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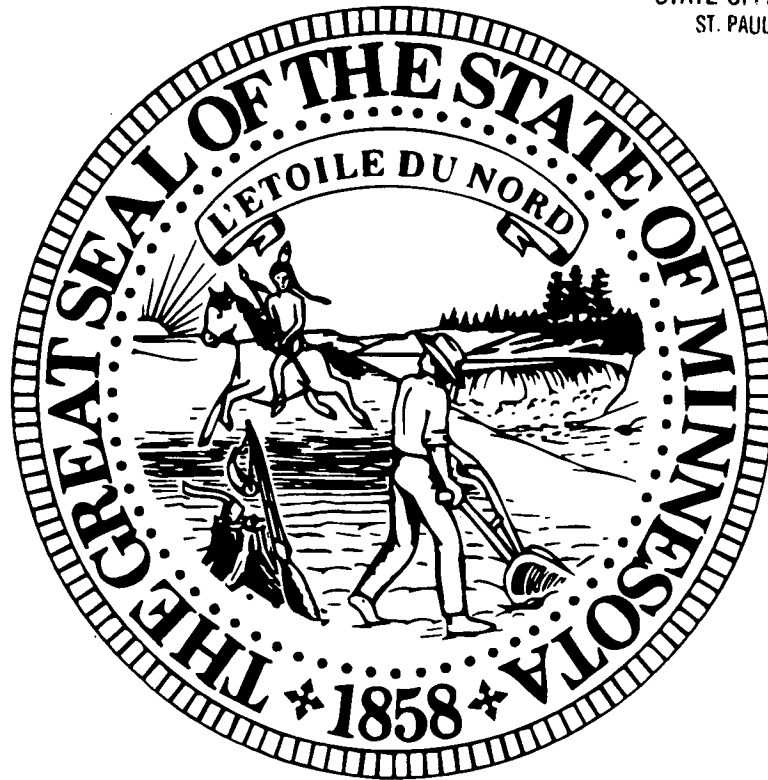
The Minnesota  
**State Register**

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# 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 and revenue notices, professional-technical-consulting contracts, non-state bids and public contracts and grants.

### Printing Schedule and Submission Deadlines

Vol. 21 Issue Number	PUBLISH DATE	Deadline for both Adopted and Proposed RULES	Deadline for: Emergency Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical-Consulting Contracts, Non-State Bids and Public Contracts
# 31	Monday 27 January	Friday 10 January	Friday 17 January
# 32	Monday 3 February	Friday 17 January	Monday 27 January
# 33	Monday 10 February	Monday 27 January	Monday 3 February
# 34	Tuesday 18 February	Monday 3 February	Monday 10 February

Arne H. Carlson, Governor 612/296-3391	Hubert H. Humphrey III, Attorney General 612/297-4272	Joan Anderson Growe, Secretary of State 612/296-2079
Joanne E. Benson, Lt. Governor 612/296-3391	Judi Dutcher, State Auditor 612/297-3670	Michael A. McGrath, State Treasurer 612/296-7091
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- Single issues are available for a limited time: *State Register* \$3.50, *Contracts Supplement* 50¢. Shipping is \$3.00 per order.
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### FOR LEGISLATIVE NEWS

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

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

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

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Professional, Technical and Consulting contract awards are published monthly in an *Awards Report*.

Individual copies and subscriptions for both publications are available through Minnesota's Bookstore, (612) 297-3000 or 1-800-657-3757..

# Minnesota Rules: Amendments and Additions

## 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 80 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. The current 1995 set is a 13-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or a 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 most current edition of 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 issues #1-39; issues #40-51 inclusive; and issues #1-52 (or 53 in some years), cumulative for issues #1-52 (or 53). An annual subject matter index for rules was separately printed usually in August, but starting with Volume 19 now appears in the final issue of each volume. For copies or subscriptions to the *State Register*, contact Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000, or toll-free 1-800-657-3757.

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## Proposed Rules

### Comments on Planned Rules or Rule Amendments

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

### Rules to be Adopted After a Hearing

After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

### Rules to be Adopted Without a Hearing

Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. 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*.

## Department of Health

### Proposed Permanent Rules Governing the Special Supplemental Nutrition Program for Women, Infants, and Children

**DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing are Received**

**Proposed Amendment to Rules Governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program), *Minnesota Rules* 4617.0002 through 4617.0176.**

**Introduction.** The Minnesota Department of Health intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes* sections 14.22 to 14.28, and rules of the Office of Administrative Hearings, *Minnesota Rules* parts 1400.2300 to 1400.2310. If, however, 25 or more persons submit a written request for a hearing on the rules within 30 days or by 4:30 p.m. on February 26, 1997, a public hearing will be held in the Chesley Room (Room 105), Minnesota Department of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55414, starting at 9:30 a.m. on Thursday, March 27, 1997. To find out whether the rules will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after February 26, 1997, and before March 27, 1997.

**Agency Contact Person.** Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to the agency contact person. The agency contact person is: Mary Jarosch, WIC Vendor Unit, Minnesota Department of Health, 717 Delaware Street S.E., P.O. Box 9441, Minneapolis, Minnesota 55440-9441, telephone: 612-623-5505, fax: 612-623-5445. TTY users may call the Minnesota Department of Health at 612-623-5522.

**Subject of Rules and Statutory Authority.** The proposed rules are all of the rules relating to vendors in the WIC Program, including both retail food stores which are vendors and pharmacies which are vendors. The proposed rules also concern the processes by which infant formula and other foods are approved for use in the WIC Program. The statutory authority to adopt the rules is *Minnesota Statutes*, sections 145.894(k) and 144.11. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. on February 26, 1997, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the

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

## Proposed Rules

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comment, and any change proposed. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rules must also be made during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on February 26, 1997. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules to which you object or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and cannot be counted by the agency for determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes* sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, this Notice can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** The proposed rules may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must be supported by data and views submitted to the agency or presented at the hearing and the adopted rules may not be substantially different than these proposed rules. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation of Hearing.** The hearing scheduled for March 27, 1997, will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rules. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call the agency contact person at 612-623-5505 after February 26, 1997 to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit written requests for a public hearing on the rules, a hearing will be held following the procedures in *Minnesota Statutes* sections 14.131 to 14.20. The hearing will be held on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Steve M. Mihalchick is assigned to conduct the hearing. Judge Mihalchick can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone 612/349-2544 and fax 612/349-2665.

**Hearing Procedure.** If a hearing is held, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Following the comment period, there is a five-working-day response period during which the agency and any interested person may respond in writing to any new information submitted. No additional evidence may be submitted during the five-day response period. All comments and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules* parts 1400.2000 to 1400.2240, and *Minnesota Statutes* sections 14.131 to 14.20. Questions about procedure may be directed to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment or response period also submit a copy of the written views or data to the agency contact person at the address stated above.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency contact person. This statement contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. The statement may also be reviewed and copies obtained at the cost of reproduction from either the agency or the Office of Administrative Hearings.

**Lobbyist Registration.** *Minnesota Statutes* chapter 10A, requires each lobbyist to register with the State Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at: First Floor South, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 612/296-5148 or 1-800-657-3889.

**Adoption Procedure if No Hearing.** If no hearing is required, the agency may adopt the rules after the end of the comment period. The rules and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

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## Proposed Rules

**Adoption Procedure After a Hearing.** If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date when the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date on which the agency adopts the rules and files them with the Secretary of State, and can make this request at the hearing or in writing to the agency contact person stated above.

**ORDER.** I order that the rulemaking hearing be held at the date, time, and location listed above.

Dated: 3 January 1997

Anne M. Barry  
Minnesota Commissioner of Health

### 4617.0002 DEFINITIONS.

[For text of subs 1 and 2, see M.R.]

Subp. 2a. [See repealer.]

[For text of subs 2b to 3, see M.R.]

**Subp. 3a. Business-related violation.** "Business-related violation" means a criminal conviction of a person, or a civil judgment rendered against a person, for violating one or more federal or state antitrust statutes, committing embezzlement, fraud, theft, bribery, or falsification or destruction of records, making one or more false statements, or receiving stolen property, whether the conviction or judgment is based on a verdict, plea, stipulation, or settlement agreement.

**Subp. 3b. Business site.** "Business site" means the specific location, as designated by an address, of the real property where a vendor or vendor applicant operates.

**Subp. 3c. Cashier.** "Cashier" means an individual who accepts vouchers on behalf of a vendor.

[For text of subs 4 to 6, see M.R.]

**Subp. 6a. Change of ownership.** "Change of ownership" means a sale or other transaction which results in at least one new owner of a vendor.

**Subp. 6b. Check-out lane.** "Check-out lane" means a distinct physical location within the vendor's established business site, with a separate operational cash register capable of generating receipts, where a customer can purchase items.

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

**Subp. 7a. Citrus juice.** "Citrus juice" means orange juice, grapefruit juice, or a combination of orange and grapefruit juices.

**Subp. 8. Clinic area town.** "Clinic area town" means a town or city in which a person is certified the local agency distributes vouchers to participants and proxies, or where participants are certified, or both.

[For text of subs 9 and 10, see M.R.]

**Subp. 12. Competent professional authority.** "Competent professional authority" means a person who meets the requirements of part 4617.0035, subpart 1, and who is qualified to determine nutritional risk, assign applicant priorities to program participant applicants, prescribe supplemental foods, and provide a nutrition education contact.

Subp. 12a. [See repealer.]

**Subp. 12b. Controlling person.** "Controlling person" means any owner or any person who, directly or indirectly, has the power to direct the management or control the activities of the vendor or vendor applicant, including any officer, director, or general partner of the vendor or vendor applicant.

[For text of subs 13 and 14, see M.R.]

**Subp. 14a. Disqualification.** "Disqualification" of a vendor from the Minnesota WIC program means the act of making the vendor, for a period of time, ineligible to participate or apply to participate as a vendor in the Minnesota WIC program.

**Subp. 14b. Expired or damaged food.** "Expired or damaged food" means a food item which is in stock and available for purchase after the date stamped on the food item, or is dented, rusted, unlabeled or otherwise damaged, or has become moldy or otherwise spoiled.

**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

**Subp. 14c. Food assistance program.** "Food assistance program" means the WIC program, the Food Stamp Program, or any other food and consumer service program in Minnesota or in any other state, district, commonwealth or territory of the United States.

**Subp. 14d. Food item.** "Food item" means a specific brand, variety, and size of a food product.

**Subp. 14e. Food product.** "Food product" means any category of food in part 4617.0067, subpart 3, item A or B, and any other category of food which meets the requirements of Code of Federal Regulations, title 7, section 246.10(c), as amended.

[For text of subs 15 and 16, see M.R.]

Subp. 16a. [See repealer.]

[For text of subs 17 and 17a, see M.R.]

**Subp. 17b. Incentives.** "Incentives" means goods or services, in addition to the food products specified on a voucher, offered or provided to a WIC customer who redeems a voucher at a particular vendor.

[For text of subs 18 and 19, see M.R.]

**Subp. 19a. Infant formula.** "Infant formula" means any food item formulated to replace human breast milk. The term infant formula includes the formulas specified in part 4617.0067, subpart 3, item B, subitems (1) to (4), and all special infant formulas.

[For text of subs 20 and 21, see M.R.]

**Subp. 21a. Management representative.** "Management representative" means an individual who is responsible for training personnel of the vendor or vendor applicant in the procedures for accepting WIC vouchers.

[For text of subs 22 to 24, see M.R.]

Subp. 24a. [See repealer.]

[For text of subs 25 and 26, see M.R.]

Subp. 26a. [See repealer.]

**Subp. 27. Ongoing, routine obstetric care.** "Ongoing, routine obstetric care" means a comprehensive continuation of care from antepartum care through a postpartum review and examination, as provided in the Standards for Obstetric-Gynecologic Services, American College of Obstetricians and Gynecologists, sixth seventh edition, 1985 1989, chapter 2. This document is incorporated by reference, is not subject to frequent change, can be found in the Minnesota Department of Health library, and is available through the Minitex interlibrary loan system.

[For text of sub 28, see M.R.]

**Subp. 28a. Owner.** "Owner" means any person who, directly or indirectly, beneficially owns a 20 percent or greater interest in any vendor or vendor applicant, or in any partnership, joint venture, association, corporation, or otherwise organized business entity which directly or indirectly has the power to direct the management or control the activities of the vendor or vendor applicant.

**Subp. 28b. Participant.** "Participant" means a pregnant woman, breast-feeding woman, postpartum woman, infant, or child who is receiving WIC-approved WIC-allowed foods or vouchers from a local agency, or an infant being breast-fed by a woman who is receiving vouchers from a local agency.

**Subp. 28c. Participant hardship.** "Participant hardship" exists in an area if the participants in the area cannot be served by the authorized vendors in the area.

[For text of sub 29, see M.R.]

**Subp. 30. Person.** "Person" includes means an individual, partnership, joint venturer, association, corporation or otherwise organized business entity, or combination of them.

**Subp. 31. Pharmacy vendor.** "Pharmacy vendor" means a vendor that is also a business registered by the Minnesota Board of Pharmacy in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or retailed.

**Subp. 31a. Pharmacy vendor.** "Pharmacy vendor" means a vendor that is a pharmacy.

**Subp. 31b. Pharmacy vendor applicant.** "Pharmacy vendor applicant" means any pharmacy which has applied to the commissioner to be a pharmacy vendor, including any currently authorized pharmacy vendor which has applied to continue as a pharmacy vendor and any pharmacy which has applied for an immediate vendor agreement under part 4617.0066, subpart 3.

[For text of subs 32 to 37, see M.R.]

**Subp. 37a. Region.** "Region" means a geographical grouping of contiguous counties as specified in this subpart:

A. "Region 1" is comprised of Hennepin county.

B. "Region 2" is comprised of the following counties: Aitkin, Carlton, Cass, Chisago, Cook, Crow Wing, Isanti, Itasca, Kanabec, Koochiching, Lake, Mille Lacs, Pine, and St. Louis.



C. "Region 3" is comprised of the following counties: Big Stone, Blue Earth, Brown, Chippewa, Cottonwood, Dodge, Faribault, Fillmore, Freeborn, Houston, Jackson, Kandiyohi, Lac Qui Parle, Lincoln, Lyon, Martin, Mower, Murray, Nobles, Olmsted, Pipestone, Redwood, Renville, Rock, Steele, Swift, Waseca, Watonwan, Winona, and Yellow Medicine.

D. "Region 4" is comprised of the following counties: Anoka, Ramsey, and Washington.

E. "Region 5" is comprised of the following counties: Becker, Beltrami, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomon, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stevens, Traverse, Wadena, and Wilkin.

F. "Region 6" is comprised of the following counties: Benton, Carver, Dakota, Goodhue, Le Sueur, McLeod, Meeker, Morrison, Nicollet, Rice, Scott, Sherburne, Sibley, Stearns, Todd, Wabasha, and Wright.

Subp. 37b. Regional review period. "Regional review period" means the designated time, with respect to a particular region, during which the commissioner reviews vendor applications from vendor applicants located in that region, under part 4617.0065, subpart 5.

[For text of subp 38, see M.R.]

Subp. 39. [See repealer.]

Subp. 39a. Retail food store. "Retail food store" means a store which sells food at retail directly to consumers other than WIC customers.

Subp. 40. Retail food vendor. "Retail food vendor" means a vendor that is a grocer located in Minnesota whose primary purpose is to sell food at retail directly to the consumer according to Minnesota Statutes, section 28A.04 retail food store.

Subp. 40a. [See repealer.]

Subp. 40b. Retail food vendor applicant. "Retail food vendor applicant" means any retail food store which has applied to the commissioner to be a retail food vendor, including any currently authorized retail food vendor which has applied to continue as a retail food vendor and any retail food store which has applied for an immediate vendor agreement under part 4617.0066, subpart 3.

Subp. 40c. Special infant formula. "Special infant formula" means any infant formula specified on a voucher, other than the infant formula specified in part 4617.0067, subpart 3, item B, subitems (1) to (4).

Subp. 40d. Tier 1 county. "Tier 1 county" means a Minnesota county in which the total population is 250,000 or more according to the most recent State of Minnesota or United States census or estimated update as compiled by the state demographer.

Subp. 40e. Tier 2 county. "Tier 2 county" means a Minnesota county in which the total population is less than 250,000 according to the most recent State of Minnesota or United States census or estimated update as compiled by the state demographer.

[For text of subp 41, see M.R.]

Subp. 42. Vendor. "Vendor" means a person that owns a pharmacy or food business for which a vendor stamp has been issued by the commissioner and that is in compliance with this chapter retail food store, a pharmacy, or a store which is both a retail food store and pharmacy, which has been authorized by the commissioner to provide WIC-allowed foods to WIC customers in exchange for vouchers.

Subp. 42a. Vendor applicant. "Vendor applicant" means a retail food store, a pharmacy, or a store which is both a retail food store and pharmacy, which has applied to the commissioner to be a vendor, including any currently authorized vendor which has applied to continue as a vendor and any retail food store or pharmacy which has applied for an immediate vendor agreement under part 4617.0066, subpart 3.

Subp. 42b. Vendor application. "Vendor application" means all information and documentation submitted to the commissioner by a vendor applicant under part 4617.0065; 4617.0066, subpart 3; or 4617.0069.

Subp. 43. Vendor stamp. "Vendor stamp" means a stamp with a number on the imprint face of the stamp that is issued by the commissioner to a vendor to authorize that vendor to accept WIC vouchers an ink stamp issued to a vendor by the commissioner with a unique number identifying that vendor, which the vendor uses under part 4617.0070.

[For text of subp 44, see M.R.]

Subp. 44a. [See repealer.]

Subp. 44b. ~~WIC approved~~ WIC-allowed foods. "~~WIC approved~~ WIC-allowed foods" means special infant formula, and foods approved by the commissioner pursuant to under this chapter for purchase with WIC vouchers.

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Subp. 44c. **WIC authorization folder.** “WIC authorization folder” means a document issued by a local agency to a participant or proxy which contains eligibility information on a participant and contains the signatures of all individuals authorized to sign vouchers issued to the participant.

Subp. 44d. **WIC customer.** “WIC customer” means a participant in the WIC program, a proxy, or a representative of the commissioner posing as a participant or proxy.

Subp. 44e. **WIC food center.** “WIC food center” means a site at which the commissioner or a nonprofit agent of the commissioner distributes WIC-allowed foods directly to WIC customers under Code of Federal Regulations, title 7, subtitle B, chapter II, subchapter A, part 246, subpart E, section 246.12(t), as amended.

Subp. 45. **WIC program.** “WIC program” means the Special Supplemental Food Nutrition Program for Women, Infants, and Children administered by the United States Department of Agriculture under United States Code, title 42, section 1786, as amended.

### **4617.0059 RETAIL FOOD VENDOR LIMITATION CRITERIA.**

**Subpart 1. Determining maximum number of retail food vendors.** Before the first day of each applicable regional review period, the commissioner shall establish a maximum number of retail food vendors for each county within that region, according to this subpart.

A. The minimum number of participants per vendor for each Tier 1 county shall be 120.

B. The minimum number of participants per vendor for each Tier 2 county shall be 60.

C. The maximum number of retail food vendors for each county shall be calculated by dividing the number of participants in that county by the applicable minimum number of participants per vendor for that county, rounded up to the nearest whole number, except as provided in part 4617.0069, subpart 4, and the maximum number of retail food vendors for each county shall not be less than the number of clinic towns in that county.

**Subp. 2. Process for selection of retail food vendors.** When required by parts 4617.0065, subpart 5, item C, subitem (2), unit (a), and 4617.0069, subpart 2, item B, the commissioner shall follow the process in this subpart.

A. When selecting which retail food vendor applications to approve, the commissioner’s decision must be based on the following factors:

(1) the geographic accessibility to participants as indicated by:

(a) whether the vendor applicant is located in a clinic town;

(b) the number of participants residing in geographic proximity to the vendor applicant;

(c) the proximity of the vendor applicant to other eligible retail food vendor applicants; and

(d) the availability of public roads and public transportation between the vendor applicant and participants;

(2) the business history, as indicated by:

(a) whether any controlling person of the vendor applicant has had a business-related violation;

(b) whether the vendor applicant has ever been disqualified or suspended from any food assistance program, or has ever been assessed a civil money penalty in lieu of disqualification or suspension from any food assistance program;

(c) whether any controlling person of the vendor applicant has ever been a controlling person of any retail food store or pharmacy disqualified or suspended from any food assistance program, or has ever been a controlling person of a retail food store or pharmacy assessed a civil money penalty in lieu of disqualification or suspension from any food assistance program;

(d) the proportion of WIC vouchers improperly presented for payment by the vendor applicant during each of the most recent 12 months for which voucher presentment information is available for review, if the vendor applicant is a retail food vendor or was a retail food vendor at any time during the previous two years. For the purpose of this unit, a voucher has been improperly presented for payment if its price exceeds the maximum price printed on the voucher, if it does not include the legible imprint of the vendor stamp, if it does not include the signature of a WIC customer authorized to sign the voucher, if the vendor accepted the voucher before the first-day-to-use date or after the last-day-to-use date, or if any of the information on the voucher has been altered; and

(e) the history of class B and class C violations committed by the vendor applicant during the previous two years, if the vendor applicant is or has been a retail food vendor;

(3) the availability of WIC-allowed foods, as indicated by:

(a) the variety and quantity of WIC-allowed foods stocked by the vendor applicant; and

(b) the number of the vendor applicant’s WIC-allowed food items available for purchase which are expired or damaged foods; and

(4) the cost of WIC-allowed foods as indicated by the vendor applicant's prices for the foods listed in part 4617.0067, subpart 3, item A.

B. The commissioner shall select for approval at least one retail food vendor application in each clinic town.

**4617.0065 VENDOR APPLICATION PROCESS.**

Subpart 1. Applicability. This part applies to all vendor applications except applications for immediate vendor agreements under part 4617.0066, subpart 3. If a vendor applicant is applying to be both a pharmacy vendor and a retail food vendor:

A. the applicant need only submit one application; however, the commissioner shall treat the application as if the applicant had submitted an application to be a pharmacy vendor separate from the application to be a retail food vendor; and

B. the commissioner shall approve or disapprove the applicant as a retail food vendor, and shall approve or disapprove the vendor applicant as a pharmacy vendor, according to this part.

Subp. 2. Application.

A. Each vendor applicant shall complete and submit to the commissioner an application form, supplied by the commissioner, which contains the following information:

(1) name of the applicant;

(2) mailing address and location of the applicant's business site;

(3) whether the applicant is seeking to be a retail food vendor, a pharmacy vendor, or both;

(4) names and current addresses of all controlling persons of the applicant;

(5) hours of operation of the applicant;

(6) if the applicant is a retail food vendor applicant, then the price, size, quantity, and variety information on WIC-allowed foods stocked by the applicant;

(7) other information requested by the commissioner which relates to whether the applicant is in compliance with all applicable vendor eligibility requirements in part 4617.0067; and

(8) the signature of an authorized representative of the applicant, attesting that the information in the application is true and correct to the best of the authorized representative's knowledge and belief.

B. Each vendor applicant shall submit to the commissioner documentation described in this item.

(1) A retail food vendor applicant must submit to the commissioner:

(a) if the applicant is located in Minnesota:

i. a copy of the Minnesota Food Handler License for the store, as required by Minnesota Statutes, section 28A.04; or

ii. if the store has applied for but not yet received a Minnesota Food Handler License, a copy of the receipt for the license; and

(b) a copy of all other applicable government licenses, or, if the store has applied for but not yet received all other applicable government licenses, a copy of all licenses received and the receipts for all licenses not yet received.

(2) A pharmacy vendor applicant must submit to the commissioner a copy of all applicable government licenses and registrations.

C. Upon request by the commissioner, a vendor applicant must submit to the commissioner all additional information necessary to support or clarify information submitted under items A and B.

Subp. 3. Submission deadlines for applications. The commissioner must receive a vendor applicant's vendor application on or before the first business day of the applicable regional review period specified in subpart 4. If the commissioner receives the application, other than a resubmitted application as permitted in subpart 5, item A, subitem (1), after the first business day of the applicable regional review period, then the commissioner shall disapprove the application.

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## Proposed Rules

Subp. 4. Regional review periods. The commissioner shall review vendor applications during the following regional review periods:

- A. January 1 to April 30 of even-numbered years if the applicant is located in Region 1;
- B. May 1 to August 31 of even-numbered years if the applicant is located in Region 2;
- C. September 1 to December 31 of even-numbered years if the applicant is located in Region 3;
- D. January 1 to April 30 of odd-numbered years if the applicant is located in Region 4;
- E. May 1 to August 31 of odd-numbered years if the applicant is located in Region 5; and
- F. September 1 to December 31 of odd-numbered years if the applicant is located in Region 6.

Subp. 5. Application review and approval process. The commissioner shall, in accordance with this subpart, review vendor applications which have not been disapproved under subpart 3.

A. The commissioner shall perform an initial office review of each application to determine whether the application is complete and the applicant meets all applicable eligibility requirements in part 4617.0067.

(1) If the commissioner determines during the initial office review of the application that the application is incomplete or that the applicant's prices, stock, or hours of operation do not comply with the applicable requirements of part 4617.0067, then the commissioner shall give the applicant one opportunity to complete and modify the application and resubmit it to the commissioner, unless subitem (2) applies. The commissioner must, unless subitem (2) applies, advise the applicant in writing of the portions of the application which the commissioner has determined to be incomplete or not in compliance with the applicable pricing, stock, or hours of operation requirements in part 4617.0067.

(a) The commissioner must receive any resubmitted application within 15 business days after the date the commissioner mailed the notice advising the applicant of the need to complete or modify the application.

(b) The commissioner shall disapprove a resubmitted application if:

- i. the resubmitted application is still incomplete;
- ii. based on all information available to the commissioner at the time of reviewing the resubmitted application, the application does not meet all applicable eligibility requirements in part 4617.0067; or
- iii. the applicant did not resubmit the application by the deadline in unit (a).

(2) If the commissioner determines during the initial office review of the application that the applicant does not meet an applicable eligibility requirement in part 4617.0067, subpart 4, item B, C, or F; or 6, the commissioner shall disapprove the application.

(3) If, based on all information available to the commissioner at the time of the initial office review of the application or the review of a vendor application resubmitted in accordance with subitem (1), the applicant meets all applicable eligibility requirements in part 4617.0067, then:

(a) if the applicant is a pharmacy vendor, the commissioner shall approve the application;

(b) if the applicant is not a vendor, the commissioner shall conduct an unannounced on-site inspection according to item B; or

(c) if the applicant is a retail food vendor, the commissioner shall follow the procedures in item C.

B. When required by item A, subitem (3), the commissioner shall conduct an unannounced on-site inspection of the applicant to verify the information in the application and to verify that the applicant is in full compliance with part 4617.0067:

(1) If the on-site inspection shows that the applicant is not in full compliance with part 4617.0067, then:

(a) if the applicant is a retail food vendor applicant, the commissioner shall notify the applicant in writing that the applicant has ten business days from the date of the written notice to bring the applicant into full compliance with part 4617.0067, and the commissioner shall conduct a second unannounced on-site inspection no sooner than 11 business days after the date of this written notice; or

(b) if the applicant is a pharmacy vendor applicant, the commissioner shall disapprove the application.

(2) If the on-site inspection of a pharmacy vendor applicant shows that the applicant is in full compliance with part 4617.0067, then the commissioner shall approve the application.

(3) If the applicant is a retail food vendor applicant and either the initial or second unannounced on-site inspection under this item shows that the applicant meets all applicable eligibility requirements in part 4617.0067, then the commissioner shall follow the procedures in item C.

(4) If the second unannounced on-site inspection under subitem (1), unit (a), shows that the retail food vendor applicant does not meet all applicable eligibility requirements in part 4617.0067, then the commissioner shall disapprove the application.

C. This item applies to all retail food vendor applicants which are in full compliance with part 4617.0067.

(1) For the purpose of this item, a retail food vendor applicant is in full compliance with part 4617.0067 if:

(a) the applicant is a retail food vendor whose initial application or application resubmitted according to item A, subitem (1), shows that the applicant meets all applicable eligibility requirements in part 4617.0067; or

(b) either the initial or second unannounced on-site inspection of the retail food vendor applicant under item B shows that the applicant meets all applicable eligibility requirements of part 4617.0067.

(2) If an applicant is a retail food vendor applicant which is in full compliance with part 4617.0067, then:

(a) if the applicant is located in a county in which the total number of retail food vendor applicants in full compliance with part 4617.0067 exceeds the maximum number of retail food vendors for the county, as calculated according to part 4617.0059, subpart 1, then the commissioner shall follow the selection process in part 4617.0059, subpart 2; or

(b) if the applicant is located in a county in which the total number of retail food vendor applicants in full compliance with part 4617.0057 is less than or equal to the maximum number of retail food vendors for the county, as calculated according to part 4617.0059, subpart 1, then the commissioner shall approve the application.

Subp. 6. Notification of status of application. No later than the last day of the applicable review period, the commissioner shall inform each vendor applicant in writing of the commissioner's approval or disapproval of the application. A notice of disapproval must state the reasons for the commissioner's disapproval.

Subp. 7. Mandatory training of vendor management representative.

A. If a vendor's application is approved, then at least one management representative of that applicant must complete a WIC-approved training course specified by the commissioner, sign a training verification form provided by the commissioner to verify completion of the WIC-approved training course, and submit this signed training verification form to the commissioner.

B. If a management representative of the vendor applicant has completed a WIC-approved training course within one year before the end of the applicable regional review period and has signed and submitted to the commissioner a training verification form provided by the commissioner to verify completion of the training, then the requirements of item A shall not apply.

Subp. 8. Execution of vendor agreement.

A. Upon the commissioner's verification of the vendor applicant's compliance with subpart 7, the commissioner shall mail or deliver to the applicant a vendor agreement. The applicant shall submit the vendor agreement, signed by the applicant according to part 4617.0075, to the commissioner by the deadline specified by the commissioner. This deadline shall be no sooner than 14 days after the commissioner mails or delivers the vendor agreement to the applicant. Upon receipt of a timely signed and submitted vendor agreement, the commissioner shall:

(1) execute the vendor agreement; and

(2) issue the applicant a vendor stamp unless the applicant already has a valid vendor stamp.

B. If the applicant fails to submit the signed vendor agreement by the specified deadline, the commissioner shall not execute the vendor agreement or issue the applicant a vendor stamp, and the applicant shall not be authorized to accept WIC vouchers.

Subp. 9. Additional grounds for disapproval. Notwithstanding subpart 5, the commissioner shall disapprove a vendor application if:

A. the applicant does not comply with all applicable requirements in part 4617.0067 at any time between the final unannounced on-site inspection under subpart 5, item B, and the commissioner's execution of a new vendor agreement;

B. the applicant is a retail food vendor applicant which does not comply with the requirement in part 4617.0067, subpart 2, item B, by the date the applicant signs any vendor agreement; or

C. the applicant provides the commissioner with false or misleading material information:

(1) on the application; or

(2) in any other manner after the application is submitted but before the commissioner's execution of a new vendor agreement.

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### 4617.0066 CHANGE OF OWNERSHIP, NAME, OR BUSINESS SITE.

Subpart 1. Notice of change of ownership, name, or business site. A vendor must submit to the commissioner a written notice of a change of ownership or a change of name or business site. This notice must be received by the commissioner prior to the effective date of the change.

Subp. 2. Effect of change of ownership or business site. The vendor agreement shall be immediately null and void if there is a change of vendor ownership or business site, and the vendor stamp must be returned to the commissioner within five business days after the effective date of the change.

Subp. 3. Immediate vendor agreement. If a vendor agreement is rendered null and void under subpart 2, then the retail food store or pharmacy which had been a vendor under the voided agreement may apply for an immediate vendor agreement under this subpart as long as the retail food store or pharmacy has not changed its business site to a different county.

A. The application for an immediate agreement must include, at a minimum, the materials specified in part 4617.0065, subpart 2.

B. The commissioner shall approve the application for an immediate vendor agreement if:

(1) the vendor, during the two years immediately preceding the change of ownership or change of business site, had no history of sanctions under Minnesota Rules 1995, part 4617.0085 and no history of any Class A or Class B violations under part 4617.0086;

(2) during the most recent 12 months for which voucher redemption information is available for the commissioner's review, the vendor under the voided agreement redeemed WIC vouchers in an average total amount of:

(a) at least \$150 per month if the vendor is located in a Tier 1 county; or

(b) at least \$100 per month if the vendor is located in a Tier 2 county.

Subitem (2) does not apply if:

i. the vendor under the voided agreement was the only vendor in a clinic town;

ii. the vendor applicant is not a retail food vendor applicant; or

iii. under part 4617.0069, subpart 1, the commissioner determines that participant hardship exists in the particular area where the vendor applicant is located;

(3) the vendor applicant has not accepted and has not held itself out as able to accept a WIC voucher at any time when there was not a fully executed vendor agreement in effect between the applicant and the commissioner;

(4) the vendor applicant meets all applicable eligibility requirements under part 4617.0067; and

(5) the commissioner has not previously approved an immediate vendor agreement for the same retail food store or pharmacy at any time since the first day of the most recent regional review period under part 4617.0065, subpart 4, for the region in which the retail food store or pharmacy is located.

C. If a retail food store or pharmacy which is applying for an immediate vendor agreement does not meet all the requirements in item B, then the commissioner shall deny the application for an immediate vendor agreement.

D. If the commissioner approves an application for an immediate vendor agreement, then the commissioner and the applicant shall comply with part 4617.0065, subpart 7, and, with respect to the immediate vendor agreement, part 4617.0065, subpart 8. The immediate vendor agreement shall expire on the same expiration date stated on the voided vendor agreement. The immediate vendor agreement shall be effective no sooner than the effective date of the change of ownership or change of business site.

E. Notwithstanding item B, the commissioner shall disapprove an application for an immediate vendor agreement if:

(1) the applicant does not comply with all applicable requirements in part 4617.0067 before the commissioner executes the immediate vendor agreement;

(2) a retail food vendor applicant does not comply with the requirement in part 4617.0067, subpart 2, item B, by the date the applicant signs the immediate vendor agreement; or

(3) the applicant provides the commissioner with false or misleading material information.

### 4617.0065 4617.0067 VENDOR ELIGIBILITY CRITERIA REQUIREMENTS.

Subpart 1. Requirement Applicability to vendor applicants. To be eligible as a vendor, a vendor applicant shall comply with subparts 2 to 5. A pharmacy vendor applicant shall at all times comply with the requirements in subparts 2, item C; 4; and 6. A retail food vendor applicant shall at all times comply with the requirements in subparts 2, item A, and 3 to 6, and shall comply with the requirement in subpart 2, item B, no later than the date the applicant signs any vendor agreement.

**Subp. 2. Location, licensing, and registration requirements.**

A. Except as provided in part 4617.0069, subpart 3, item A, a retail food vendor must be a retail food store located in Minnesota.

B. Except as provided in part 4617.0069, subpart 3, item A, a retail food vendor must be licensed by the Minnesota commissioner of agriculture according to *Minnesota Statutes*, chapter 28A.

C. Except as provided in part 4617.0069, subpart 3, item B, a pharmacy vendor must be a pharmacy located in Minnesota which is registered by the Minnesota Board of Pharmacy according to *Minnesota Statutes*, chapter 151.

**Subp. 3. Minimum in-stock food requirements for retail food vendors.**

A. A retail food vendor located in a Tier 2 county shall at all times keep have in stock at least the authorized foods in item A or B.

A. A retail food vendor shall keep in stock at least:

(1) 31 13-ounce cans of concentrated iron fortified infant formula of the brand specified on the voucher;

(2) three eight-ounce containers and available for purchase, at a minimum:

(1) 31 containers of milk-based concentrated infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171, or 31 containers of soy-based concentrated infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(2) nine containers of milk-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171, or nine containers of soy-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(3) 24 ounces of WIC-allowed plain, dry, infant cereal in any combination of at least two varieties;

(3) 15 4-ounce or 4.2-ounce jars (4) 60 ounces of pure, unsweetened, WIC-allowed infant juice in any combination of at least two varieties;

(4) (5) ten gallons of unsweetened, unflavored, WIC-allowed fluid whole, lowfat, or skim cow's milk in gallon or half-gallon containers in any combination of at least two of the following varieties:

(a) skim or nonfat;

(b) one percent milkfat;

(c) two percent milkfat; and

(d) whole;

(5) (6) three pounds of WIC-allowed domestic cheese in blocks that do not exceed one pound packages of at least one-half pound each, in any combination of at least two varieties;

(6) 72 ounces of cereal in any combination of at least four varieties;

(7) 12 six-ounce or six 12-ounce containers of frozen concentrate juice or six 46-ounce cans of single concentrate juice in any combination of at least two varieties;

(8) (7) four one-dozen containers of medium or large WIC-allowed fresh eggs; and

(9) two one-pound containers (8) 28 ounces of WIC-allowed dried legumes in two varieties, which do not contain any added ingredients;

(9) 36 ounces of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam, or chocolate;

(10) two pounds of WIC-allowed fresh or frozen carrots, or canned carrots packed in water;

(11) 26 ounces of WIC-allowed canned tuna fish;

(12) three 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate 100 percent citrus juice, or three 46-ounce containers of WIC-allowed pure and unsweetened 100 percent citrus juice;

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(13) three 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate juice which is not 100 percent citrus juice, or three 46-ounce containers of WIC-allowed pure and unsweetened juice which is not 100 percent citrus juice; and

(14) 72 ounces of WIC-allowed cereal in any combination of at least four varieties.

**B. A pharmacy vendor shall keep in stock at least:**

(1) the foods under item A, subitems (1) to (3); and

(2) within three business days of a request from a participant or a local agency, any of the following products: Alimentum; Enfamil low-iron; Ensure; Isocal; Isomil SF; Nursoy; Nutramigen; Osmolite; PediaSure; Portagen; Pregestimil; Prosobee; Similac low-iron; Similac PM 60/40; Similac Special Care with Iron 24; SMA low-iron; Sustacal; and Sustacal HC.

**Subp. 3. Restricted pharmacy vendor.** A restricted pharmacy vendor shall not redeem a voucher for authorized foods listed in subpart 2, item A.

**B. A retail food vendor located in a Tier 1 county shall at all times have in stock and available for purchase, at a minimum:**

(1) 31 containers of milk-based concentrated infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(2) 31 containers of soy-based concentrated infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(3) nine containers of milk-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(4) nine containers of soy-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;

(5) 48 ounces of WIC-allowed plain, dry, infant cereal;

(6) 120 ounces of pure, unsweetened, WIC-allowed infant juice;

(7) 15 gallons of unsweetened, unflavored, WIC-allowed fluid cow's milk in gallon or half-gallon containers in any combination of at least two of the following varieties:

(a) skim or nonfat;

(b) 1 percent milkfat;

(c) 2 percent milkfat; and

(d) whole;

(8) four pounds of WIC-allowed domestic cheese in packages of at least one-half pound each, in any combination of at least two varieties;

(9) six one-dozen containers of WIC-allowed fresh eggs;

(10) 42 ounces of WIC-allowed dried legumes, which do not contain any added ingredients;

(11) 54 ounces of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam, or chocolate;

(12) two pounds of WIC-allowed fresh or frozen carrots, or canned carrots packed in water;

(13) 26 ounces of WIC-allowed canned tuna fish;

(14) six 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate 100 percent citrus juice, or six 46-ounce containers of WIC-allowed pure and unsweetened 100 percent citrus juice;

(15) six 12-ounce containers of WIC-allowed pure and unsweetened frozen concentrate juice which is not 100 percent citrus juice, or six 46-ounce containers of WIC-allowed pure and unsweetened, juice which is not 100 percent citrus juice; and

(16) 108 ounces of WIC-allowed cereal in any combination of at least four varieties.

**C. In determining the amounts and varieties of foods in stock and available for purchase, a retail food vendor may not include any expired or damaged foods or any food which originated from the Commodity Supplemental Food Program.**

**Subp. 4. Operating Additional requirements.** A vendor ~~All vendors~~ shall comply with the following operating requirements:

**A. A vendor shall operate must be open to the public for business at least Monday to Friday through Saturday, 10 a.m. to 4:30 p.m., unless the commissioner determines that the vendor needs to be open for business during different hours because of a religious or cultural reason.**

**B. A vendor shall allow the commissioner access to vouchers that are present in the store on the day of an on-site monitoring visit.**



B. A vendor shall must operate at an established one business site, or on an established business route using route lists that the vendor shall submit to the commissioner by October 1, January 1, April 1, and July 1 of each year located at a fixed and permanent location.

C. One or more of the controlling persons of the vendor must own or lease the real estate on which the vendor is located.

D. Employees who accept vouchers for the vendor must be able to demonstrate their ability to read and understand a voucher.

E. A vendor must ensure that the price charged for each WIC-allowed food stocked by the vendor is displayed for easy viewing or marked on the food. If the vendor charges WIC customers less than the vendor's usual and customary charge, the WIC customer price must be displayed for easy viewing or marked on the food.

F. A vendor must ensure that no controlling person of the vendor and no spouse, child, or parent of any controlling person of the vendor:

(1) is employed by the Minnesota Department of Health in connection with the WIC program;

(2) is employed by the local agency in whose jurisdiction the vendor is located; or

(3) has a direct or indirect financial interest in the local agency in whose jurisdiction the vendor is located.

Subp. 5. Vendor prices. A retail food vendor's total price for the minimum amount of authorized foods in subpart 2 3, item A, must not be more than 120 percent of the average price plus one standard deviation of other vendors in the same geographic area charged by retail food vendors. The commissioner shall determine the average price of vendors in the geographic area using shelf price surveys that each vendor shall submit to the commissioner by January 15 and July 15 of each year charged by retail food vendors based on the most recent price information available to the commissioner on prices charged by a statistically significant sample of retail food vendors.

If the commissioner determines that there is a religious or cultural need for a vendor to charge a specific price greater than 120 percent of the average price charged by retail food vendors, the vendor may charge that specific price.

Subp. 6. Disqualification from other programs Special requirements for vendor applicants. To be authorized to accept WIC vouchers, a grocery or pharmacy must not be currently disqualified from another food and nutrition service program; must not have been subjected to a civil money penalty instead of disqualification from another food and nutrition service program within the last six months; and must not be owned by a person who owns another business that is currently disqualified from the WIC program.

A. Within the six months immediately preceding the date of the vendor application, and at any time on or after the date of the application, an applicant must not have accepted or held itself out as able to accept a WIC voucher when the applicant did not have a fully executed vendor agreement.

B. An applicant must not currently be disqualified from any food assistance program. If a vendor applicant is subjected to a civil money penalty by a food assistance program, and:

(1) the notice of the civil money penalty specifies that the penalty is in lieu of disqualification for a specific period of time, then the vendor applicant is not eligible to become a vendor if there is any overlap between that period of time and the period of time between the relevant application deadline under part 4617.0065, subpart 3, and the commissioner's execution of a vendor agreement with the vendor applicant; or

(2) the notice of the civil money penalty does not specify that the penalty is in lieu of disqualification for a specific period of time, then the vendor applicant is not eligible to become a vendor if the relevant vendor application deadline under part 4617.0065, subpart 3, is less than six months after the date of the notice of the civil money penalty.

C. A vendor applicant must not have as a controlling person someone who is, or has been, within the year immediately preceding the application deadline under part 4617.0065, subpart 3, a controlling person of a retail food store or pharmacy at any location in the United States which:

(1) is disqualified from a food assistance program;

(2) has not fully paid a civil money penalty assessed by a food assistance program; or

(3) was assessed a civil money penalty by a food assistance program in lieu of disqualification for a specific period of time, and there is any overlap between that period of time and the period of time between the vendor application deadline and the commissioner's execution of a vendor agreement with the vendor applicant.

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D. A vendor applicant must not have as a controlling person someone with a business-related violation which occurred within ten years before the vendor application deadline under part 4617.0065, subpart 3.

E. If at the time of the application the vendor applicant is currently authorized as a retail food vendor, then during the most recent 12 months for which voucher redemption information is available for the commissioner's review, the vendor must have redeemed WIC vouchers in an average monthly amount of:

- (1) at least \$150 per month if the vendor is located in a Tier 1 county; or
- (2) at least \$100 per month if the vendor is located in a Tier 2 county.

This item does not apply if: (a) the applicant is the only vendor in a clinic town; or (b) under part 4617.0069, subpart 1, the commissioner determines that participant hardship exists in the particular area where the applicant is located.

### **4617.0068 OPERATING REQUIREMENTS.**

#### **Subpart 1. Acceptance of vouchers.**

A. A pharmacy vendor shall not accept WIC vouchers for any foods other than infant formula, infant cereal, and infant juice, unless the pharmacy vendor is also a retail food vendor.

B. For each voucher accepted by a vendor, the vendor shall ensure that:

- (1) the voucher is accepted at a check-out lane at the vendor's business site;
- (2) the voucher is accepted on a date between the first-day-to-use date and the last-day-to-use date, inclusive, on the voucher;
- (3) the price of the food purchased with the voucher is inserted in the space provided on the voucher before the WIC customer signs the voucher;
- (4) the WIC customer signs the voucher at the time the WIC customer uses the voucher to obtain food;
- (5) the cashier verifies that the signature of the individual who signs the voucher matches an authorized signature on the WIC authorization folder;
- (6) before deposit in the vendor's bank, the number on the vendor stamp has legibly been imprinted onto the voucher; and
- (7) the voucher does not contain any alteration of the maximum price, first-day-to-use date, last-day-to-use date, or food prescription.

Subp. 2. Deposit of vouchers. A vendor shall deposit each voucher in the vendor's bank within 60 days of the first-day-to-use date on the voucher. The vendor may only deposit into the vendor's account vouchers which were accepted at a check-out lane at the vendor's business site. The vendor may not transfer any vouchers accepted by the vendor to anyone else for deposit in an account other than the vendor's account.

Subp. 3. Access to vouchers. A vendor shall allow representatives of the Minnesota Department of Health and representatives of the United States Department of Agriculture access to vouchers that are present at the vendor's business site on the day of an on-site monitoring visit.

#### **Subp. 4. Documentation of purchases.**

A. For a minimum of two years, a vendor shall maintain documentation, including receipts or invoices, showing all purchases by the vendor while a vendor agreement was in effect of all WIC-allowed foods for which the vendor accepted one or more vouchers.

B. All documentation required by this subpart shall specify the quantity of each WIC-allowed food purchased by the vendor, the date of purchase, the name and address of the entity from which the purchase was made, and the date of delivery to the vendor.

C. Within 15 business days of a request by the commissioner, a vendor shall provide to the commissioner:

- (1) the documentation required under this subpart; and
- (2) the vendor's inventory records relating to the inventory maintained during the two years before the commissioner's request.

Subp. 5. Documentation of real estate ownership. A vendor shall maintain documentation showing that one or more controlling persons of the vendor own or lease the real estate where the vendor's business site is located. A vendor shall provide this documentation to the commissioner within 30 days from the date of a request by the commissioner.

Subp. 6. Notification requirements. In addition to the notification required by part 4617.0066, subpart 1, a vendor must notify the commissioner of any change in controlling persons. A vendor must also notify the commissioner of any business-related violation of any cashier or controlling person of the vendor.

Subp. 7. Annual training requirements. A vendor shall ensure that:

A. a management representative of the vendor completes WIC-approved training on the WIC program at least once per calendar year;

B. the management representative who completes this training conveys all information presented during the training to all cashiers of the vendor; and

C. the management representative who completes this training signs and submits to the commissioner, within 30 days after completing this training, a form provided by the commissioner to verify completion of this training.

Subp. 8. Pharmacy stock requirement. A pharmacy vendor shall have available for purchase the special infant formula listed on a WIC customer's voucher within three business days of a request from a WIC customer or local agency.

Subp. 9. Shelf price surveys. Within 15 business days of a request by the commissioner, a vendor shall provide the commissioner with accurate and complete shelf price survey information in the format requested.

Subp. 10. Shelf labels. A vendor shall display in proximity to each WIC-allowed food a current shelf label provided by the commissioner which indicates that the food item is a WIC-allowed food.

#### **4617.0069 EXCEPTIONS BASED ON PARTICIPANT HARDSHIP.**

Subpart 1. Determination of participant hardship. In determining whether participant hardship exists in a particular area, the commissioner shall consider the following factors:

- A. the number of participants in the area;
- B. the number of retail food vendors or pharmacy vendors in that area;
- C. the proximity of retail food vendors or pharmacy vendors to participants in that area;
- D. the availability of public roads and public transportation in that area; and
- E. whether there is a documented cultural or religious need for an additional retail food vendor in that area.

Subp. 2. Exception to application process. Notwithstanding part 4617.0065, subpart 4, the commissioner shall review vendor applications from retail food vendor applicants or pharmacy vendor applicants located in a particular area if and when the commissioner determines that participant hardship exists in that area. If a retail food vendor application is being reviewed because the commissioner has found that participant hardship exists in a particular area, then the commissioner shall:

A. approve the application if the retail food vendor applicant is the only retail food vendor applicant in a particular area and is in full compliance with part 4617.0067, as defined in part 4617.0065, subpart 5, item C, subitem (1); or

B. follow the selection process in part 4627.0059, subpart 2, if the retail food vendor applicant is one of two or more retail food vendor applicants located in a particular area which are in full compliance with part 4617.0067, as defined in part 4617.0065, subpart 4, item C, subitem (1).

Subp. 3. Exception to location, licensing, and registration requirements.

A. Retail food vendors, retail food vendor applicants, pharmacy vendors, and pharmacy vendor applicants need not comply with part 4617.0067, subpart 2, if:

(1) the commissioner determines that, for reasons of participant hardship as determined under subpart 1, there is a need for a retail food vendor in a town adjacent to Minnesota, and the retail food store is located in the town specified by the commissioner and is licensed by the applicable state agency; or

(2) the commissioner determines that, for reasons of participant hardship as determined under subpart 1, there is a need for a pharmacy vendor in a town adjacent to Minnesota, and the pharmacy is located in the town specified by the commissioner and is licensed or registered by the applicable state board or agency.

B. If the commissioner approves the application of a retail food store or pharmacy located in a state other than Minnesota according to item A, then the regional review period for that retail food store or pharmacy shall be the same as the regional review period for the region closest to the retail food store or pharmacy.

Subp. 4. Exception to maximum number of retail food vendors. Notwithstanding part 4617.0059, subpart 1, a determination of participant hardship in a county under this part shall be grounds for the commissioner to increase the maximum number of retail food vendors for that county.

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Subp. 5. Notification of status of application. Notwithstanding part 4617.0065, subpart 6, for vendor applications reviewed because of a commissioner determination that participant hardship exists, the commissioner shall inform each vendor applicant in writing of the commissioner's approval or disapproval of the vendor application within 120 days of the commissioner's receipt of the application.

### 4617.0070 VENDOR STAMPS.

Subpart 1. Issuance. After a vendor agreement has been executed by the commissioner, the commissioner shall issue a vendor stamp to an applicant who, under parts 4617.0060 to 4617.0064, has been determined eligible to be a vendor for the WIC program. A grocer or pharmacy that applies to become a vendor shall not accept a voucher before receiving a vendor stamp. A vendor shall use the stamp to imprint the number on the stamp onto each voucher accepted by that vendor. The commissioner shall not issue more than one vendor stamp to a vendor, and the vendor, unless the vendor already has a valid vendor stamp. The number on the stamp must be issued to that vendor only. A vendor shall not possess more than one vendor stamp, shall not use a vendor stamp issued to another vendor, and shall not duplicate a vendor stamp, and shall not use or allow the use of the vendor stamp on any voucher other than a voucher accepted at a check-out lane at the vendor's business site. The commissioner shall issue only one vendor stamp to each vendor, even if the vendor is authorized as both a retail food vendor and a pharmacy vendor.

Subp. 1a. Returning vendor stamp. If a vendor is disqualified under part 4617.0086, the vendor must return the vendor stamp to the commissioner no later than the effective date of the disqualification. In addition to disqualification under part 4617.0086, the vendor must return the vendor stamp to the commissioner within five business days after the earlier of: (i) the date that the vendor permanently closes the business; (ii) the date that the business site changes; (iii) a change of ownership of the vendor; or (iv) the expiration of the vendor's current vendor agreement if the vendor's application is disapproved, or if the vendor agreement ends and no subsequent agreement is executed.

[For text of subp 2, see M.R.]

### 4617.0075 VENDOR GUARANTEE AGREEMENTS.

A person whose application to be a vendor has been approved duly authorized agent of a retail food store or pharmacy which has been approved to be a vendor shall sign and date a retail food vendor guarantee, pharmacy vendor guarantee, or restricted pharmacy vendor guarantee agreement. A separate vendor guarantee agreement must be signed for each vendor. A vendor guarantee agreement must contain:

- A. the name and address of the vendor;
- B. the method by which the guarantee agreement must be terminated;
- C. terms that are consistent with this chapter and Code of Federal Regulations, title 7, sections 246.12, paragraphs (f)(2) and (k)(1)(iii), and 278.1, paragraph (n)(1), as amended;
- D. a warning that a vendor's authorization to participate in the food stamp program can be withdrawn according to Code of Federal Regulations, title 7, section 278.1(0)(4) 278.1, paragraph (n)(1), as amended, if the vendor is disqualified from the WIC program; and
- E. assurances that:
  - (1) no conflict of interest exists with the Department of Health or any local agency;
  - (2) the vendor will use the vendor stamp to validate only those vouchers accepted at the vendor outlet for which the stamp was issued;
  - (3) the vendor will redeem vouchers only for authorized persons identified on the Minnesota WIC program authorization/transfer of certification card;
  - (4) the vendor will make no alterations on the voucher with the exception of properly executed price corrections, and will not accept vouchers that appear to have been altered by a participant;
  - (5) the vendor will respond within 45 days to a letter requesting justification of or reimbursement for vouchers identified as potentially overpriced;
  - (6) the vendor will return the vendor stamp to the commissioner when the vendor permanently closes business, ownership of the business or vendor outlet changes, the vendor is disqualified, the vendor's application is disapproved, or the vendor guarantee ends;
  - (7) the vendor will comply with this chapter and Code of Federal Regulations, title 7, part 246; and
  - (8) the vendor will only accept a voucher for authorized supplemental foods provided at the time the voucher is countersigned;
- F. a beginning date that is the same as the date of the notice of approval of the vendor's application and an ending date that is not more than two years beyond the beginning date; and
- G. the signature of the vendor and the date of the signature.

**4617.0080 IDENTIFYING AND MONITORING HIGH RISK VENDORS.**

The commissioner shall identify a vendor as a high-risk vendor monitor vendors according to the criteria in *Code of Federal Regulations*, title 7, section 246.12, paragraph (i)(+), as amended, or because of vendor activities observed by or reported to the commissioner or local agency staff that are suspected by the commissioner or local agency staff to not comply with this chapter. Vendor activities that staff suspect do not comply with this chapter must be reported to or by the commissioner on a form supplied by the commissioner. The form must require a description of the suspected abuse, the name and address of the vendor, and the signature of the staff member.

A high-risk vendor must be monitored according to *Code of Federal Regulations*, title 7, section 246.12, paragraph (+).

**4617.0086 NONCOMPLIANCE WITH PROGRAM REQUIREMENTS.**

Subpart 1. General provisions. Under subpart 2, the commissioner shall impose sanctions on a vendor for noncompliance with one or more program requirements as contained in the vendor agreement. Each noncompliant action shall be classified as a Class A, B, or C violation according to subparts 3 to 5. If two or more instances of the same noncompliant action occur simultaneously, all such instances of the noncompliant action shall be considered one violation, unless the noncompliant action is classified as a Class A violation. Each instance of a noncompliant action classified as a Class A violation shall be considered a separate violation.

Subp. 2. Sanctions for noncompliance.

A. Class A violations. The commissioner shall disqualify a vendor if the vendor commits a Class A violation under subpart 3. The disqualification shall be effective for one year for the vendor's first Class A violation. For each additional Class A violation committed by the vendor, the commissioner shall disqualify the vendor for the maximum period authorized in *Code of Federal Regulations*, title 7, section 246.12 (k)(1)(ii), as amended.

B. Class B violations. This item applies if a vendor has committed one or more Class B violations under subpart 4.

(1) For a first violation within any two-year period of a particular item in subpart 4, the commissioner shall mail or deliver to the vendor a notice of violation.

(2) For a second violation within any two-year period of a particular item in subpart 4, the commissioner shall disqualify the vendor for six months.

C. Class C violations. This item applies if a vendor has committed one or more Class C violations under subpart 5.

(1) For each first and second violation within any two-year period of a particular item in subpart 5, the commissioner shall mail or deliver to the vendor a notice of violation.

(2) For a third violation within any two-year period of a particular item in subpart 5, the commissioner shall disqualify the vendor for three months.

Subp. 3. Itemization of Class A violations. Each of the following actions shall be a Class A violation by a vendor, when committed by any controlling person, employee, or agent of the vendor:

A. charging the WIC program for items not received by a WIC customer;

B. providing one or more nonfood items in exchange for a voucher, regardless of whether food items are also provided;

C. substituting for the infant formula specified on a voucher any other brand, size, or type of infant formula, any infant formula with a different level of iron fortification, or a food item which is not infant formula;

D. substituting for the infant formula specified on a voucher, store credit which can be used to purchase a brand, size, or type of infant formula which is not specified on the voucher, an infant formula with a different level of iron fortification than the infant formula specified on the voucher, or a food item which is not infant formula;

E. allowing a WIC customer to return or exchange infant formula bought with a voucher, unless the WIC customer is exchanging spoiled or damaged infant formula for infant formula of the identical brand, size, type, and level of iron fortification;

E. providing any cash in exchange for a voucher;

G. providing, in exchange for a voucher, any store credit which can be used to purchase one or more nonfood items;

H. accepting or redeeming a voucher from any source other than a WIC customer;

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I. accepting a voucher which is then redeemed by another vendor;

J. bribing or attempting to bribe a representative of the WIC program;

K. altering the maximum price, first-day-to-use date, last-day-to-use date, or food prescription on a voucher;

L. charging the WIC program more money for an item than the vendor's usual and customary charge for that item;

M. seeking reimbursement from the WIC program for the sale of a WIC-allowed food item which exceeds the vendor's documented inventory for that food;

N. violating the nondiscrimination clause of the vendor agreement, as specified in Code of Federal Regulations, title 7, section 246.12, paragraph (f)(2)(xv), as amended;

O. providing false or misleading material information on any document submitted to the commissioner; and

P. accepting a voucher at a place other than an established check-out lane at the vendor's business site.

**Subp. 4. Itemization of Class B violations.** Each of the following actions shall be a Class B violation by a vendor, when committed by any controlling person, employee, or agent of the vendor:

A. failing to provide as required, by the deadline and in the manner specified by the commissioner, documentation requested by the commissioner under part 4617.0068, subpart 4;

B. except as specified in subpart 3, item C, providing any food other than WIC-allowed food in exchange for a voucher;

C. failing to allow the commissioner access to any voucher located on the vendor's premises at the time of an on-site inspection;

D. offering an incentive for a WIC customer to redeem a voucher at the vendor's business site, or advertising that the vendor would provide such an incentive;

E. except as specified in subpart 3, item D, providing in exchange for a voucher any store credit which can be used to purchase food other than WIC-allowed food;

F. failing to comply with part 4617.0066, subpart 1;

G. requesting any reimbursement or payment from a WIC customer in connection with any WIC purchase;

H. if the vendor is a food vendor, failing to maintain the required minimum stock under part 4617.0067, subpart 3, but only if this failure is with respect to two or more types of food;

I. requiring the purchase of a specific brand or type of WIC-allowed food when that specific brand or type of food is not specified on the front of the voucher;

J. requiring that a WIC customer make a cash purchase in order to redeem a voucher;

K. duplicating a vendor stamp or using a counterfeit vendor stamp;

L. allowing a WIC customer to return or exchange food other than infant formula bought with a voucher, unless the customer is exchanging a spoiled or damaged item for the identical size and type of food;

M. failing to comply with part 4617.0068, subpart 9; and

N. failing to comply with part 4617.0068, subpart 7, item A.

**Subp. 5. Itemization of Class C violations.** Each of the following actions shall be a Class C violation by a vendor, when committed by any controlling person, employee, or agent of the vendor:

A. except as specified in subpart 3, item C, providing in exchange for a voucher, one or more WIC-allowed food items not specified on the voucher;

B. providing a service to a WIC customer that is lower in quality than the comparable service provided to non-WIC customers;

C. entering a dollar amount on a voucher after the WIC customer has signed the voucher;

D. failing to obtain the WIC customer's authorized signature on a voucher at the time that voucher is accepted by the vendor;

E. failing to reimburse the WIC program within 30 days of a written request for an amount paid by the WIC program for an improperly redeemed voucher;

F. violating part 4617.0067, subpart 3, with respect to any one type of WIC-allowed food;

G. violating part 4617.0067, subpart 5;

H. violating part 4617.0068, subpart 8;

I. failing to either display for viewing or mark on the food the price of one or more WIC-allowed foods;

I. except as provided in subpart 3, item D, providing in exchange for a voucher store credit which can only be used to purchase one or more WIC-allowed foods;

K. refusing to allow a WIC customer to use a manufacturer's coupon for a WIC-allowed food item when redeeming a voucher which includes that WIC-allowed food item;

L. providing in exchange for a voucher one or more expired or damaged WIC-allowed food items, regardless of whether other items are also provided;

M. failing to verify that the signature of the individual who signs the voucher matches an authorized signature on the WIC Authorization Folder;

N. requiring a WIC customer to provide information or identification other than the WIC Authorization Folder;

O. providing to a WIC customer and charging the WIC program for more WIC-allowed food than is specified on the WIC customer's voucher; and

P. accepting a voucher on which the maximum price, last-day-to-use date, first-day-to-use date, or food prescription has been altered.

**Subp. 6. Disqualification.**

A. Notice. The commissioner shall notify a vendor in writing of the vendor's disqualification.

B. Effective date. Disqualification is effective 15 days after the date of a written notice of disqualification, unless the vendor appeals the disqualification and the vendor is the only vendor in the clinic town, in which case the disqualification is effective 15 days after the date of the commissioner's order for disqualification.

C. Reapplication. A disqualified vendor may apply for WIC vendor authorization after expiration of the disqualification period, according to part 4617.0065, subpart 3.

D. Termination of vendor agreement. A vendor may not terminate the vendor's WIC vendor agreement in lieu of disqualification.

Subp. 7. Additional grounds for disqualification. In addition to the grounds for disqualification specified in subpart 1, a vendor shall be disqualified from the WIC program according to this subpart, but the period of disqualification shall not exceed the maximum period authorized in *Code of Federal Regulations*, title 7, section 246.12 (k)(1)(ii), as amended.

A. If a vendor is disqualified from any other food assistance program, then the commissioner shall disqualify the vendor from the Minnesota WIC program for an equal amount of time.

B. If a vendor is assessed a civil money penalty in lieu of disqualification from any other food assistance program, and the penalty is in lieu of disqualification for a specified period of time, and disqualification of the vendor will not create undue hardships for WIC participants, then the commissioner shall disqualify the vendor from the Minnesota WIC program for the amount of time specified in the notice of assessment of the civil money penalty.

C. If a controlling person of a vendor is convicted of a crime which involves one or more vouchers, or one or more food instruments of another food assistance program, then the commissioner shall disqualify the vendor for the greater of three years or the maximum period authorized in *Code of Federal Regulations*, title 7, section 246.12 (k)(1)(ii), as amended.

D. If a vendor's license or registration required under part 4617.0067, subpart 2, item B or C; 4617.0069, subpart 3, item A, subitem (2); or 4617.0069, subpart 3, item B, subitem (2), is suspended or revoked, then the commissioner shall disqualify the vendor until any suspension is over and the license or registration has been reinstated.

Subp. 8. Effect of expiration, termination, or nullification of vendor agreement. The expiration or termination of the vendor agreement, or the rendering of the vendor agreement null and void under part 4617.0066, shall not affect the commissioner's duty to disqualify the vendor, and shall not affect the vendor's right to appeal this disqualification under part 4617.0100.

**4617.0087 WIC FOOD CENTERS.**

For the purpose of this chapter, WIC food centers are not vendors.

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### 4617.0088 MAXIMUM PRICES OF VOUCHERS.

**Subpart 1. Calculation of maximum prices.** Beginning no sooner than three months after the effective date of this part, a maximum price shall be printed on each computer-generated voucher. The maximum price shall be the sum of the maximum prices of all products on the voucher. The maximum price for each food product shall be 120 percent of the average price of the food product. The commissioner shall compute an average price for each food product listed on a voucher based on the most recent price information available to the commissioner on prices charged by a statistically significant sample of vendors.

**Subp. 2. Increasing maximum prices.** An increase in the manufacturer's price of an applicable WIC-allowed food item shall be grounds for the commissioner to increase the maximum price of a food product computed under subpart 1.

**Subp. 3. Special infant formula.** If there is not a statistically significant sample from which to compute an average price for a particular special infant formula, then no maximum price shall be printed on any vouchers for that special infant formula.

### 4617.0090 RETURNING VOUCHERS TO VENDORS REJECTION OF VOUCHERS AND REIMBURSEMENT BY VENDORS.

**Subpart 1. Return without payment.** The bank which processes WIC vouchers on behalf of the commissioner shall return a voucher to a vendor without payment if the space provided on the voucher for the price of the food purchased is left blank by the vendor, if:

- A. the voucher is not stamped with a vendor stamp; if;
- B. the voucher is stamped with a vendor stamp which is illegible;
- C. the voucher is not signed or countersigned by the participant or a proxy, if a WIC customer authorized to sign the voucher;
- D. the price of the food purchased exceeds the maximum price printed on the voucher according to part 4617.0088, subpart 1;
- E. the space provided on the voucher for the price of the food purchased is left blank by the vendor;
- F. there is no first-day-to-use or last-day-to-use date on the voucher;
- G. the commissioner has placed a stop-payment order on the voucher;
- H. the date the vendor accepted the voucher is before the first-day-to-use date or after the last-day-to-use date on the voucher;
- I. the vendor deposits the voucher before the issue first-day-to-use date of on the voucher; or if;
- J. the vendor does not initially deposit the voucher in the vendor's bank within 60 days of the issue first-day-to-use date on the voucher;
- K. the vendor does not redeposit the voucher in the vendor's bank within 90 days of the first-day-to-use date on the voucher, if the voucher was returned to the vendor under item A or B;
- L. the maximum price, first-day-to-use date, last-day-to-use date, or food prescription on the voucher has been altered; or
- M. the vendor is a pharmacy vendor and the voucher includes any food product other than infant formula, infant cereal, or infant juice.

#### **Subp. 2. Payment of rejected vouchers.**

**A.** A voucher returned to a vendor under subpart 1, item A or B, may be corrected by the vendor and redeposited in the vendor's bank within 90 days of the first-day-to-use date on the voucher.

**B.** A voucher returned to a vendor by the bank under contract with the commissioner under subpart 1, item D, E, or F, or for a reason not authorized by this part, may be submitted by the vendor to the commissioner for payment if:

(1) the voucher is received by the commissioner not more than 120 days after the issue first-day-to-use date on the voucher and if; and

(2) for a voucher returned to the vendor under subpart 1, item D or E, the vendor inserts the correct price and provides to the commissioner documentation showing that the vendor had failed to insert the correct price due to inadvertent error, oversight, or some other reason not inconsistent with the purposes of this chapter.

- A. the issue date or the last-day-to-use date on the voucher was not written on the voucher by the commissioner;
- B. the first signature on the voucher is missing; or
- C. the bank under contract with the commissioner returned the voucher to the vendor for a reason not authorized by this part.
- C.** The commissioner is not liable for any bank fees incurred by a vendor.

**Subp. 3. Reimbursement by vendor.** If the bank which processes WIC vouchers on behalf of the commissioner erroneously pays a voucher which should have been returned to the vendor without payment according to subpart 1, then the vendor shall pay to the commissioner, within 30 days of a request by the commissioner, the amount erroneously paid to the vendor.



Subp. 4. Vendor liability. ~~A vendor shall pay to the commissioner, within 30 days of a request by the commissioner, the amount of any overcharges paid by the commissioner to the vendor, all money paid by the commissioner to the vendor for food items not received by a WIC customer, all money paid by the commissioner to the vendor for products other than WIC-allowed foods, and all money paid by the commissioner to the vendor for vouchers accepted by the vendor while there was not in effect a WIC vendor agreement for the vendor.~~

Subp. 5. Prohibited vendor conduct. ~~A vendor shall not seek reimbursement from a participant any WIC customer for a voucher not paid according to this part, or for any banking charges paid by the vendor as a result of the nonpayment of a voucher, or for any money paid by the vendor to the commissioner according to this part. A vendor shall not require a participant WIC customer to provide a countersignature signature that was not provided at the time the voucher was used to buy food from the vendor.~~

#### **4617.0100 APPEALS BY VENDORS AND LOCAL AGENCIES.**

Subpart 1. Procedures. ~~A local agency or vendor against whom the commissioner takes adverse action that affects participation in the WIC program may appeal the action. A notice of violation under part 4617.0086, subpart 2, item B, subitem (1), or 4617.0086, subpart 2, item C, subitem (1), is not subject to appeal unless the violation results in the vendor's disqualification or denial of the vendor's application for reauthorization as a vendor in the WIC program. An appeal must be in writing and be received by the commissioner not more than 30 days after notice of adverse action was mailed. The commissioner shall provide an appellant not less than ten days' advance written notice of the time and place of a hearing. The appellant must be given one opportunity to request that a hearing date be rescheduled. An appeal by a local agency or vendor must be decided in accordance with the requirements of Minnesota Statutes, sections 14.57 to 14.62; Minnesota Rules, parts 1400.5100 to 1400.8401; Code of Federal Regulations, title 7, section 246.18, as amended through January 1, 1988; and this part. Expiration of a contract or agreement with a local agency or vendor is not subject to appeal.~~

[For text of subs 2 and 3, see M.R.]

#### **4617.0120 TRANSITION PERIOD.**

Subpart 1. Existing guarantees. ~~The commissioner and vendor shall comply with the terms of each fully executed vendor agreement or vendor guarantee, unless the vendor and the commissioner agree in writing to an amendment of the vendor guarantee or vendor agreement.~~

##### Subp. 2. Reauthorization applications.

A. If a retail food store or pharmacy is an authorized vendor on the effective date of this part, and if the last day of the guarantee period in that vendor's most recent vendor guarantee is the effective date of this part or is not more than four months after the effective date of this part, then the commissioner shall approve a reauthorization application submitted by that vendor if the vendor complies with all reauthorization requirements in effect prior to the effective date of this part. If the commissioner approves this reauthorization application, then the resulting vendor guarantee shall reflect the requirements in effect prior to the effective date of this part, and the requirements of part 4617.0090, subpart 1, item D; this vendor guarantee shall not be renewable. The ending date of this vendor guarantee will be the last day of the next applicable regional review period under part 4617.0065, subpart 4.

B. If a retail food store or pharmacy is a vendor on the effective date of this part, and the last day of the guarantee period specified in the vendor's most recent guarantee is more than four months after the effective date of this part and is not the same as the last day of the next applicable regional review period under part 4617.0065, subpart 4, then the commissioner and the vendor may execute a new vendor agreement so that the ending date of the new agreement will be the last day of the next applicable review period under part 4617.0065, subpart 4, and so that the new agreement reflects the requirements in effect on the effective date of this part.

##### Subp. 3. New vendor applications and new owner applications.

A. All new retail food or pharmacy vendor applications and all new owner applications received by the commissioner before the effective date of this part shall be processed according to the requirements in effect prior to the effective date of this part.

B. Approval of an application processed under item A shall result in a vendor guarantee that reflects the requirements in effect prior to the effective date of this part and the requirements of part 4617.0090, subpart 1, item D. This vendor guarantee shall not be renewable.

C. Notwithstanding item B, the ending date of a vendor guarantee issued under this subpart will be the last day of the next applicable regional review period under part 4617.0065, subpart 4.

**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

Subp. 4. Optional vendor agreements. Notwithstanding subparts 2 and 3, if an application processed under subpart 2, item A, or subpart 3, item A, is approved by the commissioner, the commissioner and vendor applicant may execute a vendor agreement which reflects the requirements in effect on the effective date of this part.

Subp. 5. Receipt of applications. For the purpose of this part, an application is received by the commissioner on the date that the commissioner receives a complete and correct application.

Subp. 6. Disqualification provisions. The commissioner shall enforce the disqualification provisions in each fully executed vendor agreement or vendor guarantee, notwithstanding anything in part 4617.0086.

### **4617.0171 INFANT FORMULA APPROVAL PROCESS.**

In accordance with *Code of Federal Regulations*, title 7, section 246.16(m), the commissioner shall solicit bids and approve for purchase using WIC vouchers one or more brands, sizes, types, and levels of iron fortification of milk-based iron fortified infant formula and soy-based iron fortified infant formula. The nutritional content, size, and packaging of each approved brand, size, type, and level of iron fortification of infant formula must be consistent with *Code of Federal Regulations*, title 7, section 246.10(c).

### **4617.0176 APPROVAL PROCESS FOR WIC FOODS OTHER THAN INFANT FORMULA.**

Subpart 1. Approval process. The commissioner shall approve for purchase using WIC vouchers:

A. food items within each food product in part 4617.0067, subpart 3, item A, subitems (3) to (14); and

B. any other food item permitted under *Code of Federal Regulations*, title 7, part 246, other than infant formula, if the commissioner determines that there is a nutritional need for participants to obtain such food item.

Subp. 2. Approval criteria. At least once every three years, the commissioner shall determine which food items within each food product to approve for purchase using WIC vouchers.

A. For food products in part 4617.0067, subpart 3, item A, subitems (3) to (12), the commissioner's determination must be based on the following factors:

- (1) whether the food item meets all specifications in the applicable subitem of part 4617.0067, subpart 3, item A;
- (2) whether the food item meets the nutritional requirements of *Code of Federal Regulations*, title 7, section 246.10(c);
- (3) whether the food item contains any nonnutritive or artificial sweetener; and
- (4) the price per ounce of the food item compared to other brands, sizes, and varieties of the food product.

B. For food products in part 4617.0067, subpart 3, item A, subitems (13) and (14), the commissioner's determination must be based on the factors in item A, subitems (1) to (4), and the following factors:

(1) the quantity of sucrose or other sugars in each ounce of the food item compared to other brands, sizes, and varieties of the food product;

(2) the extent to which the food item is available at WIC retail food vendors, based on the most recent survey conducted by the commissioner for which results are available; and

(3) the extent to which WIC participants prefer the food item, based on the most recent food preference survey conducted by the commissioner for which results are available.

Subp. 3. Nutritional, cultural, religious, or ethnic need. The commissioner shall approve for purchase using WIC vouchers a food item or food product which meets the requirements of *Code of Federal Regulations*, title 7, section 246.10(c), as amended, if the commissioner determines, based on the information available, that there is a nutritional need for the item or product, or that there is a need for the item or product within a specific cultural, religious, or ethnic group.

Subp. 4. Notice of approval. The commissioner shall provide notice to each vendor and local agency of the food items approved under this part.

Subp. 5. Revocation of approval. The commissioner shall, at any time, revoke approval of a food item if:

A. it no longer meets the nutritional requirements in *Code of Federal Regulations*, title 7, section 246.10(c), as amended; or

B. it no longer meets all applicable specifications in part 4617.0067, subpart 3.

If the commissioner revokes approval of a food item, the commissioner shall provide notice to each vendor and local agency of the revocation.

**REPEALER.** *Minnesota Rules*, parts 4617.0002, subparts 2a, 12a, 16a, 24a, 26a, 39, 40a, and 44a; 4617.0060; 4617.0061; 4617.0062; 4617.0063; 4617.0064; 4617.0085; 4617.0095; 4617.0172; 4617.0173; and 4617.0174, are repealed.

## **Public Utilities Commission**

### **Proposed Permanent Rules Relating to Local Telephone Competition**

**Proposed Rules Governing the Competitive Provision of Local Telecommunications Service in Areas Served by Local Exchange Companies with 50,000 or more Subscribers, *Minnesota Rules*, Chapter 7812, Docket No. P-999/R-95-53.**

#### **Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Hearing if Twenty-five or More Persons Request a Hearing**

**NOTICE IS HEREBY GIVEN** that the Minnesota Public Utilities Commission (Commission) intends to adopt the above-entitled rules 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. The Commission's authority to adopt these rules is set forth in *Minnesota Statutes* §§ 237.16, 237.10 and 216A.05.

*Minnesota Statutes*, section 237.16 establishes requirements to facilitate the competitive provision of local telephone service and to protect the public interest. The Commission proposes these rules to implement section 237.16, pursuant to the specific rulemaking mandate in subdivision 8(a) of section 237.16 and the Commission's general rulemaking mandates in sections 237.10 and 216A.05.

All persons have until 4:30 p.m. on February 26, 1997, 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 rules addressed, the reason for the comment, and any recommended changes. PLEASE USE DOCKET NO. P-999/R-95-53 ON ALL CORRESPONDENCE.

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 request for a public hearing must include (1) the name and address of the person requesting the public hearing; and (2) the portion or portions of the rule to which the person objects or a statement that the person opposes the entire rule. The request should also include any recommended changes or clarifications to the proposed rule that would cause the requesting person to withdraw the request for hearing.

The Commission will give notice of any withdrawals of hearing requests as required under *Minnesota Statutes* § 14.25, subd. 2, if the withdrawal affects whether a hearing must be held and the withdrawal results from action taken by the Commission subsequent to publication of the proposed rules.

If a public hearing is required, the Commission will proceed pursuant to *Minnesota Statutes* §§ 14.14 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 IN ACCORDANCE WITH *MINNESOTA STATUTES* § 14.25, A HEARING WILL BE HELD ON WEDNESDAY, MARCH 12 AND, IF NECESSARY, THURSDAY, MARCH 13, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING OF THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE COMMISSION. To verify whether a hearing will be held, please call the Commission's receptionist, Jessie Schmoker, between February 28, 1997 and March 11, 1997, at (612) 296-7124.

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

Dan Lipschultz  
Minnesota Public Utilities Commission  
121 7th Place East  
Suite 350  
St. Paul, Minnesota 55101-2147  
(612) 296-9617

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

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

## Proposed Rules

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The proposed rules, if adopted, will establish the following: (1) procedures and standards for certifying new local service providers; (2) basic service obligations, including mandates regarding service areas and calling scope offerings; (3) general service quality requirements; (4) annual customer notice requirements; (5) protections against unauthorized changes in service or local service provider; (6) procedures to implement federal universal service support mechanisms established by the Federal Communications Commission (FCC) under section 254 of the Federal Telecommunications Act of 1996 (Federal Act); (7) procedures and standards for mediating, arbitrating, approving and resolving disputes under agreements between carriers under the Federal Act; (8) procedures for determining rural company exemptions from federal negotiation and interconnection requirements pursuant to section 251(f)(1) of the Federal Act; (9) procedures for determining petitions for suspensions or modifications of federal interconnection requirements pursuant to section 251(f)(2) of the Federal Act; (10) provisions for the regulatory treatment of new local service providers; and (11) provision for appointment of a task force no later than January 2, 2002 to review these rules.

The proposed rules are published below. One free copy of the rules is available upon request from the Commission by contacting the Commission's receptionist at the above address or by calling (612) 296-7124.

A Statement of Need and Reasonableness that provides a summary of the justification for the proposed rules and identifies who will be affected by the proposed rules is available from the Commission by contacting the Commission's receptionist at the above address or by calling (612) 296-7124.

If no hearing is required, the proposed rules as published, the rules as proposed for adoption and all required supporting documents will be submitted to the Office of Administrative Hearings, Judge Allan W. Klein, for review under *Minnesota Statutes* § 14.26. Any person may request notification of the date of submission to the Office of Administrative Hearings. Persons who wish to be advised of the submission of this material to the Office of Administrative Hearings, or who wish to receive a copy of the rules submitted to the Office of Administrative Hearings, must submit a written request to Dan Lipschultz at the above address.

Burl W. Haar  
Executive Secretary

### 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 the Minnesota Public Utilities Commission (Commission) will hold a public hearing in the above-entitled matter at the Commission's Large Hearing Room, 121 7th Place East, Suite 350, St. Paul, Minnesota, commencing at 9:30 a.m. on Wednesday, March 12, 1997 and continuing, if necessary, through Thursday, March 13, 1997, until all interested or affected persons have had an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted to the presiding Administrative Law Judge, as hereinafter indicated, without appearing at the hearing.

**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 COMMISSION.** To verify whether a hearing will be held, please call the Commission between February 28, 1997 and March 11, 1997 at (612) 296-7124.

The matter will be heard before Administrative Law Judge Allan W. Klein, Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, (612) 341-7609. The rule hearing procedure is governed by *Minnesota Statutes* sections 14.14 to 14.20 and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.0200 to 1400.1200. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge at the address and telephone number stated above.

The subject of the hearing will be the proposed rules governing the competitive provision of local telecommunications service, *Minnesota Rules*, chapter 7812. The Commission intends to adopt these rules in accordance with *Minnesota Statutes* §§ 14.14 to 14.20 and *Minnesota Rules*, parts 1400.2000 to 1400.2560 if a hearing is held, or in accordance with *Minnesota Statutes* §§ 14.22 to 14.28 if no hearing is held. The proposed rules are authorized by *Minnesota Statutes* §§ 237.16, 237.10 and 216A.05. The proposed rules are published below. One free copy of the rules is available on request by contacting:

Jessie Schmoker  
Minnesota Public Utilities Commission  
121 7th Place East  
Suite 350  
St. Paul, Minnesota 55101-2147  
(612) 296-7124

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## Proposed Rules

**NOTICE IS HEREBY GIVEN** that a Statement of Need and Reasonableness is now available for review at the Commission offices and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of the evidence and argument supporting the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Commission offices or at the Office of Administrative Hearings and copies may be obtained from the Commission or the Office of Administrative Hearings at the cost of reproduction.

Any person may present his or her views on the proposed rules in one or more of the following ways: by submitting written comment to the Administrative Law Judge at any time before the close of the hearing; by submitting oral or written comment at the hearing; and by submitting written comment to the Administrative Law Judge during the comment period following the hearing. The comment period will be not less than five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing.

The written material received during the comment period shall be available for review at the Office of Administrative Hearings. Within five business days after the expiration of the comment period, the Commission and interested persons may respond in writing to any new information received during the comment period; however, no additional evidence may be submitted during this five-day period.

The Commission requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment period also submit a copy of the written data to Dan Lipschultz at the Commission address stated above.

The proposed rules may be modified if the data and views received during the hearing process warrant modification and the modification does not result in a substantial change in the proposed rules.

Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Commission may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules are adopted and filed with the Secretary of State. The notice must be mailed on the same day that 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 Commission at any time prior to the filing of the rules with the Secretary of State.

Any person may request to be placed on the Commission's mailing list to receive notice of any future rule proceedings.

Please be advised that *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, subd. 11. The statute also contains certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612) 296-5148.

Burl W. Haar  
Executive Secretary

### **7812.0050 APPLICABILITY.**

This chapter applies to all telecommunications service providers operating under the commission's jurisdiction in Minnesota. This chapter does not apply to telephone companies with fewer than 50,000 subscribers, unless specified otherwise in this chapter.

### **7812.0100 DEFINITIONS.**

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

Subp. 2. Act or federal act. "Act" or "federal act" means the federal Telecommunications Act of 1996, Public Law No. 104-104, codified in *United States Code*, title 47, sections 153 to 614.

Subp. 3. Alternative regulation plan or AFOR. "Alternative regulation plan" or "AFOR" means an alternative to rate-of-return regulation of a local exchange carrier adopted pursuant to *Minnesota Statutes*, sections 237.76 to 237.774.

Subp. 4. Applicant. "Applicant" means a person filing a petition for certification to provide telecommunications services in Minnesota under parts 7812.0200 to 7812.0500.

Subp. 5. Automatic location identification or ALI. "Automatic local identification" or "ALI" means the automatic display, on equipment at the public safety answering point, of the telephone, including nonlisted and nonpublished telephone numbers and addresses, and other information about the caller's location.

**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

Subp. 6. ALI database provider. "ALI database provider" means any person who provides automatic location identification to the basic emergency services provider and the governing body for a specific geographic area.

Subp. 7. Automatic number identification or ANI. "Automatic number identification" or "ANI" means the process used on customer-dialed calls to automatically identify the calling station.

Subp. 8. Basic local service. "Basic local service" means the services required under part 7812.0600 and any other services or terms determined by the commission to be integral to the basic communications, health, privacy, or safety needs of customers.

Subp. 9. Central office. "Central office" means a facility in a telecommunications system that provides service to the general public where the telephone lines of subscribers are joined to switching equipment that redirects calls to called parties or other central offices, or to the interexchange facilities of a carrier.

Subp. 10. Certificate of authority or certificate. "Certificate of authority" or "certificate" means a commission order authorizing the provision of telecommunications service under this chapter.

Subp. 11. Commission. "Commission" means the Minnesota Public Utilities Commission.

Subp. 12. Competitive local exchange carrier or CLEC. "Competitive local exchange carrier" or "CLEC" means a telecommunications carrier that is certified by the commission to provide local service, or a telephone company to the extent it provides local service in an area other than its initial service territory.

Subp. 13. Customer. "Customer" means a person who has contracted with a local service provider for retail telecommunications service and has been billed for that service in the person's name or in the name of an agent or representative designated by the customer.

Subp. 14. Department. "Department" means the Minnesota Department of Public Service.

Subp. 15. Eligible telecommunications carrier or ETC. "Eligible telecommunications carrier" or "ETC" means a local service provider designated by the commission as eligible to receive federal universal service support pursuant to the federal Telecommunications Act of 1996, at *United States Code*, title 47, section 254, based on a determination by the commission that the local service provider, at a minimum, meets the requirements of items A and B, throughout the applicable universal service area.

A. the local service provider offers the services identified by the Federal Communications Commission as eligible for support by federal universal service support mechanisms under the federal Telecommunications Act of 1996, at *United States Code*, title 47, section 254, using its own facilities or a combination of its own facilities and either the unbundled network elements of a local exchange carrier or resale of another carrier's services; and

B. the local service provider advertises the availability of the services referenced in item A and the charges for those services using media of general distribution.

Subp. 16. Emergency telephone service or 911. "Emergency telephone service" or "911" means a telephone system using the three-digit number 911 to report police, fire, medical, or other emergency situations.

Subp. 17. Enhanced 911 or E 911. "Enhanced 911" or "E 911" means an emergency telephone service that includes automatic number identification and automatic location identification to facilitate public safety response.

Subp. 18. End-user. "End-user" means a person requesting, receiving, or using telecommunications service on a retail basis, regardless of whether that person is a customer.

Subp. 19. Exchange area. "Exchange area" means a geographic unit established by a local service provider and identified in the local service provider's tariff on file with the commission. It may consist of one or more central offices or wire centers together with associated facilities used to furnish telecommunications services in that area.

Subp. 20. Extended area service or EAS. "Extended area service" or "EAS" means interexchange calling for which a message toll charge is not assessed.

Subp. 21. Facilities. "Facilities" means the plant and equipment of a telecommunications service provider. This includes, but is not limited to, a telecommunications service provider's network facilities.

Subp. 22. Facilities-based carrier. "Facilities-based carrier" means a local service provider that relies on its own network facilities, in whole or in part, for providing local service.

Subp. 23. Facilities-based service. "Facilities-based service" means service offerings provided, in whole or in part, through the telecommunications service provider's own network facilities.

Subp. 24. FCC. "FCC" means the Federal Communications Commission.

Subp. 25. FCC interconnection rules. "FCC interconnection rules" means the rules adopted by the Federal Communications

Commission pursuant to the federal Telecommunications Act of 1996, *United States Code*, title 47, section 251, subsection (d), and codified at *Code of Federal Regulations*, title 47, section 51.1 to 51.809.

**Subp. 26. Interexchange service.** "Interexchange service" means telecommunications service between exchanges as defined in a local exchange service provider's tariff.

**Subp. 27. Interexchange trunks.** "Interexchange trunks" means transmission facilities used to transport telecommunications traffic between exchanges or central offices.

**Subp. 28. Local calling area.** "Local calling area" means the area within which calls originate and terminate without a toll charge.

**Subp. 29. Local exchange carrier or LEC.** "Local exchange carrier" or "LEC" means a telephone company, with 50,000 or more subscribers, that is authorized to provide local telephone service in Minnesota under *Minnesota Statutes* 1994, section 237.16, subdivision 2.

**Subp. 30. Local loop.** "Local loop" means the transmission path capable of transporting analog or digital signals from a network interface at a customer's premises to a central office switching device, distribution frame, or similar demarcation point.

**Subp. 31. Local niche service.** "Local niche service" refers to point-to-point connections between end-user locations within a service area and any telecommunications services under the commission's jurisdiction that do not fall within the definition of local service or the definition of interexchange service.

**Subp. 32. Local niche service provider.** "Local niche service provider" means a telecommunications carrier that provides local niche service pursuant to a certificate of authority granted by the commission.

**Subp. 33. Local service.** "Local service" means dial tone, access to the public switched network, and any related services provided in conjunction with dial tone and access, including services that may be required under part 7812.0600. Local service does not include local niche service.

**Subp. 34. Local service provider or LSP.** "Local service provider" or "LSP" means a telephone company or telecommunications carrier providing local service in Minnesota pursuant to a certificate of authority granted by the commission. Local service provider includes both local exchange carriers and competitive local exchange carriers.

**Subp. 35. Network element.** "Network element" means a functional capability of a network, disaggregated from other network capabilities and made available to other carriers and end-users separately from all other network capabilities. Network elements include, but are not limited to, the local loop, switching functions, ports, and trunks.

**Subp. 36. Network facilities.** "Network facilities" means a telecommunications service provider's facilities other than those used exclusively by a reseller to provide resale service.

**Subp. 37. Number portability.** "Number portability" means the ability of customers to retain their existing telephone numbers, consistent with the requirements established by the Federal Communications Commission, notwithstanding changes in location of service, type of service, or local service provider.

**Subp. 38. Office of Attorney General-Residential Utilities Division or OAG-RUD.** "Office of Attorney General-Residential Utilities Division" or "OAG-RUD" refers to the Residential and Small Business Utilities Division of the Minnesota Attorney General's Office.

**Subp. 39. Person.** "Person" means an individual; a firm, company, limited liability company, partnership, limited liability partnership, corporation, cooperative, and any other commercial or business entity, however organized; any form of municipality including a county, statutory or home rule charter city, and town; and any other political subdivision or agency of the state including, but not limited to, a metropolitan council or commission, school district, joint powers authority, port authority, special service district, regional development commission, and their agencies, as well as any combination of them.

**Subp. 40. Port.** "Port" means a mechanism allowing access to switching functions, including dial tone generation, origination, and termination of local and long-distance calls.

**Subp. 41. Public safety answering point or PSAP.** "Public safety answering point" or "PSAP" means a facility equipped and staffed to receive and direct the disposition of 911 calls from the basic emergency service provider.

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Subp. 42. Resale service. "Resale service" refers to service that is purchased on a wholesale basis from a local service provider and then resold on a retail basis to end-users.

Subp. 43. Reseller. "Reseller" means a local service provider that provides local service to end-users without using its own network facilities, or the unbundled network elements of a local exchange carrier.

Subp. 44. Service area. "Service area" means the geographic area in which a local service provider offers local service pursuant to its certificate of authority under part 7812.0200.

Subp. 45. Telecommunications. "Telecommunications" means any transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Subp. 46. Telecommunications carrier. "Telecommunications carrier" means a person, firm, association, or corporation as defined in *Minnesota Statutes*, section 237.01, subdivision 6.

Subp. 47. Telecommunications service. "Telecommunications service" means the offering of telecommunications under the commission's jurisdiction for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Subp. 48. Telecommunications service provider. "Telecommunications service provider" means any provider of telecommunications service.

Subp. 49. Telephone company. "Telephone company" means a person, firm, association, or other entity, as defined in *Minnesota Statutes*, section 237.01, subdivision 2, but does not include an independent telephone company as defined in *Minnesota Statutes*, section 237.01, subdivision 3.

Subp. 50. Total service long-run incremental cost or TSLRIC. "Total service long-run incremental cost" or "TSLRIC" has the meaning given in *Minnesota Statutes*, section 237.772, subdivision 1.

Subp. 51. Universal service area. "Universal service area" means:

A. the study area of a local exchange carrier with fewer than 50,000 subscribers, or any other local exchange carrier the commission finds through a proceeding to be a rural company under section 3(47) of the federal Telecommunications Act of 1996; or

B. the exchange area, or a smaller geographic unit identified by the commission under part 7812.1400, subpart 3, of a local exchange carrier serving 50,000 or more subscribers, unless the commission has found the local exchange carrier to be a rural company under section 3(47) of the federal Telecommunications Act of 1996.

### **7812.0150 APPLICABILITY OF RULES OF PRACTICE AND PROCEDURE.**

Proceedings under this chapter must be conducted according to the commission's rules of practice and procedure, parts 7829.0100 to 7829.1200 and 7829.2600 to 7829.3200, to the extent those parts are consistent with the requirements of this chapter.

### **7812.0200 GENERAL CERTIFICATION REQUIREMENTS.**

Subpart 1. Scope. No person may provide telecommunications service in Minnesota without first obtaining a certificate under this part and parts 7812.0300 to 7812.0600, except to the extent the person is providing telephone service under a certificate issued by the commission before the effective date of this chapter.

Subp. 2. Certification categories. A person may seek certification in any of the following four categories:

A. local facilities-based service;

B. local resale service;

C. interexchange service; or

D. local niche service.

A certificate to provide local facilities-based service authorizes the provision of all forms of local service, interexchange service, and local niche service in Minnesota. A certificate to provide local resale service only authorizes the provision of local resale service. A certificate to provide interexchange service only authorizes the provision of interexchange service. A certificate to provide local niche service only authorizes the provision of local niche service. An applicant may request certification in multiple categories in a single petition.

Subp. 3. Limitations on local service certification/intent to provide service. An applicant may obtain certification to provide local service for a geographic area only if:

A. the applicant has started any necessary negotiations for resale, the purchase of network elements, or interconnection under section 252 of the federal act with the local exchange carrier (LEC) currently serving the area; and



B. the applicant plans to provide local service in the area, either through resale, the purchase of unbundled network elements, or use of its own facilities, within 24 months after the date of the applicant's petition. A certificate for local service obtained under part 7812.0300 or 7812.0350 applies only to the service area designated in the petition within the limits established in this subpart. The service area may be expanded under part 7812.0300, subpart 5, or 7812.0350, subpart 5.

Subp. 4. Automatic revocation for failure to serve. The local service provider (LSP) certified under part 7812.0300 or 7812.0350 must offer services, consistent with part 7812.0600, throughout its entire local service area within 24 months after the later of the following three dates:

A. the date of the commission order granting the applicant's certificate of authority;

B. the date of the commission order under part 7812.1100, approving the necessary agreements resulting from the negotiations that provided the basis under subpart 3, item A, for granting the certificate; or

C. the effective date of this subpart. Failure to offer basic local service throughout the entire local service area as required in this subpart results in the automatic revocation of the local service provider's certificate with respect to those areas in which the LSP is not offering basic local service, unless the LSP demonstrates to the satisfaction of the commission, under subpart 5, that its failure to offer basic local service throughout the entire local service area results from factors beyond the local service provider's control.

Subp. 5. Show-cause proceeding to justify failure to serve entire area. An LSP shall file a petition with the commission to justify anticipated failure to offer basic local service within its entire local service area as required under subpart 4. The petition must be filed at least 90 days before the applicable 24-month deadline under subpart 4. The petition must include the basis for the local service provider's failure to meet the deadline and an alternative date by which the LSP expects to begin offering service in the areas for which it will not meet the 24-month deadline. The local service provider's certification for the portion of its local service area in which it does not offer basic local service does not expire until the commission has issued an order denying the local service provider's request for an extension under this subpart.

Subp. 6. Required notification. Petitions for certification under this chapter must be served on the department, the OAG-RUD, the Department of Administration, persons certified to provide telecommunications service within the petitioner's designated service area, and the city clerk, or other official authorized to receive service or notice on behalf of the municipality, of all municipalities within the petitioner's designated service area.

Subp. 7. Comment periods. Comments on a petition must be filed and served within 45 days after the petition is filed. Responsive comments must be filed and served within 20 days after the deadline for initial comments.

Subp. 8. Factual disputes. If the petition raises contested issues of material fact, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings or conduct an expedited proceeding under Minnesota Statutes, section 237.61, if permitted under the commission's rules of practice and procedure under part 7829.1200, item B or C.

#### **7812.0300 LOCAL FACILITIES-BASED SERVICE CERTIFICATION.**

Subpart 1. Scope of certificate. A certificate to provide local facilities-based service authorizes the provision of telecommunications services in Minnesota within the area identified in the applicant's petition. This includes authority to provide local service through the resale of a local exchange carrier's services, the purchase and recombination of a local exchange carrier's network elements or the use of the local service provider's own facilities.

Subp. 2. Filing requirements. A petition for authority to provide local facilities-based service must include the following information:

A. the applicant's full legal name and address, including the address of the applicant's place of business; if a corporation, the names, addresses, telephone numbers, and business experience of its officers; if a partnership or limited liability partnership, the names, addresses, telephone numbers, and business experience of persons authorized to bind the partnership; or, if a limited liability company, the names, addresses, and telephone numbers of its managers;

B. a description of the applicant's organizational structure, including documentation identifying the petitioner's legal status, for example, sole proprietorship, partnership, limited liability partnership, company, limited liability company, corporation, and so forth; a copy of its articles of incorporation; and, a list of shareholders, partners, or members owning ten percent or more of the interest in the business;

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C. a list of the applicant's affiliates, subsidiaries, and parent organizations, if any;

D. the nature of the applicant's business, including a list of the services it provides;

E. a description of the applicant's business history, including:

(1) the date the business was first organized, the dates of subsequent reorganizations, and the date the applicant started providing telephone or other telecommunications services; and

(2) the applicant's experience providing telephone company services or telecommunications services in Minnesota and other jurisdictions, including the types of services provided, the dates and nature of state or federal authorization to provide those services, the length of time it has provided those services, and pending or completed criminal, civil, or administrative action taken against the applicant by a state or federal authority, including any settlements, in connection with the applicant's provision of telephone company services or telecommunications services;

E. for the most recent fiscal year, a financial statement of the applicant, consisting of a balance sheet, an income statement, notes to the financial statement, and, if available, an annual report;

G. a list and description of the types of services the applicant seeks authority to offer:

(1) including the classes of customers the applicant intends to serve;

(2) indicating the extent to which it intends to provide service through use of its own facilities, the purchase of unbundled network elements, or resale;

(3) identifying the types of services it seeks authority to provide by reference to the general nature of the service, for example, voice, custom calling, signaling, information, data, and video; and

(4) listing the technology that will be used to deliver the service, for example, fiber-optic cable, digital switches, or radio;

H. a proposed price list or tariff setting forth the rates, terms, and conditions of each service offering, unless the applicant is seeking a conditional certificate under subpart 4 and has not yet developed the information listed in this item;

I. a service area map providing the information required under part 7810.0500, subpart 2, and narrative description of the area for which the applicant is seeking certification, except that if the applicant does not have the necessary agreements or tariffs to serve the entire area for which certification is sought, a map providing the information required under part 7810.0500, subpart 2, and a narrative delineating specifically those areas in which the applicant is currently prepared to provide service;

J. the date by which the applicant expects to offer local service to the entire service area for which the applicant is seeking certification, including the applicant's estimated timetable for providing at least some of its services through use of its own network facilities;

K. a description of the applicant's policies, personnel, and equipment or arrangements for customer service and equipment maintenance, including information demonstrating the applicant's ability to respond to customer complaints and inquiries promptly and to perform maintenance necessary to ensure compliance with the quality requirements set forth in the commission's rules;

L. a copy of the applicant's certificate to conduct business from the Minnesota Secretary of State;

M. a description of the applicant's facilities and the location or proposed location of those facilities; and

N. other information needed to demonstrate that the applicant has the managerial, technical, and financial ability to provide the services it intends to offer consistent with the requirements of this chapter and applicable law.

**Subp. 3. Decision criteria.** A certificate to provide local facilities-based service must not be granted unless the applicant establishes that it has the financial, technical, and managerial capability to provide the services described in its petition consistent with the public interest, including the requirements of this chapter, *Minnesota Statutes*, section 237.16, and all other applicable laws, rules, and commission orders. The decision to grant a certificate under this part must be based on the following criteria:

A. the applicant's experience providing telecommunications service in Minnesota or other jurisdictions, including the extent to which that experience is comparable to the service plans outlined in the certification petition;

B. the applicant's personnel, staffing, equipment, and procedures, including the extent to which these are adequate to ensure compliance with the commission's rules and orders relating to service requirements, service quality, customer service, engineering, accounting, and other relevant areas;

C. the extent to which the applicant has had any civil, criminal, or administrative action taken against it in connection with the applicant's provision of telecommunications services;

D. the applicant's cash reserves and the extent to which those reserves or cash equivalent are adequate to meet the petitioner's start-up costs and expenses;

E. the applicant's business or owner equity, which must be positive;

F. the nature and location of the applicant's proposed or existing facilities, including the extent to which those facilities are capable of providing the services identified in the applicant's filing under this part;

G. the applicant's plan and facilities for receiving and responding to customer inquiries and complaints, which must include a toll-free telephone number giving customers access to the applicant's place of business during regular business hours; and

H. any other factors relevant to determining the applicant's technical, managerial, and financial capability to provide the reasonably adequate services, as described in its petition, consistent with the public interest, including the requirements of this chapter, Minnesota Statutes, section 237.16, and all other applicable laws, rules, and commission orders.

Subp. 4. Conditional certificate. The commission may grant a conditional certificate pending submittal and commission approval of the tariffs and intercompany agreements necessary for providing the services contemplated in the applicant's petition for certification. The filings necessary to make the conditional certificate operational must include any related changes to every service area map filed under subpart 2, item I. The maps must distinguish clearly between operational areas and nonoperational areas. Failure to offer service in the nonoperational areas by the deadline under part 7812.0200, subpart 4, results in the automatic revocation of the local service provider's certificate with respect to those nonoperational areas as provided in part 7812.0200, subparts 4 and 5.

Subp. 5. Amended certificate for change in service area. A local service provider (LSP) shall not provide local service in an area for which it does not have a valid certificate under this part or acquire ownership or control of another LSP without first obtaining an amended certificate from the commission applicable to the area into which the LSP proposes to expand. A petition to modify a local service provider's service area must include a revised map and descriptive narrative as provided in subpart 2, item I, indicating the petitioner's proposed service area changes. The petition must be served on the parties identified in part 7812.0200, subpart 6. An amended certificate under this subpart is deemed approved within 20 days of the petition's service date unless:

A. the petition involves an acquisition under Minnesota Statutes, section 237.23, in which case a certificate must not be granted until the acquisition is approved under that section; or

B. an objection to the petition is filed within 20 days of the petition's service date, in which case the commission shall determine whether to grant the petition in an expedited proceeding under Minnesota Statutes, section 237.61. An objection must identify the reasons for opposing the petition, including a statement of why the proposed service area revisions would not be consistent with the public interest.

When an objection is filed under item B, the petitioner has the burden of proving that it has the technical, managerial, and financial resources to provide local service in the service area into which it proposes to expand, consistent with this chapter and applicable rules, commission orders, and laws.

Subp. 6. Changes in terms and conditions. An LSP shall file and obtain approval of tariffs to reflect any changes in terms and conditions of service. The LSP filing for a tariff change under this subpart shall demonstrate that the change is consistent with the provider's certificate and applicable commission orders, rules, or laws.

#### **7812.0350 LOCAL RESALE SERVICE CERTIFICATION.**

Subpart 1. Scope of certificate. A certificate to provide local resale service exclusively authorizes the provision of local service as a reseller throughout the service area identified in the petition. It does not authorize the provision of other telecommunications service and it does not authorize the provision of local service through the applicant's own network facilities or through the purchase and recombination of a local exchange carrier's network facilities.

Subp. 2. Filing requirements. A petition for authority to provide local service as a reseller must include the information required under part 7812.0300, subpart 2, items A to L, except for the information relevant to facilities-based service identified or contemplated in part 7812.0300, subpart 2, items G and K. The applicant shall provide any additional information needed to demonstrate that it satisfies the requirements for certification under subpart 3.

Subp. 3. Decision criteria. A certificate to provide local service as a reseller must be granted when the petitioner establishes that it has the financial, technical, and managerial capability to provide the services described in its petition consistent with the public interest, including the requirements of this chapter, Minnesota Statutes, section 237.16, and all other applicable laws, rules, and commission orders. The decision to grant a certificate under this part must be based on the criteria in part 7812.0300, subpart 3, to

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the extent those criteria relate to the applicant's technical, managerial, and financial ability to provide reasonably adequate resale service.

Subp. 4. Conditional certificate. The commission may grant a conditional certificate for local resale service as provided in part 7812.0300, subpart 4.

Subp. 5. Amended certificate for change in service area. A reseller may expand its service area as provided in part 7812.0300, subpart 5.

Subp. 6. Changes in terms and conditions. A reseller may change its terms and conditions of service as provided under part 7812.0300, subpart 6.

### **7812.0400 INTEREXCHANGE SERVICE CERTIFICATION.**

Subpart 1. Filing requirements. A petition to provide interexchange service, but not local service, must include all the information required for local resale service petitions under part 7812.0350.

Subp. 2. Decision criteria. The commission shall apply the decision criteria identified in part 7812.0300 or 7812.0350 to the extent those criteria are relevant to providing interexchange service.

### **7812.0500 LOCAL NICHE SERVICE CERTIFICATION.**

Subpart 1. Filing requirements. A petition to provide local niche service, but not local service or interexchange service, must include a description of the petitioner's business organization, experience, and expertise in providing telephone or telecommunications services, including local niche service. The petitioner must also submit a balance sheet indicating its current financial status.

Subp. 2. Decision criteria. The commission shall apply the criteria identified in part 7812.0300 or 7812.0350 to the extent those criteria are relevant to providing the local niche services the petitioner intends to provide.

### **7812.0550 911 EMERGENCY SERVICE CAPABILITIES AND REQUIREMENTS.**

Subpart 1. CLEC 911 plan. Before providing local service in a service area, a competitive local exchange carrier (CLEC) shall submit to the commission a comprehensive plan, detailing how it will provide 911 service to its customers in a manner consistent with applicable law, including chapter 1215, and comparable to the provision of 911 service by the local exchange carrier (LEC) operating in the competitive local exchange carrier's local service area. The CLEC filing the plan shall serve the plan on the department, Office of Attorney General-Residential Utilities Division (OAG-RUD), Department of Administration, and the Executive Director of the Metropolitan 911 Board. The commission shall not permit the CLEC to begin providing local service until the commission has approved the plan.

Subp. 2. LEC cooperation. An LEC shall provide a CLEC with the access to facilities and information necessary to enable the CLEC to meet its 911 service obligations. With respect to resale service, the LEC shall provide a CLEC customer's name, address, and telephone number information to the automatic location identification (ALI) database provider within 24 hours of the daily close of service order activity.

Subp. 3. Factors to apply in reviewing CLEC plan. In determining whether to approve a competitive local exchange carrier's 911 plan under subpart 1, the commission shall consider, at a minimum, the competitive local exchange carrier's ability and intent to:

- A. comply with chapter 1215;
- B. integrate into the 911 tandem network as specified in the relevant county plan to achieve appropriate tandem-based choking;
- C. design a network with adequate diversity and default-routing capability;
- D. provide for the display at the public safety answering point (PSAP) of the customer's old and new telephone numbers when call-forwarding technology is used for interim number portability;
- E. cooperate with each relevant county and system integrator in developing a 911 contingency plan;
- F. maintain circuit-routing profiles and expedite service restoration;
- G. share customer information and data consistent with current national standards for sharing information related to providing emergency telephone service;
- H. enter into nondisclosure agreements with the ALI database provider;
- I. submit data to the ALI database provider in the format required by the database provider;
- J. ensure that the competitive local exchange carrier's identity is shown on the ALI record and displayed at the PSAP; and

K. provide for operator-assisted emergency calls, including calls from speech-impaired, hearing-impaired, or non-English speaking customers.

**7812.0600 BASIC SERVICE REQUIREMENTS.**

**Subpart 1. Required services.** A local service provider (LSP) shall provide, as part of its local service offering, the following to all customers within its service area:

A. single party voice-grade service and touch-tone capability;

B. 911 or enhanced 911 access;

C. 1 + intraLATA and interLATA presubscription and code-specific equal access to interexchange carriers subscribing to its switched access service;

D. access to directory assistance, directory listings, and operator services;

E. toll and information service-blocking capability without recurring monthly charges as provided in the commission's ORDER REGARDING LOCAL DISCONNECTION AND TOLL BLOCKING CHARGES, Docket No. P-999/CI-96-38 (June 4, 1996), which is incorporated by reference, is not subject to frequent change, and is available through the statewide interlibrary loan system;

F. one white pages directory per year for each local calling area, which may include more than one local calling area, except where an offer is made and explicitly refused by the customer;

G. a white pages and directory assistance listing, or, upon customer request, a private listing that allows the customer to have an unlisted or unpublished telephone number;

H. call-tracing capability according to chapter 7813;

I. blocking capability according to the commission's ORDER ESTABLISHING CONDITIONS FOR THE PROVISION OF CUSTOMER LOCAL AREA SIGNALING SERVICES, Docket No. P-999/CI-92-992 (June 17, 1993) and its ORDER AFTER RECONSIDERATION, Docket No. P-999/CI-92-992 (December 3, 1993), which are incorporated by reference, are not subject to frequent change, and are available through the statewide interlibrary loan system; and

J. telecommunications relay service capability or access necessary to comply with state and federal regulations.

**Subp. 2. Separate flat rate service offering.** At a minimum, each LSP shall offer the services identified in subpart 1 as a separate tariff or price list offering on a flat rate basis. An LSP may also offer basic local service on a measured rate basis or in combination with other services. An LSP may impose separate charges for the services set forth in subpart 1 only to the extent permitted by applicable laws, rules, and commission orders.

**Subp. 3. Service area obligations: all LSPs.** An LSP shall provide its local services on a nondiscriminatory basis, consistent with its certificate under part 7812.0300 or 7812.0350, to all customers who request service and whose premises fall within the carrier's service area boundaries or, for an interim period, to all requesting customers whose premises fall within the operational areas of the local service provider's service area under part 7812.0300, subpart 4, or 7812.0350, subpart 4. The obligation to provide resale services does not extend beyond the service capability of the underlying carrier whose service is being resold. The obligation to provide facilities-based services does not require an LSP that is not an eligible telecommunications carrier (ETC) to build out its facilities to customers not abutting its facilities or to serve a customer if the local service provider cannot reasonably obtain access to the point of demarcation on the customer's premises.

**Subp. 4. Service area obligations: ETCs.** An LSP designated an ETC by the commission must provide local service, including, if necessary, facilities-based service, to all requesting customers within the carrier's service area on a nondiscriminatory basis, regardless of a customer's proximity to the carrier's facilities.

**Subp. 5. CLEC service areas.** Competitive local exchange carriers (CLECs) may designate service areas different from the service areas of local exchange carriers (LECs).

**Subp. 6. Limitation on exit.** An LSP shall not withdraw from a service area unless another LSP certified for that area will be able to provide basic local service to the exiting local service provider's customers immediately upon the date the exiting provider discontinues service. An LSP shall not withdraw from its service area until at least 60 days after it has given written notice to the

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commission, department, Office of Attorney General-Residential Utilities Division (OAG-RUD), and its customers. The notice must identify the other LSPs available to its customers.

Subp. 7. Service disconnection. An LSP may disconnect a customer's basic local service as allowed under parts 7810.1800 to 7810.2000, except that it shall not disconnect basic local service for nonpayment of toll or information service charges or any service other than basic local service.

### **7812.0700 GENERAL SERVICE QUALITY REQUIREMENTS.**

Subpart 1. Service to end-users. The local services provided by a local service provider (LSP) must meet the standards in:

- A. applicable commission orders and rules, including parts 7810.0100 to 7810.6100 or their successor parts and;
- B. the local service provider's alternative regulation plan (AFOR), if the provider is operating under an AFOR.

Subp. 2. Intercarrier agreements. All local exchange carriers (LECs) and competitive local exchange carriers (CLECs) must include quality standards in their intercarrier agreements for resale, the purchase of network elements, or interconnection. These standards must, at a minimum:

- A. enable each party to the agreement to meet the standards applicable under subpart 1; and
- B. ensure that the CLEC receives service, network elements, and interconnection at least at parity with the services, network elements, and interconnection the LEC provides to itself or to any subsidiary, affiliate, or other party consistent with section 251, subsection (c), paragraphs (2) and (3), of the act and section 51.311, paragraphs (b) and (c), of the FCC interconnection rules.

Subp. 3. Intercarrier standards exceeding parity. The standards in an agreement under subpart 2 may require the LEC to provide the CLEC with services, network elements, or interconnection at a level of quality exceeding that which the LEC provides itself or its affiliates. The CLEC shall pay a reasonable portion of the additional cost of providing the higher quality of service if the higher quality level goes beyond the specific mandates in applicable commission orders or rules. The reasonable portion of additional costs the CLEC must pay must be determined as provided in items A and B:

A. The CLEC shall pay for the higher quality services, network elements, or interconnection based on the proportional benefit the CLEC receives from the higher standards relative to the benefit received by the LEC.

B. The LEC shall demonstrate through its own internal quality measures that the contract standards exceed both the local exchange carrier's internal standards and the standards set forth in applicable commission orders and rules. Disputes regarding payment for higher service levels must be resolved through arbitration under section 252, subsection (b), of the act or through the dispute resolution process set forth in the parties' agreement.

Subp. 4. Determining carrier responsibility. An LSP is directly responsible to its customers for the quality of service provided to those customers. Nothing in this subpart may be interpreted or applied to impact the allocation of liability between two or more telecommunications service providers in connection with quality of service issues.

### **7812.0800 LOCAL CALLING SCOPE FOR CLECs.**

Subpart 1. Required offering. A competitive local exchange carrier (CLEC) shall offer each end-user at least one flat rate calling area that matches the flat rate calling area offered that customer by the local exchange carrier (LEC) under part 7812.0900, subpart 1, including any applicable extended area service (EAS).

Subp. 2. Additional calling area options. Upon 30 days' notice to the commission, department, Office of Attorney General-Residential Utilities Division (OAG-RUD), and LEC, a CLEC may offer alternative calling areas or measured rate options in addition to the flat rate calling area offered under subpart 1. The rates charged under any alternative calling area or measured rate options must be just, reasonable, and affordable relative to the rates charged for the required calling area under subpart 1.

### **7812.0900 LOCAL CALLING SCOPE FLEXIBILITY FOR LECs.**

Subpart 1. Required offering. A local exchange carrier (LEC) shall offer each end-user the flat rate calling area, including any applicable extended area service (EAS), offered by the LEC as of the effective date of this subpart, as modified to reflect any subsequent addition or removal of EAS under the following commission orders, which are incorporated by reference, regarding the commission's Investigation into the Appropriate Local Calling Scope, in Accordance with Minn. Stat. 237.161, Docket No. P-999/CI-94-296:

- A. ORDER REACTIVATING THE PROCESSING OF EAS PETITIONS (October 24, 1995); and
- B. ORDER AFTER RECONSIDERATION (February 23, 1996).

These orders are not subject to frequent change and are available through the statewide interlibrary loan system.

Subp. 2. Additional calling area options. At any time after receipt of a notice under part 7812.0800, subpart 2, that a competitive local exchange carrier (CLEC) intends to offer additional alternative local calling areas or measured rate options, the LEC may,

upon 30 days' notice to the commission, department, Office of Attorney General-Residential Utilities Division (OAG-RUD), and CLECs certified in the applicable area, file a tariff offering additional calling areas or measured rate options. The rates charged under an alternative calling area or measured rate options must be just, reasonable, and affordable relative to the rates charged for the required calling area under subpart 1. Changes in current rates are subject to the applicable provisions of Minnesota Statutes, chapter 237, regarding rate changes.

**7812.1000 ANNUAL NOTICE OF CUSTOMER RIGHTS.**

At the time service is initiated, at least annually thereafter, and upon customer request, a local service provider (LSP) shall provide customers with a summary, in plain language, of the rights and obligations of customers as provided in items A to D.

A. The notice must describe the complaint procedures available through the LSP and the commission, and must indicate that the customer can contact the commission if dissatisfied with the local service provider's resolution of the customer's complaint. The notice must specify the current address and the local and toll-free telephone numbers of the commission's Consumer Affairs office.

B. The notice must describe the customer's rights regarding the payment of bills, disconnection of service, privacy, deposits, low-income assistance, hearing-impaired programs, and blocking options.

C. The notice must summarize the commission's service quality standards and the remedies available to customers for failure to meet those standards.

D. The notice must specify the price and service options as required by Minnesota Statutes, section 237.66.

**7812.1100 NOTICE AND DISCLOSURE OF CALLING AREA OFFERINGS.**

New calling area offerings that differ from the calling area authorized under part 7812.0900, subpart 1, must comply with the customer notice requirements of items A to C.

A. The local service provider (LSP) shall include a map that distinguishes between the new calling area offerings and the calling area required under part 7812.0900, subpart 1, in printed advertisements and written solicitations regarding the new calling area offerings and in each customer's initial bill for service under the new calling area. The printed advertisements, written solicitations, and initial bill must include a narrative explaining the differences between the different calling area offerings, including the differences in the application of toll charges.

B. The LSP shall identify clearly the differences between any new calling area offering and the calling area required under part 7812.0900, subpart 1, including the differences in the application of toll charges, as part of any oral solicitation or contact with a customer regarding the new calling area offerings.

C. The LSP shall not provide service to a customer under a calling area different from the calling area authorized under part 7812.0900, subpart 1, unless the customer requests the new calling area after receiving direct notice and explanation as required under item A or B.

**7812.1200 PROTECTION AGAINST UNAUTHORIZED CHANGES IN SERVICE OR LOCAL SERVICE PROVIDER.**

A local service provider must comply with Minnesota Statutes, section 237.66, with respect to changes in a customer's local service provider.

**7812.1300 UNIVERSAL SERVICE.**

Subpart 1. State universal service support mechanism. Eligibility for any state universal service support established by the commission under Minnesota Statutes, section 237.16, subdivision 9, must be limited to commission-designated eligible telecommunication carriers (ETCs) that offer and market the services identified in part 7812.0600, subpart 1. The support mechanism must provide support as necessary to ensure the affordability of basic local service, on a competitively neutral basis, consistent with section 254 of the act and FCC regulations adopted under the act, for the benefit of the following categories of end-users:

A. high-cost area end-users; and

B. low-income end-users.

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Subp. 2. Federal universal service support mechanism. Eligibility for federal universal service support for the benefit of high-cost area and low-income customers shall be limited to commission-designated ETCs as provided in section 254 of the federal act and applicable FCC regulations adopted pursuant to the act. Local service providers are eligible to receive federal universal service support for the benefit of rural health care providers, educational institutions, and libraries as provided in section 254, subsection (h), paragraph (1), subparagraph (B)(ii), of the act and any applicable FCC regulations.

### 7812.1400 ETC DESIGNATION

Subpart 1. Automatic designation of LECs. On and after the effective date of this part, each local exchange carrier (LEC) operating in Minnesota shall be designated an eligible telecommunication carrier (ETC), eligible to receive universal service support throughout its service territory existing on the effective date of this part, under both the federal support mechanism established pursuant to section 254 of the act and any state fund established pursuant to Minnesota Statutes, section 237.16, subdivision 9.

Subp. 2. Designation of CLECs upon petition. Upon request and consistent with the public interest, convenience, and necessity, the commission shall designate a competitive local exchange carrier (CLEC) as an ETC and eligible to receive universal service support from the federal universal service support mechanisms under section 254 of the federal act if the CLEC qualifies as an ETC under part 7812.0100, subpart 12. A request for designation as an ETC eligible to receive universal service support must be filed and decided according to the requirements of subparts 3 to 13.

Subp. 3. Determining applicable universal service area. A decision on a petition for designation to receive universal service support under this part must include a determination of the applicable universal service area. The commission shall determine whether the LEC serving the area for which the CLEC seeks designation to receive universal service support is a rural company under section 3(47) of the act, if the competitive local exchange carrier's petition or another party's initial comments under subpart 8 assert that the LEC is a rural company. If the applicable LEC has 50,000 or more subscribers and is not found by the commission to be a rural company, the commission shall designate the local exchange carrier's exchange area as the universal service area unless the commission finds that a smaller geographic unit would be more appropriate, based on consideration of the relevant high-cost areas designated by the FCC and the public interest.

Subp. 4. Petition information. A competitive local exchange carrier's petition for designation as an ETC to receive federal universal service support under section 254 of the act, or any state universal service support under Minnesota Statutes, section 237.16, subdivision 9, must include:

- A. the legal name, address, and telephone number of the CLEC and its designated contact person;
- B. the name, address, and telephone number of the attorney, if the CLEC will be represented by an attorney;
- C. the proposed effective date of designation of eligibility to receive universal service support;
- D. the signature and title of the CLEC officer or representative authorizing the petition;
- E. identification of the service area for which designation is sought, the LEC serving that area and whether the petitioning CLEC considers that LEC to be a rural company under section 3(47) of the act;
- F. a statement supporting the petition, which specifies why the requested designation satisfies the requirements for receiving universal service support under part 7812.0700.

Subp. 5. Filing and service. A local service provider (LSP) filing a designation petition under subpart 1 shall file an original and 15 copies of the petition with the commission, unless otherwise directed by the executive secretary. A copy of the petition must also be served on the department, the Office of Attorney General-Residential Utilities Division (OAG-RUD), those persons on the applicable general service list, and on all other LSPs authorized to provide services in the area for which designation is sought.

Subp. 6. Challenges to form and completeness. A person wishing to challenge the form or completeness of a designation petition shall do so within ten days of its filing. The filing local service provider shall reply to the challenge within five days of its filing.

Subp. 7. Rejection of filings. The commission shall reject a designation petition found to be substantially out of compliance with this part. A filing under this part not rejected within 45 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 8. Initial comments. A person wishing to comment on a designation petition under this part shall file initial comments within 20 days of the filing. Initial comments must include a recommendation on whether the filing requires a contested case proceeding, expedited proceeding, or some other procedure, together with reasons for the recommendation.

Subp. 9. Petition to intervene. If a person who files initial comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene before the reply comment period expires. The intervention petition may be combined with comments on the filing.



Subp. 10. Reply comments. Commenting parties have ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments.

Subp. 11. Nature of proceeding. Unless all parties agree to the use of a different procedure or there are no unresolved issues of fact, the commission shall conduct an expedited proceeding under *Minnesota Statutes*, section 237.61, or refer the matter for a contested case proceeding.

Subp. 12. Time frame for disposition. The commission shall take final action within 180 days of the filing of the petition.

Subp. 13. Unserved areas. The commission may order an LSP to provide the services that are supported by a federal universal service support mechanism to an otherwise unserved area only as provided in section 102(a) of the act and consistent with *Minnesota Statutes*, sections 237.081 and 237.16.

Subp. 14. Relinquishment of universal service. A local service provider may relinquish its ETC designation and accompanying universal service obligations as provided in items A to C.

A. A local service provider seeking to relinquish its ETC designation shall file a petition with the commission, specifying the service area for which it seeks to relinquish its designation, its proposed timetable for relinquishing its designation, and the identity of the other ETCs serving the service area. The petition to relinquish must be served on the department, the OAG-RUD, and all other local service providers serving the area for which the petitioner seeks to relinquish its ETC designation.

B. The commission shall permit a local service provider to relinquish its ETC designation if at least one other ETC serves the area for which the relinquishment is sought.

C. The petitioning ETC shall continue to meet its ETC obligations for the entire area for which it seeks to relinquish those obligations until the date specified in the commission's order approving the relinquishment. The commission shall specify the date upon which the local service provider may discontinue service based on the ability of other ETCs to serve the relinquishing provider's customers as provided in section 102(a) of the act.

Subp. 15. Revocation. The commission shall revoke a local service provider's ETC designation upon finding that the LSP does not qualify as an ETC under part 7812.0100, subpart 12.

#### **7812.1500 INTERCARRIER NEGOTIATIONS GENERALLY.**

Subpart 1. Definitions. The following definitions apply to parts 7812.1500 to 7812.1900:

A. "Arbitration" means an alternative process for resolving disputes submitted to the commission pursuant to section 252 of the act, in which the commission, assisted by a neutral third party fact-finder, makes a final determination on the issues presented.

B. "Arbitrator" means the person or persons designated by the commission to conduct arbitration proceedings as provided in part 7812.1700.

C. "Intervenor" means a person who is not a party to the negotiation but who is permitted to participate as a party in a proceeding under part 7812.1700 or 7812.1800.

D. "Mediation" means a voluntary alternative dispute resolution process in which a neutral third party helps parties reach a negotiated agreement as provided in part 7812.1600.

E. "Negotiating party" means a party to negotiations under section 252 of the act.

E. "Participant" means a person who files comments or otherwise participates in an arbitration or approval proceeding without becoming a party to the proceeding.

G. "Party" means a party to the negotiations under section 252 of the act, or a person permitted to intervene in the arbitration or approval proceeding under part 7812.1700 or 7812.1800.

H. "Petition for arbitration" means the petition requesting arbitration of open issues in a negotiation for interconnection or resale pursuant to section 252 of the act.

I. "Petitioner" means a party to a negotiation who files a petition for arbitration.

I. "Respondent" means a party to a negotiation against whom a petition for arbitration is filed.

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Subp. 2. Establishing initial service list. Persons desiring to receive notice of (1) requests for negotiation under section 252 of the act, (2) filings related to arbitrations under part 7812.1700, and (3) approval proceedings under part 7812.1800, shall file a written request with the incumbent local exchange carrier (LEC). The LEC shall maintain a list of all persons who have filed the requests and shall provide the list to any carrier requesting negotiations under section 252 of the act. The commission's rules of practice and procedure, part 7829.0600, subparts 2 to 5, apply to this list.

Subp. 3. Notice of interconnection request. An incumbent LEC that receives a request for negotiation shall notify the commission in writing of the request. The notice must identify the party requesting negotiation and the date of the request. The notice must be filed and served on the other party to the negotiation, the department, the Office of Attorney General-Residential Utilities Division (OAG-RUD), and persons on the service list established under subpart 2 within ten days after receiving the request.

Subp. 4. Update on negotiation status. Each party to a negotiation shall, between 90 and 125 days after the request for negotiation, notify the commission in writing of the status of the negotiations. The status report must identify any issues that have been settled, provide any timetable for completing the negotiations on which the parties have agreed, and indicate the date, if any, on which the party anticipates filing for arbitration. The parties may file a joint status report in lieu of a separate report from each party.

### **7812.1600 MEDIATION OF INTERCARRIER NEGOTIATIONS.**

Subpart 1. Request for mediation. A party may request mediation by the commission at any point during the negotiation. The parties to the negotiation may also file a joint request for mediation. The request must be in writing and must include the following information:

A. the identity of the parties to the negotiation, including the name, address, and telephone numbers and FAX numbers of the parties or their representatives;

B. the date on which the request for negotiation was made;

C. a brief summary of the parties negotiation history, including meeting dates and issues discussed;

D. a brief statement of the nature of the dispute, including a list of the issues in the negotiation that identifies which issues have already been resolved, which have not been resolved and which unresolved issues should be mediated;

E. a statement of the parameters, if any, within which the requesting party expects the mediator to help resolve the disputed issues;

E. a proposed calendar for the mediation, including a date by which the mediation should be terminated if an agreement is not reached;

G. any recommendations regarding the choice of mediator, including preferences related to qualifications or individuals; and

H. any agreements between the parties as to how the mediation should be conducted.

Subp. 2. Notice of request. The party requesting mediation shall serve the request on the other party or parties to the negotiation, the department and the Office of Attorney General-Residential Utilities Division (OAG-RUD).

Subp. 3. Response to request. The negotiating party that did not file a mediation request shall file with the commission a written response to the request within ten days after being served under subpart 2. The response must be served as provided in subpart 2. The response must indicate whether the party is willing to participate in a mediation and identify any disagreements with the text of the petition for mediation.

Subp. 4. Decision to initiate mediation. The commission shall initiate a mediation upon request under subpart 2 unless another party to the negotiation indicates in writing that it will not participate in a mediation. The mediation shall be initiated by appointing a mediator under subpart 5.

Subp. 5. Appointment of mediator. Within 15 days after receiving the mediation request, the commission or the commission's executive secretary shall appoint a person or persons to serve as mediator unless a party to the negotiation has submitted written notice that it will not participate in the mediation. Upon appointment, the mediator shall contact the parties promptly and establish a time to begin mediation. This subpart does not preclude the parties, by mutual agreement, from seeking private mediation from some other source in lieu of mediation under this part.

Subp. 6. Mediator qualifications. The person appointed to mediate must be an administrative law judge assigned by the Office of Administrative Hearings, a member of the commission's staff, or a person retained by the commission on contract for the purpose of mediating under this part. The mediator assigned must have training or experience in mediation or expertise in the subject matter of the negotiations.

Subp. 7. Mediator neutrality and participation in subsequent proceedings. The mediator must have no personal or financial interest in the outcome of the negotiations. The mediator shall not conduct or participate in any arbitration or approval proceedings regarding the matters submitted for mediation except as provided in subpart 15.

**Subp. 8. Mediator role.** The mediator has no authority to compel a settlement, but shall attempt to encourage voluntary settlement by the parties. The mediator may make suggestions or, subject to the consent of the parties, take actions the mediator considers helpful in facilitating a settlement. The mediator's actions may include:

- A. scheduling meetings;
- B. directing the parties to provide and exchange information;
- C. holding private caucuses with each party;
- D. consulting other sources such as the department or commission staff; and
- E. making oral or written recommendations for settlement.

**Subp. 9. Representation of parties.** A party may be represented by counsel or others of the party's choice.

**Subp. 10. Privacy.** Persons other than the parties' representatives may attend mediation sessions or otherwise participate in the mediation only upon agreement of the parties and the mediator.

**Subp. 11. Confidentiality.** Records, reports, or other documents received by the mediator while serving in that capacity must not be divulged by the mediator in any subsequent proceeding. In any subsequent proceeding, the parties shall not rely on or introduce as evidence any of the following:

- A. views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- B. admissions made by another party in the course of the mediation;
- C. proposals made or views expressed by the mediator; or
- D. the fact that another party did or did not indicate a willingness to accept a proposal for settlement made by the mediator.

**Subp. 12. Discovery.** Subpart 11 does not require the exclusion of evidence in subsequent proceedings that is otherwise discoverable.

**Subp. 13. Record.** No stenographic record or electronic recording of the mediation process is permitted.

**Subp. 14. Termination of mediation.** The mediator shall end the mediation under any of the following circumstances:

- A. the parties execute an agreement on all the issues in dispute in the mediation;
- B. at least one party submits to the mediator and serves on the parties a written declaration of the party's unwillingness to continue the mediation; or
- C. the mediator determines that the mediation is unlikely to lead to a settlement, in which case the mediator shall serve on the commission and the parties a written statement terminating the mediation.

**Subp. 15. Mediator serving as arbitrator.** The mediator shall not conduct or participate in the arbitration proceedings under part 7812.1700 unless all the parties to the negotiation agree in writing. If the parties and mediator agree to have the mediator conduct the arbitration proceedings under part 7812.1700, they shall notify the commission in writing of this agreement. The mediator is deemed to have been designated to conduct the arbitration effective upon commission receipt of the written notice.

#### **7812.1700 ARBITRATION OF INTERCARRIER NEGOTIATIONS.**

**Subpart 1. Request to arbitrate.** During the period from the 135th day to the 160th day, inclusive, after the date on which an incumbent local exchange carrier (LEC) receives a request to negotiate under section 252, subsection (a), of the act, any party to the negotiation may petition the commission to arbitrate unresolved issues in the negotiation. The petition must include the following:

- A. the name, address, and telephone number of the petitioner and its counsel;
- B. the name, address, and telephone number of the other party to the negotiation and its counsel;
- C. a brief summary of the negotiation history since the request for negotiation was made, including meeting dates;
- D. the date of the initial request for negotiation and the dates 135 days, 160 days, and nine months after that date;
- E. a list of the issues resolved by the parties, including a copy of any proposed contract language that reflects the resolution of those issues;

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E. a list of the unresolved issues, if any, that are not being submitted for arbitration;

G. a list of the unresolved issues submitted for arbitration and the position of each of the parties with respect to those issues;

H. any proposed contract language reflecting the parties' positions;

I. a written narrative that explains the petitioner's position on each disputed issue and indicates how the petitioner's and respondent's positions meet or fail to meet the requirements of the act, applicable FCC regulations, applicable state statutes, and applicable rules, orders, or policies of the commission;

J. any terms and conditions the petitioner recommends imposing;

K. a proposed schedule for implementing the terms and conditions imposed in the arbitration;

L. a recommendation as to what information the other parties to the negotiation should provide, including a narrative explaining the relevance and importance of the information;

M. a proposed agreement reflecting the petitioner's recommended resolution of the disputed issues;

N. all documentation in the petitioner's possession or control that is relevant to the dispute, including:

(1) the documents the petitioner intends to rely on to support its position on each issue, including exhibits the petitioner intends to introduce at the arbitration hearing;

(2) to the extent prices are in dispute, the petitioner's proposed rates or charges and relevant cost studies and other information supporting those rates or charges;

O. any procedural recommendations regarding the conduct of the arbitration;

P. any request for a protective order;

Q. a list of all the witnesses and exhibits the petitioner intends to present at the arbitration hearing under subpart 17; and

R. any request for consolidation under subpart 12.

**Subp. 2. Response to petition.** A nonpetitioning party or other interested person shall file with the commission any request to modify the procedures under this part or to consolidate the proceeding under subpart 11 within five days after the petition is filed. A nonpetitioning party shall file with the commission a complete response to the arbitration petition within 25 days after the petition is filed. The response must include the information required for petitions under subpart 1.

**Subp. 3. Service and verification of petition and response.** The petition and response must be served on the other party to the negotiations, the department, the Office of Attorney General-Residential Utilities Division (OAG-RUD), and all persons on the service list established pursuant to part 7812.1500, subpart 2. Petitions and responses under subparts 1 and 2, and their accompanying documentation, must be verified.

**Subp. 4. Assignment of arbitrator.** The commission shall meet and issue an order assigning an arbitrator within 25 days after the petition is filed. The commission may appoint a single arbitrator or a panel of arbitrators. The order may include procedural requirements or guidelines for the conduct of the arbitration in addition to those established in this part, and must include a decision on any request to consolidate proceedings under subpart 12. If the procedures set forth in the commission's order conflict with the procedures established in this part, the commission shall vary the requirements of this part as necessary under part 7829.3200.

**Subp. 5. Mediation-arbitration hybrid.** The arbitration shall proceed without a commission order under subpart 4 if the arbitrator was designated under part 7812.1600, subpart 15, unless a party files a petition with the commission to decide procedural disputes regarding the conduct of the arbitration.

**Subp. 6. Arbitrator qualifications.** The arbitrator must be, or the arbitration panel must include, an administrative law Judge with the Office of Administrative Hearings or a person with arbitration or adjudicative experience retained by the commission on contract for the purpose of arbitrating under this part. If an arbitration panel is used, the administrative law judge or other experienced arbitrator under contract with the commission shall chair the panel.

**Subp. 7. Arbitrator neutrality.** The person assigned to conduct the arbitration proceedings must have no personal or financial interest in the outcome of the proceeding. The arbitrator must not have participated or assisted materially in the negotiations leading up to the arbitration unless the arbitrator served as a mediator and was assigned under part 7812.1600, subpart 15, or the negotiating parties otherwise agree expressly in writing to waive the limitation in this subpart.

**Subp. 8. Arbitrator role and authority.** The arbitrator shall conduct the arbitration proceedings and submit a recommended decision to the commission. The commission is the final arbiter and shall issue the final binding decision under section 252, subsection (b), paragraph (4), of the act. The arbitrator has those duties and powers necessary to conduct the arbitration, including the authority to:

A. conduct hearings and prehearing conferences;

- B. direct parties to serve verified statements and exhibits;
- C. supervise discovery procedure;
- D. administer oaths and affirmations;
- E. examine witnesses and allow parties to examine an adverse party or agent;
- F. rule upon matters that do not result in the final determination of the proceeding;
- G. direct any person to produce witnesses or information relevant to issues in the arbitration;
- H. waive any of the requirements in this part upon agreement of the parties or for good cause;
- I. issue protective orders as provided in subpart 9; and
- L. issue proposed arbitration decisions as provided in subpart 19.

Subp. 9. Proprietary information. Trade secret and proprietary information must be treated as provided under the commission's rules of practice and procedure, part 7829.0500. At any time during the proceeding, the arbitrator or commission may enter an order to protect the confidential, proprietary, or trade secret nature of data, information, or studies.

Subp. 10. Intervenor and participants. The department and OAG-RUD may intervene in an arbitration proceeding by filing comments or a request to intervene within 25 days after the arbitration petition is filed. The comments or intervention request must be served on the negotiating parties and the persons on the service list established under part 7812.1500, subpart 2. No other intervention is permitted. Others wishing to participate may attend hearings as observers, file written comments and request the opportunity for oral argument to the arbitrator or the commission as provided in part 7829.0900.

Subp. 11. Staff involvement. Commission staff may attend all prehearing conferences and hearings. Staff may question witnesses to the extent the arbitrator considers the questions relevant and helpful in developing a record for decision.

Subp. 12. Consolidation. A party or other interested person may petition the commission to consolidate an arbitration with another arbitration or related proceeding. The petition must identify the issues common to the proceedings for which consolidation is sought, indicate the appropriate deadline for completing the consolidated proceeding, and explain why the request should be granted based on the criteria in items A to D. The commission may also take up the issue of consolidation on its own motion. The commission may consolidate an arbitration with another proceeding if the rights of the parties or the public interest will not be materially prejudiced by consolidation. The commission shall decide whether to consolidate based on:

- A. the commonality of issues and interests in the proceedings;
- B. the degree to which consolidation would reduce administrative burdens on the commission and the parties in the proceedings for which consolidation is being considered;
- C. the administrative burdens and delay that may result from consolidation; and
- D. the rights and preferences of the parties.

Subp. 13. Discovery request and response. A party may serve requests for discovery on other parties at any time after the arbitration petition is filed, and may seek discovery by any means available under the Rules of Civil Procedure for the District Courts of Minnesota, subject to the discretion of the arbitrator under subpart 14. Initial requests for discovery must be served no later than 35 days after the arbitration petition is filed. The response to the request must explain any refusal to provide the information requested. The request and response must be served on the parties and filed with the arbitrator and the commission.

Subp. 14. Arbitrator discretion. The arbitrator may establish a schedule for discovery and set any reasonable limits on the type, scope, or extent of discovery as needed to avoid delay or undue hardship on a party. The arbitrator's authority includes, but is not limited to, authority to set deadlines for responses to discovery requests and to limit the number of questions permitted in any written depositions or interrogatories.

Subp. 15. Inadequate response to discovery requests. If a party believes another party has failed to respond adequately to a discovery request, the party shall file a written statement to that effect with the arbitrator before the hearing has closed. The statement must identify specifically the alleged inadequacies and provide the reasons for concluding that the discovery responses were inadequate. The party against whom the allegation is made may file a written statement responding to the allegation according to

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the timetable established by the arbitrator. The arbitrator or commission may do any of the following based on a party's failure to respond adequately to discovery requests or cooperate in the discovery process:

- A. issue an order to compel discovery;
- B. resolve the issue to which the discovery pertains in favor of the party making the discovery request; or
- C. treat the failure as a failure to negotiate in good faith under the act.

Subp. 16. Prehearing conference. The arbitrator shall hold at least one prehearing conference no later than ten days after the response to the arbitration petition is filed under subpart 2. The arbitrator shall ensure the parties receive notice of the prehearing conference at least 48 hours in advance. The notice may be provided in writing by mail, hand-delivery or facsimile, or orally by telephone. The arbitrator may hold as many prehearing conferences as necessary to ensure the fair and expeditious conduct of the arbitration. The prehearing conferences may be used to set the hearing schedule and guidelines, and to consider all other relevant procedural matters, including:

- A. identification and narrowing of issues;
- B. amendments to documents;
- C. limitations on the number of witnesses; and
- D. discovery.

Subp. 17. Hearing. If material issues of fact are in dispute, the arbitrator must conduct a hearing with the opportunity for cross-examination. The arbitrator shall schedule the hearing to ensure the proceeding can be completed by the deadline under the act. The arbitrator shall conduct the hearing according to the following procedures:

- A. The arbitrator shall serve notice of the hearing on all parties and participants at least five days before the hearing begins.
- B. Oral testimony must be given under oath and witnesses are subject to cross-examination.
- C. The arbitrator may, with or without timely objection, exclude evidence or limit testimony that is irrelevant or unduly repetitious.
- D. The arbitrator shall ensure that a written transcript of the hearing is prepared.

Subp. 18. Posthearing argument and comment. Parties shall file briefs and reply briefs as directed by the arbitrator. Participants may file comments and reply comments during the briefing period.

Subp. 19. Arbitrator's recommended decision. The arbitrator shall issue a recommended decision on the issues submitted for arbitration no later than 35 days before the date nine months after the request for negotiation that gave rise to the arbitration. The decision must be in writing, setting forth the recommended resolution of each issue submitted for arbitration that has not been resolved through subsequent negotiations. The decision must also include a recommended schedule for implementation by the parties. The decision must be accompanied by a written memorandum that provides the rationale for each recommended resolution, including any necessary findings and relevant citations to law or the record.

Subp. 20. Exceptions. The parties and participants may file exceptions to the recommended decision and requests for oral argument with the commission no later than ten days after the arbitrator issues the recommended decision under subpart 19.

Subp. 21. Commission decision. The commission shall issue a final arbitration decision no later than 35 days after the arbitrator issues the recommended decision. The decision must include a resolution of each issue submitted for arbitration that has not been resolved through subsequent negotiations. The decision must also include a schedule for implementation by the parties and a deadline for submitting a final agreement to the commission for approval under part 7812.1800.

Subp. 22. Decision criteria. Issues submitted for arbitration must be resolved consistent with the public interest, to ensure compliance with the requirements of sections 251 and 252(d) of the act, applicable FCC regulations, and applicable state law, including rules and orders of the commission.

Subp. 23. Burden of proof. The burden of production and persuasion with respect to issues of material fact are on the incumbent LEC. The facts at issue must be proven by a preponderance of the evidence. The arbitrator may shift the burden of production as appropriate, based on which party has control of the critical information regarding the issue in dispute. The arbitrator may also shift the burden of proof as necessary to comply with applicable FCC regulations regarding burden of proof.

**7812.1800 AGREEMENT APPROVAL.**

**Subpart 1. Filing of agreement.** The negotiating parties shall submit a complete agreement to the commission by the deadline established in the commission's final arbitration order under part 7812.1700, subpart 21, unless the agreement does not include any arbitrated terms, in which case the parties may file the agreement at a time of their own choosing. The agreement must contain all negotiated and arbitrated terms and must include a memorandum that:

- A. identifies and explains inconsistencies between the arbitrated terms of the agreement and the commission's arbitration decision;
- B. explains how the agreement is consistent with the public interest and nondiscriminatory as to other local service providers;
- C. describes the likely impact, if any, on the rates or service of the end-use customers of both providers; and
- D. provides the rationale for severance, if requested under subpart 3.

**Subp. 2. Service.** The negotiating parties shall serve the agreement on the department, the Office of Attorney General-Residential Utilities Division (OAG-RUD), and persons on the service list established under part 7812.1500, subpart 2. The agreement must be served on the same day it is submitted to the commission.

**Subp. 3. Severance of arbitrated and negotiated terms.** The commission shall consider arbitrated terms separate from negotiated terms with respect to a single negotiation request under the act only if the commission finds that the arbitrated matters are unrelated to the negotiated matters as, for example, wholesale rates for resale may be unrelated to interconnection issues. A request for severance under this subpart must be made in writing prior to or as part of the filing of the agreement under subpart 1.

**Subp. 4. Comments.** Parties and participants may file written comments on the filing under subpart 1 no later than ten days after the agreement is filed.

**Subp. 5. Decision criteria.** The commission shall reject an agreement if it finds that the agreement discriminates unreasonably against another telecommunications carrier as defined in *United States Code*, title 47, section 153, subsection (r), paragraph (49), is inconsistent with the public interest or, with respect to its arbitrated terms, fails to comply with the commission's arbitration decision under part 7812.1700, subpart 21, or meet the arbitration standards set forth in part 7812.1700, subpart 22.

**Subp. 6. Commission decision.** The commission shall issue a written order accepting or rejecting the agreement. The commission shall issue its decision no later than 90 days after the agreement is filed unless:

- A. the parties to the agreement agree to extend the deadline;
- B. the agreement filed under subpart 1 contains no negotiated terms, in which case the commission shall issue its decision within 30 days; or
- C. the commission considers the arbitrated terms separately as a separate agreement pursuant to a severance under subpart 3, in which case the commission shall issue its decision with respect to the arbitrated terms within 30 days.

**Subp. 7. Rehearing.** If the commission rejects an agreement, the parties may file a petition for rehearing at any time, provided the parties have agreed to changes that they believe remedy the deficiencies identified by the commission. If the parties cannot agree on changes, they shall proceed with negotiations and, if necessary, arbitration according to section 252 of the act and parts 7812.1500 to 7812.1800.

**7812.1900 DISPUTES ARISING UNDER EXISTING AGREEMENTS.**

Disputes arising in the implementation of an agreement must be submitted to the commission for arbitration under part 7812.1700, unless the agreement provides a different mechanism for resolving those disputes.

**7812.2000 RURAL CARRIER EXEMPTION FROM NEGOTIATION AND INTERCONNECTION REQUIREMENTS.**

**Subpart 1. Notice of claim to rural exemption.** A local exchange carrier (LEC) seeking to retain or establish a rural company exemption under *United States Code*, title 47, section 251, subsection (f), paragraph (1), shall, no later than 20 days after receiving a competitive local exchange carrier's bona fide request for interconnection, services, or network elements under *United States Code*, title 47, section 251, notify the requesting company, the commission, the department, and the Office of Attorney General-Residential Utilities Division (OAG-RUD), of its claim to the exemption. An LEC failing to assert its exemption claim as provided

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## Proposed Rules

in this subpart is deemed to have waived any right it may have to the exemption for purposes of the specific bona fide request for which it has failed to assert the exemption. The notice must state the basis upon which the LEC considers itself to be a rural company under section 3(47) of the act.

**Subp. 2. CLEC response to exemption claim.** An affected competitive local exchange carrier (CLEC) shall file any challenge to a local exchange carrier's exemption claim under subpart 1, including a request to terminate the exemption, within 20 days after receiving the local exchange carrier's notice under subpart 1.

**Subp. 3. Commission decision.** The commission shall determine a local exchange carrier's eligibility for an exemption asserted under subpart 1, including whether the exemption should be terminated, as provided in *United States Code*, title 47, section 251, subsection (f), paragraph (1), and applicable FCC regulations. A commission decision to deny or terminate an exemption must include a schedule for implementing the negotiation, arbitration, and agreement approval requirements of *United States Code*, title 47, section 252.

### **7812.2100 SUSPENSIONS OR MODIFICATIONS OF INTERCONNECTION REQUIREMENTS.**

**Subpart 1. Petition for suspension or modification.** A local exchange carrier (LEC) seeking suspension or modification of the requirements of *United States Code*, title 47, section 251, subsection (b) or (c), pursuant to *United States Code*, title 47, section 251, subsection (f), paragraph (2), shall file a petition with the commission. The petition must include:

- A. the legal name, address, and telephone number of the LEC and its designated contact person;
- B. the name, address, and telephone number of the attorney if the LEC will be represented by an attorney;
- C. the date of the filing, which is the date the commission receives the local exchange carrier's filing or the date designated by the LEC, whichever is later;
- D. the proposed effective date of the suspension or modification sought by the LEC;
- E. the signature and title of the LEC officer or representative authorizing the petition;
- F. a description of the obligations the LEC seeks to suspend or modify, including specific references to the relevant provisions of section 251, subsection (b) or (c), of the act;
- G. a detailed description of the modifications or suspensions the LEC is seeking, including the proposed duration of each suspension or modification;
- H. the number of subscriber lines the LEC has nationwide, at the holding company level, and the local exchange carrier's estimate of the total number of all LEC subscriber lines nationwide;
- I. a statement supporting the petition, which must specify why each requested modification or suspension meets the conditions for modification or suspension specified in section 251, subsection (f), paragraph (2), subparagraphs (A) and (B), of the act and applicable FCC regulations; and
- J. a statement as to whether the LEC requests the commission to grant a temporary stay under subpart 9 of the obligations the LEC seeks to modify or suspend.

**Subp. 2. Filing and service.** The petition filed under subpart 1 must be served on the department, the Office of Attorney General-Residential Utilities Division (OAG-RUD), each competitive local exchange carrier (CLEC) to which the requested suspensions or modifications would likely apply, and those persons on an applicable general service list established by the commission.

**Subp. 3. Challenges to form and completeness.** A challenge to the form or completeness of a petition filed under subpart 1 must be received by the commission and served on the LEC within ten days after the local exchange carrier's petition is filed. The LEC shall reply to the challenge within five days of the date it receives the filing challenging its petition.

**Subp. 4. Rejection of filings.** The commission shall reject a modification or suspension petition it finds to be substantially out of compliance with subpart 1 or 2. A modification or suspension petition is considered to be in substantial compliance with subparts 1 and 2 if the commission does not issue an order rejecting the petition within 45 days after the petition is filed.

**Subp. 5. Initial comments.** Comments on a modification or suspension petition must be filed with the commission within 20 days after the petition is filed. Initial comments must include a recommendation on the type of proceeding the commission applies to the petition and the reasons for the recommendation.

**Subp. 6. Reply comments.** Reply comments must be filed with the commission within ten days after the deadline for filing initial comments under subpart 5. Reply comments must be limited in scope to the issues raised in the initial comments.

**Subp. 7. Petition to intervene.** Petitions to intervene must be filed by the deadline for reply comments under subpart 6. An intervention petition may be combined with initial or reply comments filed under subpart 5 or 6.



**Subp. 8. Nature of proceeding.** Unless all parties agree to use a different procedure or there are no material issues of fact in dispute, the commission shall conduct an expedited proceeding under *Minnesota Statutes*, section 237.61, or refer the matter for a contested case proceeding under *Minnesota Statutes*, chapter 14.

**Subp. 9. Stay of LEC obligations pending final disposition of petition.** The commission may suspend enforcement of any of the obligations which the local exchange carrier's petition seeks to modify or suspend pending final disposition of the petition if, based on the standards applied by Minnesota courts for granting temporary injunctions, the commission determines that a suspension would be appropriate.

**Subp. 10. Commission disposition.** The commission shall decide the petition according to the requirements in section 251, subsection (f), paragraph (2), subparagraphs (A) and (B), of the act and applicable FCC regulations.

**Subp. 11. Time frame for disposition.** The commission shall take final action on a petition within 180 days after receiving a petition that substantially complies with the filing requirements of subpart 1 and 2.

#### **7812.2200 REGULATORY TREATMENT OF CLECS.**

Unless provided otherwise in this chapter, the local services provided by a competitive local exchange carrier (CLEC) are subject to *Minnesota Statutes*, chapter 237, and the commission's rules in the same manner as the local services provided by a local exchange carrier (LEC), except that the CLEC is not subject to *Minnesota Statutes*, section 237.22, and is not subject to rate-of-return regulation or earnings investigations under *Minnesota Statutes*, section 237.075 or 237.081. A competitive local exchange carrier's local services are also subject to *Minnesota Statutes*, section 325.692.

#### **7812.2300 RULE REVIEW AND REVISION.**

The commission shall appoint a task force no later than January 2, 2002, to evaluate the provisions in this chapter and determine whether any provisions of this chapter should be revised or deleted. The task force shall make its recommendations to the commission within six months after the date it is appointed. As a result of the task force recommendations, the commission may propose revisions to this chapter or any other related rules.

## **Adopted Rules**

A rule becomes effective after the requirements of *Minnesota Statutes* §§ 14.05-14.28 have been met and five working days after the rule is published in the *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.

#### **Exempt Rules**

An exempt rule adopted under *Minnesota Statutes* §§ 14.386 or 14.388 is effective upon its publication in the *State Register*.

#### **Emergency Expedited Rules**

Provisions for the Commissioner of Natural Resources to adopt emergency expedited Game and Fish Rules are specified in *Minnesota Statutes* §§ 84.027. The commissioner may adopt emergency expedited rules when conditions exist that do not allow the Commissioner to comply with the requirements for emergency rules. The Commissioner must submit the rule to the attorney general for review and must publish a notice of adoption that includes a copy of the rule and the emergency conditions. Emergency expedited rules are effective upon publication in the *State Register*, and may be effective up to seven days before publication under certain emergency conditions. Emergency expedited rules are effective for the period stated or up to 18 months.

## **Department of Agriculture**

### **Adopted Permanent Rules Relating to Commodity Councils**

The rules proposed and published at *State Register*, Volume 21, Number 12 pages 390-391, September 16, 1996 (21 SR 390), are adopted as proposed.

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## Executive Orders

## Withdrawn Rules

### Peace Officer Standards and Training Board

#### Withdrawal of Proposed Permanent Rules Relating to POST Board Rules Governing Training and Eligibility for Licensing

The rules as proposed and published at *State Register*, Volume 21 Number 5, pages 144-146, July 29, 1996, are withdrawn.

## Executive Orders

### Office of the Governor

#### Emergency Executive Order #97-1: Providing for Assistance to the Minnesota Air National Guard

I, ARNE H. CARLSON, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Emergency Executive Order:

WHEREAS, a Minnesota Air National Guard F-16 fighter jet, piloted by Major Peter M. Woodbury, crashed in a remote wooded area near Greenwood Lake in Lake County on January 7; and

WHEREAS, the crash site is inaccessible to all but helicopters and special all-terrain vehicles; and

WHEREAS, the Air National Guard does not have the special equipment available to transport investigators, recovery teams and security personnel into and out of the crash site; and

WHEREAS, the Commander of the 148th Fighter Wing, Minnesota Air National Guard, has requested the Army National Guard's assistance;

NOW, THEREFORE, I hereby order that:

1. The Adjutant General of Minnesota order to state active duty on or about January 9, 1997, in the service of the State, such personnel and equipment of the military forces of the State as required and for such period of time as necessary to assist and support the Air National Guard.
2. The cost of subsistence, transportation, fuel, pay and allowances of said individuals shall be defrayed from the general fund of the State as provided for in *Minnesota Statutes* 1996, sections 192.49, subd. 1; 192.51, and 192.52.

Pursuant to *Minnesota Statutes* 1996, section 4.035, subd. 2, this Order shall be effective immediately, and shall remain in effect until such date as elements of the military forces of the State are no longer required.

IN TESTIMONY WHEREOF, I have set my hand this tenth day of January, 1997.

Arne H. Carlson  
Governor

Filed According to Law:  
Joan Anderson Growe  
Secretary of State

## Office of the Governor

### Emergency Executive Order #97-2: Declaring a State of Emergency in the State of Minnesota

I, ARNE H. CARLSON, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Emergency Executive Order:

**WHEREAS**, since mid-November 1996, and continuing, winter storms accompanied by freezing rain, heavy snow, high winds and frigid temperatures have affected the entire state of Minnesota; and

**WHEREAS**, these events have inflicted widespread and considerable damage to the public infrastructure as well as to homes, farms and businesses; and

**WHEREAS**, there is a threat to public safety for citizens in the entire state of Minnesota; and

**WHEREAS**, the resources of local, county, state and tribal government and private relief agencies have been exhausted in responding to the crisis;

**NOW, THEREFORE**, I hereby order that:

A State of Emergency exists in the state of Minnesota and do direct the Division of Emergency Management, in conjunction with the Federal Emergency Management Agency and other state and federal agencies, to determine the need for supplementary disaster aid and to coordinate the provision of any such assistance as necessary under existing state and federal authority.

Pursuant to *Minnesota Statutes* 1996, section 4.035, subd. 2, this Order is effective immediately and shall remain in effect until rescinded by proper authority or it expires in accordance with *Minnesota Statutes* 1996, section 4.035, subd. 3.

**IN TESTIMONY WHEREOF**, I have set my hand this fourteenth day of January, 1997.

Arne H. Carlson  
Governor

Filed According to Law:

Joan Anderson Growe  
Secretary of State

## Office of the Governor

### Emergency Executive Order #97-3: Providing for Assistance to the Brown, Watonwan and Jackson County Sheriffs

I, ARNE H. CARLSON, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Emergency Executive Order:

**WHEREAS**, a fierce blizzard hit the southern and western portions of Minnesota resulting in zero visibility, blocked roads and white-out conditions in Brown, Watonwan and Jackson counties; and

**WHEREAS**, numerous motorists are stranded on the highways and are in danger if they are not rescued; and

**WHEREAS**, local law enforcement agencies do not have emergency equipment capable of driving through the heavy snow; and

**WHEREAS**, the sheriffs of Brown, Watonwan and Jackson counties have requested the National Guard's assistance in rescuing stranded motorists;

**NOW, THEREFORE**, I hereby order that:

1. The Adjutant General of Minnesota order to state active duty on or about January 9, 1997, in the service of the State, such elements and equipment of the military forces of the State as required and for such period of time as necessary to assist and support the sheriffs of Brown, Watonwan and Jackson counties.
2. The cost of subsistence, transportation, fuel, pay and allowances of said individuals shall be defrayed from the general fund of the State as provided for in *Minnesota Statutes* 1996, Sections 192.49, subd. 1; 192.51, and 192.52.

## Executive Orders

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Pursuant to *Minnesota Statutes* 1996, section 4.035, subd. 2, this Order shall be effective immediately, and shall remain in effect until such date as elements of the military forces of the State are no longer required.

IN TESTIMONY WHEREOF, I have set my hand this fifteenth day of January, 1997.

Arne H. Carlson  
Governor

Filed According to Law:  
Joan Anderson Growe  
Secretary of State

## Office of the Governor

### Emergency Executive Order #97-4: Providing for Assistance to Local, County and State Officials in Accordance with the Minnesota Emergency Operations Plan

I, ARNE H. CARLSON, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Emergency Executive Order:

WHEREAS, severe winter storms have repeatedly struck Minnesota and another storm resulting in blizzard conditions is forecast; and

WHEREAS, road crews are struggling to clear roads and keep them open, with many roads remaining impassable or only partially open; and

WHEREAS, local and county law enforcement agencies are having difficulty responding to emergency calls because of the poor road conditions; and

WHEREAS, a state of emergency has been declared and the Minnesota Emergency Operations Plan has been implemented;

NOW, THEREFORE, I hereby order that:

1. The Adjutant General of Minnesota order to state active duty on or about January 14, 1997, in the service of the state, such personnel and equipment of the military forces of the state as required and for such period of time as necessary, to assist and support civil authorities with snow removal, emergency response and other operations in accordance with the Minnesota Emergency Operations Plan.
2. The cost of subsistence, transportation, fuel, pay and allowances of said individuals shall be defrayed from the general fund of the state, as provided for in *Minnesota Statutes* 1996, sections 192.49, 192.51 and 192.52.

Pursuant to *Minnesota Statutes* 1996, section 4.035, subd. 2, this Order is effective immediately and shall remain in effect until such date as elements of the military forces of the state are no longer required or until rescinded by the proper authority.

IN TESTIMONY WHEREOF, I have set my hand this fifteenth day of January, 1997.

Arne H. Carlson  
Governor

Filed According to Law:  
Joan Anderson Growe  
Secretary of State

Pursuant to *Minnesota Statutes* §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rule-making proposal under active consideration within the agency by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

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

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## Minnesota Comprehensive Health Association

### Notice of Benefit/Contract Changes Meetings

**NOTICE IS HEREBY GIVEN** that a representative of the Minnesota Comprehensive Health Association's (MCHA) executive staff and a representative of the Minnesota Department of Commerce will hold a series of benefit/contract change meetings across the State of Minnesota as indicated below. The purpose of these meetings is to allow MCHA enrollees an opportunity to comment on the proposed benefit/contract changes, and to be made aware of legislative changes enacted in 1996.

For additional information, please call Lynn Gruber at (612) 593-9609.

WHERE	DATE/LOCATION	TIME
Rochester	Monday, February 3, 1997 Best Western Apache 1517 SW 16th Street Rochester, MN 55902	6:30 pm
Duluth	Tuesday, February 4, 1997 Holiday Inn 200 West First Street Duluth, MN 55802	6:30 pm
Redwood Falls	Wednesday, February 5, 1997 Redwood Inn 1305 East Bridge Street Redwood Falls, MN 56283	6:30 pm
Fergus Falls	Thursday, February 6, 1997 Best Western International Interstate 94 & Highway 210 Fergus Falls, MN 56538	6:30 pm
Twin Cities	Monday, February 10, 1997 Holiday Inn Metrodome 1500 Washington Avenue South Minneapolis, MN 55454	6:30 pm

## Minnesota State Board of Education

### Request for Comments for Planned Adoption of Rules Relating to Profile of Learning Requirements in the Graduation Standards

**Subject of Rules.** The Minnesota State Board of Education requests comments on its planned adoption of rules relating to Profile of Learning Requirements in the graduation standards. The Board is considering adopting rules that require students to complete work to be scored against high standards in: reading/listening/viewing; writing and speaking; the arts; mathematics; inquiry; sciences; problem-solving; people and cultures; managing resources; and encourage work in languages other than English. These requirements will affect all students entering 9th grade for the first time in 1998 and thereafter.

**Persons Affected.** The adoption of the rules would affect public school students, their parents, teachers, school administrators and local schools boards.

**Statutory Authority.** *Minnesota Statutes*, section 121.11, subd. 7c, requires the Board to set in rule high academic standards for all students that provide an opportunity for students to excel through a profile of learning.

## Official Notices

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**Public Comment.** Interested persons or groups may submit comments or information on these planned rules in writing or orally until 4:30 p.m. on April 4, 1997. The Board does not contemplate appointing an advisory committee to comment on the planned rule.

**Rules Drafts.** The Board has not yet prepared a draft of the planned rules.

**Agency Contact Person.** Written or oral comments, questions, and requests for more information on this planned rule should be addressed to:

Mary Lynne McAlonie  
732 Capitol Square Building  
550 Cedar Street  
St. Paul, MN 55101-2273  
Telephone: (612) 297-7820 (24 hours a day)  
FAX (612) 282-6779 TDD/TTY (612) 297-2094

**Alternative Format.** Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Dated: 13 January 1997

Jeanne Kling  
President, State Board of Education

## Minnesota Department of Health

### Health Policy and Systems Compliance Division

#### Notices Related to Essential Community Provider Designation

**NOTICE IS HEREBY GIVEN** that applications for Essential Community Provider designation have been received from the applicants listed below. Pursuant to *Minnesota Statutes* section 62Q.19, subdivision 1, the public has 30 days from the date of this publication to submit written comments regarding these applications. Written comments should be submitted to: Tom Johnson, Minnesota Department of Health, Health Policy and Systems Compliance Division, 121 East Seventh Place, P.O. Box 64975, St. Paul, Minnesota 55164-0975. Telephone inquiries may be directed to Mr. Johnson at (612) 282-6333.

**Adams Area Medical Clinic**  
908 West Main  
Adams, Minnesota 55909  
Date received: January 9, 1997

**Bertha Medical Clinic**  
210 First Street North, Box 67  
Bertha, Minnesota 56437  
Date received: January 9, 1997

**Bridges Medical Clinics (locations in  
Ada, Twin Valley and Ulen)**  
207 Fifth Street East  
Ada, Minnesota 56510  
Date received: January 9, 1997

**Canby Medical Center**  
215 St. Olaf Avenue North  
Canby, Minnesota 56220  
Date received: January 8, 1997

**Floodwood Community Clinic**  
126 West Seventh Avenue, Box 426  
Floodwood, Minnesota  
Date post-marked: January 9, 1997  
Date received: January 13, 1997

**Albany Medical Center (including Avon Medical  
Clinic and Holdingford Medical Clinic)**  
300 Third Avenue  
Albany, Minnesota 56307  
Date received: January 8, 1997

**Bon Homme Family Practice**  
(street address not listed in application)  
Tyndall, South Dakota 57066  
Date received: January 9, 1997

**Buffalo Community Health Center**  
101 Ramsland — Box 182  
Buffalo, South Dakota 57720  
Date received: January 9, 1997

**Dassel Medical Clinic**  
450 Fourth Street  
Dassel, Minnesota 55325  
Date received: January 8, 1997

**Fond du Lac Reservation Business Committee**  
105 University Road  
Cloquet, Minnesota 55720  
Date received: January 8, 1997

**Harmony Community Hospital  
Association**  
815 Main Avenue South  
Harmony, Minnesota 55939  
**Date received: January 9, 1997**

**Henning Medical Clinic**  
401 Douglas Avenue, Box 16  
Henning, Minnesota 56551  
**Date received: January 9, 1997**

**Board of Social Ministry, dba  
Mahnomen Health Center**  
P.O. Box 396  
Mahnomen, Minnesota 56557  
**Date received: January 9, 1997**

**Northern Medical Clinic**  
Michigan Avenue & Seventh Street  
Walker, Minnesota 56484  
**Date received: January 9, 1997**

**Pembina Clinic Association**  
152 East Stubman Street  
Pembina, North Dakota 58271  
**Date received: January 9, 1997**

**Sebeka Medical Clinic**  
102 Minnesota Avenue East, Box 306  
Sebeka, Minnesota 56477  
**Date received: January 9, 1997**

**Southwest Medical Clinic**  
12 Sixth Avenue Southwest, Box C  
Bowman, North Dakota 58623  
**Date received: January 9, 1997**

**Twenteen/Lutheran Health Care  
Center**  
125 Fifth Avenue Southeast  
Spring Grove, Minnesota 55974  
**Date received: January 9, 1997**

**Wells Clinic — Mayo Health System**  
36 Third Street Southeast  
Wells, Minnesota 56097  
**Date received: January 8, 1997**

**Sioux Valley Service Corporation, dba  
Mountain Lake Medical Clinic**  
308 North Eighth Street  
Mountain Lake, Minnesota 56159  
**Date received: January 14, 1997**

**Hendricks Clinic, P.A.**  
115 North Main Street  
Hendricks, Minnesota 56136  
**Date received: January 9, 1997**

**Leech Lake Tribal Health Division**  
RR 3, Box 100  
Cass Lake, Minnesota 56633  
**Date received: January 8, 1997**

**Model Cities Health Center (and Model Cities -  
Abrams Clinic)**  
430 North Dale Street  
St. Paul, Minnesota 55103  
**Date received: January 9, 1997**

**Paynesville Area Health Care System —  
Eastside Medical Clinic**  
505 Nelson Avenue  
Belgrade, Minnesota 56312  
**Date received: January 9, 1997**

**Ripple River Medical Center**  
25 Fourth Street Southwest  
Aitkin, Minnesota 56431  
**Date received: January 9, 1997**

**Sioux Valley Service Corporation, dba  
Slayton Clinic**  
2040 Juniper Avenue  
Slayton, Minnesota 56172  
**Date received: January 9, 1997**

**Tracy Medical Clinic**  
249 Fifth Street East  
Tracy, Minnesota 56175  
**Date post-marked: January 7, 1997**  
**Date received: January 10, 1997**

**Watonwan Memorial Hospital, dba St. James  
Family Clinic**  
1205 Sixth Avenue South, Box 460  
St. James, Minnesota 56081  
**Date received: January 9, 1997**

**West Side Community Health Center**  
153 Concord Street  
St. Paul, Minnesota 55107  
**Date received: January 7, 1997**

Dated: 14 January 1997

Anne M. Barry, Commissioner  
Minnesota Department of Health

## Department of Human Services

### Request for Comments on Planned Restructuring of the Chemical Dependency Treatment System

The Department of Human Services requests comments on its plans to restructure the chemical dependency treatment system. Changes will include the licensing of treatment services, and for persons requiring public funds to pay for treatment, the methods for accessing treatment services, and the methods for paying providers of treatment services.

**Persons Affected.** The restructuring will affect managed care organizations with contracts to provide health care to medical assistance recipients, county social service agencies, licensed chemical dependency treatment providers and person in need of chemical dependency treatment services, whether publicly or privately funded.

**Advisory Committee:** The Department of Human Services has formed an advisory committee to provide input on the affect of the restructuring plan on major stakeholders. The Advisory Committee is made up of chemical dependency treatment providers, consumers of chemical dependency treatment services, representatives of the Department's American Indian Advisory Council, the Health Maintenance Organization Council, the Minnesota Association of Community Social Service Administrators and the Minnesota Association of Resources for Recovery and Chemical Health.

**Public Comment.** Interested persons or groups may request a copy of the restructuring plan or submit comments or information on the planned restructuring in writing or verbally to:

Lee Gartner  
Department of Human Services  
444 Lafayette Road  
St. Paul, MN 55155-3823  
Phone: 612-296-3978

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## Department of Labor and Industry

### Correction to Notice of Membership of Rulemaking Advisory Committees

For the Department's proposed Workers' Compensation Joint Rules of Practice Amendments, Chapter 1415, Leslie Altman is also participating in the Rules Advisory Committee.

Dated: 21 January 1997

Scott Brener  
Assistant Commissioner

## Department of Labor and Industry

### Labor Standards Division

### Notice of Prevailing Wage Certifications for Commercial Construction Projects

Effective January 27, 1997 prevailing wage rates were determined and certified for commercial construction projects in the following counties:

**Anoka:** Asbestos Abatement in College Center, College Services, Humanities Buildings Anoka Ramsey Community College-Anoka.

**Becker:** DNR Detroit Lakes Area Headquarters Vehicle Storage/Maintenance Building-Detroit Lakes.

**Carlton:** Cloquet Middle School Fire Door Replacement-Cloquet.

**Clay:** Domestic Water Heater Revisions Kise Commons MSU-Moorhead; Domestic Water Heater Revisions SNARR Hall MSU-Moorhead.

**Dakota:** 1997 Reroofing at Farmington Senior High School-Farmington; Empire WWTP Expansion 12 MGB-Farmington.

**Faribault:** 1997 Reroofing of Blue Earth Middle School-Blue Earth.



**Hennepin:** 1997 Reroofing Wayzata Public Schools-Plymouth; Williams Arena Loft Addition U of M-Minneapolis; Anthony School Asbestos Abatement Phase 2-Minneapolis; Sanford Middle School Misc. Renovations-Minneapolis; New Elementary School Asbestos Abatement Project Phase 2-Minneapolis; Edison High School Science/Tech/Prep Addition & Remodeling-Minneapolis; Milwaukee Road Depot Preservation-Minneapolis; Audubon School Deferred Maintenance Work-Minneapolis; Roosevelt High School Asbestos Abatement Phase 3-Minneapolis; Shingle Creek School Asbestos Abatement Phase 3-Minneapolis; Lyndale School Asbestos Abatement Phase 2-Minneapolis; Renovations of Webster Elementary School-Minneapolis.

**Lake:** DNR Two Harbors Area Headquarters Unheated Storage Building-Two Harbors.

**Pennington:** Lincoln High School Reroof-Pennington.

**Ramsey:** Energy Retrofit Project for St. Paul Public Schools-St. Paul.

**Stearns:** Paramount Theater Renovations Project-St. Cloud.

Copies of the certified wage rate for these projects may be obtained by writing the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road, St. Paul, Minnesota 55155-4306. The charge for the cost of copying and mailing are \$1.36 per project. Make check or money order payable to the State of Minnesota.

Gary W. Bastian,  
Commissioner

## Department of Natural Resource

### Bureau of Real Estate Management

#### Notice of Proposed Conveyance for the Purpose of Correcting Legal Descriptions of Boundaries Affecting the Ownership Interests of the State and Adjacent Landowners

**NOTICE IS HEREBY GIVEN** that the Minnesota Department of Natural Resources intends to correct a boundary discrepancy which affects land presently owned by the State and land owned by Timothy E. and Holly H. Cashin (*Minnesota Statutes* 84.0273, 1993). The State originally acquired its property by Quit Claim Deed recorded in the Office of the Hennepin County Recorder November 1, 1974 as Document No. 4119550. The State will exchange quit claim deeds with the adjacent owner in order to resolve the boundary discrepancy. The deed from the State to Timothy E. and Holly H. Cashin will contain the following legal description:

Lot 3, Block 1, Routson Addition

For further information, contact Stephanie Warne at the Bureau of Real Estate Management, DNR, 500 Lafayette Road, St. Paul, MN 55155, (612) 296-0639.

# State Grants and Loans

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In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grants and loans available through any agency or branch of state government. Although some grant and loan programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

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

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## Minnesota Department of Corrections

### Request for Proposals for Grants for Programming for Adult Female Offenders

The Minnesota Department of Corrections, Research and Planning Unit, Office of Planning for Female Offenders, is requesting proposals for grants for gender specific and culturally sensitive programming for adult female offenders. One hundred forty thousand dollars (\$140,000.) is available for the biennium (July 1, 1997 - June 30, 1999). Each fiscal year \$70,000. will be available for programs. The maximum amount per grant will be \$10,000. annually. Awards will be made based upon achievement of geographic and racial balance. For more information or a copy of the RFP call Ethel Jackman at 612/642-0450.

Proposals must be received by 4:30 p.m. on Monday, April 28, 1997.

Ethel Jackman  
Minnesota Department of Corrections  
Planning and Research Unit,  
Office of Planning for Female Offenders  
1450 Energy Park Drive, Suite 200  
St. Paul, MN 55108-5219

## Minnesota Department of Corrections

### Request for Proposals for Programming for At-Risk or Adjudicated Adolescent Females

The Minnesota Department of Corrections, Planning and Research Unit, Office of Planning for Female Offenders, is requesting proposals for grants for gender specific and culturally sensitive programming for at-risk or adjudicated adolescent females. Two hundred forty four thousand dollars, (\$244,000.) is available for the biennium (July 1, 1997 - June 30, 1999). Each fiscal year \$122,000. will be available for programs. The maximum amount per grant will be \$14,500. annually. Awards will be made based upon achievement of geographic and racial balance. For more information or a copy of the RFP call Ethel Jackman at 612/642-0450.

Proposals must be received by 4:30 p.m. on Monday, April 28, 1997.

Ethel Jackman  
Minnesota Department of Corrections  
Planning and Research Unit  
Office of Planning for Female Offenders  
1450 Energy Park Drive, Suite 200  
St. Paul, MN 55108-5219

## **Housing Finance Agency**

### **Request for Proposals for the Home Rental Rehabilitation Program**

The Minnesota Housing Finance Agency (MHFA) is pleased to announce that it is accepting applications for local administration of its 1997 HOME Rental Rehabilitation Program. The Home Investment Partnership Program (HOME) was created under the National Affordable Housing Act of 1990 (NAHA). The Program provides MHFA with federal funds to be used in a variety of ways to meet affordable housing needs in areas of the State which do not directly receive HOME funds from the federal government.

In 1997, MHFA will make available approximately \$4,000,000 for projects and administrative fees in the MHFA HOME Rental Rehabilitation Program. The HOME Rental Rehabilitation Program provides grants to rehabilitate privately owned residential rental properties to provide affordable, decent, safe and energy efficient housing for low income families and individuals. The grantee is required to provide at least one dollar for every three grant dollars, with a maximum grant of \$14,000 per unit.

Interested applicants should request an Application for Administrative Authority (application) from MHFA.

Minnesota Housing Finance Agency  
Attention: Tere Hopponen  
400 Sibley Street, Suite 300  
St. Paul, MN 55101

Applicants will be required to:

1. demonstrate their qualifications to administer the program;
2. discuss other resources they may be able to use to assist projects; and
3. identify the geographic areas in which they propose to offer the program.

**NOTE:** the program is not available in areas which receive their own HOME funds. Those areas are the cities of Minneapolis, St. Paul, and Duluth and the counties of Anoka, Dakota, Ramsey, Washington, Hennepin, St. Louis, Cook, Itasca, Koochiching, and Lake.

Administrators are also asked to prepare in writing the costs they would charge MHFA to deliver this program. MHFA will select administrators primarily on their administrative capabilities rather than the cost to deliver the program.

Applications must be received by MHFA no later than 4:30 p.m., March 7, 1997. No faxes will be accepted and no deliveries will be accepted after 4:30 p.m. on March 7, 1997.

Any questions concerning the HOME Rental Rehabilitation Program or the application process should be directed to Tere Hopponen at (612) 297-5709.

This Request for Proposals (RFP) is subject to all applicable federal, state and municipal laws, rules and regulations. MHFA reserves the right to modify or withdraw the RFP at any time and is not able to reimburse any applicant for costs incurred in preparation or submittal of applications.

It is the policy of the Minnesota Housing Finance Agency (MHFA) to further fair housing opportunity in all Agency programs and to administer its housing programs affirmatively, so that all Minnesotans of similar income levels have equal access to Agency programs regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to receipt of public assistance, disability, or familial status.

## **Housing Finance Agency**

### **Contingent Request for Proposals for Family Homeless Prevention and Assistance Program**

The Minnesota Housing Finance Agency announces the anticipated availability of grant funds through the Family Homeless Prevention and Assistance Program. The actual availability and amount of funds is contingent upon approval by the 1997 Minnesota Legislature.

**Location:** Counties with a significant number or significant growth in the number of homeless families with children, youth, and single adults.

**Sponsor:** In the Twin Cities seven-county metropolitan area, a county is an eligible applicant. In non-metropolitan areas, eligible applicants include a county, a group of contiguous counties jointly acting together, an Indian tribal organization, or a community based nonprofit organization with a sponsoring resolution from each of the county boards of the counties located within its operating jurisdiction.

## State Grants and Loans

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For both metropolitan and non-metropolitan applicants, preference will be given to applicants who include other public and private providers of emergency services and transitional and affordable permanent housing in the development of their application and the implementation of their program.

**Amount of Funds Available:** \$4.75 million in grant funds are anticipated to be available for the biennium ending June 30, 1999.

**Allocation of Funds:** \$2.61 million will be reserved for the Twin Cities 7-county metropolitan area. \$2.14 million will be reserved for the rest of the state.

**Eligible Uses:** The purpose of the program is to encourage and support innovation at the county, region, or local level in redesigning the existing support system to homelessness or in establishing a comprehensive system. Grants may be used to prevent or decrease the period of homelessness of families with children, youth, and single adults, and to decrease the time period that families, youth, and single adults stay in emergency shelters. Grants may *not* be used to acquire, rehabilitate, or construct emergency shelters or transitional or permanent housing. Grants may *not* be used to pay more than 24 months of rental assistance.

**Other Requirements:** 1) Each project must be designed to stabilize people in their existing homes, shorten the amount of time that people stay in emergency shelters, and/or assist people with securing transitional or permanent affordable housing throughout the grantee's area of operation.

2) Each grantee must establish an advisory committee consisting of a homeless advocate, a homeless or formerly homeless person, a member of the state interagency task force on homelessness, local representatives, if any, of public and private providers of emergency shelter, transitional housing, and permanent affordable housing, and other members of the public. The grantee shall consult on a regular basis with the advisory committee in the design, implementation, and evaluation of the project.

3) Each grantee must submit an annual project report to the state interagency task force on homelessness. The report must include the actual program results compared to program objectives.

**Procedures:** Applicants should request application packets from the Agency, by writing or calling the Minnesota Housing Finance Agency, 400 Sibley Street, Suite 300, St. Paul, Minnesota 55101. Attn.: Denise Rogers (800-657-3769 or 612-296-8206).

The deadline for all applicants is **5:00 p.m., Tuesday, April 1, 1997.**

## Human Services Department

### Request for Proposals (RFP) for Initiation or Development of Services Alternatives for Chronic Chemically Dependent Persons

The Chemical Dependency Program Division of the Minnesota Department of Human Services (hereinafter CDPD) is soliciting proposals for initiation or development of services alternatives for chronic chemically dependent people. CDPD anticipates allocating approximately \$700,000 annually to this effort. Persons to be served are those who have repeated detoxification admissions, repeated exposure to treatment referral services, and a history of homelessness or difficulty in retaining adequate housing due to alcoholism or chemical dependency. The funding of eight to twelve proposals is contemplated.

Funds may be used for planning program development activity and operating costs. Preferred proposals will implement case management or other similar community services in areas with demonstrated need. It is anticipated that the work called for would begin July 1, 1997 and end on or before June 30, 1999. Proposals should not exceed \$60,000.00 per year or \$55,000 per site per year for projects with offices in more than one community.

Copies of the full Request for Proposals and grant application forms are available on request from:

Proposal Requests  
Chemical Dependency Program Division  
Department of Human Services  
444 Lafayette Road  
St. Paul, Minnesota 55155-3823  
(612/296-3991)

Proposals must be received no later than 4:30 p.m., February 28, 1997, or have a legible postmark no later than February 25, 1997.

## **Human Services Department**

### **Grant Announcement and Request for Proposals for Prevention Projects Due February 28, 1997**

The Chemical Dependency Program Division (CDPD) is requesting proposals to create and/or maintain projects in the following areas: (1) Community-Based Prevention Projects; (2) Special Populations Prevention [Chicano-Latinos and Asian/Pacific Islanders and Refugees]; (3) Children of Addicted Parents; (4) Statewide Drug Education. For this RFP, community is defined as state, region [multi-county], county, city or town, or neighborhood.

A total of \$1,636,817 is available to be distributed in the following manner: (1) Community Projects - approximately \$1,074,488; Special Populations - approximately \$319,670; Children of Addicted Parents - approximately \$146,411; and Statewide Drug Education - approximately \$96,248. The funded projects will begin on or about July 1, 1997.

The goal of the Community-Based Prevention Projects is to reduce the incidence and prevalence of alcohol, tobacco and other drug use/abuse in the community. The goal of the Special Populations Prevention Projects is to provide culturally specific strategies for Chicano/Latinos and Asian/Pacific Islanders and Refugees. The goal of the Children of Addicted Parents Projects is to provide ancillary services and prevention efforts to pregnant women/women with children and their families to prevent child abuse. The goal of the Statewide Drug Education Project is to provide classes for minimal marijuana offenders and minor alcohol and tobacco offenders.

Telephone requests for programmatic information concerning this RFP should be directed to Ruthie Dallas at (612) 296-3504, Yvette House at (612) 296-9858, Al Fredrickson at (612) 282-5877, and Sharon Johnson at (612) 296-4711. Budget/fund use questions should be directed to Joann Burns at (612) 297-1863.

## **Human Services Department**

### **Chemical Dependency Division**

#### **Request for Proposals for Services for Chemically Dependent Women Offenders**

The Chemical Dependency Program Division (CDPD) of the Minnesota Department of Human Services is requesting proposals for Services for Chemically Dependent Women Offenders. A total of \$42,000 from Federal Substance Abuse Prevention and Treatment Block Grant is available to fund one program. The funded program will help Chemically Dependent Women Offenders reduce recidivism and maintain sobriety by assisting them with the transition from incarceration back into the community and providing the following services: access to chemical dependency treatment, other community resources, housing, improved life coping skills, improved parenting skills, follow-up and aftercare services. Funded programs will begin on or about July 1, 1997, unless otherwise noted in the RFP, and continue for a minimum of one year contingent upon funds being available. Copies of the full Request for Proposal and grant application forms are available upon request from:

State of Minnesota  
Department of Human Services  
Chemical Dependence Program Division  
444 Lafayette Road, 5th Floor  
St. Paul, Minnesota 55155-3823  
(612) 296-3991

Proposals must be received no later than 4:30 p.m. March 7, 1997. Mailed proposals must be postmarked no later than March 5, 1997.

# 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, and final submission date of completed contract proposal.

In accordance with *Minnesota Rules Part 1230.1910*, certified Targeted Group Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of up to 6% preference in the evaluation of their proposal. For information regarding certification, call the Materials Management Helpline (612) 296-2600 or [TTY (612) 297-5353 and ask for 296-2600].

## Department of Administration

### State Designer Selection Board

#### Request for Proposals for a Department of Corrections Project

IN AN ATTEMPT TO FACILITATE COMMUNICATION, THE STATE DESIGNER SELECTION BOARD HAS MADE SOME CHANGES IN THEIR STANDARD RFP LANGUAGE. PLEASE READ CAREFULLY THE SECTIONS THAT ARE IN BOLD TYPE AS THEY CONTAIN REVISIONS TO THE RFP.

#### To Minnesota Registered Design Professionals:

The State Designer Selection Board is RE-ADVERTISING Project 13A-96 which was last advertised in the Monday, September 9, 1996 edition of the *State Register*. Shortly after proposals were received, this project was put on extended hold by the Department of Corrections. The project is now approved for re-advertisement as Project 13B-96.

The Board has been requested to select a consultant for a Department of Corrections (DOC) project. Design firms who wish to be considered for this project should deliver proposals on or before 4:00 p.m., Tuesday, February 18, 1997, to:

Mary Closner, Executive Secretary  
State Designer Selection Board  
Department of Administration  
50 Sherburne Avenue, Room G-10  
St. Paul, Minnesota 55155-3000  
(612) 296-4655

The proposals must conform to the following:

- 1) **Six (6) copies of the proposal will be required plus one additional unbound copy in black and white for micro fiche purposes only.\***
- 2) All data must be on 8½" x 11" sheets, soft bound. No more than 20 printed faces will be allowed (see the following bullet points for clarification).
  - **Any letters directed to the Board shall be bound into the proposal and all pages will be counted as printed face(s).** It is not necessary to do a cover letter to Mary Closner.
  - **Blank dividers (with printed tab headings only) are not counted as faces.**
  - Front and back covers of proposals are not counted as faces.
  - **None of the statutory, mandatory, or optional information, except as required in 3) below, shall appear on the dividers or covers.**
- 3) **The front cover of the proposal must be clearly labeled with the project number, as listed in 7) below, together with the designer's firm name, address, telephone number, \*\*fax number, and the name of the contact person. The back cover shall remain blank.**
- 4) **Brief Proposal Summary:**

All proposals shall begin with a summary which includes only the following items:

- a) Name of firm and its legal status;
- b) **Names of the persons responsible for the management, design, and production of each major element of the work, including consultants, as well as Minnesota registration numbers for all (e.g. architects, civil/electrical/mechanical/structural engineers, landscape architects, land surveyors, and geotechnical);**
- c) The proposal shall contain a statement indicating that the consultants listed have been contacted and have agreed to be a part of the design team;

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## Professional, Technical & Consulting Contracts

- d) A commitment to enter the work promptly, if selected, by engaging the consultants and assigning the persons named in 4 b) above, along with adequate staff to meet the requirements of work;
- e) **A list of State and University of Minnesota current and past projects and studies awarded to the prime firms(s) submitting this proposal during the four years immediately preceding the date of this request for proposal. For the purposes of this list, "awarded" shall mean you have been selected for a given project regardless of the status of the contract.**

The prime firm(s) shall list and total all fees associated with these projects and studies whether or not the fees have been received or are anticipated. In addition, the prime firm(s) shall indicate the amount of fees listed which were paid directly to engineers or other specialty consultants employed on the projects and studies listed pursuant to the above.

**NOTE:** Please call Mary Closner and leave your address or fax number to receive a copy of the acceptable format for providing this information.

- f) In accordance with the provisions of *Minnesota Statutes*, 1981 Supplement, Section 363.075; for all contracts estimated to be in excess of \$50,000, all responders having more than 20 full-time employees anywhere in the United States at any time during the previous 12 months, must have an affirmative action plan **approved by the Commissioner of Human Rights before a proposal may be submitted**; therefore, the proposal shall include one of the following:
  - 1. A copy of your firm's current certificate of compliance issued by the Commissioner of Human Rights; or
  - 2. A statement certifying that the firm has a current certificate of compliance issued by the Commissioner of Human Rights; or
  - 3. **A statement certifying that the firm has not had a cumulative total of more than 20 full-time employees at any time during the previous 12 months, anywhere in the United States. Any questions regarding this topic may be directed to the Department of Human Rights, (612) 296-5663 Phone & (612) 296-9042 Fax.**
- 5) **Additional Mandatory Proposal Contents:**
  - a) A section containing graphic material (e.g. photos, plans, drawings, etc.) as evidence of the firm's qualifications for the work. The graphic material must be identified. It must be work in which the personnel listed in 4 b) above have had significant participation and their roles must be clearly described. It must be noted if the personnel were, at the time of the work, employed by other than their present firms.
  - b) Expanded resumes showing qualification of individuals, listed in 4(b) above, administering or producing the major elements of the work, including consultants. Identify roles that such persons played in projects which are relevant to the project at hand.
  - c) A discussion of the firm's understanding of and approach to the project.
  - d) A listing of relevant past projects.
- 6) Design firms wishing to have their proposals returned after the Board's review, must follow one of the following procedures:
  - a) Enclose a **self-addressed stamped** postal card with the proposals. Design firms will be notified when material is ready to be picked up. Design firms will have two weeks to pick up their proposals, after which time the proposals will be discarded; or
  - b) Enclose a **self-addressed stamped** mailing envelope with the proposals. When the Board has completed its review, proposals will be returned using this envelope.

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

Any questions concerning the Board's procedures or their schedule for the projects herein described may be referred to Mary Closner at (612) 296-4655.

- 7) **PROJECT 13B-96 REVISED**  
**Department of Corrections (DOC)**  
**Minnesota Correctional Facility - Lino Lakes (MCF-LL)**  
**Predesign and Design of a Segregation Unit**  
**Lino Lakes, Minnesota**

- 1. **PROJECT DESCRIPTION:**

The 1996 Legislature appropriated \$500,000 for the predesign and design of a segregation unit for 80 medium-security beds at the Minnesota Correctional Facility at Lino Lakes (MCF-LL). At the present time, the Department has determined that they need a 72-80 cell administrative segregation unit. It is anticipated that this can be accomplished by remodeling the existing dormitories in B Building.

## Professional, Technical & Consulting Contracts

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### 2. REQUIRED SERVICES:

The architects/engineers will be required to assist the facility and DOC staff with formalizing the operational program; develop a space program and provide schematic design; as well as a project estimate. It is anticipated that the expertise required would include architects and engineers well versed in applicable codes, including ADA, structural, electrical, mechanical, civil, and fire protection systems.

### 3. PROJECT SCHEDULE:

A formal request for funding of the construction of these buildings will be made to the 1998 legislature. Therefore, appropriate budget figures and schematic design will be required by July, 1997.

### 4. INFORMATIONAL MEETING/SITE VISIT:

A site tour will be limited to short-listed firms and will be scheduled prior to the final interviews.

### 5. PROJECT CONTACT:

Questions concerning the project should be referred to:

James B. Zellmer, Director  
Institution Support Services  
Department of Corrections  
1450 Energy Park Drive, Suite 200  
St. Paul, MN 55108-5219  
Phone: (612) 642-0247  
Fax: (612) 603-0150

### 6. STATE DESIGNER BOARD SCHEDULE FOR PROJECT 13B-96:

Tuesday, February 18, 1997 - Proposals Due  
Tuesday, March 4, 1997 - Short List  
Site Visit - TBA (Short Listed Firms Only)  
Tuesday, March 18, 1997 - Interviews & Award

**\*The addition of the black and white copy is for time and money savings only. If you do not submit this unbound, file copy, you will *not* be disqualified. We will simply break down one of the bound copies you submit and recycle the components that are unusable for micro fiche (e.g. photos, tabs, decorative covers, laminated inserts, blank covers).**

**\*\*The addition of the fax number on the cover is for the convenience of communication only. If you do not have a fax number, you will *not* be disqualified.**

Douglas Wolfangle, P.E., Chair  
State Designer Selection Board

## Department of Children, Families and Learning

### Office of Lifework Development

### **Notice of Request for Proposal to Design, Develop and Produce a 12-15 Minute Video to Educate Parents and Other Viewers on What and Where the Jobs are in Minnesota and Across the Nation. In Addition, a User's Guide and a Complimentary Parent Pamphlet Will Be Produced**

The Department of Children, Families and Learning is soliciting proposals from qualified vendors to design, develop and produce a 12-15 minute video; develop an accompanying user's guide and a complementary parent pamphlet.

The Department has estimated that the cost of this project would not exceed \$45,000.00 and completion date is June 30, 1997.

For a complete request for proposal, please contact Diane M. Miller, Department of Children, Families and Learning, 651B Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101, telephone (612) 296-1085, FAX (612) 296-3348.

### **COMPLETED PROPOSALS ARE DUE BY FEBRUARY 28, 1997.**

In compliance with *Minnesota Statutes* 16B.167, the availability of this contract opportunity is being offered to state employees. We will evaluate the responses of any state employee along with other responses to this request for proposal.



## Minnesota State Colleges and Universities (MnSCU)

### Winona State University

#### Notice of Request for Proposals for a Copy Management Contract

NOTICE IS HEREBY GIVEN that Winona State University will receive sealed proposals for a copy management contract.

There will be a pre-RFP meeting for vendors on January 31, 1997, at 10:00 AM, at Winona State University, Somsen 213, Winona, MN. RFP specifications will be available February 20, 1997 from Sandra Schmitt, Purchasing Director, PO Box 5838, 205 Somsen Hall, Winona State University, Winona, MN 55987 or by calling 507/457-5067.

Sealed proposals must be received by Sandra Schmitt, PO Box 5838 or Somsen 205C, Business Office, Winona State University, Winona, MN 55987 by 2:00 PM on March 20, 1997.

Winona State University reserves the right to reject any or all proposals or portions thereof, or to waive any irregularities or informalities in proposals received.

## Iron Range Resources and Rehabilitation Board

### Request for Proposals for Sponsorship Contract

The Iron Range Resources and Rehabilitation Board (IRRRB), a state agency responsible for diversifying the economy of northeastern Minnesota, is requesting proposals from firms or individuals to assist in obtaining sponsorships for the Agency's tourist facilities.

#### Goal

It is the goal of this project to reduce the cost of presenting special events presented by the Agency by partnering with various organizations to sponsor such events on a local, regional and national level.

#### Objective

It is the objective of this project to increase the quality of special events presented by the Agency while decreasing the cost to the State for such events.

#### Contract length and amount

The contract will run from approximately February 20, 1997 (or upon execution of the contract) through January 31, 1998 with four one-year renewal options to extend through June 30, 2002. Renewal options are subject to contractor performance and the states continued need for the service.

#### Proposal Deadline and Contact

Responders should mail or deliver five (5) copies of their proposal, each signed in ink by a principal of the submitting firm, labeled "IRRRB/Sponsorship Proposal" by 3:00 p.m. Wednesday, February 12, 1997.

Proposals will be received and logged as to time and date by the receptionist at the front desk of the IRRRB administration building located on Highway 53 S, Eveleth, Minn.

**To receive a complete request for proposal please phone or write:**

Shirley Robinson  
Contract Coordinator  
Iron Range Resources and Rehabilitation Board  
Highway 53 South  
P.O. Box 441  
Eveleth, MN 55734  
(218) 749-7721; FAX (218) 749-9665

**by February 3, 1997.**

Agencies with questions about this request for proposals may contact Shirley Robinson directly at the address or telephone numbers above. Other IRRRB personnel are not authorized to discuss this Request for Proposal.

## Professional, Technical & Consulting Contracts

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### Department of Transportation

#### Operations Division

#### Notice of Availability of Contracts for Collaborative Surface Transportation Safety Projects

The Department of Transportation is requesting proposals for qualified transportation safety organizations to collaborate in the development and implementation of innovative projects to reduce the number and severity of roadway traffic crashes. The Department has made available \$50,000 to be divided between one or more selected projects. Projects should be commenced prior to July 1, 1997 and must be completed by June 30, 1998.

For further information or to obtain a copy of the complete Request for Proposal, contact:

Mike Gillen  
Assistant State Traffic Engineer  
Mn/DOT  
1500 W. Co. Rd B2, MS 725  
Roseville, MN 55113  
Ph: 612-582-1042 FAX: 612-582-1033

Proposals must be received at the above address no later than 4:00 p.m. on March 3, 1997. This request does not obligate the State of Minnesota, Department of Transportation to complete the work contemplated in this notice, and the department reserves the right to cancel this solicitation. All expense incurred in responding to this notice shall be borne by the responder.

### Department of Transportation

#### Notice of Request for Proposals for Professional Services for Performance of Advanced Tools for Technology Transfer in Transportation

##### Background and General Information

The Minnesota Department of Transportation's (Mn/DOT) Office of Research Administration (ORA) and the University of Minnesota's (U of M) Center for Transportation Studies (CTS) perform technology transfer activities for transportation research in Minnesota. While managing separate programs, ORA and CTS collaborate in many of their technology transfer efforts, resulting in some overlap of their customer base. One major difference between ORA and CTS lies with their key customers. ORA's key customers are within Mn/DOT; CTS's key customers are within local transportation agencies. Both ORA and CTS also provide services to the private sector within Minnesota and both are involved in technology transfer activities at the national level.

Another difference between ORA's and CTS's technology transfer programs is in the methods used to accomplish technology transfer. ORA currently has a primary focus on print media such as reports and technical summaries, while CTS primarily focuses on personal contact in the form of training and on-site visits. However, because of the close working relationship between ORA and CTS, the audiences for the services provided are often the same.

At this time both ORA and CTS are interested in examining new opportunities for accomplishing technology transfer in Minnesota. Mn/DOT is therefore soliciting proposals from qualified vendors to conduct the first two phases of the five-phase project described below.

##### Problem Statement

Research-needs brainstorming sessions, conducted for Mn/DOT and local transportation agency personnel, led to the identification of several needs in the area of improving technology transfer capabilities. The past several years have seen an expansion of transportation research efforts in Minnesota and at a national level. This change reflects an effort by governmental agencies to become more efficient in their operations. A key element in making any new procedure, product, or equipment operational is technology transfer.

##### Project Objective

The scope of this project is to identify, test, and evaluate advanced tools that have the potential for improving transportation related technology transfer capabilities. Although technology transfer means different things to different people, this project will be limited to the following objectives:

- 1) to improve educational programs related to research results and implementation of new procedures, products, or equipment
- 2) to improve educational programs that expand employee knowledge of existing technology

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## Professional, Technical & Consulting Contracts

- 3) to improve the sharing, marketing, and communication of research results and practitioner experiences throughout the public, private, and educational sectors
- 4) to utilize tools developed by other research organizations (for example, the Strategic Highway Research Program (SHRP) and other states' technology transfer programs) that will enhance our own technology transfer capabilities

### Project Description

The first phase of this project is to conduct a literature search and to interview national experts for the purpose of developing a list of available advanced technology transfer tools. This list will include tools new to the market as well as proven tools developed and used by other technology transfer groups.

The second phase is to evaluate and rate the available tools in terms of their ability to effectively and efficiently improve technology transfer within the environment of the Minnesota transportation community, as representative of state government and local technical assistance programs.

The following phases of the project are not included in this contract:

The third phase is to select several highly rated technologies, to obtain the technologies (through loan, lease, or purchase), and to use them within Mn/DOT and CTS in pilot technology transfer situations.

The fourth phase is to evaluate the tools in terms of their efficiency and effectiveness in improving technology transfer in the pilot installations.

The final phase is to implement the use of selected tools.

The tasks proposed for this project will focus on Minnesota's needs and take advantage of mechanisms that already exist in Minnesota for the use of new tools. It is assumed that findings will be transferrable to technology transfer programs in general. Some examples of technology uses that might be explored are:

- Fiber optics
- CDI and CD-ROM
- Interactive videos
- Video conferencing
- Satellite training
- Computer based training
- Electronic Bulletin Boards
- E-Mail
- Document imaging
- On-line conferencing

The project will be conducted under the direction of a Mn/DOT appointed Technical Advisory Panel.

### Project Scope

The scope of this request for proposals is limited to phases 1 and 2 and will include: 1) a literature search and telephone interviews with national experts to determine available technology transfer tools, 2) personal interviews with Mn/DOT and CTS technology transfer personnel to identify Minnesota's existing and projected needs for performing technology transfer, and 3) an evaluation and rating of selected technology transfer tools.

### Deliverables

A final report that can be used in the development of future phases of the research.

A list of potential tools, each including:

- Characteristics of the tool
- Circumstances under which tool can be used (i.e., size of audience, type and amount of information to be transferred, etc.)
- Costs for developing and maintaining
- Development time required
- Advantages and disadvantages of use
- Barriers preventing use
- How it meets Minnesota's needs
- Mechanisms in place that will enable Minnesota to use the tool
- Potential sources for providing the tools (especially local providers)

### Estimated Project Cost

Mn/DOT has estimated that the cost of this project should not exceed \$20,000.

# Professional, Technical & Consulting Contracts

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## Project Completion Date

This project will be completed within two months of the start date.

## Schedule of Work

All tasks set forth in the Statement of Work shall be performed in accordance with the work schedule as negotiated. Performance shall begin on the effective date of the contract.

## RFP Process

### A. Submission of Proposals

All proposals must be sent to and received by:

Sandy McCully  
Administrative Assistant  
Minnesota Department of Transportation  
Office of Research Administration  
Mail Stop 330  
Second Floor Ford Building  
117 University Avenue  
St. Paul, MN 55155  
(612) 282-2272

Proposals will not be accepted after 3:00 P.M. on Friday, February 21, 1997. All proposals must be signed in ink by an authorized member of the firm. Late proposals will not be accepted. Six (6) copies of the proposal must be submitted in a sealed mailing envelope or package with the vendor's name and address written on the outside.

The State reserves the right to:

1. Reject any and all proposals received in response to this RFP;
2. Select, for contract award or for negotiations, a proposal other than that with the lowest cost;
3. Consider a late modification of a proposal if the proposal itself was submitted on time, and, if the modifications were requested by the State, and, if the modifications make the terms of the proposal more favorable to the State, accept such proposal as modified;
4. Negotiate as to any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time;
5. Use any or all ideas presented in any proposal received in response to this RFP unless the vendor presents a positive statement of objection in the proposal. Objections will be considered as valid only relative to proprietary information of the vendor which is so designated in the proposal. Exceptions to this are ideas which were known to the State before submission of such proposal or properly became known to the State thereafter through other sources or through acceptance of a vendor's proposal.

THIS REQUEST FOR PROPOSALS DOES NOT OBLIGATE MN/DOT IN ANY WAY. MN/DOT RESERVES THE RIGHT TO CANCEL THE SOLICITATION AT ITS DISCRETION.

### B. Department Contact

Prospective vendors who have any questions regarding this RFP may write or FAX to:

Micky Ruiz  
Technology Transfer Manager  
Minnesota Department of Transportation  
Office of Research Administration  
Mail Stop 330  
Second Floor Ford Building  
117 University Avenue  
St. Paul, MN 55155  
(612) 282-2269  
FAX: (612) 296-6599

Please note that other State personnel are not allowed to discuss the project with vendors before the proposal deadline.

### C. Contract Negotiations

Contract negotiations will begin upon selection of the successful vendor. The estimated effective date for the contract is April 1, 1997.

**D. Costs Incurred**

The vendor is liable for all costs incurred in preparing and/or submitting the proposal.

**Required Proposal Contents**

The contents of this RFP and the proposal of the successful vendor may become part of the final Contract if a contract is awarded. Failure by any vendor to include the following information or statements in the proposal will result in its being declared unacceptable or nonresponsive, and it will receive no further consideration for award of the Contract.

The following, arranged in the same order as listed below, will be considered minimum contents of the proposal:

**A. Transmittal Letter**

A transmittal letter must accompany the proposal. The letter must be in the form of a standard business letter and be signed, in ink, by an individual authorized to legally bind the vendor.

It must include:

1. A statement indicating that the vendor is a corporation or other legal entity, and is authorized to provide the services set forth in the vendor's proposal. Evidence of current license(s) must accompany the proposal.
2. A statement to the fact that prices and terms of the proposal are valid for the term of the proposed contract;
3. A statement identifying those individuals who were involved with the preparation of the proposal;
4. A statement that no attempt has been made or will be made by the vendor to induce any other person or firm to submit or not to submit a proposal;
5. A statement of acceptance of, or exception to, the terms and conditions stated in this RFP. Any suggestions for alternate language must be indicated on a document entitled "Exceptions to Terms and Conditions," which must be attached to the vendor's proposal. The State is under no obligation to accept wording changes submitted by the vendor;
6. A statement identifying all addenda to this RFP issued by the State and received by the vendor (if no addenda have been received, a statement to that effect must be included);
7. A statement that the vendor has sole and complete responsibility for the completion of all services provided under the Contract, except for those items specifically defined as State responsibilities;
8. A statement that the vendor certifies that, in connection with this procurement, the prices proposed have been arrived at independently, without consultation, communication, or agreement, for the purpose of restriction of competition, as to any other vendor or with any competitor; and that unless otherwise required by law, the prices quoted have not been knowingly disclosed by the vendor prior to award, either directly or indirectly, to any other vendor or competitor;
9. A statement certifying that no personnel currently employed by or under personal contract to the State, or any other State agency, participated, either directly or indirectly, in any activities related to the preparation of the vendor's proposal; and
10. A statement that each person signing this proposal certifies that she/he is the person in the vendor's organization responsible for, or authorized to make, decisions as to the prices quoted in the cost proposal and that she/he has not participated and will not participate in any action contrary to those stated above.

**B. Proposal Narrative**

1. A statement of the proposed objectives and tasks to demonstrate how the vendor views the project. The proposal must outline the vendor's background and experience. It must identify the involved personnel and detail their training and work experience.
2. A thorough description of the proposed process and design that will perform the requirements to cover all deliverables.
3. An outline of the vendor's background capabilities with particular emphasis on:

Experience with new communications technology  
Experience in technology transfer  
Experience in marketing

The following disciplines and/or areas of expertise are believed to be necessary for the successful completion of this project:

Background in communications/education  
Familiarity with communications technology  
Strong communication skills (written and oral)  
Research methodology and data collection skills

## **Professional, Technical & Consulting Contracts**

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4. A detailed work plan/time line identifying the major tasks to be accomplished and products and outcomes to be delivered, a management timetable including specific task assignments and estimated person hours by specific personnel that will participate on the project and the conditions for payment, and the geographic location where the work will be performed.
5. A statement as to the State's participation in the development and implementation and any services to be provided by the State.

### **Proposal Evaluation Criteria**

#### **A. Evaluation Phases**

During the evaluation process, all information concerning the proposals submitted, including identity and number of vendors, will remain private and will not be disclosed to anyone whose official duties do not require such knowledge. At any time during the evaluation, the State may request a vendor to provide explicit written or oral clarification of any part of the vendor's proposal.

In addition to the written proposal, Mn/DOT may request an oral presentation by one or more vendors to aid in its project proposal selection.

If a contract is awarded, the award will be made to that financially responsible and technically responsive vendor whose proposal best addresses all conditions and requirements of this RFP, and which is most advantageous to the State with price and other factors considered. The State will notify the successful vendor in writing of the award of the Contract. The State will notify the unsuccessful vendors in writing that their proposals have not been accepted.

#### **B. Evaluation Committee**

A committee will be selected to evaluate vendor proposals. Members of the evaluation Committee will be designated by Mn/DOT.

Mn/DOT reserves the right to alter the composition of the Evaluation Committee and its specific responsibilities.

#### **C. Evaluation Process**

Only those proposals found to be responsive to the RFP requirements will be considered.

During the course of the technical evaluation, Mn/DOT may request oral presentations of vendors or the opportunity to interview the proposed key personnel. Reference checks may also be made. However, Mn/DOT reserves the right to make an award without further clarification of the proposals received. Therefore, it is important that each proposal be submitted in the most complete manner possible.

Factors upon which proposals will be judged include, but are not limited to, the following:

##### **Quality of proposal (60%)**

- 1) Expressed understanding of objectives, including the completeness of services proposed and the quality of the management and technical approach to be used.
- 2) Does the approach to the tasks make sense and is it feasible?
- 3) Project work plan.

##### **Qualification of company and personnel (40%)**

Experience of project personnel will be given greater weight than that of the firm. This includes the ability to maintain the level of effort necessary to effectively manage operation of the project without loss of quality in the event of vendor staffing changes.

### **Workers' Compensation**

Successful Responders must provide acceptable evidence of compliance with Minnesota worker's compensation insurance coverage requirements prior to contract execution.

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# Non-State Public Bids, Contracts & Grants

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

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

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## Minnesota Historical Society

### Notice of Request for Bids for MHS All-site Travel Guide Production

The Minnesota Historical Society is seeking bids from qualified firms and individuals to provide MHS All-site Travel Guide Production.

The work will generally consist of color production of travel guides per specifications with delivery between February 25 and March 3, 1997.

The Request for Bids is available by calling or writing Deane M. Roe, Contracting Officer, Minnesota Historical Society, 345 Kellogg Blvd. West, St. Paul, MN 55102. Telephone (612) 297-5863.

Bids must be received not later than 3:00 P.M. Central Time February 10, 1997.

Complete specifications and details concerning submission requirements are included in the Request for Bids.

## Minnesota Historical Society

### Notice of Request for Bids for MHS Site Brochure Production

The Minnesota Historical Society is seeking bids from qualified firms and individuals to produce MHS Site Brochures.

The work will generally consist of color production of brochures per specifications, with delivery between February 25 and March 3, 1997.

The Request for Bids is available by calling or writing Deane M. Roe, Contracting Officer, Minnesota Historical Society, 345 Kellogg Blvd. West, St. Paul, MN 55102. Telephone (612) 297-5863.

Bids must be received not later than 3:00 P.M. Central Time February 10, 1997.

Complete specifications and details concerning submission requirements are included in the Request for Bids.

## **Metropolitan Council Environmental Services**

### **Public Notice for Letters of Interest for Professional Services for Environmental Planning and Evaluation**

**NOTICE IS HEREBY GIVEN** that the Metropolitan Council Environmental Services (MCES) is soliciting qualifications for professional services for the Environmental Planning and Evaluation (EPE) Department Environmental Information Management System (EIMS). This project will have two phases: Phase I - System Planning and Phase II - System Development, with Phase I being required to be completed within 60 days after issuance of Notice To Proceed. The cost for Phase I shall not exceed \$50,000.

The project goals are to consolidate and integrate all environmental information generated by the EPE Department sections, and also provide direct linkages to other Metropolitan Council computer systems, to external environmental information management's systems and to Geographic Information Systems. An effective EIMS will enable the EPE Department to assess environmental trends, identify and prioritize environmental problems, and measure environmental quality improvements as a result of management programs.

The tentative schedule for selecting a consulting firm for this project is as follows:

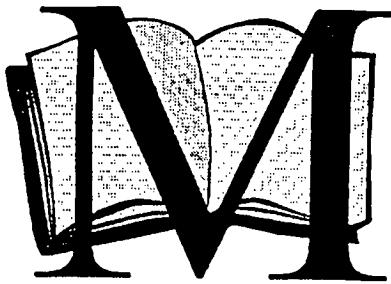
Receive Letters of Interest	January 1997
Request For Proposals (RFP) issued	January 1997
General Informational Meeting	February 1997
Proposals Received	February 1997
Select Consultant	March 1997
Negotiate final Contract Agreement	March 1997
Notice To Proceed given	March 1997

All firms interested in being considered for this project are invited to submit a Letter of Interest asking for the Request For Proposals package.

All inquiries are to be addressed to:

Administrative Assistant, Contracts and Documents  
Metropolitan Council Wastewater Services  
Mears Park Centre  
230 East Fifth Street  
St. Paul, MN 55101





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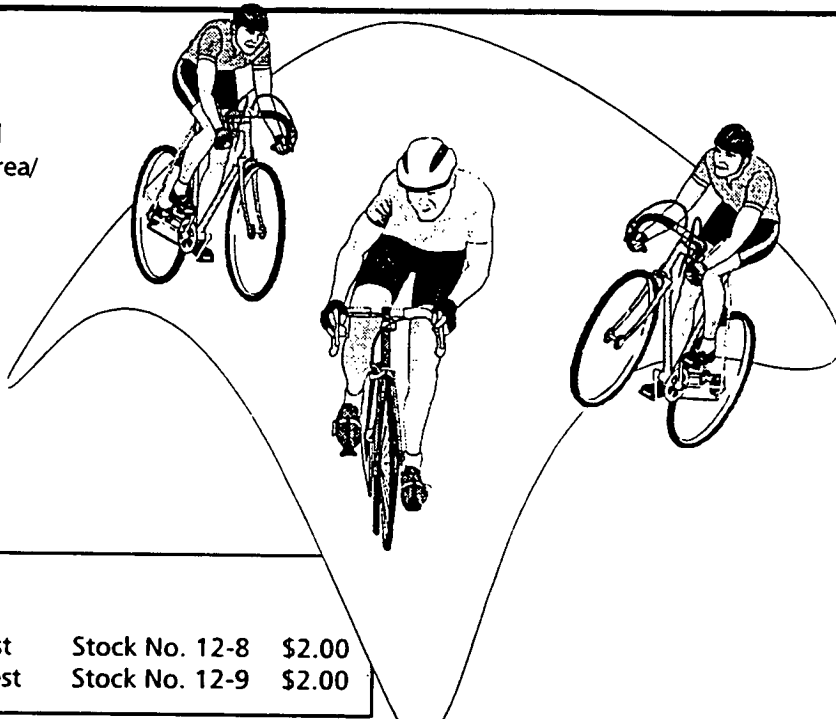
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## Bikeway Maps

The Department of Transportation has redesigned their bikeway maps to detail all roads with four area/ quadrant maps of the state, thus reducing the number of maps you may need to carry for your cross-country trips.

Each map contains information regarding:

- \* Historical and cultural attractions
- \* Public parklands and facilities
- \* Controlled access roads (bicycles prohibited)
- \* Unpaved/gravel roads
- \* Location of paved road shoulders
- \* Road analysis for bicycle usage
- \* Location of off-road bikeways



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Department of Administration



# Admin MINNESOTA

Department of Administration  
Communications Media Division

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