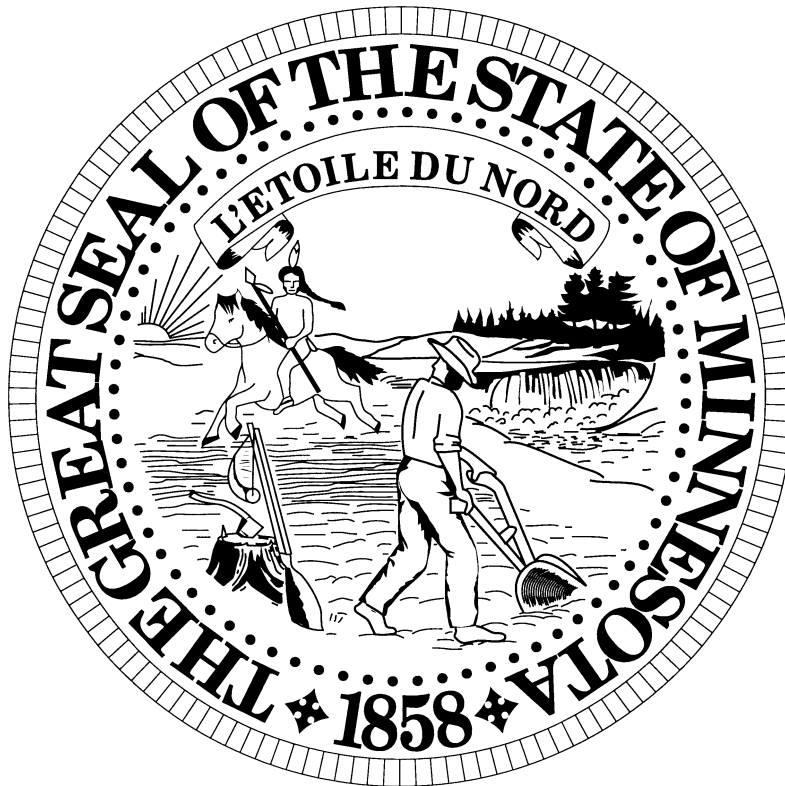


State of Minnesota

State Register

Rules and Official Notices Edition



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State Register

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The *State Register* is the official publication of the State of Minnesota, published weekly to fulfill the legislative mandate set forth in *Minnesota Statutes* § 14.46. The *State Register* contains:

- proposed, adopted, exempt, expedited emergency and withdrawn rules
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- proclamations and commendations
- commissioners' orders
- revenue notices
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#29	Monday 13 January	Noon Tuesday 7 January 2003	NOON TUESDAY 31 DECEMBER
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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 1999 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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7510.3520 s.4, 5, 6; .3540; .3550; .3560, s.1, 6, 7, 11, 16; .3570; .3580 s. 5, 6, 7, 8; .3590; .3600; .3610 s.1, 2, 3, 6; .3620; .3630; .3640 s.2, 3; .3650 s.1; 3660; .3680; .3690; .3700; .3710 s.2, 3, 4, 5, 6, 7, 8, 9, 10 (**errata repealed**)..... 639

7515.0100; .0200; .0210; .0220; .0300; .0310; .0320; .0410; .0420 .0430; .0440; .0450; .0460; .0470; .5000; .0520; .0550; .0560; .0570; .0580; .0590; .0600; .0620; .0630; .0640; .0650; .0720; .0760; .0780; .0800; .0810; .0820; .0840; .0850; .0900; .0920; .0940; .0950; .0960; .1030; .1040; .1050; .1060; .1070; .1090; .1100; .1120; .1200; .1210; .1220; .1300; .1310; .1330; .1340; .1360; .1400; .1410; 1450 (**proposed**)..... 8

7515.0100 s. 3, 6, 8, 9, 12, 15; .0210 s. 1a; .0310 s. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 19; .0320 s. 3; .0430 s. 4; .0710 s. 3; .0760 s. 6; .0900 s. 2; .0930; .1020; .1210 s. 1; .1300 s.1, 2; .1310 s. 2, 5; .1320; .1350; .1420 (**proposed repealer**)..... 8

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7826.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100; .1200; .1300; .1400; .1500; .1600; .1700; .1800; .1900; .2000 (**proposed**)..... 458

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8120.0600; .1000; .1200; .1500; .1800; .1900; .3100; .4100; .5200 (**adopted**)..... 585

8120.0600; .1000; .1200; .1500; .1800; .1900; .3100; .4100; .5200 (**proposed**)..... 163

8120.1000 s.5; .1100; .2400; .2600; .4200; .4700; .4800; .5200 s.3 (**proposed repealer**)..... 163

8120.1000 s.5; .1100; .2400; .2600; .4200; .4700; .4800; .5200 s.3 (**repealed**)..... 585

Water and Soil Resources Board

8420.0105; .0110; .0112; .0122; .0210; .0220; .0225; .0230; .0240; .0260; .0290; .0400; .0505; .0510; .0520; .0530; .0540; .0541; .0544; .0548; .0549; .0550; .0720; .0740; .0760 (**adopted**) 135

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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 Administration

Materials Management Division (MMD)

Proposed Permanent Rules Relating to State Contracts

Notice of Intent to Adopt Rules Without a Public Hearing

Proposed Amendments to Rules Governing State Contracting, *Minnesota Rules*, Chapter 1230.

Introduction. The Department of Administration intends to adopt rules without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules until January 30, 2003.

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: Betsy Hayes at Department of Administration, Materials Management Division, 112 Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155; **Telephone:** (651) 296-5942; **FAX:** (651) 297-5347; **email:** betsy.hayes@state.mn.us. TTY users may call the Department of Administration at (651) 282-5799.

Subject of Rules and Statutory Authority. The proposed rules are about state contracting. Specifically, the proposed rules amend existing rules relating to topics including soliciting bids and proposals from vendors, bid security, vendor errors, opening of responses, award of contracts, contract performance, vendor suspension and debarment, contract cancellation, and the Socially Disadvantaged and Economically Disadvantaged Area Small Business Program. In addition, new rules are being proposed regarding organizational conflicts of interest. The statutory authority to adopt the rules is *Minnesota Statutes*, sections 16B.04, subd. 1, 16C.03, subd. 2, 16C.16, subd. 2 and 16C.19(a). 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 Thursday, January 30, 2003, to submit written comment in support of or in opposition to the proposed rules and 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 comment should identify the portion of the proposed rules addressed and the reason for the comment. 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.

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

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 January 30, 2003. 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 when 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 valid 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. 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, please contact the agency contact person at the address or telephone number listed above.

Modifications. The proposed rules may be modified as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rules may not be substantially different than these proposed rules, unless the procedure under *Minnesota Rules*, part 1400.2110, has been followed. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

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. Copies of the statement may be obtained at the cost of reproduction from the agency.

Adoption and Review of Rules. 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.

Dated: 18 December 2002

Kent Allin
Director, Materials Management Division

1230.0150 DEFINITIONS.

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

Subp. 2a. Best Value. “Best value” describes a result intended in the acquisition of all goods and services unless otherwise provided for by law. Except as otherwise provided by law, price must be one of the evaluation criteria when acquiring goods and services. Other evaluation criteria may include, but are not limited to, environmental considerations, quality, and vendor performance.

Subp. 2b. Bid. “Bid” means an offer extended by a vendor in response to a request for bids.

Subp. 3. Broker. “Broker” means a business that carries no inventory and that has no written ongoing agreement with any manufacturer or manufacturer’s authorized distributor to sell the products of the manufacturer, does not take legal title to the product, does not add value to the product, and has no written authorization to represent the manufacturer of the product.

[For text of subp 4, see M.R.]

Subp. 4a. Competitive bidding. “Competitive bidding” means a process by which an award is made to the lowest responsible bidder meeting all terms, conditions, and specifications of the solicitation document.

Subp. 5. Contractor. “Contractor” means a business that is engaged in construction such as general, mechanical, or electrical contracting, or that provides a specific service such as trash removal, snow removal, janitorial services, or ~~consultant~~, professional, or technical services.

[For text of subp 6, see M.R.]

Subp. 7. Debarment. “Debarment” means the disqualification of a person ~~to receive invitations for bids or requests for proposals~~ ~~from receiving solicitations,~~ ~~or~~ the award of a contract by a governmental body, or selling any products or services to state agencies for a specified time commensurate with the seriousness of the offense, the failure, or the inadequacy of performance.

[For text of subs 8 to 10, see M.R.]

Subp. 11. Joint venture. “Joint venture” means the temporary association of two or more businesses to secure and fulfill a ~~procurement bid award~~ ~~contract.~~ For awards contracts awarded under the preference or set-aside provisions of the small business procurement program in parts 1230.1400 to 1230.1910, all parties in the joint venture must be certified as targeted groups or economically disadvantaged area businesses.

[For text of subs 12 to 14, see M.R.]

Subp. 15. **Material variance or material deviation.** “Material variance” or “material deviation” means a variance in a ~~bid response~~ from specifications or conditions that allows a ~~bidder responder~~ a substantial advantage or benefit not enjoyed by all other ~~bidders responders~~ or gives the state something significantly different from what the state requested in the solicitation document.

Subp. 16. **Open market.** “Open market” means purchases made in the marketplace without the need for competitive ~~bids~~ solicitations.

Subp. 17. **Person.** “Person” means a natural person or a business and includes both if the natural person is engaged in a business.

[For text of subp 18, see M.R.]

Subp. 18a. **Proposal.** “Proposal” means an executed document submitted by a vendor in response to a request for proposals.

Subp. 19. **Reinstatement.** “Reinstatement” means a process by which a debarred vendor may seek restoration is restored to state bidders lists one year from the date on which debarment ends by submitting an application to the director. If a debarred vendor is restored to the state bidders lists, the vendor will be subject to a one year probationary period the state vendor list.

Subp. 19a. **Responder.** “Responder” means a person who provides an offer in response to a solicitation.

Subp. 20. **Responsible bidder vendor.** “Responsible bidder vendor” means a bidder vendor who:

[For text of items A and B, see M.R.]

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

D. has no unresolved record of failure to perform, or of unsatisfactory performance of, contracts for the state or other customers; and

E. is not currently debarred by another government entity for any cause including defaults on contracts, late deliveries, product not meeting specifications, substandard installation, or service; and

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

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

~~G.~~ H. is in compliance with all tax laws of Minnesota, as evidenced by timely filing of all required returns, reports, payments, and possession of all applicable stamps, licenses, or other permits, and freedom from any judgment, lien, or seizure of assets or property to satisfy tax payments or duties; and

~~H.~~ I. is willing to furnish all information necessary to determine responsibility as outlined in items A to ~~G~~ H within 30 days or less or within a reasonable amount of time determined by prior consensus between the bidder and the division.

Subp. 21. **SIC or Standard Industrial Classification and NAICS or North American Industry Classification System.** “SIC” or “standard industrial classification” ~~was~~ and “NAICS” or “North American Industry Classification System” are systems developed for use in the classification of business establishments by type of activity for the purpose of facilitating the collection, tabulation, presentation, and analysis of data collected by various agencies of the United States government, state agencies, trade associations, and private research organizations for promoting uniformity and comparability in the presentation of statistical data relating to those establishments and their fields of endeavor.

Subp. 21a. **Solicitation.** “Solicitation” means a request for bids or a request for proposals.

Subp. 22. **Suspension.** “Suspension” means to be temporarily suspended ~~from consideration for award of contracts~~ by the director of materials management from receiving solicitations, the award of a contract, or selling any products or services to state agencies while the director determines if there is probable cause for debarment. ~~The suspension shall not exceed six months.~~

Subp. 23. **Targeted group businesses.** “Targeted group businesses” means certified businesses designated by the commissioner of administration that are ~~majority~~ at least 51 percent owned and operated by women, persons with substantial physical disabilities, or specific minorities and provide goods, products, or services within purchasing categories designated by the commissioner.

Subp. 24. **Terms governing socially disadvantaged persons.** The terms in items A to C have the meanings given them for purposes of administering the small business procurement program.

A. “Racial minority” means ~~persons~~ an individual in one or more of the categories in subitems (1) to (5).

(1) “Black ~~(not of Hispanic origin)~~ American” means persons having origins in any of the Black racial groups of Africa.

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

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.

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(3) ~~“Asian or Pacific Islander American”~~ means persons ~~having with~~ origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes China, Vietnam, Japan, Korea, the Philippine Islands, and Samoa from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, the Philippines, the United States Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated states of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru.

(4) ~~“Alaska Native”~~ means persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation. ~~“Subcontinent Asian American”~~ means persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal.

(5) ~~“Indian”~~ means persons having origins in any of the original peoples of North America who are enrolled members of Indian tribes recognized by the governments of the United States and Canada. ~~“Indigenous American”~~ means:

(a) Eskimos and Aleuts having origins in any of the original people of North America who maintain cultural affiliation through tribal or community affiliation;

(b) native Hawaiians whose ancestors were natives, prior to 1778, of the area which now comprises the state of Hawaii; and

(c) American Indians having origins in any of the original people of North America who are enrolled members of Indian tribes recognized by the governments of the United States and Canada.

B. “Women” means persons of the female gender.

C. ~~“Disabled Substantial physical disability”~~ means ~~any condition or characteristic that renders a person a disabled person. A disabled person is any person who~~ with respect to an individual:

(1) ~~has a physical, sensory, or mental impairment which materially~~ a physical impairment that substantially limits one or more major life activities;

(2) ~~has~~ a record of such an impairment; or

(3) ~~is~~ being regarded as having such an impairment.

[For text of subp 25, see M.R.]

Subp. 26. **Small business eligible for certification as socially disadvantaged business or economically disadvantaged area business.** “Small business eligible for certification as socially disadvantaged business or economically disadvantaged area business” means a small business entity with its principal place of business in Minnesota organized for profit, including an individual, partnership, corporation, joint venture, association, or cooperative that is at least 51 percent owned and is operationally controlled on a day-to-day basis by citizens or lawfully admitted permanent residents of the United States.

Subp. 27. **Vendor.** “Vendor” means a natural person or a business and includes both if the natural person is engaged in a business.

1230.0300 SOLICITING BIDS RESPONSES.

Subpart 1. **Publication.** ~~Any purchase estimated to exceed the limits established by Minnesota Statutes, section 16B.07, subdivision 3, shall be purchased on sealed bids. Notice of solicitation of bid will~~ solicitations estimated to exceed the limits established by *Minnesota Statutes*, section 16C.06, subdivision 1, must be advertised at least seven days prior to the bid opening date. ~~Bids shall~~ Responses must also be solicited by ~~sending bid invitations~~ announcing solicitations to prospective ~~bidders~~ responders registered with the division pursuant to subpart 3.

Subp. 2. [See repealer.]

Subp. 3. **Vendor list of bidders.** ~~A list record of bidders shall~~ potential responders must be maintained by the division for various commodities and services. Persons desiring to sell commodities or provide services to the state may request a vendor registration application. Upon approval of the application by the division as meeting the requirements in part 1230.0150, subpart 20, the vendor’s name ~~shall~~ must be placed on appropriate bid lists to receive ~~invitations to bid~~ solicitations. The name of a vendor who fails to respond to three consecutive ~~bid invitations will~~ solicitations may be removed from the ~~lists of bidders~~ vendor list. The name of the vendor so removed will be restored only through specific written request from the vendor.

1230.0400 SUBMISSION OF ADVERTISED BIDS SOLICITATIONS.

Subp. 2. **Bid Solicitation conditions.** General bid terms and conditions applicable to all state purchases ~~shall~~ must be stated ~~on~~ in the standard ~~invitation to bid~~ solicitation document. Special bid terms and conditions applicable to specific commodities or types of purchase ~~shall~~ must also be stated in the ~~invitation to bid~~ solicitation document. In the event of conflict between general bid terms and conditions and special bid terms and conditions, the special bid terms and conditions will govern.

1230.0500 BID SECURITY.

Subpart 1. **Payment.** Each ~~bid invitation shall~~ solicitation must set forth the bid security required by the division, if any. ~~Such bid~~ The security ~~shall be~~ may be a bid bond or a security check, such as a certified check, cashier’s check, or money order, made payable to “State of Minnesota” and ~~shall~~ must be made upon the condition or guarantee that in the event the ~~bidders’ responder’s~~ offer is accepted, the ~~bidding~~ responder must enter into a contract in accordance with the ~~proposal~~ solicitation. Solicitations may stipulate that a security check may also be held as supply security for delivery or acceptance of merchandise, or satisfactory completion of the contract. A successful responder may substitute a supply bond or an irrevocable letter of credit from a bank for a security check.

Subp. 2. **Forfeit.** ~~Certified checks or Bid bonds or security checks~~ of successful ~~bidders shall~~ responders constitute liquidated damages for failure of a ~~bidding responder~~ to enter into a contract, ~~and shall also be held as security for delivery and acceptance of merchandise, or satisfactory completion of the contract.~~ A performance bond for 25 percent of the award may be substituted. ~~Security checks of successful responders that are held as supply security constitute liquidated damages for failure of the successful responder to make delivery, to have merchandise accepted, or to satisfactorily complete the contract.~~

Subp. 3. **Return.** ~~Bid~~ Security checks of unsuccessful ~~bidders shall~~ responders must be returned to ~~vendor~~ the responder by placing them in the mail within five working days after an award is made. ~~Bid~~ Security checks of successful ~~vendors shall~~ responders must be returned ~~as soon as upon receipt of required supply bond or payment and performance bonds.~~ Security checks of successful responders that are held as supply security must be returned within five working days after delivery is completed and ~~notification to the division that~~ acceptance is made by the agency, or the contract is satisfactorily completed. No interest ~~shall~~ may be paid on any money held as security.

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

1230.0600 BIDDER RESPONDER ERRORS.

Prior to the ~~opening of sealed bids~~ date and time responses are due, any person may withdraw a ~~bid~~ response by notifying the director in writing of the desire to withdraw, by appearing in person at the division office and withdrawing the ~~bid~~ response, or by ~~telegraphic~~ an electronic writing or facsimile received by the director requesting withdrawal of the ~~bid~~ response.

Subsequent to the ~~opening of sealed bids~~ date and time responses are due, a person may withdraw a ~~bid~~ response only upon a showing that an obvious error exists in the ~~bid~~ response. The showing and request for withdrawal must be made in writing to the director within a reasonable time after the opening of the ~~bids~~ responses and prior to the state's detrimental reliance on the ~~bid~~ response.

1230.0700 RECEIPT AND OPENING OF BIDS RESPONSES.

Subpart 1. **Division's treatment of bids responses to solicitations.** Upon receipt in the division, all bids ~~will~~ and proposals must be time stamped, showing the date and hour received. ~~Responses must be opened publicly and read aloud in accordance with Minnesota Statutes, section 13.591, subdivision 3, at the time and place established in the solicitation.~~ Bids and proposals received after the time set for the opening of bids ~~will be returned unopened to the bidders.~~ ~~Bids shall be opened publicly and read aloud at the time and place established in the bid invitation~~ must not be opened or considered. The division must, at the vendor's request, return the unopened response to the vendor at the vendor's expense if the request is made within ten working days of the opening.

Subp. 3. **Rejection of bids responses.** The state may reject any or all ~~bids responses~~ or portions thereof. ~~All bids shall~~ Responses must be rejected for good and sufficient cause, including but not limited to, abandonment of the project by the state, or insufficient state funds, correction of a process error, disclosure or discovery of an organizational conflict of interest, or a determination that the responder is not a responsible vendor. A vendor whose ~~sealed bid~~ response is rejected ~~shall~~ must be given notice of the rejection and the reason(s) for rejection of the ~~bid~~ response.

Subp. 4. **Informalities and minor deficiencies.** The state reserves the right to waive minor deficiencies or informalities in ~~bids responses~~. Minor informalities ~~shall~~ must be waived if, in the judgment of the director, or delegate, the best interest of the state would be served without prejudice to the rights of the other ~~bidders responders~~. Examples of minor deficiencies include, but are not limited to, omission of the title of the signatory; failure to furnish required catalog cuts; and minor detail omissions.

1230.0750 ORGANIZATIONAL CONFLICTS OF INTEREST.

Subpart 1. **Disclosure requirements.** A vendor who is aware of an actual or potential conflict of interest as defined in *Minnesota Statutes*, section 16C.02, subdivision 10a, prior to the submission of a response to a solicitation or who becomes aware of an actual or potential conflict of interest during the term of a contract shall disclose the following information to the director of the division:

- A. the identity of the parties involved in the actual or potential conflict;
- B. the facts that give rise to the actual or potential conflict; and
- C. any measures the vendor proposes to avoid, mitigate, or neutralize the conflict if possible.

Subp. 2. **Cooperation required.** In the event an actual or potential organizational conflict of interest is identified with respect to a pending or existing contract, the vendor shall cooperate with the director to explore potential measures to avoid, mitigate, or neutralize the conflict. These measures include, but are not limited to, amending the scope of work to exclude the tasks that give rise to the conflict or disclosing information for distribution to other responding vendors.

<p>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.</p>
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Proposed Rules

Subp. 3. **Remedies.** If an organizational conflict of interest for a particular contract cannot reasonably be avoided, mitigated, or neutralized, a vendor may be disqualified from participation in the solicitation process for that contract. If the conflict is identified after the contract has become effective, the contract is subject to immediate cancellation. Pursuant to *Minnesota Statutes*, section 16C.04, subdivision 3, paragraph (b), the commissioner may waive the requirement to avoid, mitigate, or neutralize an organizational conflict of interest if vital operations of the state will be jeopardized. Vital operations include contracts relating to public health, welfare or safety, or contracts that are necessary to avoid a disruption in essential state functions.

1230.0800 AWARD OF CONTRACTS.

Award of contracts ~~shall~~ must be made in conformity with ~~*Minnesota Statutes*, section 16B.09~~ and with no material variance from the terms and conditions of the ~~bid invitation~~ solicitation document. Unless otherwise provided for by law, awards for all acquisitions, except building and construction contracts, must be based on best value. Building and construction contracts must be awarded in accordance with *Minnesota Statutes*, sections 16C.25 to 16C.29.

1230.0900 TIED BIDS.

Subpart 1. **Resolving tied bids.** Tied low bids for less than ~~\$500~~ \$2,500 must be resolved by ~~drawing lots~~ a coin toss among the tied low bidders, except as provided in subpart 2.

Except as provided in subpart 2, tied low bids for ~~\$500~~ \$2,500 or more ~~shall~~ must be referred to the director for disposition. ~~The director may enter into negotiation with tied low bidders when the director deems such action~~ methods used to resolve tie bids may include requesting second pricing from the vendors, negotiating with the tied low bidders, or other methods the director considers to be in the best interest of the state.

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

1230.1000 CONTRACT PERFORMANCE.

Subpart 1. **Shipment.** The director or authorized agents of state ~~departments~~ agencies shall place orders with successful ~~bidders~~ responders using official state ~~purchase orders~~ contract documents. Upon award, shipment ~~shall~~ must be made in accordance with delivery instructions in the ~~invitation to bid~~ ordering document.

Subp. 2. **Inspection.** The state may require that the vendor permit inspection of the ~~commodities~~ goods prior to shipment at the factory, plant, or establishment where produced, manufactured, or stored. Unless provision for inspection is made in the ~~invitation to bid~~ solicitation, costs ~~thereby~~ incurred ~~will~~ must be paid by the state.

Subp. 3. **Grounds for rejection.** All deliveries ~~shall~~ must conform to all terms, conditions, and specifications of the bid solicitation. Failure in this respect ~~shall be~~ is cause for rejection of the goods. ~~Commodities~~ Goods that fail to comply with specifications, fail to conform to the vendor's sample, are not as provided on the purchase order, or arrive in an unsatisfactory condition ~~shall~~ must be rejected except as provided in subpart 7.

Subp. 4. **Notice of rejection.** Notice of rejection, based upon apparent deficiencies disclosed by ordinary methods of inspection, ~~shall~~ must be given by the receiving agency to both vendor and the carrier (if f.o.b. shipping point) within a reasonable time after delivery, with a copy of this notice to the division. A revocation of acceptance for latent deficiencies that would make the ~~items~~ goods unsatisfactory for the purpose intended ~~shall~~ must be given by the state within reasonable time after discovery. The contractor shall satisfactorily repair or replace such ~~items~~ goods within a reasonable time.

Subp. 5. **Removal of rejected items goods.** The vendor shall remove at the vendor's expense any ~~item~~ goods rejected by the state. If the vendor fails to remove the ~~items~~ goods and instead forwards shipping instructions to the agency concerned, the state need not comply, but may sell the ~~item~~ goods and remit the proceeds of sale, less the expense involved, in accordance with law, including, but not limited to, *Minnesota Statutes*, section 336.2-603.

Subp. 6. **Replacing rejected items goods.** If the needs of a state agency do not permit time to replace rejected ~~merchandise~~ goods, or if deliveries are not made within the time specified in the contract, the agency may, with the approval of the director, buy on the open market ~~supplies~~ goods of the nature required. The vendor shall be liable for all additional costs and expenses.

Subp. 7. **Adjusting price of nonconforming items goods.** If it is determined that ~~an item does~~ goods do not conform strictly to specifications, but can be used satisfactorily, the director, with written acquiescence of the vendor, may adjust the price and authorize the agency to keep and use ~~such that~~ that part of the order when ~~such action~~ it is required to sustain continued operation ~~determined by the director to be in the best interest of the state.~~

Subp. 8. **Laboratory tests.** The director may require that a laboratory analysis or other tests be made to determine the acceptability of the delivered ~~product(s)~~ goods and to ensure that those ~~product(s)~~ goods meet specifications. When analyses or tests are required, acceptance by the state ~~shall~~ must not occur nor be deemed to have been made until testing is completed and affirmative results are obtained. Any discount time applicable ~~shall begin~~ begins after affirmative results are obtained. Vendors ~~shall~~ must be notified of unsatisfactory test results. Unless provisions for laboratory analysis or tests are contained within the solicitation document, costs incurred for them must be paid by the state.

1230.1100 FAILURE TO PERFORM.

Subpart 1. **Penalties.** If a ~~bidder~~ responder who is awarded a contract fails to perform as specified, the ~~bid~~ security as described in part 1230.0500, subpart 1, ~~shall~~ must be retained by the state ~~and deposited with the state treasurer~~ as liquidated damages. The

vendor may also be determined not to be a responsible ~~bidder~~ vendor and may be subject to suspension or debarment pursuant to part 1230.1150. The state may also pursue all other remedies permitted by rule or provided by law.

If the ~~bid~~ security is in the form of a bond, the bonding company ~~shall~~ must be notified in writing of the default. A vendor awarded a contract who fails to enter into the contract may be determined not to be a responsible ~~bidder~~ vendor regardless of whether ~~bid~~ security was required. The state may seek further damages and shall not be limited by the absence or existence of a bond. In all cases of default, the vendor may be determined not to be a responsible ~~bidder~~ vendor and may be subject to suspension or debarment pursuant to part 1230.1150.

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

Subp. 3. **Types of failure to conform to ~~specifications~~ contract requirements.** A vendor ~~shall~~ must be held in default for failure to conform to ~~bid~~ contract requirements, solicitation terms, conditions, and specifications, or standard commercial practices including, but not limited to, the following:

[For text of items A to D, see M.R.]

1230.1150 AUTHORITY TO DEBAR OR SUSPEND VENDORS.

Subpart 1. **Suspension.** After written notice to the person involved and providing for a reasonable opportunity for that person to be heard, the director shall have the authority to suspend a person from ~~consideration for awards~~ eligibility to receive solicitations, the award of contracts, or selling any products or services to state agencies if the director determines that the person has engaged in an activity that might lead to debarment. A suspension must not exceed six months unless the vendor is proposed for debarment by the federal government and in that event, the suspension must not exceed the length of time necessary for the federal government to issue a final order.

Subp. 2. **Debarment causes.**

A. A ~~vendor~~ person shall be debarred if one or more of the following occurs:

~~A.~~ (1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

~~B.~~ (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that ~~currently, seriously, and directly~~ affects responsibility as a state ~~contractor~~ vendor;

~~C.~~ (3) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

~~D.~~ (4) violation of contract provisions, as set forth in ~~subitems (1) and (2)~~ units (a) and (b), of a character that is regarded by the director to be so serious as to justify debarment action:

(+) (a) failure without good cause to perform according to the specifications ~~or within the time limit provided in the limits,~~ or any terms or conditions in the contract; or

(+) (b) a ~~recent~~ record of failure to perform, or of unsatisfactory performance, according to the terms of one or more contracts or as measured by standard commercial practices; provided that this failure to perform or unsatisfactory performance was not caused by acts beyond the control of the contractor; or

~~E.~~ (5) any other cause the director determines to be so serious and compelling ~~as to affect responsibility as a state contractor,~~ including, but not limited to, threatening, abusive, or intimidating behavior; collusion with other ~~bidders~~ vendors to restrain ~~competitive bidding, competition~~; giving false information on a ~~bidder's~~ vendor's registration application; ~~or response to a solicitation~~; violating terms of suspension; and all acts that would disqualify the person as a responsible ~~bidder~~ vendor, as defined in part 1230.0150, subpart 20, including debarment by another governmental entity.

~~In the case of debarment by other governmental entities, should that debarment result from action~~

B. The following must occur in cases in which a vendor is debarred by other governmental entities:

(1) Any vendor debarred by the federal government, the state of Minnesota, or any of its departments, commissions, ~~or~~ agencies, or any of its political subdivisions, ~~the terms and limits of that debarment are~~ is automatically effective for parties so debarred ~~in doing business with~~ debarred by the division under the same terms and limits of the original debarment. ~~Debarments by~~

(2) If the vendor is debarred by any other governmental entities ~~are,~~ it is cause for suspension until a determination can be made by the division under normal suspension procedures as to whether the debarment applies under Minnesota statutes and rules.

Subp. 3. **Written notice.** A written notice ~~to debar or debarment or suspend~~ shall ~~shall~~ must be furnished to the affected parties and ~~shall~~ must:

A. state the reasons for the action taken;

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B. give the length of time the vendor will be debarred or suspended; and

C. inform the debarred or suspended person of the person's rights to administrative and judicial review according to subpart 4.

Subp. 4. **Suspension or debarment appeals.** If suspended or debarred, a person may file an appeal in writing with the commissioner of administration within 30 calendar days of receipt of a decision to suspend or debar. The commissioner shall, within 45 calendar days, decide whether the actions taken were according to statutes and regulations and were fair and in the best interest of the state.

Any person receiving an adverse decision from the commissioner may appeal in any appropriate court of the state.

Subp. 5. **Length of debarment.** A bidder vendor may be debarred from receiving solicitations and submitting bids responses for not less than one year, nor more than three years unless a longer time is in effect under subpart 2, item B, subitem (1). The length of the debarment will must depend on the vendor's past performance, the number and seriousness of the current complaints, and the cost to the state associated with correcting the problem.

Subp. 6. **Public list of debarred and suspended.** The division shall maintain a master list of all suspensions and debarments. The master list will must retain all information concerning suspensions and debarments as a public record. The records will must be maintained for at least three years following the end of a suspension or debarment. Such public information may be considered in responsible bidder vendor determinations according to part 1230.0150, subpart 20.

1230.1175 REINSTATEMENT AND PROBATION.

Subpart 1. **Review of reinstatement applications.** The director will shall review vendor applications for reinstatement.

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

Subp. 3. **Information in reinstatement application.** A request for reinstatement must be made to the director in writing and include:

A. all information necessary to qualify as a responsible bidder vendor, as defined in part 1230.0150, subpart 20;

[For text of item B, see M.R.]

C. evidence of successful completion of at least four other contracts, including contracts with two public entities in the same commodity class, field, or type of work in which the applicant seeks to bid; or and

[For text of item D, see M.R.]

Subp. 4. **Actions following decision.** The director will shall determine if the person can be reinstated as a responsible bidder vendor and be added to the bidders vendor list. If, after investigation, the petitioner's applicant's request for reinstatement is denied, the person cannot reapply for reinstatement for one year from the date of denial. If reinstated, the petitioner will applicant must be placed on the bidders vendor list and be subject to a one-year probationary period.

Subp. 5. **Probationary periods and conditions.** Vendor probationary periods apply to formally debarred persons who have been reinstated as responsible bidders vendors.

The length of the probationary period will be is one year from the date of reinstatement.

During the probationary period, the party on probation must respond to all bid requests solicitations received from the division. An indication of an intent not to respond is considered a response for purposes of this subpart.

If a bid response from a vendor on probation is accepted and the vendor refuses to perform or enters into a contract and performance is substandard, the performance or supply bond, if any, will be retained and the vendor will must be deemed not to be a responsible bidder vendor and will must be permanently removed from the vendor list of bidders.

1230.1180 TERMINATION OF DEBARMENT OR AWARD DURING DEBARMENT.

The commissioner may terminate a debarment by order or may award a contract to a debarred or suspended vendor when:

A. the vendor is the sole supplier of a material or service required by the state;

B. the commissioner determines that an emergency exists as defined in Minnesota Statutes, section 16C.10, subdivision 2; or

C. the commissioner determines that the vendor's ineligibility would cause the state undue hardship.

1230.1200 CONTRACT CANCELLATION.

The director may cancel a purchase entered into under competitive bidding or contract under any one of the following conditions including, but not limited to:

A. the contractor vendor agrees to the cancellation;

B. the contractor vendor has obtained the contract by fraud, collusion, conspiracy, or in conflict with any statutory or constitutional provision of the state of Minnesota;

C. failure to deliver as agreed; or

D. failure to deliver within the time period stated in the invitation to bid. failure to conform to contract requirements or standard commercial practices including, but not limited to, all instances of failure to perform in part 1230.1100, subpart 3;

D. the existence of an organizational conflict of interest is identified; or

E. funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition.

1230.1300 REHABILITATION FACILITY.

Any rehabilitation facility wishing to apply to receive notice of available state contracts pursuant to Minnesota Statutes, section 16B.18 solicitations shall apply in writing to the director of the Minnesota Association of Rehabilitation Facilities Community Rehabilitation Organizations.

1230.1400 PURPOSE.

Parts 1230.1400 to 1230.1910 are adopted pursuant to *Minnesota Statutes*, sections ~~16B.19 to 16B.22~~ 16C.16 to 16C.21, for the purpose of governing procurement procedures relating to the ~~preference~~ programs for small businesses and targeted group or economically disadvantaged area small businesses. These programs are administered by the Materials Management Division, Department of Administration, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

1230.1450 SCOPE.

In the event of irreconcilable conflict between the general procurement rules in parts 1230.0100 to 1230.1399 and 1230.1400 to 1230.1910 ~~relating specifically to the small business procurement program~~, parts 1230.1400 to 1230.1910 shall govern. The definitions contained in part 1230.0150 ~~shall~~ apply in the administration of these ~~preference~~ programs.

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

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

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

A. ~~Standard industrial Classification (SIC) codes shall~~ SIC or NAICS must be used in classifying limitations among the variety of businesses potentially eligible for participation in the ~~Minnesota Small Business~~ program.

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

[For text of subitems (1) to (3), see M.R.]

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

[For text of units (a) and (b), see M.R.]

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

1230.1700 CERTIFICATION OF ELIGIBILITY.

Subpart 1. **Required information.** To qualify for the ~~preference~~ programs ~~established~~ authorized by *Minnesota Statutes*, section ~~16B.19, subdivisions 2a to 2d~~ 16C.16, each business shall file with the ~~Materials Management~~ division the ~~following~~ information in items A, B, C, D, and H; and E, F, and G as applicable on the application forms provided:

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

B. Which type of designation; ~~small business;~~ small business; ~~socially disadvantaged small business;~~ socially disadvantaged small business; or economically disadvantaged area small business; is being applied for:

[For text of subitem (1), see M.R.]

(2) an individual business which is not a targeted group business but is owned by a socially disadvantaged person, as defined in part 1230.0150, subpart 24, that is encountering the effects of discrimination as evidenced by the owner lacking adequate external support necessary to operate a competitive business enterprise through a diminished ability to secure:

[For text of units (a) to (c), see M.R.]

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

(3) the small business is located in an economically disadvantaged area as defined in *Minnesota Statutes*, section ~~16B.19, subdivision 2d, and/or~~ 16C.16, subdivision 7; or

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

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

(c) ~~(4) the business is a rehabilitation facility or a work activity program as certified by the Department of Economic Security;~~ ~~or.~~

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

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

D. A listing of all owners, including percentage of ownership, method of acquisition, ownership in other firms, and copies of the following documents:

(1) Complete financial statements for the business for each of the preceding three fiscal years, or since the inception of the business if established less than three years; Financial statements may be returned to the applicant upon completion of the application process if requested by the applicant. If financial statements are not available, the applicant may submit federal tax form Schedule C (Profit or Loss From Business or Profession).

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

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

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

[For text of subitem (5), see M.R.]

[For text of item E, see M.R.]

F. If the business seeking certification under item B, subitem (2), unit (a), (b), (c), or (d), and is a contractor, the information in item E must be submitted in all categories except as modified in the following:

[For text of subitems (1) to (3), see M.R.]

[For text of items G and H, see M.R.]

~~F.~~ Denials of certification under these provisions are subject to appeal under subpart 6.

Subp. 4. [See repealer.]

Subp. 5. **Grounds for rejecting application.** An applicant ~~shall~~ must be notified in writing of the acceptance or rejection of the application, within ~~30~~ 60 days of receipt of the application form and all supporting documents required by the division. An application ~~shall~~ must be rejected on any of the following grounds:

[For text of items A to G, see M.R.]

H. ownership of the applicant's business is shared with a previously certified participant who was removed from the ~~bid eligibility~~ vendor list or directory of certified businesses by operation of ~~Minnesota Statutes, section 16B.22, clause (e)~~ 16C.19, paragraph (c), and part 1230.1850; and

[For text of item I, see M.R.]

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

[For text of item A, see M.R.]

B. The ownership and day-to-day operation of a socially disadvantaged small business or economically disadvantaged area small business must be real, substantial, and continuing, and must go beyond the pro forma ownership of the firm as reflected in its ownership documents. The majority owner of the firm must be employed at least half time by the firm during normal business hours for that industry. The socially disadvantaged or economically disadvantaged small business owners ~~must~~ shall have the customary incidents of business ownership and shall share in the risks and profits commensurate with their ownership interests as demonstrated by an examination of the substance, rather than form of the business arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient. The division shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial arrangements, equipment rental or leasing agreements, and relationships with nontargeted businesses vary from accepted industry practice.

C. The socially disadvantaged or economically disadvantaged area business owner ~~must~~ shall possess the power and expertise to direct the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy, and operation. If the business is a corporation, the socially disadvantaged or economically disadvantaged area stockholder shall hold the position of chief executive officer or president. The firm must not be subject to any formal or informal restrictions that limit the customary discretion of the socially or economically disadvantaged owners. There must be no restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the socially or economically disadvantaged business owners from making a business decision for the firm without the cooperation or vote of any owner who is not a socially or economically disadvantaged person.

[For text of items D to F, see M.R.]

G. In addition to the standards in items A to F, the following circumstances will be given special consideration in determining eligibility:

[For text of subitems (1) and (2), see M.R.]

(3) any relationship between a socially disadvantaged or economically disadvantaged area business and a business that is not a socially disadvantaged or economically disadvantaged area business that has an interest, financial or otherwise, in the socially disadvantaged or economically disadvantaged area business will be carefully reviewed to determine if the interest conflicts with the ownership and day-to-day operating control requirements.

[For text of item H, see M.R.]

I. The following standards, along with supporting documentation, ~~shall~~ must be used in reaching a determination to certify an applicant under subpart 1, item B, subitem (2), unit (a), (b), (c), or (d):

[For text of subitems (1) to (4), see M.R.]

(5) Businesses seeking certification that operate in distinctly defined commodities, construction services, or product lines ~~shall~~ must be reviewed for certification under those distinctions. If the company operates in more than one SIC classification, the review ~~shall~~ must be made under the primary industry segment if 75 percent or more of its net sales or contract revenues are generated by that segment. The business may seek certification for individual product, service, commodity, or construction activities if 25 percent or more of its net sales or contract revenues is generated by a given category. All other financial data required by this application process must be proportionately attributed to the categories for which certification is sought unless it can be conclusively demonstrated that the dollar amounts shown are directly attributable to specific elements. If the company is unable to provide the breakdown of financial data requested by this rule, it ~~must~~ shall accept or request certification under the predominant category in its operation.

Subp. 6. **Appeal of rejection of application.** After an applicant has received written notice of rejection of the application for certification as a socially disadvantaged small business or economically disadvantaged area small business, the applicant may appeal the decision in writing to the commissioner of administration within 15 calendar days of receipt of the determination. If there are facts in dispute, the commissioner may refer the matter to the Office of Administrative Hearings for a contested case hearing under *Minnesota Statutes*, sections 14.57 to 14.62. The applicant has the burden of proof in establishing qualifications for certification. The commissioner shall, if time permits, refer the appeal to the Small Business Procurement Advisory Council for its recommendation before reaching a final decision. The commissioner shall make a final decision in writing within ~~45~~ 60 calendar days of receipt of the appeal.

1230.1805 PROCUREMENTS FROM SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESSES.

Subpart 1. Directory. A directory of eligible businesses, certified pursuant to part 1230.1700, ~~shall~~ must be established and maintained by the division for various commodity classes.

Subp. 2. Manufacturers representatives. Manufacturers representatives shall have written agreements with manufacturers to sell the products of the manufacturers in place and approved by the division at the time responses are due in order to be eligible for consideration for award under parts 1230.1810 to 1230.1830.

1230.1810 PROPORTIONAL UTILIZATION OF SOCIALLY DISADVANTAGED BUSINESSES.

The division shall attempt to achieve utilization of socially disadvantaged small businesses in proportion to their representation in the state's market area. In so doing, the division may use either of the following purchasing methods for ~~awarding requisitions making awards~~ to those socially disadvantaged businesses designated by the commissioner as targeted group businesses.

A. When it is likely that three ~~competitive bids~~ responses will be obtained from certified targeted group small businesses, the ~~requisition solicitation~~ may be set aside for ~~bidding~~ responses only ~~by from~~ those businesses.

(1) The division shall include a statement on the ~~invitation to bid solicitation document~~ informing all vendors that the ~~bid solicitation~~ is set aside for ~~bidding only~~ responses only from certified targeted group small businesses.

(2) The division shall reject any ~~bid by response from~~ a business not certified as a targeted group small business.

(3) Where there are no ~~bids responses~~ or no acceptable ~~bids responses~~, unsatisfactory ~~bids responses~~, if any, ~~will~~ must be recorded and the ~~requisition shall solicitation must~~ be ~~rebid~~ reissued.

B. A certified targeted group small business may be awarded up to a six percent preference in the amount ~~bid offered~~ over the lowest responsible ~~bid offer~~ from another vendor except as provided in part 1230.1830, item D.

(1) The division shall include a statement on the ~~invitation to bid solicitation document~~ informing all vendors that certified targeted group vendors will receive a preference in the amount ~~bid offered~~ and the amount of the preference to be awarded.

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(2) Unless awarded pursuant to subitem (4), when the lowest acceptable bid response from a certified targeted group small business is within the specified percent of the lowest acceptable bid response from another vendor, award shall must be made to the lowest responsible certified targeted group small business.

(3) Unless awarded pursuant to subitem (4), when there is no acceptable bid response from a certified targeted group small business within the specified percent of the lowest acceptable bid response from another vendor, award shall must be made to the lowest responsible vendor.

(4) In the event the state is using a solicitation method other than competitive bidding, including requests for proposals and bids awarded based on best value criteria, where price is not the only factor considered in making an award, the preference shall be applied as stated in the solicitation document.

1230.1820 REQUIRED SUBCONTRACTING FOR CONSTRUCTION, ~~CONSULTING~~, OR PROFESSIONAL OR TECHNICAL SERVICES.

Subpart 1. **Goal setting.** The division may set goals that require prime contractors to subcontract a portion of any contract for construction, ~~consulting~~, or professional or technical services to targeted group small businesses.

A. Goals for subcontracting will depend on the type of work involved, location of project, size of project, and the availability of certified, willing, and able targeted group small businesses open to subcontracts from the prime contractor.

[For text of item B, see M.R.]

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

Subp. 3. **Waivers.** Prime contractors may obtain waivers from the normal subcontracting goals according to the following procedure:

A. ~~The invitation to bid or request for proposals may as one of the conditions of contract waive subcontracting requirements for all or specific specialties based on the division's determination of sufficient availability of certified targeted group subcontractors for the specialties involved.~~

~~B.~~ The prime contractor may request a waiver for some or all specialties based on a documented unsuccessful effort to obtain certified targeted group subcontractors. The request for waiver with documentation showing the effort and steps taken to secure certified targeted group subcontractors and the results thereof shall must accompany the bid response, unless the invitation to bid specified a period after bid opening, not to exceed 72 hours, where documentation of efforts and steps taken to secure certified targeted group subcontractors will be permitted.

~~C.~~ B. After the award and the commencement of ~~the a~~ project, a prime contractor may request a waiver for a specific specialty if the certified targeted group subcontractor cannot or will not fulfill the subcontract and no suitable alternative subcontractor is available so as to prevent significant project delay. Failure to use the certified targeted group subcontractors specified at the time of award without a grant of waiver will invoke a penalty as outlined in subpart 4.

Subp. 4. **Incentives and penalties.** Bid Solicitation documents will must state whether or not the incentive rule applies for the project being bid solicited. If so,

A. Prime contractors who exceed the established goal on a given project for use of certified targeted group subcontractors by more than three percent may be awarded a financial incentive over and above the awarded bid project price, the incentive to be determined in the following manner:

[For text of subitems (1) to (4), see M.R.]

[For text of item B, see M.R.]

C. Prime contractors who fail to meet the project goal without waiver for a project to be awarded and are the apparent low bidder responder shall have a penalty of up to six percent, not to exceed \$60,000, added to their total project bid to determine responsible low bidder price when other prime contractors have submitted bids responses that meet the specified targeted goal. The penalty to be added shall must be proportionate to the underuse determined in the bid proposal response as compared to the announced project goal. The formula to be utilized in the application of this subpart is: Penalty (to be added to the response) = maximum penalty x (underuse \AE\ a project goal).

D. The division ~~reserves the right to may~~ cancel ~~the request for bid or proposals~~ solicitations and rebid resolicit the project when ~~all bidders submit proposals which do not~~ no responses meet the announced goal and the evidence available to the division indicated sufficient responsible certified targeted group subcontractors are willing and able to do the work.

1230.1830 PREFERENCE PROCUREMENTS FROM ECONOMICALLY DISADVANTAGED SMALL BUSINESSES.

A certified economically disadvantaged small business may be awarded up to a four six percent preference ~~in the amount bid over the lowest responsible bid from another vendor~~ for commodities and services and a four percent preference for construction projects.

A. The division shall include a statement on the invitation to bid solicitation document informing all vendors that certified economically disadvantaged vendors will receive a preference in the amount bid offered and the amount of the preference to be awarded.

B. Unless awarded pursuant to item E, when the lowest acceptable ~~bid response~~ from a certified economically disadvantaged small business is within the specified percent of the lowest acceptable ~~bid response~~ from another vendor, award ~~shall~~ must be made to the lowest responsible certified economically disadvantaged small business.

C. Unless awarded pursuant to item E, when there is no acceptable ~~bid response~~ from a certified economically disadvantaged small business within the specified percent of the lowest acceptable ~~bid response~~ from another vendor, award ~~shall~~ must be made to the lowest responsible vendor.

D. Unless awarded pursuant to item E, when the division awards ~~both a different percentage preference to a certified targeted group small business and a preference to a certified economically disadvantaged small business on the same requisition solicitation~~, the lowest acceptable ~~bid shall response must~~ be determined by deducting the appropriate preference percent awarded from the acceptable ~~bids responses~~ by the certified small businesses.

E. In the event the state is using a solicitation method other than competitive bidding, including requests for proposals and bids awarded based on best value criteria, where price is not the only factor considered in making an award, the preference must be applied as stated in the solicitation document.

1230.1850 REMOVAL FROM ELIGIBILITY LISTS OR DIRECTORY OF CERTIFIED BUSINESSES SOCIALLY DISADVANTAGED OR ECONOMICALLY DISADVANTAGED AREA SMALL BUSINESS PROGRAM.

Subpart 1. **Removal for failure to fulfill contract.** A business ~~shall may~~ be removed from the ~~bid eligibility lists certified directory and the vendor list~~ and ~~shall may~~ be ineligible to be awarded contracts when it fails to satisfactorily fulfill the terms and conditions of a contract as specified in parts 1230.1000 and 1230.1100.

Subp. 2. **Reinstatement.** An otherwise eligible business that was removed ~~from the the bid list~~ under subpart 1 may apply for reinstatement and participation in the preference program according to part 1230.1175.

Subp. 3. **Removal from ~~certified directory~~ Socially Disadvantaged or Economically Disadvantaged Area Small Business Program when a business no longer qualifies.** A business ~~shall must~~ be removed from the ~~certified directory and will no longer be eligible for bidding on any set aside or preference contract~~ Socially Disadvantaged or Economically Disadvantaged Area Small Business Program when the business no longer qualifies for the programs under *Minnesota Statutes*, section ~~16B.22~~ 16C.19, and parts 1230.1400 to 1230.1910. Notice of removal and the reasons for removal ~~shall must~~ be given in writing to the business by the division. Removal is effective upon receipt of the notice by the business. When removal is for loss of status as an economically disadvantaged area, the business ~~shall remain~~ remains eligible for 120 days after certified small businesses in the area are notified of the termination of the status by the division.

Subp. 4. **Appeal of removal.** When a business is removed from the ~~certified directory~~ Socially Disadvantaged or Economically Disadvantaged Area Small Business Program under subpart 3, the business may appeal the removal and disqualification to the commissioner of administration in writing within 15 calendar days of the receipt of the notice of removal. Receipt of the appeal ~~shall must~~ be acknowledged by the commissioner in writing within 15 calendar days of receipt. The commissioner shall request that the business choose either an informal review of the disqualification under item A or a formal review under item B if facts of the matter are in dispute. If a business fails to choose either an informal or formal review within 15 calendar days of the receipt of the notice of removal, the right to appeal lapses.

A. ~~Under an informal review process,~~ Informal review. The Small Business Procurement Advisory Council shall consider whether the decision to remove a business from the ~~certified directory~~ Socially Disadvantaged or Economically Disadvantaged Area Small Business Program was reasonable and whether the removal is in compliance with subpart 3. The council will review the facts presented by the business and the division. Within ~~45~~ 60 calendar days of the council's receipt of a request for review, the council shall recommend that the commissioner take one of the following actions:

(1) reinstate the business to the ~~certified directory~~ Socially Disadvantaged or Economically Disadvantaged Area Small Business Program;

(2) affirm the removal of the business; or

(3) refer the matter to the Office of Administrative Hearings for a contested case hearing under *Minnesota Statutes*, sections 14.57 to 14.62.

The council's recommendation to the commissioner ~~shall must~~ be in writing and include the reasons for its decision. The commissioner shall consider the recommendation and make a final decision on the matter within 15 calendar days of receiving the council's recommendation. The commissioner shall include written reasons for the decision.

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

B. Formal review. Within 30 calendar days after a request by the business or the council for formal review, the commissioner will initiate a contested case hearing under *Minnesota Statutes*, sections 14.57 to 14.62, by filing a request for assignment of an administrative law judge with a notice of an order for hearing. When the commissioner receives the report of the administrative law judge, the commissioner shall forward the report to the Small Business Procurement Advisory Council for its review, and the council shall, within 45 calendar days, make its recommendation. The commissioner shall make a final decision on each appeal.

1230.1860 LIMITS TO PROGRAM PARTICIPATION.
To ensure equitable distribution of awards and reduce the dependency of any given business on state awards for a major part of its annual revenues, the following limitations apply:

A. [Repealed, L 1999 c 232 s 2]

B. Eligibility for set-aside or preference for a specific business ~~shall participating in the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program~~ must be terminated when the ~~annual~~ review of financial statements or the cumulative record of awards compiled by the division from reports submitted by agencies covered under the statute indicate that any of the following conditions exist:

[For text of subitems (1) to (3), see M.R.]

C. No business ~~shall be permitted to~~ may participate in the ~~preference and set-aside programs~~ Socially Disadvantaged or Economically Disadvantaged Area Small Business Program indefinitely. A business ~~will not be certified but will~~ shall graduate from the ~~preference and set-aside programs~~ program when one of the following circumstances exists:

(1) if certified under part 1230.1700 according to *Minnesota Statutes*, section ~~16B.19~~ 16C.16, subdivision ~~2b 5~~, designation of targeted groups, and a new study conducted by the commissioner of administration finds the original conditions defining eligibility and certification no longer exist;

[For text of subitems (2) and (3), see M.R.]

1230.1900 GENERAL TERMS AND CONDITIONS.

Subpart 1. **Inability to perform.** An eligible business that finds it cannot produce, supply, or construct according to the ~~bid~~ terms and conditions of a contract ~~for reasons beyond its control~~ shall immediately notify the division in writing of the reasons therefore. When the commissioner determines that the business is unable to perform for the reasons stated, the division shall notify the Department of Trade and Economic Development so that the commissioner of trade and economic development can assist the small business in attempting to remedy the causes of the inability to perform. The division shall notify the business of the referral to the Department of Trade and Economic Development and the notice ~~shall~~ must include a statement that any records of the Department of Trade and Economic Development in assisting the small business may be discoverable in a contested case or judicial procedure. Failure to enter into a contract, to accept an offered award, or to satisfactorily complete a contract for documented reasons beyond its control will not automatically disqualify a business from ~~further bidding~~ future participation in the solicitation process.

[For text of items A and B, see M.R.]

Subp. 5. **Dividing ~~bid invitations~~ solicitations.** The director of the division shall divide ~~bid invitations~~ solicitations by dollar amounts, units of production, or duration of contract to facilitate awarding set-aside or preference contracts where economically feasible.

Subp. 7. **Annual Reporting ~~requirement~~ requirements.** The following reporting requirements apply to the Socially Disadvantaged or Economically Disadvantaged Area Small Business ~~programs~~ Program:

A. Businesses eligible to participate in these programs shall, within 30 calendar days of a request by the division, verify information on file with the division for that business, make any necessary changes, and submit a complete financial statement to the division. The information on file with the division will include:

[For text of subitems (1) to (4), see M.R.]

(5) all other relevant or supporting information necessary for verifying status resulting in eligibility under certification procedures if requested in writing by the division, before or after the ~~annual~~ reporting requirement date.

B. Failure to provide the information required by item A may result in removal of the noncomplying business from the ~~certified directory~~ Socially Disadvantaged or Economically Disadvantaged Area Small Business Program.

1230.1905 NOTICE OF CHANGES.

All businesses shall notify the division in writing of any changes in information submitted in an application for certification or attached information within 30 days of the changes. This section applies to changes in information occurring at any time and is not limited to changes occurring while an application is pending approval.

1230.1910 CONSULTANT, PROFESSIONAL, AND TECHNICAL PROCUREMENTS.

Subpart 1. **Applicability.** Parts 1230.1400 to 1230.1910 apply to the award of ~~consultant~~, professional, and technical procurements under *Minnesota Statutes*, section ~~16B.19~~ 16C.16, subdivision ~~2 3~~.

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

REPEALER. *Minnesota Rules*, parts 1230.0300, subpart 2; 1230.0500, subparts 4 and 5; and 1230.1700, subpart 4, are repealed.

Minnesota Board of Chiropractic Examiners

Proposed Permanent Rules Relating to the Definition of Sexual Misconduct

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 Rules Governing the Definition of Sexual Misconduct *Minnesota Rules*, 2500.6050

Introduction. The Board of Chiropractic Examiners intends to adopt rules without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on January 30, 2003, a public hearing will be held in Conference Room A, University Park Plaza, 2829 University Ave SE, 300, Minneapolis, Minnesota 55414, starting at 9:00 AM on Wednesday, February 19, 2003. 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 January 30, 2003 and before February 19, 2003.

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: Micki King at the Chiropractic Board, 2829 University Ave SE, #300, Minneapolis MN 55414, (612) 617-2226, **FAX** (612) 617-2224, and **email** Micki.king@state.mn.us. TTY users may call the Board of Chiropractic at TTY phone # 1-800-267-3529.

Subject of Rules and Statutory Authority. The proposed rules define the presence of sexual misconduct within the practice of chiropractic. The statutory authority to adopt the rules is *Minnesota Statutes*, 14.23 and 148.08, (2000). A copy of the proposed rules is published in the *State Register*, and on the Board's web page at www.mn-chiroboard.state.mn.us. You may contact the board to request a copy be mailed to you directly.

Comments. You have until 4:30 p.m. on Thursday, January 30, 2003, 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 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 Thursday, January 30, 2003. 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 when 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 valid 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, unless the procedure under *Minnesota Rules*, part 1400.2110, has been followed. 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 February 19, 2003, 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

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

scheduled hearing whether or not the hearing will be held. You may also call the agency contact person at (612) 617-2226 after January 30, 2003 to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit valid 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 Kathleen Sheehy is assigned to conduct the hearing. Judge Sheehy can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, **telephone** (612) 341-7602, 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 rebuttal 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 rebuttal 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 rebuttal 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 the agency or downloaded from the Board's web site at www.mn-chiroboard.state.mn.us.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 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.

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 the rules are filed 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: 16 December 2002

Larry A. Spicer, DC
Executive Director

2500.6050 SEXUAL MISCONDUCT.

For the purposes of determining the presence of sexual misconduct:

A. a person is considered to remain an active patient until no less than one year has elapsed since the last date on which the chiropractor examined or treated the patient; and

B. the conduct must occur subsequent to the provision of an initial examination or treatment.

Consent or mutual consent may not be used by the chiropractor in the defense of an allegation of sexual misconduct by the chiropractor.

Minnesota Board of Chiropractic Examiners

Proposed Permanent Rules Relating to Engagement in the Practice of Chiropractic

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 Rules Governing the Definition of the Practice of Chiropractic *Minnesota Rules*, 2500.6000

Introduction. The Board of Chiropractic Examiners intends to adopt rules without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on January 30, 2003, a public hearing will be held in Conference Room A, University Park Plaza, 2829 University Ave SE, 300, Minneapolis, Minnesota 55414, starting at 9:00 AM on Monday, February 24, 2003. 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 January 30, 2003 and before February 24, 2003.

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: Micki King at the Chiropractic Board, 2829 University Ave SE, #300, Minneapolis MN 55414, (612) 617-2226, **FAX** (612) 617-2224, and **email** Micki.king@state.mn.us. TTY users may call the Board of Chiropractic at TTY phone # 1-800-267-3529.

Subject of Rules and Statutory Authority. The proposed rules define when the doctor is engaged in the practice of chiropractic. The statutory authority to adopt the rules is *Minnesota Statutes*, 14.23 and 148.08, (2000). A copy of the proposed rules is enclosed with this notice, published in the *State Register*, and on the Board's web page at www.mn-chiroboard.state.mn.us.

Comments. You have until 4:30 p.m. on Thursday, January 30, 2003 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 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 Thursday, January 30, 2003. 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 when 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 valid 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, unless the procedure under *Minnesota Rules*, part 1400.2110, has been followed. 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 Monday, February 24, 2003, 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) 617-2226 after January 30, 2003 to find out whether the hearing will be held.

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

Notice of Hearing. If 25 or more persons submit valid 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 Richard Luis is assigned to conduct the hearing. Judge Luis can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, **telephone** (612) 349-2542 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 rebuttal 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 rebuttal 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 rebuttal 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 the agency or downloaded from the Board's web site at www.mn-chiroboard.state.mn.us.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 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.

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 the rules are filed 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: 16 December 2002

Larry A. Spicer, DC
Executive Director

2500.6000 ENGAGEMENT IN THE PRACTICE OF CHIROPRACTIC.

A chiropractor is engaged in the practice of chiropractic when:

A. the chiropractor provides examination or treatment services; and

B. the patient, or a person authorized to act for the patient, accepts the services provided.

The chiropractor is subject to items A and B regardless of whether the patient or the patient's agent was billed or was paying for chiropractic services.

Minnesota Department of Health

Division of Infectious Disease Epidemiology, Prevention and Control, Immunization, Tuberculosis & International Health Section

Proposed Permanent Rules Relating to Immunization

Notice of Hearing

Proposed New Rules Governing School Immunization Requirements, *Minnesota Rules*, Parts 4604.0100 to 4604.1000

Public Hearing. The Department of Health intends to adopt rules after a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20. The agency will hold a public hearing on the above-entitled rules in the Mississippi Room, at the Snelling Office Park building, 1645 Energy Park Drive, St. Paul, Minnesota 55108, starting at 9:00AM on Friday, February 28, 2003, and continuing until the hearing is completed. Additional days of hearing will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements may be submitted without appearing at the hearing.

Administrative Law Judge. The hearing will be conducted by Administrative Law Judge Beverly Jones Heydinger, who can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone (612) 341-7600, and FAX (612) 349-2665. The rule hearing procedure is governed by *Minnesota Statutes*, sections 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2000 to 1400.2240. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge.

Subject of Rules, Statutory Authority, and Agency Contact Person. The proposed rules govern School Immunizations. The Department is considering rules that modify the current school and college immunization requirements, *Minnesota Statutes*, sections 121A.15 and 135A.14. The proposed rules are authorized by *Minnesota Statutes*, sections 121A.15, subdivision 12 paragraphs (a) and (c) and *Minnesota Statutes*, section 135A.14, subdivision 7. A copy of the proposed rules is published in the *State Register*, and on MDH's website at <http://www.health.state.mn.us/divs/dpc/adps/immrule.htm>. A free copy of the rules is available upon request from Patricia Segal Freeman, P.O. Box 9441, Minneapolis, MN 55440, **Phone:** (612) 676-5414, 1-800-657-3670, **FAX** (612) 676-5689 and **e-mail:** ImmunizeRule@health.state.mn.us. **TTY** users may call MDH at (651) 215-8980.

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available for review at the agency office at 717 Delaware Street, Minneapolis, at the Office of Administrative Hearings and on the MDH Immunization Rule Website. 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 be reviewed and copies obtained at the cost of reproduction from the agency.

Public Comment. You and all interested or affected persons, including representatives of associations and 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 rebuttal 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 rebuttal 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.

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 rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

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 as a result of the rule hearing process. Modifications must be supported by data and views presented during the rule hearing process, and the adopted rules may not be substantially different than these proposed rules, unless the procedure under *Minnesota Rules*, part 1400.2110, has been followed. If the proposed rules affect you in any way, you are encouraged to participate.

Adoption Procedure After The Hearing. 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 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 the rules are filed with the Secretary of State, or ask to register with the agency to receive notice of future rule proceedings, and can make these requests at the hearing or in writing to the agency contact person stated above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 296-5148 or 1-800-657-3889.

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

Dated: 12 December 2002

Jan Malcolm, Commissioner
Minnesota Department of Health

4604.0100 SCOPE AND EFFECT.

According to *Minnesota Statutes*, sections 121A.15, subdivision 12, and 135A.14, subdivision 7, parts 4604.0100 to 4604.1000 modify the requirements of and supersede any conflicting provisions of *Minnesota Statutes*, sections 121A.15 and 135A.14.

4604.0200 DEFINITIONS.

Subpart 1. **Applicability.** The terms used in parts 4604.0100 to 4604.1000 have the meaning given them in this part and in *Minnesota Statutes*, sections 121A.15, subdivision 9, and 135A.14, subdivision 1.

Subp. 2. **Enroll.** "Enroll" in a child care facility or school means to begin attending the child care facility or school. The first day that a child begins attending the facility or school is the day that the child enrolls in the facility or school.

Subp. 3. **Pneumococcal vaccine.** "Pneumococcal vaccine" means the pneumococcal conjugate vaccine licensed for vaccination of children from two months to five years of age.

Subp. 4. **Provider.** "Provider" means a licensed physician, registered physician assistant, or advanced practice registered nurse, as defined in *Minnesota Statutes*, section 148.171, subdivision 3.

Subp. 5. **Varicella disease.** "Varicella disease" means the chicken pox disease.

Subp. 6. **Varicella vaccine.** "Varicella vaccine" means the product used to vaccinate persons against the chicken pox disease.

4604.0250 PHYSICIAN AND PROVIDER STATEMENTS.

For purposes of *Minnesota Statutes*, section 121A.15, subdivisions 1, 2, 3, and 4, a statement from a physician or a statement signed by a physician includes a statement from or a statement signed by a provider, as defined under part 4604.0200, subpart 4.

4604.0300 SCHEDULE CHANGES.

Subpart 1. **School-age children.**

A. If a required immunization for an elementary or secondary school student involves a series of doses, then the elementary or secondary school student must complete the required immunization series within eight months of the first day on which the requirement was imposed to remain enrolled in elementary or secondary school.

B. If an elementary or secondary school student is unable to complete the required immunization series within eight months due to a medical condition, a provider must submit a request for an extension until the student's medical condition allows the student to complete the series. The request must be submitted to the administrator or other person having general control and supervision of the school.

Subp. 2. **Timing of administered vaccine dose.** A vaccine dose administered four or less days before the minimum age required by law is considered timely for purposes of parts 4604.0100 to 4604.1000 and *Minnesota Statutes*, sections 121A.15 and 135A.14.

4604.0400 IMMUNIZATION DOCUMENTATION RECORD.

To document a person's immunization history as required under parts 4604.0100 to 4604.1000 and *Minnesota Statutes*, section 121A.15, all child care facilities and elementary and secondary schools must use the Department of Health's official record form or a similar document, approved by the commissioner of health, that requests information about immunizations and includes statements for documenting medical or conscientious exemptions.

4604.0500 HAEMOPHILUS INFLUENZA TYPE B (HIB) DOSE REQUIREMENT FOR CHILD CARE ENROLLMENT.

Except as provided in *Minnesota Statutes*, section 121A.15, subdivision 3, paragraph (c), (d), or (f), to enroll or remain enrolled in a child care facility, a child's parent or legal guardian must submit documentation to the administrator or person having general control and supervision of the child care facility that the child received at least one dose of vaccine for HIB at or after 12 months of age.

4604.0600 CHANGES IN MEASLES, MUMPS, AND RUBELLA VACCINE REQUIREMENTS.

Subpart 1. Measles, mumps, and rubella at kindergarten. Except as provided in subpart 2 or in *Minnesota Statutes*, section 121A.15, subdivision 3, paragraph (c) or (d), a student enrolling in kindergarten during or after the 2004-2005 school year must submit documentation that the student received two doses of vaccine each for measles, mumps, and rubella or have an exemption statement according to *Minnesota Statutes*, section 121A.15, subdivision 3. The documentation must be submitted to the administrator or person having general control and supervision of the school.

Subp. 2. Grades 7 through 12 sunset provision. The requirement in *Minnesota Statutes*, section 121A.15, subdivision 10, paragraph (d), regarding a statement of measles, mumps, and rubella vaccination in grades 7 through 12, expires after the 2011-2012 school year.

Subp. 3. Documentation for out-of-state transfer students. Beginning with the 2012-2013 school year, a student who transfers from outside Minnesota to a Minnesota school in grades 1 through 12 must show documentation that the student received two doses of vaccine each for measles, mumps, and rubella or have an exemption statement according to *Minnesota Statutes*, section 121A.15, subdivision 3. The documentation must be submitted to the administrator or person having general control and supervision of the school.

4604.0700 SUSPENSION OF SCHOOL IMMUNIZATION LAWS.

A. The commissioner of health shall suspend one or more of the immunization requirements in parts 4604.0100 to 4604.1000 or in *Minnesota Statutes*, section 121A.15 or 135A.14, if the commissioner determines that suspension of the requirement is necessary to address a vaccine shortage or other emergency situation statewide or in a portion of the state.

B. In determining whether suspension of the requirement is necessary to address a vaccine shortage or other emergency situation and in determining the portion of the state for which suspension is necessary, the commissioner shall consider the following factors:

- (1) the availability of the vaccine;
- (2) the inability to comply with the law due to a natural or man-made disaster; or
- (3) the ability to fulfill the commissioner's general duties under *Minnesota Statutes*, section 144.05.

C. The commissioner shall suspend a requirement for the length of time needed to remedy the vaccine shortage or emergency situation. If the commissioner suspends a requirement under this part, the commissioner shall publish notice of the suspension on the Department of Health's Web page and mail notices to all affected elementary, secondary, and post-secondary schools, child care facilities, and providers.

4604.0800 HEPATITIS B DOSE REQUIREMENT.

A hepatitis B vaccine licensed for and administered according to an alternative dosing schedule, such as the two dose series for adolescents ages 11 through 15 years, meets the hepatitis B vaccination requirement in parts 4604.0100 to 4604.1000 and in *Minnesota Statutes*, section 121A.15.

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

4604.0900 NEW VARICELLA VACCINE REQUIREMENT.

Subpart 1. Requirements for child care enrollees. Beginning September 1, 2004, a child 18 months of age or older who is enrolled in a child care facility in this state must submit documentation of receipt of the varicella vaccine consistent with medically acceptable standards, submit documentation of a history of the disease, or submit an exemption statement according to *Minnesota Statutes*, section 121A.15, subdivision 3, paragraph (c) or (d). The documentation required by this subpart must be submitted to the administrator or other person having general control and supervision of the child care facility.

Subp. 2. Requirements for students. Beginning with the 2004-2005 school year, a student entering kindergarten or seventh grade must submit documentation of receipt of the varicella vaccine consistent with medically acceptable standards, submit documentation of a history of the disease, or submit an exemption statement according to *Minnesota Statutes*, section 121A.15, subdivision 3, paragraph (c) or (d). The documentation required by this subpart must be submitted to the administrator or other person having general control and supervision of the school.

Subp. 3. Documentation of varicella vaccine. Documentation of receipt of the varicella vaccine under subparts 1 and 2 must:

A. include a statement that the child received the varicella vaccination consistent with medically acceptable standards and must include the month, day, and year of the vaccination; and

B. be signed by a provider, a representative of a public clinic, or the child's parent or legal guardian.

Subp. 4. Documentation of disease history. Documentation of a history of the varicella disease under subparts 1 and 2 must include one of the following:

A. the signature of a provider and must include the date of the child's varicella illness;

B. the signature of a provider and must include a statement that a parent's or legal guardian's description of the child's varicella disease history is indicative of past varicella infection;

C. the signature of a provider or a representative of a public clinic and must include laboratory evidence of the child's varicella immunity; or

D. on or before August 31, 2010, the signature of the child's parent or legal guardian and must include the year that the child had the varicella disease. This item expires September 1, 2010.

4604.1000 NEW PNEUMOCOCCAL VACCINE REQUIREMENT.

Subpart 1. Requirement for child care enrollees. Beginning September 1, 2004, a child enrolled or enrolling in a child care facility in this state who is at least two months old and not yet two years old must submit documentation of receipt of the pneumococcal conjugate vaccine consistent with medically acceptable standards or must submit an exemption statement according to *Minnesota Statutes*, section 121A.15, subdivision 3, paragraph (c) or (d). The documentation required by this subpart must be submitted to the administrator or other person having general control and supervision of the child care facility.

Subp. 2. Documentation of vaccine. Documentation of receipt of the pneumococcal vaccination under subpart 1 must:

A. include a statement that the child received the pneumococcal vaccination consistent with medically accepted standards and must include the month, day, and year of the vaccination; and

B. be signed by a provider or representative of a public clinic or, if the child is at least 15 months old, by a provider, a representative of a public clinic, or the child's parent or legal guardian.

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.

Expedited and 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 Natural Resources

Adopted Permanent Rules Relating to Taking Fish in Inland and Boundary Waters

The rules proposed and published at *State Register*, Volume 27, Number 3, pages 87-91, July 15, 2002 (27 SR 87), are adopted as proposed.

Revenue Notices

The Department of Revenue began issuing revenue notices in July of 1991. Revenue notices are statements of policy made by the department that provide interpretation, detail, or supplementary information concerning a particular statute, rule, or departmental practice. The authority to issue revenue notices is found in *Minnesota Statutes* § 270.0604.

Department of Revenue

Revenue Notice # 02-22: Sales and Use Tax - Building Cleaning and Maintenance - Swimming Pools

Background

Minnesota Statutes section 297A.61, subdivision 3(g)(5)(iii) provides that the Minnesota sales tax applies to building and residential cleaning, maintenance and disinfecting services. Building cleaning, maintenance and disinfecting services include the cleaning, maintenance and disinfecting of indoor and outdoor swimming pools.

Department Position

The department takes the position that the cleaning, maintenance and disinfecting of spas and hot tubs are also subject to the sales tax. The department also takes the position that swimming pool, spa and hot tub seasonal opening and closing services are maintenance services that are subject to the sales tax. Opening services may include removing tarps or other covers; taking plugs out of the plumbing; reinstalling handrails, diving boards, and other equipment; and priming and restarting pumps. Closing services may include removing handrails, diving boards and other equipment; blowing out plumbing lines and inserting plugs in the pipes; adding anti-freeze into the lines; and putting a tarp or other covering over the pool, spa or hot tub.

Effective Date

This revenue notice is effective for services performed after the date of publication.

Terese M. Mitchell, Director
Appeals and Legal Services Division

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.

Revenue Notices

Department of Revenue

Revenue Notice # 02-23: Sales and Use Tax - Exemption Certificates

Background

Minnesota Statutes section 297A.665, provides that all sales are presumed to be taxable and that the burden is on the retailer to prove that the item is being purchased for resale or is otherwise exempt from tax under *Minnesota Statutes* chapter 297A. *Minnesota Statutes* section 297A.72, subdivision 1, provides that for sales and purchases occurring after December 31, 2001, a fully completed exemption certificate conclusively relieves the retailer from collecting and remitting the tax if taken from the purchaser at the time of sale.

Issue

Can the purchaser provide the retailer with an exemption certificate other than a certificate provided by the department of revenue?

Department position

A purchaser may prepare their own exemption certificate as long as it contains the information required by *Minnesota Statutes* section 297A.72, subdivision 2. The certificate must include the following information: (1) seller's name and address; (2) purchaser's name and address; (3) description of the purchaser's business; (4) description of the items purchased; (5) type of exemption claimed; (6) purchaser's signature; and (7) purchaser's Minnesota tax identification number, or an explanation as to why an ID is not needed.

Minnesota will also accept the Uniform Sales and Use Tax Certificate developed by the Multistate Tax Commission (MTC). The purchaser's state tax identification number, or an explanation why one is not needed, will be accepted in lieu of Minnesota's tax identification number when the purchaser is located outside Minnesota, does not have nexus with Minnesota, and the tangible personal property is delivered by drop shipment to the purchaser's customer located in Minnesota. As noted on the MTC exemption certificate, Minnesota does not allow a resale exemption for purchases of taxable services, but does allow an exemption for items used and consumed during the industrial or agricultural production process.

Terese M. Mitchell, Director
Appeals and Legal Services Division

Department of Revenue

Revenue Notice # 02-24: Sales and Use Tax - Revocation of Revenue Notice # 95-10

Revenue Notice # 1995-10: "Sales & Use Tax - Natural Gas Pipelines and Transporter Use Gas," is hereby revoked.

Terese M. Mitchell, Director
Appeals and Legal Services Division

Official Notices

Pursuant to Minnesota Statutes §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking 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.

Minnesota Agricultural Education Leadership Council (MAELC) University of Minnesota

Seeking Position of Executive Director

This full-time position provides leadership and works with MAELC to support the development of Agricultural Education in a formal educational setting. Works primarily with Minnesota agri-business firms, education institutions, public policy makers, communities and MAELC to devise recommendations for initiatives to enhance formal agricultural education at all levels. For complete position description, see the Human Resources section at: <http://www.coafes.umn.edu>

Competitive compensation and benefits package provided based on the candidate's experience and qualifications. Position available March 1, 2003.

Essential qualifications: Bachelor's Degree; strong public relations and interpersonal skills; ability to work with people across a wide spectrum of organizations.

Preferred qualifications: Master's Degree or higher; legislative experience; record in public policy development.

Review of applications will begin on January 20, 2003. To apply: Send letter of Interest including a statement of career goals, resume, and the names, addresses, telephone numbers, and email addresses of three references to:

Mr. Darrell Hartle, Chair, Search Advisory Committee
C/O Betty Davidson
COAFES
277 Coffey Hall
1420 Eckles Avenue
St. Paul, Minnesota 55108-6074
(612) 625-7061

The University is an equal opportunity educator and employer.

Minnesota Department of Agriculture Agronomy and Plant Protection Division

Request for Comments on Possible Amendments to Rules Governing Noxious Weeds, *Minnesota Rules 1505.0740*

Subject of the Rule. The Minnesota Department of Agriculture requests comments on its planned amendment to rules governing secondary noxious weeds. The department is considering an amendment that adds Grecian Foxglove to the secondary noxious weed list.

Persons Affected. The amendment to rules would likely affect landowners in Washington County because that is the only known county in Minnesota with Grecian Foxglove infestations. If the plant spreads or is found in other counties, the county may choose to add this weed to the county's primary noxious weed list, thereby, affecting landowners in those counties. The department does not contemplate appointing an advisory committee to comment on the planned rules.

Statutory Authority. *Minnesota Statutes*, section 18.79, subd. 4 allows the commissioner to adopt rules to enforce the noxious weed law.

Official Notices

Public Comment. Interested persons or groups may submit comments or information on the possible amendments in writing or orally until 4:30 p.m. on February 28, 2003. The department has prepared a draft of the planned amendment. Written or oral comments, questions, requests to receive a draft proposed rule, and requests for more information on the possible rules should be addressed to: Collie Graddick, Minnesota Department of Agriculture, 90 W. Plato Blvd., St. Paul, MN 55107: **Phone** 651/296-1234, **Fax** 651/297-2271, **Email-** *collie.graddick@state.mn.us*. TTY users may contact the Department of Agriculture through Minnesota Relay Service at 800/627-3529.

Comments submitted in response to this notice will not be included in the formal rulemaking record when a proceeding to adopt a rule is started.

Dated: 17 December 2002

Sharon Clark
Deputy Commissioner

Emergency Medical Services Regulatory Board

Notice of Completed Application In the Matter of the License Application of the Adams Area Ambulance Services, Adams, Minnesota

PLEASE TAKE NOTICE that the Emergency Medical Services Regulatory Board (hereinafter EMSRB) has received a completed application from the **Adams Area Ambulance Service, Adams, Minnesota**, for a new license, advanced ambulance - part time.

NOTICE IS HEREBY GIVEN that, pursuant to *Minnesota Statutes* section 144E.11, subdivision 3, each municipality, county, community health board, governing body of a regional emergency medical services system, ambulance service and other person wishing to make recommendations concerning the disposition of the application, shall make written recommendations or comments opposing the application to the EMSRB within 30 days or by January 30, 2003, 4:30 p.m.

Written recommendation or comments opposing the application should be sent to: Mary Hedges, Executive Director, EMSRB, 2829 University Avenue S.E., Suite 310, Minneapolis, Minnesota 55414-3222.

If fewer than six comments opposing the application are received during the comment period, and the EMSRB approves the application, the applicant will be exempt from a contested case hearing, pursuant to *Minnesota Statutes* section 144E.11, subdivision 4. If six or more comments in opposition to the application are received during the comment period or the EMSRB denies the application, the applicant may immediately request a contested case hearing, or may try to resolve the objections of the public and/or the EMSRB within 30 days, pursuant to *Minnesota Statutes* section 144E.11, subdivision 5(a), (b). If the applicant is unable to resolve the objections within 30 days, or if the applicant initially requests a contested case hearing one will be scheduled and notice of the hearing given pursuant to *Minnesota Statutes* section 144E.11, subdivision 5(c), (e).

Dated: 20 December 2002

Mary F. Hedges,
Executive Director

Department of Human Services

Health Care - Purchasing and Delivery Systems

Public Notice of Disproportionate Population Adjustment Paid for Inpatient Hospital Services under Minnesota Health Care Programs

NOTICE IS HEREBY GIVEN to recipients, providers, and to the public concerning the disproportionate population adjustment (DPA) that is paid for inpatient hospital services under Minnesota Health Care Programs (Medical Assistance, MinnesotaCare, and General Assistance Medical Care). The listed DPA factors are effective for admissions occurring on January 1, 2003 through December 31, 2003. The DPA is based on the Medical Assistance inpatient days utilization rate of a hospital compared to the mean utilization rate of all Minnesota non-state owned or operated hospitals and Minnesota local trade area hospitals. The utilization rate of each hospital is calculated by dividing Medical Assistance patient days by total patient days as derived from Medicare cost report data from the base year that is used for all rate setting.

In order to qualify for a DPA payment, hospitals must comply with section 1923(d) of the Social Security Act (*42 United States Code* section 1396r-4(d)) at the time of an admission. Section 1923(d) requires hospitals to meet criteria regarding the provision of obstetric services or specific exemptions. However, state law provides for a hospital payment adjustment that is equal to the DPA for hospitals that do not meet the federal criteria. Because hospitals may change eligibility status over time, both the DPA and the hospital payment adjustment are listed. The federal requirements do not affect DPA payments under General Assistance Medical Care (GAMC).

The Medical Assistance and the MinnesotaCare DPA is calculated as the difference between a hospital's utilization rate and the mean utilization rate. The DPA for hospitals with utilization rates that are above the mean plus one standard deviation is increased by 10 percent. The Medical Assistance and the MinnesotaCare inpatient total rate of each hospital is increased by the indicated percentage.

The GAMC DPA is calculated as the difference between a hospital's utilization rate and the mean plus one standard deviation utilization rate. The inpatient operating rate of each hospital is increased by the indicated percentage.

In addition to the listed DPA percent 1) an intergovernmental transfer of \$1,515,000 that is considered to be a DPA is paid each month to a hospital that received more than 13 percent of the total 1991 Medical Assistance inpatient payments (Hennepin County Medical Center); and 2) an intergovernmental transfer of \$505,000 that is considered to be a DPA is paid each month to a hospital that received more than 8 percent of total 1991 Medical Assistance payments and is affiliated with the University of Minnesota (Fairview/University Medical Center).

Questions or comments may be directed to:

Richard Tester
 Health Care Administration
 Minnesota Department of Human Services
 444 Lafayette Road North
 St. Paul, MN 55155-3853
 Phone: (651) 296-5596
 Email: richard.testler@state.mn.us

DISPROPORTIONATE POPULATION ADJUSTMENT

January 1, 2003

Minnesota and Minnesota Local Trade Area Hospitals

Mean	0.0964	MA	
Standard Deviation	0.0924	MinnesotaCare	GAMC
Mean + Standard Deviation	0.1888	DPA Percent	DPA Percent

Provider No.	Hospital	
025745100	Clearwater County Memorial Hospital, Bagley	0.17
393247800	Virginia Regional Medical Center	0.17
468845700	Fall Memorial Hospital, International Falls	0.25
875747000	Sioux Valley Hospital, Sioux Falls	0.75
155047100	Monticello Big Lake Community Hospital	0.77
731047100	Northwest Medical Center, Thief River Falls	0.87
710047700	Fairview Northland, Princeton	0.89

Official Notices

Mean	0.0964	MA	
Standard Deviation	0.0924	MinnesotaCare	GAMC
Mean + Standard Deviation	0.1888	DPA Percent	DPA Percent

Provider No.	Hospital		
395845100	Windom Area Hospital	1.08	
281747100	United Hospital, St. Paul	1.21	
616845100	Fairview/University Medical Center, Minneapolis	1.29	
694245800	Mercy Hospital, Coon Rapids	1.47	
708052200	Buffalo Hospital	1.49	
114247000	Greater Staples Hospital	1.50	
030747500	Worthington Regional Hospital	1.55	
623847500	Owatonna Hospital	1.64	
039845400	North Valley Health Center, Warren	1.79*	
736045200	St. Joseph's Medical Center, Brainerd	1.85	
765347600	Lutheran Hospital, La Crosse	1.86	
090398100	SCCI Hospital, Fargo	2.04	
624345200	Unity Hospital, Fridley	2.12	
644747300	St. Francis, Breckenridge	2.12	
535845100	Cuyuna Regional Medical Center, Crosby	2.27	
712047800	HealthEast St. Joseph's, St. Paul	2.28	
315245600	Mercy Hospital, Moose Lake	2.39	
475747500	Avera McKennan Hospital, Sioux Falls	2.71	
381347900	First Care Medical Services, Fosston	2.85*	
735547500	Meritcare Hospital, Fargo	3.27	
777545800	North Memorial Medical Center, Robbinsdale	3.36	
883747300	St. Cloud Hospital	3.38	
185347300	Franciscan Skemp Medical Center, La Crosse	3.64	
341547300	Glacial Ridge Hospital Glenwood	4.01	
860747800	Olmsted Medical Center, Rochester	4.52	
573047300	St. Mary's Medical Center, Duluth	4.77	
333747200	Paynesville Area Health Care	5.08*	
982347600	Rice County District 1 Hospital, Faribault	6.05	
019545600	Weiner Memorial Medical Center, Marshall	6.65	
502847700	University Medical Center, Hibbing	6.96	
190247400	Mille Lacs Hospital, Onamia	6.97	
529245000	Minnesota Valley Memorial Hospital, Le Sueur	7.20*	
618245300	Deer River Healthcare Center	7.61	
238245800	Cambridge Memorial Hospital	7.72	
692847100	Miller-Dwan Medical Center, Duluth	7.78	
174545000	St. Mary's Regional Health Center, Detroit Lakes	8.00	
754347600	Tri-County Hospital, Wadena	8.14	
921547600	HealthEast Bethesda Hospital, St. Paul	8.31	
314545000	North Country Regional Hospital, Bemidji	10.98	0.74
672522800	Valley Hospital at Hidden Lakes, Golden Valley	16.36	5.63
422247400	Regions Hospital, St. Paul	16.39	5.66
157245800	Hennepin County Medical Center, Minneapolis	31.81	19.68
099725100	Prairie at St. Johns, Fargo	32.74	20.52
141847500	Children's Health Care, St. Paul	41.14	28.16
435247500	Children's Health Care, Minneapolis	49.13	35.42
996047300	Gillette Children's Specialty Healthcare, St. Paul	54.96	40.72

*Hospital Payment Adjustment

Department of Human Services

Health Care Purchasing and Delivery Systems

Public Notice Regarding Payment Rates Related to Inpatient Hospital Services under the Medical Assistance Program

NOTICE IS HEREBY GIVEN to recipients, providers of services under the Medical Assistance (MA) Program, and to the public of the payment rates for inpatient hospital services. This notice is published pursuant to 42 *United States Code* section 1396a(a)(13), which requires the Department to publish hospital payment rates, the methodologies underlying the establishment of such rates, and the justification of such rates.

This notice informs the public that the payment rates for inpatient hospital services for admissions on or after January 1, 2003 have been calculated and that individual hospitals were notified of their applicable rates. These payment rates were determined pursuant to *Minnesota Statutes*, sections 256.9685, 256.9686 and 256.969 and *Minnesota Rules*, parts 9500.1090 to 9500.1140.

The MA Program uses a diagnostic related groups payment system. Under this system, inpatient hospital services are divided into diagnostic categories. Each diagnostic category represents a broad clinical category differentiated from all others based on the body system and cause of disease. Changes to the diagnostic categories, effective January 1, 2003, were published in the *State Register* on December 23, 2002. In addition to the changes in the diagnostic categories, the relative values for the categories have also been changed. The Department intends to submit an amendment to its MA State plan during the first quarter of 2003 to incorporate the changes to the diagnostic categories.

The inpatient hospital rates effective January 1, 2003 have been rebased to reflect more recent data. These rates have increased by an average of 5.7 percent.

Individual inpatient hospital payment rates are available by contacting:

Richard Tester
Health Care Administration
Minnesota Department of Human Services
444 Lafayette Road North
St. Paul, Minnesota 55155-3853
Phone: (651) 296-5596
Email: richard.testers@state.mn.us

Department of Labor and Industry

Labor Standards Unit

Notice of Prevailing Wage Determinations for Commercial Projects

On December 30, 2002, the commissioner determined and certified prevailing wage rates for Commercial construction projects in each of 87 counties statewide.

Copies may be obtained by writing the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road North, St. Paul, Minnesota 55155-4306 or by calling (651) 284-5091, or by accessing our web site at www.doli.state.mn.us. The charges for the cost of copying and mailing are \$.65 per page. Make check or money order payable to the State of Minnesota.

Shirley I. Chase
Commissioner

Metropolitan Council

Notice of Public Hearing on Central-South Metro Transit Concept Plan

The Metropolitan Council will hold five public meetings and a public hearing to receive comments on the proposed Central-South Concept Plan.

The goal of the plan is to improve reliability, speed and convenience of transit service in south Minneapolis, Bloomington, Edina, Richfield and in St. Paul south of I-94 and west of downtown. This includes Metro Transit service and transit services provided by other operators.

Specific routes include: 2, 4, 5, 6, 7, 8, 9, 14, 15, 17, 18, 19, 20, 21, 22, 23, 28, 35HJK, 35LSU, 39, 43, 52A, 52B, 52C, 52F, 52L, 54, 63, 64, 67, 69, 70, 84, 134, 135, 146, 148, 156, 180, 191, 194, 538, 539, 540, 541, 547, 552, 553, 556, 566, 568, 576, 586, 587, 588, 594 and 597.

Proposed changes include integrating Hiawatha Light Rail Transit (LRT) service into the bus system, improving neighborhood-to-neighborhood connections, providing faster service to major destinations and extending local service to major destinations.

The February 4 meeting is a formal public hearing. Comments for the public record will be collected at all meetings.

- **Tuesday, January 28**, 11:00 a.m. to 1:00 p.m.
University of St. Thomas
Thornton Auditorium
1000 LaSalle Avenue South, Minneapolis
- **Tuesday, January 28**, 6:30 - 8:30 p.m.
Macalester College
Weyerhaeuser Chapel
1600 Grand Avenue, St. Paul
- **Wednesday, January 29**, 6:30 - 8:30 p.m.
10 Southdale Center
6601 France Avenue, Edina
- **Thursday, January 30**, 6:30 - 8:30 p.m.
Richfield Community Center
7000 Nicollet Avenue South, Richfield
- **Monday, February 3**, 12:30 - 2:30 p.m.
Creekside Community Center
Auditorium, Room 116
9801 Penn Avenue South, Bloomington
- **Tuesday, February 4, 2003, 7:00 - 9:00 p.m.**
PUBLIC HEARING
Midtown YWCA
Community Rooms 155 & 156
2121 East Lake Street, Minneapolis

All interested persons are encouraged to attend the public meetings. Interested persons may register in advance to speak at the February 4 public hearing by calling the Metropolitan Council Data Center, at (651) 602-1140 (TTY 651-291-0904). Upon request, the Council will provide reasonable accommodations to persons with disabilities or special needs. The Council must receive such requests at the above number five business days before the hearing.

Detailed information about the draft proposal for the Central-South Concept Plan may be obtained by attending any of the five public meetings. The draft proposal also is available online at www.metrotransit.org, or by calling the Metropolitan Council Data Center, at (651) 602-1140.

Maps of proposed changes to specific routes also may be obtained after January 10 at Metro Transit stores at 719 Marquette Avenue in downtown Minneapolis; at 101 East 5th Street, U.S. Bank Center, Skyway Level, in downtown St. Paul; or at Mall of America, 50 East Broadway in Bloomington.

Comments will be received via:

- Public testimony or written comments received at the public hearing
- Written comments received at any of the five public meetings

- Written comments addressed to: Metro Transit, Service Development, 560 Sixth Avenue North, Minneapolis, MN 55411
- Faxed comments to (612) 349-7675
- Comments received online at *www.metrotransit.org*
- Comment cards available on Metro Transit and BE Line buses, Metro Transit stores or from the Metropolitan Council Data Center.

All comments must be received by Friday, February 14, at 5:00 p.m.

Minnesota Board of Nursing

Request for Comments on Possible Revision of Rules Governing Program Approval, *Minnesota Rules, Chapter 6301*

- Definitions
- Scope of Rules and Temporary Exemptions
- Restrictions Before Approval
- Conditions for Program Approval
- Application for Program Approval
- Director's Responsibilities
- Rule Compliance Survey
- Advanced Standing
- Faculty
- Student Clinical Activities
- Nursing Abilities to be Evaluated
- Additional Professional Nursing Abilities to be Evaluated
- Preparation for Evaluation
- Evaluation of Nursing Abilities
- Evaluation of Combining Nursing Categories

Possible Repeal of Obsolete Rules Governing Fees for Licensure by Examination (*Minnesota Rules 6305.0400 Subp. 10A and B; Licensure without Examination (Minnesota Rules 6305.0500 Subp. 3); Registration (Minnesota Rules 6310.3600 Subp 1A and B; and Registration as a Public Health Nurse (Minnesota Rules 6316.0100 Subp. 3).*

Subject of Rules. The Minnesota Board of Nursing requests comments on its proposed repeal of obsolete rules governing fees for licensure by examination, licensure without examination, registration, registration as a public health nurse, and revision of program approval rules. Proposed revisions in program approval rules include correcting the rule regarding advanced standing that has an incorrect reference to statute; deleting obsolete subparts of rules regarding definitions, scope of rules and temporary exemptions, student clinical activities, preparation for evaluation, and evaluation of combining nursing categories; adding definitions for greater clarity in understanding rules; providing language clarification of subparts that do not clearly articulate their intent; requiring evaluation of student performance of additional nursing abilities that reflect current nursing practice; specifying within the rule compliance survey, the responsibilities of programs whose success rate on the licensing examination is 75 percent or lower; removing prescriptive requirements for the documentation of the evaluation of nursing abilities; requiring that students demonstrate competent performance of the required nursing abilities; and changing requirements for student clinical activities to reflect recipients of care across the continua of age span and wellness to acute illness to chronic illness.

Persons Affected. The proposed repeal of obsolete rules governing fees would likely affect those individuals who apply for licensure by examination, licensure without examination, registration, and registration as a public health nurse. The proposed revision of program approval rules would likely affect applicants for approval and renewal of approval of nursing programs and nursing students in approved nursing programs.

Official Notices

Statutory Authority.

- The statutory authority for the deletion of obsolete fee rules is *Minnesota Statutes* 148.191 subd. 2, 148.211, subd.1 and 2, 148.231, subd. 1 that authorize the board to establish rules and assess fees for licensure by examination, licensure without examination, registration, and registration as a public health nurse. *Minnesota Statutes* 214.06 requires all health-related licensing boards to adjust any fee which the board is empowered to assess at a sufficient amount so that the total fees collected by each board will as closely as possible equal anticipated expenditures during a fiscal biennium. *Minnesota Statute* 16A.1283 stipulates that an executive branch state agency may not impose a new fee or increase an existing fee unless the new fee or increase is approved by law.
- The statutory authority for the revision of Program Approval Rules is *Minnesota Statutes* section 148.191, subd. 2 which authorizes the board to adopt and, from time to time, revise rules not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of sections 148.171 to 148.285. The board shall prescribe by rule curricula and standards for schools and courses preparing persons for licensure under sections 148.171 to 148.285. It shall conduct or provide for surveys of such schools and courses at such times as it may deem necessary. It shall approve such schools and courses as meet the requirements of sections 148.171 to 148.285 and board rules.

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing or orally until further notice is published in the *State Register* that the Board of Nursing intends to adopt or to withdraw the revised rules.

Rules Drafts. The Board of Nursing does not anticipate that a draft of the revision to the Program Approval Rules will be available before the publication of the proposed rules.

Agency Contact Person. Written or oral comments, questions, requests to receive a draft of the revision to the rules when it is prepared, and requests for more information on these possible rules should be directed to:

Sharon Ridgeway, Assistant Director
Minnesota Board of Nursing
2829 University Avenue SE, Suite 500
Minneapolis, Minnesota 55414
Telephone: (612) 617-2294
Facsimile: (612) 617-2190
e-mail: sharon.ridgeway@state.mn.us

NOTE. Comments received in response to this notice will not necessarily be included in the formal rulemaking record. If you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: 17 December 2002

Shirley A. Brekken,
Executive Director

State Contracts

Informal Solicitations: Effective March 1, 2002, informal solicitations for professional/technical (consultant) contracts valued at over \$5,000 through \$50,000, may either be published in the *State Register* or posted on the Department of Administration, Materials Management Division's (MMD) website. Interested vendors are encouraged to monitor the P/T Contract section of the MMD website at www.mmd.admin.state.mn.us for informal solicitation announcements.

Formal Solicitations: Department of Administration procedures require that formal solicitations (announcements for contracts with an estimated value over \$50,000) for professional/technical contracts must be published in the *State Register*. Certain quasi-state agency and Minnesota State College and University institutions are exempt from these requirements.

Colleges and Universities, Minnesota State (Mn/SCU)

Dakota County Technical College

Request for Proposals for Three Used Truck/Tractors

NOTICE IS HEREBY GIVEN that Dakota County Technical College will receive proposals for 3 used truck/tractors. Request for proposal specifications will be available December 23, 2002 from the Dakota County Technical College Purchasing Department, 1300 145th St. East, Rosemount, MN 55068. Phone (651) 423-8236.

Proposals must be received by Pat Adams at Dakota County Technical College, 1300 145th St. East, Rosemount, MN 55068 by 2:00 pm, Monday, January 6, 2003.

Dakota County Technical College reserves the right to reject any or all bids or portions thereof, or to waive any irregularities or informalities in proposals received.

Colleges and Universities, Minnesota State (Mn/SCU)

St. Cloud Technical College

Call for Bids for Boiler Burner Replacement

NOTICE IS HEREBY GIVEN that sealed bids will be received by the St. Cloud Technical College, St. Cloud, Minnesota, until 2:30 p.m. Central Time, Monday, January 13, 2003, for Upgrade to boiler burners according to specifications on file in the Business Office, Room 1-106, St. Cloud Technical College, 1540 Northway Drive, St. Cloud, Minnesota at which time the bids will be opened publicly and read aloud in Room 1-106 located in the St. Cloud Technical College, 1540 Northway Drive, St. Cloud, Minnesota, and tabulated for review by staff members who will make recommendations.

Specifications and bid forms may be obtained from the St. Cloud Technical College, Business Office, 1540 Northway Drive, St. Cloud, Minnesota 56303.

Bids are to be submitted in an opaque, sealed envelope addressed to the Business Office, St. Cloud Technical College, 1540 Northway Drive, St. Cloud, Minnesota 56303, and clearly marked on the outside that it is a bid proposal for Upgrade to boiler burners. Each bidder must furnish with each proposal a certified check or bid bond in the sum of not less than of 5% of the bid made payable to St. Cloud Technical College, St. Cloud, Minnesota, to be forfeited as damages in case the proposal is accepted and the bidder fails to enter into a contract with the Owner or fails to deliver services as specified according to the provision of these bid specifications. The College reserves the right to reject any or all bids and to waive any informalities in bids.

Dated at St. Cloud, Minnesota, this 19th day of December, 2002.

Jeff John
Purchasing Agent
(320) 654-5512

Non-State Contracts & Grants

Department of Transportation

Program Support Group

Notice Concerning Professional/Technical Contract Opportunities

NOTICE TO ALL: The Minnesota Department of Transportation (Mn/DOT) is now placing additional public notices for professional/technical contract opportunities on Mn/DOT's Consultant Services **website** at: www.dot.state.mn.us/consult

New public notices may be added to the website on a daily basis and be available for the time period as indicated within the public notice.

Non-State Contracts & Grants

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *State 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.

Solid Waste Management Coordinating Board

Notice of Request for Bids for Residential Backyard Composting Bins

The Solid Waste Management Coordinating Board is seeking bids from qualified vendors for up to 15,000 residential backyard composting bins. Delivery date will be April through July 2003 at up to 10 locations in the Minnesota Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Washington.

The Request for Bids is available by calling or writing Linda Gondringer, Solid Waste Management Coordinating Board, Richardson, Richter & Associates, Inc., 477 Selby Avenue, St. Paul, Minnesota 55102. Phone: (651) 222-7227. Email: lgondringer@richardsonrichter.com

Bids must be received not later than 12:00 noon, Central Time, Wednesday, January 15, 2003. No late bids will be accepted.

Complete specifications and details concerning submission requirements are included in the Request for Bids.

University of Minnesota

Notice of Bid Information Service (BIS) Available for All Potential Vendors

The University of Minnesota offers 24 hour/day, 7 day/week access to all Request for Bids/Proposals through its web based Bid Information Services (BIS). Subscriptions to BIS are \$75/year. Visit our web site at bidinfo.umn.edu or call the BIS Coordinator at (612) 625-5534.

Request for Bids/Proposals are available to the public at no charge each business day from 8:00 a.m. to 4:30 p.m. in Purchasing Services lobby, Suite 560, 1300 S. 2nd Street, Minneapolis, MN 55454.

