday 30 July	Monday 6 August
7	Monday 30 July	Monday 6 August	Monday 13 August
8	Monday 6 August	Monday 13 August	Monday 20 August

*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 *State Register* editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

The *State Register* is published every Monday (Tuesday when Monday is a holiday) by the State of Minnesota, Department of Administration, Print Communications Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to *Minnesota Statutes* § 14.46. A *State Register Contracts Supplement* is published every Thursday. The Monday edition is the vehicle for conveying all information about state agency rulemaking, including official notices; hearing notices; proposed, adopted and emergency rules. It also contains executive orders of the governor; commissioners' orders; state contracts and advertised bids; professional, technical and consulting contracts; non-state public contracts; state grants; decisions of the supreme court; a monthly calendar of scheduled cases before the supreme court; and other announcements. The Thursday edition contains additional state contracts and advertised bids, and the most complete listing of contract awards available in one source.

In accordance with expressed legislative intent that the *State Register* be self-supporting, the following subscription rates have been established: the Monday edition costs \$140.00 per year and includes an index issue published in August (single issues are available at the address listed above for \$3.50 per copy); the combined Monday and Thursday editions cost \$195.00 (subscriptions are not available for just the *Contracts Supplement*); trial subscriptions are available for \$60.00, include both the Monday and Thursday edition, last for 13 weeks, and may be converted to a full subscription anytime by making up the price difference. No refunds will be made in the event of subscription cancellation.

Both editions are delivered postpaid to points in the United States, second class postage paid for the Monday edition at St. Paul, MN, first class for the Thursday edition. Publication Number 326630 (ISSN 0146-7751).

Subscribers who do not receive a copy of an issue should notify the *State Register* circulation manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

Rudy Perpich, Governor
Sandra J. Hale, Commissioner
Department of Administration

Stephen A. Ordahl, Director
Print Communications Division
Robin PanLener, Editor

Paul Hoffman, Assistant Editor
Debbie George, Circulation Manager
Bonita Karels, Staff Assistant

FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

SENATE

Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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NOTICE: How to Follow State Agency Rulemaking in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific *Minnesota Rule* chapter numbers. Every odd-numbered year the *Minnesota Rules* are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the *Official Notices* section of the *State Register*. When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the *State Register*, a subscription, the annual index, the *Minnesota Rules* or the *Minnesota Guidebook to State Agency Services*, contact the Print Communications Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-9747.

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Proposed Rules

Pursuant to Minn. Stat. §§ 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 Permanent Rules Relating to Health Coverage Conversion Privileges Upon Termination

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Department of Commerce intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statute* § 45.023 and § 62E.09.

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

All persons 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. 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 in writing. 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 department will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

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

Richard G. Gomsrud
Department Counsel
Minnesota Department of Commerce
133 E. Seventh Street
St. Paul, Minnesota 55101
(612) 296-5689

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 as noticed.

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

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 upon request from:

Richard G. Gomsrud
Department Counsel
Minnesota Department of Commerce
133 E. Seventh Street
St. Paul, Minnesota 55101

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 rule, must submit the written request to:

Richard G. Gomsrud
Department Counsel
Minnesota Department of Commerce
133 E. Seventh Street
St. Paul, Minnesota 55101

Dated: 5 July 1990

Thomas Borman
Commissioner of Commerce

Rules as Proposed

2740.1600 TERMINATION OF COVERAGE; CONVERSION PRIVILEGES.

[For text of subpart 1, see M.R.]

Subp. 2. **Duty to offer conversion policy or contract.** Duty to offer conversion policy or contracts:

A. For the purposes of *Minnesota Statutes*, sections 62E.16 and 62A.17, an insurer, health maintenance organization, or self-insurer shall not be required to offer a conversion policy or contract to a person who is then covered by a qualified plan ~~or eligible for medicare~~.

B. An insurer, health maintenance organization, or self-insurer shall not be required to renew a conversion policy or contract issued to a person who, during the prior policy or contract year, became covered by a qualified plan, ~~or became eligible for medicare~~.

C. An insurer, health maintenance organization, or self-insurer that is required to offer conversion coverage to a terminated employee must offer, at the employee's option, a number 1, number 2, or number 3 qualified plan. A policy providing reduced benefits at a reduced premium rate may be accepted by the employee, spouse, or a dependent in lieu of the optional coverage otherwise required by *Minnesota Statutes*, sections 62A.17, subdivision 6 and 62E.16.

[For text of subp 3, see M.R.]

Department of Human Services

Proposed Permanent Rules Relating to Community Health Clinic Services Eligible for Medical Assistance Payment

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above entitled rule amendment without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is in *Minnesota Statutes*, section 256B.04, subdivision 2.

All persons have 30 days or until 4:30 p.m. on August 29, 1990 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 in writing. 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.

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

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

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 as noticed.

Minnesota Rules, part 9505.0255 establishes the conditions for a facility providing health services to be eligible to receive medical assistance payment for community health clinic services to recipients. Subpart 1 of part 9505.0255 defines the term "community health clinic service" and lists four required criteria including tax exempt status. The proposed amendment expands the means to establish tax exempt status.

A free copy of the rule is available upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296-7454.

A copy of the rule may also be viewed at any of the 87 county welfare or human service agencies in the State of Minnesota.

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 upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296-7454

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

Adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 rule, must submit the written request to:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816.

Ann Wynia
Commissioner of Human Services

Rules as Proposed

9505.0255 COMMUNITY HEALTH CLINIC SERVICES.

Subpart 1. **Definition.** "Community health clinic service" means a health service provided by or under the supervision of a physician in a clinic that meets the criteria listed in items A to D. The clinic:

A. has nonprofit status as specified in *Minnesota Statutes*, chapter 317; and

B. has tax exempt status as provided in Internal Revenue Code, section 501(c)(3) as amended through October 4, 1976, or is established as a hospital authority under *Minnesota Statutes*, section 144.581, or is operated under the control of the commissioner under *Minnesota Statutes*, section 246.01; and

C. is established to provide health services to low income population groups; and

D. has written clinic policies as provided in subpart 4.

[For text of subps 2 to 4, see M.R.]

Department of Human Services

Proposed Permanent Rules Relating to Nursing Home Preadmission Screening and Alternative Care Grant Program

Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing If Twenty-Five or More Persons Request a Hearing

NOTICE IS HEREBY GIVEN that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in the *Minnesota Statutes*, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is *Minnesota Statutes*, section 256B.091, subdivisions 8 and 9.

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 in writing. 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. **PLEASE NOTE that if twenty-five or more persons submit written requests for a public hearing within the 30-day comment period, a hearing will be held on Tuesday, September 18, 1990, unless a sufficient number withdraw their request, in accordance with the notice of public hearing on these same rules published in this *State Register* and mailed to persons registered with the Department of Human Services.** To verify whether a hearing will be held, please call the Department of Human Services between August 30, 1990 and September 17, 1990 at (612) 297-4301.

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

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on Wednesday, August 29, 1990.

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 as noticed.

A free copy of this rule is available upon request for your review from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296-7454.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

Parts 9505.2390 to 9505.2500 establish the standards and procedures applicable to the preadmission screening of applicants for admission to and residents of nursing homes and to alternative care grant (ACG) services for some community services in lieu of nursing home admission or continued nursing home residence for persons who meet the eligibility requirements specified in the rules. The proposed amendments will: 1. revise the beginning of the rate year for preadmission screenings from January 1 to July 1 and amend the rate adjustment mechanism to one specifically for home health services that is used by other Department health care programs; 2. clarify reimbursement for preadmission screenings; 3. add extended medical supplies and equipment as an available ACG service, consistent with the federal government's waiver of certain medical assistance limitations; 4. clarify the monthly limit on the cost of ACG client services; 5. authorize a one-time adjustment to certain ACG rates to achieve consistency with medical assistance rates for similar services; 6. freeze the rates for case management and health aide services under ACG until the Department completes a study of rates for these waived services; 7. clarify the billing of costs of ACG service supervision.

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 upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296-7454.

Adoption of these rules will not result in additional spending by local public bodies in the excess of \$100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11.

If no hearing is required upon adoption of the 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 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 rule, must submit the written request to:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816.

State of Minnesota
Ann Wynia
Commissioner

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Proposed Rules

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in the Department of Human Services, Rooms 1A and 1B, 444 Lafayette Road, St. Paul, MN 55155 on Tuesday, September 18, 1990 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, however, that the hearing will be cancelled if fewer than twenty-five persons request a hearing in response to the notice of intent to adopt these same rules without a public hearing published in this *State Register* and mailed to persons registered with the Department of Human Services. To verify whether a hearing will be held, please call the Department of Human Services between August 30, 1990 and September 17, 1990 at (612) 297-4301.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Peter C. Erickson, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7606, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in *Minnesota Statutes*, sections 14.15 and 14.50. The rule hearing is governed by *Minnesota Statutes*, sections 14.14 and 14.20 and by *Minnesota Rules*, parts 1400.0200 to 14.00.1200. Questions about procedure may be directed to the Administrative Law Judge.

Parts 9505.2390 to 9505.2500 establish the standards and procedures applicable to the preadmission screening of applicants for admission to and residents of nursing homes and to alternative care grant (ACG) services for some community services in lieu of nursing home admission or continued nursing home residence for persons who meet the eligibility requirements specified in the rules. The proposed amendments will: 1. revise the beginning of the rate year for preadmission screenings from January 1 to July 1 and amend the rate adjustment mechanism to one specifically for home health services that is used by the other Department health care programs; 2. clarify reimbursement for preadmission screenings; 3. add extended medical supplies and equipment as an available ACG service, consistent with the federal government's waiver of certain medical assistance limitations; 4. clarify the monthly limit on the cost of ACG client services; 5. authorize a one-time adjustment to certain ACG rates to achieve consistency with medical assistance rates for similar services; 6. freeze the rates for case management and health aide services under ACG until the Department completes a study of rates for these waived services; 7. clarify the billing of costs of ACG service supervision.

The agency's authority to adopt the proposed rules is contained in *Minnesota Statutes*, section 256B.091, subdivisions 8 and 9.

Adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816.

This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Eleanor Weber at (612) 297-4301.

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

NOTICE IS HEREBY GIVEN THAT A STATEMENT OF NEED AND REASONABLENESS is now available for review at

the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

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

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

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

Ann Wynia
Commissioner

Rules as Proposed

9505.2395 DEFINITIONS.

[For text of subs 1 to 5, see M.R.]

Subp. 6. **Alternative care grant services.** "Alternative care grant services" means the services listed in items A to ~~G~~ H provided to ACG clients:

- A. case management services;
- B. respite care services;
- C. homemaker services;
- D. home health aide services;
- E. adult foster care services;
- F. adult day care services; ~~and~~
- G. personal care services; ~~and~~
- H. extended medical supplies and equipment.

[For text of subs 7 to 19, see M.R.]

Subp. 19a. **Extended medical supplies and equipment.** "Extended medical supplies and equipment" means medical supplies and equipment as specified in part 9505.0310, except that the limitations on the amount, scope, and duration of these supplies and equipment do not apply.

[For text of subs 20 to 56, see M.R.]

9505.2440 PREADMISSION SCREENING RATE.

For rate years beginning on ~~January~~ July 1 following the effective date of parts 9505.2390 to 9505.2500, the commissioner shall annually establish the maximum statewide rate allowed for reimbursement of preadmission screening and the maximum reimbursement rate of a local agency for preadmission screening. The maximum statewide rate and the maximum reimbursement rate of a local agency shall not exceed the prior year's rate by more than the percentage change ~~between the two previous Junes in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul new series index (1967=100) as published by the Bureau of Labor Statistics, United States Department of Labor. The CPI-U forecast in the fourth quarter of the prior calendar year by the Home Health Agency Market Basket of Operating Costs, Health Care Costs, unless otherwise adjusted by statute. The Home Health Agency Market Basket of Operating Costs is published by Data Resources, Inc., and is revised quarterly. The Home Health Agency Market~~

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Proposed Rules

Basket of Operating Costs is incorporated by reference and is available ~~from~~ for inspection at the Department of Human Services, Division of Reports and Statistics, Third Floor, 444 Lafayette Road, Saint Paul, Minnesota 55155, and through the Minitex interlibrary loan system. The CPI-U is subject to frequent change. By January 15 of each year, the commissioner must send a written notice of the maximum reimbursement rate to a local agency.

9505.2445 REIMBURSEMENT FOR PREADMISSION SCREENING.

[For text of subpart 1, see M.R.]

Subp. 2. [See Repealer.]

Subp. 3. **Reimbursement for preadmission screening of persons who are not recipients.** Reimbursement for the preadmission screening of ~~persons who are not recipients~~ must be made according to ~~Minnesota Statutes, section 256B.091, subdivision 4 as specified in items A to D.~~

A. A nursing home participating in the medical assistance program in a county must pay the county the monthly amount estimated by the county as the cost of screening applicants and residents as specified in Minnesota Statutes, section 256B.091, subdivision 4. The nursing home shall report the annual estimated cost of screenings as determined by the county in the operating cost of the nursing home according to Minnesota Statutes, section 256B.431, subdivision 2b, paragraph (g).

B. In the case of a person who requests screening, who is not a nursing home applicant or resident, and who is not a recipient or eligible to receive medical assistance within 180 days after admission to a nursing home, the local agency of the county in which the person is residing at the time of the preadmission screening may bill the client for the cost of the preadmission screening.

C. In the case of a person who requests screening, who is not a nursing home applicant or resident, and who is not a recipient but would be eligible to receive medical assistance within 180 days after admission to a nursing home, the department shall reimburse the local agency of the county in which the person is residing at the time of the preadmission screening for 50 percent of the preadmission screening rate established under part 9505.2440. The local agency of the county in which the person is residing at the time of the preadmission screening shall submit an invoice to the department for reimbursement of preadmission screening costs for the person, as required in part 9505.0450, subpart 2. The local agency of the county in which the person is residing at the time of the preadmission screening may bill the person for 50 percent of the preadmission screening rate.

D. In the case of a recipient who requests screening, and who is not a nursing home applicant or resident, the medical assistance program shall reimburse the county the rate established under part 9505.2440. The local agency of the county of financial responsibility shall submit an invoice to the department for reimbursement of the preadmission screening costs, as required under part 9505.0450, subpart 2.

Subp. 4. **Required local agency estimate of the cost and number of preadmission screenings of persons other than recipients.** Annually by February 15, a local agency must prepare and submit to the department an estimate for the following state fiscal year of the number and costs of preadmission screenings of persons ~~who are not recipients and~~ who will be applicants or residents of nursing home residents homes for whom the county will provide preadmission screening.

Subp. 5. **Local agency's Allocation of cost estimate of preadmission screening to a nursing home.** Using the annual estimate of the number and costs of preadmission screenings required in subpart 4, a local agency must calculate the monthly amount to be paid by a nursing home to the local agency for preadmission screenings performed by the local agency for the following state fiscal year. The amount must be based on the nursing home's percentage of the number of licensed beds in nursing homes in the county of the local agency. The local agency must ~~submit the amount to notify~~ the nursing home by February 15 of the monthly amount to be paid for preadmission screenings.

Subp. 6. **Reconciliation of estimate required in subpart 4 with estimated and actual cost costs of preadmission screenings.** Annually by January 15, the department shall reconcile its estimated cost of a nursing home's number of preadmission screenings of persons ~~who are not recipients~~ are applicants or residents of nursing homes as calculated under subpart 4 with the actual cost of preadmission screenings of these persons performed in the previous state fiscal year. The department shall notify the local agency of the amount of the overpayment or underpayment that the local agency must use in completing the calculation required under subpart 4.

9505.2455 ALTERNATIVE CARE GRANTS.

[For text of subs 1 to 4, see M.R.]

Subp. 5. **Extended medical supplies and equipment.** If the ACG client is a recipient and the supplies and equipment are covered services under part 9505.0310, the cost of the supplies and equipment shall be paid as provided in the medical assistance program under parts 9505.0170 to 9505.0475 to the extent that reimbursement of the cost is not available from Medicare and a third party payer as defined in part 9505.0015, subpart 46. A local agency shall use ACG money to buy or rent care related supplies and equipment for an ACG client as specified in items A to C.

A. If the supplies and equipment are not covered services under part 9505.0310 or the ACG client is not a recipient and the cost of the supplies and equipment for the ACG client is not more than \$100 per month, the local agency shall authorize the use of ACG funds.

B. If the supplies and equipment are not covered services under part 9505.0315 or the ACG client is not a recipient and the cost of the supplies and equipment exceeds \$100 per month, the local agency must obtain prior authorization from the department to use ACG funds to pay the cost of the supplies and equipment. For purposes of this subpart, "prior authorization" means written approval and authorization given by the department to the local agency before the purchase or rental of the supply or equipment.

C. The department shall have the right to determine whether the supplies and equipment are necessary to enable the client to remain in the community. If the department determines that the supplies and equipment are necessary to enable the ACG client to remain in the community and if the cost of the supplies and equipment together with all other ACG services and skilled nursing services provided by public health nursing services is less than the limitation in subpart 8, the department shall authorize the use of the ACG funds to pay the cost. The cost of extended medical supplies and equipment shall be eligible for reimbursement as an ACG service provided that all of the requirements in items A to F are satisfied.

A. Reimbursement for extended medical supplies and equipment must not be otherwise available from Medicare or a third party payer as defined in part 9505.0015, subpart 46.

B. The extended medical supplies and equipment must be necessary to enable the ACG client to remain in the community.

C. The cost of the extended medical supplies and equipment together with all other ACG services and skilled nursing services provided by the public health nursing services must be less than the limitation in subpart 8.

D. Expenditures for extended medical supplies and equipment that cost \$150 per item per month must have the prior approval of the department. For purposes of this subpart, "prior approval" means written approval given by the department to the local agency before the purchase or rental of the supplies or equipment. The local agency shall authorize without prior approval the use of ACG funds for extended medical supplies and equipment costing less than \$150 per month where such supplies and equipment otherwise meet the requirements of this subpart.

E. Approval by the department of the use of ACG funds to pay the cost of extended medical supplies and equipment shall be as specified by subitems (1) to (3).

(1) If the ACG client is a recipient and the extended medical supplies and equipment are covered services under part 9505.0310, the cost of the extended medical supplies and equipment shall be paid as provided in the medical assistance program under parts 9505.0170 to 9505.0475.

(2) If the ACG client is a recipient and the extended medical supplies and equipment otherwise meet the criteria in this subpart and are not covered services under part 9505.0310, the cost of the extended medical supplies and equipment shall be paid through the use of medical assistance funds available under the waiver.

(3) If the ACG client is not a recipient but would be eligible for medical assistance within 180 days of admission to a nursing home as specified by Minnesota Statutes, section 256B.091, subdivision 8, clause (2), the local agency must obtain prior authorization from the department to use ACG funds to pay the cost of the extended medical supplies and equipment except as specified in item D.

F. Annually on July 1, after the effective date of this subpart as amended, the commissioner must adjust the amount for which no prior authorization is required up to the percentage change forecast in the first quarter of the calendar year by the Home Health Agency Market Basket of Operating Costs, Health Care Costs, unless otherwise adjusted by statute. The Home Health Agency Market Basket of Operating Costs is published by Data Resources, Inc., and is revised quarterly. The Home Health Agency Market Basket of Operating Costs is incorporated by reference and is available for inspection at the Department of Human Services, Division of Reports and Statistics, Third Floor, 444 Lafayette Road, Saint Paul, Minnesota 55155, and through the Minitex interlibrary loan system.

Subp. 6. **Supervision costs.** ~~The cost of supervising a home health aide or personal care assistant must be included in the rate for home health aide or personal care services, unless payment for the cost of supervision is included service or in the rate for skilled nursing service. If the cost of supervising a home health aide or personal care assistant is included in the rate for skilled nursing service, the cost must not be included in the payment for a home health aide or personal care assistant. The cost of supervising a personal care assistant must be billed as a separate cost and is not included in the rate for personal care service. The cost of supervising~~

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Proposed Rules

the provision of an alternative care grant service other than a personal care service or a health aide service must be included in the rate for the service.

[For text of subp 7, see M.R.]

Subp. 8. **Costs included within the Monthly limitation of an ACG to an limit on costs of ACG client services.** In a calendar month, the total cost of an ACG to an ACG client must not exceed the total statewide monthly average payment of the resident class to which the ACG client would be assigned under parts 9549.0050 to 9549.0059, calculated from the payments made for that resident class in the previous fiscal year. The monthly cost of ACG services to a recipient shall not exceed the statewide monthly average nursing home rate effective July 1 of the fiscal year in which the cost is incurred less the statewide average monthly income of nursing home residents who are age 65 or older and who are medical assistance recipients in the month of March of the previous Minnesota fiscal year. In calculating the monthly limit for an ACG client, the statewide monthly average nursing home payment rate shall be the statewide average payment rate of the resident class to which the ACG client would be assigned under parts 9549.0050 to 9549.0059. The following costs must be included in determining the total costs of an ACG:

A. cost of all ACG services;

B. cost of skilled nursing services provided by public health nursing services and reimbursable under parts 9505.0170 to 9505.0475; and

C. cost of supplies and equipment funded by an ACG.

[For text of subps 9 to 12, see M.R.]

9505.2465 STANDARDS FOR PERSONAL CARE SERVICES.

[For text of subps 1 to 3, see M.R.]

Subp. 4. **Employment of personal care assistants.** A personal care assistant who provides personal care services under the ACG program is not an employee of the ACG client but must be employed by or under contract with a personal care provider or local agency. A personal care assistant employed by a personal care provider or local agency must meet the training requirements in subpart 2. The personal care provider or local agency shall terminate the personal care assistant's employment or assignment to an ACG client if the supervising registered nurse determines that the personal care assistant is not performing satisfactorily.

[For text of subps 5 to 11, see M.R.]

9505.2490 RATES FOR ACG SERVICES.

Subpart 1. **Statewide maximum ACG service rate.** For years beginning Upon the effective date of this subpart as amended, the commissioner shall make a one-time adjustment of the statewide maximum ACG service rate for adult day care, and homemaker and respite care, to be the maximum rate available to a county to reimburse a provider of equivalent services under rules adopted under Minnesota Statutes, section 256B.49, and for personal care services and supervision of personal care services at rates that are the same as the medical assistance rates for the equivalent services. Thereafter, annually on July 1 following the effective date of parts 9505.2390 to 9505.2500, the commissioner must annually set a statewide maximum rate allowed for payment of providing an ACG service. The statewide maximum rate must not exceed the prior fiscal year's rate by more than the percentage change between the two previous Januarys indicated by the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul new series index (1967 = 100), as published by the Bureau of Labor Statistics, United States Department of Labor. The CPI-U adjust the rates available for reimbursement of an ACG provider for personal care services and the supervision of personal care services based on the medical assistance rate for equivalent services and must adjust the rates available for reimbursement of an ACG provider for adult day care services, adult foster care services, homemaker services, and respite care services up to the percentage change forecast in the first quarter of the calendar year by the Home Health Agency Market Basket of Operating Costs, Health Care Costs, unless otherwise adjusted by statute. The Home Health Agency Market Basket of Operating Costs is published by Data Resources, Inc., and is revised quarterly. The Home Health Agency Market Basket of Operating Costs is incorporated by reference and is available from for inspection at the Department of Human Services, Division of Reports and Statistics, Third Floor, 444 Lafayette Road, Saint Paul, Minnesota 55155, and through the Minitex interlibrary loan system. The CPI-U is subject to frequent change.

Additionally, upon the effective date of this subpart, the commissioner shall freeze the case management and home health aide service rates until the department completes a study of rates for case management services and home health aide services to persons receiving home and community-based services under a waiver and the commissioner approves rates based on the study.

Subp. 2. **Local agency maximum ACG service rate set by commissioner; general.** The commissioner shall annually set the maximum rate, not to exceed the rate specified in subpart 1, that is available to a local agency for reimbursing an ACG provider for an ACG service. For years beginning on the first of July following the effective date of parts 9505.2390 to 9505.2500, the commissioner shall authorize an increase in the ACG rate available to a local agency for reimbursing an ACG provider equal to the percentage change between the two previous Januarys indicated by the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul new series index (1967 = 100), as published by the Bureau of Labor Statistics, United States Department of Labor, up to the percentage change

forecast in the first quarter of the calendar year by the Home Health Agency Market Basket of Operating Costs, Health Care Costs, unless otherwise adjusted by statute. The Home Health Agency Market Basket of Operating Costs is published by Data Resources, Inc., and is revised quarterly. The Home Health Agency Market Basket of Operating Costs is incorporated by reference and is available for inspection at the Department of Human Services, Division of Reports and Statistics, Third Floor, 444 Lafayette Road, Saint Paul, Minnesota 55155, and through the Minitex interlibrary loan system.

[For text of subps 3 to 6, see M.R.]

REPEALER. Minnesota Rules, part 9505.2445, subpart 2, is repealed.

Department of Labor and Industry

Proposed Permanent Rules Relating to Master Job Classifications For Prevailing Wage Determinations

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Labor and Industry intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is found in *Minnesota Statutes* section 175.171 (1) (1988) and *Minnesota Statutes*, sections 177.41-177.44 (1988).

All persons 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. Public 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 in writing. 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.

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

Donald G. Jackman
Director, Division of Labor Standards
Department of Labor and Industry
443 Lafayette Road
St. Paul, Minnesota 55155
(612) 297-3349

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 as noticed.

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

The rule proposed for adoption adds the master job classification of asbestos abatement worker to the rules governing payment of prevailing wages on state-funded construction projects.

A free copy of the rule is available upon request from Donald Jackman at the above address and telephone number.

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 Donald Jackman upon request.

The rule will set the prevailing rate for asbestos abatement workers on state-funded construction projects. Small businesses currently paying less than the prevailing rate will be required to increase the rate paid to these workers, and small businesses currently paying more than the prevailing rate may have the option of decreasing the rate paid to these employees on future projects, subject to contract

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Proposed Rules

agreements. Therefore, the impact on small business varies by company. Further information concerning the impact of the proposed rule on small businesses is contained in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 rule, must submit the written request to Don Jackman at the above address and telephone number.

Dated: 13 July 1990

Ken Peterson
Commissioner

Rules as Proposed

5200.1100 MASTER JOB CLASSIFICATIONS.

[For text of subs 1 to 4, see M.R.]

Subp. 5. **Special crafts.**

Code No.	Position Title
401	Asbestos workers
402	Boilermakers
403	Bricklayers
404	Carpenters
405	Carpet layers (linoleum)
406	Cement masons
407	Electricians
408	Elevator constructors
409	Glaziers
410	Lathers
411	Groundman
412	Ironworkers
413	Lineman
414	Millwright
415	Painters
416	Piledriverman
417	Pipefitters - steamfitters
418	Plasterers
419	Plumbers
420	Roofer
421	Sheet metal workers
422	Sprinkler fitters
423	Terrazzo workers
424	Tile setters
435	<u>Asbestos abatement worker</u>

Wage determinations shall be made for other classifications not listed if such other classifications are in general use in the area being surveyed.

Pollution Control Agency

Proposed Permanent Rules Relating to Underground Storage Tanks

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The MPCA's authority to adopt the rule is set forth in *Minnesota Statutes* § 116.49 (1988).

All persons have until 4:30 p.m., on August 29, 1990, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. 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 MPCA will proceed pursuant to *Minnesota Statutes* § 14.131 to 14.20 (1988).

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

Thomas P. Clark
Minnesota Pollution Control Agency
Hazardous Waste Division
Tanks and Spills Section
520 Lafayette Road
St. Paul, Minnesota 55155
612/643-3407

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

The proposed rules, if adopted, will establish technical standards and safeguards necessary to protect human health, safety and the environment and include the following areas: 1. Design, construction, installation and notification of underground storage tank systems; 2. general operating requirements; 3. release detection requirements; 4. release reporting, investigation, and confirmation; 5. release response and corrective action; and 6. closure of underground storage tank systems. Regulated substances include petroleum products as well as certain hazardous materials. One free copy of the rules is available upon request from Tom Clark at the address and telephone number stated above.

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 rule has been prepared and is available from Tom Clark upon request.

You are hereby advised, pursuant to *Minnesota Statutes* § 13.115 (1988), "Small Business Considerations in Rulemaking," that the proposed rules will have a minimal effect on small businesses. In drafting the proposed rules, the MPCA considered the potential impact on small businesses. A discussion of these considerations can be found in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent 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 rule as adopted, must submit a written request to Tom Clark of the Tanks and Spills Section.

Gerald L. Willet
Commissioner

Rules as Proposed (all new material)

PROGRAM SCOPE AND INTERIM STANDARDS

7150.0010 APPLICABILITY.

Subpart 1. **Scope.** The requirements of this chapter apply to all owners and operators of an underground storage tank system as defined in part 7150.0030, except as otherwise provided in this subpart and subparts 2 and 3. Any underground storage tank system listed in subpart 3 must meet the requirements of part 7150.0020.

Subp. 2. **Exclusions.** The following underground storage tank systems are excluded from the requirements of this chapter:

A. an underground storage tank system holding hazardous wastes listed or identified under chapter 7045 or Code of Federal Regulations, title 40, part 261, or a mixture of such hazardous waste and other regulated substances;

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B. a wastewater treatment tank system that is part of a wastewater treatment facility regulated under United States Code, title 33, section 1317 or 1342;

C. equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

D. an underground storage tank system with a capacity of 110 gallons or less;

E. an underground storage tank system that contains a de minimus concentration of regulated substances;

F. an emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use;

G. a farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

H. a tank of 1,100 gallons or less capacity used exclusively for storing heating oil for consumptive use on the premises where stored;

I. a septic tank;

J. a pipeline facility, including gathering lines, regulated under United States Code, title 49, chapter 24 or 29;

K. a surface impoundment, pit, pond, or lagoon;

L. a storm water or wastewater collection system;

M. a flow-through process tank; and

N. a storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is located upon or above the surface of the floor.

Subp. 3. **Deferrals.** Parts 7150.0100 to 7150.0430 and 7150.0600 to 7150.0640 do not apply to any of the following types of underground storage tank systems:

A. wastewater treatment tank systems;

B. underground storage tank systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, United States Code, title 42, sections 2011 to 2296;

C. an underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under Code of Federal Regulations, title 10, section 50, Appendix A, and part 7150.0700;

D. airport hydrant fuel distribution systems; and

E. underground storage tank systems with field-constructed tanks.

Subp. 4. **Release detection deferrals.** Parts 7150.0300 to 7150.0350 do not apply to an underground storage tank system that stores fuel solely for use by emergency power generators.

Subp. 5. **Heating oil underground storage tank deferrals.** Parts 7150.0100 to 7150.0350, except 7150.0120, subparts 2 and 6, and 7150.0600 to 7150.0640 do not apply to an underground storage tank system of over 1,100 gallons capacity used exclusively for storing heating oil for consumptive use on the premises where stored.

7150.0020 INTERIM STANDARDS FOR DEFERRED UNDERGROUND STORAGE TANK SYSTEMS.

Subpart 1. **Interim standards.** No person may install an underground storage tank system listed in part 7150.0010, subparts 3 to 7, for the purpose of storing regulated substances unless the underground storage tank system, whether of single- or double-wall construction:

A. is installed according to requirements of the American Petroleum Institute Bulletin 1615 to the extent applicable, and all manufacturer's recommendations;

B. will prevent releases due to corrosion or structural failure for the operational life of the underground storage tank system;

C. is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

D. is constructed or lined with material that is compatible with the stored substance.

Subp. 2. **Systems without corrosion protection.** Notwithstanding subpart 1, an underground storage tank system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this subpart for the remaining life of the tank. The determination required by this subpart must be in accordance with the National Association of Corrosion Engineers, Standard RP-02-85.

7150.0030 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms and abbreviations have the meanings given them. Terms that are not specifically defined have the meanings given them in *Minnesota Statutes*, sections 115.01, 115C.02, and 116.46.

Subp. 2. **Aboveground release.** "Aboveground release" means a release to the surface of the land or to surface water, including, but not limited to, releases from the aboveground part of an underground storage tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system.

Subp. 3. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 4. **Appurtenances.** "Appurtenances" means devices such as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

Subp. 5. **Belowground release.** "Belowground release" means a release to the subsurface of the land and to groundwater, including, but not limited to, releases from the belowground parts of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

Subp. 6. **Beneath the surface of the ground.** "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

Subp. 7. **Cathodic protection.** "Cathodic protection" means using a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

Subp. 8. **Cathodic protection tester.** "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

Subp. 9. **Change in service.** "Change in service" means a permanent removal from service or a change in the reported uses, contents, or ownership of an underground storage tank under *Minnesota Statutes*, section 116.48, subdivision 3, or a repair under this chapter.

Subp. 10. **Closure or removal.** "Closure" or "removal" means permanently taking an underground storage tank out of service by either closing it in place, removing it from the ground, or converting it to store a nonregulated substance as required by this chapter.

Subp. 11. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 12. **Compatible.** "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the underground storage tank.

Subp. 13. **Connected piping.** "Connected piping" means underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to an individual underground storage tank system, the piping that joins two underground storage tank systems should be allocated equally between them.

Subp. 14. **Consumptive use.** "Consumptive use," with respect to heating oil, means consumed on the premises.

Subp. 15. **Corrosion expert.** "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. The person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

Subp. 16. **Dielectric material.** "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate underground storage tank systems from the surrounding soils. Dielectric bushings are used to electrically isolate parts of the underground storage tank system, for example, tank from piping.

Subp. 17. **Electrical equipment.** "Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

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Subp. 18. **Excavation zone.** "Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

Subp. 19. **Existing tank system.** "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation began on or before December 22, 1988. However, a tank system containing hazardous materials that is not regulated under Code of Federal Regulations, title 40, part 280, is considered an existing tank system if installation began on or before (insert 90 days after date of adoption). Installation is considered to have begun if:

A. the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and

B. either a continuous on-site physical construction or installation program has begun, or the owner or operator has entered into contractual obligations, that cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

Subp. 20. **Farm tank.** "Farm tank" means a tank located on a tract of land devoted to the production of crops, raising animals, including fish, range land, nurseries with growing operations, and associated residences and improvements. A farm tank must be located on the farm property.

Subp. 21. **Flow-through process tank.** "Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

Subp. 22. **Free product.** "Free product" means a regulated substance that is present as a nonaqueous phase liquid, for example, liquid not dissolved in water.

Subp. 23. **Gathering lines.** "Gathering lines" means a pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

Subp. 24. **Hazardous material.** "Hazardous material" means:

A. a substance listed in Code of Federal Regulations, title 49, section 172.101, including petroleum under subpart 38, item C, but not including a hazardous waste listed or identified under chapter 7045 or Code of Federal Regulations, title 40, part 261, and not including petroleum under subpart 38, item A, B, or D; or

B. any mixture of substances identified in item A and petroleum, unless the amount of the substance identified in item A is de minimus.

Subp. 25. **Hazardous material underground storage tank system.** "Hazardous material underground storage tank system" means an underground storage tank system that is used to contain a hazardous material.

Subp. 26. **Heating oil.** "Heating oil" means petroleum that is Nos. 1, 2, and 4 light, No. 4 heavy, No. 5 light, No. 5 heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

Subp. 27. **Hydraulic lift tank.** "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

Subp. 28. **Maintenance.** "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

Subp. 29. **Motor fuel.** "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

Subp. 30. **New tank system.** "New tank system" means a tank system that is or will be used to contain an accumulation of regulated substances and which is not an existing tank system as defined in subpart 19.

Subp. 31. **Noncommercial purposes.** "Noncommercial purposes," with respect to motor fuel, means not for resale.

Subp. 32. **On the premises where stored.** "On the premises where stored," with respect to heating oil, means underground storage tank systems located on the same property where the stored heating oil is used.

Subp. 33. **Operational life.** "Operational life" means the period beginning when installation of the tank system has begun until the time the tank system is properly closed under parts 7150.0600 to 7150.0640.

Subp. 34. **Operator.** "Operator" means a person in control of or having responsibility for the daily operation of the underground storage tank system or a person who was in control of or had responsibility for the daily operation of the tank immediately before discontinuation of its use.

As used in parts 7150.0400 to 7150.0570, "operator" also means a person who is responsible under *Minnesota Statutes*, section 115C.021, for a release from an underground storage tank containing petroleum, or a person who is responsible under *Minnesota Statutes*, section 115B.03, for a release from an underground storage tank containing a hazardous material. "Operator" does not include a person who operates a tank if the tank is not regulated by this chapter.

Subp. 35. **Overfill release.** "Overfill release" means a release occurring when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

Subp. 36. **Owner.** "Owner" means a person who holds title to, controls or possesses an interest in an underground storage tank, and a person who held title to, controlled, or possessed an interest in the tank immediately before discontinuation of its use.

As used in parts 7150.0400 to 7150.0570, "owner" also means a person who is responsible under *Minnesota Statutes*, section 115C.021, for a release from an underground storage tank containing petroleum, or a person who is responsible under *Minnesota Statutes*, section 115B.03, for a release from an underground storage tank containing a hazardous material.

"Owner" does not include a person who owns a tank if the tank is not regulated by this chapter and does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

Subp. 37. **Person.** "Person" means an individual, partnership, association, public or private corporation, or other legal entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state, but does not include the Minnesota Pollution Control Agency.

Subp. 38. **Petroleum.** "Petroleum" means one of the following substances:

A. gasoline and fuel oil as defined in *Minnesota Statutes*, section 296.01, subdivisions 3 and 4;

B. crude oil or a fraction of crude oil that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute;

C. constituents of gasoline and fuel oil under item A and constituents of crude oil under item B; or

D. petroleum-based substances that are comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and used oils.

Subp. 39. **Petroleum underground storage tank system.** "Petroleum underground storage tank system" means an underground storage tank system that is used to contain petroleum or a mixture of petroleum with de minimus quantities of hazardous materials.

Subp. 40. **Pipe or piping.** "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

Subp. 41. **Pipeline facilities.** "Pipeline facilities," including gathering lines, means new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

Subp. 42. **Regulated substance.** "Regulated substance" means a hazardous material or petroleum.

Subp. 43. **Release.** "Release" means a spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into the environment including spills associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system. "Release" does not include discharges or designed venting allowed under agency rules.

Subp. 44. **Release detection.** "Release detection" means determining whether a release of a regulated substance has occurred from the underground storage tank system into the environment or into the interstitial space between the underground storage tank system and its secondary barrier or secondary containment around it.

Subp. 45. **Repair.** "Repair" means the correction, restoration, modification, or upgrading of a tank system, including, but not limited to, the addition of cathodic protection systems, the replacement of piping, valves, fill pipes or vents, the lining of a tank through the application of materials such as epoxy resins, or any other similar activities that may affect the integrity of the tank system.

Subp. 46. **Residential tank.** "Residential tank" means a tank located on property used primarily for dwelling purposes.

Subp. 47. **Septic tank.** "Septic tank" means a watertight, covered receptacle designed to receive or process through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from the receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

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Subp. 48. **Storm water or wastewater collection system.** "Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment, except where incidental to conveyance.

Subp. 49. **Surface impoundment.** "Surface impoundment" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, that is not an injection well.

Subp. 50. **Tank.** "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials, such as concrete, steel, and plastic, that provide structural support.

Subp. 51. **Tank system.** "Tank system" has the same meaning as underground storage tank and underground storage tank system.

Subp. 52. **Underground area.** "Underground area" means an underground room such as a basement, cellar, shaft, or vault providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

Subp. 53. **Underground release.** "Underground release" means a belowground release.

Subp. 54. **Underground storage tank or underground storage tank system.** "Underground storage tank" or "underground storage tank system" means any one or combination of containers including tanks, vessels, enclosures, or structures and underground appurtenances connected to them that is used to contain or dispense an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected to them, is ten percent or more beneath the surface of the ground. This term does not include any tank or pipes connected to a tank described in part 7150.0010, subpart 2.

Subp. 55. **Upgrade.** "Upgrade" means the addition or retrofit of systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

Subp. 56. **Wastewater treatment tank.** "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

UNDERGROUND STORAGE TANK SYSTEMS DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION

7150.0100 PERFORMANCE STANDARDS FOR NEW UNDERGROUND STORAGE TANK SYSTEMS.

Subpart 1. **Purpose.** To prevent releases due to structural failure, corrosion, or spills and overfills for as long as the underground storage tank system is used to store regulated substances, all owners and operators of new underground storage tank systems must meet the requirements in subparts 2 to 8.

Subp. 2. **Tanks.** Each tank must be properly designed and constructed, and any part underground that routinely contains product must be protected from corrosion using one of the methods specified in items A to E. The corrosion protection methods in items A to D must be in accordance with one of the codes of practice in subpart 3 developed by a nationally recognized association or independent testing laboratory:

A. The tank is constructed of fiberglass-reinforced plastic.

B. The tank is constructed of steel and cathodically protected in the following manner:

(1) the tank is coated with a suitable dielectric material;

(2) field-installed cathodic protection systems are designed by a corrosion expert;

(3) impressed current systems are designed to allow determination of current operating status as required in part 7150.0210, subpart 4; and

(4) cathodic protection systems are operated and maintained according to part 7150.0210.

C. The tank is constructed of a steel- and fiberglass-reinforced plastic composite.

D. The tank is constructed of metal without additional corrosion protection measures provided that:

(1) the tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(2) owners and operators maintain records that demonstrate compliance with the requirements of subitem (1) for the remaining life of the tank.

E. The tank construction and corrosion protection are determined by the commissioner to be designed to prevent the release or threatened release of a stored regulated substance in a manner that is no less protective of human health and the environment than items A to D. The commissioner's determination under this item must be obtained in writing and owners and operators must keep the determination for the life of the tank.

Subp. 3. **Codes of practice for tanks.** Codes of practice for subpart 2 are described in items A to C.

A. The following codes of practice apply to subpart 2, item A:

- (1) Underwriters Laboratories UL 1316, Glass-Fibre-Reinforced Plastic Underground Storage Tanks for Petroleum Products;
- (2) Underwriters Laboratories of Canada CAN4-S615-M83, Standard for Reinforced Plastic Underground Tanks for Petroleum Products; or
- (3) American Society of Testing and Materials D4021-86, Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks.

B. The following codes of practice apply to subpart 2, item B:

- (1) Steel Tank Institute Specifications for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks;
- (2) Underwriters Laboratories UL 1746, Corrosion Protection Systems for Underground Storage Tanks;
- (3) Underwriters Laboratories of Canada CAN4-S603.1-M85, Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids;
- (4) Underwriters Laboratories of Canada CAN4-S603-M85, Standard for Steel Underground Tanks for Flammable and Combustible Liquids;
- (5) Underwriters Laboratories of Canada CAN4-S631-M84, Standard for Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems;
- (6) National Association of Corrosion Engineers RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; or
- (7) Underwriters Laboratories UL 58, Steel Underground Tanks for Flammable and Combustible Liquids.

C. The following codes of practice apply to subpart 2, item C:

- (1) Underwriters Laboratories UL 1746, Corrosion Protection Systems for Underground Storage Tanks;
- (2) Association of Composite Tanks ACT-100, Specification for the Fabrication of FRP Clad Underground Storage Tanks;

or

- (3) Steel Tank Institute STI F894-89, Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks.

Subp. 4. **Piping.** The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion using one of the methods specified in items A to D. The corrosion protection methods in items A to C must be in accordance with one of the codes of practice in subpart 5 developed by a nationally recognized association or independent testing laboratory:

A. The piping is constructed of fiberglass-reinforced plastic.

B. The piping is constructed of steel and cathodically protected in the following manner:

- (1) the piping is coated with a suitable dielectric material;
- (2) field-installed cathodic protection systems are designed by a corrosion expert;
- (3) impressed current systems are designed to allow determination of current operating status as required in part 7150.0210, subpart 4; and
- (4) cathodic protection systems are operated and maintained according to part 7150.0210.

C. The piping is constructed of metal without additional corrosion protection measures, provided that:

- (1) the piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
- (2) owners and operators maintain records that demonstrate compliance with subitem (1) for the remaining life of the piping.

D. The piping construction and corrosion protection are determined by the commissioner to be designed to prevent the release or threatened release of a stored regulated substance in a manner that is no less protective of human health and the environment than

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the requirements of items A to C. The commissioner's determination under this item must be obtained in writing and the tank owners and operators must keep the determination for the life of the tank.

Subp. 5. Codes of practice for piping. Codes of practice for subpart 4 are described in items A to C.

A. The following codes of practice apply to subpart 4, item A:

- (1) Underwriters Laboratories UL 567, Pipe Connectors for Flammable and Combustible Liquids and LP-Gas;
- (2) Underwriters Laboratories UL 971, UL Listed Non-Metal Pipe;
- (3) Underwriters Laboratories of Canada CAN4-S633-M84, Flexible Underground Hose Connectors for Flammable and Combustible Liquids; or
- (4) Underwriters Laboratories of Canada ULC Subject C107C-M1984, Guide for Glass Fibre Reinforced Plastic Pipe and Fittings for Flammable Liquids.

B. The following codes of practice apply to subpart 4, item B:

- (1) National Fire Protection Association 30, Flammable and Combustible Liquids Code;
 - (2) American Petroleum Institute 1615, Installation of Underground Petroleum Storage Systems;
 - (3) American Petroleum Institute 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;
- or
- (4) National Association of Corrosion Engineers RP-01-69, Control of External Corrosion on Underground or Submerged Metallic Piping Systems.

C. The following codes of practice apply to subpart 4, item C:

- (1) National Fire Protection Association 30, Flammable and Combustible Liquids Code; or
- (2) National Association of Corrosion Engineers RP-01-69, Control of External Corrosion on Underground or Submerged Metallic Piping Systems.

Subp. 6. Spill and overfill prevention equipment.

A. Except as provided in item B, to prevent spilling and overfilling associated with product transfer to the underground storage tank system, owners and operators must use the following spill and overfill prevention equipment:

- (1) spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe, for example, a spill catchment basin; and
- (2) overfill prevention equipment that will:
 - (a) automatically shut off flow into the tank when the tank is no more than 95 percent full; or
 - (b) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm.

B. Owners and operators are not required to use the spill and overfill prevention equipment specified in item A if:

- (1) alternative equipment is used that is determined by the commissioner to be no less protective of human health and the environment than the equipment specified in item A; or
- (2) the underground storage tank system is filled by transfers of no more than 25 gallons at one time.

The commissioner's determination under subitem (1) must be obtained in writing and the tank owners and operators must keep the determination for the life of the tank.

Subp. 7. Installation. All tanks and piping must be properly installed according to the manufacturer's instructions and one of the following codes of practice developed by a nationally recognized association or independent testing laboratory:

- A. American Petroleum Institute 1615, Installation of Underground Petroleum Storage Systems;
- B. Petroleum Equipment Institute RP 100, Recommended Practices for Installation of Underground Liquid Storage Systems;
- C. American National Standards Institute B31.3, Chemical Plant and Petroleum Refinery Piping; or
- D. American National Standards Institute B31.4, Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia and Alcohols.

Subp. 8. Certification of installation. Owners and operators must demonstrate compliance with subpart 7 by certifying on the underground storage tank notification form required in part 7150.0120 that:

- A. the installer is in compliance with certification requirements imposed by the agency under chapter 7105; and

B. all work listed in the manufacturer's installation checklists has been completed.

7150.0110 UPGRADING OF EXISTING UNDERGROUND STORAGE TANK SYSTEMS.

Subpart 1. **Alternatives allowed.** Not later than December 22, 1998, all existing underground storage tank systems must comply with one of the following requirements:

A. new underground storage tank system performance standards under part 7150.0100;

B. the upgrading requirements in subparts 2 to 4; or

C. closure requirements under parts 7150.0600 to 7150.0640, including applicable requirements for corrective action under parts 7150.0500 to 7150.0570.

Subp. 2. **Tank upgrading requirements.** Steel tanks must be protected from corrosion using the corrosion protection methods in items A to C.

A. A tank may be upgraded by internal lining if:

(1) the lining is installed according to the requirements of part 7150.0230; and

(2) within ten years after lining, and every five years after that, the lined tank is internally inspected and found to be structurally sound with the lining still performing according to original design specifications.

B. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of part 7150.0100, subpart 2, item B, subitems (2) to (4), and the integrity of the tank is ensured using one of the methods in subitems (1) to (4).

(1) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system.

(2) The tank has been installed for less than ten years and is monitored monthly for releases according to part 7150.0330, items E to I.

(3) The tank has been installed for less than ten years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of part 7150.0330, item D. The first tightness test must be conducted before installing the cathodic protection system. The second tightness test must be conducted between three and six months following the first operation of the cathodic protection system.

(4) The tank is assessed for corrosion holes by a method that is determined by the commissioner to prevent releases in a manner that is no less protective of human health and the environment than subitems (1) to (3).

C. A tank may be upgraded by both internal lining and cathodic protection if:

(1) the lining is installed according to part 7150.0230; and

(2) the cathodic protection system meets the requirements of part 7150.0100, subpart 2, item B, subitems (2) to (4).

D. The corrosion protection methods in items A to C must be in accordance with one or more of the following codes of practice developed by a nationally recognized association or independent testing laboratory:

(1) American Petroleum Institute 1631, Interior Lining of Underground Storage Tanks;

(2) National Leak Prevention Association 631, Spill Prevention, Minimum 10-Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection;

(3) National Association of Corrosion Engineers RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; or

(4) American Petroleum Institute 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems.

Subp. 3. **Piping upgrading requirements.** Metal piping that routinely contains regulated substances and is in contact with the ground must meet the requirements of part 7150.0100, subpart 4, item B, subitems (2) to (4).

Subp. 4. **Spill and overflow prevention equipment.** To prevent spilling and overfilling associated with product transfer to the underground storage tank system, all existing underground storage tank systems must comply with new underground storage tank system spill and overflow prevention equipment requirements in part 7150.0100, subpart 6.

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7150.0120 NOTIFICATION REQUIREMENTS.

Subpart 1. **Notice of underground storage tank system installation.** At least 30 days before beginning installation of an underground storage tank system under part 7150.0100, owners and operators must notify the commissioner of their intent to install the underground storage tank system.

Subp. 2. **Notification of new tanks and changes in service.** An owner who brings an underground storage tank system into use or makes a change in service to an existing tank system after June 1, 1986, must, within 30 days of bringing such tank into use or making a change in service, submit to the agency, in the form prescribed by the commissioner, a notice of the existence of such tank system or type of change in service, including the information required by *Minnesota Statutes*, section 116.48, subdivisions 1 and 3.

Subp. 3. **Owner and operator tank system certification.** Owners and operators of new underground storage tank systems must certify in the notification form compliance with the following requirements:

- A. installation of tanks and piping under part 7150.0100, subpart 8;
- B. cathodic protection of steel tanks and piping under part 7150.0100, subparts 2 and 4;
- C. financial responsibility under Code of Federal Regulations, title 40, part 280, subpart H; and
- D. release detection under parts 7150.0310 and 7150.0320.

Subp. 4. **Installer tank system certification.** Owners and operators of new underground storage tank systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping comply with part 7150.0100, subpart 7, and that the installer is in compliance with certification requirements imposed by chapter 7105.

Subp. 5. **Repairer tank system certification.** Owners and operators of underground storage tank systems must ensure that the repairer certifies in the notification form that the methods used to repair the tanks and piping comply with parts 7150.0110 and 7150.0230 and that the repairer is in compliance with certification requirements imposed by chapter 7105.

Subp. 6. **Tank seller notification.** A person who sells a tank intended to be used as an underground storage tank or property that the seller knows contains an underground storage tank must notify the purchaser of the tank in writing of the owner's notification obligations under subpart 1 and under *Minnesota Statutes*, section 116.48.

GENERAL OPERATING REQUIREMENTS

7150.0200 SPILL AND OVERFILL CONTROL.

Subpart 1. **Spill and overfill release prevention.** Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner or operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. One of the following codes of practice developed by a nationally recognized association or independent testing laboratory must be used to comply with this subpart:

- A. National Fire Protection Association 30, Flammable and Combustible Liquids Code;
- B. National Fire Protection Association 385, Standard for Tank Vehicles for Flammable and Combustible Liquids; or
- C. American Petroleum Institute 1621, Bulk Liquid Stock Control at Retail Outlets.

Subp. 2. **Reporting and cleanup.** The owner and operator must report, investigate, and cleanup any spills and overfills according to part 7150.0430.

7150.0210 OPERATION AND MAINTENANCE OF CORROSION PROTECTION.

Subpart 1. **Owner and operator compliance.** Owners and operators of steel underground storage tank systems with corrosion protection must comply with the requirements in subparts 2 to 5 to ensure that releases due to corrosion are prevented for as long as the underground storage tank system is used to store regulated substances, or is temporarily closed in accordance with part 7160.0600.

Subp. 2. **Corrosion protection system maintenance.** All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of the part of the tank and piping that routinely contains regulated substances and is in contact with the ground.

Subp. 3. **Cathodic protection system maintenance.** All underground storage tank systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester according to the following requirements:

- A. all cathodic protection systems must be tested within six months of installation and at least every three years after that; and
- B. the criteria that are used to determine that cathodic protection is adequate as required by this subpart must be according to the code of practice in National Association of Corrosion Engineers RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems.

Subp. 4. **Impressed current system maintenance.** Underground storage tank systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

Subp. 5. **Recordkeeping.** For underground storage tank systems using cathodic protection, records of the operation of the cathodic protection must be maintained according to part 7150.0240 to demonstrate compliance with the performance standards in this part. These records must provide:

- A. the results of the last three inspections required in subpart 4; and
- B. the results of testing from the last two inspections required in subpart 3.

7150.0220 COMPATIBILITY.

Owners and operators must use an underground storage tank system made of or lined with materials that are compatible with the substance stored in the underground storage tank system. Owners and operators storing alcohol blends may use the following guidance to comply with the requirements of this part:

- A. American Petroleum Institute 1626, Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations; or
- B. American Petroleum Institute 1627, Storing and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations.

7150.0230 REPAIRS ALLOWED.

Owners and operators of underground storage tank systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the underground storage tank system is used to store regulated substances. The owner and operator of the tank shall ensure that the person performing the repairs has been certified under chapter 7105. The repairs must meet the requirements in items A to F:

A. Repairs to underground storage tank systems must be properly conducted according to one of the following codes of practice developed by a nationally recognized association or independent testing laboratory:

- (1) National Fire Protection Association 30, Flammable and Combustible Liquids Code;
- (2) American Petroleum Institute 2200, Repairing Crude Oil, Liquefied Petroleum Gas and Product Pipelines;
- (3) American Petroleum Institute 1631, Interior Lining of Underground Storage Tanks; or
- (4) National Leak Prevention Association 631, Spill Prevention, Minimum 10-Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection.

B. Repairs to fiberglass-reinforced plastic tanks must be made according to the codes of practice required in item A.

C. Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings must be repaired in accordance with the manufacturer's specifications.

D. Repaired tanks and piping must be tightness tested according to parts 7150.0330, item D; and 7150.0340, item B, within 30 days after the date of the completion of the repair except as provided in subitems (1) to (3):

- (1) the repaired tank is internally inspected according to the codes of practice required in item A;
- (2) the repaired part of the underground storage tank system is monitored monthly for releases according to a method specified in part 7150.0330, items E to I; or
- (3) another test method is used that is determined by the commissioner to be no less protective of human health and the environment than the tests in subitems (1) and (2).

E. Within six months after the repair of a cathodically protected underground storage tank system, the cathodic protection system must be tested according to part 7150.0210, subparts 3 and 4, to ensure that it is operating properly.

F. Owners and operators must maintain records of each repair, and of a commissioner's determination under item D, subitem (3), for the remaining operating life of the underground storage tank system that demonstrate compliance with the requirements of this part.

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7150.0240 REPORTING AND RECORDKEEPING.

Owners and operators of underground storage tank systems must cooperate fully with inspections, monitoring, and testing conducted by the agency, as well as requests for document submission, testing, and monitoring by the owner or operator under United States Code, title 42, section 6991d.

A. Owners and operators must submit the following information to the commissioner:

(1) notification of all underground storage tank systems under part 7150.0120, including certification of installation for new underground storage tank systems under part 7150.0100, subpart 8;

(2) notification of the discovery of an abandoned tank or of a change in the uses, contents, or ownership of a tank under *Minnesota Statutes*, section 116.48, subdivisions 2 and 3;

(3) reports of all releases, including suspected releases under part 7150.0400, spills and overfills under part 7150.0430, and confirmed releases under part 7150.0510;

(4) corrective actions planned or taken, including initial abatement measures under part 7150.0520, free product removal under part 7150.0530, initial site characterization under part 7150.0540, investigation of soil and groundwater cleanup under part 7150.0550, and corrective action plan under part 7150.0560; and

(5) a notification before permanent closure or change in service under part 7150.0610.

B. Owners and operators must maintain the following information:

(1) a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used under part 7150.0100, subparts 2, item D, and 4, item C;

(2) the commissioner's determination that alternative corrosion protection or spill and overfill equipment means may be used under part 7150.0100, subpart 2, item E; 4, item D; or 6, item B;

(3) documentation of operation of corrosion protection equipment under part 7150.0210, subpart 5;

(4) documentation of underground storage tank system repairs under part 7150.0230, item F;

(5) documentation of compliance with release detection requirements under part 7150.0350; and

(6) results of the site investigation conducted at permanent closure under part 7150.0640.

C. Owners and operators must keep the records required either:

(1) at the underground storage tank site where they are immediately available for inspection by the commissioner; or

(2) at a readily available alternative site where they can be provided for inspection to the commissioner upon request.

In the case of permanent closure records required under part 7150.0640, owners and operators are also provided with the additional alternative of mailing closure records to the commissioner if they cannot be kept at the site or an alternative site as required in this item.

RELEASE DETECTION

7150.0300 GENERAL REQUIREMENTS FOR ALL UNDERGROUND STORAGE TANK SYSTEMS.

Subpart 1. **Methods.** Owners and operators of new and existing underground storage tank systems must provide a method, or combination of methods, of release detection that:

A. can detect a release from any part of the tank and the connected underground piping that routinely contains product;

B. is installed, calibrated, operated, and maintained according to the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

C. meets the performance requirements in part 7150.0330 or 7150.0340, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, all methods must be capable of detecting the leak rate or quantity specified for that method in part 7150.0330, items B to E; or 7150.0340, items A and B, with a probability of detection of 0.95 and a probability of false alarm of 0.05.

Subp. 2. **Release notification.** When a release detection method operated according to the performance standards in parts 7150.0330 and 7150.0340 indicates a release may have occurred, owners and operators must notify the agency according to *Minnesota Statutes*, section 115.061, and parts 7150.0400 to 7150.0430.

Subp. 3. **Release detection schedule.** Owners and operators of all underground storage tank systems must comply with the release detection requirements of parts 7150.0300 to 7150.0350 by December 22 of the year listed in the following table. Hazardous material tanks which are not regulated by Code of Federal Regulations, title 40, part 280, must comply with these requirements by the date indicated or by (insert date 180 days after date of adoption), whichever is later:

Schedule for Phase-in of Release Detection

Year System Was Installed	Year When Release Detection is Required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-1969		P/RD			
1970-1974		P	RD		
1975-1979		P		RD	
1980-1988		P			RD
New tanks (after December 22, 1988)			Immediately upon installation		

P = must begin release detection for all pressurized piping according to part 7150.0310.

RD = must begin release detection for tanks and suction piping according to parts 7150.0310, items A and B, subitem (2); and 7150.0320.

Subp. 4. **Closure.** An existing underground storage tank system that cannot apply a method of release detection that complies with the requirements of parts 7150.0300 to 7150.0350 must complete the closure procedures in parts 7150.0600 to 7150.0640 by the date on which release detection is required for the underground storage tank system under subpart 3.

7150.0310 REQUIREMENTS FOR PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS.

Owners and operators of petroleum underground storage tank systems must provide release detection for tanks and piping as required in items A and B.

A. Tanks must be monitored at least every 30 days for releases using one of the methods in part 7150.0330, items E to I, except that:

(1) underground storage tank systems that meet the performance standards in part 7150.0100 or 7150.0110, and the monthly inventory control requirements in part 7150.0330, item A or B, may use tank tightness testing, conducted according to part 7150.0330, item D, at least every five years until December 22, 1998, or until ten years after the tank is installed or upgraded under part 7150.0110, item B, whichever is later;

(2) underground storage tank systems that do not meet the performance standards in part 7150.0100 or 7150.0110 may use monthly inventory controls conducted according to part 7150.0330, item A or B, and annual tank tightness testing conducted according to part 7150.0330, item D, until December 22, 1998, when the tank must be upgraded under part 7150.0110 or permanently closed under part 7150.0610; and

(3) tanks with capacities of 550 gallons or less may use weekly manual tank gauging conducted according to part 7150.0330, item B, as the sole method of release detection.

B. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the requirements in subitem (1) or (2).

(1) Underground piping that conveys regulated substances under pressure must:

(a) be equipped with an automatic line leak detector conducted according to part 7150.0340, item A; and

(b) have an annual line tightness test conducted according to part 7150.0340, item B, or have monthly monitoring conducted according to part 7150.0340, item C.

(2) Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and according to part 7150.0340, item B, or use a monthly monitoring method conducted according to part 7150.0340, item C. No release detection is required for suction piping that is designed and constructed to meet the following standards:

(a) the below-grade piping operates at less than atmospheric pressure;

(b) the below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(c) only one check valve is included in each suction line;

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- (d) the check valve is located directly below and as close as practical to the suction pump; and
- (e) a method is provided that allows compliance with units (b) to (d) to be readily determined.

7150.0320 REQUIREMENTS FOR HAZARDOUS MATERIAL UNDERGROUND STORAGE TANK SYSTEMS.

Owners and operators of hazardous material underground storage tank systems must provide release detection that meets the requirements in items A and B.

A. Release detection at existing hazardous material underground storage tank systems must meet the requirements for petroleum underground storage tank systems in part 7150.0310 by the dates set forth in part 7150.0300. By December 22, 1998, all existing hazardous material underground storage tank systems must meet the release detection requirements for new systems in item B.

B. Release detection at new hazardous material underground storage tank systems must meet the requirements in subitems (1) to (5):

(1) Secondary containment systems must be designed, constructed, and installed to:

- (a) contain regulated substances released from the tank system until they are detected and removed;
- (b) prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system; and
- (c) be checked for evidence of a release at least every 30 days.

The provisions of part 7045.0528 may be used to comply with this subitem.

(2) Double-walled tanks must be designed, constructed, and installed to:

- (a) contain a release from any part of the inner tank within the outer wall; and
- (b) detect the failure of the inner wall.

(3) External liners, including vaults, must be designed, constructed, and installed to:

- (a) contain 100 percent of the capacity of the largest tank within its boundary;
- (b) prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and
- (c) surround the tank completely, for example, it is capable of preventing lateral as well as vertical migration of regulated substances.

(4) Underground piping must be equipped with secondary containment that satisfies the requirements of subitem (1), for example, trench liners and jacketing of double-walled pipe. In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector according to part 7150.0340, item A.

(5) Other methods of release detection may be used if owners and operators:

- (a) demonstrate to the commissioner that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in part 7150.0330, items B to I, can detect a release of petroleum;
- (b) provide information to the commissioner on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the underground storage tank site; and
- (c) obtain approval from the commissioner to use the alternate release detection method before the installation and operation of the new underground storage tank system.

7150.0330 METHODS OF RELEASE DETECTION FOR TANKS.

Each method of release detection for tanks used to meet the requirements of part 7150.0310 must be conducted according to items A to I.

A. Product inventory control or another test of equivalent performance must be conducted monthly to detect a release of at least 1.0 percent flow-through plus 130 gallons on a monthly basis in the following manner:

- (1) inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
- (2) the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (3) the regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
- (4) deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(5) product dispensing is metered and recorded within the local standards for meter calibration incorporated by reference at part 7600.6800; and

(6) the measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

Practices described in American Petroleum Institute 1621, Recommended Practice for Bulk Liquid Stock Control at Retail Outlets, may be used, where applicable, as guidance in meeting the requirements of this item.

B. Manual tank gauging may be used as described in this item to meet the requirements of part 7150.0310, item A.

(1) For tanks with capacities of 550 gallons or less, weekly manual tank gauging may be used as the sole method of release detection.

(2) For tanks with capacities of 551 to 2,000 gallons, manual tank gauging may be used in place of product inventory control in item A.

For tanks not described in subitems (1) and (2), manual tank gauging may not be used to satisfy the provisions of parts 7150.0310, item A.

C. Manual tank gauging must meet the following requirements:

(1) tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(2) level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period; and

(3) the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch.

A leak is suspected and subject to the requirements of parts 7150.0400 to 7150.0430 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

<u>Nominal Tank Capacity</u>	<u>Weekly Standard (one test)</u>	<u>Monthly Standard (average of four tests)</u>
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons

D. Tank tightness testing or another test of equivalent performance must be capable of detecting a 0.1 gallon per hour leak rate from any part of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

E. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(1) the automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any part of the tank that routinely contains product; and

(2) inventory control or another test of equivalent performance is conducted according to the requirements of item A.

F. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(1) the materials used as backfill are sufficiently porous such as gravel, sand, or crushed rock, to readily allow diffusion of vapors from releases into the excavation area;

(2) the stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile, such as gasoline, to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(3) the measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

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(4) the level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(5) the vapor monitoring points are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(6) in the underground storage tank excavation zone, the site is assessed to ensure compliance with the requirements in subitems (1) to (4) and to establish the number and positioning of vapor monitoring points that will detect releases within the excavation zone from any part of the tank that routinely contains product; and

(7) vapor monitoring points are clearly marked and secured to avoid unauthorized access and tampering.

G. Testing or monitoring for liquids in the groundwater must meet the provisions of chapter 4725, as well as the following requirements:

(1) the regulated substance stored is immiscible in water and has a specific gravity of less than one;

(2) groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil between the underground storage tank system and the monitoring wells or devices is not less than 0.01 centimeters per second, for example, the soil should consist of gravels, coarse to medium sands, coarse silts, or other permeable materials;

(3) the slotted part of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

(4) monitoring wells are sealed from the ground surface to the top of the filter pack;

(5) monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(6) the continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells;

(7) within and immediately below the underground storage tank system excavation zone, the site is assessed to ensure compliance with the requirements in subitems (1) to (5), and to establish the number and positioning of monitoring wells or devices that will detect releases from any part of the tank that routinely contains product; and

(8) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

H. Interstitial monitoring between the underground storage tank system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any part of the tank that routinely contains product and also meets one of the requirements of subitems (1) to (3).

(1) For double-walled underground storage tank systems, the sampling or testing method can detect a release through the inner wall in any part of the tank that routinely contains product. The provisions outlined in the Steel Tank Institute's Standard for Dual Wall Underground Storage Tanks may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

(2) For underground storage tank systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the underground storage tank system and the secondary barrier according to the following requirements:

(a) the secondary barrier around or beneath the underground storage tank system consists of artificially constructed material that is sufficiently thick and impermeable, being at least 10^{-6} centimeters per second for the regulated substance stored, to direct a release to the monitoring point and permit its detection;

(b) the barrier is compatible with the regulated substance stored so that a release from the underground storage tank system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(c) for cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(d) the groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(e) the site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(f) monitoring wells and vapor monitoring points are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

I. Any other type of release detection method, or combination of methods, can be used if:

(1) it can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; and

(2) the owner and operator can demonstrate to the commissioner that the method can detect a release as effectively as any of the methods allowed in items D to H and obtain the commissioner's prior approval of the method. In comparing methods, the commissioner shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved by the commissioner, the owner and operator must comply with any conditions imposed by the commissioner on its use to ensure the protection of human health and the environment.

7150.0340 METHODS OF RELEASE DETECTION FOR PIPING.

Each method of release detection for piping used to meet the requirements of part 7150.0300 must be conducted according to items A to C.

A. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted according to the manufacturer's requirements.

B. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

C. Any of the methods in part 7150.0330, items F to I, may be used if they are designed to detect a release from any part of the underground piping that routinely contains regulated substances.

7150.0350 RELEASE DETECTION RECORDKEEPING.

Owners and operators shall maintain records according to part 7150.0240 demonstrating compliance with applicable requirements of parts 7150.0300 to 7150.0350. These records must include the requirements of items A to C.

A. All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for as long as the system is being used to comply with the requirements of this chapter.

B. The results of any sampling, testing, or monitoring must be maintained for at least ten years.

C. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least ten years after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained as long as the system is being used to comply with the requirements of this chapter.

D. Documentation of the commissioner's approval of alternate release detection methods under part 7150.0330, item I, must be maintained for as long as the methods are being used to comply with the requirements of this chapter.

RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

7150.0400 REPORTING OF SUSPECTED RELEASES.

Owners and operators of underground storage tank systems must immediately report to the agency and follow the procedures in part 7150.0420 for any of the following conditions:

A. the discovery by owners and operators or others of released regulated substances at the underground storage tank site or in the surrounding area, such as the presence of free product or vapors in soils, basements, sewer and utility lines, or free or dissolved product in nearby surface or groundwater;

B. unusual operating conditions observed by owners and operators, such as the erratic behavior of product dispensing equipment, the sudden loss of product from the underground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and

C. monitoring results from a release detection method required under parts 7150.0310 and 7150.0320 that indicate a release may have occurred unless:

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(1) the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result; or

(2) in the case of inventory control, a second month of data does not confirm the initial result.

7150.0410 INVESTIGATION DUE TO OFF-SITE IMPACTS.

When required by the commissioner, owners and operators of underground storage tank systems must follow the procedures in part 7150.0420 to determine if the underground storage tank system is the source of off-site impacts. These impacts include the discovery of regulated substances, such as the presence of free product or vapors in soils, basements, sewer and utility lines, on nearby surface and drinking waters, that has been observed by the commissioner or brought to the attention of the commissioner by another party.

7150.0420 RELEASE INVESTIGATION AND CONFIRMATION STEPS.

Subpart 1. **Duty to investigate.** Unless corrective action is initiated according to parts 7150.0500 to 7150.0570, owners and operators must investigate and confirm all suspected releases of regulated substances requiring reporting under part 7150.0400 within seven days, or another reasonable time period specified by the commissioner, using the steps in subpart 2 or another procedure approved by the commissioner.

Subp. 2. **Site check.** Owners and operators must measure for the presence of a release where contamination is most likely to be present at the underground storage tank site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release.

A. If the test results for the excavation zone or the underground storage tank site indicate that a release has occurred, owners and operators must begin corrective action according to parts 7150.0500 to 7150.0570.

B. If the test results for the excavation zone or the underground storage tank site do not indicate that a release has occurred, further investigation is not required unless directed by the commissioner.

7150.0430 REPORTING AND CLEANUP OF SPILLS AND OVERFILLS.

Owners and operators of underground storage tank systems must notify the agency immediately of a spill or overfill which, if not recovered, may cause pollution of the waters of the state, and must take corrective action in accordance with parts 7150.0500 to 7150.0570.

RELEASE RESPONSE AND CORRECTIVE ACTION FOR UNDERGROUND STORAGE TANK SYSTEMS CONTAINING PETROLEUM OR HAZARDOUS SUBSTANCES

7150.0500 GENERAL.

Owners and operators of petroleum or hazardous material underground storage tank systems must, in response to a confirmed release from the underground storage tank system, comply with the requirements of parts 7150.0500 to 7150.0570.

7150.0510 INITIAL RESPONSE.

After confirmation of a release according to part 7150.0420 or after a release from the underground storage tank system is identified in any other manner, owners and operators must immediately perform the following initial response actions:

A. report the release to the agency by telephone;

B. identify and mitigate fire, explosion, and vapor hazards, and notify appropriate public safety officials; and

C. take action to prevent any further release of the regulated substance into the environment.

7150.0520 INITIAL ABATEMENT MEASURES AND SITE CHECK.

Subpart 1. **Abatement measures.** Unless directed to do otherwise by the commissioner, owners and operators must perform the abatement measures in items A to F within a reasonable period of time determined by the commissioner.

A. Remove as much of the regulated substance from the underground storage tank system as is necessary to prevent further release to the environment.

B. Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the release substance into surrounding soils and groundwater.

C. Continue to monitor and mitigate any additional fire, public health, and safety hazards posed by vapors or free product that have migrated from the underground storage tank excavation zone and entered into subsurface structures, such as sewers or basements.

D. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements.

E. Measure for the presence of a release where contamination is most likely to be present at the underground storage tank site, unless the presence and source of the release have been confirmed according to the site check required by part 7150.0420, subpart 2, or the closure site assessment of part 7150.0620. In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to groundwater, and other factors as appropriate for identifying the presence and source of the release.

F. Investigate to determine the possible presence of free product and begin free product removal as soon as practicable and according to part 7150.0530.

Subp. 2. **Abatement notification.** Within 20 days after release confirmation, or within another reasonable period of time determined by the commissioner, owners and operators must notify the commissioner summarizing the initial abatement steps taken under subpart 1 and any resulting information or data.

7150.0530 FREE PRODUCT REMOVAL.

At sites where investigations under part 7150.0520, subpart 1, item F, indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the commissioner while continuing, as necessary, any actions initiated under parts 7150.0510 and 7150.0520, or preparing for actions required under parts 7150.0540 to 7150.0560. In meeting the requirements of this part, owners and operators must:

A. conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges, or disposes of recovery by-products in compliance with applicable local, state, and federal regulations;

B. use abatement of free product migration as a minimum objective for the design of the free product removal system;

C. handle any flammable products in a safe and competent manner to prevent fires or explosions; and

D. unless directed to do otherwise by the commissioner, prepare and submit to the commissioner, within 45 days after confirming a release, a free product removal report that provides at least:

(1) the name of the person responsible for implementing the free product removal measures;

(2) the estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(3) the type of free product recovery system used;

(4) whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(5) the type of treatment applied to, and the effluent quality expected from, any discharge;

(6) the steps that have been or are being taken to obtain necessary permits for any discharge; and

(7) the disposition of the recovered free product.

7150.0540 INITIAL SITE CHARACTERIZATION.

Subpart 1. **Site assessment.** Unless directed to do otherwise by the commissioner, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in parts 7150.0500 to 7150.0520. This information must include, but is not necessarily limited to:

A. data on the nature and estimated quantity of release;

B. data from available sources and site investigations concerning surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

C. results of the site check required under part 7150.0520, subpart 1, item E; and

D. results of the free product investigations required under part 7150.0520, subpart 1, item F, to be used by owners and operators to determine whether free product must be recovered under part 7150.0530.

Subp. 2. **Site characterization report.** Within 45 days of release confirmation or another reasonable period of time determined by the commissioner, owners and operators must submit the information collected in compliance with subpart 1 to the commissioner in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the commissioner.

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7150.0550 REMEDIAL INVESTIGATIONS FOR SOILS AND GROUNDWATER CLEANUP.

Subpart 1. **Cleanup investigation.** To determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

- A. there is evidence that groundwater wells have been affected by the release, for example, as found during release confirmation or previous corrective action measures;
- B. free product is found to need recovery in compliance with part 7150.0530;
- C. there is evidence that contaminated soils may be in contact with groundwater, for example, as found during conduct of the initial response measures or investigations required under parts 7150.0500 and 7150.0530; and
- D. the commissioner requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.

Subp. 2. **Cleanup investigation report.** Owners and operators must submit the information collected under subpart 1 as soon as practicable or according to a schedule established by the commissioner.

7150.0560 CORRECTIVE ACTION DESIGN.

Subpart 1. **Design submission.** At any point after reviewing the information submitted in compliance with parts 7150.0510 to 7150.0550, the commissioner may require owners and operators to submit additional information or to develop and submit a corrective action design for responding to contaminated soils and groundwater. If a design is required, owners and operators must submit the design according to a schedule and format established by the commissioner. Alternatively, owners and operators may, after fulfilling the requirements of parts 7150.0510 to 7150.0550, choose to submit a corrective action design for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a design that provides for adequate protection of human health, safety, and the environment as determined by the commissioner, and must modify their design as necessary to meet this standard.

Subp. 2. **Design approval.** The commissioner shall approve the corrective action design only after ensuring that implementation of the design will adequately protect human health, safety, and the environment. In making this determination, the commissioner shall consider the following factors as appropriate:

- A. the physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
- B. the hydrogeologic characteristics of the facility and the surrounding area;
- C. the proximity, quality, and current and future uses of nearby surface water and groundwater;
- D. the potential effects of residual contamination on nearby surface water and groundwater, including public health and safety concerns;
- E. the potential for human exposure to the release; and
- F. information assembled in compliance with parts 7150.0500 to 7150.0570.

Subp. 3. **Design implementation.** After approval of the corrective action design or as directed by the commissioner, owners and operators must implement the design, including modifications to the design made by the commissioner. They must monitor, evaluate, and report the results of implementing the design in accordance with a schedule and in a format established by the commissioner.

Subp. 4. **Cleanup initiation.** Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action design is approved, provided that they:

- A. notify the commissioner of their intention to begin cleanup;
- B. comply with any conditions imposed by the commissioner, including halting cleanup or mitigating adverse consequences from cleanup activities;
- C. incorporate these self-initiated cleanup measures in the corrective action design that is submitted to the commissioner for approval; and
- D. obtain all necessary federal, state, and local approvals or permits.

OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND CLOSURE

7150.0600 TEMPORARY CLOSURE.

Subpart 1. **Requirements.** In addition to the requirements of chapter 7510, the Minnesota Uniform Fire Code, owners and operators must comply with the provisions in subparts 2 to 4 relating to temporary closure.

Subp. 2. **Operation and maintenance during temporary closure.** When an underground storage tank system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection according to part 7150.0210, and any release detection according to parts 7150.0300 to 7150.0350. Parts 7150.0400 to 7150.0570 must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the underground storage tank system is empty. The underground storage tank system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters, or one inch, of residue, or 0.3 percent by weight of the total capacity of the underground storage tank system, remain in the system.

Subp. 3. **Tanks out of service 90 days.** When an underground storage tank system is temporarily closed for 90 days or more, owners and operators must also comply with the following requirements:

- A. leave vent lines open and functioning; and
- B. cap and secure all other lines, pumps, passageways, and appurtenances.

Subp. 4. **Tanks out of service one year.** When an underground storage tank system is temporarily closed for more than 12 months, owners and operators must permanently close the underground storage tank system if it does not meet either performance standards in part 7150.0100 for new underground storage tank systems or the upgrading requirements in part 7150.0110, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard underground storage tank systems at the end of this 12-month period according to parts 7150.0610 to 7150.0640, unless the commissioner provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment according to part 7150.0620 before such an extension can be applied for.

7150.0610 PERMANENT CLOSURE AND CHANGES-IN-SERVICE TO STORAGE OF NONREGULATED SUBSTANCES.

Subpart 1. **Requirements.** In addition to the requirements of chapter 7510, the Minnesota Uniform Fire Code, owners and operators must comply with the provisions in subparts 2 to 7 relating to permanent closure and changes-in-service.

Subp. 2. **Notice of closure or change in service.** At least ten days before beginning either permanent closure or a change-in-service under subparts 3 and 4, owners and operators must notify the commissioner of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. The required assessment of the excavation zone under part 7150.0620 must be performed after notifying the commissioner but before completion of the permanent closure or a change-in-service.

Subp. 3. **Permanent closure.** To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled in with an inert solid material.

Subp. 4. **Storage of nonregulated substances.** Continued use of an underground storage tank system to store a nonregulated substance is considered a change in service. Before a change in service to storage of a nonregulated substance, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment according to part 7150.0620.

Subp. 5. **Certified removers.** Owners and operators must ensure that persons performing permanent closures under subpart 3 or changes-in-service under subpart 4 are in compliance with certification requirements imposed by chapter 7105. Certified removers must furnish copies of current certificates issued by the agency to the owner and operator before beginning a permanent closure under subpart 3 or a change-in-service under subpart 4.

Subp. 6. **Tank system closure certification.** Owners and operators must ensure that the person who removes or otherwise closes an underground storage tank system certifies in the notification form that the methods used to remove or otherwise close the tanks and piping comply with part 7150.0610, subparts 3 to 5.

Subp. 7. **Cleaning and closure procedures.** The cleaning and closure procedures listed in one of the following documents must be used as guidance for complying with this subpart:

- A. American Petroleum Institute 1604, Removal and Disposal of Used Underground Petroleum Storage Tanks;
- B. American Petroleum Institute 1631, Interior Lining of Underground Storage Tanks; or
- C. American Petroleum Institute 2015, Cleaning Petroleum Storage Tanks.

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7150.0620 ASSESSING THE SITE AT CLOSURE OR CHANGE IN SERVICE.

When removing or closing a tank or making a change in service to storage of a nonregulated substance, owners and operators must measure through laboratory analysis for the presence of a release where contamination is most likely to be present at the underground storage tank site. If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered by this measurement or by any other manner, owners and operators must notify the agency immediately and begin corrective action according to parts 7150.0500 to 7150.0560. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. The requirements of this part are satisfied if one of the external release detection methods allowed in part 7150.0330, items F and G, is operating according to the requirements of part 7150.0330 at the time of removal, closure, or making a change in service to storage of a nonregulated substance, and indicates no release has occurred.

7150.0630 APPLICABILITY TO PREVIOUSLY CLOSED UNDERGROUND STORAGE TANK SYSTEMS.

When directed by the commissioner, the owner and operator of an underground storage tank system permanently closed before December 22, 1988, must assess the excavation zone and close the underground storage tank system according to parts 7150.0600 to 7150.0640 if releases from the underground storage tank may, in the judgment of the commissioner, pose a current or potential threat to human health and the environment.

7150.0640 CLOSURE RECORDS.

Owners and operators must maintain records according to part 7150.0240 that are capable of demonstrating compliance with closure requirements under parts 7150.0600 to 7150.0640. The results of the excavation zone assessment required in part 7150.0620 must be maintained for at least three years after completion of permanent closure or change in service in one of the following ways:

- A. by the owners and operators who took the underground storage tank system out of service;
- B. by the current owners and operators of the underground storage tank system site; or
- C. by mailing these records to the commissioner if they cannot be maintained at the closed facility.

7150.0700 INCORPORATION BY REFERENCE.

Subpart 1. **Scope.** For purposes of chapter 7150, the documents in subpart 2 are incorporated by reference. They can be found at the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155 or at the addresses indicated. If any of the documents are amended, and if the amendments are incorporated by reference or otherwise made a part of federal technical rules at Code of Federal Regulations, title 40, part 280, then the amendments to documents are also incorporated by reference in this chapter.

Subp. 2. **Referenced standards.** The documents incorporated by reference in this chapter are listed in items A to K:

- A. American Societies of Mechanical Engineers, 345 East 47th Street, New York, New York 10017.
 - (1) B31.3, Chemical Plant and Petroleum Refinery Piping (1987); and
 - (2) B31.4, Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia and Alcohols (1986).
- B. American Petroleum Institute, 1220 L Street Northwest, Washington, D.C. 20005.
 - (1) 1604, Removal and Disposal of Used Underground Petroleum Storage Tanks (1987);
 - (2) 1615, Installation of Underground Petroleum Storage Systems (1987);
 - (3) 1621, Bulk Liquid Stock Control at Retail Outlets (1987);
 - (4) 1626, Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations (1985);
 - (5) 1627, Storing and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations (1986);
 - (6) 1631, Interior Lining of Underground Storage Tanks (1987);
 - (7) 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems (1987);
 - (8) 2015, Cleaning Petroleum Storage Tanks (1985); and
 - (9) 2200, Repairing Crude Oil, Liquefied Petroleum Gas and Product Pipelines (1983).
- C. American Society of Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.
 - D4021-86, Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks (1986).
- D. Association of Composite Tanks, 108 North State Street, Suite 720, Chicago, Illinois 60602.
 - ACT-100, Specification for the Fabrication of FRP Clad/Composite Underground Storage Tanks (1989).

E. National Association of Corrosion Engineers, Publications Department, P.O. Box 218340, Houston, Texas 77218.

(1) RP-01-69, Control of External Corrosion on Underground or Submerged Metallic Piping Systems (1983); and

(2) RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems (1985).

F. National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(1) 30, Flammable and Combustible Liquids Code (1987); and

(2) 385, Standard for Tank Vehicle for Flammable and Combustible Liquids (1985).

G. National Leak Prevention Association, 4090 Rosehill Avenue, Cincinnati, Ohio 45229.

631, Spill Prevention, Minimum 10-Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection (1988).

H. Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma 74101.

RP100, Recommended Practices for Installation of Underground Liquid Storage Systems (1987).

I. Steel Tank Institute, 728 Anthony Trail, Northbrook, Illinois 60062.

(1) Specifications for STI-P₃ System of External Corrosion Protection of Underground Steel Storage Tanks (1987);

(2) Steel Tank Institute Standard for Dual Wall Underground Steel Storage Tanks (undated); and

(3) STI F894-89, Steel Tank Institute Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks (1989).

J. Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(1) UL 58, Steel Underground Tanks for Flammable and Combustible Liquids (1986);

(2) UL 567, Pipe Connectors for Flammable and Combustible Liquids and LP-Gas (1989);

(3) Proposed UL 971, Nonmetallic Underground Pipe for Flammable and Combustible Liquids, Appendix A to May 24, 1989, letter to Tom Clark from Ray Hernandez;

(4) UL 1316, Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products (1983); and

(5) UL 1746, Corrosion Protection Systems for Underground Storage Tanks (1989).

K. Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9.

(1) CAN4-S603.1-M85, Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids (1985);

(2) CAN4-S603-M85, Standard for Steel Underground Tanks for Flammable and Combustible Liquids (1985);

(3) CAN4-S615-M83, Standard for Reinforced Plastic Underground Tanks for Petroleum Products (1983);

(4) CAN4-S631-M84, Standard for Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems (1984);

(5) CAN4-S633-M84, Flexible Underground Hose Connectors for Flammable and Combustible Liquids (1984); and

(6) ULC Subject C107C-M1984, Guide for Glass Fibre Reinforced Plastic Pipe and Fittings for Flammable Liquids (1984).

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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.

Pollution Control Agency

Adopted Permanent Rules Relating to Municipal Wastewater Treatment Construction Assistance Programs

The rules proposed and published at *State Register*, Volume 14, Number 35, pages 2084-2122, February 26, 1990 (14 S.R. 2084) are adopted with the following modifications:

Rules as Adopted

7075.0100 PURPOSE.

This chapter provides for the administration of grants awarded under the federal construction grant program, the independent state construction grant program, and the state matching construction grant program; the state loan program for the construction of municipal disposal systems. This chapter also provides for the administration of grants awarded before July 1, 1990, under the state independent grants program and the state financial assistance program for combined sewer overflow abatement. It applies to grants and loans awarded before July 1, 1990.

7077.0100 PURPOSE.

Parts 7077.0100 to ~~7077.0330~~ 7077.2010 provide for the administration of the financial assistance programs for the construction of municipal wastewater treatment facilities ~~and~~. Parts 7077.0200 to 7077.0330 apply to state independent grants and loans financial assistance for combined sewer overflow abatement awarded on or after July 1, 1990. Chapter 7075 applies to awards made under these programs before July 1, 1990. Parts 7077.0400 to 7077.0765 apply to funds awarded at any time. ~~Chapter 7075 applies to grants and loans awarded before July 1, 1990.~~ The programs in chapter 7077 consist of the state independent grants program, parts 7077.0200 to 7077.0265; the combined sewer overflow abatement program, parts 7077.0300 to 7077.0330; and the water pollution control revolving fund program, parts 7077.0400 to 7077.0445. The state independent grants program includes three set-aside programs:

7077.0105 DEFINITIONS.

Subp. 25. **Need.** "Need" means a determination that a new or upgraded disposal system is currently required, or will be required within a five-year period to comply with chapter 7040, 7050, 7060, or 7080; provided the situation does not exist primarily due to inadequate operation and maintenance or to negligence on the part of any person.

Subp. 31. **Performance certification.** "Performance certification" means a certification made by a municipality one year after initiation of operation that states its newly constructed wastewater treatment facility is meeting performance standards, as specified under ~~part parts~~ 7077.0255, subpart 1, item A 7077.0325, and 7077.0440.

7077.0130 PRIORITY POINTS FOR TYPE OF PROJECT.

Subp. 2. **Description of project types.** Project types are described as follows:

A. Major treatment facilities are new facilities or additions to existing facilities which improve effluent quality in order that a municipality may achieve compliance with its NPDES/SDS permit conditions. Major treatment facilities include sewer system rehabilitation projects as described in subpart 3, item A, and major interceptor sewers ~~and may include sewer system rehabilitation projects in subpart 4.~~

B. Dechlorination facilities are facilities that remove chlorine from the effluent of a wastewater treatment facility. When a municipality is listed on the municipal needs list for major treatment facilities, the facilities described in this item ~~may will~~ be included as part of that project.

7077.0210 ELIGIBILITY.

Subpart 1. **Project eligibility.** The provisions in items A to C govern project eligibility.

B. The commissioner ~~may~~ shall grant an exemption to the required 20-year planning period for the cost-effectiveness analysis under part 7077.0150, subpart 2, item E, to a municipality under 1,500 population ~~for reasons of where the commissioner finds that construction of the 20-year cost-effective alternative would result in significant financial hardship.~~ In determining significant financial hardship, the commissioner shall consider the municipality's median household income, the estimated sewer service charge for the 20-year cost-effective alternative, the municipality's total bonded indebtedness, and the patterns of population and commercial-industrial growth or decline within the municipality. If an exemption is granted, the municipality may receive grant assistance for a proposed treatment alternative that is different than the 20-year cost-effective alternative. A municipality must submit a written request for this exemption that includes:

7077.0215 GRANT APPLICATIONS.

Subp. 4. **Application requirements.** A municipality that applies for a construction grant shall, in addition to submitting the completed application form, submit the following information for the commissioner's review and approval:

C. A signature and registration number of the consulting engineer accompanying the following certification statement:

The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. dated It is my judgment and carefully considered opinion that these facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of *Minnesota Rules*, part 7077.0155, subpart 2, item C.

7077.0240 GRANT AMENDMENTS.

Subp. 2. **Unanticipated site condition amendments.** Only cost overruns caused by unanticipated site conditions are eligible for grant amendments once final grant eligible construction costs based on the amounts in the signed construction contracts are determined under subpart 1.

A. Where the commissioner finds that unanticipated site conditions exist, the commissioner ~~may~~ shall approve an amendment for up to two percent of the final grant eligible construction costs ~~to compensate for unanticipated site conditions encountered during construction.~~ The three percent contingency fund under part 7077.0210, subpart 2, item F, must be depleted before an amendment for unanticipated site conditions is approved.

7077.0245 CHANGE ORDERS.

Subp. 4. **Approval of change orders.** Approval of change orders is required as follows:

B. Change orders not requiring the commissioner's prior approval under item A must be submitted to the commissioner for review and approval within one month after the date on which the municipality, its engineer, or other authorized agent, and the contractor execute the change order.

7077.0250 COMPLETION OF CONSTRUCTION.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days following initiation of ~~initiating~~ operation.

7077.0310 APPLICATIONS.

Subp. 3. **Additional information.** A municipality that applies for state financial assistance for a combined sewer overflow abatement project shall submit the following information for the commissioner's review and approval:

D. ~~An engineer's~~ A certificate of adequate errors and omissions insurance carried by the engineering firm.

7077.0330 PAYMENT OF STATE FINANCIAL ASSISTANCE.

Subp. 3. **Retained payments.** Financial assistance payments ~~may~~ shall be withheld if the commissioner determines that a project does not substantially conform to approved plans and specifications, or there has been a major breach of a condition in the financial

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Adopted Rules

assistance agreement, or the municipality has failed to comply with the applicable requirements of this chapter. If funds are withheld pursuant to this subpart, further payments will be made when the condition causing the withholding has been corrected, or as otherwise agreed to by the commissioner and the municipality.

7077.0410 APPLICATIONS.

Subp. 2. **Planning loans.** In addition to any other information required by the authority, a municipality applying for a planning loan shall include the following items for the commissioner's review and approval as part of its application:

C. ~~an engineer's~~ a certificate of adequate errors and omissions insurance carried by the engineering firm; and

Subp. 3. **Design loans.** In addition to any other information required by the authority, a municipality applying for a design loan shall include the following items for the commissioner's review and approval as part of its application:

B. ~~an engineer's~~ a certificate of adequate errors and omissions insurance carried by the engineering firm;

Subp. 4. **Construction loans.** In addition to any other information required by the authority, a municipality applying for a construction loan shall include the following items for the commissioner's review and approval as part of its application.

G. A signature and registration number of the consulting engineer accompanying the following certification statement:

The facilities described in this application have been designed based on data that has been verified to accurately represent present and future flows and loadings and with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. _____ dated _____. It is my judgment and carefully considered opinion that these facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the flow data presented in the plans and specifications under the requirements of *Minnesota Rules*, part 7077.0155, subpart 2, item C.

H. ~~An engineer's~~ A certificate of adequate errors and omissions insurance carried by the engineering firm.

7077.0435 COMPLETION OF CONSTRUCTION.

Subp. 2. **Initiation of operation.** Initiation of operation is the date the project begins operating for the purposes for which it was planned, designed, and built. A project must not initiate operation until it receives approval from the commissioner.

A. The municipality must notify the commissioner in writing of the initiation of operation date within ten days following initiation of ~~initiating~~ operation.

7077.0535 APPLICATION.

Subp. 2. **Application requirements.** The municipality shall apply for a corrective action grant on a form provided by the authority and submit the following information for the commissioner's review and approval:

C. A proposed engineering contract that includes, at a minimum, the following provisions:

(2) two sets of "as built" plans and specifications on microfiche for submittal to the agency;

E. A signature and registration number of the consulting engineer accompanying the following certification statement:

Corrective action for the facilities described in this grant application has been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. dated It is my judgment and carefully considered opinion that the performance standards required by the Minnesota Pollution Control Agency will be met after the work detailed in the approved corrective action report, dated, is completed and that the corrected facilities ~~are~~ will be capable of consistently producing the required effluent quality, provided that the facilities are operated in conformance with the approved operation and maintenance manual and the volume and characteristics of raw wastewater are within the flow data presented in the plans and specifications approved for the original project or in the corrective action report modifications.

7077.0540 CERTIFICATION OF APPLICATION FOR AWARD.

Subp. 3. ~~**Amendments to award.** Any grant amendments shall be based on the cost of the completed procurement actions and shall be dependent upon the availability of additional grant funds.~~

Subp. 5. ~~**Report to agency board.** The commissioner shall report the certification of a corrective action grant under this part to the agency board as soon as possible, but, in any case, within 60 days.~~

7077.0545 GRANT AMENDMENTS.

Subp. 3. **Final amendment.** A municipality shall submit a written request for a final amendment when construction has been completed. The commissioner shall certify the amendment to the authority if funds are available and the costs are eligible. The amendment shall:

B. increase the grant amount under part 7077.0515, subpart 3, ~~for administrative, engineering, and legal costs~~ as the amount of grant eligible construction costs increase through approved change orders. ~~This increase may only be used to pay for engineering costs, including inspection, created by work specified on the approved change orders.~~

7077.0555 PAYMENTS.

Subp. 3. **Retainage.** The commissioner shall withhold certification for payment of the final ten percent of the grant until the municipality has successfully completed all activities in the corrective action report, has affirmatively certified that the project meets the performance standards, and has met the recovery of costs requirement.

Commissioners' Orders**Department of Natural Resources****Commissioner's Order No. 2382—Regulations for Hunting in Camp Ripley During 1990**

PURSUANT TO AUTHORITY vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following regulations for hunting in Camp Ripley during 1990.

Section 1. WEAPONS.

All persons hunting within Camp Ripley must use a legal bow and arrow. Legal bows must have a pull of no less than 40 pounds at or before full draw and arrowheads must be sharp and have a minimum of two metal cutting edges, be of a barbless broad head design, and must have a diameter of at least seven-eighths inch. The bow may not be drawn, held, or released by mechanical means, except for permits issued under *Minnesota Statutes* § 97B.106 or except that a person may use a mechanical device attached to the bowstring if the person's own strength draws, holds, and releases the bowstring.

Sec. 2. DEER SEASON AND HUNTER QUOTA.

Camp Ripley shall be open for the taking of any deer by bow and arrow on October 27 and 28, and November 17 and 18, 1990, from one-half hour before sunrise to sunset each day, according to the following provisions.

(a) Each hunter must have a valid Minnesota bow and arrow deer hunting license and a 1990 permit validated for the Camp Ripley Archery Hunt. No other persons will be permitted to enter Camp Ripley. Permits are not transferable between individuals or hunting dates.

(b) Not more than 1,750 preference permits and regular permits combined shall be issued for each 2-day hunting period except that the number of permits may be modified to accommodate all members of a selected party if the party as a whole makes total permits exceed 1,750. No hunter will be allowed to hunt during both hunting periods. If more than 1,750 applications are received for a hunting period, a preference drawing and general drawing will be held to select the 1,750 hunters. In the event either hunting period is undersubscribed after the preference drawing, a random drawing will be conducted from unsuccessful 1990 applicants to reach a total of 1,750 archers for each time period.

Sec. 3. PERMIT APPLICATION.

Persons wishing to hunt must apply for a permit as follows:

(a) No person shall apply for both the preference and general drawings, submit more than one application per year or apply for more than one hunting period. Submission of more than one application is a misdemeanor and will disqualify the applicant. Each applicant must sign his or her own application.

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Commissioners' Orders

(b) Preference Permits. Those archers unsuccessful in the 1989 Camp Ripley drawing shall have preference status and shall be issued a 1990 Camp Ripley preference permit by correctly and completely filling out and submitting the preference application mailed to them by the Department of Natural Resources. All preference applications and a \$5.00 application fee per hunter must be received on or before August 17, 1990 at Archery Hunt, Route 4, Box 19A, Little Falls, MN 56345. All application fees are non-refundable. Those applicants applying incorrectly or late shall be eliminated from the 1990 preference drawing. Persons applying for a preference permit in 1990 may not enter the general drawing in 1990. Those permits remaining after the issuance of preference permits shall be issued in the general drawing up to a combined total of 1,750 permits for October 27 and 28 and 1,750 permits for November 17 and 18, 1990.

(c) General Drawing.

(1) All applicants without preference shall enter the general drawing. All persons entering the general drawing shall make application on official application forms that are mailed to them by the Department of Natural Resources or are available by writing: Archery Hunt, Route 4, Box 19A, Little Falls, MN 56345, or by visiting the above address between 8:00 a.m. to 4:30 p.m. Monday through Friday. Persons requesting the application forms by mail must include with their request a stamped, self-addressed business-size envelope for return of the application forms to them.

(2) Persons applying in the general drawing who wish to hunt together as a party must all submit their applications together in one envelope. Up to six persons may submit their applications together as one party. In the general drawing, either all members of a party will be selected, or none will be selected. Each party, regardless of member size, shall have one chance in the general drawing.

(3) Incomplete or incorrect applications will be rejected. Applications will not be returned for correction. Each applicant must submit along with his or her application a cashier's check, money order, or personal check in the amount of \$5.00 payable to DNR Archery Hunt. Any checks that are returned to the Department of Natural Resources for nonpayment shall invalidate the application and the check will be destroyed. Refunds of application fees shall not be made for any reason. Both successful and unsuccessful applicants in the general drawing will be notified by mail.

(4) General drawing applications must be hand-delivered or received by mail at the Department of Natural Resources (DNR) Area Wildlife Office, Route 4, Box 19A, Little Falls, MN 56345 no later than 4:30 p.m. on August 17, 1990.

Sec. 4. COYOTES AND PORCUPINES.

Porcupines and coyotes may be taken in Camp Ripley without limit by the same means and at any time that deer may be taken. Only persons lawfully hunting deer within Camp Ripley may take porcupines and coyotes.

Sec. 5. SPECIAL INSTRUCTIONS.

(a) Access.

(1) Hunters shall enter and leave Camp Ripley only by way of the southeast railroad gate and only from 6 p.m. October 26, 1990 to 8 p.m. October 28, 1990, or 6 p.m. November 16, 1990 to 8 p.m. November 18, 1990, as per their permit.

(2) Each archer receiving a permit will be issued a 1990 map of Camp Ripley in advance of the Camp Ripley hunt. The maps issued shall show areas of Camp Ripley that are closed to hunting. No person shall enter any area that is indicated on the map as being closed, except for the road from the southeast railroad gate through the checkpoint to the open hunting area. A zoning system may be used to regulate access into various portions of the open areas of Camp Ripley. Maps issued in any year previous to 1990 are not valid for purposes of determining which areas are open or closed. Violators of this paragraph or section 5(a)(6) will have their hunting permits immediately revoked and their bows seized.

(3) Each hunter must register at the DNR checkpoint prior to hunting each day.

(4) Hunters will be permitted beyond the DNR checkpoint only from one hour before sunrise to one hour after sunset on Saturday and Sunday of each weekend, or as otherwise authorized by an agent of the Commissioner.

(5) Hunters shall not pursue wounded deer into closed areas or closed zones. Attempts to retrieve wounded or dead deer from closed areas or closed zones require prior approval of and accompaniment by an agent of the Commissioner.

(6) No person or vehicle shall pass beyond any road or trail barrier, gate, or warning sign anywhere in Camp Ripley.

(b) Weapons Possession and Transportation.

(1) No firearms may be possessed or transported on any person or in any vehicle in Camp Ripley except by special firearms permit.

(2) When being transported, bows must be unstrung or completely contained in a case or contained in the trunk of a car with the trunk door closed. While in the field, bows must be unstrung or cased from one-half hour after sunset to one hour before sunrise.

(c) Vehicle Restrictions.

(1) Off-road vehicles such as trail-bikes, motor bikes, all-terrain vehicles and snowmobiles shall not be permitted in Camp Ripley during the hunting season established by this order. All other vehicles are restricted to operating only on designated roads.

(2) Vehicles in line overnight at the checkpoint must be occupied. Hunters must stay with their vehicles.

(3) Maximum speed limit on roads in the hunting areas is 35 mph or as otherwise posted.

(d) Tree Stands.

(1) No permanent tree stands shall be erected. Portable stands shall not be left up overnight.

(2) No licensed hunter shall occupy any elevated deer stand from sunset to one hour before sunrise.

(e) Other Restrictions.

(1) No fires are permitted anywhere in the hunting areas, except in emergencies.

(2) No person shall destroy or remove any Camp Ripley property.

(3) No deer shall be removed from Camp Ripley or be transported beyond the DNR checkpoint until registered at the checkpoint.

(4) The Commissioner may close the season without prior notice for any reason deemed necessary.

(5) No wild animals other than deer, porcupines, and coyotes as permitted by this order shall be taken in Camp Ripley at any time.

(6) Except as specifically authorized none of the provisions of this order shall be construed as modifying or superseding any order establishing game refuges within the state nor as permitting the taking of any wild animals within such refuges or within state parks.

Dated at Saint Paul, Minnesota this 9th day of July, 1990.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Emergency Rules

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

- 1) that a free copy of the proposed emergency rule is available upon request from the agency;
- 2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
- 3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
- 4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Department of Administration

Proposed Emergency Amendments to Permanent Rules Relating to the Small Business Procurement Program

Notice of Intent to Adopt an Emergency Rule

NOTICE IS HEREBY GIVEN that the State of Minnesota, Department of Administration intends to adopt the above entitled

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emergency rule. The statutory authority to adopt the rule is contained in *Minnesota Statutes* Section 16B.189 to 16B.22 as amended by Chapter No. 541, H.F. No. 2230, 1990, Section 30. The agency in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes*, sections 14.29 to 14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Robert J. Baldwin
Department of Administration
Materials Management Division, Room #112
50 Sherburne Avenue
St. Paul, Minnesota 55155

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

A free copy of the proposed emergency rule is available by contacting the Materials Management Division Helpline (612) 296-2600.

The proposed emergency 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 emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent 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 wish to receive a copy of the adoptive rule, must submit this written request to Robert J. Baldwin at the address specified above.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35.

Dated: 23 July 1990

Sandra J. Hale
Commissioner of Administration

Rules as Proposed

1230.0100 SCOPE.

Pursuant to *Minnesota Statutes*, chapter 16B, parts 1230.0100 to ~~1230.2300~~ 1230.1910 govern the procurement of materials and services for the state under the competitive bidding requirements.

SMALL BUSINESSES OWNED BY DISADVANTAGED PERSONS BUSINESS PROCUREMENT PROGRAM

1230.1400 PURPOSE.

Parts ~~1230.1300~~ 1230.1400 to ~~1230.1900~~ 1230.1910 are ~~promulgated~~ adopted pursuant to *Minnesota Statutes*, sections 16B.19 to 16B.22 and 645.445 for the purpose of ~~establishing~~ governing procurement procedures relating to the ~~small business and small business owned by socially or economically disadvantaged persons set-aside program preference programs for targeted group or economically disadvantaged area small businesses.~~ These programs are administered by the Materials Management Division of Procurement, Department of Administration, 50 Sherburne Avenue, Saint Paul, Minnesota 55155. ~~Parts 1230.1300 to 1230.1900 shall also govern procurement under this program.~~

1230.1500 SCOPE.

~~Subpart 1. Priority of set-aside rules.~~ In the event of irreconcilable conflict between the general procurement rules in parts 1230.0100 to ~~1230.1300~~ 1230.1399 and ~~these rules~~ parts 1230.1400 to 1230.1910 relating specifically to the ~~set-aside small business procurement program,~~ the rules of the set-aside program parts 1230.1400 to 1230.1910 shall govern.

1230.1550 DEFINITIONS.

~~Subp. 2. Definitions.~~ Subpart 1. Scope. The definitions contained in *Minnesota Statutes*, section 645.445 ~~part 1230.0200~~ shall apply in the administration of ~~the set-aside program~~ these preference programs. ~~In addition, The following definitions in subparts 2 to 25 shall also apply.~~

~~Subp. 3. Terms governing minorities.~~ The terms "racial minorities," "women," and "persons who have suffered a substantial physical disability" contained in *Minnesota Statutes*, section 645.445, subdivision 5 shall have the following meanings:

A. "Racial minorities" means all persons in one or more of the following categories:

(1) "Black (not of Hispanic origin)" means all persons having origins in any of the Black racial groups of Africa.

(2) "Hispanic" means all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(3) "Asian or Pacific Islander" means all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands. This area includes, but is not limited to, China, Vietnam, Japan, Korea, the Philippine Islands, and Samoa.

(4) "Alaska native" means all persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation.

(5) "Indian" means an individual having origins in any of the original people of North America who is an enrolled member of an Indian tribe recognized as such by the government of the United States and Canada.

B. "Women" means all persons of the female gender.

C. "Persons who have suffered a substantial physical disability" means all persons suffering a physical impairment that is likely to cause difficulty in securing, retaining, and/or advancing in employment, and that substantially limits one or more of his or her major life activities, including but not limited to visual, hearing, or special learning impairments.

Subp. 4. **Small business owned and operated by disadvantaged person.** "A small business owned and operated by a socially or economically disadvantaged person(s)" means a small business as defined in Minnesota Statutes, section 645.445, subdivision 2 which is 51 percent owned and operated on a day-to-day basis by a socially or economically disadvantaged person as defined in Minnesota Statutes, section 645.445, subdivision 5.

Subp. 2. Affiliate or subsidiary of a business dominant in its field of operation.

A. "Affiliate or subsidiary of a business dominant in its field of operation" means a business that is at least 20 percent owned by a business dominant in its field of operation or by partners, officers, directors, majority stockholders, or their equivalent of a business dominant in that field of operation.

B. "Dominant in its field of operation" means exceeding the annual gross revenues or sales specified in part 1230.1600, subpart 3.

Subp. 5- 3. **Broker.** "Broker" means a business that carries no inventory and that has no written ongoing agreement with any manufacturer or manufacturer's authorized distributor to sell the products of such the manufacturer.

Subp. 4. **Business.** "Business" means a sole proprietor doing business as a contractor, subcontractor, supplier, or a partnership, association, corporation, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

Subp. 6- 5. **Contractor.** "Contractor" means a business that is engaged in construction including but not limited to such as general, mechanical, and/or electrical contracting, or that provides a specific service including but not limited to such as trash removal, snow removal, janitorial services, or consultant, professional, or technical services.

Subp. 7- 6. **Dealer, jobber, or distributor.** "Dealer," "jobber," or "distributor" means a business that maintains a store, warehouse, or other establishment in which a line or lines of products are kept in inventory and are sold to the public on a wholesale and/or retail basis.

Subp. 7. **Debarment.** "Debarment" means the disqualification of a person to receive invitations for bids or requests for proposals, or the award of any contract by any governmental body, for a specified period of time commensurate with the seriousness of the offense, the failure, or the inadequacy of performance.

Subp. 8. **Director.** "Director" means director of the Materials Management Division or a materials management division manager with written delegation of authority from the director.

Subp. 9. **Division.** "Division" means Material Management Division, Department of Administration, Room 112, State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

Subp. 10. **Franchise.** "Franchise" means any operating agreement obtained from a franchiser to conduct a business entity, as an affiliate, which does not provide the operator with the exclusive right to profit from his or her effort, commensurate with ownership and to bear the risk of loss or failure and does not meet the test of ownership outlined in subpart 24 and part 1230.1700, subparts 5, item C, and 5a, items A to F.

Subp. 11. **Full-time equivalent employees.** "Full-time equivalent employees" are determined by dividing the total hours worked by all employees in the business during the preceding fiscal year by 2,088 hours.

Subp. 8- 12. **Joint venture.** "Joint venture" means the association of two or more businesses, all of which are certified businesses

Emergency Rules

in the small business are certified as a targeted group and/or small business owned and operated by socially and economically disadvantaged persons program, for the purpose of receiving a procurement bid award.

Subp. 13. Liquidated damages. "Liquidated damages" means a specific sum of money, agreed to as part of a contract to be paid by one party to the other in the event of a breach of contract in lieu of actual damages, unless otherwise provided by law.

Subp. 9- 14. Manufacturer. "Manufacturer" means a business that makes and/or processes raw materials into a finished product.

Subp. 40- 15. Manufacturer's representative. "Manufacturer's representative" means a business that has a written agreement or agreements with one or more manufacturers or manufacturer's authorized distributors to sell the products of such manufacturer(s) the manufacturer, but that is not an employee of such manufacturer(s) the manufacturer.

Subp. 16. Material variance. "Material variance" means a variance in a bid from specifications or conditions which allows a bidder a substantial advantage or benefit not enjoyed by all other bidders.

Subp. 17. Person. "Person" means a natural person or a business.

Subp. 18. Principal place of business. "Principal place of business" means the physical location at which or from which a business performs, is maintained, or operates.

Subp. 19. Reinstatement. "Reinstatement" means a debarred vendor may seek restoration to state bidders' lists one year from the date of debarment by submitting application to the commissioner through the Material Management Review Board. If restored, the vendor will be subject to a one year probationary period.

Subp. 20. Responsible bidder. "Responsible bidder" means a bidder who:

A. is not a broker of, but rather is a manufacturer of, regular dealer in, or the agent of a manufacturer with full knowledge of supplies to be furnished; or

B. if services are to be provided, has the necessary skills or is in the business of supplying these services; and

C. can demonstrate a satisfactory credit standing, lack of tax liability, and the financial capability to perform the contract as evidenced by the ability to obtain bonding when required; and

D. has no record of failure to perform or of unsatisfactory performance of contracts for the state or other customers and is not currently debarred by another government entity for any cause including defaults on contracts, late deliveries, products not meeting specifications, substandard installation, or service; and

E. is otherwise qualified under rule and law, including incorporation in or registration to do business in Minnesota; and

F. has not engaged in unlawful practices, associated with organized crime, operated under false names or fronts as small business or a socially or economically disadvantaged small business; and

G. is in compliance with all tax laws of Minnesota; and

H. is willing to furnish all information necessary to determine responsibility as outlined in items A to G under part 1230.1500, subpart 20.

Subp. 21. SIC or Standard Industrial Classification. "SIC" or "Standard Industrial Classification" was developed for use in the classification of business establishments by type of activity, for the purpose of facilitating the collection, tabulation, presentation, and analysis of data collected by various agencies of the United States government, state agencies, trade associations, and private research organizations, for promoting uniformity and comparability in the presentation of statistical data relating to those establishments and their fields of endeavor.

Subp. 22. Suspension. "Suspension" means to be temporarily suspended from consideration for award of contracts by the director of Materials Management while the director determines if there is probable cause for debarment. The suspension shall not be for a period exceeding six months.

Subp. 23. Targeted group businesses. "Targeted group businesses" means those certified businesses designated by the commissioner of administration that are majority owned and operated by women, persons with disabilities, or specific minorities and provide goods, products, or services within purchasing categories designated by the commissioner.

Subp. 24. Terms governing socially disadvantaged persons. "Racial minority," "women," and "persons who have suffered a substantial physical disability" shall have the following meanings.

A. "Racial minority" means all persons in one or more of the following categories:

(1) "Black (not of Hispanic origin)" means all persons having origins in any of the Black racial groups of Africa.

(2) "Hispanic" means all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(3) "Asian or Pacific Islander" means all persons having origins in any of the original peoples of the Far East, Southeast

Asia, the Indian subcontinent or the Pacific Islands. This area includes China, Vietnam, Japan, Korea, the Philippine Islands, and Samoa.

(4) "Alaska native" means all persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation.

(5) "Indian" means an individual having origins in any of the original people of North America who is an enrolled member of an Indian tribe recognized as such by the governments of the United States and Canada.

B. "Women" means all persons of the female gender.

C. "Persons who have suffered a substantial physical disability" means all persons with a physical impairment that is likely to cause difficulty in securing, retaining, or advancing in employment, and that substantially limits one or more of his or her major life activities.

Subp. 4+. 25. Third-party lessor. "Third-party lessor" means a business that as a lessee acts as a lessor to a third party.

Subp. 26. Small business eligible for certification as socially disadvantaged business or economically disadvantaged area business. "Small business eligible for certification as socially disadvantaged business or economically disadvantaged area business" means a small business entity with its principal place of business in Minnesota organized for profit, including any individual, partnership, corporation, joint venture, association, or cooperative, which entity is 51 percent owned and operated on a day-to-day basis by citizens of the United States of America.

1230.1600 ELIGIBILITY FOR SET-ASIDE SOCIALLY DISADVANTAGED OR ECONOMICALLY DISADVANTAGED AREA SMALL BUSINESS PROGRAM.

Subpart 1. Eligible businesses. The following businesses ~~shall be~~ are eligible for participation in the ~~set-aside~~ socially disadvantaged or economically disadvantaged area small business program: manufacturer, manufacturer's representative, dealer, jobber, distributor, contractor, and businesses engaged in a joint venture.

Subp. 2. Ineligible businesses. The following businesses ~~shall be~~ are not be eligible for participation in the ~~set-aside~~ socially disadvantaged or economically disadvantaged area small business program: brokers ~~and~~, third-party lessors, and franchises.

Subp. 3. Revenue or sales limitations; Minnesota Small Business Program. For the purpose of identifying businesses eligible to participate in the Minnesota Small Business Program, the preference and set-aside programs for targeted group small businesses; or for small businesses located in economically disadvantaged areas, the qualifying parameter shall be expressed in terms of gross annual revenues or sales as an upper limitation; i.e. "not to exceed." In no case shall the limitation for any category of business enterprise be set at less than \$1,000,000.

A. Standard industrial classification (SIC) codes shall be used in classifying limitations among the variety of businesses potentially eligible for participation in the Minnesota Small Business Program.

B. Limitations, standards, shall be set for each major, two-digit, SIC group based on the following procedure:

(1) Typical financial balance sheet information compiled in annual reports such as the Robert Morris and Associates annual statement studies, Dun and Bradstreet, or similar reporting services will be used to establish the range of annual revenues or sales for a given major group class. This range shall, wherever the data is available, reflect an average of at least three consecutive reporting years, but shall not exceed five years.

(2) The upper limitation defining small business based on annual gross revenues or sales is determined by establishing a representative annual market consisting of the total gross revenues or sales generated by the reporting sample class. The lower quartile, 25 percent, of this market shall represent the small business category.

(3) The average gross revenues of the number of firms it requires to equal the total lower quartile market shall be the upper limit, defined in gross annual revenues or sales, permitted for definition of a small business in Minnesota.

(4) Where the three-digit SIC code data treated in subitems (1) to (3), varies significantly from the two-digit aggregated data or the four-digit data varies significantly from the two- or three-digit classes, a specific limitation shall be established for that three- or four-digit class.

(a) Significant variation for differences between two- and three-digit codes shall be five percent above or below the two-digit standard for gross annual revenue or sales.

(b) Significant variation for differences between three- and four-digit codes shall be five percent, or ten percent above or below the two-digit standard.

(5) After the initial establishment of limitations according to the process described for definition as a small business in Minnesota, for the purposes of this program, the Department of Administration shall in year two of the rule begin a process of reexamining on an annual basis one-third of the groups for appropriate limitations and redefinition where justified.

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1230.1700 SELF-CERTIFICATION CERTIFICATION OF ELIGIBILITY.

Subpart 1. **Required information.** To become eligible to receive invitations for set-aside bids qualify for the preference programs established by Minnesota Statutes, section 16B.19, subdivisions 2a to 2d, each business shall ~~certify and~~ file with the Materials Management Division of Procurement the following information on the application forms provided:

A. the name and address of the applicant and the principal place of business;

B. ~~whether applicant is applying for which type of designation as a small business or a small business owned and operated by a socially disadvantaged small business or economically disadvantaged person(s); designation shall be made as to area small business, is being applied for:~~

(1) socially disadvantaged small businesses are those businesses defined by Minnesota Department of Administration, part 1230.1550, subpart 24; or

(2) an individual business which is not a targeted group business but is owned by a socially disadvantaged person, as defined in part 1230.1550, subpart 24, that is encountering the effects of discrimination as evidenced by the owner lacking adequate external support necessary to operate a competitive business enterprise through a diminished ability to secure:

(a) long-term or working capital financing;

(b) equipment, raw material, or supplier trade credit;

(c) bonding and insurance; or

(d) a proportionate share of the market for its goods and services; or

(3) the small business is located in an economically disadvantaged area as defined in Minnesota Statutes, section 16B.19, subdivision 2d, and/or

(a) the owner resides or is employed in an area designated a labor surplus area by the United States Department of Labor;

(b) the owner resides or is employed in a county in which the median income for married couples is less than 70 percent of the state median income for married couples;

(c) the business is a rehabilitation facility or a work activity program as certified by the Department of Jobs and Training;
or

(d) the small business owner resides or is employed in an area designated by the commissioner as an economically disadvantaged area under Minnesota Statutes, section 16B.19, subdivision 2d;

C. an indication of the type of business operated and the kinds of service, materials, or supplies which can be delivered;

~~C. number of employees;~~

~~D. gross revenues in the preceding fiscal year;~~

~~E. whether the business is an affiliate or subsidiary of a business dominant in its field of operation;~~

~~F. D. a listing of all owners, including percentage of ownership, and all officers of the applicant with method of acquisition, ownership in other firms, and copies of the following documents:~~

(1) complete financial statements for the business for each of the preceding three fiscal years, or since the inception of the business if established less than three years;

(2) a profile of the owners' management responsibilities and a description of the management responsibilities assigned to other individuals, including a chronological resume for each owner, officer, and other key personnel;

(3) a statement indicating whether or not the business is an affiliate or subsidiary of a business dominant in its field of operation;

(4) full disclosure of all owners' and officers' direct and indirect involvement in other businesses and enterprises which are in the same field of operation as the applicant, unless ownership is by common stock regularly bought and sold through recognized exchanges; and

~~G. all other relevant information requested by the division.~~

(5) proof of ownership of business. Owners shall submit proof of their ownership of the requisite percentage of the business at the time the application is submitted, and the proof shall consist of stock certificates, a notarized affidavit of stock ownership from the corporate treasurer, a partnership agreement, a canceled check used to purchase ownership, or other recognized proof of ownership.

(a) In the case of a sole proprietorship or where documentary proof of ownership is not available, the owner shall clearly state the reasons for such and be prepared to assist the division in further investigation of proof.

(b) If requested, the owners must show how and when the interest in the business was acquired.

(c) The division may require additional proof or information necessary to verify ownership.

E. In addition, for certification under item B, subitem (2), unit (a), (b), (c), or (d), the following information must be provided for the most recent fiscal year and the preceding four years, if the applicant has operated as a business for four years, identifying the fiscal year reporting system used by the applicant and listing in whole dollar amounts:

(1) assets:

(a) cash and equivalent: all cash, marketplace securities, and other near-cash items, excluding sinking funds;

(b) trade receivables (net): all accounts from trade, less allowance for doubtful accounts;

(c) inventory: anything constituting inventory for the business;

(d) all other current: any other current assets, not including prepaid items;

(e) total current: the total of all current assets shown in subitems (a) to (d);

(f) fixed assets (net): all property, plant, leasehold improvements, and equipment, less accumulated depreciation or depletion;

(g) intangibles (net): intangible assets, including goodwill, trademarks, patents, catalogs, brands, copyrights, formulas, franchises, and mailing lists, less accumulated amortization;

(h) all other noncurrent: prepaid items and any other noncurrent assets;

(i) total: total of all items listed above.

(2) liabilities:

(a) notes payable (short-term debt): all short-term note obligations, including bank and commercial paper excluding trade notes payable;

(b) current maturities (long-term debt): that portion of long-term obligations that is due within the next fiscal year;

(c) trade payables: open accounts due to the trade;

(d) income taxes payable: income taxes, including current portion of deferred taxes. Identify federal, state, and local income taxes in subtotals;

(e) all other current: all other current liabilities, including bank overdrafts and accrued expenses;

(f) total current: total of all current liabilities listed above;

(g) long-term debt: all senior debt, including bonds, debentures, bank debt, mortgages, deferred portions of long-term debt, and capital lease obligations;

(h) deferred taxes: all deferred taxes. Identify federal, state, and local taxes in subtotals;

(i) all other noncurrent: any other noncurrent liabilities, including subordinated debt and liability reserves;

(j) net worth: difference between total liabilities and total assets, including minority interest;

(k) total liabilities and net worth: total of all items listed above.

(3) income data:

(a) net sales: gross sales less returns and discounts allowed, if any;

(b) gross profit: net sales less cost of sales;

(c) operating expenses: all selling, general, and administrative expenses, including depreciation, excluding interest expense;

(d) operating profit: gross profit less operating expenses;

(e) all other expenses (net): includes miscellaneous other income less expenses, such as interest expense, miscellaneous expenses not included in general and administrative expenses netted against recoveries, interest income, dividends received, and miscellaneous income;

(f) profit before taxes: operating profit minus all other expenses (net).

F. If the business seeking certification is a contractor, the information in item E must be submitted in all categories except as modified in the following:

(1) assets:

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- (a) accounts receivable - progress billings: amounts billed on current contracts excluding retention;
- (b) accounts receivable - current retention: amounts held back by customers on current contracts as retention;
- (c) inventory: costs attributable to equipment, small tools, supplies, and other deferred costs related to contracts in progress where a portion of the cost applies to work not yet performed;
- (d) costs and estimated earnings in excess of billings: the difference between the total of costs and recognized estimated earnings to date and the total billings to date;
- (e) total current: total of all current assets shown and as modified, changed, or added in the above definitions;
- (f) joint ventures and investments: the total of investments and equity in joint ventures.

(2) liabilities:

- (a) accounts payable - trade: open accounts and not obligations due to the trade;
- (b) accounts payable - retention: amounts held back as retention in payments to subcontractors on current contracts;
- (c) billings in excess of costs and estimated earnings: the difference between the total billings to date and the total of costs and recognized estimated earnings to date;
- (d) total current: total of all current liabilities shown and as modified, changed or added in the above definition;
- (e) total liabilities and net worth: total of all items shown as modified, changed, or added in the above definitions.

(3) income data:

- (a) contract revenues: revenues recognized under percent of completion method (in place of net sales).

G. In separate schedules, all applicants applying under item E or F should show the amounts attributable to depreciation, depletion, amortization, interest income, interest expenses, officers' compensation, and miscellaneous income shown as passive or nonpassive income. A schedule of leased assets with a brief description of type and dollar value must be submitted. A brief outline describing shareholders equity must be submitted, when applicable, for the type of company organization.

In addition, supportive documentation must be submitted when seeking certification under various provisions as follows:

(1) item B, subitem (2), unit (a): for certification as lacking adequate external support in obtaining long-term or working capital financing, any documentation showing denial of loans or offers of loans at terms and rates not currently normal for similar enterprises;

(2) item B, subitem (2), unit (b): for certification as lacking external support in obtaining equipment, raw materials, or supplier trade credit, any documentation showing denial of credit or credit extended at terms, conditions, and rates in excess of the norm expected within similar enterprises;

(3) item B, subitem (2), unit (c): for certification as lacking adequate external support in obtaining bonding and insurance, any documentation showing inability to obtain bonding or insurance at rates and terms normally expected within the industry segment of the applicant.

(4) In all cases, adequacy of documentation, accuracy of financial data, and development of argument and positions with regard to an applicant's lack of external support within any of the four categories of item B, subitem (2), unit (a), (b), (c), or (d), rests with the applicant and must be submitted in writing with the application for certification. The division retains the right of inquiry and verification of all information submitted.

H. When seeking certification under any provision of item B, subitem (1), (2), or (3), or any other certification provision, the applicant shall provide all other relevant or supporting information requested by the division.

I. Denials of certification under these provisions are subject to appeal under subpart 7.

Subp. 2. and 3. [See Repealer.]

Subp. 4. **Notice of changes.** The director of the division of ~~Procurement~~ shall be notified in writing of any ~~and all changes change~~ in the applicant's business ~~which may alter the application or attached information provided above~~ within 30 days of such ~~change(s)~~ the changes.

Subp. 5. **Grounds for rejecting self-certification application.** ~~Each~~ An applicant shall be notified in writing of the acceptance or rejection of the application, within 30 days of receipt of the ~~self-certification application~~ form ~~and all supporting documents required~~ by the division of ~~Procurement~~. An application shall be rejected on any of the following grounds:

A. the applicant is dominant in its field of operation or is an affiliate or subsidiary of a business dominant in its field of operation;

B. the applicant has failed to provide all relevant required information;

C. where applying for designation as a business owned and operated by socially or economically disadvantaged person(s); the applicant failed to establish that majority ownership and day-to-day operating control are held by socially disadvantaged small business or economically disadvantaged area small business person(s);

D. the applicant has failed to comply with laws and rules of the state relating to procurement;

E. applicant's failure to comply with the requirements of these rules or Minnesota Statutes, section 16B.19, et seq. faith in application for inclusion in this program; and the applicant has intentionally or negligently falsified application information;

F. the applicant is a broker and/or third-party lessor; or operates as a franchiser or franchisee;

G. the applicant's principal place of business is not in Minnesota;

H. ownership of the applicant's business is shared with a previously certified participant who was removed from the bid eligibility list or directory of certified businesses by operation of Minnesota Statutes, section 16B.22, clause (c), and part 1230.1850; and

I. the applicant's financial data profile does not fit within the parameters in subpart 5a, item I, subitem (2), unit (a), when applying as an individual business under subpart 1, item B, subitem (2).

Subp. 5a. Criteria for determinations. The following standards shall be used in determining whether, under subpart 5, item C, a firm is owned and operated on a day-to-day basis by one or more socially or economically disadvantaged persons:

A. The individual's claim, supported by sufficient documentation, that he or she is a socially disadvantaged small business person or an economically disadvantaged area small business person as defined in these rules.

B. The ownership and day-to-day operation of a socially disadvantaged small business or economically disadvantaged area small business must be real, substantial, and continuing, and must go beyond the pro forma ownership of the firm as reflected in its ownership documents. The socially disadvantaged or economically disadvantaged small business owners must have the customary incidents of business ownership and shall share in the risks and profits commensurate with their ownership interests as demonstrated by an examination of the substance, rather than form of the business arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient. The division shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial arrangements, equipment rental or leasing agreements, and relationships with nontargeted businesses that vary from accepted industry practice.

C. The socially disadvantaged or economically disadvantaged area business owner must possess the power to direct the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy, and operation. The firm must not be subject to any formal or informal restrictions that limit the customary discretion of the socially or economically disadvantaged owners. There must be no restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the socially or economically disadvantaged business owners from making a business decision for the firm without the cooperation or vote of any owner who is not a socially or economically disadvantaged person.

D. If the owners of the firm who are not socially or economically disadvantaged persons are disproportionately responsible for the operation of the firm, then the firm will not be considered to be owned and operated by socially or economically disadvantaged persons.

E. All securities that constitute ownership or control or both ownership and control of a corporation must be held directly by socially or economically disadvantaged persons. No securities held in trust or by any guardian for a minor will be considered as held by socially or economically disadvantaged persons in determining the ownership or control of a corporation.

F. The contributions of capital or expertise by the socially or economically disadvantaged owners to acquire their interests in the firm must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not socially or economically disadvantaged, or participation as an employee only, rather than as a manager.

G. In addition to the standards in items A to F, the following circumstances will be given special consideration in determining eligibility:

(1) newly formed firms and firms whose ownership or day-to-day operating control or both ownership and control has changed will be closely scrutinized to determine the reasons for the timing of the formation or of a change in the firm;

(2) a previous or continuing employer-employee relationship between or among present owners will be carefully reviewed to ensure that the employee-owner has the management responsibilities and capabilities referred to in subpart 5 and this subpart;

(3) any relationship between a socially disadvantaged or economically disadvantaged area business and a business that is not a socially disadvantaged or economically disadvantaged area business that has an interest in the socially disadvantaged or economically disadvantaged area business will be carefully reviewed to determine if the interest conflicts with the ownership and day-to-day operating control requirements.

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H. The combined gross sales or revenues from businesses operated by the same owners in related fields exceed the highest size standard for the field defined under part 1230.1600, subpart 3.

I. The following standards, along with supporting documentation, shall be used in reaching a determination to certify an applicant under subpart 1, item B, subitem (2), unit (a), (b), (c), or (d):

(1) Financial data for the company seeking certification shall be analyzed using formulas, techniques, processes, and ratios used in the annual statement studies published by Robert Morris and Associates (RMA), Philadelphia. Where RMA data does not reflect or provide adequate comparable data for the applicant's main line of business, the "Industry Norms and Key Business Ratios," published by Dun and Bradstreet Credit Services, or any similar representative reporting service may be used.

(2) Certification determination will be made upon careful review of all the evidence submitted. However, to establish eligibility for this review, the financial data applicable to the applicant company shall fall within the following parameters:

(a) financial ratios: at any point between the lower quartile and the upper quartile. Upper quartile ratings are indicative of a successful company not in need of the assistance provided through certification. Lower quartile ratings indicate a need for additional assistance before certification. Lower quartile businesses will be referred to the Department of Trade and Economic Development for remedial assistance before becoming eligible for reconsideration for certification.

(3) The following ratios and formulas will be used to determine eligibility for certification:

(a) lacking adequate external support in obtaining long-term or working capital financing: earnings before interest and taxes (EBIT)/interest, sales/working capital, quick ratio, fixed/worth, debt/worth;

(b) lacking adequate external support in obtaining equipment, raw materials, or supplier trade credit: current ratio, quick ratio;

(c) bonding and insurance: none - review of documentation only;

(d) the business has not captured a proportionate share of the market for its goods and services, based on the most current annual statement studies published by RMA. The national average revenues appropriate for the applicant business's standard industrial code and asset size will be divided by the national average assets determined similarly and multiplied by the applicant's actual total assets to indicate a proportionate market share. The applicant business's actual revenues will be divided by this proportionate market share to indicate the actual percentage of the proportionate market attained. Any percentage at 75 or less shall qualify for eligibility.

(4) If eligible under subpart 1, item B, subitem (2), unit (a), (b), (c), or (d), all other documentation shall be reviewed to arrive at a determination to grant or deny certification. The key determinant is "lacking adequate external support...as evidenced by diminished ability to secure..." Even though an applicant qualifies as an eligible business on the basis of financial ratios, if the business has been able to secure sufficient loans, bonding, insurance, or credit at the usual industry norms, it is not qualified as there is no evidence showing lack of support. Conversely, the business may show adequate financial ratios but still find itself unable to obtain any, or only partial, amounts of financing, bonding, credit, or insurance needed to remain competitive, or it can only acquire such at unfavorable terms not normal for its industry segment. Upon finding that such circumstances are not a result of internal management deficiencies as indicated by ratios appropriate to these concerns such as the following:

(a) percent profit before taxes/tangible net worth;

(b) percent profit before taxes/total assets;

(c) percent depreciation, depletion, amortization/sales; and

(d) percent officers' compensation/sales;

the business can be certified as a targeted group business. The same management efficiency review shall apply when determining certification due to an inability to capture a proportionate market share; however, no other documentation will need be considered under this eligibility criterion. Findings that a business suffers from internal management deficiencies will require a denial of certification until remedial assistance has been obtained through referral to the Department of Trade and Economic Development for help from public or private resources. When the appropriate ratio indicators fall within the eligible zone, the business may again apply for certification.

The impact of both short- and long-term business cycles for the economy in general and for the particular business segment in specific shall be considered in arriving at certification findings. When appropriate, an average of two to five years of fiscal data for the applicant company shall be used in determining ratio values.

(5) Businesses seeking certification that operate in distinctly defined commodities, construction services, or product lines shall be reviewed for certification under those distinctions. If the company operates in more than one SIC classification, the review shall be made under the primary industry segment if 75 percent or more of its net sales or contract revenues are generated by that segment. The business may seek certification for individual product, service, commodity, or construction activities if 25 percent or

more of its net sales or contract revenues is generated by a given category. All other financial data required by this application process must be proportionately attributed to the categories for which certification is sought unless it can be conclusively demonstrated that the dollar amounts shown are directly attributable to specific elements. If the company is unable to provide the breakdown of financial data requested by this rule, it must accept or request certification under the predominant category in its operation.

Subp. 6. **Appeal of rejection of application.** After an applicant has received written notice of rejection of its the application to participate in the set-aside program for certification as a socially disadvantaged small business or economically disadvantaged area small business, the applicant may appeal this the decision in writing to the director of the Division of Procurement commissioner of administration within 30 15 calendar days of receipt of such notice the determination. The director shall render a decision in writing on the application within 30 days of receipt of the appeal. If the applicant's rejection is sustained by the director, applicant may appeal this decision in writing to the commissioner of administration within 30 days of receipt of such determination. If there are facts in dispute, the commissioner may refer the matter to the Office of Administrative Hearings for a contested case hearing under Minnesota Statutes, sections 14.57 to 14.62. The applicant has the burden of proof in establishing qualifications for certification. The commissioner shall, if feasible, refer the appeal to the Small Business Procurement Advisory Council for its recommendation before reaching a final decision. The commissioner shall render the make a final decision in writing within 30 45 calendar days of receipt of such the appeal.

1230.1800 ESTABLISHMENT OF SET-ASIDE PROCUREMENTS FROM SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESSES.

Subpart 1. **List of set-aside businesses.** A list directory of set-aside eligible businesses, properly certified pursuant to part 1230.1700 shall be established and maintained by the division for various commodity classes.

Subp. 2. **Determination of contracts for set-aside.** When a requisition is received by the Division of Procurement and is placed on the list of set-aside contracts, the contract for a particular commodity shall be offered to those businesses on that commodity list and awarded as follows:

A. For all such requisitions, the Division of Procurement shall establish an estimated price for the goods or services.

B. All businesses on the set-aside list shall be notified of the estimated price.

C. First attempt at purchase shall be made from a small business owned and operated by a socially or economically disadvantaged person(s).

D. Where there is only one business in a given commodity class the business shall be invited to submit a bid based on the estimated price.

E. Where there are two or more businesses in a given commodity class, competitive bids shall be obtained.

F. Acceptable bids shall be recorded and the award made to the lowest responsible bidder.

G. No award shall be made when the low bid is more than five percent over the estimated price.

H.

1230.1810 PROPORTIONAL UTILIZATION OF SOCIALLY DISADVANTAGED BUSINESSES.

The division shall attempt to achieve utilization of socially disadvantaged small businesses in proportion to their representation in the market. In so doing, the division may use either of the following purchasing methods for awarding requisitions to those socially disadvantaged businesses designated by the commissioner as targeted group businesses.

A. When it is likely that three competitive bids will be obtained from certified targeted group small businesses, the requisition may be set aside for bidding only by those businesses.

(1) The division shall include a statement on the invitation to bid informing all vendors that the bid is set aside for bidding only by certified targeted group small businesses.

(2) The division shall reject any bid by a business not certified as a targeted group small business.

(3) Where there are no bids or no acceptable bids, unsatisfactory bids, if any, will be recorded and the requisition shall thereafter be rebid through normal procurement procedures.

I. If it is necessary to reject original bids and the bid specifications are substantially changed or were in error, specifications shall be revised and the project rebid under set-aside rules.

J. If an acceptable bid is received and awarded under normal procurement procedures, the cost or price shall be recorded for report purposes.

B. A certified targeted group small business may be awarded up to a six percent preference in the amount bid over the lowest responsible bid from another vendor.

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(1) The division shall include a statement on the invitation to bid informing all vendors that certified targeted group vendors will receive a preference in the amount bid and the amount of the preference to be awarded.

(2) When the lowest acceptable bid from a certified targeted group small business is within six percent of the lowest acceptable bid from another vendor, award shall be made to the lowest responsible certified targeted group small business.

(3) When there is no acceptable bid from a certified targeted group small business within six percent of the lowest acceptable bid from another vendor, award shall be made to the lowest responsible vendor.

1230.1820 REQUIRED SUBCONTRACTING FOR CONSTRUCTION, CONSULTING, OR PROFESSIONAL OR TECHNICAL SERVICES.

Subpart 1. Goal setting. The division may set goals that require prime contractors to subcontract a portion of any contract for construction, consulting, or professional or technical services to targeted group small businesses.

A. Goals for subcontracting may be independently set for each contract and may vary from contract to contract, depending on the type of work involved and the availability of certified, willing, and able targeted group small businesses open to subcontracts from the prime contractor.

B. Credit toward the goal established for the contract shall be at 100 percent for subcontractors who provide labor, materials, and supplies and at 60 percent for subcontractors who provide supplies and materials only.

Subp. 2. Subcontracting. No contractor receiving a subcontract under this program shall in turn subcontract more than 25 percent of the contract dollar amount. A targeted group small business may exceed the 25 percent limitation if the awarded subcontract is to another targeted group small business.

Subp. 3. Waivers. Prime contractors may obtain waivers from the normal subcontracting goals according to the following procedure:

A. The invitation to bid or request for proposals may as one of the conditions of contract waive subcontracting requirements for all or specific specialties based on the division's determination of sufficient availability of certified targeted group subcontractors for the specialties involved.

B. The prime contractor may request a waiver for some or all specialties based on a documented unsuccessful effort to obtain certified targeted group subcontractors. The request for waiver with documentation showing the effort and steps taken to secure certified targeted group subcontractors and the results thereof shall accompany the bid response, unless the invitation to bid specified a period after bid opening, not to exceed 72 hours, where documentation of efforts and steps taken to secure certified targeted group subcontractors will be permitted.

C. After the award and the commencement of the project, a prime contractor may request a waiver for a specific specialty if the certified targeted group subcontractor cannot or will not fulfill the subcontract and no suitable alternative subcontractor is available so as to prevent significant project delay. Failure to use the certified targeted group subcontractors specified at the time of award without a grant of waiver will invoke a penalty as outlined in subpart 4.

Subp. 4. Incentives and penalties. Bid documents will state whether or not the incentive rule applies for the project being bid. If so,

A. Prime contractors who exceed the established goal on a given project for use of certified targeted group subcontractors by more than three percent may be awarded a financial incentive over and above the awarded bid price, the incentive to be determined in the following manner:

(1) Contracts qualifying for incentive clauses may be prime contracts at \$50,000 or higher in which the goal for subcontractor use has been set at one percent or higher. The maximum goal qualifying for incentives may not exceed 25 percent. Contracts between \$2,000 and \$50,000 may qualify for incentive clauses if the approved goal percentage applied to the estimated project cost will provide a minimum of \$500 in potential subcontracting awards.

(2) A monetary incentive over and above the awarded contract price shall be paid to the prime contractor upon documented proof of actual use of certified targeted group subcontractors on the project in excess of three percent of the goal set for that project. The monetary incentive in any case shall not exceed six percent of the awarded project price, or \$60,000 at the maximum. The form of documented proof shall be specified in the award agreement.

(3) The actual amount of incentive to be paid shall be calculated by the following formula:

(a) subtract the established goal plus three percent from 25 percent;

(b) divide six percent of the project or \$60,000, as appropriate, by the number of percentage points in unit (a); and

(c) multiply the result of unit (b) by the number of percentage points exceeding goal plus three percent.

(4) The provisions of subitems (1), (2), and (3), shall be applicable to all prime contractors and shall also apply to certified targeted group contractors acting as prime contractors if the awarded contract was not gained through preference or set-aside bidding procedures.

B. Prime contractors who have been awarded a contract and fail to meet the project goal for certified targeted group subcontractor use without approved waiver shall be penalized up to six percent of the total project value, not to exceed \$60,000. The penalty to be assessed will be proportionate to the actual underuse of certified targeted group subcontractors as compared to the project goal. The contractor involved shall be notified in writing of the proposed penalty and the reasons for the penalty. Within 15 calendar days of receipt of the notice the contractor may request a hearing before the Materials Management Review Board. The board may uphold, modify, or reject the penalty. The decision of the board may be appealed within 30 calendar days to the commissioner. If there are facts in dispute, the commissioner may refer the matter to the Office of Administrative Hearings for a contested case hearing under Minnesota Statutes, sections 14.57 to 14.62, or, if feasible, may affirm or reject the board's decision.

C. Prime contractors who fail to meet the project goal without waiver for a project to be awarded and are the apparent low bidder shall have a penalty of up to six percent, not to exceed \$60,000, added to their total project bid to determine responsible low bidder when other prime contractors have submitted bids that meet the specified targeted goal. The penalty to be added shall be proportionate to the underuse determined in the bid proposal as compared to the announced project goal.

D. The division reserves the right to cancel the request for bid or proposals and rebid the project when all bidders submit proposals which do not meet the announced goal and the evidence available to the division indicated sufficient responsible certified targeted group subcontractors are willing and able to do the work.

1230.1830 PREFERENCE PROCUREMENTS FROM ECONOMICALLY DISADVANTAGED SMALL BUSINESSES.

A certified economically disadvantaged small business may be awarded up to a four percent preference in the amount bid over the lowest responsible bid from another vendor.

A. The division shall include a statement on the invitation to bid informing all vendors that certified economically disadvantaged vendors will receive a preference in the amount bid and the amount of the preference to be awarded.

B. When the lowest acceptable bid from a certified economically disadvantaged small business is within four percent of the lowest acceptable bid from another vendor, award shall be made to the lowest responsible certified economically disadvantaged small business.

C. When there is no acceptable bid from a certified economically disadvantaged small business within four percent of the lowest acceptable bid from another vendor, award shall be made to the lowest responsible vendor.

D. When the division awards both a preference to a certified targeted group small business and a preference to a certified economically disadvantaged small business on the same requisition, the lowest acceptable bid shall be determined by deducting the preference percent awarded from the acceptable bid by the certified small business.

1230.1850 REMOVAL FROM ELIGIBILITY LISTS OR DIRECTORY OF CERTIFIED BUSINESSES.

Subpart 1. Removal for failure to fulfill contract. A business shall be removed from the bid eligibility lists and shall be ineligible to be awarded contracts when it fails to satisfactorily fulfill the terms and conditions of a contract. Removal or debarment by other governmental entities shall automatically result in removal from these bid eligibility lists as well. Notice of removal from bidding lists and the reasons for removal shall be given in writing to the business by the division. Removal is effective upon receipt of the notice by the business.

Subp. 2. Reinstatement. An otherwise eligible business that was removed from the the bid list under this subpart may apply for reinstatement and participation in the preference program and may be listed if the division determines that the business is able to undertake and satisfactorily complete future contracts. As part of the reinstatement evaluation process, the division may require the applicant to provide in writing:

A. an explanation of the steps taken by the applicant to resolve the production, financial, or technical problems that caused its previous failure to perform; or

B. evidence of successful completion of at least four other contracts, including contracts with two public entities, in the same commodity class, field, or type of work in which the applicant seeks to bid or completion of the requirements for reinstatement and probation.

Subp. 3. Removal from certified directory when a business no longer qualifies. A business shall be removed from the certified directory and will no longer be eligible for bidding on any set-aside or preference contract when the business no longer qualifies for these preference program under Minnesota Statutes, section 16B.22, and parts 1230.1400 to 1230.1910. Notice of removal and the reasons for removal shall be given in writing to the business by the division. Removal is effective upon receipt of the notice by the business. When removal is for loss of status as an economically disadvantaged area, the business shall remain eligible for 120 days after certified small businesses in the area are notified of the termination of the status by the division.

Subp. 4. Appeal of removal. When a business is removed from the bid lists and disqualified from further bidding under subpart 1, 2, or 3 or is removed from the certified directory, the business may appeal the removal and disqualification to the commissioner of administration in writing within 15 calendar days of the receipt of the notice of removal. Receipt of the appeal shall be acknowledged

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by the commissioner in writing within 15 calendar days of receipt. The commissioner shall request that the business choose either an informal review of the disqualification under item A or a formal review under item B if facts of the matter are in dispute.

A. Under an informal review process, the Small Business Procurement Advisory Council shall consider whether the decision to remove a business from the bid list or certified directory was reasonable and whether the removal is in compliance with subpart 1 or 2. The council will review the facts presented by the business and the division. Within 45 calendar days of the council's receipt of a request for review, the council shall recommend that the commissioner take one of the following actions:

(1) reinstate the business on the bid lists or certified directory;

(2) affirm the removal of the business; or

(3) refer the matter to the Office of Administrative Hearings for a contested case hearing under Minnesota Statutes, sections 14.57 to 14.62.

The council's recommendation to the commissioner shall be in writing and include the reasons for its decision. The commissioner shall consider the recommendation and make a final decision on the matter within 15 calendar days of receiving the council's recommendation. The commissioner shall include written reasons for the decision.

B. Within 30 calendar days after a request by the business or the council for formal review, the commissioner will initiate a contested case hearing under Minnesota Statutes, sections 14.57 to 14.62, by filing a request for assignment of an administrative law judge with a notice of an order for hearing. When the commissioner receives the report of the administrative law judge, the commissioner shall forward the report to the Small Business Procurement Advisory Council for its review, and the council shall, within 45 days, make its recommendation. The commissioner shall make a final decision on each appeal.

1230.1860 LIMITS TO PROGRAM PARTICIPATION.

To ensure equitable distribution of awards and reduce the dependency of any given business on state awards for a major part of its annual revenues, the following limitations apply:

A. Eligibility for participation in preference or set-aside provisions of this program shall be temporarily suspended, for the fiscal year only, for any certified economically disadvantaged small business when the total awards under these program to that business exceed three-tenths of one percent of the total anticipated awards. These limitations shall be applied individually and not in the aggregate by the agencies covered under the statute, the Department of Administration, the Department of Transportation, and the University of Minnesota.

B. Eligibility for set-aside or preference for a specific business shall be terminated when the annual review of financial statements or the cumulative record of awards compiled by the division from reports submitted by agencies covered under the statute indicate that any of the following conditions exist:

(1) more than an average of 80 percent of the business's gross revenues or sales are attained through preference or set-aside awards during the second and third years of participation in the program;

(2) for years four and five, the limitation average shall be 50 percent of gross annual revenues or sales;

(3) for years six and beyond, the limit shall not exceed 40 percent.

There will be no limit on awards acquired through the normal competitive bid process at any time.

C. No business shall be permitted to participate in the preference and set-aside programs indefinitely. A business will not be certified but will graduate from the preference and set-aside programs when one of the following circumstances exists:

(1) if certified under part 1230.1700 according to Minnesota Statutes, section 16B.19, subdivision 2b, designation of targeted groups, and a new study conducted by the commissioner of administration finds the original conditions defining eligibility and certification no longer exist;

(2) demographic statistics justify loss of status as a labor surplus area, a 70 percent median income county, or a disadvantaged area; or

(3) the business has captured a proportionate share in its market for assets employed, by the following averages:

(a) 200 percent in year one;

(b) 175 percent in years one and two;

(c) 150 percent in years one, two, and three;

(d) 125 percent in years two, three, and four;

(e) 125 percent in years three, four, and five, or any three consecutive years thereafter.

1230.1900 GENERAL TERMS AND CONDITIONS.

Subpart 1. Inability to perform. A An eligible business which, if offered an award, finds that it cannot produce, supply, or

construct according to the bid terms and conditions of a contract for reasons beyond its control shall, within seven calendar days after receipt of notice as low bidder, immediately notify the division of Procurement in writing of the reasons therefor. When the commissioner of administration finds determines that the low bidder business is unable to perform for the reasons stated, the division shall notify the Department of Trade and Economic Development shall be notified by the Division of Procurement in accordance with *Minnesota Statutes*, section 16B.20, so that the commissioner of trade and economic development can assist the small business in attempting to remedy the causes of the inability to perform. The division shall notify the business of the referral to the Department of Trade and Economic Development and the notice shall include a statement that any records of the Department of Trade and Economic Development in assisting the small business may be discoverable in a contested case or judicial procedure. Failure to enter into the a contract or, to accept an offered award, or to satisfactorily complete a contract for documented reasons beyond its control will not automatically disqualify a business from further bidding. The records of the Procurement Division shall show the reason(s) for such failure.

A. The division may, if circumstances permit, delay an award or completion of a contract to allow the commissioner of the Department of Trade and Economic Development to provide assistance or to allow the business to remedy the business's inability to perform. If the division decides that delay is inappropriate because of the nature of the bid or contract, the division may seek other solutions. The decision to proceed shall not be prejudicial to the record of the business in question.

B. Failure of the business in question to reasonably cooperate with either the division or the Department of Trade and Economic Development shall be considered a failure to fulfill the terms of a contract and shall be handled according to part 1230.1850, subpart 1. The records of the division shall document the actions taken relative to each case of inability to perform handled under this subpart.

Subp. 2. to 4. [See Repealer.]

Subp. 5. **Dividing bid invitations.** The director of the division of Procurement may shall divide bid invitations by dollar amounts, units of production, or duration of contract to facilitate awarding set-aside or preference contracts to business in the set-aside program wherever the division is considered feasible.

Subp. 6. [See Repealer.]

Subp. 7. **Annual reporting requirement.** The following reporting requirements apply to the socially disadvantaged or economically disadvantaged area small business programs:

A. Businesses eligible to participate in these programs shall, within 30 calendar days of a request by the division, verify information on file with the division for that business, make any necessary changes, and submit a complete financial statement to the division. The information on file with the division will include:

(1) the name and address of the applicant and its principal place of business;

(2) the applicant's gross revenues in the most recently completed fiscal year;

(3) whether the applicant's business is an affiliate or subsidiary of a business dominant in its field of operation;

(4) a listing of all owners, including percentage of ownership, and all officers of the applicant, with full disclosure of all owners' and officers' direct and indirect involvement in other businesses and enterprises that are in the same field of operation as the applicant, unless ownership is by common stock regularly bought and sold through recognized exchanges; and

(5) all other relevant or supporting information necessary for verifying status resulting in eligibility under certification procedures if requested in writing by the division, before or after the annual reporting requirement date.

B. Failure to provide the information required by item A may result in removal of the noncomplying business from the certified directory.

1230.1910 CONSULTANT, PROFESSIONAL, AND TECHNICAL PROCUREMENTS.

Subpart 1. **Applicability.** Parts 1230.1400 to 1230.1910 apply to the award of consultant, professional, and technical procurements under *Minnesota Statutes*, section 16B.19, subdivision 2.

Subp. 2. **Awards.** Division certification is not required for individuals who provide consultant, professional, or technical services and who are not organized as a business, corporation, partnership, proprietorship, or other recognized business structure. An individual person may be awarded contracts under *Minnesota Statutes*, section 16B.19, subdivision 2, provided that the contracting agency maintains records stating that the individual meets the terms governing socially or economically disadvantaged area persons established in part 1230.1500, subparts 24 and 26, and reports the awards in the format required by the division.

REPEALER. *Minnesota Rules*, parts 1230.1700, subparts 2 and 3; 1230.1900, subparts 2, 3, 4, and 6; 1230.2000; 1230.2100; 1230.2200; and 1230.2300 are repealed.

EFFECT OF EMERGENCY AMENDMENTS. After the emergency amendments expire as provided in *Minnesota Statutes*, section 14.35, the permanent rules as they read prior to those amendments shall again be in effect, except as they may be subsequently amended, and all rules that were repealed in these rules shall be revived.

Emergency Rules

Office of the Secretary of State

Proposed Emergency Amendment to Permanent Rules and Emergency Rules Relating to Absentee Ballot Applications

Notice of Intent to Adopt an Emergency Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Secretary of State intends to adopt the above-entitled emergency rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Laws of Minnesota*, chapter 585, section 19.

All persons have 25 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 25-day comment period. If 25 or more persons submit a written request for a public hearing within the 25-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. 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 Secretary of State will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

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

Joseph Mansky
Director, Election Division
180 State Office Building
St. Paul, Minnesota 55155
(612) 296-2805

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 as noticed.

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

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 the Secretary of State upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to the 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 matter to the Attorney General, or who wish to receive a copy of the adoptive rule, must submit the written request to the Secretary of State.

Dated: 23 July 1990

Joseph Mansky
Director, Election Division

Emergency Rules as Proposed

8210.0200 ABSENTEE BALLOT APPLICATION.

[For text of subps 1 to 3, see M.R.]

Subp. 4. Permanent application. An eligible voter who meets the requirements in *Minnesota Statutes*, section 203B.04, subdivision 5, may apply to the county auditor or municipal clerk to automatically receive an absentee ballot application for each election in which the voter is eligible to vote. The county auditor shall make available the form provided in part 8210.9915 [Emergency] for this purpose. The voter shall complete the form and return it to the county auditor or municipal clerk. A municipal clerk who receives a completed application shall forward it to the county auditor immediately. The completed form must be attached to the voter's registration card.

The county auditor shall maintain a list of voters who have applied to automatically receive an absentee ballot application. At least 45 days before each election, the county auditor or municipal clerk shall send an absentee ballot application to each person on the list who is eligible to vote in the election.

An application submitted by a voter under this subpart must be retained permanently with the voter's registration record. The form must be transferred with the voter's registration record whenever a change in the voter's name, address, or status occurs.

Emergency Rules as Proposed (all new material)**8210.9915 [Emergency] APPLICATION TO AUTOMATICALLY RECEIVE ABSENTEE BALLOT APPLICATIONS, SPECIFIED BY PART 8210.0200.****APPLICATION TO AUTOMATICALLY RECEIVE ABSENTEE BALLOT APPLICATIONS**

Name _____
Last First Middle

Township or City
of Legal Residence _____
Township or City County

Address of
Legal Residence _____
Street Address or Route and Box Number

Mailing Address
for Application
(if different) _____
Street Address or Route and Box Number

_____ Mailing City State Zip

Date of Birth _____ Telephone Number _____

I certify that I reasonably expect to be permanently unable to vote in person at the polling place for my precinct due to illness or disability and hereby request that an application for absentee ballots be sent to me before each election in which I am eligible to vote.

Signature Date_____
Date

EFFECT OF EMERGENCY AMENDMENT. After the emergency amendment to *Minnesota Rules*, part 8210.0200 expires, the permanent rules are again in effect, unless they are amended by permanent rule.

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, 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.

Minnesota Agricultural and Economic Development Board**Notice of Public Hearing on Proposed Project and the Issuance of Bonds under *Minnesota Statutes* 1986, Chapter 116M, and *Minnesota Statutes*, Chapter 41A**

NOTICE IS HEREBY GIVEN that the Minnesota Agricultural and Economic Development Board (the "Board") or its designated representative, shall meet on August 16, 1990, at 9:30 a.m. o'clock, at 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota, for the purpose of conducting a public hearing on a proposed issue of bonds (the "Bonds") and the provision of other financial assistance under *Minnesota Statutes* 1986, Chapter 116M, and *Minnesota Statutes*, Chapter 41A, as amended (the "Act"), to undertake and finance a project on behalf of **The Duplication Factory, Inc.**, a Wisconsin corporation (the "Applicant"). Such persons as desire to be heard with reference to said issue of Bonds will be heard at this public hearing.

The project to be financed consists of the acquisition of land and the constructing and equipping of a new manufacturing facility in the **City of Chaska, Minnesota** [general description of the location being at 4275 Norex Drive, Chaska, Minnesota (the "Project")]. The initial owner of the Project will be one of the parties identified above as the "Applicant" and the Project is expected to be operated and managed by one of the parties identified above as the "Applicant." It is contemplated that the Project will be used primarily for the manufacture of duplicate video tapes in VHS format. The estimated amount of the Board's proposed bond issue is an amount not

Official Notices

to exceed \$1,900,000. The Bonds shall be limited obligations of the Board, the Bonds and the interest thereon shall be payable solely from the revenue pledged to the payment thereof, and a mortgage or security interest or other security arrangements to be established by or on behalf of the Applicant. In addition, the Bonds and the Project may be subsequently considered by the Board for financial assistance to be provided by the Economic Development Fund created and established under *Minnesota Statutes* 1986, Chapter 116M or other financial or special assistance from the Board. Notwithstanding the foregoing, no holders of any such Bonds shall ever have the right to compel any exercise of the taxing powers of the State of Minnesota or any political subdivision thereof to pay the Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

A copy of the Application to the Board for approval of the Project, together with all attachments and exhibits thereto and a copy of the Board's resolution accepting the Application and accepting the Project is available for public inspection at the offices of the Board at 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

BY ORDER OF THE MEMBERS OF
THE MINNESOTA AGRICULTURAL
AND ECONOMIC DEVELOPMENT BOARD

Paul Moe, Executive Director, Minnesota Agricultural
and Economic Development Board

Minnesota Agricultural and Economic Development Board

Notice of Public Hearing on Proposed Project and the Issuance of Bonds under *Minnesota Statutes* 1986, Chapter 116M and *Minnesota Statutes*, Chapter 41A

NOTICE IS HEREBY GIVEN that the Minnesota Agricultural and Economic Development Board (the "Board") or its designated representative, shall meet on August 16, 1990, at 9:30 a.m. o'clock, at 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota, for the purpose of conducting a public hearing on a proposed issue of bonds (the "Bonds") and the provision of other financial assistance under *Minnesota Statutes* 1986, Chapter 116M, and *Minnesota Statutes*, Chapter 41A, as amended (the "Act"), to undertake and finance a project on behalf of **Lewis Engineering Company**, a Minnesota corporation (the "Applicant"). Such persons as desire to be heard with reference to said issue of Bonds will be heard at this public hearing.

The project to be financed consists of the acquisition of land and the constructing and equipping of a new manufacturing facility for the fabrication of specialty steel products for use in the highway industry [general description of the location being at **4201 Norex Drive, Chaska, Minnesota** (the "Project")]. The initial owner of the Project will be the "Applicant" and the Project is expected to be operated and managed by the "Applicant." It is contemplated that the Project will be used primarily for the production of specialty steel products for the highway industry. The estimated amount of the Board's proposed bond issue is an amount not to exceed \$2,700,000. The Bonds shall be limited obligations of the Board, the Bonds and the interest thereon shall be payable solely from the revenue pledged to the payment thereof, and a mortgage or security interest or other security arrangements to be established by or on behalf of the Applicant. In addition, the Bonds and the Project may be subsequently considered by the Board for financial assistance to be provided by the Economic Development Fund created and established under *Minnesota Statutes* 1986, Chapter 116M or other financial or special assistance from the Board. Notwithstanding the foregoing, no holders of any such Bonds shall ever have the right to compel any exercise of the taxing powers of the State of Minnesota or any political subdivision thereof to pay the Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

A copy of the Application to the Board for approval of the Project, together with all attachments and exhibits thereto and a copy of the Board's resolution accepting the Application and accepting the Project is available for public inspection at the offices of the Board at 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

BY ORDER OF THE MEMBERS OF
THE MINNESOTA AGRICULTURAL
AND ECONOMIC DEVELOPMENT BOARD

Paul Moe, Executive Director, Minnesota Agricultural
and Economic Development Board

Department of Commerce

Notice of Supplemental Hearing Regarding the Minnesota Comprehensive Health Association

At the conclusion of the hearings on the Minnesota Comprehensive Health Association's Fee Schedule noticed in the *State Register*

on July 23, 1990, a Supplemental Hearing lasting 30 minutes will be held regarding suggestions for changes in the funding of the Minnesota Comprehensive Health Association. The supplemental hearing will begin one and one-half hours after the stated beginning time for the MCHA fee schedule hearing. The times and dates of the Minnesota Comprehensive Health Association fee schedule hearings are as follows:

Public Hearing Schedule**Rochester**

Monday, August 6th
9:00-11:00 a.m.

Midway Motor Lodge/The Hoffman House
1517 - 16th Street S.W.
Rochester, Minnesota 55902

Marshall

Monday, August 6th
3:00-5:00 p.m.

Marshall Area Senior Center
107 South Fourth Street
Marshall, Minnesota 56256

St. Cloud

Tuesday, August 7th
10:30 a.m.-12:30 p.m.

St. Cloud Civic Center
Opportunities Suites
10 Fourth Avenue South
St. Cloud, Minnesota 56301

Brainerd

Tuesday, August 7th
3:00-5:00 p.m.

Holiday Inn
Hwy. 371 South
Brainerd, Minnesota 58401

Fergus Falls

Wednesday, August 8th
10:00 a.m.-12:00 noon

Holiday Inn
I94 and Hwy. 210
Fergus Falls, Minnesota 56537

Grand Forks

Wednesday, August 8th
3:00-5:00 p.m.

Holiday Inn
1210 North 43rd Street
Grand Forks, North Dakota 58203

Duluth

Thursday, August 9th
10:00 a.m.-12:00 noon

Radisson Hotel
500 West Superior Street
Duluth, Minnesota 55802

Mpls./St. Paul

Friday, August 10th
9:00 a.m.-11:00 a.m.

Sheraton Midway
400 North Hamline Avenue
St. Paul, Minnesota 55104

Minnesota Comprehensive Health Association

Notice of Meeting of the Executive Committee

NOTICE IS HEREBY GIVEN that a meeting of the Executive Committee of the Minnesota Comprehensive Health Association will be held at 10:30 a.m. on Tuesday, July 31, 1990, at Physicians Health Plan, 5601 Smetana Drive, Minnetonka, Minnesota, 10th floor executive conference room.

For additional information, please call (612) 936-6050.

Department of Human Services

Health Care Management Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to *Minnesota Rules* Governing Eligibility to Receive Payment as a Provider in the Medical Assistance Program

NOTICE IS HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the adoption of amendments to the rules governing eligibility to receive payment as a provider in the medical assistance program. The adoption of the rule amendments is authorized by *Minnesota Statutes*, section

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256B.04, subdivision 2 which requires the agency to adopt rules concerning the medical assistance program. The proposed amendments affect parts: 9505.0175, definitions; 9505.0215, covered services, out-of-state-providers; 9505.0221, payment limitation, parties affiliated with a provider; 9505.0240, ambulatory surgical centers; 9505.0242, anesthesia services; 9505.0245, chiropractic services; 9505.0250, clinic services; 9505.0255, community health clinic services; 9505.0270, dental services; 9505.0280, family planning services; 9505.0281, federally qualified health center services; 9505.0287 hearing aids; 9505.0298, individual education program plan related medical services; 9505.0300, inpatient hospital services; 9505.0305, laboratory and x-ray services; 9505.0307, lead toxicity source identification; 9505.0310, medical supplies and equipment; 9505.0315, medical transportation; 9505.0321, certified family and certified pediatric nurse services; 9505.0325, nutritional products; 9505.0330, outpatient hospital services; 9505.0340, pharmacy services; 9505.0345, physician services; 9505.0350, podiatry services; 9505.0355, preventive health services; 9505.0365, prosthetic and orthotic devices; 9505.0380, public health clinic services; 9505.0383, public health nursing clinic services; 9505.0395, rural health clinic services; 9505.0405, vision care services; 9505.0445, payment rates; and 9505.0446, hospice care payment rates.

The State Department of Human Services requests information and opinions concerning the subject matter of the amendments to the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statement should be addressed to:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Oral statements will be received during the regular business hours over the telephone at (612) 297-4301 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event the rule is adopted.

Dated: 18 July 1990

Eleanor Weber
Assistant Director
Rules and Bulletins Division

Department of Labor and Industry

Workers' Compensation Division

Notice of Solicitation of Outside Information or Opinions Regarding Workers' Compensation Proposed Rules of Practice for Health Care Providers

NOTICE IS HEREBY GIVEN that the State Department of Labor and Industry is seeking information or opinions from sources outside the agency in preparing to propose Rules of Practice governing health care providers who treat workers' compensation patients. These rules may govern communication with parties, provider conduct and discipline, required forms, provider enrollment or certification, and other rules concerning health care provider standards of practice in the workers' compensation system.

The adoption of the rule is authorized by *Minnesota Statutes*, section 176.83.

The State Department of Labor and Industry requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Gloria Gebhard
Senior Rehab and Medical Specialist
Rehabilitation and Medical Affairs
Minnesota Department of Labor and Industry
443 Lafayette Road
St. Paul, Minnesota 55155

Oral statements will be received during regular business hours over the telephone at (612) 296-8213 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register*. Any written material received by the State Department of Labor and Industry shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 19 July 1990

Ken Peterson, Commissioner

Department of Labor and Industry

Labor Standards Division

Notice of Prevailing Wage Determinations for Commercial Projects

On August 1, 1990 the commissioner certified prevailing wage rates for commercial construction projects in the following Minnesota counties: **AITKIN, BECKER, BELTRAMI, CARLTON, CASS, CLAY, CLEARWATER, COOK, CROW WING, HUBBARD, ITASCA, KITTSO, KOCHICHING, LAKE, LAKE OF WOODS, MAHOMEN, MARSHALL, NORMAN, OTTERTAIL, PENNINGTON, POLK, REDLAKE, ROSEAU, ST. LOUIS, WADENA, WILKIN.**

Copies of the determined wage rates for Minnesota counties may be obtained by writing the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road, St. Paul, Minnesota 55155, or calling (612) 296-6452. The charges for the cost of copying and mailing are \$1.00 for the first copy and \$.50 for any additional copies. Please note that the cost of one county varies according to the number of pages per county.

Ken Peterson, Commissioner
Department of Labor and Industry

Office of the Secretary of State

Notice of Vacancies in Multi-Member Agencies

NOTICE IS HEREBY GIVEN to the public that vacancies have occurred in multi-member state agencies, pursuant to *Minnesota Statutes* 15.0597, subdivision 4. Application forms may be obtained from the Office of the Secretary of State, Open Appointments, 180 State Office Building, St. Paul, MN 55155-1299; (612) 297-5845, or in person at Room 174 of the State Office Building. More specific information about these vacancies may be obtained from the agencies listed below.

The application deadline is July 30, 1990.

Environmental Education Advisory Board

Room 300, Centennial Bldg., 658 Cedar St., St. Paul 55155. (612) 296-2723

Laws of 1990, Chapter 595, Section 2

APPOINTING AUTHORITY: Governor. **COMPENSATION:** \$55 per diem.

VACANCY: Eight citizen members, one from each congressional district; two must be licensed teachers currently teaching in the K-12 system.

The Board shall advise the director of the Environmental Education Office in initiating, developing, implementing, evaluating and marketing informal environmental education programs, promoting state government and private sector policy consistent with environmental education programs established in Section 8; and may coordinate informal environmental education with the K-12 and post-secondary environmental education programs developed by the Department of Education and the state's post-secondary institutions. Seventeen members including the commissioners of the State Planning Agency, the Department of Natural Resources, the Pollution Control Agency, the Department of Agriculture, the Department of Education, the chair of the Board of Water and Soil Resources, the executive director of the Higher Education Coordinating Board, Board of Teaching, and the director of the extension service; and eight citizen members appointed by the Governor, one from each congressional district. Two of the citizen members must be licensed teachers currently teaching in the K-12 system. Quarterly meetings.

Advisory Council on Uniform Financial Accounting and Reporting Standards

Room 937, Capitol Square Bldg., St. Paul 55101. (612) 296-5906

Minnesota Statutes 121.901

APPOINTING AUTHORITY: Bd. Education/Com. Education/Bd. Voc Tech/State Auditor **COMPENSATION:** None.

VACANCY: One member to be a public school employee whose position involves activities related to school financing and accounting; appointed by the State Board of Education.

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The council provides uniform accounting and reporting standards for school districts and recommends rules, statute changes, modifications of financial accounting codes, manuals, procedures and reporting forms. Thirteen members include two employees of the Dept. of Education, one licensed certified public accountant, eight school district employees whose responsibilities include school financing and accounting; one employee appointed by State Board of Vocational and Technical Education, and one member of the state auditor's office. Approximately six meetings per year.

Committee on Science & Technology Research & Development

900 American Center Bldg., 150 E. Kellogg Blvd., St. Paul 55101. (612) 297-4368

Minnesota Statutes 116J.971

APPOINTING AUTHORITY: Governor, Legislature. COMPENSATION: Reimbursed for expenses.

VACANCY: Two members, one to be a resident of the Southwest McKnight region. Members must be qualified in at least one of these areas: economic development, academic and applied research, the administration of research, the review of research processes, the management and development of technology intensive companies.

The committee, upon request by the governor or legislature, evaluates proposed science and technology research and development projects to determine if technically feasible and have economic potential; also approves peer review guidelines, advises the director on effectiveness of peer review processes, approves formation and reviews reports of ad hoc committees. Thirteen members include the chair and eight members appointed by the governor. There must be at least one member from each of the six regions as defined by the Dept. of Trade and Economic Development. The legislature appoints four members of the committee.

Board of Architecture, Engineering Land Surveying & Landscape Architecture

402 Metro Square Bldg., St. Paul 55101. (612) 296-2388

Minnesota Statutes 326.04

APPOINTING AUTHORITY: Governor. COMPENSATION: \$35 per diem plus expenses.

VACANCY: One member to be a licensed architect; must have been in responsible charge for a minimum of five years.

The board licenses and regulates architects, engineers, land surveyors and landscape architects. Seventeen members include three licensed architects, five licensed engineers, one licensed landscape architect, two licensed land surveyors and six public members. Not more than one member may be from the same branch of the engineering profession. Each professional member must have ten years experience in their profession and have been in responsible charge of work for at least five years. Meetings four times a year. Members must file with the Ethical Practices Board.

Ombudsman Committee for Mental Health and Mental Retardation

Suite 202, Metro Square Bldg., St. Paul 55101. (612) 296-0941

Minnesota Statutes 245.97

APPOINTING AUTHORITY: Governor. COMPENSATION: Reimbursed for expenses.

VACANCY: One member must be a medical doctor with experience in health care delivery and have knowledge and interest in the health and human services.

The committee advises and assists the Ombudsman for Mental Health and Mental Retardation. Fifteen members will be appointed on the basis of their knowledge and interest in the health and human services system subject to the ombudsman's authority. Meetings four times per year.

American Indian Advisory Council on Chemical Dependency

444 Lafayette Rd., St. Paul 55155-3823. (612) 296-8941

Minnesota Statutes 254A.035

APPOINTING AUTHORITY: Commissioner of Human Services. COMPENSATION: \$35 per diem plus expenses.

VACANCY: One member, to represent the interests of the Grand Portage Reservation to the American Indian Advisory Council and the Chemical Dependency Program Division—D.H.S.

The council establishes policies and procedures for American Indian chemical dependency programs, and reviews and recommends proposals for funding. Members include one member from each of eleven reservations, two members from Mpls., two members from St. Paul, one member from Duluth, and one member from International Falls. Quarterly meetings.

Drug Abuse Prevention Resource Council

Department of Public Safety, Office of Drug Policy, 316 Transportation Bldg., St. Paul 55155. (612) 297-4749

Laws of 1989, Chapter 290

APPOINTING AUTHORITY: Governor. COMPENSATION: Per diem plus expenses.

VACANCY: One member with demonstrated knowledge in the area of drug abuse prevention.

The council is to foster the coordination and development of a statewide drug abuse prevention policy, developing guidelines for the development of drug abuse prevention programs and assisting in establishing community-based drug abuse prevention programs

and services. Eighteen members: the commissioners of public safety, education, health human services, the state planning agency and the attorney general each appoint one member from their employees; the speaker of the house and subcommittee for committees of the senate each appoint a legislative member; the governor appoints ten members from throughout the state with demonstrated knowledge in drug abuse prevention, representing the following groups: parents, educators, clergy, local government, racial and ethnic minority communities, professional providers of prevention services, volunteers in private non-profit prevention programs, and the business community. Meetings held the second Thursday of each month, 1:00 to 4:00 p.m., at the Centennial Building (call 297-4749 for meeting room).

Office of Waste Management

Notice of Intent to Solicit Outside Information Regarding Proposed Amendments to Grant Rules

NOTICE IS HEREBY GIVEN that the Office of Waste Management (OWM) is seeking information and opinions from outside sources in preparing to amend its rules governing grants for hazardous and industrial waste reduction. These rules are cited as *Minnesota Rules* pts. 9205.0400 through 9205.0480. The OWM is planning to amend these rules both to incorporate the pollution prevention grant program created by the legislature during this last legislative session and to improve the existing procedures for obtaining hazardous and industrial waste grants. The amendment of these rules is authorized by *Minnesota Statutes* §§ 115A.06, subd. 2 and 115D.05, which direct the OWM to promulgate rules governing, among other things, these grant programs.

The Office of Waste Management requests information and opinions concerning the subject matter of the proposed amendments. Interested person(s) or group(s) may submit data and views in writing or by oral communication. Both written and orally communicated statements and comments should be directed to:

Julie Mackenzie, Coordinator
Pollution Prevention Grants Program
Minnesota Office of Waste Management
1350 Energy Lane Suite #201
Saint Paul, MN 55108
Telephone: (612) 649-5494
or MN toll free at 1-800-652-9747

All statements of information and opinion will be accepted until 4:30 p.m., August 31, 1990. Oral statements will be received during regular business hours, Monday through Friday. Any written material received by the Office of Waste Management by August 31, 1990, will become a part of the rulemaking record in the event that the proposed amendments are adopted.

Good Business Decisions are Made with Good Information

Minnesota Manufacturer's Directory. More than 7,000 entries that include name, address, phone number, staff size, sales volume, market area, year of establishment, type of firm, C.E.O., Sales or Marketing Manager, Purchasing Manager and four major manufactured products. Code #40-2, \$78.50 plus tax.

Business and NonProfit Corporation Act 1989. A handy reference that contains all the state laws governing the establishment and conduct of corporations in Minnesota. Includes *Minnesota Statutes* Chapters 80B, 302, 302A and 317. Code #2-87, \$15.00 plus tax.

Minnesota Guidebook to State Agency Services 1987-1990. Packed with information to help you cut through red tape for easy and fast dealing with state agencies, this treasure of information opens state government to you. Its 640 pages describe agencies, how they work, listing contacts, addresses, phones, and license requirements, grants, forms, reports, maps, publications and much more. Gives historical, statistical and important data useful in hundreds of ways. Code #1-4. \$15.00 plus tax. FAX: (612) 296-2265.



Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. § 14.10, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Commodities contracts with an estimated value of \$15,000 or more are listed under the Materials Management 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 whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Awards of contracts and advertised bids for commodities and printing, as well as awards of professional, technical and consulting contracts, appear in the midweek STATE REGISTER Contracts Supplement, published every Thursday. Call (612) 296-0931 for subscription information.

Materials Management Division—Department of Administration:

Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid.

Commodity: Lease purchase of copy machines
Contact: Joseph Gibbs 296-3750
Bid due date at 2pm: July 31
Agency: Jobs & Training Department
Deliver to: St. Paul
Requisition #: 21200-30929

Commodity: 386-165X computer
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: August 2
Agency: Building Construction—Administration Department
Deliver to: Thief River Falls
Requisition #: 02310-18166

Commodity: Valves
Contact: Mary Jo Bruski 296-3772
Bid due date at 4:30pm: August 3
Agency: Administration Department
Deliver to: St. Paul
Requisition #: 02307-11229

Commodity: 1991 15 passenger van
Contact: Brenda Thielen 296-9075
Bid due date at 2pm: August 3
Agency: Willow River Camp
Deliver to: Willow River
Requisition #: 78890-02764

Commodity: Genuine repair parts for Champion motor graders
Contact: Dale Meyer 296-3773
Bid due date at 2pm: August 3
Agency: Various
Deliver to: Various
Requisition #: Price contract—rebid

Commodity: Fluorescence Immunoassay
Contact: Joseph Gibbs 296-3750
Bid due date at 4:30pm: August 6
Agency: Health Department
Deliver to: Minneapolis
Requisition #: 12400-65405

Commodity: Signs
Contact: Joan Breisler 296-9071
Bid due date at 2pm: August 6
Agency: Natural Resources Department
Deliver to: St. Paul
Requisition #: 29008-80427

Commodity: 80386 computers
Contact: Bernadette Vogel 296-3778
Bid due date at 2pm: August 7
Agency: Lakewood Community College
Deliver to: White Bear Lake
Requisition #: 27154-47019

Commodity: Radio frequency shielding enclosure
Contact: Pamela Anderson 296-1053
Bid due date at 2pm: August 7
Agency: Transportation Department
Deliver to: Various
Requisition #: 79000-061243

Commodity: Winter sand stockpiled
Contact: Joan Breisler 296-9071
Bid due date at 2pm: August 7
Agency: Transportation
Deliver to: Grand Marais
Requisition #: 79100-09148

Commodity: Firearms training system
Contact: Linda Parkos 296-3725
Bid due date at 2pm: August 10
Agency: Law Enforcement Training Center
Deliver to: Edina
Requisition #: 27160-51762

Commodity: Lighting: roadway luminaires & encapsulated ballasts
Contact: Patricia Anderson 296-3770
Bid due date at 2pm: August 20
Agency: Various
Deliver to: Various
Requisition #: Price contract

Commodity: Relay system upgrade
Contact: Teresa Ryan 296-7556
Bid due date at 2pm: August 2
Agency: Public Service Department
Deliver to: St. Paul
Requisition #: 99908-00214

Commodity: Auto purce and trap concentrator
Contact: Joe Gibbs 296-3750
Bid due date at 2pm: August 3
Agency: Health Department
Deliver to: Minneapolis
Requisition #: 12400-47388

Commodity: Lektriever—rebid
Contact: John Bauer 296-2621
Bid due date at 2pm: August 3
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: 55000-03655-1

Commodity: Chairs/tables
Contact: John Bauer 296-2621
Bid due date at 2pm: August 3
Agency: Anoka Ramsey Community College
Deliver to: Coon Rapids
Requisition #: 27152-46778

Commodity: IBM PS/2's
Contact: Bernie Vogel 296-3778
Bid due date at 2pm: August 7
Agency: Moorhead State University
Deliver to: Moorhead
Requisition #: 26072-02452

Commodity: Cutting edger disk drive
Contact: Bernie Vogel 296-3778
Bid due date at 2pm: August 7
Agency: Community College
Deliver to: Rochester
Requisition #: 27148-60411

Commodity: Laser graphics film recorder
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: August 7
Agency: State University
Deliver to: Moorhead
Requisition #: 26072-02450

Commodity: Human muscular male and female
Contact: Joe Gibbs 296-3750
Bid due date at 4:30pm: August 7
Agency: Rainy River Community College
Deliver to: International Falls
Requisition #: 27155-55139

Commodity: Clean sewer lines
Contact: Pamela Anderson 296-1053
Bid due date at 4:30pm: August 8
Agency: Correctional Facility
Deliver to: Sauk Centre
Requisition #: 78770-03189-01

Commodity: Articulated wheel loader—MN/DOT various
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: August 10
Agency: Transportation Department
Deliver to: Various
Requisition #: 79382-02100

Commodity: Articulated wheel loader MN/DOT various
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: August 10
Agency: Transportation Department
Deliver to: Various
Requisition #: 79382-02101

Department of Administration: Print Communications Division

Printing vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

Printing vendors NOTE: Other printing contracts can be found in the Materials Management Division listing above, and in the Professional, Technical & Consulting Contracts section immediately following this section.

Commodity: Posters: Animals (Don't Smoke) & Butts (Don't Smoke), 2 posters 35M each, 21"x28" camera ready, 4-color process, 1-sided
Contact: Printing Buyer's Office
Bids are due at 2pm: August 1
Agency: Health Department
Deliver to: Minneapolis
Requisition #: 9381 and 9382

Commodity: 1991 MN State Park Guide, 250M books, 24 pages, 2-sided, 9½"x14" folded to 8½"x3½", 4-color process, camera ready, saddle stitch
Contact: Printing Buyer's Office
Bids are due at 2pm: August 6
Agency: Natural Resources Department
Deliver to: St. Paul
Requisition #: 10117

Commodity: Giants Ridge Brochure, 60M, 9"x6", 2-folds to 9"x4", type to set, 2-sided, 4-colors, saddle stitch
Contact: Printing Buyer's Office
Bids are due at 2pm: August 6
Agency: Giants Ridge
Deliver to: Biwabik
Requisition #: 10085

Commodity: Medical Assistance and General Assistance Medical Care Provider Manual, 15.5M each of 4 issues, 8½"x11", 2-sided, camera ready, 3-hole punch; Aug issue 650 pages; Nov, Feb, May issues 150-pages self-cover
Contact: Printing Buyer's Office
Bids are due at 2pm: August 6
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: 10026

Commodity: Firearm Student Safety Certificate, 10M, 9½"x7" overall certificates + card, 3⅜"x2½" affixed to each carrier at right, type to set + camera ready, 2-sided
Contact: Printing Buyer's Office
Bids are due: August 1
Agency: DNR Enforcement
Deliver to: St. Paul
Requisition #: 10118

Commodity: Programs and Services booklet, 200 3.75"x8.5", 12-pages + cover, saddle stitch
Contact: Printing Buyer's Office
Bids are due: August 1
Agency: Trade & Economic Development Department
Deliver to: St. Paul
Requisition #: 7973

State Contracts and Advertised Bids

Commodity: Boat & Water Prepaid Return Label, 5M 5"x3", adhesive-back labels, 100 per roll, die cut, rounded corners, 1-color, negs available, 1-sided
Contact: Printing Buyer's Office
Bids are due: August 1
Agency: Natural Resources Department—Boat & Water Safety
Deliver to: St. Paul
Requisition #: 10094

Commodity: TODAY Magazine (4 issues) 50M per issue, 11½"x16", 60 + halftones per issue, 30-32 pages, camera ready and mailed
Contact: Printing Buyer's Office
Bids are due at 2pm: August 6
Agency: State University
Deliver to: Mankato
Requisition #: 10188

Commodity: Seed Envelope, 10M 6½"x9½", camera ready, 2-sided, 1" safety fold top and bottom
Contact: Printing Buyer's Office
Bids are due: August 1
Agency: Agriculture Department
Deliver to: St. Paul
Requisition #: 10270

Commodity: Notice of Tax Lien, 2M 8-part form snapout, ¾" stub on top, 8½"x11" DETACHED, 2-sided, carbon interleave, camera ready
Contact: Printing Buyer's Office
Bids are due: August 1
Agency: Jobs & Training Department
Deliver to: St. Paul
Requisition #: 10208

Resolve Bargaining Disputes and Grievances

Public Employment Labor Relations Act 1989. The collective bargaining rights and responsibilities of public employers and public employees. Details employees' right to organize and the legislature's authority. Code #2-90, \$6.00 plus tax.

Public Sector Labor Relations in Minnesota. A practical resource and training guide analyzing public sector labor relations in Minnesota. A special emphasis on contract administration, grievance handling and the arbitration process. 286 pages, paperbound. Code #10-51, \$12.50.

Minnesota Guidebook to State Agency Services 1987-1990. A treasure of helpful, useful, and interesting information about Minnesota state government. This important resource guides you through applications, fees, licenses, reports, history and travel highlights. Describes agencies in detail, giving addresses, phones and contact people. Code #1-4, \$15.00 plus tax. FAX: (612) 296-2265.



Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

Professional, Technical & Consulting Contracts

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

Department of Administration

Print Communications Division

Request for Proposals for Computer Consultant Services

The Minnesota Department of Administration, Print Communications Division, seeks, for a two-year period, the services of a qualified consultant with the IBM AS/400 Computer, DMAS distribution software, OfficeVision/400 and PROFIT Control Systems Printing Software.

I. Background

The Print Communications Division is a self-supporting retail sales and services enterprise with individual customer bases comprised of both government agencies and private sector entities.

The division owns an IBM AS/400 9404-Model P20 (28 meg) computer system which uses nine 3180, six 3196, three 3197, and seven 3477 workstations, as well as 12-IBM/IBM clone PC's (using 5250 Enhanced, Workstation Emulation or PC Support/400) as AS/400 workstations. Printers include IBM 5219, 5224, 2 Quickwriters, 4224, 4019 Laser Printer, Proprinter; a Fujitsu printer equipped with a protocol converter; a HP Laserjet II; and various other PC printers which are also used as AS/400 system printers. In addition, the division owns ten IBM 7525 Data Collection (ELF) Terminals equipped with bar code scanning devices.

The division operates its Retail Sales operations with IBM DMAS software with the following components: Accounts Receivable, Billing, Inventory Control and Sales Analysis. The division's Printing Services operations are run with PROFIT Control Systems software which includes Order Entry, Estimating, Job Costing, Job Tracking, Accounts Receivable, Data Collection.

The division relies heavily upon OfficeVision/400, PC Support/400-file transfer, and Query for its daily operations.

Several locally-generated enhancements to purchased software have been installed.

II. Contract Scope

During the course of the contract, the contractor will provide consultant services on an on-call basis. Project assignments will include, but will not be limited to the following:

- Provide local assistance with DMAS. Tasks include: management and operator education, trouble shooting, design and programming of required modifications and enhancements, release upgrade and PTF installation.
- Instruction for division personnel on AS/400 operations.
- Work with division personnel to install new software releases, OS/400 support programs and OS/400 program temporary fixes.
- Development, testing and implementation of stand-alone programs to meet division-identified needs.
- Provide local assistance with PROFIT Control Systems printing software.

III. Experience Requirements

To be considered qualified for the award of this two-year contract, the successful respondent must possess at least one-year experience working with the AS/400 and two-years experience working with the Customer Service Applications of DMAS. Further, the respondent must have demonstrated an ability to successfully tailor IBM software, in particular DMAS, to enhance local applications.

In addition to the above experience, the respondent must evidence a successful track record with clients in both the private and governmental sectors.

IV. Proposal Contents

Bidders must provide a detailed explanation of experience with the AS/400, DMAS, OfficeVision/400, PC Support and PC Connectivity, and PROFIT Control Systems software. A successful track record of experience in all the above, with particular emphasis on software, must be demonstrated to the sole satisfaction of the state.

Individuals who will be assigned to work on this project must be identified by name and their experience/expertise detailed in the bid.

Hourly billing rates must be quoted. Please note that this is a two-year contract which is to begin September 1, 1990 and terminate September 1, 1991. Billing rates for both years of the contract must be specified.

Professional, Technical & Consulting Contracts

V. Department Contacts

Prospective respondents having questions regarding this Request for Proposal may call or write:

Jan Prelgo
Print Communications Division
117 University Avenue
St. Paul, MN 55155
Telephone: (612) 296-8233

All proposals must be sent to and received by the Print Communications Division, at the above address, no later than 4:30 p.m., August 10.

VI. Evaluation

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

- Demonstrated familiarity and experience with IBM AS/400, DMAS Customer Service Applications, OfficeVision, PC Support and PROFIT Control Systems software.
- Qualifications of both the company and the individuals assigned to work on the contract. Experience will be an important factor.
- The relevance of previous experience to the responsibility outlined in this proposal.
- The satisfaction of previous customers who have been served by the bidder in areas of relevance to this proposal.
- Significant experience with the use of the division's stand alone PC software applications is necessary.
- The ability to provide trouble-shooting for the division's computer hardware is a significant factor.
- Ability to provide AS/400 Electronic Customer Support from contractor's location both during and after regular business hours.
- Ability to provide "hotsite" backup of the Print Communication Division's computer system.
- The billing rates quoted by the bidder.
- Ability, in the sole opinion of the state, to best meet the stated requirements of this proposal.

Evaluation and selection will be completed by August 23, 1990. All respondents will be notified by mail of the results of the evaluation.

VII. Withdrawal

The state reserves the right to withdraw this Request for Proposals at any time.

VIII. Additional Mandatory Requirements

The successful respondent will be required to submit acceptable evidence of compliance with Worker's Compensation insurance coverage requirements prior to the execution of contract.

The successful respondent is required to submit a certificate of compliance with the Minnesota Human Rights Act. If the respondent is exempt from compliance, this must be stated in the respondent's proposal.

Department of Health

Notice of Availability: Request for Proposals to Conduct Needs Assessment on Breastfeeding Promotion and Support and to Develop a Breastfeeding Promotion Plan for the Minnesota WIC Program

The Minnesota WIC Program (Special Supplemental Food Program for Women, Infants, and Children) is seeking proposals to conduct a needs assessment on breastfeeding promotion and support in the Minnesota WIC Program. The plan will include specific recommendations for breastfeeding promotion and support activities at both the state and local levels.

The contractor for this project will identify methods for the needs assessment, conduct the needs assessment, prepare a summary of the needs assessment, and develop a realistic plan for breastfeeding promotion and support, considering resources available in the Minnesota WIC Program. The plan will include recommendations for breastfeeding promotion and support activities at the state and local levels. The plan will include recommendations for timeline, priority, resources and evaluation for each activity.

Professional, Technical & Consulting Contracts

Applicants will be expected to demonstrate the knowledge, skills, and fiscal capability to complete this project. All materials produced under this contract are in the public domain.

The anticipated amount of this contract is not more than \$35,200, including travel costs. The estimated starting date is October 22, 1990 and estimated end date is June 21, 1991, or eight months from the start of the project.

Individuals or agencies interested in bidding for this contract should obtain a copy of the request for proposal by contacting:

Sandy Jacobsen
Minnesota WIC Program
Minnesota Department of Health
717 Delaware St. S.E.
P.O. Box 9441
Minneapolis, Minnesota 55440
(612) 623-5750

The deadline for submitting proposals is 4:00 p.m., August 24, 1990. Some applicants will be asked to participate in an interview with a review committee, and may be asked to provide samples of previous work relevant to this project.

Minnesota Historical Society

Advertisement for Bids for Reprinting, Manufacturing and Delivery of 10,000 Copies of a Book: *Northern Lights: Going to the Sources*

Bids

Sealed bids for the reprinting, manufacturing and delivery of the Minnesota Historical Society's *Northern Lights: Going to the Sources*, in accordance with specifications prepared by the Minnesota Historical Society, will be received in the office of the Contracting Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, MN 55101 until 2:00 p.m., Central Daylight Time, on August 7, 1990 at which time the bids will be publicly opened and read aloud. Bids received after the above deadline will be returned unopened.

Bid Security

Each bid must be accompanied by a cashier's check, certified check or corporate surety bond of a surety company duly authorized to do business in Minnesota, in the sum of not less than 5% of the total bid, payable without condition to the Minnesota Historical Society, which is submitted as bid security.

Specifications

Copies of specifications and bidding documents for preparation of bids may be obtained by contacting Gary W. Goldsmith, Contracting Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, MN 55101. Telephone (612) 296-2155.

Conditions of Bids

The Minnesota Historical Society reserves the right to accept any bid or to reject all bids, and to waive any informalities therein. No bid may be withdrawn within 30 days after the scheduled closing time for the receipt of bids.

Minnesota Historical Society

Advertisement for Bids for Printing, Manufacturing and Delivery of 2,500 Copies of a Book: *Picturing Minnesota, 1936-43*

Bids

Sealed bids for the printing, manufacturing and delivery of the Minnesota Historical Society's *Picturing Minnesota, 1936-43* in accordance with specifications prepared by the Minnesota Historical Society, will be received in the office of the Contracting Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, MN 55101 until 2:00 p.m., Central Daylight Time, on August 7, 1990 at which time the bids will be publicly opened and read aloud. Bids received after the above deadline will be returned unopened.

Bid Security

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Professional, Technical & Consulting Contracts

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Conditions of Bids

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Department of Human Services

Notice of Request for Proposals for Quality Assurance Review of Prepaid Health Plans

The Department of Human Services is seeking proposals to conduct a quality assurance review of health plans providing health care to Medical Assistance recipients in the Medicaid Demonstration Project and in the prepaid Voluntary Program. The Proposal must fulfill the requirements of 9431 of the Omnibus Budget Reconciliation Act of 1986, PL 99509, 42 U.S.L. 1396a and the results of the review must be available, on request, to the Secretary of Health and Human Services, the Office of the Inspector General (OIG) and the General Accounting Office (GAO) as well as to the Minnesota Department of Human Services, the Minnesota Department of Health and the appropriate sections of the review to the health plans under review. The contract will be awarded on the basis of total cost, technical approach of the contractor to the scope of work and the experience/expertise of the contractor.

The formal Request for Proposals which contains specifications may be requested from the Department of Human Services by contacting the individual listed below. The deadline for submitting a proposal is 4:30 p.m., September 10, 1990. The selection of the contractor will be made on September 17, 1990. The Commissioner of the Department of Human Services reserves the right to reject all proposals submitted.

Please direct proposals and written inquiries to:

Deborah Bachrach
Department of Human Services
Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55155
612/297-1380

Department of Natural Resources

Division of Parks and Recreation

Notice of Request for Proposals for Consultant to Assist the Minnesota DNR Parks and Recreation Division in Developing a Strategic Plan for Managing and Using Information for All Programs and Support Functions Within the Division

The Minnesota Parks and Recreation Division is requesting proposals from any qualified individual or firm interested in assisting in developing a need's assessment, and data architecture upon which future information systems development will be based. This study will define the division's major information needs and translate those into an entity-attribute relationship description for the division. Available funds are \$15,000.

Proposals must be received by 4:30 p.m. CDT, August 27, 1990.

Interviews of finalists tentatively will be held in late September, with final selection by early October, 1990. This study will extend over a three-month period beginning in October, 1990.

For a copy of the Request for Proposals, contact:

Suzanne Jenkins, Parks and Recreation
Minnesota Department of Natural Resources
500 Lafayette Road-Box 39
St. Paul, Minnesota 55155-4039
(612) 297-1154

State Planning Agency

Request for Proposal for Director of Environmental Compact of the States (ECOS) Project

The Minnesota State Planning Agency is requesting proposals from eligible persons to serve as director of the Environmental Compact of the States (ECOS) Project for the period from August 20, 1990 to January 22, 1990.

The development of an Environmental Compact of the States has been proposed as a way to create an ongoing forum through which states, environmental organizations, the business community, and academia can collaborate to address critical environmental problems which transcend state and national boundaries. The mission of the organization will be to advance cooperative problem-solving and build partnerships among the states and between the public and private sectors to pursue environmental progress. Initial support for the project has been developed. The director of the project will be expected to continue to develop this support, pursue financial support, and work with supporters toward implementation of the proposal.

Qualifications for the position include: knowledge of the ECOS Project; recent experience in working with governors, state and federal legislators, environmental organizations, and the business community (e.g., as a member of a governor's staff or as staff to an organization working with these groups); familiarity with techniques for raising funds for projects; and a demonstrated ability to work with diverse groups and to develop creative solutions to issues which separate these groups.

Minimum tasks to be performed include: developing support for an environmental compact among target groups (e.g., governors, environmental organizations, legislators, and members of the business community), working with foundations to achieve financial support for the continuation of the project, and progress toward an agreement among supporters of the project on the organizational framework for an environmental compact.

Candidates must respond in the form of a written proposal to enter into a contract as required by the Minnesota State Planning Agency. Reimbursement for services will be a maximum of \$30,000 for the period, including travel and expenses. ***Proposals must be received at the State Planning Agency offices prior to 4:30 p.m. on August 20, 1990.***

Written proposals must be submitted to:

Jack Ditmore, Deputy Commissioner
Minnesota State Planning Agency
300 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155

Additional information about the ECOS Project, the duties of the Project Director, and instructions for submitting a proposal are available from the State Planning Agency.

Department of Transportation

Operations Division

Availability of a Contract for Intelligent Vehicle Highway Systems (IVHS) Planning and Program Development

The Minnesota Department of Transportation (Mn/DOT) may engage a consultant for the following:

- to determine the status of IVHS development nationally and worldwide and Mn/DOT's opportunities in IVHS technology research, development, demonstrations, and rapid implementation;
- to help define Mn/DOT's IVHS program, elements, and strategies;
- to propose specific projects to test alternative technologies prior to system wide implementation in the Minneapolis/St. Paul metropolitan area;
- to provide on-site IVHS-training for Mn/DOT's staff members;
- to recommend IVHS policies for program management, public relations, and communications.

The consultant firms selected will be requested to respond to a detailed Request for Proposals (RFP) due about September 20, 1990. The total budgeted amount for this project is \$350,000 and the duration is one year.

A general information meeting regarding details, issues, and considerations of the project is scheduled for August 14, 1990 at 10:30 a.m. to 12:00 noon in room 300N, State Office Building, 100 Constitution Avenue, St. Paul, Minnesota 55155.

Professional, Technical & Consulting Contracts

Technical inquiries should be directed to the following:

Mr. Richard A. Stehr, Director
Office of Traffic Management
Minnesota Department of Transportation
Transportation Building, Room 120
St. Paul, Minnesota 55155
(612) 297-3532

Firms desiring consideration should submit their qualifications along with three copies of their federal forms 254 and 255 to Mr. Gabriel S. Bodoczy, P.E., Consultant Agreements Engineer, Minnesota Department of Transportation, Transportation Building, Room 720S, St. Paul, Minnesota 55155.

Response Deadline—2:00 p.m. August 24, 1990

Office of Waste Management

Notice of Request for Proposals for Development of Plans and Progress Reports on Assisting Businesses With Pollution Prevention Projects

The Minnesota Office of Waste Management (OWM) is a state agency with responsibilities in the area of pollution prevention. The OWM also oversees several programs designed to provide technical and financial assistance to Minnesota businesses seeking to implement technologies and methods to eliminate or reduce releases of toxic pollutants into the environment.

On May 3, 1990, Governor Perpich signed into law the Minnesota Toxic Pollution Prevention Act (to be codified at *Minnesota Statutes* Chapter 115D). The Act defines pollution prevention to mean "eliminating or reducing at the source the use, generation, or release of toxic pollutants, hazardous substances, and hazardous wastes." A variety of programs to assist businesses with pollution prevention projects were created by the Act. In addition, facilities required by the Community Right-to-Know Act to report releases of toxic pollutants must develop a "Toxic Pollution Prevention Plan," and submit an "Annual Progress Report." The OWM and the Minnesota Pollution Control Agency, a separate state agency with environmental protection responsibilities, will perform joint activities to provide guidance and assistance for development of Plans and Progress Reports.

The OWM seeks proposals from qualified firms to assist in development of a manual that will be made available to persons required to prepare Plans and Progress Reports. Specifically, the OWM intends to design and produce a guidance manual to provide practical information that Minnesota businesses can use in developing their Plans and Progress Reports. The actual final design and presentation format of the manual will be completed independently of this RFP.

Scope of Work

The RFP requests that qualified firms submit to the OWM proposals describing, in detail, the tasks that the proposer would conduct to create narratives for inclusion in a manual.

Specific experience in multi-media pollution prevention planning, analysis of prevention practices and activities, and pollution prevention project implementation is desired, as well as expertise in development of manuals, training materials and other written documents for the industrial community.

The OWM expects to enter into a contract in mid-September which will extend to January, 1991.

Response Information and Deadline

Copies of the Request for Proposals are available by contacting:

Kevin J. McDonald
Office of Waste Management
1350 Energy Lane
St. Paul, MN 55108
Telephone: (612) 649-5744

Responses should be submitted to the OWM no later than 4:30 p.m. CST, Monday, August 27, 1990.

Supreme Court Decisions, Opinions & Rules

Decisions Filed 27 July 1990

C1-89-780 Ronald L. Trondson, et al., individually and as Limited Partners of Grand Chicago Limited Partnership v. Duane Janikula, Ronald L. Knuth, 3939 Limited Partnership, Floyd C. Sjostrand, et al., petitioners, Appellants, Clara A. Axberg, et al., Joseph C. Lindseth, et al., Donald J. Erickson, et al., Grand Chicago Partnership, Coin-Controlled Washers, Inc. Court of appeals.

1. Under *Minnesota Rules Civil Procedures* 52.01, the finding by the trial court that the general partner of the limited partnership had authority to convey the partnership's real estate without the consent of the limited partners was not clearly erroneous.
2. Where an assignee purchases the vendor's interest in a contract for deed as an investment rather than taking assignment as security for a debt, the assignee acquires the same rights that the vendor possessed in the contract.

Affirmed in part, reversed in part. Keith, J.

C3-89-828 State Farm Fire & Casualty Co., petitioner, Appellant v. Steven Short, George Keller. Court of Appeals.

1. Jury instructions, on factors to consider when determining whether a family member of the insured is a resident in its household for purposes of household and umbrella insurance coverage, conveyed a fair, clear and correct understanding of the applicable law; therefore trial court's refusal to include an instruction requiring jurors also to consider whether "it is reasonable to conclude that the parties would consider the relationship in contracting about such matters as insurance or in their conduct in reliance thereon" did not constitute error.

2. Although improper statement by counsel, informing the jury of the effect its answer to a special verdict would have on the rights of the parties, is a violation of *Minnesota Rules Civil Procedure* 49.01 (1988), trial court's denial of a motion for new trial does not constitute reversible error when the statement reiterates the purpose of the lawsuit already explained to the jury by both judge and plaintiff's counsel, and the facts fully support the verdict, thus negating any possible influence from passion or prejudice.

Affirmed. Keith, J.

Took no part, Kelly, J.

C0-89-1404 In re Petition for Disciplinary Action against Dean D. Larsen, an Attorney at Law of the State of Minnesota. Supreme Court.

The misconduct warrants disbarment.

Disbarment. Per Curiam.

Orders

C8-87-691 In re the Petition for Disciplinary Action against Robert Munns, an Attorney at Law of the State of Minnesota. Supreme Court.

Indefinite probation. Kelley, J.

Order C1-84-2168 Order Appointing Members to Compensation Council

WHEREAS, *Minnesota Statutes* § 15A.082 directs that a Compensation Council be created each even numbered year to assist the legislature in establishing the compensation of constitutional officers, members of the legislature, justices of the Supreme Court and judges of the Court of Appeals, and district court and authorizes the undersigned to appoint two non-judges as members of the council,

IT IS HEREBY ORDERED that Sidney P. Abramson, Esq., 900 Second Avenue South, #1800, Minneapolis, Minnesota 55402 (telephone no. 349-8202) and Thomas Swain, 385 Washington Street, St. Paul, Minnesota 55102 (telephone no. 221-7032) be, and hereby are appointed members of said council in accordance with the cited statute.

Dated 18 July 1990

BY THE COURT
Peter S. Popovich
Chief Justice

Announcements

Environmental Quality Board (EQB): The EQB is seeking advice on the scope of a statewide study on timber harvesting in the state through a series of public meetings and written comments. The study, a Generic Environmental Impact Statement (GEIS), was commissioned in Dec. 1989. Public meetings will be held: **Monday 30 July 7 p.m.**,

Announcements

Rochester Community College, Charles E. Hill Theater, 851—30th Ave S.E., Rochester, MN; **Tuesday 31 July** 7 p.m. at Blaine High School Auditorium, 12555 University Avenue N.E., Blaine, MN; **Wednesday 1 August** 7 p.m. at the Reif Center, Conifer Drive, Grand Rapids, MN. Interested persons may request a copy of a draft report by calling (612) 296-1424. Written comments will be accepted until 4:30 p.m. on Friday 24 August. • Comments are due August 22 on the following EAWs (environmental assessment worksheets) at their listed regional governing unit: **Shakopee Mdewakanton Sioux Community Big Eagle's Village**, Shakopee Mdewakanton Sioux Community (612) 445-8900; **Starbuck Marina Expansion**, City of Starbuck (612) 239-2533; **Mora Wastewater Treatment Facility**, MPCA (MN Pollution Control Agency) (612) 296-7432; **Devil's Track Airport Improvements-Grand Marais**, Cook County (218) 387-1081; **Mitchell-Pearson Property**, City of Plymouth (612) 550-5000. • Petitions have been received for review of the **Dill Company Fertilizer Facility**, City of Wabasha, William Pfeilsticker, Administrator, P.O. Box 127, Wabasha, MN 55981. • Amendments have been added to the June 30, 1990 Scoping Decision Document issued by the Minn. Dept. of Transportation (MnDOT) for the proposed extension of **Runway 4-22 at the Minneapolis-St. Paul International Airport (MSP)**. For information about these amendments, contact Richard Theisen, MnDOT (612) 296-2552.

New Law on Wells Affects Real Estate Sales: People who buy real estate in Minnesota must now be informed about any water wells that may be on the property—whether those wells are still being used or not. The requirement, part of a new state law that took effect July 1, applies to all types of wells, including water wells. Under the new law, the property owner must provide a formal disclosure statement to the prospective buyer, indicating the location and status of any wells located on the property. The statement must be provided before the parties can sign any agreement to sell or transfer the property. Beginning November 1, the information in the disclosure statement must also be included on a certificate of disclosure—and that document must be filed with the county recorder, along with the deed. It won't be necessary to file a disclosure certificate if no wells are known to exist on the property—but a statement to that effect must be recorded on the deed, when ownership of the property is legally transferred. Disclosure certificate forms will be available before November 1 at county recorders' offices throughout Minnesota. MDH estimates that there may be anywhere from 400,000 to 1.2 million unsealed, abandoned wells in the state. Many of these wells have been left open, or are in a serious state of disrepair—creating a potential health and safety hazard for adults, children, pets and livestock. Property owners are legally responsible for all wells on their property, including any abandoned wells. Abandoned wells must be properly sealed, by a licensed well contractor. Maintenance permits can be obtained for wells that are inoperable and not currently being used, or that are not connected to a power source. The wells must be properly maintained, so they do not endanger human health or safety, or contaminate the groundwater. The permits are available from MDH for a fee of \$50 a year. Well contractors must file a report with MDH after sealing an abandoned well. MDH advises property owners to keep a copy of the report for their own records. More information about the state well abandonment effort is available by calling (612) 627-5146—or by writing to the Well Management Unit, Minnesota Department of Health, 925 Delaware St. S.E., Box 59040, Minneapolis 55459-0040.

Art Guide Available: A new guide, *Art Town*, published by the Metropolitan Council, lists more than 200 non-profit arts organizations. Each listing has the organization's address, phone number and a brief description of activities offered. The guide also provides information on the availability of discounts, group rates, handicap accessibility, sign language interpretation, programs in Braille, bus line accessibility, parking and activities for children. Free copies of *Art Town* can be picked up in St. Paul at the Metropolitan Council (Mears Park Centre, 230 East Fifth St.), at Landmark Center (75 W 5th St.) or at the Town Square Information Booth (7th and Cedar St.); or in Minneapolis at Hennepin Center for the Arts (528 Hennepin Av.). The guide is also available by mail for \$1 by writing the Council's Data Center.

Arts Board Elects New Officers, Solicits Comments: At its regular meeting held on July 19 in Saint Paul, the Minnesota State Arts Board elected the following new officers: Board Chair—**Jim Nardone**, Grand Rapids, Vice-Chair—**Benjamin Vander Kooi, Jr.**, Luverne, Secretary—**Delores Knaak**, White Bear Lake, Member At Large—**Bunny Robinson**, Golden Valley, Immediate Past Chair—**Karen B. Gray** Spring Grove. • The Minnesota State Arts Board is holding several public meetings this summer to gather comments on its programs and services from constituents throughout the state. Information received at these meetings will help the Arts Board prepare its Fiscal Year 1992-93 biennial plan and budget. The meetings will be of particular interest to individual artists, arts educators, arts administrators, volunteers, staff, or board members of arts organizations, or anyone concerned about the future of the arts in Minnesota. The Arts Board is interested in receiving either written or oral responses. Oral presentations will be limited to five minutes, and will be delivered before Arts Board staff and board members, local arts council staff and board members, and the public. People who wish to give oral remarks should call the Arts Board at (612) 297-2603, or toll-free at (800) 652-9747, to reserve a time. Written commentary can be mailed directly to the Arts Board at 432 Summit Ave, St. Paul, MN 55102. Below is the schedule for the Arts Board constituent meetings: **Twin Cities—August 14, 1990—6:00 p.m. to 8:00 p.m.**, Minnesota Museum of Art, Jemne Building, 305 St. Peter Street, Saint Paul, Minnesota; **Rochester—August 15, 1990—6:00 p.m. to 8:00 p.m.**, Rochester Art Center, 320 Center Street East, Rochester, Minnesota; **Duluth—August 16, 1990—5:00 p.m. to 7:00 p.m.**, Duluth Public Library—Gold Room, 520 West Superior Street, Duluth, Minnesota. Two additional meetings are scheduled to address specific issues: **Folk Arts Constituent Meeting—August 17, 1990, 1:30 p.m. to 3:30 p.m.**, Minnesota State Arts Board, 432 Summit Avenue, Saint Paul, Minnesota; **Design Arts Constituent Meeting—Date time, and location to be announced.**

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