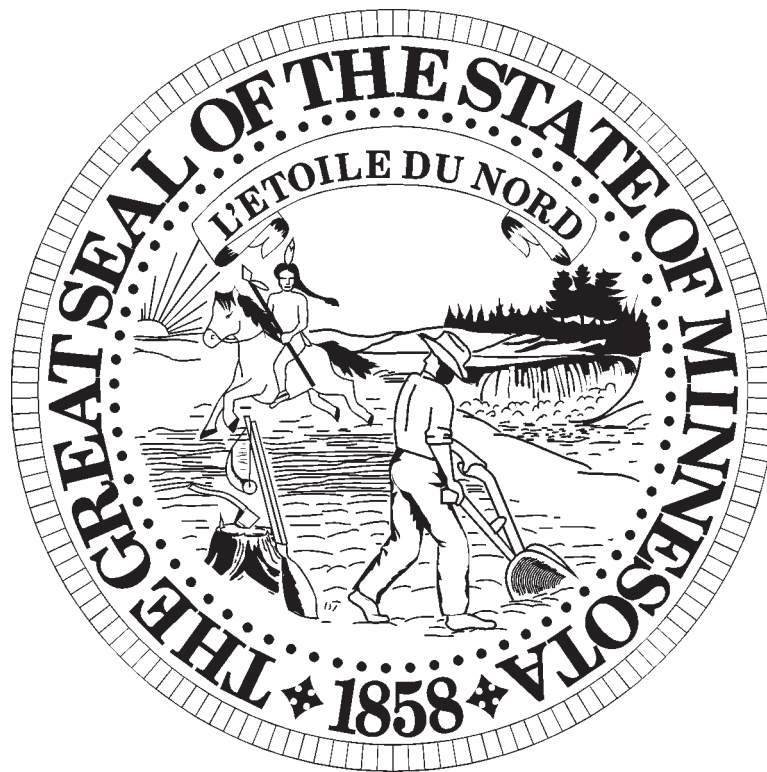


State of Minnesota

# State Register



Rules and Official Notices Edition  
Published every Monday (Tuesday when Monday is a holiday)  
by the Department of Administration – Communications Media Division

Monday 22 November 2004  
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# State Register

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

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

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- executive orders of the governor
- appointments
- proclamations and commendations
- commissioners' orders
- revenue notices
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- state grants and loans
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Printing Schedule and Submission Deadlines			
Vol. 29 Issue PUBLISH Number DATE	Deadline for: Emergency Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical-Consulting Contracts, Non-State Bids and Public Contracts	Deadline for Both Adopted and Proposed RULES	
#21	Monday 22 November	Noon Tuesday 16 November	Noon Wednesday 10 November
#22	Monday 29 November	NOON MONDAY 22 NOVEMBER	Noon Wednesday 17 November
#23	Monday 6 December	Noon Tuesday 30 November	NOON TUESDAY 23 NOVEMBER
#24	Monday 13 December	Noon Tuesday 7 December	Noon Wednesday 1 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.

### Volume 29, Issues #14-21

( See Issue #13 for the rule numbers that appeared in issues #1 - 13 )

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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.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." Adopted Rules - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

## Office of Administrative Hearings

### Workers' Compensation Division

### Proposed Permanent Rules Relating to Workers' Compensation Litigation

#### Procedures in the Office of Administrative Hearings

#### NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

#### Proposed Adoption of Rules Governing Workers' Compensation Litigation Procedures, *Minnesota Rules*, part 1420 and a portion of part 5220

Introduction. The Office of Administrative Hearings (OAH) 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 December 22, 2004.

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: Penny Johnson at the Office of Administrative Hearings, Workers' Compensation Division, 100 Washington Ave. South, Suite 1700, Minneapolis, MN 55401, phone: (612) 349-2557, FAX: (612) 349-2691. TTY users may call the Office of Administrative Hearings at (612) 341-7346. E-mail comments should be directed to Penny Johnson at the Office of Administrative Hearings at penny.johnson@state.mn.us.

Subject of Rules and Statutory Authority. The proposed rules modify procedures in workers' compensation cases before the Office of Administrative Hearings. In a companion set of proposed rule revisions, the joint rules of the Department of Labor and Industry and OAH in part 1415 and portions of part 5220 are revised, updated, or repealed. Portions of part 1415 are modified in these OAH rules, new part 1420. The proposed rules in chapter 1420 are updated from chapter 1415 rules in light of statutory and case law changes during the last 20 years. The rules clarify procedures in problem areas. Topics include but are not limited to professionalism and civility, joining parties to a claim, settlement conferences, resolving claims of intervenors, pretrial procedures, settlement agreements, expedited proceedings, discovery, disclosure of surveillance, motion practice, temporary orders, petitions for contribution or reimbursement, consolidation, reassignment or disqualification of a judge, disposition of insurance coverage disputes, subpoenas, continuances, hearing procedures, amending findings, appeals, and sanctions. The statutory authority to adopt or amend the rules is provided in Minnesota Statutes, sections 14.51; 176.081, subd. 6 and 12; 176.155, subd. 5; 176.285; 176.312; 176.361, subd. 1; and 176.83, subd. 7, 9, and 12. A copy of the proposed rules is published in the State Register. A free copy of the rules is available upon request from the agency contact person listed above and is also available on the OAH website at <http://www.oah.state.mn.us/>.

Comments. You have until 4:30 p.m. on December 22, 2004, 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.



# Proposed Rules

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**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 December 22, 2004. 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 and on-line at the OAH website at <http://www.oah.state.mn.us/>. The 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. There is a Statement of Need and Reasonableness for part 1415 and another Statement of Need and Reasonableness for new part 1420. For a full understanding of the proposed amendments, both sets of proposed rules (part 1415 and part 1420) and both Statements of Need and Reasonableness should be reviewed. Copies of the statements may be obtained at the cost of reproduction from the agency.

**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 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, Administrative Law Division, 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: November 2, 2004

Raymond R. Krause  
Chief Administrative Law Judge  
Office of Administrative Hearings

## 1420.0100 SCOPE AND PURPOSE.

This chapter governs workers' compensation matters in litigation before the Office of Administrative Hearings. Except for parts 1420.0300 and 1420.3700, this chapter applies to litigation initiated by the filing of a petition and does not apply to administrative conferences. This chapter does not apply to matters pending at the Department of Labor and Industry. Chapter 1415 contains joint rules with the Department of Labor and Industry concerning workers' compensation litigation procedures. The two chapters together contain the litigation rules in workers' compensation cases. Rules regarding appeals to the Workers' Compensation Court of Appeals are contained in chapter 9800.

## 1420.0200 DEFINITIONS.

- Subpart 1. Scope. For the purposes of this chapter, the following terms have the meanings given them.
- Subp. 2. Act. "Act" means the Workers' Compensation Act, Minnesota Statutes, chapter 176.
- Subp. 3. Chief judge. "Chief judge" means the chief administrative law judge of the Office of Administrative Hearings.
- Subp. 4. Commissioner. "Commissioner" means the commissioner of the Department of Labor and Industry.
- Subp. 5. Court of appeals. "Court of appeals" means the Workers' Compensation Court of Appeals.
- Subp. 6. Days. "Days" means calendar days unless specifically provided otherwise.
- Subp. 7. Division. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.
- Subp. 8. Expedited hearing. "Expedited hearing" means a hearing that is required to be heard within a shorter time period than an ordinary hearing under the act.

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## Proposed Rules

Subp. 9. Insurer. "Insurer" means the workers' compensation insurer for the employer and includes selfinsured employers. For the purposes of this chapter only, "insurer" also includes the special compensation fund where the employer was uninsured on the date of injury.

Subp. 10. Intervenor. "Intervenor" means a party under Minnesota Statutes, section 176.361, who has an interest in a pending workers' compensation proceeding such that the person or entity may either gain or lose by an order or decision in the case, and the person or entity has filed a motion to intervene under part 1415.1250 and Minnesota Statutes, section 176.361.

Subp. 11. Judge. "Judge" means a compensation judge from the Office of Administrative Hearings.

Subp. 12. Office. "Office" means the Office of Administrative Hearings.

Subp. 13. Petition. "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer, insurer, or special compensation fund which initiates a contested workers' compensation case requiring resolution by the Office of Administrative Hearings.

Subp. 14. Petitioner. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf, an employer or insurer, or the special compensation fund.

Subp. 15. Potential Intervenor. "Potential intervenor" means a person or an entity under Minnesota Statutes, section 176.361, who has an interest in a workers' compensation proceeding such that the person or entity may either gain or lose by an order or decision in the case, and the person or entity has not filed a motion to intervene under part 1415.1250 or Minnesota Statutes, section 176.361.

### 1420.0300 PROFESSIONALISM AND CIVILITY.

In matters pending at the office, lawyers and judges are expected to conduct themselves with professionalism and civility. Personal courtesy and professional integrity must be the standard for all interactions. The Minnesota Rules of Professional Conduct and the professionalism aspirations endorsed by the Minnesota State Supreme Court have also been endorsed by the office to ensure that all proceedings are conducted in a civil manner.

### 1420.1300 JOINDER OF PARTIES.

Subpart 1. Motion or amended petition. Upon a motion of a party or upon a judge's own motion, a judge may order the joinder of additional parties necessary for the full adjudication of the case. The petitioner may also join an additional party by filing an amended petition or motion according to part 1415.1000, subpart 4.

Subp. 2. Service. A party requesting joinder of additional parties shall serve a copy of the motion on all existing parties and the party to be joined. The moving party or petitioner joining a party by amended petition must also serve the party to be joined with copies of all pleadings and notice of the date, time, and place set for a settlement or pretrial conference or the hearing, if scheduled. Pleadings and attachments already filed in the division file shall not be refiled. When a judge joins parties on the judge's own motion, the office shall either serve the pleadings on the newly joined parties or designate a party to do so.

### 1420.1800 SETTLEMENT CONFERENCES.

Subpart 1. Purpose. A settlement conference is for the primary purpose of assisting the parties in resolving the disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

Subp. 2. Attendance. All parties, including intervenors unless otherwise excused, shall attend personally or by representative any settlement conference conducted by a judge. A representative of a party shall be prepared to engage in meaningful settlement negotiations and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 3. Preconference demand and offer. The petitioner shall provide a claims summary and settlement demand one week in advance of a settlement conference. The respondent shall provide an offer of settlement or response at least one working day before the settlement conference.

### 1420.1850 RESOLUTION OF CLAIMS WITH INTERVENORS; HEARINGS.

Subpart 1. Stipulations without agreement of all intervenors or potential intervenors. A stipulation for settlement that does not include the agreement of all intervenors or that seeks to preclude rights of potential intervenors must meet the requirements of this subpart.

A. Where a potential intervenor has been excluded from the settlement for failure to timely file a petition to intervene, a statement to that effect must be made in the stipulation for settlement and the stipulation must be accompanied by a copy of the notice given to the potential intervenor under part 1415.1100 and an affidavit of service.

B. Where other parties have reached an agreement to settle a claim but have been unable to reach agreement with an intervenor, the requirements of subitem (1) or (2) must be met.

(1) If the stipulation is signed by the intervenor, the stipulation must include a statement that the parties negotiated with the intervenor in good faith but the intervenor chooses not to enter into an agreement and reserves the right to petition for hearing on the merits

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under subpart 3. By signing the stipulation in this manner, the intervenor is waiving the right to a Parker/Lindberg hearing under subpart 2, but not waiving the right to a hearing on the merits under subpart 3.

(2) If the stipulation is not signed by the intervenor, the stipulation must include a statement that the parties were unable to obtain a response from the intervenor despite good faith efforts, or were unable to reach agreement with the intervenor despite the belief that the parties negotiated with the intervenor in good faith and made a reasonable offer to settle the intervention claim. At the time the stipulation is filed for approval, a copy of the stipulation must be served on the intervenor. An affidavit of service of the stipulation must accompany the stipulation when it is filed for approval.

Subp. 2. Initial hearing on partial settlement.

A. Where the principal parties have reached an agreement to settle a pending matter but are unable to reach agreement with one or more intervenors as provided in subpart 1, item B, subitem (2), the office shall schedule the matter for an expedited hearing to be held within 60 days of the filing of the stipulation for settlement.

B. The purpose of the initial hearing is to determine whether the stipulation for settlement of the other parties precludes the nonparticipating party from pursuing its claim.

C. If the judge finds that the stipulation for settlement does not preclude the intervenor from pursuing its claim and the stipulation for settlement is otherwise in accordance with the law, the stipulation will be approved. An intervenor claim of exclusion from the settlement negotiations or entitlement on the merits of the claim will be scheduled for hearing at a later date as provided in subpart 3. If the judge finds a potential intervenor had proper notice or actual notice within a reasonable period of time before a case was finally concluded but failed to act, and the employee's claim does not include the potential intervenor's claim, the judge may order extinguishment of the potential intervenor's claim.

Subp. 3. Intervenor hearing on the merits.

A. If the parties have not fully resolved the intervenor claim following the procedures in subparts 1 and 2 and there is no action pending at the office, a party must file a written petition under Minnesota Statutes, section 176.291, for a hearing on the merits of the intervening party's claim. The petition must be filed within 30 days after an award on stipulation is served and filed. If a petition is pending at the time an award on stipulation is served and filed under subpart 2, the office shall schedule the intervenor claims for a hearing on the merits for at least onehalf day.

B. The intervenor may present evidence that the intervenor was effectively excluded from meaningful settlement negotiations through lack of an offer of settlement, lack of notice of the right to intervene, or an unreasonable or bad faith offer of settlement. If the judge finds that the intervenor was effectively excluded from the proceeding or negotiations, full reimbursement to the intervenor will be ordered. If the judge does not find that the intervenor was excluded from the proceeding or negotiations, the intervenor must present evidence regarding the compensability of the employee's claim from which the intervenor's claim is derived as well as evidence of the intervenor's claim. The intervenor has the burden of proving the claims.

Subp. 4. Potential intervenor claims after final order. If a potential intervenor claims the potential intervenor was not served with a notice of the right to intervene and a settlement or decision is now final, the potential intervenor may request a hearing on the issue of whether the parties failed to provide proper notice under part 1415.1100. The potential intervenor must, within 30 days of knowledge of the exclusion, file a motion under part 1420.2250 for a hearing under subpart 3.

## 1420.1900 PRETRIAL PROCEDURES.

Subpart 1. Conference. All cases are subject to a pretrial conference with a judge. All parties shall attend or be represented unless a judge orders otherwise.

Subp. 2. Location, notice of conference. A pretrial conference must be conducted by telephone if the set location would require a party to travel more than 50 miles to attend, unless the party prefers to be physically present. If a telephone conference is scheduled, the parties not in attendance must be available by telephone at the time of the conference. Written notice of the pretrial conference must be given at least 20 days before the conference.

Subp. 3. Conference procedures. At the pretrial conference, the parties shall be prepared to state the claims and defenses with specificity; identify witnesses; identify anticipated exhibits; disclose any photographs, videotapes, or other documentary evidence intended to be used at the hearing; and identify any additional potential intervenors. A pretrial statement must be served and filed prior to a pretrial conference or delivered to the parties and the office at the pretrial conference. In cases not expedited under part 1420.2150 and not scheduled for a pretrial, the pretrial statement must be filed 30 days before the hearing. The pretrial statement must include answers to the questions asked in the pretrial order or, if no pretrial order was issued, to the questions in the standard pretrial order maintained by the office, including whether or not security or an interpreter is needed.

## 1420.2050 SETTLEMENT AGREEMENTS.

Subpart 1. Contents. Stipulations for settlement must contain, if applicable, a brief statement of the admitted material facts, a statement of the matters in dispute, the positions of the parties and supporting documentation, the matters agreed upon, and where the



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agreement is not conclusively presumed reasonable under Minnesota Statutes, section 176.521, sufficiently specific information for the judge to determine whether or not the settlement is fair, reasonable, and in conformity with the act. The party submitting the stipulation for settlement for approval must also provide a proposed award on stipulation prepared for signature by a judge.

Subp. 2. Filing. A stipulation for settlement must be filed within 45 days of the date the parties reached an agreement. If the stipulation is not timely filed, and good cause for the delay is not shown after notice to the parties, the judge may reinstate the matter on the active trial calendar or dismiss the matter. The office may schedule a settlement conference upon request to assist the parties in finalizing and filing a stipulation for settlement.

### 1420.2150 EXPEDITED PROCEEDINGS.

Subpart 1. Expedited hearings. A hearing will be held on an expedited basis only where all required statutory conditions have been met. If the statutory requirements are not met, the matter will be placed on the regular hearing calendar. A hearing will also be held on an expedited basis concerning a request for prior approval of surgery or other treatment if the surgery or treatment is urgently needed and if the surgery or treatment has not already been provided at the time of hearing.

Subp. 2. Issues limited.

- A. The hearing on an objection to discontinuance is limited to the issues raised in the notice of intention to discontinue benefits.
- B. The hearing on a petition to discontinue benefits is limited to the issues raised in the petition to discontinue benefits.
- C. The hearing on a request for formal hearing is limited to the issues raised on the medical or rehabilitation request or response.
- D. The hearing on a claim granted hardship status is limited to the issues raised on the original claim.
- E. The hearing on a failure to answer under Minnesota Statutes, section 176.331, is limited to the issues raised in the original petition.
- F. The hearing on a request for approval of urgent medical treatment is limited to the treatment approval issues.

Subp. 3. Expansion of issues. Expansion of the issues in an expedited proceeding will only be allowed upon agreement of the parties and the office, except that an expedited proceeding may be consolidated with another expedited proceeding.

(1) If the parties agree to expansion of the issues, the judge has 60 days rather than 30 days to issue a decision.

(2) If the expansion of the issues will require substantially more discovery and preparation time by any party, the expansion will not be allowed unless all parties agree that the case may be removed from expedited status.

Subp. 4. Incomplete pleadings. If the office notifies a party that a pleading is incomplete, the incomplete pleading must be corrected within ten days of notification in order to maintain expedited status.

Subp. 5. Intervention. Once an expedited process is initiated or granted, the parties must, within ten days, notify any remaining potential intervenors that the proceeding is expedited and that a motion to intervene must be filed within 30 days from service of the intervention notice rather than the 60 days allowed under part 1415.1250.

Subp. 6. Discovery. In expedited proceedings, reasonable discovery is allowed provided it is conducted as expeditiously as possible and is completed before the date of hearing. A judge may require the parties to comply with curtailed time limits in order to ensure a timely hearing.

### 1420.2200 DISCOVERY.

Subpart 1. Demand. Each party shall, within 30 days of a demand by another party, unless a shorter time is indicated by this part, disclose or furnish the following:

A. the names and addresses of all known witnesses that a party intends to call at the hearing, including doctors by crossexamination or who will testify by report only. All witnesses unknown at the time of the disclosure must be disclosed within 15 days after they become known if a prior demand has been made;

B. nonprivileged written or recorded statements made by a party or by witnesses on behalf of a party. The demanding party must be permitted to inspect and reproduce such statements at the demanding party's expense. A party unreasonably failing upon demand to make the disclosure required by this part, upon proper motion made to the judge at the hearing, may be foreclosed from presenting evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed;

C. the petitioner shall disclose the names and addresses of all persons who have treated the employee in the past for injuries or conditions identical or related to those alleged in the petition, the dates of the treatment, and provide medical authorization for each. Medical privilege is waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease;

D. wage and personnel records;

E. if temporary partial disability benefits are claimed, the employee must provide a list of postinjury employers and authorizations for the release of wage information for each or a complete set of wage records regarding the employee's claim; and

F. for the purpose of the pending hearing only, a party shall provide a response to a party's request for admissions relevant to the matters in dispute, including, but not limited to, the genuineness of any documents, whether the party is the person depicted in surveillance, and whether or not surveillance accurately depicts the subject's activities during the time covered by the surveillance. If a party

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fails to provide a response to a request for admissions, the requesting party may file a motion to compel compliance with discovery under part 1420.2250 or a motion to establish an admission or preclude evidence under subpart 5.

**Subp. 2. Depositions.** Under Minnesota Statutes, section 176.411, subdivision 2, depositions may be taken in the manner the law provides for depositions in civil actions in the district courts for the state, except where a judge orders otherwise. Upon request by an adverse party, a party must produce named witnesses for discovery deposition, except as otherwise provided by this part or Minnesota Statutes, section 176.155, subdivision 5.

**A.** When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the judge who will determine whether the deposition should proceed. The motion must state, with specificity, the facts or other reasons supporting the need for the deposition. The judge shall order the deposition to proceed if the judge finds that:

- (1) the deposition is needed for the proper presentation of a party's case;
- (2) the deposition is not for purposes of delay;
- (3) unusual or extraordinary circumstances exist which compel extensive discovery; or
- (4) the issues or amounts in controversy are significant enough to warrant extensive discovery.

**B.** Depositions to preserve testimony or to present testimony due to the unavailability of the witness are allowed. The deposition must be taken sufficiently in advance of the hearing so that the deposition may be offered as an exhibit at the hearing, unless, for good cause shown, the party taking the deposition has the permission of the judge to take or file the deposition subsequent to the hearing.

**C.** Under Minnesota Statutes, section 176.155, subdivision 5, the crossexamination of a physician or health care provider before a hearing is specifically allowed. When a deposition for the purpose of crossexamination of a physician or health care provider is taken under this item, redirect examination is allowed. Unless ordered otherwise by a judge, the crossexamination deposition must be completed before the hearing.

**D.** Depositions taken for purposes of presenting testimony may be offered as an exhibit at the hearing but need not be filed with the division before the hearing.

**E.** The party initiating the taking of any deposition, including a crossexamination deposition under Minnesota Statutes, section 176.155, subdivision 5, is responsible for all costs of the deposition, including witness fees and court reporter fees.

**Subp. 3. Motions for disputed or additional discovery.** Upon the motion of a party, the judge may order discovery of other relevant material or information and resolve disputes about the extent of discovery, recognizing all privileges recognized by law. The judge may order discovery available under the Rules of Civil Procedure for the district courts of Minnesota provided that the discovery:

- A.** is needed for the proper presentation of a party's case;
- B.** is not for purposes of delay; and
- C.** the issues or amounts in controversy are significant enough to warrant extensive discovery.

**Subp. 4. Motion for direct testimony by physician or health care provider.** A motion for full testimony of a physician or health care provider must comply with part 1420.2900, subpart 3.

**Subp. 5. Penalties.** Upon the failure of a party to reasonably comply with discovery or a judge's order under this part, the following orders of the judge are allowed upon a party's motion:

- A.** an order that the subject matter of the order for discovery or other relevant facts is established in accordance with the moving party's claim; or
- B.** an order prohibiting the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

**Subp. 6. Protective orders.** When a party is asked to reveal material which that party considers proprietary or privileged information, trade secrets, or sensitive medical data, the party may bring the matter to the attention of the judge, who may issue a protective order as is reasonable and necessary or as otherwise provided by law.

**Subp. 7. Employer's expert examinations.** If an employee claims that the employee's ability to earn has been substantially reduced because of the injury in combination with other factors, the employee must submit to a physical and verbal examination by the employer's or insurer's expert if requested by the employer or insurer. Expert reports must be provided, upon demand, to adverse parties. A party who objects to the scope of the requested examination may bring a motion for protection. The motion must be served as provided in part 1420.2250. The judge may issue an order allowed by Rule 26.03 of the Rules of Civil Procedure for the district courts.

**Subp. 8. Disclosure of surveillance evidence.**

**A.** A party possessing relevant surveillance evidence must disclose the existence of said evidence to opposing parties upon discovery demand but no later than 30 days prior to the hearing date, or within five business days of the date it is obtained if the evidence is obtained within 30 days of the hearing date. The surveillance evidence must be disclosed at least five business days before a hearing. If a party offers undisclosed surveillance, it is only admissible where the proponent makes an offer of proof to the judge and establishes that admission of the undisclosed surveillance is vital to prevent a miscarriage of justice or fraud.

Surveillance evidence under this part includes any photographic, video, digital, motion picture, or other electronic recording or depiction of a party surreptitiously taken or obtained without the party's expressed permission or knowledge. If the items described in this

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subpart were not surreptitiously obtained, they are not considered surveillance evidence. Surveillance evidence does not include the personal observations of an investigator or witness or party whether surreptitiously obtained or not, or the handwritten or recorded notes of observations. Surveillance evidence includes surveillance reports.

B. At the time of disclosure of the existence of surveillance evidence under this subpart, the party disclosing evidence shall provide a copy of the evidence to the attorney representing the subject of the surveillance, or where the subject is unrepresented, to the subject, and shall advise the other parties of the existence of surveillance. A copy of the surveillance shall be presumed to have been disclosed when sent by first class mail upon posting or delivered by messenger. In the case of surveillance evidence disclosed within ten days of the hearing date, disclosure shall be by messenger under this rule and not by first class mail. Where an edited version of surveillance is disclosed, the subject of the surveillance may request the right to view or inspect the unedited version or to be provided with a copy of the unedited version at the insurer's expense.

### 1420.2250 MOTION PRACTICE.

Subpart 1. Timing. Unless otherwise provided or due to circumstances occurring just prior to or after a pretrial conference, a motion must be served and filed on or before the date set for a pretrial conference. An adverse party has ten days from the date the motion was served to serve and file a response.

Subp. 2. Contents of motion and response to motion. A motion must be filed as a separate document and may not be included within another pleading. A motion and a response to a motion must contain the following information:

A. the complete case caption and descriptive title in the case caption;

B. a statement of the specific relief sought;

C. a statement of the grounds supporting or opposing the motion including citations to applicable law and, if oral argument is requested in the motion, the reasons it is needed;

D. if the motion is untimely, a showing of good cause for the delay; and

E. one copy of an order granting or denying the motion ready for signature by the judge.

Motions and responses must also, as appropriate, include affidavits, memoranda, briefs, or other support setting forth the legal or factual grounds for the motion. If supporting documentation was previously filed, those documents may be incorporated by reference.

Subp. 3. Judge action on motion. The office shall assign a motion to a judge when action by a judge is needed. The judge shall take action on the motion within 30 days of the filing of the motion by issuing an order, advising the parties of how the motion will be resolved, or scheduling a conference or hearing to resolve the motion.

### 1420.2350 TEMPORARY ORDERS.

Subpart 1. Petition. The person or entity seeking to pay or receive payment under a temporary order must file a petition. The petition for temporary order must contain:

A. an explanation of the nature of the dispute and an assertion that the claimed benefits are payable under the act by at least one of the employers or insurers;

B. the names and addresses of all employers and insurers who are parties to the claim or who may be liable for the benefits claimed;

C. the date of each alleged injury and the name of the employer and insurer on each date;

D. the beginning date of the employee's present disability, the compensation rate for each injury, the proposed compensation rate to be paid, and an itemization of all benefits to be paid under the order;

E. copies of medical reports supporting the claimed period of disability and other claimed benefits;

F. a statement identifying any intervenors or potential intervenors with proof the intervenor was served with notice under part 1415.1100; and

G. a statement indicating whether the employee is represented by counsel, the name and address of the attorney, and whether attorney fees should be withheld or paid from payments made under the order.

Subp. 2. Necessary parties. For the purpose of this part, the following are necessary parties:

A. the employee, dependent, or heir of a deceased employee;

B. insurers or selfinsurers named in the petition for temporary order;

C. an employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;

D. the special compensation fund if the employer, after reasonable inquiry, appears to be uninsured; and

E. intervenors.

Subp. 3. Proposed order. The petition for temporary order must be accompanied by an order ready for a judge's signature.

Subp. 4. Objections. A responding party has ten days after service of the petition in which to serve and file an objection. The objection must clearly state the basis of the objection and include supporting documentation.

### 1420.2400 PETITIONS FOR CONTRIBUTION OR REIMBURSEMENT.

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Subpart 1. Contents. Petitions for contribution or reimbursement in cases pending before the office must describe in detail the basis of a claim for contribution or reimbursement against the additional employer, insurer, or the special compensation fund. The petition must be supported by medical evidence and signed. If a claim petition is currently pending, and the party from whom contribution or reimbursement is sought is not a party, the petition for contribution or reimbursement must be accompanied by either a petition for joinder of the party from whom reimbursement or contribution is sought, or a petition for consolidation under part 1420.2500. The two actions may be combined on a joint petition.

Subp. 2. Filing. A petition for contribution or reimbursement must be filed no later than ten days before a pretrial conference or 60 days before hearing if a pretrial conference is not held. Copies of all pleadings, including a notice of pretrial conference, must be served upon the additional employers or insurers by the party bringing the petition.

Subp. 3. Answer. Within 20 days after being served with a copy of a petition for contribution or reimbursement, employers or their insurers, other than the petitioning party, shall file an answer to the petition under Minnesota Statutes, section 176.321.

## 1420.2500 CONSOLIDATION.

Subpart 1. Authorization. Except as provided in part 1420.2150, consolidation of two or more related cases involving the same employee may be ordered for the purpose of hearing. Consolidation may be ordered upon motion by a party to the judge, or upon the judge's own motion, if the judge determines that:

- A. separate cases present substantially the same or similar issues of fact and law;
- B. a holding in one case would affect the rights of the parties in the other case; and
- C. the consolidation would not substantially prejudice the rights of any party.

Notwithstanding the requirements of this part, the parties may stipulate to consolidation.

Subp. 2. Objection to consolidation. A party objecting to consolidation or moving for severance must file with the judge and serve upon all parties at least seven days before the hearing a motion for severance from consolidation which includes the reasons for the motion.

Subp. 3. Companion cases. Two or more related cases involving different employees may not be consolidated, however, companion cases involving the same or similar issues may be grouped for scheduling purposes. In companion cases, the parties and the judge shall prepare separate pleadings and orders for each case.

## 1420.2600 REASSIGNMENT AND DISQUALIFICATION.

Subpart 1. Disqualification by judge. A judge shall withdraw from participation in a case at any time if the judge deems himself or herself disqualified, prejudiced, or biased for any reason.

Subp. 2. Disqualification by a party. A party or the party's attorney may file an affidavit of prejudice and motion to disqualify a judge if the party reasonably believes that a hearing before the assigned judge cannot be fair due to the judge's prejudice or bias. The affidavit must be served on opposing parties and filed with the chief judge not more than ten days after the filing party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. Each party is allowed one filing per case under this subpart and Minnesota Statutes, section 176.312. Upon filing of the motion and affidavit of prejudice, the chief judge or designee shall issue an order and assign the case to another judge if appropriate. For purposes of this part, "case" means the initial assignment of a judge for hearing and all subsequent hearings regarding the same parties with the same judge. If the parties to the claim subsequently change, only the new parties may request reassignment under subpart 3.

A party or the party's attorney may file a motion to disqualify a judge for a cause other than or in addition to that described in an affidavit of prejudice. The motion must be supported by an affidavit detailing the facts establishing the grounds for disqualification and filed with the chief judge not more than ten days after the moving party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. The motion will be decided by the chief judge or a designee.

Subp. 3. Reassignment. A request for reassignment under Minnesota Statutes, section 176.312, is subject to the same procedures set forth in subparts 2, 4, and 5, except that an affidavit of prejudice is not required. If a judge assignment is made just prior to a hearing, a party may request reassignment orally and then file the written request for reassignment on or before the hearing date. If a judge assignment is made just before the hearing, the written petition for reassignment may be faxed to the office or filed in person on or before the date of hearing. The chief judge may reassign a case or a particular hearing to a different judge as necessary when the assigned judge is unavailable to hear the case as scheduled.

Subp. 4. Consolidated cases. Consolidated cases are considered one case under this part.

Subp. 5. Conferences. This part is not applicable to settlement, administrative, or pretrial conferences.

## 1420.2605 DISPOSITION OF COVERAGE ISSUES.

Subpart 1. Motion. If an answer filed under Minnesota Statutes, section 176.321, raises an issue related to independent contractor or employment status, a party may move to bifurcate the issue or issues for immediate and expedited resolution upon stipulated facts under

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Minnesota Statutes, section 176.322, a summary decision under Minnesota Statutes, section 176.305, or a hearing.

Subp. 2. Filing. The motion must be filed with the division pursuant to part 1420.2250. The motion must include evidence relied on in support of the motion by verified affidavits or stipulated facts, any request for a hearing, and if desired, a written brief not exceeding 25 pages in support of the motion.

Other parties to the proceeding may respond to the motion within 20 days after the service of the motion under this part by submission of affidavits and, in the party's discretion, a written brief not exceeding 20 pages. The movant will have ten days from service of a response to the motion to file affidavits and, if desired, a written brief not exceeding ten pages in rebuttal to any issue raised in opposition to the motion.

Subp. 3. Decision; hearing. The judge may determine the motion based on stipulated facts, issue a summary decision, or schedule a hearing.

Subp. 4. Hearing on the merits. The office shall schedule a hearing on other issues not decided under this subpart, if needed, following a final decision on the motion under this subpart and any related appeal.

### 1420.2700 SUBPOENAS.

Subpoenas may be obtained without charge from the office. The name, address, and telephone number of the party or attorney requesting service of the subpoena must be included on the subpoena before service is tendered in accordance with Minnesota Statutes, section 357.22.

The judge shall quash or modify a subpoena upon a party's motion if the judge finds that it is unreasonable or oppressive. The motion must be promptly made, no later than the date specified in the subpoena for compliance.

### 1420.2800 CONTINUANCES.

Subpart 1. Continuances not favored. Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious. Continuances are not favored and will be granted only upon a clear showing of good cause.

Subp. 2. Request. When a continuance is requested before the hearing date, the party requesting the continuance shall first contact all other parties to determine whether mutual agreement to the continuance can be reached and, if the continuance is granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, which date has been approved by the office, and when the continuance request is made more than 30 days before the hearing date, the continuance will be granted.

Subp. 3. Motion. A request for continuance must be in writing in the form of a motion for continuance pursuant to part 1420.2250. Urgent requests may be made orally to the assigned judge. For urgent requests on cases that have not been assigned to a judge, the continuance request must be made to the telephone calendar line designated by the office for such requests.

Subp. 4. Good cause. Good cause does not include:

A. when a law firm, or an insurer with inhouse counsel, consists of more than one attorney who practice in the field of workers' compensation law, and counsel assigned to the case is unavailable because of engagement in another court or otherwise, unless all counsel are committed elsewhere;

B. unavailability of a medical or other witness if the deposition of the witness could have been taken after receipt of the notice of hearing date and before the hearing; or

C. where the judge determines that the reason for the continuance was reasonably foreseeable and avoidable.

### 1420.2900 HEARING.

Subpart 1. Notice. A place, date, and time certain will be assigned to each case. Written notice of the hearing will be given as soon as the assigned date is known, but must be given at least 30 days in advance of the hearing, except:

A. when notice is waived by the parties;

B. when a different time is expressly agreed to by the parties;

C. when the notice is governed by contrary law or rule; or

D. when the hearing has been continued from an earlier date and the parties are all available at an earlier date.

The notice must include the place of hearing, the amount of time allowed for the hearing, and if known, the name of the judge assigned. If an additional hearing date is required, the office will set the date and time.

Subp. 2. Witnesses. As soon as the parties know the hearing date, they shall immediately notify all witnesses in writing and arrange for the witnesses to be present or for the taking of a deposition under part 1420.2200. A party calling a witness for whom an interpreter is required shall advise the office in advance of the need for an interpreter.

Subp. 3. Medical evidence. Rules governing medical evidence are as follows:

A. If a party believes that the oral testimony of a physician or health care provider is crucial to the accurate determination of the employee's disability, the party shall file a written motion pursuant to part 1420.2250.



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B. If medical evidence is submitted in the form of written reports, rather than by oral testimony, under Minnesota Statutes, section 176.155, subdivision 5, the reports must include:

- (1) the date of the examination;
- (2) the history of the injury;
- (3) the patient's complaints;
- (4) the source of all facts in the history and complaints;
- (5) findings on examination;
- (6) opinion as to the extent of disability and work limitations, if any;
- (7) the cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward the disability;
- (8) the medical treatment indicated;

(9) if permanent disability is an issue, an opinion as to whether or not the permanent disability has resulted from the injury and whether or not the condition has stabilized. If stabilized, a description of the disability with a complete evaluation;

(10) if a permanent partial disability is a result of two or more injuries or occurrences, or if part of the permanent disability is a result of a preexisting disability that arises from a congenital condition, traumatic injury, or incident, whether or not compensable under Minnesota Statutes, chapter 176, the health care provider shall apportion the disability between the injuries, occurrences, or conditions;

(11) if future medical care or treatment is anticipated, a statement of the nature and extent of treatment recommended and, if possible, the anticipated results;

(12) the reason for each opinion; and

(13) if applicable, a statement that the health care provider has read the rules concerning determination of permanent partial disability, understands them, and has applied those rules in making the determination.

C. Medical reports to be used at the hearing must be served on the parties and filed with the office, with an affidavit of service, sufficiently in advance of the hearing to allow other parties the opportunity to cross-examine the health care provider, if desired, unless the delay in filing the report was caused by a failure of the employee to report for an adverse medical examination or to provide medical support for the claim on a timely basis, or other good cause. If the report is filed too late to allow the cross-examination, the record will be held open to allow other parties to cross-examine the health care provider after the hearing.

Subp. 4. Rights of parties. All parties have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony.

Subp. 5. Witnesses. A party may be a witness and present other witnesses at the hearing. Oral testimony at the hearing must be under oath or affirmation. At the request of a party or upon the judge's motion, the judge may exclude witnesses other than parties from the hearing room so that they cannot hear the testimony of other witnesses.

Subp. 6. Evidence.

A. The judge will accept only relevant and material evidence that is not repetitive or cumulative.

B. Exhibits for hearings scheduled to be conducted by video technology must be prefiled with the office at least three business days before the hearing. Mailed or delivered exhibits must be placed in a separate, sealed envelope marked with the name and date of the case, the file number, and must be identified as exhibits of the submitting party. Faxed exhibits may not exceed 15 pages in length and must be clearly marked as video hearing exhibits for immediate hand delivery to the judge, and must include the name and file number of the case, the date of hearing, and identify the submitting party. An adverse party must also receive the exhibits at least three business days before the hearing.

Subp. 7. Record requirements. Record requirements are as follows:

A. The office shall maintain the official record, other than the stenographic notes of a hearing reporter, in each case until the issuance of the final order.

B. The record shall contain:

(1) all pleadings, motions, and orders;

(2) subject to part 1415.3500, evidence received or considered unless, through agreement of the parties or by order of the judge, custody of an exhibit is given to one of the parties;

(3) those parts of the division's official file on the matter which the judge incorporates on the record;

(4) offers of proof, objections, and the resulting rulings;

(5) the judge's order;

(6) memoranda submitted by a party in connection with the case and accepted by the judge;

(7) a transcript of the hearing, if one was prepared; and

(8) until a final order is issued after any appeals, the audio-magnetic recording tapes used to record the hearing, if any.

C. The chief judge shall direct that the verbatim record of a hearing be transcribed if requested by any person. The person requesting a transcript must pay the person preparing the transcript a reasonable fee.

D. Under Minnesota Statutes, section 176.421, subdivision 4, clause (3), a party may petition the chief judge for an order directing that a transcript be prepared, for purposes of appeal to the court of appeals, at no cost to the appellant. A petition filed under this provision

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# Proposed Rules

must include:

- (1) the caption of the case;
- (2) case identification numbers;
- (3) the name, address, and telephone number of the attorney representing the appellant; and
- (4) a sworn affidavit from the appellant which must include a complete accounting of all household income from any source, the market value of any holdings including real estate, and all expenses on a monthly basis.

Subp. 8. Hearing procedure.

A. Unless the judge determines that the substantial rights of the parties will be ascertained better in some other manner, the hearing will be conducted in the following manner:

- (1) After opening the hearing, the judge shall, unless all parties are represented by counsel, state the procedural rules for the hearing.
- (2) Stipulations entered into by the parties before the hearing must be entered into the record.
- (3) If the judge requests opening statements, the party with the burden of proof shall proceed first. Other parties shall make opening statements in a sequence determined by the judge.
- (4) After opening statements, the party with the burden of proof shall begin the presentation of evidence. That party will be followed by the other parties in a sequence determined by the judge.
- (5) Cross-examination of witnesses will be conducted in a sequence determined by the judge.
- (6) When the parties and witnesses have been heard and if the judge believes that legal issues remain unresolved, final arguments may be presented in a sequence determined by the judge. Final argument may, in the discretion of the judge, be in the form of written memoranda or oral argument, or both. The judge shall decide when memoranda must be submitted. Final arguments must be limited to legal issues only.
- (7) The record of the case will be closed upon receipt of the final written memorandum or transcript, if any, or late-filed exhibits which the judge has received into the record, whichever occurs last.

Subp. 9. Disruption of hearing. Persons in the hearing room may not converse in a disruptive manner, read newspapers, smoke, chew gum, eat food, or drink liquids other than water, or otherwise disrupt the hearing while the hearing is in session, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them. A cellular telephone must be turned off in the hearing room unless the judge grants permission for it to be turned on. Guns and other weapons are not allowed in the hearing room or on the premises of the office.

No television, video, digital, still, or other camera, and no electronic recording devices, other than those provided by the office may be operated in the hearing room during the course of the hearing unless permission is obtained from the judge. Permission is subject to conditions set by the judge to avoid disruption of the hearing.

Under Minnesota Statutes, section 624.72, no person may interfere with the free, proper, and lawful access to or egress from the hearing room. No person may interfere or threaten interference with a hearing, or disrupt or threaten disruption of a hearing.

## 1420.3150 AMENDED FINDINGS; APPEALS.

Subpart 1. Amended findings. Upon issuance of findings and orders after a hearing, the judge's jurisdiction over the case continues until a notice of appeal is filed or the appeal period expires, whichever occurs first. While jurisdiction continues, amended findings may be issued as needed to fully and fairly decide all issues litigated.

Subp. 2. Filing fee for appeal. When findings and orders are appealed under Minnesota Statutes, section 176.421 or 176.442, each appellant must submit a \$25 filing fee.

## 1420.3700 SANCTIONS.

Subpart 1. Generally. Failure to comply with the order of a judge, or the willful failure to comply with the applicable provisions of this chapter or other applicable law, may subject a party or attorney to any of the following sanctions:

- A. continuance of the proceeding;
- B. striking of pleadings;
- C. preclusion of evidence;
- D. evidence sought deemed proven, where a party fails to comply with an order compelling discovery;
- E. dismissal of proceedings;
- F. to pay the reasonable expenses, including attorney fees, incurred by the other parties due to failure to appear, prepare, or participate in good faith; or
- G. other sanction permitted by rule, statute, or case law, as the judge deems just or appropriate under the circumstances.

Subp. 2. Procedures. A motion to impose sanctions may be brought by a party under part 1420.2250 or upon the judge's own motion. An order for sanctions issued without a hearing is a summary decision under Minnesota Statutes, section 176.305, subdivision 1a.

Subp. 3. Failure to appear or notify. The petitioner must notify the office and other parties of settlement or other resolution of a

# Proposed Rules

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conference or hearing immediately following resolution of the case. If the petitioner fails to provide notice of resolution and does not appear, and a court reporter, interpreter, or security guard appears, or the office incurs an expense to reserve a facility with video equipment, the office may impose a sanction of \$150 or the reasonable fee charged by the court reporter, interpreter, security guard, or video facility if the fee is more than \$150. A party seeking cancellation of a proceeding must take reasonable steps to notify the other parties of a late settlement, rescheduling, or other cancellation of a proceeding. If the party seeking cancellation fails to take reasonable steps to notify the other parties and a party makes an appearance, the office may impose a reasonable sanction payable to the appearing party to cover the expense incurred by the appearing party.

## 1420.3800 SEVERABILITY.

If any provision of this chapter is held: to conflict with a governing statute, applicable provisions of the Administrative Procedure Act, Minnesota Statutes, chapter 14, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason, the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

## Office of Administrative Hearings

and the

## Department of Labor and Industry

### Workers' Compensation Division

## Proposed Joint Permanent Rules Relating to Workers' Compensation Litigation Procedures

### NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

### Proposed Amendment to Joint Rules Governing Workers' Compensation Litigation Procedures, Minnesota Rules, Part 1415 and Portions of Part 5220

Introduction. The Office of Administrative Hearings (OAH) and the Department of Labor and Industry (DLI) intend 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 December 22, 2004.

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 for the chapter 1415 rules is: Penny Johnson at the Office of Administrative Hearings, Workers' Compensation Division, 100 Washington Ave. South, Suite 1700, Minneapolis, MN 55401, phone: (612) 349-2557, FAX: (612) 349-2691. TTY users may call the Office of Administrative Hearings at (612) 341-7346. E-mail comments should be directed to Penny Johnson at the Office of Administrative Hearings at penny.johnson@state.mn.us.

Subject of Rules and Statutory Authority. The proposed rules modify procedures in workers' compensation cases before the Office of Administrative Hearings and Department of Labor and Industry. The rules are extensively revised and updated. In a companion set of rules, portions of part 1415 are revised as OAH Workers' Compensation Litigation Rules in a new part of Minnesota Rules, part 1420. The proposed rules in chapter 1415 are updated in light of statutory and case law changes during the last 20 years. They revise outdated procedures in workers' compensation disputes under the authority of both agencies, move matters within the authority of OAH to a separate set of rules, repeal unnecessary rules, and clarify procedures in problem areas. Topics include but are not limited to filing and service requirements, examination of files, commencement of proceedings, notice of representation, notice to potential intervenors, intervening in a dispute, attorney fees, costs, exhibits, administrative conferences (including discontinuance conferences), and determination of a subrogation interest in a third party recovery. The statutory authority to adopt or amend the rules is provided in Minnesota Statutes, sections 14.51; 175.17(2); 175.171(2); 176.081, subd. 6 and 12; 176.155, subd. 5; 176.231, subd. 5; 176.285, 176.312; 176.361, subd. 1; and 176.83, subd. 1, 7, 9, 10, 12, and 15. A copy of the proposed rules is published in the State Register. A free copy of the rules is available upon request from the agency contact person listed above and is also available on the OAH website at <http://www.oah.state.mn.us>.

Comments. You have until 4:30 p.m. on December 22, 2004, 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.

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 December 22, 2004. Your

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## Proposed Rules

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 and on-line at the OAH website at <http://www.oah.state.mn.us/>. The 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. There is a Statement of Need and Reasonableness for part 1415 and another Statement of Need and Reasonableness for new part 1420. For a full understanding of the proposed amendments, both sets of proposed rules (part 1415 and part 1420) and both Statements of Need and Reasonableness should be reviewed. Copies of the statements may be obtained at the cost of reproduction from the agency.

**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 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, Administrative Law Division, 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: November 2, 2004

Raymond R. Krause  
Chief Administrative Law Judge  
Office of Administrative Hearings

Dated: November 5, 2004

M. Scott Brener  
Commissioner  
Department of Labor and Industry

### 1415.0100 SCOPE AND PURPOSE.

~~Parts 1415.0100 to 1415.3500 govern~~ This chapter governs all workers' compensation matters in litigation before ~~settlement judges in the Workers' Compensation Division of the Department of Labor and Industry and compensation judges in the Office of Administrative Hearings under Minnesota Statutes, section 176.305.~~ Parts 1415.0100 to 1415.3500 do not apply to and administrative conferences conducted ~~by at the Workers' Compensation Division of the Department of Labor and Industry and the Office of Administrative Hearings~~ under Minnesota Statutes, sections 176.102, ~~176.103~~ 176.106, 176.135, 176.136, ~~176.242~~ 176.137, and ~~176.243~~ 176.239. Additional rules of the office regarding workers' compensation litigation procedures are contained in chapter 1420. The two chapters together contain the litigation rules in workers' compensation cases. Rules regarding appeals to the Workers' Compensation Court of Appeals are contained in chapter 9800.

### 1415.0300 DEFINITIONS.

Subpart 1. Scope. For the purposes of ~~parts 1415.0100 to 1415.3500~~ this chapter, the following terms have the meanings given them.

Subp. 2. Act. "Act" means the Workers' Compensation Act, Minnesota Statutes, chapter 176.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. Chief ~~administrative law~~ judge. "Chief ~~administrative law~~ judge" means the chief administrative law judge of the Office of

# Proposed Rules

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## Administrative Hearings.

Subp. 6. Commissioner. "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 7. [See repealer.]

Subp. 8. Court of appeals. "Court of appeals" means the workers' compensation court of appeals.

Subp. 8a. Days. "Days" means calendar days unless specifically provided otherwise. Days are computed as provided in Minnesota Statutes, section 645.15.

Subp. 9. Division. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

Subp. 10. [See repealer.]

Subp. 10a. Imaging. "Imaging" means the technology and process by which paper documents are scanned and stored digitally for subsequent retrieval and processing. The documents are indexed according to type of document, employee name, Social Security number, and date of injury. Once indexing is complete, the document is automatically routed to staff at the division or office as needed and it is a part of the permanent division file. The paper is confidentially recycled.

Subp. 10b. Insurer. "Insurer" means the workers' compensation insurer for the employer and includes self-insured employers. For the purposes of these rules only, "insurer" also includes the special compensation fund where the employer was uninsured on the date of injury.

Subp. 11. [See repealer.]

Subp. 11a. Intervenor. "Intervenor" means a party under Minnesota Statutes, section 176.361, who has an interest in a pending workers' compensation proceeding such that the person or entity may either gain or lose by an order or decision in the case, and the person or entity has filed a motion or application to intervene under part 1415.1250 and Minnesota Statutes, section 176.361.

Subp. 12. Judge. "Judge" means a calendar or workers' compensation judge from the Office of Administrative Hearings or a settlement judge from the Department of Labor and Industry.

Subp. 13. Office. "Office" means the Office of Administrative Hearings.

Subp. 14. [See repealer.]

Subp. 15. Petition. "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer, insurer, or special compensation fund, or any other person or entity authorized by law to file a petition which initiates a contested workers' compensation case requiring assignment for hearing.

Subp. 16. Petitioner. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf, an employer or insurer, or the special compensation fund, or any other person or entity authorized by law to file a petition.

Subp. 17. [See repealer.]

Subp. 18. Potential Intervenor. "Potential intervenor" means a person or entity under Minnesota Statutes, section 176.361, who has an interest in a workers' compensation proceeding such that the person or entity may either gain or lose by an order or decision in the case, and the person or entity has not filed a motion or application to intervene under part 1415.1250 and Minnesota Statutes, section 176.361.

## 1415.0500 LEGAL DOCUMENTS.

Forms and documents used or filed in all workers' compensation proceedings before the division or the office must be on white standard size 8-1/2 by 11 inch paper.

~~Unless otherwise provided by law, requests for action by the division or office after the filing of a petition, and must contain the caption, the employee's social security number, any appropriate identification numbers of the case identifying information required by Minnesota Statutes, section 176.275, and must also indicate the type of action requested. Pleadings and motions must also include the full caption of the case listing all parties.~~

All legal documents filed by an attorney must include the attorney's Minnesota Supreme Court license number.

## 1415.0600 EXAMINATION OF WORKERS' COMPENSATION FILES.

Persons desiring to examine a file maintained by the division or office shall present a written authorization to inspect the file to designated personnel of the division or office. ~~Files are generally reviewed at the division, except when the file is in paper form only and located at the office.~~ The authorization must be signed and dated by a party to the claim who is either the employee, the employer, the insurer, a dependent in death cases, or a legal guardian in cases of mental or physical incapacity. The authorization must specify the person or party authorized to review the file. The authorization is placed in and becomes part of the file. This part does not grant greater access to the files than that given by the Minnesota Data Privacy Act or the Workers' Compensation Act.

## 1415.0700 SERVICE AND FILING.

Subpart 1. Service by state. The division and the office must serve all notices, findings, orders, decisions, or awards upon the parties by first class mail at their addresses of record ~~or, by personal service, or, if authorized by the recipient, by facsimile or electronic mail.~~

If the division or office has received notice that a party is represented by an attorney ~~or authorized agent, the attorney must be served~~



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## Proposed Rules

with all documents required to be served on the party must also be served on the attorney or agent. Service on the attorney is considered service on that party, except that all final orders, decisions, awards, orders striking a case from the calendar, continuance orders, and notices of proceedings must also be served directly on the party.

Subp. 1a. Digitized signatures. All orders, decisions, awards, or other documents issued by an employee of the office or the division authorized to sign the document may be signed by digitized signature pursuant to Minnesota Statutes, section 176.281. Digitized signatures must be affixed as follows:

A. The signatory must either personally affix, or instruct another office or division employee to affix, a digitized signature to a document or group of documents.

B. The person affixing a digitized signature must ensure that all information required by item C is completed and accurate.

C. A digitized signature must include the typed name and title of the signatory, the date of issuance, and immediately below the typed name and title, a certificate in lieu of original signature. The certificate in lieu of original signature must include certification that the document was approved and issued by the signatory on the date indicated and explain how to confirm the authenticity of the document.

Subp. 2. Service by parties. A party may serve documents by first class mail or, by personal service, or, if authorized by the recipient, by facsimile or electronic mail. Service of documents required to be served on a party must also be served on the party's attorney or authorized agent. Filed documents must be accompanied by an affidavit or proof of service in a form acceptable to the district courts. All documents filed in connection with a proceeding at the division or office must be served on all parties and filed, together with an affidavit of service, with the division. If a party is represented by an attorney in the matter, the attorney must be served with all documents. Service on the attorney is considered service on that party, except where Minnesota Statutes, chapter 176, requires otherwise.

Subp. 3. Computation of time. Computation of time for service is governed by Minnesota Statutes, section 645.15.

Subp. 4. Filing with state.

A. Except as provided in item B, all documents must be filed with the division. Filed documents must be accompanied by an affidavit of service in a form acceptable to the district courts. A document is filed upon its receipt by the division or the office by 4:30 p.m. on a state business day. Documents received after 4:30 p.m. on a state business day are considered filed on the next open state business day.

B. If the document requires attention by the office within two business days, it must be filed with the office. Stipulations for settlement require attention by the office within two business days. Exhibits for video hearings are filed with the office as provided in part 1415.2900, subpart 6. Exhibits submitted while a hearing record is open are filed with the office.

C. Because documents are destroyed after imaging, a party shall retain an original document and file a copy with the division except when filing a notice of appeal, or where the department has notified the party that an original must be filed because the quality or authenticity of a document is at issue. The original notice of appeal under Minnesota Statutes, section 176.421, must be filed with the office and copied to the division. This filing must be by mail or in person. A filing by facsimile or electronic transmission is not effective.

Subp. 5. Electronic or fax filing. A party is authorized to file a document with the office or the division by facsimile if the document is 15 pages or less in length. A party may file a document by electronic transmission only as authorized by the division or office. A notice of appeal, as provided in subpart 4, may not be filed by facsimile or electronic transmission. The filed facsimile or transmitted information has the same force and effect as the original. Where the quality or authenticity of a document is at issue, the division or the office shall require the original document to be filed. Where the division or office has not identified quality or authenticity as an issue and the document is filed by facsimile or electronic transmission, the party shall not also file the original document.

### 1415.0800 NOTICE OF REPRESENTATION.

Subpart 1. Filing. When an employee a party is represented by an attorney, written notice of representation must be filed with the division, or if the case has been certified to the office, with the office. A notice of representation is not necessary when the attorney files a signed pleading as the attorney for the party or a copy of a fully executed retainer agreement.

A. The notice of representation of an employee, dependent, or heir must be signed by the attorney, signed by the employee, dependent, or heir, and include the address and telephone number of the attorney, and the attorney's Minnesota Supreme Court license number, the employee's social security number, and the date of the claimed injury or disease. A copy of the fully executed retainer agreement must be attached to the notice of representation filed with the division or office.

B. Copies of the notice or retainer agreement must be sent to the employer, the insurer, and other parties, if any served pursuant to part 1415.0700.

C. Failure to file the notice and retainer agreement will be considered in determining attorney fees according to Minnesota Statutes, section 176.081, subdivision 5.

Subp. 2. Substitution of attorney. If the employee, dependent, or heir a party is represented by an attorney who may have an undetermined claim for fees and the employee, dependent, or heir party subsequently desires to change attorneys, the attorney assuming representation shall file a substitution of attorney and consent form signed by the client, the previous attorney, and the new attorney, together with notice of representation and a copy of the new retainer agreement. The new notice of representation and new retainer agreement must be filed and served on all parties and the previous attorney within 20 calendar days of the signing of a retainer agreement.

# Proposed Rules

if a claim petition has been filed or if the original notice of representation has been served by the preceding attorney.

Subp. 3. [See repealer.]

## 1415.1000 COMMENCEMENT OF PROCEEDINGS.

Subpart 1. Commencement of proceedings. ~~All proceedings~~ Except for a potential intervenor claim under part 1420.1850, subpart 4, or a request for an administrative conference, or where otherwise provided by law, a proceeding for adjudication of claims for personal injuries or occupational diseases are instituted a claim by a party under Minnesota Statutes, chapter 176, is commenced by petition addressed to the division, and must be on forms in the form prescribed by the division, containing:

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

~~E. the position held by the employee at the time of the alleged injury or disease;~~

~~F. the weekly wage at the time of injury or disease;~~

~~G. F. the nature of the injury or disease;~~

~~H. G. a statement that the injury or disease arose out of and in the course of the employment and that the employer had knowledge or notice of the injury or disease;~~

~~I. H. an itemization of all benefits claimed, including the type of disability and the time period for which coverage is claimed;~~

~~J. I. an itemization of medical benefits claimed;~~

~~K. J. the name, address, and claim or policy number of any third party who has paid medical, disability, welfare, or unemployment benefits, or rehabilitation benefits provided by DVR potential intervenor; and~~

~~L. K. the name, address, telephone number, and Minnesota Supreme Court license number of the petitioner's attorney; and~~

~~L. whether an interpreter or reasonable accommodation of disability is needed.~~

Subp. 2. Service of petition, filing. The petitioner shall serve a copy of the petition, together with all attachments, on each adverse party personally or by first class mail. "Adverse party" includes all employers, insurers, potential intervenors, and the fund director, if the employer is uninsured or the special compensation fund is named all other parties named in the caption. The original petition, together with the copy of the notice of claim required by Minnesota Statutes, section 176.271, subdivision 2 and any medical, vocational, or other supporting documentation not filed with the notice of reports supporting each claim, must be filed with the division with proof an affidavit of service.

Subp. 3. [See repealer.]

Subp. 4. Amended petitions and requests. ~~A party may file an amended petition. Amended petitions must be served on the other parties. If a new claim is raised and an adverse party objects to it, the judge shall grant a continuance for the portion of the case involving new issues if the adverse party has insufficient time to prepare for a proceeding before the office or division regarding new issues raised in the amended petition. When an amendment to a petition or to a medical or rehabilitation request seeks to add, subtract, or change a party to the claim or injury date, the petitioner must file an amended petition or medical or rehabilitation request on the form or in the format prescribed by the division. The judge or the commissioner shall disallow an amended petition or medical or rehabilitation request or continue the proceeding if the adverse party has insufficient time to prepare for a proceeding regarding the new issues or parties. Service of amended petitions is governed by part 1420.1300, subpart 2. A motion for joinder under part 1420.1300 rather than an amended petition must be filed to add a party when there are fewer than 120 days before a scheduled hearing.~~

Subp. 5. Letter amendment to petition or request. If a petitioner seeks to add an additional claim, withdraw a claim, or otherwise change the claimed benefits or other assertions that do not change the identified parties, the petitioner may amend the claim by filing an amendment to the petition or request in the form of a letter setting forth the amendment; however, a judge or the commissioner shall disallow an amendment or continue the proceeding if the adverse party has insufficient time to prepare for a proceeding regarding the new issues.

## 1415.1100 NOTICE TO POTENTIAL INTERVENORS.

Subpart 1. Responsibilities of attorneys. All attorneys, whether representing employees, employers, or any other parties to a workers' compensation proceeding, shall ask their clients whether a third party, other than the workers' compensation insurer, has paid ~~monetary~~ or provided benefits or treatment expense services to the employee or on the employee's behalf, or whether there is an outstanding order under Minnesota Statutes, chapter 518, for an employer to withhold sums for the payment of support or maintenance that may entitle the person or entity to intervene as a party under Minnesota Statutes, section 176.361. ~~Attorneys shall specifically ask their clients whether the DVR has provided rehabilitation services to the employee.~~

Subp. 2. Notice to ~~third parties~~ potential intervenors. If inquiry discloses that a third party has made a payment the existence of a potential intervenor, the attorney discovering that fact then has the duty to must promptly place serve the third party on potential intervenor with written notice of its right to petition for intervention and reimbursement pursuant to subpart 3. ~~The DVR must be given notice if inquiry discloses that the DVR provided rehabilitation services to the employee~~ Notice to potential intervenors under Minnesota Statutes, section 176.361, may not be given before a proceeding at the office or division has been commenced. The attorney shall attach

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# Proposed Rules

to the notice ~~a copy of part 1415.1200~~, a copy of all pleadings in the case, and a copy of all notices and orders served in the case to date. The notice need not be filed with the division except as required by part 1420.1850. If a party files the notice to potential intervenors, the party shall omit the attachments in the copy filed with the division unless directly relevant to a dispute. The notice must specifically advise:

A. that the petitioner has commenced a proceeding to recover workers' compensation benefits, and that under ~~part 1415.1250 and Minnesota Statutes, section 176.361 and part 1415.1200~~, the ~~third-party potential intervenor~~ has the right to petition for intervention and reimbursement of payments of monetary benefits, treatment expenses, or vocational rehabilitation services;

B. the name and address of parties to the proceeding and the name and address of their attorney;

C. the name of a ~~third-party's potential intervenor's~~ insured, if applicable, the nature of the payments made or services provided, and any identifying claim and policy number;

D. that the failure of a ~~third-party potential intervenor to comply with part 1415.1200~~ will file a motion for intervention within 60 days of service of the notice or within 30 days of notice of an administrative conference or expedited hearing may result in a denial of the claim for reimbursement unless the judge determines that the error or omission is merely technical.

E. that, unless an intervenor's right to reimbursement is established by stipulation or otherwise, failure to personally attend scheduled administrative conferences and hearings when required by Minnesota Statutes, section 176.361, subdivision 4, or appear by an alternative method approved by the commissioner or a judge, will result in a denial of the claim for reimbursement; and

F. how the potential intervenor may obtain a copy of the intervention statute, rule, and sample form.

Subp. 3. Time to notify. Attorneys shall comply with this part within 30 days after the ~~filing~~ service of an answer, or within 60 days of ~~receipt~~ service of a petition if no answer ~~is required~~ has been filed; and when a medical or rehabilitation request or response is filed. Attorneys shall promptly notify a potential intervenor whose interest arises upon payment made or services rendered after the ~~claim~~ petition or, answer, rehabilitation request, or medical request was filed, but not before a proceeding at the office or division has been commenced.

Subp. 4. Failure to notify potential intervenors. Failure to comply with the notice requirements of this part may result in the matter being stricken from the hearing or conference calendar, or other sanction under part 1420.3700, if the judge or commissioner finds the noncompliance materially prejudices the rights and liabilities of the other parties or the potential intervenor.

Further proceedings may be ordered under part 1420.1850 if an intervenor or potential intervenor claims to have been effectively excluded from a binding determination or from settlement negotiations or has been unable to reach a resolution of its claim at the time the other parties have resolved their claims.

## 1415.1250 INTERVENTION.

Subpart 1. Motion. A person desiring to intervene in a workers' compensation case under this chapter must serve and file a motion or application to intervene within 60 days of notice under part 1415.1100 or, for an expedited hearing, within 30 days of notice under part 1420.2150, subpart 5, or within 30 days of notice of an administrative conference under part 1415.3700.

Subp. 2. Personal appearance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall personally attend all scheduled administrative conferences and hearings where required by Minnesota Statutes, section 176.361, unless an alternative to personal appearance is allowed by the commissioner or the judge.

## 1415.3200 ATTORNEY FEES.

Subpart 1. Controlling statute. Fees for legal services are governed by Minnesota Statutes, ~~section~~ sections 176.081 and 176.191.

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

Subp. 3. Statement of fees, ~~petition for disputed or excess attorney's fees~~. The following procedures must be followed in claiming fees:

A. If the claim for An attorney fees does not exceed the fees allowed by Minnesota Statutes, section 176.081, subdivision 1, clause (a), the party claiming attorney fees shall must serve on the employee and the insurer, and file with the division, a statement of attorney's fees on a form prescribed by the commissioner, including:

(1) ~~the caption of the case;~~

(2) ~~the employee's social security number;~~

(3) ~~the date of injury or disease;~~

(4) a list of benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement and any certification or noncertification of a dispute issued under Minnesota Statutes, section 176.081, subdivision 1, paragraph (c);

(5) ~~(2) the amount of retainer received from the employee~~ attorney fees previously paid for the same injury;

(6) ~~the amount the employee advanced for expenses;~~

(7) ~~(3) the amount the employer and insurer are currently withholding as attorney's fees, if known;~~

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- ~~(8) (4) the amount claimed for attorney's fees;~~
- ~~(9) (5) a statement that the attorney is licensed to practice law in the state;~~
- ~~(10) (6) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;~~
- ~~(11) (7) a notice that the employee or insurer has ten calendar days to object to the attorney fees requested;~~
- ~~(12) (8) the date the statement was served on the employee, employer, and insurer; and~~
- ~~(13) (9) the full address and phone number of the employee's attorney;~~
- ~~(10) the number of hours spent in representation of the employee and the attorney's hourly fee; and~~
- ~~(11) an itemization of costs incurred and by whom paid.~~

The statement must be accompanied by the retainer agreement, if not previously filed, ~~and a copy of the usual billing statement given to the employee.~~ Any party may object to the statement of fees in writing within ten days of the date the statement was served. If, at the hearing or in a stipulation for settlement or mediation agreement, all parties state on the record or include in the stipulation or mediation agreement that they have no objection to the statement of attorney's fees, the judge ~~shall~~ or commissioner may issue an appropriate order without waiting ten calendar days. Except where excess fees are requested in item B, an oral statement of attorney fees may be presented at the hearing on the record if the case has been tried to a conclusion, no objection is made at the hearing, and a retainer agreement is filed. An oral statement of attorney fees must contain the information in this item.

B. If a party claims fees in excess of the amounts listed in Minnesota Statutes, section 176.081, subdivision 1, ~~clause paragraph (a) or (b),~~ the party shall file a petition for disputed or excess attorney's fees on a form prescribed by the commissioner, including attach the following additional information to the statement of attorney fees prescribed in item A:

- ~~(1) the caption of the case;~~
- ~~(2) the employee's social security number;~~
- ~~(3) the date of the claimed injury or disease;~~
- ~~(4) an exhibit showing specific legal services performed, the date performed, and the time number of hours spent for each service in representation of the employee;~~
- ~~(5) the number of hours spent in the employee's representation;~~
- ~~(6) (2) a statement of expertise and experience in workers' compensation matters;~~
- ~~(7) (3) a brief description of the factual, medical, and legal issues in dispute;~~
- ~~(8) (4) the nature of proof required in the case and the responsibility assumed by counsel; and~~
- ~~(9) a list of the benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement;~~
- ~~(10) the amount of the retainer;~~
- ~~(11) the amount employee advanced for expenses;~~
- ~~(12) the amount claimed in fees;~~
- ~~(13) the amount the employer and insurer is currently withholding, if known;~~
- ~~(14) a list of the disbursements incurred and if the disbursement has been paid, by whom;~~
- ~~(15) a statement that the attorney is licensed to practice law in the state;~~
- ~~(16) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;~~
- ~~(17) (5) whether or not a hearing on attorney fees is requested;~~
- ~~(18) the date the statement was served on the employer and insurer; and~~
- ~~(19) the full address and phone number of the employee's attorney.~~

The petition must be accompanied by a copy of the retainer agreement, if not previously filed, and proof of service.

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. Genuinely disputed portions of claims. This subpart provides the applicable principles for the commissioner, compensation judge, or Workers' Compensation Court of Appeals to determine whether the benefit paid or payable was genuinely disputed for the purpose of calculation of a contingent fee under Minnesota Statutes, section 176.081, subdivision 1.

The statement of attorney fees or petition for excess attorney fees must include, for each benefit paid or awarded for which an attorney fee is sought sufficient information to allow the fee determiner to apply the principles contained in this subpart.

The principles applicable to determine whether a benefit was genuinely disputed are as follows:

A. If primary liability had been denied for the claim, all compensation paid or awarded to the employee or dependent other than payment of medical and rehabilitation expenses, is used to compute the attorney's fee.

B. If there was no dispute concerning the rate, amount, duration, or eligibility for a benefit and the benefit was timely paid, the benefit

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may not be used to compute the fee.

C. The fee may not be computed on the entire amount of a benefit where only a portion of the benefit is disputed. Only the disputed portion of the benefit may be used to compute the fee.

D. If eligibility for the benefit is disputed, the entire benefit during the period for which eligibility was disputed is used to compute the fee.

E. If the rate of the benefit is disputed, only the amount paid or awarded above the rate admitted and timely paid is used to compute the fee.

F. If the duration of the benefit is disputed, only the portion of the benefit not conceded and not timely paid is used to compute the fee.

G. Benefits allegedly admitted but not timely paid may be used to compute the fee.

H. Benefits timely paid may not be used to compute the fee except where primary liability for the entire claim or eligibility for the benefit had been generally denied.

I. The difference between the compensation eventually paid or awarded and the amount admitted and timely paid is used to compute the fee.

J. The following benefits may be used to compute the fee:

(1) remodeling compensation pursuant to Minnesota Statutes, section 176.137, which was in dispute under this subpart;

(2) a penalty sum awarded to the employee or dependent for a benefit which was in dispute under this subpart;

(3) interest on a benefit which was in dispute under this subpart; and

(4) a benefit which was in dispute under this subpart although reimbursable to an intervenor.

K. Generally, each benefit is evaluated separately, however, if the rate, duration, or eligibility for permanent partial disability is disputed, the difference between the permanent partial disability which was conceded and timely paid and the amount of disputed permanent partial disability eventually paid or awarded is used to compute the fee.

L. The principles of this subpart apply to settlement sums. Attorney fees for a portion of a lump sum award allocated to medical or rehabilitation expenses must comply with Minnesota Statutes, section 176.081, subdivision 1.

Subp. 8. Determinations without a hearing. The office shall assign an attorney fee statement to a judge when action by a judge is needed. The judge shall take action on the attorney fee statement within 30 days of the filing of the statement by issuing an order advising the parties of how the attorney fee statement will be addressed or scheduling a conference or hearing on attorney fees.

If an objection to the requested fee has been filed and the interested parties waive their right to a hearing, the fees may be determined under Minnesota Statutes, section 176.305 or 176.322, without a hearing. A hearing must be scheduled and heard on the record if an objection has been filed and all interested parties have not waived their right to a hearing. Where no objection to the requested fee has been filed, the judge or court before whom the matter is pending shall issue a summary decision under Minnesota Statutes, section 176.305, regarding the amount of attorney fees owing under this part and Minnesota Statutes, section 176.081 or 176.191.

### 1415.3300 TAXATION OF COSTS AND DISBURSEMENTS.

Subpart 1. When allowed. This part applies to costs in disputed cases which have been heard by a compensation judge. Costs associated with cases settled before hearing may be recovered by agreement in a stipulation or retainer agreement.

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

Subp. 3. Service of formal request. ~~Service of~~ The taxing party shall serve the request for taxation of costs and disbursements ~~must be made upon the parties, or their attorneys, by the taxing party.~~

Subp. 4. Service of objection. An opposing party has ten working days from the date of service upon him or her ~~in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.~~

Subp. 5. Hearing. ~~If requested, a time for hearing before the compensation judge to whom the matter has been assigned must be fixed. A notice of hearing must be given to the parties by the compensation judge~~ party requests a hearing on costs, the office shall schedule a hearing and give notice of the hearing to the parties.

### 1415.3500 EXHIBITS; REMOVAL AND RETURN.

Subpart 1. ~~Requests for removal~~ Retention and retrieval of exhibits. ~~All requests for permission to remove an exhibit or document from the official file must be made to the compensation or settlement judge to whom the file has been assigned or to the supervisor of the docket section of either the office or the division~~ For purposes of this part, an exhibit is a document or other evidence that is introduced at a hearing and is marked, offered, and accepted into the record by a judge as an exhibit. Exhibits do not become a permanent part of the division file; however, the judge's lists of exhibits must be retained in the division file. Exhibits must be retained by the division or the office for 60 days after a final decision is served and filed in the case. During this 60-day period, exhibits may be retrieved by the submitting party upon request to the division. If no party has retrieved the exhibits after 60 days, the exhibits will be destroyed.

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]



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## 1415.3700 ADMINISTRATIVE CONFERENCES.

Subpart 1. Scope. This part governs administrative conferences conducted under Minnesota Statutes, sections 176.106 and 176.239. Rehabilitation disputes are also governed by part 5220.0950.

Subp. 2. Notice. Unless the issue will be decided on the basis of written submissions, or unless the parties agree on a shorter notice period, the division or office must notify the parties and intervenors or potential intervenors under Minnesota Statutes, section 176.361, of the date, time, and place of the conference at least 14 days before the conference date. The qualified rehabilitation consultant, if one is assigned, must be notified of a rehabilitation conference. The special compensation fund must be notified of all administrative conferences where the fund is reimbursing benefits to an insurer or selfinsurer under Minnesota Statutes 1990, section 176.131, or Minnesota Statutes 1994, section 176.132, or a claim has been made under the above referenced statutes against the fund for benefits by any of the parties, or the fund is paying benefits under Minnesota Statutes, section 176.191. The notice must include the statutory authority to hold the conference and indicate whether issues from another petition or request form have been joined for consideration at the conference. Telephone notice of the conference at least three working days before the conference date is sufficient for a discontinuance or other expedited conference if timely service of notice by mail cannot be made.

Subp. 3. Appearances. All parties, and the qualified rehabilitation consultant if the conference is conducted under Minnesota Statutes, section 176.106, concerning rehabilitation services, must be given notice and the opportunity to attend administrative conferences or, at their option, to present documents on their behalf. A potential intervenor may attend the conference. Intervenors are required to appear as provided in part 1415.1250, subpart 2, and Minnesota Statutes, section 176.361, subdivision 4. A party may be represented by an attorney. The employee and insurer, or designated person having authority to act on behalf of the party regarding the matter in dispute, is required to attend an administrative conference under Minnesota Statutes, section 176.239, unless health reasons, distances, or other good cause prevents attendance. If absent because of distance, the employee and insurer or authorized designee of the employee and insurer must be available by telephone at the scheduled conference time.

Subp. 4. Information considered. The presiding official shall permit the parties to present their positions and reports or other documents or information relevant to the issues involved. Reasonable opportunity for parties to refute statements or other information submitted must be allowed. Copies of documents submitted must be simultaneously supplied to the other parties.

Subp. 5. Concurrent litigation. When the same or a nearly identical issue in the same case is pending with the office, the Workers' Compensation Court of Appeals, or another court, the division must decline to issue a decision and defer to the office or court if issuing a decision will result in an inconsistent determination.

Subp. 6. Continuance. Continuances are disfavored and will be granted only upon a showing of good cause for the inability or failure to appear at a conference. Good cause generally means that circumstances beyond the control of the party or party's representative prevent attendance at the scheduled time.

Subp. 7. Intervenors. If, at the time of the conference, the division or office determines that a potential intervenor has not been notified of the conference, the conference must be canceled or continued, the parties may enter into an agreement which does not compromise the rights of the potential intervenor, or the division or office must issue a decision which does not compromise the rights of the potential intervenor.

Subp. 8. Testimony cost. The division shall not order reimbursement of costs for testimony at an administrative conference.

Subp. 9. Administrative conference documents.

A. Documents submitted to the office during an administrative conference are not maintained in the permanent division file. A party desiring to file an administrative conference document in the permanent division file must file the document with the division.

B. A party submitting a document to be considered at a conference scheduled to be conducted at the office by video technology must prefile the document with the office at the location of the judge at least one full business day before the conference date. Mailed or delivered documents to be considered at the video conference must be placed in a separate, sealed envelope and marked with the name and date of the case and the employee's file number, and must be identified as conference documents of the submitting party. Faxed documents may not exceed 15 pages and must be clearly marked as video conference documents for immediate hand delivery to the judge; must include the name and file number of the employee and the date of the conference; and must identify the submitting party. An adverse party must also receive the documents for a video conference at least one full business day before the conference date.

Subp. 10. Resolution forum. Administrative conferences concerning rehabilitation issues are conducted by the division unless the division refers the matter to the office. Administrative conferences concerning the discontinuance of benefits under Minnesota Statutes, section 176.239, are conducted by the office. Administrative conferences concerning medical disputes are conducted by the division under this part and part 1415.3800 unless the division refers the matter to the office. Administrative conferences concerning medical disputes referred by the division to the office are conducted informally by the office under this part and part 1415.3800, or more formally in a hearing pursuant to part 1420.2900. Except where the insurer is disputing that the injury arose out of and in the course of employment, a claim petition containing only medical or rehabilitation issues shall be resolved by the division unless the division refers the matter to the office.

## 1415.3800 MEDICAL DISPUTES.

Subpart 1. Definition. For purposes of this part, "medical disputes" means any dispute arising under Minnesota Statutes, sections 176.135, 176.1351, and 176.136, as determined by the division or office under Minnesota Statutes, sections 176.103 and 176.106.

Subp. 2. Medical claim, request. An employee or insurer may initiate a medical claim by filing a medical request form with the division. A medical request form may be filed by a health care provider as defined by Minnesota Statutes, section 176.011, subdivision 24, where the insurer has denied payment on the basis that a charge is excessive under Minnesota Statutes, section 176.136, subdivision 2. For purposes of filing by a health care provider, a claim is not considered denied based on excessiveness where the insurer asserts that the injury did not arise out of and in the course of employment or where the disputed treatment is for a condition which the insurer asserts is not wholly or partly casually related to the work injury. The requesting party shall serve the medical request form and attachments pursuant to part 1415.0700 and shall serve potential intervenors. The requesting party shall specify the medical disputes and attach supporting documents. A health care provider filing a medical request form must attach evidence of the insurer's denial of payment based on excessiveness, an itemized statement of charges, and the appropriate record as defined in part 5221.0100, subpart 1a. The requesting party must also specify the name and address of any potential intervenor, and the claim or policy number, if known.

Subp. 3. Medical claims response. If the employee or health care provider has filed a medical request form, the insurer must file a medical response form with the division and serve copies on the other parties no later than 20 days after service of the medical request form or within the time period provided by part 5221.6050, subpart 7. Failure to file a required form will be considered in the determination of disputed issues, penalties, and interest charges, and may result in a determination based solely on the written submissions of the requester when an administrative conference is not scheduled.

Subp. 4. Medical claim; denial of liability. If a medical request form has been mistakenly filed in a case in which initial issues of liability exist, the matter may be set for a settlement conference before a judge under Minnesota Statutes, section 176.305, or the requester will be instructed to file a claim petition, intervene in another proceeding, or other procedure as the division or office directs.

Subp. 5. Penalties. Where payment of medical charges is not made in compliance with part 5221.0600 and Minnesota Statutes, section 176.135, a penalty may be assessed under part 5220.2740.

## 1415.3900 DISCONTINUANCE CONFERENCES.

Subpart 1. Purpose. The purpose of an administrative conference under Minnesota Statutes, section 176.239, is to determine whether reasonable grounds exist for a discontinuance of weekly benefits. If the parties do not reach an agreement on the issues, they will be resolved by a decision of the judge. When the division has referred a medical or rehabilitation issue to the office under part 1415.3700, subpart 10, the medical or rehabilitation issue may also be discussed and clarified at the conference, and a decision issued under Minnesota Statutes, section 176.102 or 176.106, if:

A. all affected parties consent; or

B. a notice that the issues will be joined is issued under part 1415.3700, subpart 2.

Subp. 2. Request. The employee may request that the office schedule an administrative conference to discuss a proposed discontinuance of benefits. If the proposed discontinuance is based on a reason other than a return to work, the employee's request for a conference must be personally delivered or received by the division or office no later than 12 calendar days from the date a notice of intention to discontinue benefits, which was served on the employee and the employee's attorney, was filed. The employee shall direct a written request for a discontinuance conference to the division or a telephone request to the office. If the proposed discontinuance is based on a return to work, the employee's request must be received by the division or office within 30 days of the reported date of the employee's return to work. Allowance will be made, if appropriate, for nonreceipt or delay under Minnesota Statutes, section 176.285.

If the insurer discontinues, reduces, or suspends benefits without properly serving and filing a notice of intention to discontinue benefits and with the required attachments in a situation in which a notice of intention to discontinue benefits was required under part 5220.2630 and Minnesota Statutes, section 176.238, the employee may request an administrative conference within 40 days after the employee received the last payment but no later than 12 days after a notice of intention to discontinue benefits is properly served and filed, or 30 days after the employee returned to work if the notice is properly served and filed within 14 days after the insurer has notice of the employee's return to work.

Subp. 3. Continuation of benefits.

A. If an employee requests an administrative conference within the time set out in this part, benefits must be paid through the date of the conference unless:

(1) the employee has withdrawn the request for a conference;

(2) the employee fails to appear at the conference without good cause;

(3) the employee has returned to work in which case benefits are due through the date of the employee's return to work;

(4) the employee is receiving temporary partial benefits and the employee is no longer employed;

(5) the employee dies;

(6) no plausible information is presented by the employee to dispute the proposed discontinuance of the benefits;

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(7) notice of maximum medical improvement was served more than 90 days before the administrative conference;

(8) an approved retraining plan ended more than 90 days before the administrative conference;

(9) the employee has failed to make a good faith effort to participate in the rehabilitation plan before the administrative conference, but is making a good faith effort at the time of the conference, in which case benefits may be discontinued between the date the notice of intention to discontinue benefits was served and filed and the administrative conference date;

(10) the workers' compensation claim was mistakenly accepted by the insurer and primary liability for the entire injury is now denied;

(11) the employee has received temporary partial benefits for the maximum period allowed under Minnesota Statutes, section 176.101, subdivision 2;

(12) the effects of the injury have totally resolved without residual disability or restrictions; or

(13) the employee has voluntarily retired from the labor market.

B. If the employee requests a continuance of the conference date that is granted and the employee is awarded ongoing benefits, benefits must be paid through the date of the conference and continuing. If the employee's request for a continuance is granted and the employee is not awarded benefits, benefits need not be paid during the period of continuance. If the employer or insurer requested the continuance, benefits must be paid during the period of continuance. If the employee and insurer's joint request for a continuance is granted, benefits must be paid during the period of continuance unless the employee agrees in writing to waive the interim payment and await a decision regarding payment under subpart 5 following the administrative conference.

Subp. 4. Scheduling. Subject to part 1415.3700, subpart 6, a discontinuance conference must be set within the time limits set by this subpart. Following a notice of intention to discontinue benefits, the office shall schedule an administrative conference no later than ten calendar days after receipt of a timely request for a conference. If no notice of intention to discontinue benefits was filed as required by part 5220.2630 and the employee requests a conference, the office shall schedule a conference no later than ten calendar days after the division's receipt of the employee's request if the conference request is received within 40 days from the date the employee's last benefit payment was received.

Subp. 5. The decision. The decision must be based on information presented at the conference and information from the division file relating to authority to decide the issue, and information contained in the notice of intention to discontinue benefits and any attachments. The office shall mail a copy of the decision to the parties no later than five working days from the date of the conference.

Subp. 6. Penalties. Penalties may be imposed for an improper discontinuance of compensation under part 5220.2720 and Minnesota Statutes, section 176.238, subdivision 10, and for unreasonable or inexcusable delay or other grounds under parts 5220.2760 and 5220.2790 and Minnesota Statutes, section 176.225, subdivisions 1 and 5. If the employee seeks a penalty in a discontinuance proceeding, the employee must provide reasonable prior written notice of the claim for penalties.

## 1415.4000 SUBROGATION INTEREST IN THIRDPARTY RECOVERY.

Subpart 1. Determination of subrogation interest by division. Where there is no dispute about the facts or the calculation of the subrogation interest, credit, or sum payable to the employee under Minnesota Statutes, section 176.061, subdivision 5, the insurer and employee may submit a petition based on stipulated facts under Minnesota Statutes, section 176.322, to the Workers' Compensation Division for an order determining subrogation interest and credit.

A. The petition must contain substantially the following:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the total proceeds of the third-party settlement or award;

(3) the amount of legal fees and costs of the third-party claim;

(4) the subrogation interest of the employer itemized by type of benefits paid such as but not limited to:

(a) temporary total disability;

(b) temporary partial disability;

(c) permanent total disability;

(d) permanent partial disability; and

(e) medical expenses where Minnesota Statutes, section 176.061, subdivision 7, claim was not made;

(5) the name, address, and telephone number of the attorney for each party if any; and

(6) the signatures of all parties indicating agreement with the information in subitems (1) to (5).

B. The parties may also, but are not required to, submit a proposed calculation of the subrogation interest, including the future credit amount and the sum payable to the employee.

C. The petitioners must file one clean copy of the petitions and attachments, suitable for imaging. The petition must be served on the special compensation fund where it has a subrogation interest based on payments made pursuant to Minnesota Statutes, section 176.183, or a known potential interest under Minnesota Statutes 1990, section 176.131, or Minnesota Statutes 1994, section 176.132.

D. The division may refer a petition based on stipulated facts submitted under this subpart to the office for further proceedings where

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the parties disagree how the subrogation interest, credit, or sum payable to the parties should be calculated.

E. Except as provided in item D, after receipt of the petition, the division shall serve on the petitioners, and special compensation fund if appropriate, an order containing the following:

- (1) the information upon which the subrogation order is based;
- (2) the calculation of the subrogation interest, including the future credit amount and the sum payable to the employee;
- (3) an explanation of the effect of the credit upon future benefit entitlement; and
- (4) notice of the parties' right to appeal the order within 30 days of its service pursuant to Minnesota Statutes, section 176.322.

Subp. 2. Alternative petitions and orders. Instead of petitioning the division for an order under subpart 1, parties may request an award from a judge by submitting a stipulated agreement under Minnesota Statutes, section 176.521, or by filing a petition under Minnesota Statutes, section 176.291, for a determination of subrogation interest and credit.

### 1415.4100 SEVERABILITY.

If any provision of this chapter is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law: to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason, the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

REPEALER. Minnesota Rules, parts 1415.0200; 1415.0300, subparts 3, 4, 7, 10, 11, 14, and 17; 1415.0400; 1415.0800, subpart 3; 1415.0900; 1415.1000, subpart 3; 1415.1200; 1415.1300; 1415.1400; 1415.1500; 1415.1600; 1415.1700; 1415.1800; 1415.1900; 1415.2000; 1415.2100; 1415.2200; 1415.2300; 1415.2400; 1415.2500; 1415.2600; 1415.2700; 1415.2800; 1415.2900; 1415.3000; 1415.3100; 1415.3200, subparts 4, 5, and 6; 1415.3400; 1415.3500, subparts 2 and 3; 1415.3600; 5220.2605; 5220.2610; 5220.2620; 5220.2640; 5220.2655; 5220.2690; and 5220.2920, subparts 1, 2, 3, 4, 5, 7, and 8, are repealed.

## Environmental Quality Board

### Proposed Permanent Rules Relating to Mandatory EAW Categories and Exemptions

#### **NOTICE OF HEARING on Proposed Amendment to Rules Governing the Environmental Review Program, Minnesota Rules, chapter 4410, Adopting Mandatory Environmental Assessment Worksheet and Exemption Categories for Recreational Trails**

Public Hearing. The Environmental Quality Board (EQB) 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 EQB will hold a public hearing on the aboveentitled rules at the following times and places and continuing until the hearing is completed:

- Tuesday, January 11, 2005, 2:00 p.m. to 5:00 p.m. and 7:00 p.m. to 10:00 p.m., at the Northern Inn, Highway 2 West, Bemidji, MN 56601
- Wednesday, January 12, 2005, 2:00 p.m. to 5:00 p.m. and 7:00 p.m. to 10:00 p.m., at the Hermantown Public Safety Training Facility, 5111 Maple Grove Road, Hermantown, MN 55811
- Wednesday, January 19, 2005, 2:00 p.m. to 5:00 p.m. and 7:00 p.m. to 10:00 p.m., Fort Snelling History Center Auditorium, Fort Snelling, MN, at the junction of state highways 5 & 55.

To find out if a hearing has been postponed due to adverse weather conditions, please call the EQB contact person listed below or check the EQB website: [www.eqb.state.mn.us](http://www.eqb.state.mn.us).

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 Steve M. Mihalchick, who can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone: (612) 349-2544, and FAX: (612) 349-2665. 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, and 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 would amend the lists of mandatory Environmental Assessment Worksheet (EAW) categories (at Minnesota Rules, part 4410.4300) and Exemption categories (at Minnesota Rules, part 4410.4600) to add categories specific to certain types of recreational trails. The proposed rules would not establish categories for mandatory Environmental Impact Statements (EISs) for recreational trails. The proposed mandatory EAW and Exemption categories

# Proposed Rules

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would apply to private as well as public recreational trails, provided that private trails would only be subject to review if governmental approval or financial assistance was involved. Currently, the environmental review program rules do not contain any mandatory review or exemption categories that apply directly to recreational trails of any type. An EAW may be prepared on a discretionary basis by a unit of government for a recreational trail, and citizens may request preparation of an EAW by filing a citizen's petition as authorized by the environmental review rules. If the EQB adopts the mandatory EAW and Exemption categories, review will become automatic for some trail projects, while discretionary review (including review initiated by citizen petition) will no longer be possible for some other projects.

The proposed rules are authorized by Minnesota Laws 2003, chapter 128, article 1, section 167, subdivision 3, which directs the EQB to "adopt rules providing for threshold levels for environmental review for recreational trails." The EQB also has standing authority to adopt and amend the mandatory categories and exemptions pursuant to Minnesota Statutes, section 116D.04, subd. 2a (a). A copy of the proposed rules is published in the State Register and attached to this notice as mailed. The proposed rule is also available at the EQB website, [www.eqb.state.mn.us](http://www.eqb.state.mn.us). A free copy of the rules is available upon request from the agency contact person.

The agency contact person is: Gregg Downing at EQB, 300 Centennial Building, 658 Cedar Street, St. Paul, MN 55155; phone: (651) 205-4660; FAX: (651) 296-3698; and email, [gregg.downing@state.mn.us](mailto:gregg.downing@state.mn.us).

TTY users may call the Department of Administration at 1-800-627-3529.

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available for review at the EQB offices and website ([www.eqb.state.mn.us](http://www.eqb.state.mn.us)) and at the Office of Administrative Hearings. 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 EQB 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.

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 dates, times, and locations listed above.

Dated: November 9, 2004

Robert A. Schroeder  
Chair

## 4410.4300 MANDATORY EAW CATEGORIES.

Subpart 1. Threshold test. An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to ~~36~~ 37, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

If the proposed project is an expansion or additional stage of an existing project, the cumulative total of the proposed project and any existing stages or components of the existing project must be included when determining if a threshold is met or exceeded if construction was begun within three years before the date of application for a permit or approval from a governmental unit for the expansion or



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## Proposed Rules

additional stage but after April 21, 1997, except that any existing stage or component that was reviewed under a previously completed EAW or EIS need not be included.

Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part and part 4410.4400.

[For text of subps 2 to 36, see M.R.]

Subp. 37. Recreational trails. If a project listed in items A to D will be built on stateowned land or funded, in whole or part, by grantinaid funds administered by the DNR, the DNR is the RGU. For other projects, if a governmental unit is sponsoring the project, in whole or in part, that governmental unit is the RGU. If the project is not sponsored by a unit of government, the RGU is the local governmental unit. For purposes of this subpart, "existing trail" means an established corridor in current legal use.

A. Constructing a trail at least ten miles long on forested or other naturally vegetated land for a recreational use other than snowmobiling or cross-country skiing, or constructing a trail at least 20 miles long on forested or other naturally vegetated land exclusively for snowmobiling or cross-country skiing.

B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling.

In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the sum of the quotients obtained by dividing the length of the new construction by ten miles and the length of the existing but newly designated trail by 25 miles, equals or exceeds one.

C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, item B or F.

D. Constructing an offhighway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land, or constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle recreation area by 640 or more acres, on land which either is not agricultural or naturally vegetated or has been significantly disturbed by past human activities such as metallic or nonmetallic mineral mining. If a recreation area for off-highway vehicles will be constructed partially on agricultural or naturally vegetated land and partially on land that is not agricultural or naturally vegetated or has been significantly disturbed by past human activities, an EAW must be prepared if the sum of the quotients obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres of land that is not agricultural or naturally vegetated or has been significantly disturbed by past human activities by 640, equals or exceeds one.

### 4410.4600 EXEMPTIONS.

Subpart 1. Scope of exemption. Projects within subparts 2 and ~~26~~ 27 are exempt from parts 4410.0200 to 4410.6500. Projects within subparts 3 to 25 are exempt from parts 4410.0200 to 4410.6500, unless they have characteristics which meet or exceed any of the thresholds specified in part 4410.4300 or 4410.4400.

[For text of subps 2 to 26, see M.R.]

Subp. 27. Recreational trails. The projects listed in items A to F are exempt. For purposes of this subpart, "existing trail" means an established corridor in current legal use.

A. Rerouting less than one continuous mile of a recreational trail if the reroute is necessary to avoid sensitive areas or to alleviate safety concerns. Multiple reroutes on the same trail must be treated as independent projects, except that where the cumulative length of reroutes exceeds one mile on any fivemile segment those reroutes are not exempt.

B. Reconstructing, rehabilitating, or maintaining an existing trail involving no changes in designated use.

C. Constructing less than one continuous mile of trail for use by snowmobiles or cross-country skiers.

D. Constructing a trail for winter-only use across agricultural land or across frozen water.

E. Designating an existing trail for use by snowmobiles or cross-country skiers.

F. Constructing or rehabilitating a nonmotorized trail within the Twin Cities Metropolitan Regional Park System.

# Proposed Rules

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## Department of Health

### Division of Community and Family Health

#### Proposed Permanent Rules Relating to the WIC Program

##### **DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons**

##### **Request a Hearing, And Notice of Hearing if 25 or More Requests For Hearing Are Received**

##### **Proposed Amendment to Rules Governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program), *Minnesota Rules*, chapter 4617, and Proposed Repeal of *Minnesota Rules*, parts 4617.0037, 4617.0040, 4617.0042, and 4617.0043**

Introduction. The Department of Health 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 December 22, 2004, a public hearing will be held in the Mississippi Room of the Minnesota Department of Health Service Center, 1645 Energy Park Drive, St. Paul, Minnesota 55108, starting at 9:30 a.m. on Tuesday, January 4, 2005. 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 December 22, 2004, and before January 4, 2005.

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: Paula Bastian, Legal Unit, Minnesota Department of Health, 85 East Seventh Place, Suite 400, P.O. Box 64882, St. Paul, Minnesota 55164-0882, Telephone: (651) 284-0634, FAX: (651) 215-8831, E-mail: [wicrules@health.state.mn.us](mailto:wicrules@health.state.mn.us). TTY users may call the Department of Health at (651) 215-8980.

Subject of Rules and Statutory Authority. The proposed rules are about the Minnesota WIC Program. The Department of Health is proposing to change rules relating to WIC local agencies and rules relating to WIC retail food and pharmacy vendors. The rule parts proposed for repeal are *Minnesota Rules*, parts 4617.0037, 4617.0040, 4617.0042, and 4617.0043, which all concern WIC local agencies. Part 4617.0037 concerns authorized participation levels. Part 4617.0040 concerns administrative funding. Part 4617.0042 concerns reporting requirements. Part 4617.0043 concerns evaluations and monitoring. The statutory authority to adopt the rules is *Minnesota Statutes*, sections 144.11 and 145.894(k). A copy of the proposed rules is published in the State Register, attached to this notice as mailed, and available on the Department of Health's website at <http://www.health.state.mn.us/rules/wic/index.html>.

Comments. You have until 4:30 p.m. on Wednesday, December 22, 2004, 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 Wednesday, December 22, 2004. 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 January 4, 2004, 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 (651) 284-0634 after December 22, 2004,

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# Proposed Rules

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 George A. Beck is assigned to conduct the hearing. Judge Beck can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone: (612) 341-7601, 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, and is available on the Department of Health's website at <http://www.health.state.mn.us/rules/wic/index.html>. 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.

**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: November 10, 2004

Dianne M. Mandernach  
Commissioner of Health

4617.0002 DEFINITIONS.

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

Subp. 2c. [See repealer.]

Subp. 3. [See repealer.]

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

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

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 5a. **Change of vendor location.** "Change of vendor location" means a change in the business site of a vendor by more than one mile.

# Proposed Rules

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

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

Subp. 7. [See repealer.]

[For text of subps 7a to 9, see M.R.]

Subp. 10. Community health board. "Community health board" ~~means a board established, operating, and eligible for a subsidy under~~ has the meaning given in Minnesota Statutes, sections 145A.09 to 145A.13 section 145A.02, subdivision 5.

Subp. 12. [See repealer.]

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

Subp. 14. [See repealer.]

Subp. 14a. Disqualification. "Disqualification" ~~of a vendor from the Minnesota WIC program means the act of making the vendor, for a period of time, ineligible to participate or apply to participate as a vendor in the Minnesota WIC program~~ has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended.

Subp. 14b. Expired or damaged food. "Expired or damaged food" means a food item which is in stock and available for purchase after ~~the its~~ "sell by," "best if used by," or other date stamped on limiting the sale or use of the food item, is dented, rusted, unlabeled or otherwise ~~damaged~~ defective, has become moldy or otherwise spoiled, or has been recalled by the manufacturer.

[For text of subps 14c to 14e, see M.R.]

Subp. 14f. Health promotion. "Health promotion" means activities intended to reduce the prevalence of risk conditions or behaviors of individuals or communities for the purpose of preventing chronic disease and effecting other definable advances in health status. These activities include the coordination or provision of community organization, regulation, targeted screening, and education, as well as informational and other scientifically supported interventions to foster health by affecting related conditions and behaviors.

[For text of subp 15, see M.R.]

Subp. 16. [See repealer.]

[For text of subps 17 to 17b, see M.R.]

Subp. 18. [See repealer.]

Subp. 19. [See repealer.]

Subp. 19a. Infant formula. "Infant formula" means any food item formulated to replace human breast milk. The term infant formula includes the formulas ~~specified in part 4617.0067, subpart 3, item B, subitems (1) to (4); approved by the commissioner under part 4617.0171~~ and all special infant formulas.

[For text of subp 19b, see M.R.]

Subp. 21. Local agency. "Local agency" has the meaning given it in Code of Federal Regulations, title 7, section 246.2, as amended.

Subp. 22. [See repealer.]

Subp. 23. Migrant farmworker. "Migrant farmworker" has the meaning given it in Code of Federal Regulations, title 7, section 246.2, as amended.

Subp. 24. [See repealer.]

Subp. 25. [See repealer.]

Subp. 26. [See repealer.]

Subp. 27. [See repealer.]

Subp. 28. [See repealer.]

[For text of subp 28a, see M.R.]

Subp. 28b. [See repealer.]

Subp. 28d. Participants. "Participants" has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended.

Subp. 29. [See repealer.]

[For text of subps 30 to 31b, see M.R.]

Subp. 32. [See repealer.]

Subp. 34. [See repealer.]

Subp. 35. [See repealer.]

Subp. 36. [See repealer.]

[For text of subp 36a, see M.R.]

Subp. 37. Proxy. "Proxy" ~~means a participant's legal guardian or a person designated by a participant or legal guardian who obtains a voucher from a local agency or redeems a voucher for a participant~~ has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended.

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[For text of subps 37a and 37b, see M.R.]

Subp. 37c. [See repealer.]

Subp. 37d. [See repealer.]

Subp. 38. [See repealer.]

[For text of subps 39a to 40b, see M.R.]

Subp. 40c. Single investigation. "Single investigation" means all compliance buys, monitoring visits, record reviews, and other investigatory activities conducted in connection with a store or pharmacy until the investigation is complete. The investigation is complete on the earlier of: (1) the date the investigatory file is closed; (2) the date the store or pharmacy is disqualified from the WIC program; (3) the date the commissioner assesses a civil money penalty against the store or pharmacy; ~~or~~ (4) the date the commissioner denies the vendor application of the store or pharmacy; or (5) the date the commissioner terminates the vendor agreement of the store or pharmacy.

Subp. 40d. Special infant formula. "Special infant formula" means any infant formula specified on a voucher, other than the infant formula ~~specified in part 4617.0067, subpart 3, item B, subitems (1) to (4) approved by the commissioner under part 4617.0171.~~

Subp. 40e. Special population. "Special population" means members of populations as defined in Code of Federal Regulations, title 7, section 246.2, as amended.

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

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

Subp. 41. [See repealer.]

Subp. 42. Vendor. "Vendor" ~~means a retail food store, a pharmacy, or a store which is both a retail food store and pharmacy, which has been authorized by the commissioner to provide WIC-allowed foods to WIC customers in exchange for vouchers~~ has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended.

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

[For text of subp 42b, see M.R.]

Subp. 42c. Vendor overcharge. "Vendor overcharge" has the meaning given in Code of Federal Regulations, title 7, section 246.2, as amended.

[For text of subps 43 to 44b, see M.R.]

Subp. 44c. WIC cashier trainer. "WIC cashier trainer" means the employee or other representative of a vendor who is, or, in the case of a vendor applicant, who will be, responsible for training the vendor's cashiers in properly transacting WIC vouchers.

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

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

[For text of subps 44f and 45, see M.R.]

### 4617.0005 NOTICE OF AVAILABILITY OF WIC PROGRAM FUNDS.

At least once every ~~two federal fiscal~~ five years beginning ~~October~~ January 1, 1987 ~~2006~~, the commissioner shall send a notice of availability of WIC program funds to each agency that has asked the commissioner for the notice and to other interested agencies. The notice of availability must also be published on the Department of Health's Web page or in the State Register at least ~~30~~ 15 days before the ~~application deadline given in date by which the notice of intent required under part 4617.0010, item A, must be submitted to the commissioner.~~ The notice of availability must include:

- A. a description of the WIC program;
- B. the format of the notice of intent required under part 4617.0010, item A, and the date by which that notice must be submitted to the department;
- C. the date by which the application required under part 4617.0020, subpart 2, must be submitted to the department;
- D. the timetable for the commissioner's review of applications; and
- E. a description of the process used to authorize an agency to become a local agency under part 4617.0020.



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## 4617.0010 APPLICATION FOR WIC PROGRAM FUNDS.

An agency shall apply for WIC program funds according to items A to E.

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

B. ~~Upon~~ After receiving an agency's notice of intent to apply for WIC program funds, the commissioner shall send to that agency an application form and instructions on how to complete the form. The instructions shall include a due date by which the agency shall submit the completed application form to the commissioner. The due date shall be no sooner than 30 days after the date the commissioner sends the application form and instructions.

C. An agency shall apply to administer the WIC program for a geographic area or a special population. ~~A local agency shall not serve a participant who does not live in the geographic area or who is not a member of the special population designated on the application.~~

D. An agency shall submit an application form for WIC program funds no later than the due date specified ~~under part 4617.0005, in the instructions under item E B.~~ All applications must include the name and address of the applicant and, must document that the applicant can meet the eligibility criteria under part 4617.0015, and must include all information requested on the application form that relates to the commissioner's consideration of the application under part 4617.0020.

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

## 4617.0015 AGENCY ELIGIBILITY CRITERIA.

To be eligible for WIC program funds an agency must be able to:

A. ~~provide ongoing, routine pediatric care and ongoing, routine obstetric care directly to recipients, through written agreements with other agencies or private physicians, or through referral to a health provider;~~

B. ~~provide staff sufficient in number and training to perform the duties that must be performed by a competent professional authority: a nutrition education coordinator; a coordinator of the WIC program; a person authorized to legally obligate the local agency; and a fiscal manager for the local agency; and to perform certification, voucher issuance, and nutrition education services for which a competent professional authority is not required;~~

C. ~~provide fiscal and operational systems that are consistent with Code of Federal Regulations, title 7, part 3015;~~

D. ~~provide clinic sites that are located near major concentrations of participants and that are accessible to the handicapped; and~~

E. ~~meet the definition of local agency under Code of Federal Regulations, title 7, section 246.2, as amended;~~

B. comply with all requirements for local agencies under Code of Federal Regulations, title 7, part 246, as amended; and

C. comply with the requirements of a written agreement between a local agency and the commissioner according to part 4617.0030.

## 4617.0020 AGENCY APPLICATION REVIEW AND APPROVAL.

Subpart 1. General procedure. The commissioner shall authorize an agency to administer the WIC program as a local agency by following in order the steps in subparts 2 to 7 ~~9a~~.

Subp. 2. Agency application; review. The commissioner shall, ~~according to the timetable in the notice of availability required by part 4617.0005,~~ review an application to determine whether the agency applicant meets the eligibility criteria in part 4617.0015 and whether the application was submitted according to part 4617.0010.

Subp. 3. Agency application ~~to serve geographic area;~~ approval and disapproval. The commissioner shall approve or disapprove an application ~~to serve a geographic area~~ according to items A to C ~~and subpart 4 G~~.

A. The commissioner shall approve only one application for each geographic area ~~or special population~~.

B. If an application does not document that the agency meets the eligibility criteria in part 4617.0015 or is not submitted according to part 4617.0010, the commissioner shall disapprove the application ~~by not authorizing the applicant to become a local agency~~ except as provided in item C.

C. If an applicant fails to meet a deadline in part 4617.0010 but is the only applicant that meets the eligibility criteria under part 4617.0015 to serve a particular geographic area, the commissioner shall approve the application. If, after the approval of an application under this item, the commissioner receives a subsequent application to serve the same geographic area, the commissioner shall disapprove the subsequent application.

~~E. D.~~ Except as provided in ~~subpart 4 items E and F,~~ the commissioner shall approve an application and authorize the applicant to become a local agency if the application was submitted according to part 4617.0010 and if the application documents that the applicant meets the eligibility criteria under part 4617.0015.

E. If, after disapproving applications under item B, there are two or more remaining applications to serve the same geographic area:

(1) the commissioner shall determine whether any of these remaining applicants is an agency that is or has in the past been a WIC local agency, and, if so, shall determine whether such applicants had significant WIC compliance issues. For purposes of this part, an applicant had significant WIC compliance issues if:

(a) the applicant, while a WIC local agency, committed a violation of this chapter or Code of Federal Regulations, title 7, part 246;  
and

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(b) the commissioner determines that a violation or violations described in unit (a) represents significant WIC compliance issues, based on the following factors:

- i. the number of violations;
- ii. the duration of the violations;
- iii. the impact or potential impact of the violations on participants;
- iv. the frequency of violations;
- v. how long ago the violations occurred;
- vi. the agency's response to technical assistance and training provided by the commissioner in connection with the violations; and
- vii. the adequacy of the agency's staff to avoid future violations, both in terms of ratio of staff to participants and in terms of staff qualifications; and

(2) the commissioner shall approve the application with the highest priority according to the following priority system:

(a) except as provided in item F, first priority to a community health board whose jurisdiction under Minnesota Statutes, chapter 145A, is the geographic area that the board is applying to serve;

(b) except as provided in item F, second priority to a community health board that, under one or more contracts between the applicant and another community health board, provides maternal or child health care or health promotion to residents of the geographic area that the board is applying to serve;

(c) except as provided in item F, third priority to any other community health board;

(d) except as provided in item F, fourth priority to a public or private nonprofit health service agency;

(e) except as provided in item F, fifth priority to a public human service agency; and

(f) except as provided in item F, sixth priority to a private nonprofit human service agency.

F. If the agency applicant that has the highest priority under item E had significant WIC compliance issues, as determined according to item E, subitem (1), or if there are two or more applicants with the highest priority under item E, the commissioner shall:

(1) request each applicant to provide to the commissioner information, as specified by the commissioner, that relates to the commissioner's consideration of the factors identified in subitem (2), units (a) to (i). The commissioner shall consider relevant information provided by the applicant unless the commissioner receives the information more than ten business days after the date of the commissioner's request; and

(2) determine which of the applications to approve based on the following factors:

(a) each applicant's ability to continue meeting the WIC program needs that are currently being met in the area;

(b) each applicant's ability to meet any unmet WIC program needs in the area, including language skills of the applicant's staff, use of interpreters, and the staff's knowledge of cultures and health practices. For purposes of this unit, "unmet WIC program needs" in an area includes both:

i. WIC program needs in the area that are not being met at the time of the application; and

ii. WIC program needs in the area that are anticipated to be unmet during the time for which the applicant is applying to be a local agency;

(c) the relative benefits to the population to be served;

(d) each applicant's experience with the WIC program, other maternal and child health programs, and other public health programs;

(e) each applicant's experience with coordinating and ability to coordinate WIC program benefits with benefits from other health or human service programs;

(f) the proposed sites at which each applicant will deliver WIC services;

(g) the results of any financial and administrative reviews of each applicant, conducted by local, state, or federal governmental authorities within five years before the application due date as specified in the instructions for completing the application;

(h) the results of any audits of each applicant, conducted by an independent accounting firm or the state auditor within five years before the application due date as specified in the instructions for completing the application;

(i) the availability of local or other funds or in-kind contributions to supplement the federal funds to be expended by each applicant in administering the WIC program; and

(j) the recommendation, if any, of each community health board whose jurisdiction includes all or part of the geographic area the applicants are applying to serve and each community health board's rationale for its recommendation.

G. For purposes of the priority system under item E, an agency must be classified as a health service agency or as a human service agency, based on the type of services it primarily provides during its current fiscal year. An agency must not be simultaneously classified as a health service agency and a human service agency. The commissioner shall consider an agency to be a health service agency if more than 50 percent of expenses in an agency's budget are allocated to non-WIC program health promotion or health care and if more than 50 percent of the agency's employee work hours are non-WIC program health promotion or health care.

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

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Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

Subp. 9a. Agency application to serve special population; approval and disapproval. For purposes of this subpart, “unmet WIC program needs” in a special population includes both: (i) WIC program needs in the special population that are not being met at the time of the application; and (ii) WIC program needs in the special population that are anticipated to be unmet during the time for which the applicant is applying to be a local agency. The commissioner shall approve or disapprove an application to serve a special population according to items A to E.

A. If the application does not document that the agency meets the eligibility criteria in part 4617.0015 or is not submitted according to part 4617.0010, the commissioner shall disapprove the application.

B. If the applicant is eligible for funds directly from the United States Department of Agriculture to fund the applicant to provide WIC services to the special population and if the application has not been disapproved under item A, the commissioner shall approve that application and shall disapprove all other applications to serve the same special population.

C. If the application has not been approved or disapproved under item A or B, the commissioner shall disapprove the application if:

(1) the application does not identify unmet WIC program needs in the special population the applicant is applying to serve or does not document how the applicant intends to meet the identified unmet WIC program needs in the special population;

(2) based on all information available to the commissioner, the applicant’s assertion of unmet WIC program needs is incorrect; or

(3) the applicant does not, at the time of the application, provide health promotion or obstetric or pediatric health care.

D. If, after considering applications according to items A to C, there are one or more remaining applications to serve a special population, the commissioner shall:

(1) request information from each applicant that has applied to serve a geographic area that includes the geographic area where some or all of the members of the special population reside, except applicants whose applications have been disapproved. The commissioner shall request that each such applicant submit information that relates to the commissioner’s determinations under subitem (2) and consideration of the factors identified in item E. The commissioner shall consider relevant information provided by the applicants to serve the geographic areas unless the commissioner receives the information more than ten business days after the date of the commissioner’s request; and

(2) determine whether the applicant to serve the special population can better meet the unmet WIC program needs than the applicants to serve the geographic areas. Unless an applicant to serve the special population can better meet the unmet WIC program needs of the special population, the applications to serve the special population shall be denied. If one or more applicants to serve the special population can better meet the unmet WIC program needs of the special population, the commissioner shall approve the application of the applicant that can best meet the unmet WIC program needs of the special population and shall deny all other applications to serve the special population.

E. To determine under item D, subitem (2), whether an applicant can better meet the unmet WIC program needs of a special population and to determine which applicant can best meet the unmet WIC program needs of a special population, the commissioner shall consider the factors listed in subitems (1) to (13). For purposes of subitems (1) to (10), “applicant” means an applicant to serve the special population or an applicant to serve one of the geographic areas involved, except applicants whose applications have been disapproved:

(1) each applicant’s ability to meet any unmet WIC program needs in the special population, including language skills of staff, use of interpreters, and staff’s knowledge of cultures and health practices;

(2) the extent to which the special population is at high risk for health problems related to nutritional deficiencies and the ability of each applicant to meet the needs of the high-risk persons;

(3) each applicant’s ability to continue meeting the WIC program needs that are currently being met in the special population;

(4) the relative benefits to the population to be served;

(5) each applicant’s experience with the WIC program, other maternal and child health programs, and other public health programs;

(6) each applicant’s experience with and ability to coordinate WIC program benefits with benefits from other health or human service programs;

(7) the proposed sites at which each applicant will deliver WIC services;

(8) the results of any financial and administrative reviews of each applicant, conducted by local, state, or federal governmental authorities, within five years before the application due date as specified in the instructions for completing the application;

(9) the results of any audits of each applicant by an independent accounting firm or the state auditor, within five years before the application due date as specified in the instructions for completing the application;

(10) the availability of local or other funds or in-kind contributions to supplement the state and federal funds to be expended by each applicant in administering the WIC program;

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(11) the recommendation, if any, of each community health board whose jurisdiction includes the geographic area where some or all of the members of the special population reside and each community health board's rationale for its recommendation;

(12) whether the applicant to serve the special population consulted with the existing WIC local agency serving the geographic area about the unmet WIC program needs in the special population, and how the existing WIC local agency responded; and

(13) the financial impact on administrative resources of approving the application to serve the special population.

Subp. 10. Notice of approval or disapproval. Within ~~30~~ 90 days after receiving a complete application, the commissioner shall give written notice to an agency that the commissioner has approved or disapproved its application. A notice of approval or disapproval must state:

A. that an application is:

~~(1) approved as originally submitted;~~

~~(2) approved with changes; or~~

~~(3) disapproved because of inadequate WIC program funds for WIC program expansion or initiation;~~

~~(4) disapproved because the agency does not meet the application requirements; or~~

~~(5) disapproved because the commissioner has approved another agency under subpart 6 or 7;~~

B. A notice of disapproval must state the reason for the disapproval and must state that an the agency applicant may appeal a the disapproval according to part 4617.0100 ~~and.~~

C. that an agency that is disapproved because of inadequate program funds must be approved if funds become available during the period for which the agency is applying.

Subp. 11. [See repealer.]

### 4617.0025 DISQUALIFICATION.

The commissioner shall stop providing WIC program funds to a local agency if the local agency does not comply with parts 4617.0002 to 4617.0174 or with Code of Federal Regulations, title 7, part 246, as amended. A local agency shall reimburse the commissioner for WIC program funds that are not distributed according to this chapter.

### 4617.0030 LOCAL AGENCY ~~CONTRACTS AND~~ AGREEMENTS.

Subpart 1. State ~~contracts~~ agreements. To administer the WIC program, a local agency must have a written ~~contract~~ agreement with the commissioner. The ~~contract~~ agreement must:

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

B. contain the provisions required by Code of Federal Regulations, title 7, section 246.6, paragraph (b), as amended;

C. be consistent with this chapter and Code of Federal Regulations, title 7, part 246, as amended;

D. contain a nondiscrimination clause regarding employment practices and the delivery of program benefits to eligible or potentially eligible participants that is consistent with the following statutes and the regulations adopted under them:

(1) Title VI of the Civil Rights Act of 1964, United States Code, title 42, sections 2000d to 2000d4a, as amended;

(2) Title IX of the Education Amendments of 1972, United States Code, title 20, sections 1681 to 1688, as amended;

(3) section 504 of the Rehabilitation Act of 1973, United States Code, title 29, section 794, as amended;

(4) the Age Discrimination Act of 1975, United States Code, title 42, sections 6101 to 6107, as amended; and

(5) the Americans with Disabilities Act of 1990, United States Code, title 42, sections 12101 to 12213, as amended;

[For text of items E and F, see M.R.]

G. specify beginning and ending dates of the ~~contract~~ agreement; and

H. contain a statement that the local agency agrees to develop a nutrition education plan which:

(1) is consistent with Code of Federal Regulations, title 7, section 246.11, paragraph (d)(2), as amended;

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

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

### 4617.0065 VENDOR APPLICATION PROCESS.

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

Subp. 2. Application.

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

[For text of subitems (1) to (5), see M.R.]

(6) the specific WIC-approved foods stocked by the applicant and the applicant's shelf prices at the time of application for those WIC-approved foods;

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~~(7)~~ the applicant's food stamp authorization number;

~~(8)~~ if the commissioner has given notice to vendors under part 4617.0090, subpart 1a, the name of the bank, the bank's routing number, and the bank account number of the bank account into which the applicant will deposit WIC vouchers;

~~(9)~~ information on where the applicant will, if approved as a vendor, have available for immediate review by WIC program representatives the store's original documentation, including receipts and invoices, reflecting all purchases of WIC-allowed food items by the store during the most recent three months, as required in part 4617.0068, subpart 4a;

~~(6)~~ ~~(10)~~ other information requested by the commissioner which relates to whether the applicant is in compliance with all applicable vendor eligibility requirements in part 4617.0067; and

~~(7)~~ ~~(11)~~ the signature of an authorized representative of the applicant, attesting that the information in the application is true and correct to the best of the authorized representative's knowledge and belief.

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

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

~~(a)~~ if the applicant is located in Minnesota:

i. a copy of the Minnesota food handler license for the store, as required by Minnesota Statutes, section 28A.04; or

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

~~(b)~~ a copy of all other government licenses required by part 4617.0067, subpart 2, item B, subitem ~~(2)~~ (1), or if the store has applied for but not yet received all of the government licenses, a copy of all licenses received and the receipts for all licenses not yet received.

[For text of subitem (2), see M.R.]

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

Subp. 3. Submission time frames for applications.

A. ~~The commissioner must receive a vendor's deadline for a vendor to submit a complete reauthorization application on or before the first business day of the applicable regional review period specified in subpart 4 is five months before the ending date of the vendor applicant's existing vendor agreement. If the commissioner receives the complete reauthorization application after the first business day of the applicable regional review period more than 30 days after the deadline, the vendor applicant's existing vendor agreement may expire before the commissioner approves or disapproves the reauthorization application. If the commissioner receives the complete reauthorization application after the applicant's most recent vendor agreement has expired, the commissioner shall treat the application as an application from a vendor applicant that is not a current vendor.~~

B. ~~Except as provided in item C, a pharmacy vendor applicant that is not a current pharmacy vendor may submit a pharmacy vendor application to the commissioner at any time, except that a retail food store or pharmacy whose vendor application has been disapproved cannot submit a new vendor application until one year after the date of the written notice of disapproval.~~

C. ~~A pharmacy vendor applicant may not submit more than one pharmacy vendor application in any 12-month period, other than an application for an immediate vendor agreement under part 4617.0066, subpart 3. The commissioner shall return any additional applications to the applicant without approval or disapproval.~~

D. ~~Except as provided in item E, a retail food vendor applicant that is not a current retail food vendor may submit a retail food vendor application to the commissioner at any time.~~

E. ~~A retail food vendor applicant may not submit more than one retail food vendor application in any 12-month period, other than an application for an immediate vendor agreement under part 4617.0066, subpart 3. The commissioner shall return any additional applications to the applicant without approval or disapproval.~~

Subp. 4. [See repealer.]

Subp. 5. Application review and approval process. The commissioner shall, in accordance with this subpart, review vendor applications except applications ~~submitted too early under subpart 3, item B returned to the vendor applicant under subpart 3, item C or E.~~

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

(1) If the commissioner determines during the initial office review of the application that the application is incomplete, the commissioner shall contact the applicant and give the applicant an opportunity to submit complete information, unless subitem (2) applies. If the commissioner does not receive complete information within ~~two months~~ 30 days after the commissioner first contacts the applicant for complete information, the commissioner shall disapprove the application.

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

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

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



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~~(b) if the applicant is not a vendor or if the applicant is a retail food vendor, the commissioner shall conduct an on-site inspection according to item B. If the commissioner determines during the initial office review of the application that the applicant does not meet an applicable eligibility requirement in part 4617.0067, subpart 3: 4, item D or H; or 5, the commissioner shall contact the applicant and give the applicant one opportunity to submit corrected information. If the commissioner does not receive a response from the applicant within 30 days after the commissioner first contacts the applicant for corrected information, the commissioner shall disapprove the application.~~

~~B. If the application is a reauthorization application and is not disapproved under item A, and if the complete or corrected application meets all applicable eligibility requirements under part 4617.0067, the commissioner shall approve the application.~~

~~B- C. When required by item A, subitem (3) If the application is not a reauthorization application and is not disapproved under item A, the commissioner shall conduct an on-site inspection of the applicant to verify the information in the application and to verify that the applicant is in full compliance with part 4617.0067:~~

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

~~(a) if the applicant is a retail food vendor applicant:~~

~~i. the commissioner shall notify the applicant in writing that of the ways in which the applicant has ten business days from the date of the written notice to bring the applicant into was not in full compliance with part 4617.0067;~~

~~ii. within 30 days after the date of the commissioner's written notice, the applicant must notify the commissioner in writing that the applicant has been brought into full compliance with part 4617.0067; and~~

~~iii. after receiving the applicant's written notice, the commissioner shall conduct a second on-site inspection no sooner than 11 business days after the date of this written notice; or~~

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

~~[For text of subitems (2) to (4), see M.R.]~~

~~(5) If the commissioner does not receive in a timely manner the notice required by subitem (1), unit (a), subunit ii, the commissioner shall disapprove the application.~~

~~Subp. 6. Notification of status of application.~~

~~A. The commissioner shall, in writing, inform each vendor that has submitted a complete reauthorization application of the commissioner's approval or disapproval of the application by the later of:~~

~~(1) the last day of the applicable regional review period next April 1 after the commissioner received the complete reauthorization application; or~~

~~(2) four months after the commissioner received the complete and, if applicable, corrected reauthorization application.~~

~~B. For a vendor application that is not a reauthorization application, the commissioner shall inform the vendor applicant in writing of the commissioner's approval or disapproval of the application within no later than four months after the commissioner received the complete and, if applicable, corrected application.~~

~~C. If the commissioner disapproves an application under subpart 5, item A, subitem (1) or (3), the commissioner must notify the vendor applicant of the commissioner's disapproval of the application within four months after the commissioner first requests the complete or corrected information from the vendor applicant.~~

~~D. A notice of disapproval must state the reasons for the commissioner's disapproval.~~

~~Subp. 7. Mandatory training of vendor representative.~~

~~A. If a vendor's application is approved After submitting an application and before the commissioner executes a new vendor agreement under subpart 8, at least one representative of that each vendor applicant must complete WIC-approved training, sign a training verification form provided by the commissioner to verify completion of the WIC-approved training, and submit this signed training verification form to the commissioner.~~

~~B. Item A does not apply if:~~

~~(1) a representative of the vendor applicant has completed WIC-approved training within two years before the commissioner's deadline under subpart 6 for notifying the applicant of the approval or disapproval of the application;~~

~~(2) the representative has signed and submitted to the commissioner a training verification form provided by the commissioner to verify completion of the training; and~~

~~(3) the vendor application is not from an applicant that is applying after being disqualified from the WIC program for three months or more.~~

~~Subp. 8. Execution of vendor agreement.~~

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

~~(1) verify that the applicant has complied with subpart 7;~~

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- ~~(1)~~ (2) execute the vendor agreement; and
- ~~(2)~~ (3) issue the applicant a vendor stamp unless the applicant already has a valid vendor stamp.

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

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

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

~~B. a reauthorization applicant does not comply with all applicable requirements in part 4617.0067 at any time between the commissioner's receipt of the complete and corrected application and the commissioner's execution of a new vendor agreement;~~

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

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

- (1) on the application; or
- (2) in any other manner after the application is submitted but before the commissioner's execution of a new vendor agreement; ~~or~~

~~E. the applicant does not comply with subpart 7.~~

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

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

Subp. 2. Effect of ~~change of ownership changes~~. If there is a change of vendor ownership, a change of vendor location, or a cessation of operations:

A. ~~the vendor agreement commissioner shall be immediately null and void terminate the vendor agreement~~ with respect to that vendor;

~~B. the termination of the vendor agreement is effective on the later of:~~

- ~~(1) 15 days after the commissioner mails written notice of termination; or~~
- ~~(2) the effective date of the change of vendor ownership, change of vendor location, or cessation of operations;~~

~~B. C.~~ the vendor stamp for that vendor must be returned to the commissioner within five ~~business~~ days after the effective date of the ~~change~~ termination of the vendor agreement; and

~~C. D.~~ if the vendor agreement in effect before the change includes one or more other vendors that have not changed ownership ~~or location and have not ceased operations~~, a duly authorized agent of each of the other vendors shall execute, by the effective date of the change, an amended vendor agreement that does not include ~~the any~~ vendor that changed ownership ~~or location or ceased operations~~.

Subp. 3. Immediate vendor agreement. If there is a change of vendor ownership ~~or location~~, the retail food store or pharmacy ~~which had been a vendor before the change~~ may apply for an immediate vendor agreement under this subpart.

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

~~B. A retail food store or pharmacy may not submit more than one application for an immediate vendor agreement each calendar year. The commissioner shall return any additional applications to the applicant without approval or disapproval.~~

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

(1) ~~the vendor applicant retail food store or pharmacy, during the two years immediately preceding the change of ownership or location, had no history of violations under part 4617.0084 and no history of any Class A or Class B violations under Minnesota Rules 1997, part 4617.0086, subpart 5, 6, 7, or 8;~~

~~(2) during the two years immediately preceding the change of ownership or location, no controlling person of the vendor applicant was a controlling person of another retail food store or pharmacy that committed a violation under part 4617.0084, subpart 5, 6, 7, or 8;~~

~~(2)~~ (3) the vendor applicant has not accepted and has not held itself out as able to accept a WIC voucher at any time when there was not a fully executed vendor agreement in effect between the applicant and the commissioner;

~~(3)~~ (4) the vendor applicant meets all applicable eligibility requirements under part 4617.0067; ~~and~~

~~(4)~~ (5) within ~~two years~~ one year before the change of ownership ~~or location~~, a representative of the vendor applicant:

~~(a) completed WIC-approved training under part 4617.0065, subpart 7, or 4617.0068, subpart 7; and~~

~~(b) signed and submitted to the commissioner the corresponding training verification form.~~

~~(6) the WIC cashier trainer of the vendor applicant is the same as the WIC cashier trainer of the retail food store or pharmacy before the change of ownership or location.~~

~~C. D.~~ If a retail food store or pharmacy ~~which that~~ is applying for an immediate vendor agreement does not meet all the requirements in item ~~B~~ C, the commissioner shall review the application according to part 4617.0065, subparts ~~5, 7,~~ and 9. If the commissioner approves the application under part 4617.0065, then part 4617.0065, ~~subparts 7 and~~ subpart 8, shall apply.

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

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

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

### 4617.0067 VENDOR ELIGIBILITY REQUIREMENTS.

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

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

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

B. A retail food vendor must be licensed by:

~~(1) the Minnesota commissioner of agriculture according to Minnesota Statutes, chapter 28A, if the vendor is located in Minnesota; and~~

~~(2) be licensed by all other government entities, such as the city government, that require a license before for the vendor can to be open to the public for business; and~~

~~(2) be authorized by the United States Department of Agriculture to accept food stamps.~~

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

Subp. 3. Minimum instock food requirements for retail food vendors.

A. A retail food vendor located in a Tier 2 county shall at all times have in stock and available for purchase, at a minimum:

~~(1) the following infant formula:~~

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

~~(b) nine except as provided in item D, ten containers of milk-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171, and nine containers of soy-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;~~

~~(2) 24 ounces of WIC-allowed plain, dry, infant cereal;~~

~~(3) 60 ounces of pure, unsweetened, WIC-allowed infant juice;~~

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

~~(a) skim or nonfat;~~

~~(b) one percent milkfat;~~

~~(c) two percent milkfat; and~~

~~(d) whole;~~

~~(5) (4) three four pounds of WIC-allowed domestic cheese in packages of at least one-half pound each, in any combination of at least two varieties;~~

~~(6) (5) four one-dozen containers of WIC-allowed fresh eggs;~~

~~(7) (6) 28 ounces three 14- to 16-ounce packages of WIC-allowed dried legumes, which do not contain any added ingredients;~~

~~(8) (7) 36 ounces three 16- to 18-ounce containers of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam, or chocolate;~~

~~(9) (8) two pounds of WIC-allowed fresh or frozen carrots, or canned carrots packed in water;~~

~~(10) (9) 26 ounces four six-ounce containers of WIC-allowed canned tuna fish;~~

~~(11) (10) three 12 containers of any combination of the following, as long as at least four containers are 100 percent citrus juice:~~

~~(a) 11.5 to 12-ounce containers of WIC-allowed pure and unsweetened frozen or nonfrozen concentrate 100 percent citrus juice; or~~

~~(b) 46-ounce containers of WIC-allowed pure and unsweetened 100 percent citrus juice; and~~

~~(12) three containers of any combination of the following:~~

~~(a) 11.5 to 12-ounce containers of WIC-allowed pure and unsweetened frozen or nonfrozen concentrate juice which is not 100 percent citrus juice; or~~

~~(b) 46-ounce containers of WIC-allowed pure and unsweetened juice which is not 100 percent citrus juice; and~~

~~(13) (11) 72 ounces nine boxes or bags of WIC-allowed cereal in any combination of at least four five varieties.~~

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

~~(1) except as provided in item D, 31 containers of milk-based concentrated infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;~~

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

~~(3) nine containers except as provided in item D, 15 containers of milk-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;~~

~~(4) (3) nine except as provided in item D, ten containers of soy-based powdered infant formula of the brand, size, and level of iron fortification approved by the commissioner under part 4617.0171;~~

~~(5) (4) 48 ounces of WIC-allowed plain, dry, infant cereal;~~

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

~~(7) (5) 15 gallons of unsweetened, unflavored, WIC-allowed fluid cow's milk in gallon or half-gallon containers in any combination of at least two of the following varieties:~~

~~(a) skim or nonfat;~~

~~(b) 1 percent milkfat;~~

~~(c) 2 percent milkfat; and~~

~~(d) whole;~~

~~(8) (6) four six pounds of WIC-allowed domestic cheese in packages of at least one-half pound each, in any combination of at least two three varieties;~~

~~(9) (7) six one-dozen containers of WIC-allowed fresh eggs;~~

~~(10) (8) 42 ounces four 14 to 16-ounce packages of WIC-allowed dried legumes, which do not contain any added ingredients;~~

~~(11) (9) 54 ounces four 16 to 18-ounce containers of WIC-allowed peanut butter which does not contain any other food product such as jelly, jam, or chocolate;~~

~~(12) (10) two pounds of WIC-allowed fresh or frozen carrots, or canned carrots packed in water;~~

~~(13) (11) 26 ounces four six ounce containers of WIC-allowed canned tuna fish;~~

~~(14) (12) six 18 containers of any combination of the following, as long as at least six containers are 100 percent citrus juice:~~

~~(a) 11.5- to 12-ounce containers of WIC-allowed pure and unsweetened frozen or nonfrozen concentrate 100 percent citrus juice; or~~

~~(b) 46-ounce containers of WIC-allowed pure and unsweetened 100 percent citrus juice;~~

~~(15) six containers of any combination of the following:~~

~~(a) 11.5 to 12-ounce containers of WIC-allowed pure and unsweetened frozen or nonfrozen concentrate juice which is not 100 percent citrus juice; or~~

~~(b) 46-ounce containers of WIC-allowed pure and unsweetened, juice which is not 100 percent citrus juice; and~~

~~(16) (13) 108 ounces 12 boxes or bags of WIC-allowed cereal in any combination of at least four six varieties.~~

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

D. If the vendor has been a vendor for more than six months and, during the most recent six months for which data are available, has not redeemed any voucher for a particular type of infant formula, the vendor does not need to maintain in stock and available for purchase any of that type of infant formula.

E. If a WIC customer requests a prescribed infant formula approved by the commissioner under part 4617.0171, the vendor must ensure that the requested formula is in stock and available for purchase at the vendor's location within one week of the WIC customer's request.

Subp. 4. Additional requirements. A vendor shall comply with the following requirements:

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

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

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

(2) is employed by the a local agency in whose jurisdiction the vendor is located a capacity that allows the employee access to WIC vouchers; or

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

F. At each check-out lane, a vendor must use a cash register that generates receipts including the date, the total price, and the price of each item received by the customer.

G. The vendor must be open for business at least 40 hours each week and must be open during the hours specified in the vendor's most recent vendor application.

Subp. 5. Vendor prices. A retail food vendor's total price for the minimum amount each of the authorized foods in subpart 3, item A, must not be more than 120 115 percent of the average price charged by retail food vendors. The commissioner shall determine the average price charged by retail food vendors based on the most recent price information available to the commissioner on prices charged by a statistically significant sample of retail food vendors. An increase in the manufacturer's price of an authorized food in subpart 3 is grounds for the commissioner to increase the commissioner's calculation of the average price charged by retail food vendors. If the

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commissioner determines that there is a religious need for a vendor to charge a specific price greater than ~~120~~ 115 percent of the average price charged by retail food vendors, the vendor may charge that specific price.

Subp. 6. Special requirements for vendor applicants.

A. Within ~~the three years~~ one year immediately preceding the date the commissioner received the vendor application, and at any time on or after the date the commissioner received the application, an applicant must not have accepted a WIC voucher when the applicant did not have a fully executed vendor agreement, unless the voucher was never paid by the WIC program's bank.

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

C. This item applies only to vendor applicants that are not vendors on the date the commissioner receives the application.

(1) The vendor applicant must not have as a controlling person someone who is, or has been, within the year immediately preceding the date the commissioner receives the vendor application, a controlling person of another retail food store or pharmacy at any location in the United States which:

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

(d) within ~~three years~~ one year before the date the commissioner received the vendor application or at any time on or after the date the commissioner received the application, accepted a voucher when the retail store or pharmacy did not have a fully executed vendor agreement and the voucher was then paid by the WIC program's bank.

[For text of subitem (2), see M.R.]

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

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

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

~~This item does not apply if the applicant is the only vendor in a clinic town. The vendor applicant must not have as a controlling person someone who was, at the time of the WIC disqualification or civil money penalty, a controlling person of another retail food store or pharmacy at any location in the United States that was disqualified from the WIC program for six years or more or that received a civil money penalty in lieu of disqualification from the WIC program for six years or more.~~

E. ~~The vendor applicant must not have as a controlling person someone who was, at the time of the food stamp program disqualification or civil money penalty, a controlling person of another retail food store or pharmacy at any location in the United States that:~~

~~(1) was permanently disqualified from the food stamp program; or~~

~~(2) received a civil money penalty in lieu of permanent disqualification from the food stamp program.~~

F. ~~The vendor applicant must have paid all money, including interest, owed to the commissioner under part 4617.0090, subpart 4.~~

G. ~~The previous owner or owners of the retail food store or pharmacy must not have transferred it to the owner or owners of the vendor applicant in an attempt to circumvent a WIC sanction.~~

H. ~~This item applies only to vendor applicants that are vendors on the date the commissioner receives the application. During the most recent 12 months of the current vendor agreement for which information is available, the dollar amount of the vendor applicant's WIC sales must have been 50 percent or less of the vendor applicant's total food sales.~~

### 4617.0068 OPERATING REQUIREMENTS.

Subpart 1. Acceptance and pricing of vouchers.

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

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

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

~~(3) the date that the voucher is accepted is inserted on the voucher when the voucher is accepted;~~

~~(3) (4) the price of the food purchased with the voucher is inserted in the space provided on the voucher before the WIC customer signs the voucher;~~

~~(4) the price inserted on the voucher is not greater than any maximum price printed on the voucher;~~

~~(5) the price inserted on the voucher reflects a discount in the amount of any store or manufacturer coupons presented by a WIC customer for the food purchased;~~

~~(6) the vendor does not charge the WIC program more for WIC-allowed food than the vendor's usual and customary charge to non-WIC customers;~~

~~(7) the vendor does not charge the WIC program more than the vendor's shelf price for the WIC-allowed food provided to the WIC customer at the time the vendor accepts the voucher in exchange for the food;~~

~~(5) (8) the WIC customer signs the voucher at the time the WIC customer uses the voucher to obtain food;~~



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~~(6)~~ (9) the cashier verifies that the signature of the individual who signs the voucher matches an authorized signature on the WIC ID folder;

~~(7)~~ (10) before deposit in the vendor's bank, the number on the vendor stamp has legibly been imprinted onto the voucher; and

~~(8)~~ (11) the voucher does not contain any alteration of the ~~maximum price~~, first-day-to-use date, last-day-to-use date, or food prescription.

Subp. 2. Deposit of vouchers. A vendor shall deposit each voucher in the vendor's bank within 60 days of the first-day-to-use date on the voucher, except as provided in part 4617.0084, subpart 18, item C. The vendor may only deposit into the vendor's account vouchers which were accepted at a check-out lane at the vendor's business site. The vendor may not transfer any vouchers accepted by the vendor to anyone else for deposit in an account other than the vendor's account.

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

Subp. 4. Three-year documentation of purchases.

A. For a minimum of ~~two~~ three years, a vendor shall maintain, in chronological order:

(1) documentation showing the dollar amount of all food sales by the vendor; and

(2) documentation, including receipts or invoices, showing all purchases by the vendor while a vendor agreement was in effect of all WIC-allowed foods for which the vendor accepted one or more vouchers.

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

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

Subp. 4a. Three-month documentation of purchases. During normal business hours, the vendor must have available for immediate review by WIC program representatives, at the location indicated on the vendor application, the store's original documentation, including receipts and invoices, reflecting all purchases of WIC-allowed food items by the store during the most recent three months before a request by a WIC program representative to review the documentation.

[For text of subps 5 and 6, see M.R.]

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

A. a representative of the vendor completes WIC-approved training on the WIC program at least once every ~~two~~ calendar years; and

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

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

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

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

Subp. 11. Receipts. When a vendor accepts a WIC voucher, the vendor must provide a cash register receipt to the WIC customer. The receipt must include the date, the total price, and the price of each item received by the WIC customer.

Subp. 12. Coupons. A vendor shall accept store and manufacturer's coupons for food purchased by a WIC customer.

Subp. 13. Bank account information. If the commissioner has provided notice under part 4617.0090, subpart 1a, and if there is a change in the vendor's bank name, bank routing number, or bank account number for the account to which the vendor deposits WIC vouchers, the vendor shall promptly inform the commissioner in writing of the change.

Subp. 14. Purchase of infant formula. A vendor shall only purchase infant formula from the entities on the list maintained by the commissioner under section 17(h)(8)(A)(ix) of the Child Nutrition Act of 1966, codified at United States Code, title 42, section 1786(h)(8)(A)(ix), as amended.

## 4617.0070 VENDOR STAMPS.

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

Subp. 1a. Returning vendor stamp. If a vendor is disqualified or terminated under part 4617.0084, the vendor must return the vendor stamp to the commissioner no later than five days after the effective date of the disqualification or termination. ~~In addition to disqualification under part 4617.0084,~~ the vendor must return the vendor stamp to the commissioner within five ~~business~~ days after the earlier of:

(i) the date that the vendor permanently closes the business; (ii) a change of ownership of the vendor; or (iii) the expiration of the vendor's current vendor agreement if the vendor's application is disapproved or if the vendor agreement ends and no subsequent agreement for that vendor is executed.

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

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## 4617.0075 VENDOR AGREEMENTS.

A duly authorized agent of a retail food store or pharmacy which has been approved to be a vendor shall sign and date a vendor agreement. A separate vendor agreement must be signed for each vendor, except that all vendors with identical ownership ~~in a region~~ may elect to be included in one vendor agreement. A vendor agreement must contain:

- A. the names and addresses of all vendors included in the vendor agreement;
- B. the method by which the agreement must be terminated;

C. terms that are consistent with this chapter and Code of Federal Regulations, title 7, ~~sections section~~ 246.12, ~~paragraphs (f)(2), (k)(2)(i), (k)(2)(ii), and (r)(5)(iv), and 278.1,~~ paragraph ~~(e)~~ (h), as amended;

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

E. an ending date that is not more than ~~two~~ three years beyond the beginning date ~~and that is the last day of a regional review period for the region in which the vendor is located.~~

## 4617.0080 MONITORING VENDORS.

The commissioner shall monitor vendors according to the Code of Federal Regulations, title 7, section 246.12, paragraph ~~(i)~~ (j), as amended.

## 4617.0084 VENDOR SANCTIONS.

Subpart 1. Notice of violation. If a violation described in subpart 6, 7, 8, 9, 12, or 13, 13a, or 19 does not result in disqualification or a civil money penalty, the commissioner shall mail or deliver to the vendor a notice of violation.

Subp. 2. Permanent disqualification. The commissioner shall permanently disqualify a vendor if any controlling person of the vendor is criminally convicted of either:

- A. buying or selling one or more vouchers for cash; or
- B. selling any firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended, for one or more vouchers.

Subp. 3. Six-year disqualification. Except as provided in subparts 15 and 16, the commissioner shall disqualify a vendor for six years if the vendor:

- A. buys or sells one or more vouchers for cash; or
- B. sells any firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended, for one or more vouchers.

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

Subp. 5. Redeeming vouchers in excess of inventory. Except as provided in subparts 15 and 16, the commissioner shall disqualify a vendor for three years if, on two occasions within any two-year period, the vendor claims reimbursement for the sale of an amount of a specific supplemental food item during a month and the amount claimed exceeds the store's documented inventory of that supplemental food item by at least 15 units for the month. The two occasions ~~can~~ may be established during a single review of inventory records and may involve two different food items during the same month, two different food items during two different months, or one food item during two different months.

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

Subp. 7. Providing credit or a nonfood item. ~~If a~~

~~A. Except as provided in subparts 15, 16, and 19, the commissioner shall disqualify a vendor for three years if, twice within any two-year period, the vendor provides credit, other than a rain check, or provides a nonfood item, other than any alcohol, alcoholic beverage, tobacco product, cash, firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), then: as amended, in exchange for a voucher.~~

~~A. except as provided in subparts 15 and 16, the commissioner shall disqualify the vendor for three years if the vendor commits the violation twice within any two-year period and neither of the two violations involved providing a rain check;~~

~~B. except as provided in item A and subparts 15 and 16, the commissioner shall disqualify the vendor for three years if the vendor commits the violation three times within any two-year period and only one of the three violations involved providing a rain check; or~~

~~C. B. Except as provided in items A and B and subparts 15 and 16, and 19, the commissioner shall disqualify the a vendor for three years if the vendor commits this violation, four times within any two-year period, the vendor provides a rain check in exchange for a voucher.~~

Subp. 8. Overcharging and charging for food not received.

A. This subpart applies to violations under subitems (1) and (2). The violation described in subitem (1) is distinct from the violation described in subitem (2) and is accumulated separately to determine the number of violations:

(1) ~~charging the WIC program more for WIC-allowed food than the vendor's usual and customary charge to non-WIC customers or charging the WIC program more than the vendor's current shelf price of the food~~ a vendor overcharge; and

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(2) charging the WIC program for WIC-allowed food not received by a WIC customer.

B. Except as provided in subparts 15 ~~and 16, and 19~~, the commissioner shall disqualify the vendor for three years if the vendor commits a violation under item A twice within any two-year period and if:

(1) ~~for each violation involved an overcharge to, the price the WIC program of paid the vendor for the voucher was \$2 or more greater than the correct price for the voucher;~~ and

(2) each violation involved any of the following circumstances:

(a) no price was entered on the voucher at the time it was accepted by the vendor;

(b) the price on the voucher was at any time altered to reflect a price higher than the price originally entered on the voucher; ~~or~~

(c) the price the WIC program paid the vendor for the voucher was more than ~~30~~ 20 percent greater than the correct price for the voucher;

(d) ~~no receipt was provided at the time the voucher was accepted by the vendor;~~

(e) ~~the price for any of the WIC-approved food items obtained with the voucher was not displayed for easy viewing or marked on the food; or~~

(f) ~~the cashier or other store representative asked the WIC customer for any identification other than the WIC ID folder.~~

C. Except as provided in item B and subparts 15 ~~and 16, and 19~~, the commissioner shall disqualify the vendor for three years if the vendor commits a violation under item A three times within any two-year period and if:

(1) ~~for each violation involved an overcharge to, the price the WIC program of paid the vendor for the voucher was \$2 or more greater than the correct price for the voucher;~~ or

(2) two of the violations meet the criteria in item B, subitems (1) and (2).

D. Except as provided in items B and C and subparts 15 ~~and 16, and 19~~, the commissioner shall disqualify the vendor for three years if the vendor commits a violation under item A four times within any two-year period.

Subp. 9. Providing unauthorized food.

A. A vendor shall not provide unauthorized food.

B. Except as provided in subparts 15 ~~and 16, and 19~~, the commissioner shall disqualify the vendor for one year if the vendor violates item A twice within any two-year period and ~~both violations each violation~~ involved providing unauthorized food in exchange for any of the infant formula listed on the voucher, ~~other than substituting another infant formula with the same level of iron fortification.~~

~~C. Except as provided in item B and subparts 15 and 16, the commissioner shall disqualify the vendor for one year if the vendor violates item A three times within any two-year period and if:~~

~~(1) two of the violations involved providing unauthorized food in exchange for any of the infant formula listed on the voucher; or~~

~~(2) all three of the violations involved providing unauthorized food in exchange for any of the juice specified on the voucher and the unauthorized food provided did not include any beverage that is 100 percent juice.~~

~~D. C.~~ Except as provided in ~~items item B and C~~ and subparts 15 ~~and 16, and 19~~, the commissioner shall disqualify the vendor for one year if the vendor violates item A four times within any two-year period.

[For text of subp 10, see M.R.]

Subp. 11. One-year disqualification for one violation. Except as provided in subpart 15, the commissioner shall disqualify the vendor for one year if:

A. the vendor provides false or misleading material information on any document submitted to the commissioner;

B. a controlling person of the vendor commits a business-related violation, unless the business-related violation results in permanent disqualification under subpart 1;

C. the vendor fails to provide as required, by the deadline and in the manner specified by the commissioner, documentation requested by the commissioner under part 4617.0068, subpart 4 or 5;

D. the real estate where the vendor's business is located is not owned or leased by one or more controlling persons of the vendor; ~~or~~

E. during an on-site inspection, the vendor fails to allow the commissioner access to any voucher located on the vendor's premises or to any cash register or other area of the vendor's premises where vouchers may be located; ~~or~~

F. ~~the vendor violates part 4617.0068, subpart 14.~~

Subp. 12. ~~Six-month~~ One-year disqualification for two violations.

A. This subpart applies to the violations described in subitems (1) to ~~(5)~~ (6). Violations described in each subitem are accumulated separately to determine the number of violations:

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

(3) altering the ~~maximum price~~, first-day-to-use date, last-day-to-use date, or food prescription on a voucher or signing a voucher that the vendor has accepted without a signature;

(4) offering an incentive for a WIC customer to redeem a voucher at the vendor's business site or advertising that the vendor would provide such an incentive; ~~and~~

(5) allowing a WIC customer to return or exchange any infant formula bought with a voucher, unless the customer is exchanging

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infant formula that is expired or damaged food for the identical size, type, brand, and level of iron fortification; and

(6) the vendor fails to provide as required, by the deadline and in the manner specified by the commissioner, documentation requested by the commissioner under part 4617.0068, subpart 4a.

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

Subp. 13. ~~Three-month~~ Six-month disqualification for ~~three~~ two violations.

A. This subpart applies to the violations described in subitems (1) to ~~(6)~~ (5). Violations described in each subitem are accumulated separately to determine the number of violations:

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

(4) except as provided in subpart 12, item A, subitem (5), allowing a customer to return or exchange any food bought with a voucher, unless the customer is exchanging expired or damaged food for the identical size and type of food; and

(5) accepting a voucher on which the ~~maximum price~~, last-day-to-use date, first-day-to-use date, or food prescription has been altered; and

~~(6) failing to verify that the signature of the individual who signs the voucher matches an authorized signature on the WIC ID folder.~~

B. Except as provided in subpart 15, the commissioner shall disqualify the vendor for ~~three~~ six months if the vendor commits a violation under item A ~~three times~~ twice within any two-year period.

Subp. 13a. Three-month disqualification for three violations.

A. This subpart applies to the violations described in subitems (1) to (4). Violations described in each subitem are accumulated separately to determine the number of violations:

(1) failing to verify that the signature of the individual who signs the voucher matches an authorized signature on the WIC ID folder;

(2) failing to accept a manufacturer's coupon for any food obtained by a WIC customer in exchange for a WIC voucher or failing to discount the price inserted on the voucher by the amount of the coupon;

(3) failing to provide to a WIC customer a cash register receipt that includes the date, total price, and price of each item purchased by the WIC customer; and

(4) failing to provide the commissioner with accurate and complete shelf price survey information within one month of a request by the commissioner.

B. Except as provided in subpart 15, the commissioner shall disqualify the vendor for three months if the vendor commits a violation under item A three times within any two-year period.

Subp. 14. [See repealer.]

Subp. 14a. Written warnings; termination.

A. The commissioner shall terminate a vendor agreement if:

(1) the commissioner disqualifies the vendor; or

(2) termination of the vendor agreement is required under part 4617.0066, subpart 2.

B. If a vendor commits a violation under subitems (1) to (11), the commissioner shall issue a written warning to the vendor. The vendor must correct the violation within 15 days after the vendor receives the warning. If the vendor fails to correct the violation or commits the same violation at any time more than 15 days but less than six months after receiving the written warning, the commissioner shall terminate the vendor agreement. The commissioner shall issue a written warning if the vendor:

(1) violates part 4617.0067, subpart 4, item A, B, C, D, or E, or 5; or 4617.0068, subpart 4a;

(2) is a retail food vendor and any license or authorization required under part 4617.0067, subpart 2, item B, is suspended or revoked or is not renewed;

(3) is a pharmacy vendor and the vendor's Minnesota Board of Pharmacy registration is suspended or revoked or is not renewed;

(4) with respect to two or more food items, fails to ensure that the price charged for each WIC-allowed food stocked by the vendor is displayed for easy viewing or marked on the food;

(5) is a retail food vendor that fails to maintain the required minimum stock under part 4617.0067, subpart 3;

(6) on two occasions, fails to ensure that a prescribed infant formula is in stock and available for purchase within one week of a WIC customer's request under part 4617.0067, subpart 3, item E;

(7) fails to ensure that a representative of the vendor receives WIC-approved training at least once every year;

(8) fails to make full payment to the commissioner within 60 days of a request by the commissioner under part 4617.0090, subpart 4;

(9) has in stock and available for purchase any expired infant formula of the brand and level of iron fortification approved by the commissioner under part 4617.0171;

(10) is a pharmacy vendor, is not also a retail food vendor, and accepts a WIC voucher for any foods other than infant formula, infant cereal, and juice; or

(11) fails to be open for business during the hours specified on the vendor's most recent vendor application.

Subp. 15. Inadequate participant access; corrective action plan.

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

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D. If the commissioner determines under this part that disqualification of the vendor would result in inadequate participant access, then instead of disqualifying the vendor, the commissioner shall, except as provided in item F and in subpart 16, item C, impose on the vendor one or more civil money penalties.

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

(3) For each violation described in subparts 11 to ~~14~~ 14a, the civil money penalty is \$700 or the average monthly amount of the vendor's WIC redemptions during the most recent 12 months for which voucher redemption information is available for the commissioner's review, whichever is less.

(4) The total amount of all civil money penalties imposed for violations investigated as part of a single investigation shall not exceed \$40,000.

[For text of items E and F, see M.R.]

G. If the commissioner imposes a civil money penalty on a vendor, the commissioner shall also require the vendor to create and implement a corrective action plan to prevent future violations. The corrective action plan must be in writing. The vendor must provide the corrective action plan to the commissioner no later than 30 days after the date of the notice of assessment.

Subp. 16. Second and subsequent sanctions.

A. For the purpose of this subpart, "federally mandated sanction" means any disqualification or civil money penalty assessed based on this subpart or the violations described in subparts 3 to 9 and 19.

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

Subp. 17. Multiple violations.

A. If, during a single investigation, a vendor commits multiple violations that warrant disqualification, then:

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

(3) if disqualification under subparts 2 to 9 or subpart 10, item A, ~~or 19~~ is not upheld on appeal and the vendor has also committed one or more violations warranting disqualification under subpart 10, item B, or subparts 11 to ~~14~~ 14a, the commissioner shall disqualify the vendor for the period corresponding to the most serious violation described in subpart 10, item B, or subparts 11 to ~~14~~ 14a, except as provided in subpart 15.

B. For the purpose of this subpart, a violation warranting disqualification that is described in subparts 2 to 9 or subpart 10, item A, ~~or 19~~ shall be considered more serious than any violation warranting disqualification that is described in subpart 10, item B, or in subparts 11 to ~~14~~ 14a.

Subp. 18. General provisions.

A. ~~Except for a violation of subpart 2, a vendor commits a violation described in subparts 3 to 9, 11 to 13, or 14, item A, subitem (3), (5), (6), or (7), of this part if any controlling person, employee, or agent of the vendor committed the described conduct.~~

B. The commissioner shall notify a vendor in writing of the vendor's disqualification and of the vendor's termination. The written notice shall include all information required by federal regulations. If a disqualification is based on subpart 2, the disqualification shall be effective on the date the vendor receives the written notice of disqualification. If a disqualification is based on any subpart other than subpart 2, the disqualification shall be effective 30 days after the date the written notice of disqualification is mailed. If a termination is based on subpart 14a, item A, subitem (1), the termination shall be effective on the same date that the disqualification is effective. If a termination is based on subpart 14a, item B, the termination shall be effective 30 days after the date the written notice of termination is mailed.

C. A retail food store or pharmacy that has been disqualified or terminated must deposit each voucher in the store's or pharmacy's bank account by the earlier of:

(1) 60 days after the first-day-to-use date on the voucher; or

(2) five days after the effective date of the disqualification or termination.

~~D.~~ D. After expiration of the disqualification period, a disqualified vendor may apply for WIC vendor authorization. A retail food store or pharmacy that has been terminated but not disqualified as a WIC vendor may apply for WIC vendor authorization no sooner than two months after the effective date of the termination, except that a retail food vendor terminated under part 4617.0066, subpart 2, may apply for an immediate vendor agreement under part 4617.0066, subpart 3.

~~E.~~ E. A vendor may not terminate the vendor's WIC vendor agreement or otherwise withdraw from the WIC program instead of disqualification. The expiration or termination of the vendor agreement or the rendering of the vendor agreement null and void under part 4617.0066 shall not affect the commissioner's duty to disqualify the vendor and shall not affect the vendor's right to appeal the disqualification under part 4617.0100.

~~F.~~ F. If a violation involves a vendor's acceptance of a voucher, the violation occurs on the date the vendor accepts the voucher.

G. If a vendor provides food in exchange for a voucher under circumstances where the vendor informs the WIC customer that the customer may return the food for cash or a nonfood item and if the WIC customer subsequently does return the food for cash or a nonfood item, the vendor shall be sanctioned in the same way as if the vendor had provided the cash or nonfood item directly to the WIC customer in exchange for the voucher.



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## Proposed Rules

Subp. 19. Previous history of disqualification. Notwithstanding subparts 7 to 9, if a vendor was previously disqualified under this subpart or subparts 3 to 10, and if any controlling person of the vendor was a controlling person at the time of the previous disqualification, except as provided in subparts 15 and 16, the commissioner shall disqualify the vendor for:

A. three years if, twice within any two-year period, the vendor provides credit other than a rain check or a nonfood item other than any alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, as defined under the federal Controlled Substances Act, United States Code, title 21, section 802, clause (6), as amended;

B. three years if the vendor commits a vendor overcharge twice within any two-year period;

C. three years if, twice within any two-year period, the vendor charges the WIC program for WIC-allowed food not received by a WIC customer; and

D. one year if the vendor provides unauthorized food twice within any two-year period.

### 4617.0088 MAXIMUM PRICES OF VOUCHERS.

Subpart 1. Calculation of maximum prices. Beginning no sooner than ~~November 18, 1997~~, October 1, 2005, the commissioner shall calculate a maximum price ~~shall be printed on~~ for each computer-generated voucher. The maximum price shall not be printed on the voucher. The maximum price shall be the sum of the maximum prices of all products on the voucher. The maximum price for each food product, other than special infant formula, shall be ~~120~~ 115 percent of the average price of the food product. The commissioner shall compute an average price for each food product listed on a voucher, other than special infant formula, based on the most recent vendor price survey information available to the commissioner on prices charged by a statistically significant sample of vendors. The maximum price for each special infant formula is 130 percent of the manufacturer's list price for that special infant formula.

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

Subp. 3. [See repealer.]

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

Subpart 1. Return without payment. The bank which processes WIC vouchers on behalf of the commissioner shall return a voucher to a vendor without payment if:

A. the voucher is not stamped with a vendor stamp;

B. the voucher is stamped with a vendor stamp which is illegible;

C. the voucher is not signed by a WIC customer ~~authorized to sign the voucher~~;

D. ~~the price of the food purchased exceeds the maximum price printed on the voucher according to part 4617.0088, subpart 1;~~

E. the space provided on the voucher for the price of the food purchased is left blank by the vendor;

F. ~~E.~~ there is no first-day-to-use or last-day-to-use date on the voucher;

G. ~~E.~~ the commissioner has placed a stop-payment order on the voucher;

H. ~~G.~~ the date ~~the vendor accepted the voucher that the WIC customer used the voucher to obtain food~~ is before the first-day-to-use date or after the last-day-to-use date on the voucher;

I. ~~H.~~ the vendor deposits the voucher before the first-day-to-use date on the voucher;

J. ~~I.~~ the vendor does not initially deposit the voucher in the vendor's bank ~~within by the earlier of:~~

(1) 60 days ~~of~~ after the first-day-to-use date on the voucher; or

(2) five days after the effective date of the vendor's disqualification or termination;

K. ~~J.~~ the vendor does not redeposit the voucher in the vendor's bank within 90 days of the first-day-to-use date on the voucher, if the voucher was returned to the vendor under item A or B and the vendor does not redeposit the voucher in the vendor's bank by the earlier of:

(1) 90 days after the first-day-to-use date on the voucher; or

(2) five days after the effective date of the vendor's disqualification or termination;

L. ~~K.~~ the maximum price, first-day-to-use date, last-day-to-use date, or food prescription on the voucher has been altered; or

M. ~~the vendor is a pharmacy vendor and the voucher includes any food product other than infant formula, infant cereal, or infant juice.~~

L. the voucher is stamped with a vendor stamp other than a vendor stamp issued to the vendor by the commissioner under part 4617.0070.

Subp. 1a. Return with credit. Before this subpart applies, the commissioner shall give at least two months' written notice to vendors. If the price of the food purchased with a voucher exceeds the maximum price calculated by the commissioner for that voucher under part 4617.0088, subpart 1, the bank that processes WIC vouchers on behalf of the commissioner shall:

A. return the voucher to the vendor;

B. not pay the price listed on the voucher;

C. credit the vendor in an amount equal to the maximum price calculated by the commissioner for that voucher under part 4617.0088, subpart 1; and

# Proposed Rules

D. notwithstanding item C, not credit the vendor in any amount if the bank is unable to credit the vendor because of the vendor's failure to comply with part 4617.0068, subpart 13, or failure to provide accurate information on the vendor's most recent vendor application.

Subp. 2. Payment of rejected vouchers.

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

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

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

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

~~C. Subp. 2a.~~ Bank fees. The commissioner is not liable for any bank fees incurred by a vendor.

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

Subp. 4. Vendor liability. A vendor shall pay to the commissioner, within 30 days of a request by the commissioner, the amount of any overcharges paid by the commissioner to the vendor, the amount paid by the commissioner to the vendor in excess of the maximum price of the voucher calculated under part 4617.0088, subpart 1, all money paid by the commissioner to the vendor for food items not received by a WIC customer, all money paid by the commissioner to the vendor for products other than WIC-allowed foods, and all money paid by the commissioner to the vendor for vouchers accepted by the vendor while there was not in effect a WIC vendor agreement for the vendor. If the vendor does not pay these amounts within 90 days of the initial request by the commissioner, then, in addition to any other sanction specified in this chapter, the vendor must pay interest to the commissioner computed in the same manner that interest on judgments is computed under Minnesota Statutes, section 549.09.

[For text of subp 5, see M.R.]

## 4617.0100 APPEALS BY VENDORS ~~AND~~ LOCAL AGENCIES, ~~AND~~ APPLICANTS.

Subpart 1. Procedures.

A. A local agency ~~or local agency applicant~~, vendor, ~~or vendor applicant~~ against whom the commissioner takes adverse action that affects participation in the WIC program may appeal the action, except that the following actions by the commissioner are not subject to appeal:

(1) a notice of violation under part 4617.0084 is not subject to appeal unless the violation results in the vendor's disqualification, the termination of the vendor agreement, a civil money penalty imposed on the vendor, or denial of the vendor's reauthorization application;

(2) disqualification under part 4617.0084, subpart 10, item A; ~~or~~

(3) the commissioner's determination of whether disqualification would result in inadequate participant access under part 4617.0084, subpart 15; ~~or~~

(4) the commissioner's return of an application to a vendor applicant under part 4617.0065, subpart 3, item C or E; or 4617.0066, subpart 3, item B.

B. An appeal must be in writing and be received by the commissioner not more than 30 days after notice of adverse action was mailed. ~~The commissioner shall provide an appellant not less than ten days' advance written notice of the time and place of a hearing. The appellant must be given one opportunity to request that a hearing date be rescheduled.~~ An appeal by a local agency, local agency applicant, vendor, or vendor applicant must be decided according to this part; parts 1400.5100 to 1400.8401; Minnesota Statutes, sections 14.57 to 14.62; and Code of Federal Regulations, title 7, section 246.18, as amended. Expiration of a contract or agreement with a local agency or vendor is not subject to appeal.

C. All appeals by local agencies and local agency applicants are subject to full administrative reviews under item D. Appeals by vendors and vendor applicants are subject to full administrative reviews under item D, except that appeals of the following actions by the commissioner are subject to abbreviated administrative reviews under item E:

(1) denial of authorization based on the vendor applicant's failure to comply with part 4617.0067, subpart 6, item B; C, subitems (1), units (a) and (c), and (2); D; or E, subitem (1);

(2) termination of a vendor agreement under part 4617.0066, subpart 2; and

(3) disqualification of a vendor under part 4617.0084, subpart 2 or 10, item B.

D. Full administrative reviews shall be conducted under the contested case provisions of the Minnesota Administrative Procedures Act, Minnesota Statutes, chapter 14, and rules adopted thereunder. The commissioner shall provide an appellant not less than ten days' advance written notice of the time and place of a hearing. The appellant must be given one opportunity to request that a hearing date be rescheduled.

E. Abbreviated administrative reviews shall be conducted in writing, without a hearing, according to the following procedures:

(1) The commissioner shall appoint a decision maker who had no involvement in the initial determination to take adverse action

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# Proposed Rules

against the vendor.

(2) After receiving the appellant's appeal, the decision maker shall notify the appellant and the WIC program who the decision maker is and shall require the WIC program to mail to the appellant and provide to the decision maker a letter setting forth the WIC program's basis for the action being appealed, attaching copies of any supporting documentation. The appellant shall then have 30 days to serve on the WIC program and file with the decision maker a written response to the WIC program's letter, along with any documentation to support the response. The appellant and the WIC program may be, but need not be, represented by counsel.

(3) The decision maker shall determine whether to uphold the WIC program's action based solely on whether the WIC program has correctly applied federal and state statutes, rules, regulations, policies, and procedures governing the WIC program, according to the information provided to the appellant concerning the cause for the adverse action and the appellant's response. The decision maker shall notify the WIC program and the appellant in writing of the decision maker's determination, including the basis for the determination. If the decision maker is unable to make a determination on the basis of the information filed, the decision maker shall notify the WIC program and the appellant that the procedures described in item D should be followed in connection with the appeal.

Subp. 2. Judicial review. A local agency, local agency applicant, vendor, or vendor applicant aggrieved by the commissioner's decision of the commissioner or other decision maker on an appeal is entitled to a judicial review of the decision under Minnesota Statutes, sections 14.63 to 14.69.

Subp. 3. Burden of proof. A local agency applicant or vendor applicant that appeals the commissioner's denial of an application to participate has the burden of proving the facts at issue by a preponderance of the evidence. When a local agency or vendor appeals a disqualification or other sanction, the commissioner has the burden of proof.

## 4617.0121 TRANSITION PERIOD.

Subpart 1. [See repealer.]

Subp. 2. Applications. If the commissioner has received but has neither approved nor denied a vendor application before ~~August 28, 2000~~ the effective date of this subpart, the commissioner shall approve the application if the applicant complies with all requirements in effect before ~~August 28, 2000~~ the effective date of this subpart. If the commissioner approves this application, the resulting vendor agreement shall reflect the requirements in effect on ~~August 28, 2000~~ the effective date of this subpart and shall have an ending date of March 31, 2008.

## 4617.0171 INFANT FORMULA APPROVAL PROCESS.

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

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

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

- A. food items within each food product in part 4617.0067, subpart 3, item A, subitems (2) to ~~(11)~~ (11); and
- B. any other food item permitted under Code of Federal Regulations, title 7, part 246, as amended, other than infant formula, if the commissioner determines that there is a nutritional need for participants to obtain such food item.

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

A. For food products in part 4617.0067, subpart 3, item A, subitems (2) to ~~(11)~~ (10), the commissioner's determination must be based on the following factors:

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

(2) whether the food item meets the nutritional requirements of Code of Federal Regulations, title 7, section 246.10(c), as amended:

[For text of subitems (3) and (4), see M.R.]

B. For food products in part 4617.0067, subpart 3, item A, ~~subitems (12) and (13)~~ subitem (11), the commissioner's determination must be based on the factors in item A, subitems (1) to (4), and the following factors:

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

[For text of subs 3 to 5, see M.R.]

REPEALER. Minnesota Rules, parts 4617.0002, subparts 2c, 3, 4, 5, 7, 12, 14, 16, 18, 19, 22, 24, 25, 26, 27, 28, 28b, 29, 32, 34, 35, 36, 37c, 37d, 38, and 41; 4617.0020, subparts 4, 5, 6, 7, 8, 9, and 11; 4617.0030, subparts 2 and 3; 4617.0037; 4617.0040; 4617.0042; 4617.0043; 4617.0065, subpart 4; 4617.0084, subpart 14; 4617.0088, subpart 3; and 4617.0121, subpart 1, are repealed.

# Exempt Rules

Exempt rules are excluded from the normal rulemaking procedures (Minnesota Statutes §§ 14.386 and 14.388). They are most often of two kinds. One kind is specifically exempted by the Legislature from rulemaking procedures, but approved for form by the Revisor of Statutes, reviewed for legality by the Office of Administrative Hearings, and then published in the State Register. These exempt rules are effective for two years only.

The second kind of exempt rule is one adopted where an agency for good cause finds that the rulemaking provisions of Minnesota Statutes, Chapter 14 are unnecessary, impracticable, or contrary to the public interest. This exemption can be used only where the rules:

- (1) address a serious and immediate threat to the public health, safety, or welfare, or
- (2) comply with a court order or a requirement in federal law in a manner that does not allow for compliance with Minnesota Statutes Sections 14.14-14.28, or
- (3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required, or
- (4) make changes that do not alter the sense, meaning, or effect of the rules.

These exempt rules are also reviewed for form by the Revisor of Statutes, for legality by the Office of Administrative Hearings and then published in the State Register. In addition, the Office of Administrative Hearings must determine whether the agency has provided adequate justification for the use of this exemption. Rules adopted under clauses (1) or (2) above are effective for two years only. The Legislature may also exempt an agency from the normal rulemaking procedures and establish other procedural and substantive requirements unique to that exemption.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." Adopted Rules - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

## Department of Natural Resources

### Adopted Exempt Permanent Game and Fish Rules: Designated Special Management Waters

NOTICE IS HEREBY GIVEN that the above entitled rules have been adopted through the process prescribed by Minnesota Statutes, section 97C.005.

Dated: November 3, 2004

Gene Merriam  
Commissioner of Natural Resources

6264.0400 DESIGNATED SPECIAL MANAGEMENT WATERS.

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

[For text of subp 4, see 28 SR 1361]

[For text of subps 5 to 32, see M.R.]

Subp. 33. Lake of the Woods; walleye and sauger.

A. Notwithstanding part 6266.0700, subpart 2, item A, the seasons and possession limits for walleye and sauger specified in this subpart apply to the specified portions of Lake of the Woods.

B. From the Saturday two weeks prior to the Saturday of Memorial Day weekend to November 30, the daily and possession limits for Lake of the Woods are as follows: six in the aggregate, of which not more than four may be walleye and not more than one walleye over 28.0 inches. All walleye and sauger in possession must be less than 19.5 inches in length or greater than 28.0 inches in length. All walleye and sauger that are 19.5 to 28.0 inches in length, inclusive, must be immediately returned to the water.

C. Except as provided in item D, from December 1 to April 14, the daily and possession limits for Lake of the Woods are as follows: eight in the aggregate, of which not more than four may be walleye and not more than one walleye over 28.0 inches. All walleye and sauger in possession must be less than 19.5 inches in length or greater than 28.0 inches in length. All walleye and sauger that are 19.5 to 28.0 inches in length, inclusive, must be immediately returned to the water.

D. From March 1 to April 14, the daily and possession limits for Four Mile Bay of Lake of the Woods are as follows: two in the aggregate. All walleye and sauger in possession must be less than 19.5 inches in length. All walleye and sauger that are 19.5 inches in length or greater must be immediately returned to the water.

<u>Name</u>	<u>Location</u>	<u>County</u>
<u>Lake of the Woods, including Four Mile Bay</u>	<u>T.162168, R.3237, S.Various</u>	<u>Lake of the Woods, Roseau</u>

Subp. 34. Rainy River; walleye and sauger.

A. Notwithstanding part 6266.0700, subpart 2, item A, the seasons and possession limits for walleye and sauger specified in this subpart apply to the specified portions of the Rainy River.

B. From the Saturday two weeks prior to the Saturday of Memorial Day weekend to the last day in February, the daily and possession limits are as follows: six in the aggregate, of which not more than four may be walleye and not more than one walleye over 28.0 inches.

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## Exempt Rules

All walleye and sauger in possession must be less than 19.5 inches in length or greater than 28.0 inches in length. All walleye and sauger that are 19.5 to 28.0 inches in length, inclusive, must be immediately returned to the water.

C. From March 1 to April 14, the daily and possession limits are as follows: two in the aggregate. All walleye and sauger in possession must be less than 19.5 inches in length. All walleye and sauger that are 19.5 inches in length or greater must be immediately returned to the water.

<u>Name</u>	<u>Location</u>	<u>County</u>
<u>Rainy River</u>	<u>T.162, R.31, S.19 from the U.S. Coast Guard lighthouse at Wheeler's Point upstream to the Boise Cascade Dam in T.71, R.24, S.27</u>	<u>Lake of the Woods, Koochiching</u>

6266.0700 TAKING OF FISH ON MINNESOTACANADA BOUNDARY WATERS.

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

Subp. 2. Species, seasons, and limits on MinnesotaCanada boundary waters. Except as provided in parts 6264.0300, subpart 56, and 6264.0400, ~~subpart~~ subparts 32 to 34, the following applies to the species, seasons, and limits for taking fish on MinnesotaCanada boundary waters. When the closing date of the season falls on a Saturday, the season will extend to the following Sunday.

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

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

EFFECTIVE DATE. The amendments to Minnesota Rules, parts 6264.0400 and 6266.0700, are effective December 1, 2004.

## Expedited Emergency Rules

Provisions exist for the Commissioners of some state agencies to adopt expedited emergency 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. Expedited emergency rules are effective upon publication in the State Register, and may be effective up to seven days before publication under certain emergency conditions. Expedited emergency rules are effective for the period stated or up to 18 months. Specific Minnesota Statute citations accompanying these expedited emergency rules detail the agency's rulemaking authority.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." Adopted Rules - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

## Department of Natural Resources

### Adopted Expedited Emergency Game and Fish Rules: Spring Wild Turkey Hunting; Taking Canada Geese

NOTICE IS HEREBY GIVEN that the above entitled rules have been adopted through the process prescribed by Minnesota Statutes, section 84.027, subdivision 13 (b). The statutory authority for the contents of the rules is Minnesota Statutes, sections 97A.137, 97A.435, 97B.711, 97B.723, 97B.731, 97B.802, and 97B.803.

The emergency conditions that do not allow compliance with Minnesota Statutes, sections 97A.0451 to 97A.0459, are that population and harvest data needed for setting quotas and areas are not available until August. Changes to zone boundary descriptions are to simplify boundaries by making them consistent with deer management boundaries in most instances. The change to the waterfowl expedited rule is to correct a typographical error that occurred in the waterfowl expedited rule adopted September 20, 2004. Changes that are not subject to potential annual change are in the process of being incorporated into a permanent rule (RD3327) that is nearly ready for publication in the State Register, but that will not be in effect before the 2005 seasons.

Dated: October 29, 2004

Gene Merriam  
Commissioner of Natural Resources

6236.0300 TURKEY HUNT DRAWING.

Subpart 1. License application drawings. Applications for all hunts must be made according to this part and according to application  
(Cite 29 SR 597) State Register, Monday 22 November 2004 Page 597



# Expedited Emergency Rules

instructions provided by the commissioner. Each person must apply at an electronic license system agent or the Department of Natural Resources License Center. Drawings will be conducted by the department to determine persons who will be eligible to purchase licenses for each season. The drawings will be subject to the quotas established by the commissioner. Preference in the respective drawings is given to applicants based upon the number of times they have correctly applied for a license for that hunt but have been unsuccessful. A person selected by the drawings is eligible to purchase a license to hunt turkey. Upon issuance of a turkey license for the spring or fall season, all accumulated preference for that season is lost, except as provided in subpart 6.

Subp. 2. Participation in application drawings. Applicants may complete an application form for either the spring or fall turkey hunt or both. A person may not apply more than once for a hunt, whether as an individual or as a member of a group. Qualifying individuals may apply for the resident landowner-tenant turkey drawing. All of the information in items A to G must be supplied on the application forms.

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

D. An applicant must ~~choose one~~ select a first choice of the wild turkey permit areas and one of the area and time periods period and may select a second choice of wild turkey permit area in specified time periods as authorized by the commissioner. For 2005, second-choice time periods are limited to the last three time periods only (F, G, or H).

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

[For text of subs 3 to 5, see M.R.]

Subp. 6. Undersubscribed wild turkey permit areas. ~~A second preference drawing may be held for undersubscribed time periods. All unsuccessful applicants for the wild turkey permit area that includes the undersubscribed time period will be eligible for the second drawing. In permit areas and time periods with fewer applicants than available licenses, the remaining available licenses may be first offered to unsuccessful applicants for other permit areas or time periods on a first-come, first-served basis. An eligible person must apply individually and in person at an ELS-POS (point-of-sale) agent location or individually through the ELS-Internet or ELS-Telephone system to obtain a remaining available license. Any remaining available licenses not purchased by unsuccessful applicants may then be issued to any eligible person on a first-come, first-served basis. Individuals who purchase these remaining available licenses retain their accumulated preference.~~

## 6236.0600 SPRING TURKEY SEASON.

Subpart 1. Open dates. The spring turkey season opens the Wednesday nearest April 15 and consists of ~~seven~~ six consecutive five-day periods followed by two consecutive seven-day periods.

Subp. 2. Shooting hours. Shooting hours for turkeys during the spring season are from one-half hour before sunrise to ~~12 noon~~ 5:00 p.m.

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

Subp. 4. Open areas. Wild turkey permit areas are open for the spring turkey season as prescribed by the commissioner. Turkey licenses are valid for taking turkeys only in the wild turkey permit area specified on the license.

Subp. 5. Registration. Turkeys must be registered no later than 2:00 p.m. of the day taken within 24 hours after being taken during the spring turkey season.

## 6236.0810 WILD TURKEY PERMIT AREA DESCRIPTIONS.

Wild turkey permit areas are comprised of ~~partial, single, or grouped deer and bear registration blocks~~ with the same numbers, as established in part 6232.4700, and are described except as follows:

### A. ~~Wild turkey permit areas in Zone 1:~~

- ~~(1) wild turkey permit area 152 consists of registration block 152;~~
- ~~(2) wild turkey permit area 157 consists of registration block 157;~~
- ~~(3) wild turkey permit area 158 consists of registration block 158; and~~
- ~~(4) wild turkey permit area 159 consists of registration block 159;~~

### B. ~~Wild turkey permit areas in Zone 2:~~

- ~~(1) wild turkey permit area 221 consists of registration block 221;~~
- ~~(2) wild turkey permit area 222 consists of registration block 222;~~
- ~~(3) wild turkey permit area 223 consists of registration block 223;~~
- ~~(4) wild turkey permit area 224 consists of registration block 224;~~
- ~~(5) wild turkey permit area 225 consists of registration block 225;~~
- ~~(6) wild turkey permit area 226 consists of registration block 226;~~
- ~~(7) wild turkey permit area 227 consists of registration block 227;~~
- ~~(8) wild turkey permit area 228 consists of registration block 228;~~
- ~~(9) wild turkey permit area 235 consists of registration block 235;~~

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## Expedited Emergency Rules

- (10) wild turkey permit area 236 consists of registration block 236;
- (11) wild turkey permit area 244 consists of registration block 244;
- (12) wild turkey permit area 251 consists of registration block 251;
- (13) wild turkey permit area 286 consists of registration block 286; and
- (14) wild turkey permit area 297298 consists of registration blocks 297 and 298;

C. Wild turkey permit areas in Zone 3:

- (1) wild turkey permit area 337338 consists of registration blocks 337 and 338;
- (2) wild turkey permit area 341342 consists of registration blocks 341 and 342;
- (3) wild turkey permit area 343347 consists of registration blocks 343 and 347;
- (4) wild turkey permit area 344 consist of registration block 344;
- (5) wild turkey permit area 345348 consists of registration blocks 345 and 348;
- (6) wild turkey permit area 346 consists of registration block 346; and
- (7) wild turkey permit area 349 consists of registration block 349;

D. Wild turkey permit areas in Zone 4:

- (1) wild turkey permit area 402 consists of registration block 402;
- (2) wild turkey permit area 405 consists of registration block 405;
- (3) wild turkey permit area 406 consists of registration block 406;
- (4) wild turkey permit area 407 consists of registration block 407;
- (5) wild turkey permit area 408 consists of registration block 408;
- (6) wild turkey permit area 409 consists of registration block 409;
- (7) wild turkey permit area 410 consists of registration block 410;
- (8) wild turkey permit area 411 consists of those portions of registration block 411 described as follows:

Beginning at the intersection of State Trunk Highway (STH) 78 and STH 210; thence along STH 210 in an easterly direction to STH 29; thence along STH 29 in a southerly direction to STH 235; thence along STH 235 in a westerly direction to County State Aid Highway (CSAH) 38; thence along CSAH 38 to the intersection of STH 78; thence along STH 78 in a northerly direction to the point of beginning;

- (9) wild turkey permit area 412 consists of registration block 412;
- (10) wild turkey permit area 413 consists of registration block 413;
- (11) wild turkey permit area 414 consists of registration block 414;
- (12) wild turkey permit area 415 consists of those portions of registration block 415 described as follows:

Beginning at the intersection of Interstate Highway 94 (I94) and State Trunk Highway (STH) 28; thence along STH 28 in a northeasterly direction to County State Aid Highway (CSAH) 2; thence along CSAH 2 in an easterly direction to STH 238; thence along STH 238 to CSAH 26; thence along CSAH 26 to the Mississippi river; thence along the Mississippi river in a southerly direction to STH 23; thence along STH 23 to the intersection of CSAH 75; thence along CSAH 75 to the intersection of I94; thence along I94 in a westerly direction to the point of beginning;

- (13) wild turkey permit area 416 consists of registration block 416;
- (14) wild turkey permit area 417 consists of those portions of registration block 417 described as follows:

Beginning at the intersection of State Trunk Highway (STH) 55 and STH 4; thence along STH 4 in a southerly direction to U.S. Highway 12; thence along U.S. Highway 12 to County State Aid Highway (CSAH) 104, Swift county; thence northerly on CSAH 104 to STH 55, Douglas county; thence along STH 55 in a southeasterly direction to the point of beginning;

(15) wild turkey permit area 418 consists of those portions of registration block 418 described as follows: Beginning at the intersection of Interstate Highway 94 and County State Aid Highway (CSAH) 10; thence along CSAH 10 in a southerly direction to State Trunk Highway (STH) 23; thence along STH 23 to STH 55, Stearns County; thence along STH 55 to STH 15; thence along STH 15 to Interstate Highway 94; thence along Interstate Highway 94 to the point of beginning;

- (16) wild turkey permit area 419 consists of registration block 419;

# Expedited Emergency Rules

- (17) wild turkey permit area 420 consists of registration block 420;
- (18) wild turkey permit area 421 consists of registration block 421;
- (19) wild turkey permit area 422 consists of registration block 422;
- (20) wild turkey permit area 423 consists of registration block 423;
- (21) wild turkey permit area 424 consists of registration block 424;
- (22) wild turkey permit area 425 consists of registration block blocks 425 and 435;
- (23) wild turkey permit area 426 consists of registration block 426;
- (24) wild turkey permit area 427 consists of registration block 427;
- (25) wild turkey permit area 428 consists of registration block 428;
- (26) wild turkey permit area 429 consists of registration block 429;
- (27) wild turkey permit area 431 consists of registration block 431;
- (28) wild turkey permit area 433446447 consists of registration blocks 433, 446, and 447;
- (29) wild turkey permit area 435 consists of registration block 435;
- (30) wild turkey permit area 440 consists of registration block 440;
- (31) wild turkey permit area 442 consists of registration block 442;
- (32) wild turkey permit area 443 consists of registration block 443;
- (33) wild turkey permit area 448449451 consists of registration blocks 448, 449, and 451;
- (34) wild turkey permit area 450 consists of registration block 450;
- (35) wild turkey permit area 452 consists of registration block 452;
- (36) wild turkey permit area 453 consists of registration block 453;
- (37) wild turkey permit area 454455456458 consists of registration blocks 454, 455, 456, and 458;
- (38) wild turkey permit area 457 consists of registration block 457;
- (39) wild turkey permit area 459 consists of registration block 459;
- (40) wild turkey permit area 461 consists of registration block 461;
- (41) wild turkey permit area 463 consists of registration block 463;
- (42) wild turkey permit area 464465 consists of registration blocks 464 and 465; and
- (43) wild turkey permit area 466467 consists of registration blocks 466 and 467; and
- E. wild turkey permit area 339462 consists of registration blocks 339 and 462 in Zones 3 and 4.
- B. wild turkey permit area 451 consists of registration blocks 451, 452, and 453; and
- C. wild turkey permit area 454 consists of registration blocks 454 and 455.

## 6236.1060 TURKEY HUNT QUOTAS.

Subpart 1. Open wild turkey permit areas and permit quotas by time period. The following wild turkey permit areas are open for the 2005 spring wild turkey season with the quotas on numbers of permits per time period established below:

2005 Spring Wild Turkey Permit Area Quotas

Wild Turkey Permit Area Number	Time Period		C	D	E	F	G	H
	A	B						
	April 13-17	April 18-22	April 23-27	April 28-May 2	May 3-7	May 8-12	May 13-19	May 20-2
157	5	5	5	5	5	5	5	5
159	5	5	5	5	5	5	5	5
221	20	20	20	20	20	20	20	20
222	5	5	5	5	5	5	5	5
223	75	75	75	75	75	75	75	75
225	100	100	100	100	100	100	100	100
227	60	60	60	60	60	60	60	60
228	40	40	40	40	40	40	40	40
235	15	15	15	15	15	15	15	15
236	95	95	95	95	95	95	95	95
244	25	25	25	25	25	25	25	25
248	5	5	5	5	5	5	5	5
249	15	15	15	15	15	15	15	15
337	55	55	55	55	55	55	55	55

# Expedited Emergency Rules

338	85	85	85	85	85	85	85	85	85
339	80	80	80	80	80	80	80	80	80
341	225	225	225	225	225	225	225	225	225
342	225	225	225	225	225	225	225	225	225
343	155	155	155	155	155	155	155	155	155
344	140	140	140	140	140	140	140	140	140
345	200	200	200	200	200	200	200	200	200
346	325	325	325	325	325	325	325	325	325
347	150	150	150	150	150	150	150	150	150
348	175	175	175	175	175	175	175	175	175
349	450	450	450	450	450	450	450	450	450
410	45	45	45	45	45	45	45	45	45
411	45	45	45	45	45	45	45	45	45
412	45	45	45	45	45	45	45	45	45
413	10	10	10	10	10	10	10	10	10
414	15	15	15	15	15	15	15	15	15
415	65	65	65	65	65	65	65	65	65
416	10	10	10	10	10	10	10	10	10
417	40	40	40	40	40	40	40	40	40
418	65	65	65	65	65	65	65	65	65
419	40	40	40	40	40	40	40	40	40
420	7	7	7	7	7	7	7	7	7
422	5	5	5	5	5	5	5	5	5
424	5	5	5	5	5	5	5	5	5
425	60	60	60	60	60	60	60	60	60
426	5	5	5	5	5	5	5	5	5
427	10	10	10	10	10	10	10	10	10
428	15	15	15	15	15	15	15	15	15
429	30	30	30	30	30	30	30	30	30
431	5	5	5	5	5	5	5	5	5
433	5	5	5	5	5	5	5	5	5
440	70	70	70	70	70	70	70	70	70
442	160	160	160	160	160	160	160	160	160
443	70	70	70	70	70	70	70	70	70
446	5	5	5	5	5	5	5	5	5
447	5	5	5	5	5	5	5	5	5
448	7	7	7	7	7	7	7	7	7
449	7	7	7	7	7	7	7	7	7
450	7	7	7	7	7	7	7	7	7
451	5	5	5	5	5	5	5	5	5
454	5	5	5	5	5	5	5	5	5
456	5	5	5	5	5	5	5	5	5
457	5	5	5	5	5	5	5	5	5
458	5	5	5	5	5	5	5	5	5
459	25	25	25	25	25	25	25	25	25
461	80	80	80	80	80	80	80	80	80
462	90	90	90	90	90	90	90	90	90
463	20	20	20	20	20	20	20	20	20
464	25	25	25	25	25	25	25	25	25
465	30	30	30	30	30	30	30	30	30
466	50	50	50	50	50	50	50	50	50
467	40	40	40	40	40	40	40	40	40
Total	3,983	3,983	3,983	3,983	3,983	3,983	3,983	3,983	3,983

Grand total = 31,864

# Expedited Emergency Rules

Subp. 2. Permits for disability hunts.

A. For wild turkey permit area 337, two additional permits per time period are available for individuals with disabilities participating in a special hunt in the Minnesota Valley National Wildlife Refuge. For wild turkey permit area 223, one additional permit per time period is available for individuals with disabilities participating in a special hunt in the Sand Prairie Wildlife Management Area. Capable Partners is the sponsoring nonprofit organization.

B. For Camp Ripley Military Reservation, within wild turkey permit area 248, an additional 20 permits shall be issued for May 3 and 4 for taking bearded turkey using legal shotguns, muzzleloading shotguns, or archery equipment. One nonhunting mentor must accompany each disabled hunter. The St. Cloud Veterans Administration is the sponsoring organization.

6240.1100 TAKING CANADA GEESE IN REMAINDER OF STATE.

Subpart 1. Zone and season. The remainder of the state consists of all areas not within the Northwest, West Central, and West Goose Zones. Canada geese may be taken in the remainder of the state during the ~~70 day~~ 60day period beginning Saturday, September 25, 2004.

[For text of subp 2, see 29 SR 332]

REPEALER. The expedited emergency amendments to Minnesota Rules, parts 6236.0810 and 6236.1060, published in the State Register, volume 28, page 609, November 10, 2003; volume 28, page 1128, March 15, 2004; and volume 28, page 1170, March 29, 2004, are repealed.

EFFECTIVE PERIOD. The emergency amendments to Minnesota Rules, parts 6236.0300 and 6236.0600, expire 18 months after adoption. The emergency amendment to Minnesota Rules, part 6236.0810, expires 18 months after adoption or upon adoption of a superseding permanent rule, whichever is sooner. The emergency amendment to Minnesota Rules, part 6240.1100, expires December 31, 2004. After the emergency amendments expire, the permanent rules as they read prior to the amendments again take effect, except as they may be amended by permanent rule. Minnesota Rules, part 6236.1060, expires November 1, 2005.

## 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 Department of Employment and Economic Development

### REQUEST FOR COMMENTS on Possible Amendment to Rules Governing Extended Employment, *Minnesota Rules*, parts 3300.2005 to 3300.2055

Subject of Rules. The Minnesota Department of Employment and Economic Development requests comments on its possible amendment to the rule governing the Extended Employment program. The Department is considering rule amendments to:

- Bring rules into conformity with federal regulations for the Vocational Rehabilitation program, Title 34, Code of Federal Regulations, Part 361 that emphasize allowable employment outcomes, such as supported employment within integrated settings with prevailing wages and comparable benefits;
- Clarify when community employment meets the standard for "Supported Employment;"
- Revise funding conditions to ensure the financial viability of the program to meet consumer needs. Possible funding related amendments being considered are:
  - 1) Changing terms and conditions for when costs are covered,
  - 2) Changing how services are provided,
  - 3) Limiting eligible products and services that may be provided,
  - 4) Changing performance measures for rehabilitation facilities (e.g. customer hours worked and wage and benefit levels) to ensure customer employment at the highest level of potential,
  - 5) Limiting customer eligibility criteria to assure that services are targeted toward customers without access to Medicaid,
  - 6) Setting standards to phase-out funding for Center Based employment and Community Employment not meeting



supported employment standards.

Proposed rule amendments will take into consideration results of the Occupational Development Center pilot study that was authorized by the 2004 legislature to study economic development employment options. (Minnesota Session Laws – 2004, chapter 188, section 1)

Persons Affected. The amendments to the rule would likely affect individuals with severe disabilities currently in or seeking employment, community rehabilitation programs currently providing employment services, potential other providers of employment or disability services, groups advocating for services for individuals with disabilities and county social service agencies.

Statutory Authority. Minnesota Statutes, section 116J.035 Ssubd. 2 authorizes the Commissioner to “adopt rules pursuant to chapter 14 as necessary to carry out the commissioner’s duties and responsibilities.” Minnesota Statutes, section 268A.03 item (m) authorizes the Commissioner program-specific authority to “adopt, amend, suspend, or repeal rules necessary to implement or make specific programs that the commissioner by sections 268A.01 to 268A.15 is empowered to administer.” Minnesota Statutes, section 268A.15, Subd. 3 also gives the Commissioner program-specific authority to “adopt rules on an individual’s eligibility for the extended employment program, the certification of rehabilitation facilities, and the methods, criteria, and units of distribution for the allocation of state grant funds to certified rehabilitation facilities. In determining the allocation, the commissioner must consider the economic conditions of the community and the performance of rehabilitation facilities relative to their impact on the economic status of workers in the extended employment program.”

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 Department intends to adopt or to withdraw the rules. The Department does contemplate establishing a work group to comment on the possible rules. The work group would be formed in January, 2005 and would include representatives of consumers involved with extended employment programs, community rehabilitation programs and affected state and county human service programs. The work group would operate until the final proposed draft amendments are published in the State Register. Individuals interested in serving on the group should contact John Sherman, whose contact information is below.

Rules Drafts. The Department has not yet prepared a draft of the possible rule amendments.

Agency Contact Person. Written or oral comments, questions, and requests for more information on these possible rule amendments should be directed to: John Sherman, Department of Employment and Economic Development, Extended Employment Program, 1<sup>st</sup> National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101. His phone number is 651 297-3380, fax number is (651) 297-5159, and e-mail address is john.sherman@state.mn.us. TTY users may call the Department at (651) 296-3900 or 1-800-657-3973.

Alternative Format. Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: November 22, 2004

Matt Kramer, Commissioner  
Department of Employment and Economic Development

## **Minnesota Department of Health**

### **Notice of a Revised List of Tests to be Performed for Determining the Presence of a Heritable or Congenital Disorder in Newborn Infants in Minnesota**

This notice is given to meet requirements of Minnesota Statutes 144.125 “Tests of infants for heritable and congenital disorders”. The statutes describe the mechanism for revising the list of tests as follows:

“The list of tests to be performed may be revised if the changes are recommended by the advisory committee established under section 144.1255, approved by the commissioner, and published in the State Register. The revision is exempt from the rulemaking requirements in Chapter 14, and sections 14.385 and 14.386 do not apply.”

Minnesota Department of Health Newborn Screening Panel

# Official Notices

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## Amino Acid Disorders

- Argininemia (ARG)
- Argininosuccinate Lyase Deficiency (ASA)
- Citrullinemia (CIT)
- Homocystinuria
- Hypermethioninemia
- Maple Syrup Urine Disease (MSUD)
- Phenylketonuria (PKU)
- Tyrosinemia Type I (TYR-I)
- Tyrosinemia Type II (TYR-II)
- Tyrosinemia Type III (TYR-III)

## Endocrine Disorders

- Congenital Adrenal Hyperplasia
- Congenital Hypothyroidism

## Fatty Acid Oxidation Disorders

- Carnitine Palmitoyl Transferase Deficiency I (CPT-I)
- Carnitine Palmitoyl Transferase Deficiency II (CPT-II)
- Carnitine/Acylcarnitine Translocase Deficiency (CACT)
- 2,4-Dienoyl-CoA Reductase Deficiency (2,4 Di)
- Long-Chain 3-Hydroxy Acyl-CoA Dehydrogenase Deficiency (LCHAD)
- Glutaric Acidemia Type II (GA-II)
- Short-Chain Acyl-CoA Dehydrogenase Deficiency (SCAD)
- Medium/Short-Chain Hydroxy Acyl-CoA Dehydrogenase Deficiency (M/SCHAD)
- Medium-Chain Acyl-CoA Dehydrogenase Deficiency (MCAD)
- Mitochondrial Trifunctional Protein Deficiency (TFP)
- Very Long-Chain Acyl-CoA Dehydrogenase Deficiency (VLCAD)

## Hemoglobinopathies

- Sickle Cell Disease
- Thalassemia

## Organic Acid Disorders

- Glutaric Acidemia Type I (GA-I)
- 3-Hydroxy-3-Methylglutaryl CoA Lyase Deficiency (HMG)
- Isobutyryl-CoA Dehydrogenase Deficiency (IBD)
- Isovaleric Acidemia (IVA)
- 3-Methylcrotonyl-CoA Carboxylase Deficiency (3MCC)
- Methylmalonic Acidemias (MMA)
- Mitochondrial Acetoacetyl-CoA Thiolase Deficiency (BKT)
- Propionic Acidemia (PA)
- 2-Methylbutyryl-CoA Dehydrogenase Deficiency (2MBCD or SBCAD)
- Multiple CoA Carboxylase Deficiency (MCD)
- 3-Methylglutaconyl-CoA Hydratase Deficiency (3MGA)
- 2-Methyl-3-Hydroxybutyryl CoA Dehydrogenase Deficiency (3HBD)

## Other

- Galactosemia
- Biotinidase Deficiency

Information about Minnesota's newborn screening program is posted at the website:

<http://www.health.state.mn.us/divs/fh/mcshn/nbs.htm>.

For additional information, please contact Louise Liao, Minnesota Department of Health, Public Health Laboratory Division, 717 Delaware St SE, PO Box 9441, Minneapolis, MN 55414-9441, phone (612) 676-5706, e-mail [louise.liao@health.state.mn.us](mailto:louise.liao@health.state.mn.us).

## **Teachers Retirement Association**

### **Notice of Meeting**

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Wednesday, December 8, 2004 at 9:30 a.m. in Suite 400, 60 Empire Drive, St. Paul, MN to consider matters which may properly come before the Board.

## **State Contracts**

**Informal Solicitations:** 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) Web site. Interested vendors are encouraged to monitor the P/T Contract Section of the MMD Web site at [www.mmd.admin.state.mn.us](http://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.

## **Department of Administration**

### **External Review of Adverse Determinations**

The Department of Administration, in cooperation the departments of Commerce and Health, will issue a Request for Proposal for a contract with an organization or business entity to provide independent external review of all adverse determinations of health care complaints submitted for external review under Laws of Minnesota 2004, Chapter 239, Section 39 (Minnesota Statutes Section 62Q.73). The contract shall ensure that the fees for services rendered in connection with the reviews be reasonable. Criteria may include requiring the entity to demonstrate:

- (1) no conflicts of interest in that it is not owned, a subsidiary of, or affiliated with a health plan company or utilization review organization;
- (2) an expertise in dispute resolution;
- (3) an expertise in health related law;
- (4) an ability to conduct reviews using a variety of alternative dispute resolution procedures depending upon the nature of the dispute;
- (5) an ability to provide data to the commissioners of health and commerce on reviews conducted;
- (6) an ability to ensure confidentiality of medical records and other enrollee information;
- (7) consideration of existing or proposed national accreditation standards that pertain to an external review entity; and
- (8) how any aspect of an external review involving a medical determination would be performed by a health care professional with expertise in the medical issue being reviewed, as required by law.

If you would like a copy of the complete Request for Proposal, please send a fax or an e-mail to Jake Carson, P/T Contract Analyst, Materials Management Division (FAX: (651) 297-3996 or E-mail: [jake.carson@state.mn.us](mailto:jake.carson@state.mn.us)) indicating the name of the entity, the name and title of a direct contact within the entity, a direct mailing address, e-mail address and voice and fax numbers.

Proposals must be received by no later than 2:30 p.m. CST, December 17, 2004.

Late proposals will not be considered.

## **Department of Administration**

### **Notice of Request for Bid for Lease of State-Owned Land Located at 321 Grove Street in St. Paul for Placement of Freestanding Pylon Sign Structure and Billboard Display Sign**

NOTICE IS HEREBY GIVEN that the Department of Administration is requesting bids for the lease of state-owned land at 321 Grove Street in St. Paul for placement of freestanding pylon sign structure and billboard display sign. For a copy of the bid form and requirements, E-mail a request to [Kathy.Meyer@state.mn.us](mailto:Kathy.Meyer@state.mn.us) or FAX a request to (651) 215-6245.

Interested persons or firms must send a "letter of intent to submit a bid" no later than 4:30 p.m., CST on December 8, 2004 by E-mail

# State Contracts

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to Kathy.Meyer@state.mn.us or by FAX to (651) 215-6245. Only those persons or firms submitting this letter will receive changes regarding the bid or responses to questions about this request for bid. The letter of intent must include (1) a subject line of "Bid to Lease State-Owned Land for Pylon Sign and Billboard," (2) a statement that potential responder intends to submit a proposal, and (3) a contact person, phone number, fax number and email address.

All bid proposals must be received in the Real Estate Management Division, Administration Building, 50 Sherburne Avenue, Room 309, St. Paul, MN 55155 no later than 2:30 p.m., CST, on December 30, 2004, as indicated by a notation made by the receptionist on receipt of proposal at the address noted in the bid requirements.

Late proposals will not be considered.

## Department of Administration State Designer Selection Board

### Request for Proposals for Designer Selection for Bell Museum of Natural History, University of Minnesota, St. Paul Campus (Project 04-16)

#### To Minnesota Registered Design Professionals:

The State of Minnesota (State) through its State Designer Selection Board has been requested to select a design team for the above project. Proposals from interested firms must be received by, 1:00 p. m. Monday, December 13, 2004 to:

Terry Lewko, Executive Secretary  
State Designer Selection Board  
Department of Administration  
State Architect's Office  
301 Centennial Office building  
658 Cedar Street  
St. Paul, Minnesota 55155  
(651) 297-1545

#### **PROPOSALS RECEIVED AFTER THE SUBMISSION DEADLINE WILL NOT BE CONSIDERED.**

Questions concerning procedures, or schedule are to be referred to the Executive Secretary at (651) 297-1545. Questions relating to the project are to be referred to the project contact(s) in Item 1.i.

#### 1. PROJECT 04-16

a. **PROJECT DESCRIPTION:** The University of Minnesota intends to contract with an architectural/landscape architectural/engineering team to provide complete design, construction procurement, and construction administration services for the Bell Museum of Natural History, a building and site landscaping project on the St. Paul Campus. The project, consisting of a new museum building of approximately 70,000 gross square feet and associated natural landscaping on a six acre site, will be located on the southwest corner of the intersection of Larpenteur and Cleveland Avenues.

In addition to interior and exterior exhibit space, the facility will include an auditorium, classrooms, a teacher resource center, visitor services, research space, storage for collections, space for design and fabrication of exhibits, administrative and staff offices, and general support spaces.

This project is intended to create an environment that provides seamless integration of outdoor and indoor classrooms/exhibits that highlight the University of Minnesota's mission of Research, Teaching, and Outreach in the exploration of the natural world. The surrounding landscape is intended to connect people to Minnesota's diverse ecological regions.

Design Objectives: The Bell Museum has determined that the building will be:

- An interesting and inspiring work environment
- Comprised of flexible interior spaces that are more boutique than warehouse
- Predictable enough to meet visitor expectations but flexible enough to encourage repeat visitation and a sense of discovery.
- An integration of indoor and outdoor experiences
- Complimentary to its surroundings
- Built mostly with Minnesota building materials
- Sustainable and eco-friendly as feasible, using proven technologies and applications
- Expandable
- A place where real science happens
- Timeless – reflective of history and open to the future

- The outdoor environment will be:
- A reproduction of Minnesota's three ecological regions (prairie, eastern deciduous forest, and northern coniferous forest)
  - Dynamic, promoting and encouraging exploration and discovery
  - Comprised of native materials, animals, and plants
  - Designed to invite nature to take up residence
  - A place where real science happens
- b. **REQUIRED CONSULTANT SERVICES:** The scope of the project includes full architectural/landscape architectural/engineering services including architectural, landscape architectural, mechanical, electrical, structural, civil, interior design, scheduling, cost estimating, construction procurement, and construction administration services. The predesign study for the project has been completed, and will serve as the basis for detailed programming of the facility. Exhibit design services will be contracted separately. The building and site design team will be required to collaborate with the provider(s) of exhibit design services on matters of concept design, programming, schedule and other relevant parameters. Audience research services will also be contracted separately.
- c. **PROJECT BUDGET/FEEES:** The construction budget is estimated to be approximately \$19,000,000, excluding exhibits. Fees for the work will be negotiated with the selected design team, and will include basic services, expenses, and special services as required.
- d. **SPECIAL CONSIDERATIONS:** The design team shall demonstrate successful prior experience in:
- The design and construction administration of a non-commercial public facilities, such as a nature center or museum
  - The design and construction administration of a building and an environment that interprets and reflects the mission of the institution
  - The design and construction administration of an interpreted outdoor environment
  - Collaborating with exhibit designers for educational-interpretive facilities such as nature centers or museums
  - Working with and directing the efforts of a client's building advisory committee
  - A participatory design process involving Museum staff, other University representatives, as well as public audience assessment
  - Working with the construction manager at risk project delivery method
  - Sustainable design
  - Projects that were interrupted for a period of time for fundraising before recommencing
- Proposing firms shall provide examples of recently completed projects for review by the selection committee. The firms shall also provide a list of clients for similar projects worked on within the last five years along with the names, phone numbers and addresses of contact persons.
- Selection will be based on:
- The team's qualifications and experience related to the preceding designer requirements
  - The quality of comparable projects completed by team members
  - The strength of the project team, its organization and management structure, and past working relationships of individual members
  - The team's understanding of the project's unique design objectives and its approach to addressing them
  - The team's ability to manage successful projects within the established scope, Budget, and schedule
- e. **PROJECT SCHEDULE:** Programming and schematic design will commence immediately after selection. After schematic design has been completed, design work will be suspended while funds for construction are raised. The schedule for completion of the design phase, construction procurement, and construction administration of the project is dependent upon the acquisition of funds.
- f. **PROJECT PRE-DESIGN INFORMATION:** A detailed predesign study for the project, completed in September 2003, will be used as the basis for detailed programming. The predesign is available at the Capital Planning and Project Management website at [www.cppm.umn.edu](http://www.cppm.umn.edu). Copies of the executive summary and concept drawings from the pre-design study are available to interested parties by contacting Rita Lundgren (612-626-7255).
- g. **PROJECT INFORMATIONAL MEETING (S) /SITE VISIT (S):** There will be a pre-proposal informational meeting for interested firms prior to the RFP submittal date. The meeting will be held in 140 Nolte Center, 315 Pillsbury Drive SE,



# State Contracts

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Minneapolis, MN 55455, at 10:00 to 12:00 on December 1, 2004.

h. STATE DESIGNER SELECTION BOARD SCHEDULE:

Project Proposals Due:	Monday, December 13, 2004, by 1:00 p.m.
Project Shortlist:	Tuesday, January 4, 2005
Project Information Meeting for Shortlisted firms:	To be Set by user agency
Project Interviews and Award:	Tuesday, January 18, 2005

i. PROJECT CONTACT (S):

Kent Dirks, Project Manager  
(612) 625-4454  
dirks003@umn.edu

J. SAMPLE CONTRACT: None

2. PROPOSAL REQUIREMENTS

- a. 14 copies
- b. 8 ½ X 11, soft bound, portrait format
- c. Maximum 20 faces (excluding front and back covers, blank dividers, affidavit of non-collusion, and affirmative action data page)
- d. All pages numbered

3. PROPOSAL CONTENTS

a. COVER

- Project name and number
- Prime firm name, address, telephone number, fax number
- Contact person, telephone number, fax number, and email address

b. COVER LETTER

Single face letter with original signature in ink (on at least one copy) of principal of prime firm, including:

- Brief overview of proposal
- Statement that proposal contents are accurate to the best knowledge of signatory

c. INFORMATION ON FIRM (S)

For prime firm and each consultant firm provide brief description including:

- Name and location
- Year established
- Legal status
- Ownership
- Staffing by discipline
- For firms with multiple offices briefly summarize for each office

d. PROJECT TEAM

- Brief statement of team's past or present working relationships

For each team member provide:

- Name and position in firm, include name of firm
- Home base (if in multi-office firm)
- Responsibility on this project
- Years of experience
- Relevant recent experience (if in another firm, so note)
- Registration (including specialty if engineer)

e. TEAM ORGANIZATION

If planning or design consultants are a part of the team explain how they will be utilized (e.g. major role during design, absent

during construction, etc). Matrix or chart may be used.

**f. PROJECT EXPERIENCE**

For architectural, planning, and/or landscape architecture firms, provide examples of relevant projects recently completed or in progress including:

- Photographs, sketches and/or plans
- Name and location
- Brief description (e.g. size, cost, relevance)
- Firm of record
- Involvement of proposed project team members (may be separate matrix; if in another firm so note)
- Completion date or current status

For engineering or technical firms provide examples of relevant projects recently completed or in progress including the above except that photographs, sketches and/or plans are to be for only that portion of the work for which firm was responsible.

**g. APPROACH/METHODOLOGY**

Describe your understanding of the project, significant issues to be addressed and your specific approach to the planning, design and construction process for this project.

**h. UNIQUE QUALIFICATIONS**

Briefly summarize your team's unique qualifications for this project.

**i. OTHER REQUIREMENTS**

- A statement of commitment to enter into the work promptly, if selected, by engaging the consultants and assigning the persons named in the proposal along with adequate staff to meet requirements of the work.
- A statement indicating that consultants listed have been contacted and have agreed to be a part of the team.
- A complete Affidavit of Non-collusion. (Not counted as part of the 20 faces)
- If appropriate, provide a list of all entities that create a conflict of interest (see 5.b.)
- A completed Affirmative Action Data Page regarding compliance with Minnesota Human Rights Requirements. A copy of the form is available on Web Site <http://www.dsb.admin.state.mn.us>, click on forms. (Not counted as part of the 20 faces)
- A list of all State, Minnesota State Colleges and Universities (MnSCU) and University of Minnesota current and past projects and studies awarded to the prime firm(s) responding to this request for proposal during the four years immediately preceding the date of this request for proposal.

Projects and studies shall mean those projects and studies (1) funded by the state legislature, by state/user agencies, MnSCU or University of Minnesota operating funds, or by funding raised from the private sector or individuals by state/user agencies, MnSCU or the University of Minnesota; (2) awarded as a result of the State Designer Selection Board process or awarded directly by state/user agencies, MnSCU or the University of Minnesota without employing the State Designer Selection Board process; or (3) related to design-bid-build or design/build project delivery systems.

The prime firm(s) shall list and total all gross fees associated with the above projects and studies, whether the fees have been received or are anticipated. In addition, the prime firm(s) shall indicate the amount of fees listed which were paid, or are anticipated to be paid, to engineering or other specialty consultants employed, or anticipated to be employed, on the projects and studies listed pursuant to the above. The prime firm(s) shall subtract consultant fees from gross fees to determine total net fees using the format below.

PROJECT	(A) GROSS FEES	(B) SUBDESIGNERS PORTION	(C) NET TOTAL PROJECT FEE
TOTAL			

(The total shown in column (A) shall equal the sum of those shown in columns (B) and (C).

# State Contracts

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## 4. SELECTION CRITERIA

Criteria for selection shall be as stated in the project description. Technical and aesthetic experience and capabilities are paramount. In addition, the Board seeks equitable distribution of fees among qualified firms and gives consideration to geographical location of firms with respect to project site.

## 5. CONTRACT REQUIREMENTS

### a. AFFIDAVIT OF NONCOLLUSION

Each responder must attach a completed Affidavit of Noncollusion. A copy of the form is available on Web Site: <http://www.dsb.admin.state.mn.us>, (click on forms).

### b. CONFLICTS OF INTEREST

Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

### c. DISPOSITION OF RESPONSES

All materials submitted in response to this RFP will become property of the State and will become public record in accordance with Minnesota Statutes 13.591 after the evaluation process is completed. If the responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statutes § 13.37, the responder must:

- clearly mark all trade secret materials in its response at the time the response is submitted,
- include a statement with its response justifying the trade secret designation for each item, and
- defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State.

The State will not consider the prices submitted by the responder to be proprietary or trade secret materials.

Responses to this RFP will not be open for public review until the State decides to pursue a contract and that contract is awarded.

### d. CONTINGENCY FEES PROHIBITED

Pursuant to Minnesota Statutes Section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

### e. ORGANIZATIONAL CONFLICTS OF INTEREST

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances that could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, the responder is unable or potentially unable to render impartial assistance or advice to the State, or the responder's objectivity in performing the contract work is or might be otherwise impaired, or the responder has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division, 112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155, which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to the contracting officer, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor (consultant), and the terms "contract," "contractor (consultant)," and "contracting officer" modified appropriately to preserve the State's rights.

### f. STATE EMPLOYEES

In compliance with Minnesota Statutes § 16C.08 Subd. 2. (b) (1), the availability of this work is being offered to State employ-

ees. The State will evaluate the responses of any State employee, along with other responses to this Request for Proposals.

g. **PREFERENCE TO TARGETED GROUP AND ECONOMICALLY DISADVANTAGED BUSINESS AND INDIVIDUALS**

In accordance with Minnesota Rules 1230.1810, subpart B and Minnesota Rules 1230.1830, certified Targeted Group Businesses or individuals and certified Economically Disadvantaged Businesses or individuals submitting proposals as prime contractors (consultants) will receive up to six percent preference in the evaluation of their proposals. For information regarding certification, contact the Department of Administration, Materials Management Helpline at (651) 296-2600, TTY (651) 282-5799.

h. **HUMAN RIGHTS REQUIREMENTS**

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached Affirmative Action Data page and return it with the response. As required by Minnesota Rules 5000.3600, "It is hereby agreed between the parties that Minnesota Statutes § 363.073 and Minnesota Rules 5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it". A copy of Minnesota Statutes § 363.073 and Minnesota Rules 5000.3400 - 5000.3600 are available on Web Site: <http://www.dsbc.admin.state.mn.us>.

i. Any changes in team members for the project requires approval by the State.

j. All costs incurred in responding to this RFP will be borne by the responder. This RFP does not obligate the State to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

## Minnesota State Colleges and Universities

### Notice of Availability of Request for Proposal (RFP) for Designer Selection for New Science & Learning Resource Center, Century College, White Bear Lake, Minnesota (State Project No. 04-15)

The Minnesota State Colleges and Universities, acting as the owner for the State of Minnesota through the State Designer Selection Board, is soliciting proposals from interested, qualified consultants for architectural and engineering design services for the above referenced project.

A full Request for Proposals is available on the Minnesota State Colleges and Universities website: [www.facilities.mnscu.edu](http://www.facilities.mnscu.edu), click on "Solicitation Announcements."

A project informational meeting has been scheduled for 2:00 pm, Tuesday, November 30, 2004, at Century College East Campus, Room 1333, 3300 Century Avenue North, White Bear Lake, MN. Contact Jim Tjossem, 651-773-1723 or cell 612-723-9651, or e-mail at [J.Tjossem@century.edu](mailto:J.Tjossem@century.edu) to sign up for the meeting.

Proposals must be delivered to Terry Lewko, Executive Secretary, State Designer Selection Board, in the State Architect's Office, not later than 1:00 pm, Monday, December 6, 2004. Late responses will not be considered.

Minnesota State Colleges and Universities is not obligated to complete the proposed project and reserves the right to cancel the solicitation if it is considered to be in its best interest.

## Department of Employment and Economic Development

### Notice of Availability of Contract for "E-Marketing/Communications Tool"

The Department of Employment and Economic Development (DEED) is requesting a proposal to implement a cost-effective and efficient marketing/communication tool to better serve the department, its economic development partners, and local Work Force Centers while at the same time analyzing the effectiveness of all of the ongoing marketing strategies. The proposed solution must meet the specific marketing needs outlined by DEED, including:

- Marketing automation solution that is capable of meeting the current and future needs of DEED
- Simplified integration of marketing solution with existing governmental databases

## State Contracts

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- Statewide solution to ensure data privacy and communications compliance (CAN SPAM)
- Government specific marketing metrics and reporting of DEED marketing efforts

By implementing an integrated solution across the state, DEED hopes to achieve the following measurable goals:

- Improve human resource efficiencies across the state's economic development marketing efforts
- Better service cities and local work force centers through shared marketing capabilities
- Provide more timely communications regarding programs and job opportunities
- Create more structured and consistent communications
- Ensure communication compliance with DEED

Work is proposed to start after December 17, 2004.

The Request for Proposal can be obtained from:

John Fisher, Project Coordinator  
Minnesota Department of Employment and Economic Development  
500 Metro Square  
121 Seventh Place East  
St. Paul, MN 55101  
(651) 215-3841

NOTE: No other personnel are authorized to discuss the contract or RFP. The proposal deadline is December 13, 2004, 2:00 pm. Only hard copies of written proposals will be considered, and proposals received after the deadline will not be considered.

## Minnesota Housing Finance Agency Request for Proposals for Audit and Financial Services

The Minnesota Housing Finance Agency (Agency) is requesting proposals from qualified firms to provide audit and financial services for a four-year term.

The Request for Proposal provides information about the Agency and invites your response including sufficient information about your firm and its capabilities, to enable us to make a selection and enter into a service contract engagement. Ten copies of your proposal must be received at the Agency by 12:00 p.m. Central Standard Time on December 23, 2004. Facsimiles will NOT be accepted. Please refer to the Request for Proposal for required information and other specifications, on the Agency website at: ([www.mhfa.state.mn.us/rfp\\_audit.htm](http://www.mhfa.state.mn.us/rfp_audit.htm))

Your proposal and all questions regarding this Request for Proposal should be directed to Mike LeVasseur, Director of Finance, at the Agency. No additional communication concerning this matter with Agency staff or Board members is necessary or desired prior to conclusion of the selection process.

## Department of Human Services Notice of Availability of Contract for Medicaid Mental Health Pharmacy Management

The Minnesota Department of Human Services-Pharmacy Program is requesting proposals for the purpose of improving physician prescribing of drugs used to treat mental health conditions. This proposal will be at no cost to the STATE and will include: 1) perform an initial paid prescription analysis by the CONTRACTOR to identify target "outlier" physicians based on evidenced-based criteria for mental health drugs 2) ability to modify criteria and educational matter and approach to physician education based on STATE DUR Board recommendations 3) provide a list of organizations and individuals and work with the STATE to form an advisory group regarding prescribing of mental health drugs 4) provide resources for peer-to-peer counseling of physician "outliers" 5) see the complete RFP for all requirements.

Work is proposed to start after January 1, 2005.

A Request for Proposals will be available by mail from this office through December 8, 2004. A written request (by direct mail or fax) is required to receive the Request for Proposal. After December 8, 2004, the Request for Proposal must be picked up in person.

The Request for Proposal can be obtained from:

Mary Beth Reinke, Pharm.D.  
Minnesota Department of Human Services  
444 Lafayette Road North

St. Paul, MN 55155-3853

Fax: (651) 282-6744.

Proposals submitted in response to the Request for Proposals in this advertisement must be received at the address above no later than December 16, 2004. Late proposals will not be considered. Fx or e-mailed proposals will not be considered.

This request does not obligate the State to complete the work contemplated in this notice. The State reserves the right to cancel this solicitation. All expenses incurred in responding to this notice are solely the responsibility of the responder.

## **Department of Public Safety**

### **Bureau of Criminal Apprehension - CriMNet**

### **Request for Proposals (RFP) for Technical Realignment**

Professional/technical services are needed to provide the Minnesota Department of Public Safety, Bureau of Criminal Apprehension/CriMNet ("CriMNet") with technology arm evaluation and reorganization plans for the CriMNet / CJIS (Criminal Justice Information System) services technology staff, technology resources and structure. Services will include working on CriMNet/CJIS staffing succession and organizational plan, roles and responsibilities definition, technical skills needs analysis and technology role based assignments.

The output from this contract will be a written project plan, detail project and milestones schedule, bi-weekly and monthly progress reports, roles and responsibilities definitions, role based assignments, skills need analysis, recommend technical organizational structure of the technology arm, evaluation and reorganization plans for the CriMNet / CJIS technology staff, and recommended assignments for existing and future staff based on the defined CriMNet/ CJIS needs.

Anticipated contract start date for this project is January 31, 2005 ending on April 29, 2005. Details are contained in a complete RFP, which may be obtained by emailing: Paul.Schoen@state.mn.us. All questions concerning this RFP should be emailed to Paul Schoen at Paul.Schoen@state.mn.us, and should be received no later than 2:00 PM Central Standard Time on November 30, 2004. Answers to questions will be in emailed to all entities requesting a complete RFP. Final date for submitting a proposal is 2:00 PM Central Standard Time on December 13, 2004.

## **Department of Transportation**

### **Engineering Services Division**

### **Notice of Potential Availability of Contracting Opportunities for a Variety of Highway Related Technical Activities (the "Consultant Pre-Qualification Program")**

This document is available in alternative formats for persons with disabilities by calling Robin Valento at (651) 284-3622 for persons who are hearing or speech impaired by calling the Minnesota Relay Service at (800) 627-3529.

Mn/DOT, working in conjunction with the Consultant Reform Committee, the Minnesota Consulting Engineers Council, and the Department of Administration, has developed the Consultant Pre-qualification Program as a new method of consultant selection. The ultimate goal of the Pre-Qualification Program is to streamline the process of contracting for highway related professional/technical services. Mn/DOT anticipates that most consultant contracts for highway-related technical activities will be awarded using this method, however, Mn/DOT also reserves the right to use RFP or other selection processes for particular projects. Nothing in this solicitation requires Mn/DOT to complete or use the Consultant Pre-qualification Program.

Mn/DOT is currently requesting applications from consultants. Refer to Mn/DOT's Consultant Services web site, indicated below, to see which highway related professional/technical services are available at this time. Following the advertisement of particular category of services, applications will be accepted on a continual basis.

All expenses incurred in responding to this notice will be borne by the responder. Response to this notice becomes public information under the Minnesota Government Data Practices.

Consultant Pre-Qualification Program information, application requirements and application forms are available on Mn/DOT's web site at: <http://www.dot.state.mn.us/consult>

Send completed application material to:

Robin Valento  
Pre-Qualification Administrator  
Minnesota Department of Transportation  
Consultant Services  
395 John Ireland Boulevard, Seventh Floor North, Mail Stop 680  
St. Paul, MN 55155

Note: DUE DATE: APPLICATION MATERIAL WILL BE ACCEPTED ON A CONTINUAL BASIS.



# State Contracts

## Department of Transportation Engineering Services Division

### 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](http://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 commodity, project or tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from the date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact editor for further details.

## Austin-Mower County Area Transit Joint Powers Board Notice to Bidders for Sealed Proposals to Operate Transit System

Sealed proposals for the project listed below will be received at the office of the Austin City Finance Director, 500 4th Avenue Northeast, Austin, MN 55912, until 2:00 P. M., December 6, 2004, at which time they will be opened publicly and read. Proposals may be considered by the Austin-Mower County Area Transit Joint Powers Board at their meeting at 2:00 P. M. on December 9, 2004. The Board reserves the right to review the proposals at a later date if necessary to allow for further consideration prior to taking action.

### REQUEST FOR PROPOSALS TO OPERATE TRANSIT SYSTEM

The Austin-Mower County Area Transit Joint Powers Board hereby makes a Request For Proposals (RFP) from parties interested in entering into a contract with the Board to operate Austin-Mower County Area Transit (AMCAT), for the period from January 1, 2005 through December 31, 2006, with an option exercisable by the Board at any time to extend the contract for the period from January 1, 2007 through December 31, 2007.

AMCAT is a countywide, state subsidized public transportation system, which utilizes small buses to transport passengers.

The RFP documents and forms may be obtained, at no cost, at the office of the Mower County Highway Department, 1105 8th Avenue NE, Austin, MN 55912. The contact person for all communication involving the RFP is:

Michal J. Hanson, Mower County Engineer  
1105 8th Avenue NE  
Austin, MN 55912  
(507) 437-7718

Other personnel are not allowed to discuss the RFP with anyone, including potential responders, before the RFP submission deadline. No proposal guaranty will be required.

Pursuant to Federal and State requirements, a Disadvantaged Business Enterprises (DBE) Race/Gender Neutral Goal has been assigned for work under this RFP. In preparing a bid, bidders should make every reasonable effort to solicit DBE firms to participate as subcontractors. Bidders must complete the Bidder's list contained in the DBE Special Provisions included in this RFP.

The Board reserves the right to reject any and all proposals, to waive defects therein, and to award to other than the lowest bidder if it is in its best interest.

Dated: November 12, 2004

Austin-Mower County Area Transit Joint Powers Board  
Viril Layton  
Chairman

## City of Minneapolis

### Department of Public Works

#### Request for Preparation of Ten-Year Transportation Action Plan

NOTICE IS HEREBY GIVEN that the City of Minneapolis is soliciting proposals for the preparation of a ten-year action plan for transportation facilities and services in downtown and throughout the City. The plan will address all modes of transportation (transit, pedestrian, bicycle, automobile), will assess transportation needs in 2030 (with particular emphasis on the next ten years), will evaluate up to three scenarios for transit operations in downtown, and will recommend specific actions that should be taken over the next ten years. Proposals may be submitted by individual entities or by teams comprised of multiple entities. The selected respondent must be prepared to begin work in March 2005 and must deliver a draft report by March 2006 and a final report by July 2006. The full RFP can be located on the City's web site at [www.ci.minneapolis.mn.us](http://www.ci.minneapolis.mn.us) or call or write for the full RFP, which will be sent free of charge to interested vendors. For more information, contact:

Mary Ann Miller  
Department of Public Works  
City of Minneapolis  
233 City Hall  
350 South Fifth Street  
Minneapolis, MN 55413-1315  
FAX: (612) 673-2149  
E-mail: [maryann.miller@ci.minneapolis.mn.us](mailto:maryann.miller@ci.minneapolis.mn.us)

Other department personnel are NOT allowed to discuss the Request for Proposal with anyone, including responders, before the proposal submission deadline.

The estimated budget allocated for this project is \$600,000. This proposal does not obligate the agency to spend the estimated dollar amount. All responses to this RFP must be received no later than 4:00 p.m. on January 7, 2005.

## City of St. Cloud, Minnesota

### Request for Proposals (RFP) for Transportation Consultant Services: 40<sup>th</sup> Street Corridor Study

#### Project Overview

The City of St. Cloud, through its Department of Public Works, requests proposals to complete a Corridor Study Report that will identify a preferred alignment alternative and preliminary urban type design for the 40<sup>th</sup> Street South Corridor extending approximately 2.4 miles from Stearns County Road (CR) 136 (Oak Grove Road) to Stearns County State Aid Highway (CSAH) 75 (Roosevelt Road). The westernmost mile of this corridor runs along the existing 40<sup>th</sup> Street roadway, which is a narrow, asphalt surface street. The remainder of the corridor traverses open, undeveloped lands and private driveways.

#### Project Goal

It is the goal of this project that a Corridor Study Report be completed that documents the decision-making process leading to selection of a preferred alignment alternative and preliminary urban type design for the 40<sup>th</sup> Street Corridor. The methodology used for this Corridor Study Report should follow the practices of a "pre-NEPA (National Environmental Policy Act) corridor study". This pre-NEPA methodology is outlined in the National Cooperative Highway Research Program Report 435 (NCHRP 435) Guidebook for Transportation Corridor Studies (1999).

Optional tasks requested as part of this RFP will include preparation of an Environmental Assessment (EA)/Environmental Assessment Worksheet (EAW) and official mapping for the preferred alignment alternative.

The anticipated solicitation schedule is as follows:

Issue Request for Proposals	November 22, 2004
Proposal Submittal Deadline	December 17, 2004 at 4:00 p.m.
Select Consultant	December 31, 2004
Award Contract	January, 2005
Begin Work	February, 2005

All firms interested in receiving an RFP package are invited to contact:

# Non-State Contracts & Grants

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Mr. Stephen Gaetz, P.E.  
City of St. Cloud Engineer  
400 2<sup>nd</sup> Street South  
St. Cloud, Minnesota 56301  
Phone: (320) 255-7249  
E-mail: [stephen.gaetz@ci.stcloud.mn.us](mailto:stephen.gaetz@ci.stcloud.mn.us)  
Fax: (320) 255-7250

## Metropolitan Radio Board

### Request for Proposals for Hi-Speed Wireless Mobile Data Network for Public Safety and Public Service Agencies

The Metropolitan Radio Board (MRB) is seeking proposals from qualified and experienced contractors to design, furnish and install a hi-speed wireless network solution in support of mobile data communications for local, county, and state governmental and quasi-governmental agencies operating over a nine-county region in the Minneapolis-St. Paul metropolitan area.

The first phase of this project involves the deployment of an initial wireless network serving all of Hennepin County and which will also serve as the foundation of a larger, wide-area wireless network supporting the entire nine-county region. A seven-year contract with the successful contractor will provide the opportunity for other agencies to join the network in later phases.

A non-mandatory pre-proposal conference will be held on Tuesday December 7, 2004 at 9:00 a.m. CST in the board room of the MRB, 2099 University Avenue, St. Paul, MN 55104.

Prospective contractors will have the opportunity to tour sites in accordance with the instructions contained in the RFP.

Proposals are due on Friday February 4, 2005 by 4:00 p.m. CST.

Copies of the RFP on CD can be obtained by contacting Mr. Bill Dean, MRB Executive Director, at (651) 643-8395 or by contacting [bill.dean@metroradioboard.org](mailto:bill.dean@metroradioboard.org)

## 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](http://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 the Purchasing Services lobby, Suite 560, 1300 S. 2nd Street, Mpls., MN 55454.

# Minnesota's Bookstore

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## 10% OFF! Trees of Minnesota Field Guide

This pocket-sized field guide features 93 species of Minnesota trees. Easy-to-use thumb tabs show leaf type; fact-filled information includes comparison of average tree height to a two-story house; full color photos showing bark, blossoms, leaves, and fruit. Stock Number: 9-45 Price: \$11.66 Publisher: Adventure Publishing Year: 2001 Pages: 194

## 10% OFF! Minnesota Travel Companion:

### A Guide to History Along Minnesota's Highways

Make your road trips come alive, with this great collection of historical background about the communities and people living along our most frequently traveled highways. Learn about the Sioux uprising that caught settlers by surprise in the Hwy. 7 area near Hutchinson. Discover that the city of Hibbing (off of Hwy. 169 North) was moved from its original location in 1915 to allow for access to rich deposits of ore. Find out what Minnesota town along Hwy. 35 South was the first to form a cooperative, spawning what has grown to 1400 coops throughout the nation, 50% of them in Minnesota. Learn how towns got their name, how they interact with the rivers and railroad, etc. Stock Number: 19-114 Price: \$17.96 Publisher: U of M Press Year: 2001 Pages: 253

## Minnesota's Iron Country: Rich Ore, Rich Lives

Northern Minnesota's rich iron ore deposits helped shape the destiny of the United States, and in times of war helped protect the world. The story is all here in this exploration of Minnesota's Iron Country, revealing the lives of a remarkable people, and the industrial and political forces of one of America's most important regions. Stock Number: 17-10

Price: \$19.95 Publisher: Lake Superior Port Year: 2004 Pages: 276

## Field Guide to the Freshwater Mussels of Minnesota

A tool for anyone interested in identifying and learning about Minnesota freshwater mussels. Contains photographs, shell descriptions, habitat associations, and distribution maps. Also contains general information about mussels, their importance in the ecosystem, threats to their survival, collection methods and collection regulations. Stock Number:

9-90 Price: \$9.95 Publisher: Natural Resources Year: 2003 Pages: 144

## NEW! Minnesota Contractor's Reference Manual

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