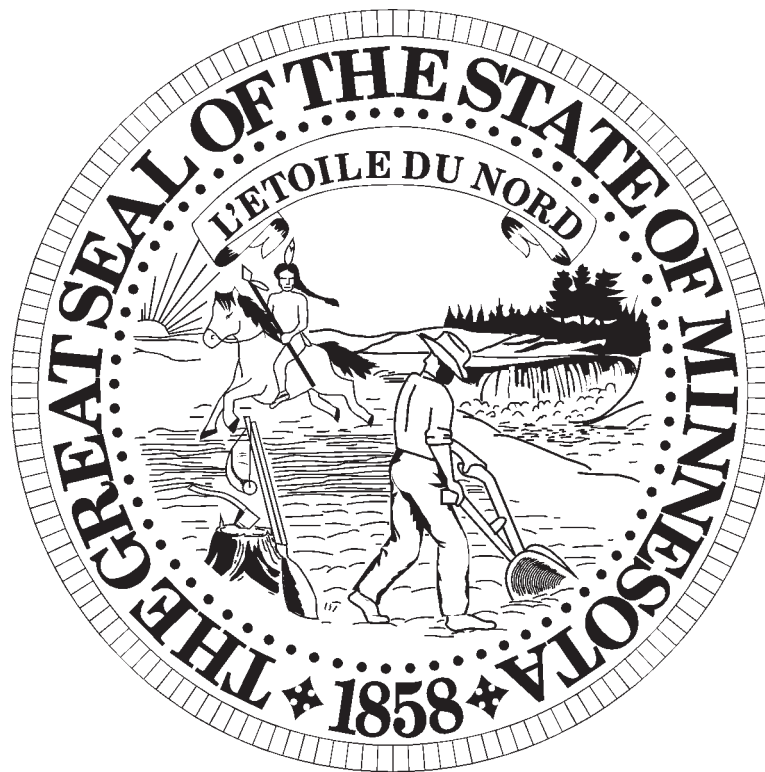


State of Minnesota

State Register



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State Register

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

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- appointments
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- commissioners' orders
- revenue notices
- official notices
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Patricia Anderson, State Auditor (651) 297-3670

Mary Kiffmeyer, Secretary of State (651) 296-2079

Department of Administration:

Dana B. Badgerow, Commissioner (651) 296-1424

Communications Media Division:

Mary Mikes, Director (651) 297-3979

State Register:

Robin PanLener, editor (651) 297-7963

John Mikes, assistant editor (651) 297-4616

Jessie Rahmeyer, subscriptions (651) 297-8774

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Minnesota Rules: Amendments & Additions

Monday 20 December 2004, Volume 29, #14-25..... 684

Proposed Rules

Labor and Industry Department

Proposed Permanent Rules Relating to Workers' Compensation
Vocational Rehabilitation..... 685

Public Safety Department

Minnesota Office of Pipeline Safety: Proposed Permanent Rules
Relating to Pipeline Safety..... 697

Revenue Department

Proposed Permanent Rules Governing the Sales and Use Tax
on Food, Drinks, and Meals..... 701

Appointments

Veterans Affairs Department

Notice of Appointment of Commissioner Michael Pugliese..... 706

Revenue Notices

Revenue Department

Modification of Revenue Notice #1991-06: Sales/Use Tax -
Isolated or Occasional Sales..... 706

Official Notices

Labor and Industry Department

Labor Standards Unit: Notice of Certification of Truck Rental
Rates and Effective Date..... 709

Minnesota Racing Commission

REQUEST FOR COMMENTS on Possible Amendment to Rules
Governing Licensure, Class C Licenses, and Other Rules
Proposed by Industry Groups..... 710

State Grants & Loans

Minnesota Historical Society

Historic Preservation Grant Application Deadlines..... 711

State Contracts

Department of Administration

Notice of Request for Proposal for Lease of Two (2) Existing
or Newly Constructed Facilities for Operation of
16-Bed In-Patient Community-Based Units (ICBUs) for
Mental Health Treatment Programs..... 711

Minnesota State Colleges and Universities (The System)

Office of the Chancellor, Information Technology Services:
Request for Proposals for Products/Components & Upgrade
two (2) – GS160 ALPAH Servers..... 712

Department of Human Services

Notice of Availability of Contracts for Evaluation of Integrated
Services Pilot Projects..... 712

Minnesota State Lottery

Proposals Sought for Market Research Services..... 713

Department of Transportation

District Operations Division: Request for Proposal (RFP) for
Cass Lake Safety Rest Area – SP 1102-60 and SP 1102-60A..... 713
Engineering Services Division: Potential Availability of Contracting
Opportunities for a Variety of Highway Related Technical Activities
(the “Consultant Pre-qualification Program”)..... 713
Engineering Services Division: Professional/Technical Contract
Opportunities..... 714

Non-State Contracts & Grants

City of Frazee

Request for Proposals for Updated City Comprehensive Plan..... 714

Metropolitan Council

Notice of Invitation for Bids (IFB) for the Transportation and
Disposal of Waste Incinerator Ash..... 715

ServeMinnesota: National and Community Service

Announcement of 2005-2006 Request for Proposals for
Minnesota Reading Corps Sites..... 715

University of Minnesota

Bid Information Service (BIS) Available for All Potential
Vendors..... 715

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available from the Materials Management Helpline
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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 #14-25

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

Administrative Hearings Office

1415.0100; .0300; .0500; .0600; .0700; .0800; .1000; .1100; .1250; .3200; .3300; .3500; .3700; .3800; .3900; .4000; .4100 (**proposed**)..... 560
1415.0200; .0300 s.3, 4, 7, 10, 11, 14, 17; .0400; .0800 s.3; .0900; .1000 s.3; .1200; .1300; .1400; .1500; .1600; .1700; .1800; .1900; .2000; .2100; .2200; .2300; .2400; .2500; .2600; .2700; .2800; .2900; .3000; .3100; .3200 s.4, 5, 6; .3400; .3500 s.2, 3; .3600; **5220.2605**; .2610; .2620; .2640; .2655; .2690; .2920 s.1, 2, 3, 4, 5, 7, 8 (**proposed repealer**)..... 560

1420.0100; .0200; .0300; .1300; .1800; .1850; .1900; .2050; .2150; .2200; .2250; .2350; .2400; .2500; .2600; .2605; .2700; .2800; .2900; .3150; .3700; .3800 (**proposed**)..... 549

Agriculture Department

1500.1201; **1505.2100**; **1510.0370**; .0371; .0372; .0400; .0401; .0402; .0408; .1930; .1943; .1947; .2070; .2130; .2180; .2190; .2200; .2220; .2230; .2500; .2510; .2520; .2530; .2540; .2550; .2560; .2570; .2580; .2590; .2595; **1515.3000**; .3100; .3200; .3400; .3500; .3600; .3800; **1552.0050**; **1556.0110**; .0120; .0132; .0134; .0145; .0160; **1570.0700**; .0800 (**adopted**)..... 655
1505.0060; .0360; .0370; **1510.0890**; .0900; .0910; .0920; .0930; .0940; .0950; .0960; .0970; .0980; .0990; .1000; .1010; .1020; .1030; .1040; .1050; .1060; .1070; .1080; .1090; .1935; .1940; .1950; .2000; .2010; .2020; .2030; .2040; .2050; .2060; .2080; .2090; .2100; .2110; .2120; .2140; .2150; .2160; .2210; **1515.0100**; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100; .1200; .1300; .1400; .1500; .1600; .1700; .1800; .1900; .2000; .2100; .2200; .2500; .2550; .2600; .2700; .2800; .2900; .3100 s.6; .3900; **1552.0030** s.4; **1556.0140** (**repealed**)..... 655

Animal Health Board

1710.1300; .1310; .1350; .1360; .1410; .1420; .1440; .1500 (**adopted**)..... 475

Environmental Quality Board

4410.4300; .4600 (**proposed**)..... 571

Health Department

4617.0002; .0005; .0010; .0015; .0020; .0025; .0030; .0065; .0066; .0067; .0068; .0070; .0075; .0080; .0084; .0088; .0090; .0100; .0121; .0171; .0176 (**proposed**)..... 574
4617.0002 s.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, 41; .0020 s.4, 5, 6, 7, 8, 9, 11; .0030 s.2, 3; .0037; .0040; .0042; .0043; .0065 s.4; .0084 s.14, .0088 s.3; .0121 s.1 (**proposed repealer**)..... 574
4761.2220; .2240; .2260; .2280; .2300; .2320; .2340; .2360; .2420; .2440; .2570; .2645; .2660 (**adopted**)..... 531

Labor and Industry Department

5205.0010 (**proposed exempt**)..... 426
5208.1500 (**proposed exempt**)..... 381
5220.0107; .0110; .0120; .0130; .0410; .0450; .0510; .0710; .0950; .1400; .1500; .1600; .1700; .1801; .1802; .1900 (**proposed**)..... 685
5220.0120 s. 4 (**proposed repealer**)..... 685
5220.2605; .2610; .2620; .2640; .2655; .2690; .2920 s.1, 2, 3, 4, 5, 7, 8 (**proposed repealer**)..... 560

Natural Resources Department

6232.1600; .1800 (**adopted expedited emergency**)..... 475
6236.0300; .0600; .0810; .1060; **6240.1100** (**adopted expedited emergency**)..... 597
6236.0810; .1060 (**repealed expedited emergency**)..... 597
6264.0400; **6266.0700** (**adopted exempt**)..... 596

Pollution Control Agency

7001.0040; .1040; **7002.0220**; .0250; **7090.0010**; .0020; .0030; .0040; .0060; .0080; .1000; .1010; .1040; .2000; .2010; .2020; .2030; .2040; .2060; .3000; .3010; .3040; .3060; .3080 (**proposed**)..... 415
7001.0520; **7045.0020**; .0120; .0206; .0208; .0214; .0450; .0552; .0685; .1400 (**proposed**)..... 623 and 651
7001.1020 s. 16a, 16b, 16c, 16d, 17a, 28a; .1035 (**proposed repealer**)..... 415
7007.1144; .1148 (**adopted**)..... 626

Minnesota Rules: Amendments and Additions

Public Safety Department

7560.0100; .0150; .0225; .0250; .0325; .0350; .0375
(proposed)..... 697
7560.0100 s.5 becomes s. 8; s. 5a becomes s. 9; s. 6
becomes s.11 (proposed renumbering)..... 697

Gambling Control Board

7861.0010; .0020; .0030; .0040; .0050; .0060; .0070; .0080; .
.0090; .0100; .0110; .0120; .0130; .0140; .0150; **7862.0010**;
7863.0010; .0020; .0050; .0060; **7864.0010**; .0030; **7865.0010**;
.0020; .0025; .0030; .0040; .0050 (**adopted**)..... 443
7861.0010, s. 2, 19, 29, 37, 40, 41, 42, 45, 46, 47;
.0020, s 6; .0030, s. 3, 8; .0040, s. 7; .0100, s. 3, 6, 10;
.0140, s. 2, 3; .0150; **7862.0010**, s. 1, 3, 9, 10, 11a;
7863.0010, s. 1, 3, 8, 10, 13; **7864.0010**, s. 1, 3, 9, 12;
7864.0030, s. 4; **7865.0020**, s. 1a, 3, (**repealed**)..... 443

Revenue Department

8130.4700 (proposed)..... 700
8130.0800; .4700 s. 1, 3, 4 (**proposed repealer**)..... 700

Transportation Department

8820.0100; .0600; .0800; .1200; .1400; .1500; .1600; .2700;
.2800; .3100; .9920; .9922; .9926; .9936; .9946; .9956; .9981;
.9986; .9995 (**adopted**)..... 450

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.

Minnesota Department of Labor and Industry

Proposed Permanent Rules Relating to Workers' Compensation Vocational Rehabilitation

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Proposed Amendment to Rules Governing Workers' Compensation Vocational Rehabilitation, *Minnesota Rules Chapter 5220*

Introduction. The Department of Labor and Industry (DLI) intends to adopt rules without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules until January 19, 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: Marie O'Neill, Legal Services Unit, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155. Comments can also be submitted to Ms. O'Neill by **phone** at (651) 284-5486; by **Fax** at (651) 284-5725; or by **e-mail** at marie.oneill@state.mn.us. **TTY** users may call the Department at (651) 297-4198.

Subject of Rules and Statutory Authority. The proposed rules govern procedures for filing of rehabilitation documents; forms and reporting procedures; disability status reports; waivers of rehabilitation services; rehabilitation consultations; rehabilitation plans, plan

Proposed Rules

progress reports and plan amendments; employee choice and change of qualified rehabilitation consultant (QRC); closure of rehabilitation; filing rehabilitation requests for assistance and rehabilitation responses; qualifying criteria for QRCs and QRC interns; the procedure and documentation for registration for QRCs, QRC firms, QRC vendors and QRC interns; professional conduct of a QRC; communication between rehabilitation providers and other participants in the workers' compensation system, including certified managed care plans; and the rate of pay for QRC travel time. The statutory authority to adopt the rules is *Minnesota Statutes*, sections 176.102, subd. 2 and 176.83, subds 1, 2 and 15, which give the commissioner the authority to promulgate: rules necessary to implement and administer section 176.102; rules for providing rehabilitation consultations; forms and other reporting procedures related to rehabilitation services; and rules limiting fees charged by QRCs and vendors. 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 DLI website at:

<http://www.doli.state.mn.us/workcomp.html>.

Comments. You have until 4:30 p.m. on January 19, 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 the 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 January 19, 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 request 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 the DLI website at <http://www.doli.state.mn.us/workcomp.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. Copies of the statement may be obtained at the cost of reproduction from the agency contact person.

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 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: December 8, 2004

M. Scott Brenner
Commissioner

5220.0107 SERVICE AND FILING OF REHABILITATION DOCUMENTS.

Subpart 1. Service on other parties. All required rehabilitation reports and progress records that are required to be sent or provided to other parties must be mailed by first class mail to their addresses of record, delivered by personal service, or, if authorized by the recipient, sent by facsimile or electronic mail.

Subp. 2. Filing with state. A document is filed upon its receipt by the division by 4:30 p.m. on an open state business day. Documents received after 4:30 p.m. are considered filed on the next open state business day. A party is authorized to file a document with the division

Proposed Rules

by facsimile if the document is 15 pages or less in length. The filed facsimile has the same force and effect as the original. Where the quality or authenticity of a document filed by facsimile is at issue, the division may require the original document to be filed. When the quality or authenticity of a document filed by facsimile is not at issue, the party shall not also file the original document.

5220.0110 REHABILITATION REQUEST; DISABILITY STATUS REPORT.

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

Subp. 7. **Disability status report.** The insurer shall file a disability status report to notify the commissioner of a referral for a rehabilitation consultation or to request a waiver of rehabilitation services.

A. ~~When an employee has not returned to work following a workplace injury;~~ The insurer shall complete a disability status report, file it with the commissioner, and serve a copy on the employee:

(1) within 14 calendar days after it becomes known that the temporary total disability will ~~extend beyond~~ likely exceed 13 cumulative weeks ~~from the date of injury;~~

(2) within 90 calendar days of the date of injury when the employee has not returned to work following a work injury; or

(3) within 14 calendar days after receiving a request for rehabilitation consultation, whichever is earlier.

~~When a waiver of rehabilitation services has been granted under part 5220.0120, the insurer shall complete, serve, and file another disability status report shall be filed by the insurer 180 days after the injury if no party has requested a rehabilitation consultation and the employee has not returned to work within 14 calendar days of the expiration of the waiver.~~ A disability status report is also required following each request for rehabilitation consultation.

B. The disability status report shall contain the following:

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

(5) information about accommodations or services being provided to the employee to assist in the return to the ~~preinjury date of injury~~ employer;

(6) an indication of whether a rehabilitation consultation is occurring or a request for a waiver of consultation is being made under part 5220.0120;

[For text of subitems (7) and (8), see M.R.]

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

[For text of subp 8, see M.R.]

5220.0120 WAIVER OF CONSULTATION AND REHABILITATION SERVICES.

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

Subp. 2. **Criteria.** ~~A request for a rehabilitation waiver must be filed on the disability status report within the time frames specified in part 5220.0110, subpart 7, item A. A waiver is granted when the employer documents that the otherwise qualified employee will return to the date-of-injury job or other suitable gainful employment with the date of injury employer within 180 days after the injury 90 calendar days after the request for the waiver is filed. The waiver shall not be effective more than 180 90 calendar days following the injury unless a renewal is granted under subpart 4 after the waiver is granted. A waiver of consultation and rehabilitation services may not be renewed.~~

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

Subp. 4. **See repealer.**

Subp. 5. **Commissioner's order.** ~~If 180 90 calendar days~~ have passed since the date of injury and the employee has not returned to work, no rehabilitation consultation has taken place, and no waiver of rehabilitation services has been granted, the commissioner shall order a rehabilitation consultation at the insurer's expense under *Minnesota Statutes*, section 176.102, subdivision 4, paragraph (f), to be provided by the vocational rehabilitation unit of the department if appropriate.

Subp. 6. **Referral for consultation after waiver.** If 90 calendar days have passed since the waiver was granted and the employee has not returned to suitable gainful employment, the insurer shall provide a rehabilitation consultation. The insurer shall also provide a rehabilitation consultation if requested by the employee at any time even if a waiver has been granted.

5220.0130 REHABILITATION CONSULTATION.

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

Subp. 2. **Criteria.** ~~If the employee, employer requests a rehabilitation consultation, or receives a request for a rehabilitation consultation from the commissioner requests a rehabilitation consultation,~~ the insurer shall arrange for a rehabilitation consultation by a qualified rehabilitation consultant to take place within 15 calendar days of the insurer's receipt of the request.

~~If the insurer receives a request for a rehabilitation consultation from an employee and does not request a waiver of rehabilitation services, the insurer shall arrange for a rehabilitation consultation by a qualified rehabilitation consultant to take place within 15 days of the receipt of the rehabilitation consultation request.~~

Proposed Rules

If the insurer requests a waiver of rehabilitation services, ~~and no waiver of rehabilitation services is granted~~ which is denied by the commissioner under part 5220.0120, the insurer shall arrange for a rehabilitation consultation by a qualified rehabilitation consultant to take place within 15 calendar days of the notification that the waiver request has not been granted.

The rehabilitation consultation shall be held at a location not more than 50 miles from the employee's residence if the employee lives in Minnesota or within 50 miles of a Minnesota state border. If the employee lives beyond this distance, the qualified rehabilitation consultant may conduct the consultation by telephone.

Subp. 3. **Consultation.** The procedure and documentation for a rehabilitation consultation are contained in items A to E.

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

C. Contents of report. The rehabilitation consultation shall be documented by the assigned qualified rehabilitation consultant on a rehabilitation consultation report form prescribed by the commissioner containing substantially the following:

- (1) identifying information of the employee, employer, insurer, and qualified rehabilitation consultant;
- (2) the rehabilitation consultation date;
- (3) an indication of the likelihood that the employee will return to the preinjury date-of-injury employer or preinjury date-of-injury occupation; and
- (4) ~~an assessment a determination~~ of whether or not the employee is a qualified employee for rehabilitation services and a narrative report explaining the basis for the determination.

D. Time for filing. ~~A rehabilitation consultation report shall be completed by the assigned qualified rehabilitation consultant in all cases. The assigned qualified rehabilitation consultant shall file~~ The assigned qualified rehabilitation consultant shall complete and file with the commissioner a rehabilitation consultation report within ~~seven~~ 14 calendar days of the first inperson meeting with the employee ~~and for the purpose of a rehabilitation consultation, or the first telephone conference if permitted by subpart 2.~~ The assigned qualified rehabilitation consultant shall concurrently ~~mail a copy~~ provide copies of these documents to the employer, the employee, any attorney for the employee, and the insurer.

E. ~~Employee's Objection to the determination.~~ The employee or the insurer may object to the qualified rehabilitation consultant's ~~assessment~~ determination by filing a rehabilitation request for assistance with the commissioner.

5220.0410 REHABILITATION PLAN.

[For text of subs 1 to 10, see M.R.]

Subp. 11. **Travel expenses.** The insurer shall reimburse the employee for automobile mileage pursuant to Minnesota Statutes, section 176.102, subdivision 9, at the rate paid by the employer for ordinary business travel expenses, or the rate paid by the state of Minnesota under the commissioner's plan for employment-related travel, whichever is lower.

5220.0450 PLAN PROGRESS REPORT.

Subpart 1. **Purpose.** The purpose of a plan progress report is to inform parties of the current status of the rehabilitation plan and provide a current estimate of plan cost and duration to completion.

Subp. 2. **Requirements.** ~~Three~~ Except as otherwise permitted by subpart 3, ~~six~~ months after the assigned qualified rehabilitation consultant has filed an approved rehabilitation plan with the commissioner, ~~three months thereafter, and every six months thereafter,~~ the assigned qualified rehabilitation consultant shall complete a plan progress report on the form prescribed by the commissioner that contains the following:

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

Subp. 3. **Filing; subsequent and alternative filing; copies to parties.**

A. The assigned qualified rehabilitation consultant shall file the six-month plan progress report with the commissioner, ~~and provide copies to the employee, employer, and insurer~~ within 15 days after six months have passed from the date of the filing of the rehabilitation plan. ~~The three-month plan progress report shall be sent to the insurer only. However, the plan progress report is not required to be completed if a plan amendment containing the information in subpart 2, items A to E, is filed within 15 days before or after six months have passed from the date the rehabilitation plan was filed.~~

B. Subsequent plan progress reports ~~are to~~ may be requested by the commissioner to monitor the progress of the rehabilitation plan. ~~Subsequent reports must be filed with the commissioner within 15 days after every six-month anniversary of the plan filing, with copies sent to the employee, employer, and insurer~~ the commissioner's written request.

C. The qualified rehabilitation consultant must provide copies of progress reports to the employee, the insurer, and attorneys representing the employee and insurer, at the time the reports are filed with the commissioner. The qualified rehabilitation consultant shall also provide a copy to the date of injury employer if the goal of the rehabilitation plan is to return the employee to work with that employer.

Subp. 4. **Commissioner's actions.** Based on the information contained in the current plan progress report and in other reports available to the commissioner, the commissioner may ~~decide to initiate further activities if the review indicates that~~ perform a more thorough review of the rehabilitation effort. The purpose of the commissioner's review is to determine if the plan is ~~inadequate~~ adequate

Proposed Rules

to carry out the objectives of rehabilitation under *Minnesota Statutes*, section 176.102, subdivision 1, paragraph (b). ~~These activities~~ The commissioner's review may include, but ~~are~~ is not limited to the following:

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

5220.0510 PLAN AMENDMENT AND CLOSURE.

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

Subp. 2. **Procedure and responsibilities.** The assigned qualified rehabilitation consultant ~~may~~ shall recommend a plan amendment when reasons for amendment are present. Parties other than the assigned qualified rehabilitation consultant may propose amendments. It is the responsibility of the assigned qualified rehabilitation consultant to facilitate discussion of proposed amendments.

Subp. 2a. **Process.** Upon preparation of the proposed plan amendment the assigned qualified rehabilitation consultant shall provide a copy to ~~all parties the employee, the insurer, and any attorneys representing the employee or insurer.~~ The qualified rehabilitation consultant shall also provide a copy to the date of injury employer if the goal of the rehabilitation plan is to return the employee to work with that employer.

Subp. 2b. **Party's response.** Upon receipt of the proposed rehabilitation plan amendment, ~~each party the employee, insurer, and qualified rehabilitation consultant~~ must, within 15 days, either:

A. sign the plan amendment signifying agreement and return it to the assigned qualified rehabilitation consultant; or

B. promptly notify the assigned qualified rehabilitation consultant of any objection to the plan amendment and work with the assigned qualified rehabilitation consultant to resolve the objection by agreement.

However, if the objection is not resolved, the objecting party must file a rehabilitation request for assistance with the commissioner within 15 days of receipt of the proposed amendment. These disputes will be resolved according to part 5220.0950.

If no rehabilitation request for assistance objecting to the plan amendment is filed within 15 days of the party's receipt, the approval process will occur as provided in subpart 2d.

Subp. 2c. **Filing.** The assigned qualified rehabilitation consultant shall file a copy of the rehabilitation plan amendment with the commissioner within 15 days of circulation to the parties.

Subp. 2d. **Approval.** A rehabilitation plan amendment that all parties have signed is deemed approved by the commissioner upon filing.

If a party fails to sign the plan amendment or fails to file a rehabilitation request for assistance objecting to the proposed plan within the 15 days specified in subpart 2b, it shall be presumed that the party is in substantial agreement with the plan amendment's vocational objective and the services that are proposed. In this event the assigned qualified rehabilitation consultant shall file the plan amendment with the commissioner along with evidence of the date the plan amendment was sent to each party and, upon receipt, the plan amendment will be deemed approved. The insurer is liable for reasonable fees for a rehabilitation plan that is deemed approved under this subpart until a further plan amendment is filed or ordered by the commissioner or compensation judge. A party's failure to sign a plan amendment shall not constitute a waiver of any right to subsequently dispute it or to dispute ~~payment of whether the~~ rehabilitation fees relative to it are reasonable.

Subp. 3. **Requirements.** The rehabilitation plan amendment shall be filed on the form prescribed by the commissioner. The prescribed form shall contain substantially the following:

A. identifying information on the employee, employer, insurer, ~~and the assigned qualified rehabilitation consultant, and any change of qualified rehabilitation consultant;~~

[For text of items B to H, see M.R.]

Subp. 3a. Reporting a change of qualified rehabilitation consultant.

A. When the employee has the right to change qualified rehabilitation consultants without approval under part 5220.0710, subpart 1, the plan amendment form is not required to be circulated to the parties for signature under subparts 2b, 2c, and 2d, but the new qualified rehabilitation consultant shall notify the department of the change by filing a plan amendment form with the commissioner. The plan amendment shall be filed with the commissioner within 15 calendar days of receipt of information transferred by the former qualified rehabilitation consultant as required by part 5220.1802, subpart 4a. The new qualified rehabilitation consultant shall also send a copy of the form to the parties as specified in subpart 2a when it is sent to the commissioner for filing.

B. If approval of a change of qualified rehabilitation consultants is required under part 5220.0710 and the insurer has approved the change, the new qualified rehabilitation consultant shall reflect the change on the plan amendment form, circulate the form for signatures, and file the form with the commissioner within 15 calendar days of obtaining the signatures. The former qualified rehabilitation consultant shall transfer information to the new qualified rehabilitation consultant as required by part 5220.1802, subpart 4a. If approval is required and the insurer has not agreed to the change, the employee shall proceed according to part 5220.0710, subpart 3.

C. If a qualified rehabilitation consultant elects to withdraw as the assigned qualified rehabilitation consultant under subpart 7a, item C, the consultant shall document the withdrawal on the plan amendment form. The qualified rehabilitation consultant shall file the plan amendment form with the commissioner and send a copy to the parties as specified in subpart 2a and the department's vocational

Proposed Rules

rehabilitation unit when it is sent to the commissioner for filing.

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

Subp. 5. **Request for closure before plan completion by filing request for assistance.** At any time, the insurer or employee may request the closure or suspension of rehabilitation services by filing a rehabilitation request for assistance with the commissioner. The commissioner or a compensation judge may close or suspend rehabilitation services for good cause, including, but not limited to:

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

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

Subp. 7. **Closure report by assigned qualified rehabilitation consultant.** ~~When an employee's rehabilitation plan is completed and closure of rehabilitation services is not disputed, the assigned qualified rehabilitation consultant shall file a report on a form prescribed by the commissioner. When the reason for the closure is a return to work, the qualified rehabilitation consultant shall not complete and file the closure report until the employee has continued working for at least 30 calendar days following the return to work. The assigned qualified rehabilitation consultant shall file a rehabilitation plan closure report on a form prescribed by the commissioner within 30 calendar days of knowledge that:~~

~~A. the employee has been steadily working at suitable gainful employment for 30 days or more, or the time period provided for in the plan;~~

~~B. the employee's rehabilitation benefits have been closed out by an award on stipulation or award on mediation;~~

~~C. the employee and insurer have agreed to close the rehabilitation plan;~~

~~D. the qualified rehabilitation consultant has been unable to locate the employee following a good faith effort to do so;~~

~~E. the employee has died; or~~

~~F. the commissioner or a compensation judge has ordered that the rehabilitation plan be closed and there has been no timely appeal of that order.~~

The form reporting plan closure must be sent to the employee and the insurer when filed with the commissioner. The form shall contain substantially the following:

~~A. (1) identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;~~

~~B. (2) the outcome reason for closure of the rehabilitation plan;~~

~~C. the employee's employment status;~~

~~(1) (3) if the employee is working, information identifying the employer with whom the employee returned to work, the job title and job code from the Dictionary of Occupational Titles described in part 5220.0105, the return to work date, the weekly wage upon return to work, and whether the employee has continued working for 30 calendar days; or~~

~~(2) if the employee is not working, information explaining why the plan should be closed or whether additional rehabilitation services would be of benefit;~~

~~D. (4) a summary of the rehabilitation services provided and rehabilitation costs by all rehabilitation providers; and~~

~~E. (5) the assigned qualified rehabilitation consultant's dated signature; and a statement that the qualified rehabilitation consultant certifies that the form was served on the employee and insurer, any attorneys representing them, and the vocational rehabilitation unit, if applicable, on the date specified; and~~

~~(6) notice to the employee about how to contact the department with questions or concerns about the closure.~~

Subp. 7a. Plan closure report; insurer's denial of further liability.

A. The qualified rehabilitation consultant shall also file the plan closure report form specified in subpart 7 if the consultant decides to withdraw as the assigned qualified rehabilitation consultant after the insurer has provided written notice to the employee, the employee's attorney, the commissioner, and the qualified rehabilitation consultant that the insurer is denying further liability for the injury for which rehabilitation services are being provided. The qualified rehabilitation consultant shall attach a copy of the insurer's notice to the plan closure form and shall provide a copy of the form and notice to the employee, any attorney for the employee, and the vocational rehabilitation unit established under *Minnesota Statutes*, section 176.104.

B. The qualified rehabilitation consultant shall continue to provide services according to the approved plan until the plan closure report form is filed and provided to the parties and the vocational rehabilitation unit as specified in item A.

C. This subpart does not apply if a claim petition, objection to discontinuance, request for an administrative conference, or other document initiating litigation has been filed on the liability issue. Where any of these litigation documents have been filed and the qualified rehabilitation consultant decides to withdraw as the assigned qualified rehabilitation consultant, the consultant shall document the withdrawal on the rehabilitation plan amendment form according to subpart 3a, item C.

[For text of subp 8, see M.R.]

5220.0710 EMPLOYEE CHOICE OF QUALIFIED REHABILITATION CONSULTANT; CHANGE OF QUALIFIED REHABILITATION CONSULTANT.

Subpart 1. **Employee right to choose.** Pursuant to *Minnesota Statutes*, section 176.102, subdivision 4, the qualified employee has a

Proposed Rules

right to choose a qualified rehabilitation consultant as defined in part 5220.0100, subpart 23, once ~~during the period commencing before a referral by the insurer or commissioner to a qualified rehabilitation consultant, or before a first in-person visit between a qualified rehabilitation consultant and the employee and continuing until at any time in the period beginning before the rehabilitation consultation and ending 60 days after filing of the rehabilitation plan.~~ Within these time limitations, the employee need not seek the approval of the insurer when choosing a qualified rehabilitation consultant. If the employee chooses a qualified rehabilitation consultant under this part, the employee shall notify the insurer in writing of the name, address, and telephone number of the qualified rehabilitation consultant chosen.

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

Subp. 3. **Dispute resolution.** After exhaustion of the employee's choices in subpart 1, any party may propose a change of assigned qualified rehabilitation consultant. The parties may at any time agree to a change and select a new qualified rehabilitation consultant. If a dispute about change or selection arises, and the parties are not able to resolve that dispute, the dispute shall be resolved by a determination of the commissioner or a compensation judge as provided in *Minnesota Statutes*, chapter 176, and part 5220.0950. If the employee's choice has not been exhausted as outlined in subpart 1, the determination shall be made according to the employee's choice. If the employee's choice has been exhausted or if the request to change qualified rehabilitation consultants is filed more than 60 days after the rehabilitation plan was filed, the determination shall be made according to the best interest of the parties. The best interest of the parties shall be determined based on the goals of rehabilitation as provided in *Minnesota Statutes*, section 176.102, subdivision 1, paragraph (b). If the commissioner or compensation judge determines the qualified rehabilitation consultant's work to be unsatisfactory or the qualified rehabilitation consultant withdraws from the case, and the parties are unable to agree on the selection of a qualified rehabilitation consultant, the commissioner or compensation judge shall assign a new qualified rehabilitation consultant.

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

Subp. 5. **Change of consultant not an exercise of choice by employee.** A change of assigned qualified rehabilitation consultant necessitated by circumstances outside the control of the employee is not a choice by the employee and does not exhaust the employee's right to choice. Such circumstances include, but are not limited to, the assigned qualified rehabilitation consultant leaving practice or the extended illness of the assigned qualified rehabilitation consultant.

If the assigned qualified rehabilitation consultant transfers from one firm to another, the employee may either choose to continue with the assigned qualified rehabilitation consultant or remain with the qualified rehabilitation consultant's former firm. Neither option will exhaust the employee's right to choice of a qualified rehabilitation consultant pursuant to subpart 1.

Disputes about changes shall be resolved according to subpart 3.

Subp. 6. **Transfer of information.** The former qualified rehabilitation consultant shall transfer pertinent documents to the new assigned qualified rehabilitation consultant pursuant to part 5220.1802, subpart 4a.

5220.0950 DISPUTES.

Subpart 1. **Rehabilitation request for assistance.**

A. Where issues exist about an employee's entitlement to rehabilitation services, the appropriateness of a proposed plan, or any other dispute about rehabilitation, a party the employer, employee, or insurer may request assistance to resolve the disputed issues by filing a rehabilitation request on a form prescribed by the commissioner. The form with all its attachments must be served on all parties and be filed with the commissioner. The form must contain the following:

- A: (1) identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;
- B: (2) a statement of the rehabilitation issues to be resolved;
- C: (3) a statement of what the requester wants and supporting evidence and arguments;
- D: (4) a list showing that all parties were served and the date they were served;
- E: (5) the requester's name and signature; and
- F: (6) instructions for completion of the form.

B. The assigned qualified rehabilitation consultant may file with the commissioner and serve on all parties a rehabilitation request to resolve issues involving elements of a rehabilitation plan or fees for rehabilitation services.

C. Except where the insurer has denied ongoing liability for the injury in writing, the assigned qualified rehabilitation consultant shall file with the commissioner and serve on all parties a rehabilitation request for assistance to determine the direction of an approved rehabilitation plan if no party has done so and the qualified rehabilitation consultant is unable to plan or implement rehabilitation services.

Subp. 1a. **Rehabilitation response.** If the employee or the qualified rehabilitation consultant has filed a rehabilitation request, the insurer must file a rehabilitation response form with the division and serve copies on the other parties no later than ten days after service of the rehabilitation request form. When an administrative conference is not scheduled, the insurer's failure to file a timely rehabilitation response may result in a determination based solely on the written submissions of the requester.

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

Proposed Rules

5220.1400 QUALIFYING CRITERIA FOR REHABILITATION CONSULTANT.

Subpart 1. **Requirement.** To ~~become~~ be registered as a qualified rehabilitation consultant, the ~~certification, education, and internship~~ requirements of subparts 2 to 5 must be met.

Subp. 2. **Certification ~~and education.~~** A qualified rehabilitation consultant shall possess at least one of the following credentials:

A. ~~a baccalaureate degree, together with certification by the Board of Commission on Rehabilitation Counselor Certification as a certified rehabilitation counselor or a certified insurance rehabilitation specialist; or~~

B. ~~a baccalaureate degree together with certification by the Association of Rehabilitation Nurses as a certified rehabilitation registered nurse; or Certification of Disability Management Specialists Commission as a certified disability management specialist.~~

C. ~~a baccalaureate degree together with certification by the American Occupational Therapy Certification Board as a registered occupational therapist. Certification by the American Occupational Therapy Certification Board shall have been held for five years prior to application.~~

Persons who were qualified rehabilitation consultants on June 15, 1987, must have obtained the certification described in item A or B by June 15, 1989. If a qualified rehabilitation consultant lacks two years or more of the experience required to meet the certifying body's minimum experience or internship requirement, the time for becoming certified shall equal the time remaining for completion of the certifying body's minimum experience or internship requirement. If a qualified rehabilitation consultant must also obtain a baccalaureate degree to meet the certifying body's minimum education requirements, the qualified rehabilitation consultant shall have an additional four years to become certified. If an examination is required for certification, the time allowed for certification under this part must include two scheduled examinations which the applicant is eligible to take.

A qualified rehabilitation consultant or qualified rehabilitation consultant intern registered with the department before July 1, 2005, may either continue to meet the certification requirements in effect at the time of initial registration or meet the certification requirements in items A and B.

Subp. 3. **Qualified rehabilitation consultant intern.** The purpose of internship is to provide a supportive, structured period of professional supervision and case review following registration. An individual who meets the requirements of subpart 2, ~~item A, B, or C;~~ may be registered as a qualified rehabilitation consultant intern. ~~If An individual meets the requirements of who is not certified under subpart 2, item A or B, except for obtaining certification, that individual at the time of application~~ may be registered as a qualified rehabilitation consultant intern by documenting how the certification will be obtained within three years from the date of registration. A qualified rehabilitation consultant intern must complete an introductory training session sponsored by the department within ~~six~~ 12 months of approval of registration. A qualified rehabilitation consultant intern shall not be a solo practitioner.

The failure to comply with the standards of performance and professional conduct contained in parts 5220.1800 and 5220.1801 or the violation of any of the provisions of *Minnesota Statutes*, chapter 176, parts 5220.0100 to 5220.1900, or orders issued under the statutes or rules constitute grounds for denial of registration as a qualified rehabilitation consultant or qualified rehabilitation consultant intern under *Minnesota Statutes*, section 176.102, subdivision 3, discipline under *Minnesota Statutes*, section 176.102, subdivision 3a, or delay of completion of internship. The intern may appeal the decision of the commissioner denying registration as provided in part 5220.1500, subpart 2.

In cases where an intern has been supervised by a qualified rehabilitation consultant who leaves the organization with which the intern has been employed and no other qualified rehabilitation consultant is available to supervise the intern, the intern may, with the prior written approval of the commissioner, sign all required documents in the capacity of a qualified rehabilitation consultant for a period of time deemed appropriate by the commissioner. Past performance and overall experience shall be taken into consideration for this approval.

Subp. 3a. **Commissioner's approval for supervised internship.** ~~When the intern is registered an individual applies for registration as a qualified rehabilitation consultant intern, the intern's applicant's employer shall provide the commissioner with the name of the qualified rehabilitation consultant under whose direct supervision the intern will work, and shall submit a plan of supervision addressing the following items: the evaluation methods used; frequency of supervisory reviews and communication; procedures for dealing with administrative conferences or hearings and file reviews; procedures for review of the rules of practice; and procedures for review of progress toward obtaining certification, including the date the intern will be eligible to take the certification examination. "Direct supervision" means that the supervisor is directly responsible for the rehabilitation work on any case, and for monitoring progress toward the certification required by subpart 2. To provide direct supervision, an intern supervisor must have at least 52 weeks of full-time experience as a qualified rehabilitation consultant not including any service provided while still a qualified rehabilitation consultant intern.~~ The intern supervisor need not maintain an office at the same location as the intern. The supervisor shall cosign all written work being done by the intern. There shall be no billing by the supervisor for these supervisory duties. The supervisor shall attend all administrative conferences with the intern and shall arrange for training as required by the commissioner. The intern shall be designated as an "intern" on all documents bearing the name of the intern.

Subp. 4. **Completion of internship.** ~~The burden of proof of experience shall be on the applicant.~~ The intern must work at least one year full time as an intern in the rehabilitation of injured workers under *Minnesota Statutes*, section 176.102. Evidence of experience

Proposed Rules

shall include documentation of a history of employment in a position of vocational rehabilitation. For purposes of this subpart, “full-time employment” is consistent with the employment experience requirement of the certifying body chosen by the qualified rehabilitation consultant intern. Where there is no definition of fulltime employment by the certifying body chosen by the qualified rehabilitation consultant intern, full-time employment means a minimum of 37 hours per week during a 52-week period. Any part-time employment will be prorated based on this definition. The burden of proof of experience shall be on the applicant.

The intern may make application for completion of internship when the minimum requirements in subparts 2 to 5 have been met.

A qualified rehabilitation consultant intern must obtain certification by one of the entities specified in subpart 2 within three years of approval of registration as an intern by the commissioner. Failure to obtain certification within three years will result in a decision and order denying registration renewal.

The commissioner’s action on the intern’s application for completion of internship shall be based in part on the report of the qualified rehabilitation consultant intern supervisor about the competence of the intern to practice independently. The supervisor shall attach examples of the following forms and reports completed by the intern as documentation of the intern’s understanding of rehabilitation procedures and ability to communicate in writing: rehabilitation consultation report, rehabilitation plan, plan progress report, notice of rehabilitation plan closure, initial evaluation narrative report, labor market analysis, and closure report. At least one of the narrative reports must show understanding of vocational testing and transferable skills analysis.

The commissioner shall also consider information about the intern’s professional competence including that obtained in the course of any investigation about professional conduct, and on any substantiated complaints regarding professional conduct. “Substantiated complaints” for purposes of denial of completion of internship means there has been a stipulation or order of discipline.

Subp. 5. **General criteria.** All persons who are qualified rehabilitation consultants shall be self-employed or employed by a single organization that is approved for the employment of qualified rehabilitation consultants as a qualified rehabilitation consultant firm or an employer or insurer. Qualified rehabilitation consultants must be available to clients, and for administrative conferences or hearings during normal business hours. A qualified rehabilitation consultant employed by an employer or insurer that is not registered as a qualified rehabilitation consultant firm is permitted to provide rehabilitation consultation and services only for the claims being handled by the entity by whom the consultant is employed. A qualified rehabilitation consultant shall notify the department immediately upon changing employment. Notification shall include the name of the former place of employment, the name, address, and telephone number of the new place of employment and the effective date of new employment.

~~Effective January 1, 1995, both registration and renewal of registration shall require current membership in a professional rehabilitation organization which provides in its constitution or bylaws for a process of review by peers of its members’ professional conduct and services.~~

Registration shall require Minnesota residency. The commissioner may grant an exception for persons who reside no more than 100 miles by road from the Minnesota border. Any such qualified rehabilitation consultant agrees, as an additional condition of registration, to appear at any administrative conference or hearing when requested, in the same manner as if subpoenaed. A qualified rehabilitation consultant shall notify the department immediately upon any change in residency to or from Minnesota.

5220.1500 PROCEDURE FOR REGISTRATION AS QUALIFIED REHABILITATION CONSULTANT.

Subpart 1. **Application to become a qualified rehabilitation consultant intern.** An individual desiring to receive approval and registration as a qualified rehabilitation consultant intern shall submit to the commissioner, a complete application consisting of the following:

- A. completed, signed, and notarized application form;
- B. copy of any pertinent license or certification or documentation showing how certification will be obtained within three years from the date of registration;
- C. documentation supporting any applicable experience requirements;
- D. official transcripts of all pertinent postsecondary education;
- E. ~~list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees;~~
- F. the annual registration application fee of \$100; and
- ~~G. E.~~ a plan of supervision as required by part 5220.1400, subpart 3a.

Qualified rehabilitation consultant applicants employed by the vocational rehabilitation unit of the Department of Labor and Industry are exempt from payment under this subpart.

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

Subp. 3. **Registration number and renewal.** The commissioner shall assign a registration number to each registered rehabilitation provider.

Registration must be renewed annually. A rehabilitation provider shall request renewal on a form prescribed by the commissioner. Application for renewal is due 60 days before expiration of registration, accompanied by the appropriate registration fee. Registration renewal applications that are not complete, are not accompanied by the registration renewal fee, or are not accompanied by documenta-

Proposed Rules

tion of certification or satisfactory documentation of continuing education will be returned to the applicant for completion. Completed registration renewal applications received later than the due date shall be assessed a \$25 late fee. Registration renewal applications received more than 30 days after the due date shall be assessed an additional \$10 per day late fee for each day after the request is 30 days late. No late fee in excess of \$125 may be assessed.

A qualified rehabilitation consultant or qualified rehabilitation consultant intern who does not file a complete and timely application for renewal of registration along with payment of all required fees shall not continue to provide rehabilitation services pursuant to Minnesota Statutes, section 176.102, beyond the expiration date.

Qualified rehabilitation consultant's employed by the vocational rehabilitation unit of the Department of Labor and Industry are exempt from payment under this subpart.

Failure to meet the standards of performance and professional conduct contained in parts 5220.1800 and 5220.1801, or the violation of any provisions of *Minnesota Statutes*, chapter 176, parts 5220.0100 to 5220.1900, or orders issued under the statutes or rules, constitute grounds for denial of registration renewal as a qualified rehabilitation consultant or qualified rehabilitation consultant intern under *Minnesota Statutes*, section 176.102, subdivision 3, discipline under *Minnesota Statutes*, section 176.102, subdivision 3a, or delay of completion of internship. The decision of the commissioner may be appealed as provided in subpart 2.

~~Service and fee schedules shall be filed with the commissioner whenever there is a change and no less than once each calendar year at the time of renewal of registration. This filing shall not constitute an approval or disapproval of the services and fees.~~

Subp. 3a. **Continuing education.** To retain registration, a qualified rehabilitation consultant or qualified rehabilitation consultant intern shall submit satisfactory documentation of current certification required by part 5220.1400, subpart 2. ~~A qualified rehabilitation consultant or~~ qualified rehabilitation consultant intern who is not yet certified shall submit satisfactory documentation of continuing education pertinent to the workers' compensation rehabilitation field equivalent to 20 contact hours each year at the time registration is renewed. Continuing education includes, but is not limited to, the following:

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

D. rehabilitation related training sponsored and approved by the commissioner.

Satisfactory documentation shall include legible certificates of attendance bearing the name of the participant that are signed and dated by the sponsoring institution or organization. Receipts for tuition are not acceptable as satisfactory documentation of attendance.

Continuing education units must be obtained in the 12-month period immediately preceding the date on which registration renewal forms are due.

The department of labor and industry's rehabilitation provider update sessions when held are mandatory for all rehabilitation providers.

Nonattendance at the mandatory orientation or update sessions is prohibited conduct for rehabilitation providers, but may be allowed only for emergency situations and must be reported to the commissioner.

Subp. 4. **Inactive status.** ~~If an interval of one year occurs without providing direct case service to workers' compensation recipients or without providing supervision to qualified rehabilitation consultants or qualified rehabilitation consultant interns who provide direct case service to workers' compensation recipients, the registration will not be renewed upon expiration. A qualified rehabilitation consultant or a qualified rehabilitation consultant intern may move to inactive status upon written notification to the department. Individuals on inactive status may apply for reinstatement of registration by providing verification to the commissioner of all of the following:~~

~~A. current certification as required by part 5220.1400; continued;~~

~~B. attendance at all annual the most recent update sessions, and fulfillment session or a recording of that session;~~

~~C. documentation of continuing education requirements as provided by subpart 3a;~~

~~D. payment of any applicable late fees if the applicant failed to notify the commissioner that registration renewal was not being sought; and~~

~~E. if the applicant has been on inactive status or has failed to renew registration for more than two years, the applicant must also complete an orientation training session before acceptance is final.~~

An order ~~regarding denying~~ renewal of registration may be appealed to the rehabilitation review panel according to *Minnesota Statutes*, section 176.102, subdivision 3.

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

5220.1600 PROCEDURE FOR APPROVAL AS QUALIFIED REHABILITATION CONSULTANT FIRM.

Subpart 1. **Criteria.** ~~The qualified rehabilitation consultant firm shall be licensed to do business in Minnesota and shall maintain an administrative office within the state. Each office of the qualified rehabilitation consultant firm that provides services to injured employees under Minnesota Statutes, chapter 176, shall be listed on the application described in subpart 2 and shall employ on the premises at least one qualified rehabilitation consultant or qualified rehabilitation consultant intern.~~

The management staff shall consist of at least one employee who is registered as a qualified rehabilitation consultant.

At least 60 percent of qualified rehabilitation consultant firm employees providing rehabilitation services to qualified employees shall be qualified rehabilitation consultants or qualified rehabilitation consultant interns.

Proposed Rules

Any firm employing four or fewer full-time qualified rehabilitation consultants or qualified rehabilitation consultant interns may employ up to two employees who are not qualified rehabilitation consultants or qualified rehabilitation interns who may, under the direct supervision of the assigned qualified rehabilitation consultant or qualified rehabilitation consultant intern, provide the services of job analysis, job seeking skills training, job development, and job placement. However, as restricted by part 5220.1250, employees who are not qualified rehabilitation consultants or qualified rehabilitation consultant interns may provide these prescribed services only in cases for which a qualified rehabilitation consultant or qualified rehabilitation consultant intern employed by the same firm is the assigned qualified rehabilitation consultant. Any branch office openings or closings shall be reported to the department within two weeks of the occurrence ~~as shall any change in the firm address, telephone number, or contact person~~. Any change of staff who provide direct services to injured workers under a rehabilitation plan or of staff who directly supervise those persons shall be reported to the department within two weeks of the change.

Subp. 2. **Application.** A private or public entity desiring to be approved as a qualified rehabilitation consultant firm shall submit to the commissioner a complete application consisting of the following:

- A. a completed, signed, and notarized application;
- B. any data or information attached to support the application;
- C. ~~a list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees; and~~
- ~~D. the annual registration application fee of \$200 per firm; and~~
- D. the name and telephone number of a contact person and an address where certified mail can be delivered.

The vocational rehabilitation unit of the Department of Labor and Industry is exempt from payment under this subpart.

[For text of subps 2a to 5, see M.R.]

5220.1700 PROCEDURE FOR APPROVAL AS REGISTERED REHABILITATION VENDOR.

Subpart 1. **Application criteria.** A private or public entity desiring to be approved as a registered rehabilitation vendor shall submit to the commissioner a complete application consisting of all of the following:

- A. A completed, signed, and notarized application.
- B. Any data or information to support an application should be attached.
- C. ~~A list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.~~
- ~~D. The annual registration application fee of \$200 for each registered rehabilitation vendor.~~
- D. The name and telephone number of a contact person and an address where certified mail can be delivered.

Any change in the firm address, telephone number, or contact person shall be reported to the department within two weeks of the occurrence.

Subp. 1a. **Approval as registered rehabilitation vendor.** The approval process shall be conducted the same as provided in part 5220.1500, subpart 1a. A registered rehabilitation vendor must have at least one person from the firm complete an introductory training session sponsored by the department within 12 months of approval of registration.

[For text of subps 2 to 5, see M.R.]

5220.1801 PROFESSIONAL CONDUCT.

[For text of subps 1 to 7, see M.R.]

Subp. 8. **Separate roles and functions.**

A. The roles and functions of a claims agent and a rehabilitation provider are separate. A qualified rehabilitation consultant, qualified rehabilitation consultant intern, registered rehabilitation vendor, or an agent of a rehabilitation provider, shall engage only in those activities designated in *Minnesota Statutes*, section 176.102, and rules adopted thereunder.

B. A qualified rehabilitation consultant, qualified rehabilitation consultant intern, or registered rehabilitation vendor shall not act as an advocate for or advise any party about a claims or entitlement issue. Except as permitted by item C, qualified rehabilitation consultants, qualified rehabilitation consultant interns, and registered rehabilitation vendors ~~shall not engage in claims adjustment, claims investigation, or related activities. Activities unrelated to rehabilitation services include, but are not limited to, shall at no time in any capacity engage in any of the following activities regarding any claim for workers' compensation benefits pursuant to *Minnesota Statutes*, chapter 176:~~

- (1) claims adjustment;
- (2) claims investigation;
- (3) determining liability or setting reserves for a claim;
- (4) authorizing or denying provision of future medical or rehabilitation services;
- (5) recommending, authorizing, or denying payment of medical or rehabilitation bills;
- (6) making recommendations about the determination of workers' compensation monetary benefits;

~~the reasonableness of medical charges, or arranging for an independent medical examination and are prohibited.;~~

Proposed Rules

(7) arranging for medical examinations not recommended by the treating doctor; or

(8) arranging for or participating in surveillance or investigative services.

C. This subpart shall not prohibit a registered rehabilitation provider from engaging in the activities in item B, subitems (4) and (5), while providing medical case management services for a certified managed care plan to the extent permitted by part 5218.0760. However, a medical case manager for an employee covered by a certified managed care plan may not be the assigned qualified rehabilitation consultant for that same employee.

This ~~part~~ subpart shall not prohibit a qualified rehabilitation consultant acting on behalf of the reinsurance association from consulting with the assigned qualified rehabilitation consultant regarding the rehabilitation plan.

Subp. 9. **Prohibited conduct.** The conditions and restrictions of practice as a rehabilitation provider are contained in parts 5220.0100 to 5220.1900 and *Minnesota Statutes*, section 176.102. The following conduct is specifically prohibited and is also grounds for discipline:

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

K. Engaging in adversarial communication or activity. Adversarial communication includes, but is not limited to:

(1) requesting or reporting information not directly related to an employee's rehabilitation plan;

(2) deliberate failure or delay to report to all parties pertinent information regarding an employee's rehabilitation including, but not limited to, whether the employee is a qualified employee as defined in part 5220.0100, subpart 22;

(3) misrepresentation of any fact or information about rehabilitation; or

(4) failure to comply with an authorized request for information about an employee's rehabilitation.

[For text of items L to Q, see M.R.]

[For text of subps 10 and 11, see M.R.]

5220.1802 COMMUNICATIONS.

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

Subp. 3. **Copies of reports and records.** The assigned qualified rehabilitation consultant shall file all required rehabilitation reports with the commissioner, and provide copies to all parties and their attorneys as the reports are created by the consultant. The qualified rehabilitation consultant shall ~~also~~ provide a copy of required progress records to the employee, the employee's attorney, and also to any other party and their attorney upon that party's request. The qualified rehabilitation consultant may not charge for the initial copy or photocopy of required rehabilitation reports or required progress records. If additional copies are requested by any party, the qualified rehabilitation consultant is entitled to reasonable compensation for cost from the requesting party. A dispute about cost is not a basis for a provider to withhold required reports or records when requested.

The requesting party shall pay for reasonable costs incurred by a rehabilitation provider in creating a report not required by rule or requested by the commissioner or compensation judge.

Subp. 4. **Registered rehabilitation vendor reporting.** At least each 30 days, the registered rehabilitation vendor shall submit all required progress records, required rehabilitation reports and cost information on an employee's case directly to the assigned qualified rehabilitation consultant with copies to all parties and their attorneys.

[For text of subps 4a to 11, see M.R.]

Subp. 12. **Communication with certified managed care plan.** When the employee is covered by a certified managed care plan, the assigned qualified rehabilitation consultant shall communicate with the assigned medical case manager who is providing services in accordance with part 5218.0760.

5220.1900 REHABILITATION SERVICE FEES AND COSTS.

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

Subp. 1c. **Consultants.** When billing on an hourly basis for the services of qualified rehabilitation consultants, a qualified rehabilitation consultant or qualified rehabilitation consultant firm shall bill at an hourly rate not to exceed \$65 per hour as adjusted under subpart 1b. A rehabilitation provider shall bill one-half of the hourly rate for travel and wait time, and three-fourths of the hourly rate for travel time. Travel time shall be prorated as outlined in part 5220.1805, item E.

[For text of subps 1d to 9, see M.R.]

REPEALER. Minnesota Rules, part 5220.0120, subpart 4, is repealed.

Department of Public Safety**Minnesota Office of Pipeline Safety****Proposed Permanent Rules Relating to Pipeline Safety****NOTICE OF HEARING on Proposed Rules Governing the Minnesota Excavation Notification System,
Minnesota Rules, chapter 7560**

Public Hearing. The Department of Public Safety intends to adopt rules after a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20. The agency will hold a public hearing on the aboveentitled rules in the Louis North Central room, MNDOT Building, 3725 12th Street North, St. Cloud, Minnesota, 56304 starting at 10:00 a.m. on Tuesday, February 1, 2005, and continuing until the hearing is completed. Additional days of hearing will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements may be submitted without appearing at the hearing.

Administrative Law Judge. The hearing will be conducted by Administrative Law Judge Richard C. Luis, who can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 554012138, **telephone:** (612) 349-2542, and **Fax:** (612) 349-2665. The rule hearing procedure is governed by *Minnesota Statutes*, sections 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2000 to 1400.2240. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge.

Subject of Rules, Statutory Authority, and Agency Contact Person. The proposed rules concern the Minnesota Excavation Notification System found in *Minnesota Rules*, chapter 7560. These rules address public safety issues that were raised by a review committee of more than 40 stakeholders which was established in 2001 to review current statutes and rules governing underground facilities. In 2003, the agency formed a rulemaking advisory committee to address the issues raised by the review committee and to offer suggestions for these rules. The resulting proposed rules clarify or define the meanings for locates; meets; public rights-of-way; and service laterals as they pertain to these rules. The proposed rules also provide for a technical change which brings the current rules in line with a 2004 statutory change to *Minnesota Statutes*, chapter 216D. Additionally, the proposed rules introduce substantive changes in five subject areas covering the following: mapping and installation in the public right-of-way; locate standards; emergency excavation notices; meets, and service lateral locates.

Specifically, the rules require operators to maintain information on underground facilities and to include an effective means of marking nonconductive underground facilities found within the public rights-of-way. These rules propose standards for locating underground facilities and operator duties concerning “no conflict” situations where the operator has been notified of an excavation but finds that none of the operator’s facilities are in conflict with the area of proposed excavation. These rules clarify excavator and operator responsibilities when confronted with emergencies including giving notice and required response times. The rules provide guidelines for holding a meet and outline the specific duties assigned to excavators and operators with respect to these meets. Finally, these rules clarify the responsibilities of operators to locate service laterals within the public rights-of-way.

Minnesota Statutes, section 299J.04, subdivision 4, gives the Commissioner of Public Safety authority to adopt rules to implement *Minnesota Statutes*, sections 299J.01 to 299J.17. *Minnesota Statutes*, section 299J.04, subdivision 1, clause 1, gives the commissioner the duty to “enforce sections 216D.01 to 216D.09, as provided in sections 216D.08 and 216D.09.” Given the above authority, the department is authorized to adopt rules to implement enforcement of chapter 216D.

A free copy of the rules is available upon request from the agency contact person. The agency contact person is: Michael J. McGrath, Damage Prevention Coordinator, Minnesota Office of Pipeline Safety. He may be contacted at 444 Cedar Street, Suite 147, St. Paul, Minnesota 55101-5147; (651) 296-5103; **Fax:** (651) 296-9641. TTY users may call the Department at **TTY phone:** (651) 282-5555.

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available for review at the agency offices 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 also be reviewed directly off the agency **website** at www.dps.state.mn.us/pipeline/publicnotice.html and copies may also be 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

Proposed Rules

p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings.

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

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

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

Adoption Procedure After The Hearing. After the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date when the judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date on which the agency adopts the rules and the rules are filed with the Secretary of State, or ask to register with the agency to receive notice of future rule proceedings, and can make these requests at the hearing or in writing to the agency contact person stated above.

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

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

Dated: 3 December 2004

Michael Campion
Commissioner
Minnesota Department of Public Safety

7560.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them. Terms not defined in this part have the meanings given them in *Minnesota Statutes*, section 216D.01.

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

Subp. 4. **Locate.** "Locate" means to provide an operator's markings of an underground facility.

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

Subp. 7. **Meet.** When used as a noun in this chapter, "meet" refers to a meeting at the site of proposed excavation requested at the time of notice by the excavator with all affected underground facility operators to further clarify the precise geographic location of excavation, schedule locating, propose future contacts, and share other information concerning the excavation and facilities.

Subp. 10. **Public rightofway.** "Public right-of-way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and sidewalk in which a government unit has an interest, including other rights-of-way dedicated for travel purposes and utility easements of government units.

Subp. 12. **Service lateral.** "Service lateral" means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of sewage from a customer's premises.

7560.0150 PUBLIC RIGHTOFWAY MAPPING AND INSTALLATION.

Subpart 1. **Duty of operator to map.** After December 31, 2005, an operator shall maintain a map, a diagram, a drawing, or geospatial information regarding the location of its underground facility within a public right-of-way installed after that date.

Subp. 2. **Duty to install locating wire.** After December 31, 2005, an operator shall install a locating wire or have an equally effective means of marking the location of each nonconductive underground facility within a public right-of-way installed after that date. This requirement does not apply when making minor repairs to an existing nonconductive facility.

7560.0225 EXCAVATOR RESPONSIBILITIES REGARDING A LOCATE.

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

Subp. 3. **Use of locate.** A locate is valid for ~~ten working~~ 14 days from the excavation commencement time stated on the excavation or location notice, unless the excavator has made previous arrangements with the operators affected to periodically verify, refresh, or re-mark the locate.

7560.0250 LOCATE STANDARDS.

Subpart 1. Facility locate. Unless otherwise agreed to between the excavator and operator, an operator shall locate an underground facility using stakes, flags, paint, or other suitable materials in varying combinations dependent upon the surface. The locate must be in sufficient detail to clearly identify the approximate route of the underground facility. The locate must also include:

- A. name, abbreviation, or logo of the operator when more than one operator listed on the notice uses the same color markings;
- B. width of the underground facility if it is greater than eight inches; and
- C. number of underground facilities if greater than one.

Subp. 2. Operator duties in no conflict situation. After December 31, 2005, an operator who receives notice and determines that an underground facility is not in conflict with the proposed excavation shall complete one or more of the following:

- A. mark the area "NO" followed by the operator's name, abbreviation, or logo in the color code of the underground facility not in conflict;
- B. place a clear plastic flag at the area that:
 - (1) states "N/C" or "NO CONFLICT" in lettering matching the color code of the underground facility that is not in conflict; and
 - (2) includes the operator's name, abbreviation, or logo, the date, a contact telephone number, and the ticket number; or
- C. contact the notification center through procedures required by the notification center and indicate that there are no underground facilities in conflict with the proposed excavation and that no markings or flags were left at the proposed excavation site.

Subp. 3. Placement of flags or markings. If using N/C (no conflict) flags or markings pursuant to subpart 2, an operator shall place the flags or markings in a location that can be readily observed by an excavator. When an area of proposed excavation is delineated by the use of white markings, an operator shall place the N/C flags or markings within, or as near as practicable to, the delineated area.

Subp. 4. Duties of notification center. After December 31, 2005, the notification center shall make the information received under subpart 2 available to the excavator before the start date and time on the notice. The notification center may fulfill this requirement by making the information accessible through one or more Internet addresses, by transmitting the information to a continuously working facsimile machine maintained by the excavator, or by other methodology developed by the notification center. The notification center shall make at least one attempt to notify the excavator at the email address or facsimile number provided by the excavator on the notice. The notification center is not required by this subpart to contact an excavator verbally via telephone.

7560.0325 EMERGENCY EXCAVATION NOTICES.

Subpart 1. Duty of excavator to provide notice. An excavator shall provide notice before commencing an emergency excavation, unless subpart 2 applies. All emergency notices, regardless whether made prior to excavation, must be verbal or in a manner accepted by the notification center. In addition to the information required by the notification center, the notice must also contain:

- A. a description of the situation requiring the emergency excavation;
- B. the precise location of the proposed area of the emergency excavation;
- C. at least one continuously staffed telephone number where the excavator can be contacted by the operator throughout the emergency; and
- D. the excavation start date and time if the need for excavation is not immediate.

Subp. 2. Excavating before notice. If an emergency is such that providing notice or waiting for an operator would result in an undue risk to life, health, or significant loss of property, the excavator may excavate without providing prior notice or waiting for an operator to mark an underground facility. In this situation, the excavator shall provide notice as soon as practicable and take all reasonable precautions to avoid or minimize damage. Excavation prior to notice under this subpart does not relieve an excavator from any responsibility for damage to an underground facility pursuant to *Minnesota Statutes*, section 216D.06.

Subp. 3. Emergency notice requesting immediate response. Upon receiving an emergency excavation notice requesting an immediate response, an operator shall:

- A. attempt to contact the excavator within one hour at the telephone number provided in subpart 1, item C, to provide any information concerning facilities at or near the area of excavation including an anticipated response time; and
- B. mark the underground facility within three hours of notice unless:
 - (1) otherwise agreed between the parties;
 - (2) the operator notifies the excavator that not locating does not present an immediate danger to life or health, or a significant loss of property; or
 - (3) there is an event or situation that cannot be reasonably anticipated or controlled by the operator.

Subp. 4. Emergency notice requesting scheduled response. Upon receiving an emergency excavation notice that does not require an immediate response, and before the scheduled excavation start date and time, an operator shall:

- A. mark the underground facility, unless otherwise agreed between the parties; or
- B. notify the excavator at the telephone number provided in subpart 1, item C, that there is not an underground facility within the area of proposed excavation.

Proposed Rules

For purposes of this subpart, a requested start time of three hours or less from the time notice is provided to the center is considered an emergency notice requesting immediate response under subpart 3.

7560.0350 EXCAVATION NOTICE REQUESTING MEET.

Subpart 1. **Excavator duties.** When requesting a meet through the notification center, an excavator must provide at least one contact name and telephone number to assist in facilitating the meet. An excavator shall contact the notification center to cancel or reschedule the meet. When a meet is requested, an excavator's notice must include the entire geographic area of the proposed excavation and the specific location of the meet. This part does not relieve an excavator from the duty to provide a precise geographic location of the proposed area of excavation, or to use white markings except where it can be shown that to do so is not practical.

Subp. 2. **Operator duties.** When a meet is requested, an affected operator shall make a reasonable effort to attend the meet at the proposed date and time, or contact the excavator before the meet and reschedule for a mutually agreed date and time.

Subp. 3. **Excavation start date and time.** When a meet is requested, the meet date and time must be at least 48 hours after notice is provided and the excavation start date and time must be at least 24 hours after the proposed meet date and time specified on the notice, excluding Saturdays, Sundays, and holidays. This subpart does not apply if these matters are provided for in a written agreement with all affected operators.

Subp. 4. **Meet request documentation.** An excavator shall maintain written documentation of each meet with an underground facility operator or representative. This documentation must be kept for the duration of the excavation conducted under the notice. The documentation must include:

- A. the date and time of each meet;
- B. the names, company affiliations, and contact information of the attendees of each meet;
- C. a diagram, sketch, or description of the precise excavation locations, dates, and times; and
- D. the agreed schedule of any future meets or communications.

7560.0375 LOCATING A SERVICE LATERAL.

Subpart 1. **Operator duties.** Unless otherwise agreed, an underground facility operator shall locate a service lateral before the start date and time on the notice and in accordance with items A through C:

A. An operator of a natural gas, propane, or electric facility shall locate a service lateral up to the meter or the connection to a customer's underground facility, whichever is closer to the end-use customer. If the meter or connection to the customer's underground facility is within a public right-of-way, at a minimum the operator shall locate that portion of the service lateral within the public right-of-way.

B. An operator of a communication facility shall locate a service lateral up to the entry of the first building. If the service lateral does not enter a building, the operator shall locate up to the utilization equipment, fence, or wall that surrounds the equipment.

C. After December 31, 2005, an operator of a sewage or water facility, at a minimum, shall locate that portion of the service lateral within a public right-of-way installed after that date. The operator shall either locate or provide information as shown on maps, drawings, diagrams, or other records, on the location of a sewer or water service lateral installed before January 1, 2006. If no information is available on a sewer or water service lateral installed before January 1, 2006, then notifying the excavator that no information exists fulfills the requirements of this section.

Subp. 2. **Exception.** An operator is not required to locate a service lateral of a customer who currently participates in the statewide notification system, provided the customer is notified in writing of the duty to locate the service lateral.

RENUMBERING INSTRUCTION. Minnesota Rules, part 7560.0100, subpart 5 is renumbered as subpart 8; subpart 5a as subpart 9; and subpart 6 as subpart 11.

Department of Revenue

Proposed Permanent Rules Governing the Sales and Use Tax on Food, Drinks, and Meals

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 Sales and Use Tax on Food, Drinks, and Meals, *Minnesota Rules*, 8130.8700.

Proposed Repeal of Rules Governing the Sales and Use Tax on Food, Drinks, and Meals, *Minnesota Rules*, 8130.0800, and 8130.4700, subparts 1, 3, and 4.

Introduction. The Department of Revenue 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 in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on January 19, 2005, a public hearing will be held at the Minnesota Department of Revenue, Room 2010, 2nd Floor, Stassen Building, 600 North Robert Street, St. Paul, Minnesota 55146, starting at 9:30 a.m., Tuesday, February 15, 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 January 19, 2005, and before Tuesday, February 15, 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:

Michal Garber, Attorney
Minnesota Department of Revenue
600 North Robert Street
Mail Station 2220
St. Paul, Minnesota 55146-2220
Telephone: (651) 556-4067
Fax: (651) 296-8229
E-mail: michal.garber@state.mn.us
Minnesota Relay (TTY) users may call #711

Subject of Rule and Statutory Authority. The Minnesota Department of Revenue proposes to amend *Minnesota Rules*, part 8130.4700, repealing 3 subparts, and to repeal part 8130.0800. Some of the new subparts in the proposed amendment to part 8130.4700 replace obsolete provisions that are currently contained in part 8130.0800. The proposed rule, part 8130.4700, deals with meals served at hospitals, schools and other facilities, purchases of equipment and products by vendors of meals and drinks and meals served to employees. The proposed rule also deals with the definitions of soft drinks and candy.

The Department proposes amending part 8130.4700 and repealing part 8130.0800 because the current rules are outdated and do not deal with some of the topics that have been added to the law since the rule was originally promulgated in 1974. The statutory language pertaining to the sale of food has been changed numerous times since these rules were drafted, and underwent a major re-codification in 2001. Additionally, the Minnesota Legislature has adopted uniform definitions provided by the Streamlined Sales Tax Project.

The statutory authority to adopt the rules is *Minnesota Statutes*, section 270.06, clause (14), which provides that the Commissioner of Revenue shall make, publish, and distribute rules for the administration and enforcement of state tax laws.

A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

Comments. You have until 4:30 p.m. on Wednesday, January 19, 2005, 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, January 19, 2005. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules to which you object or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and cannot be counted by the agency for determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must

Proposed Rules

give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

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

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

Cancellation of Hearing. The hearing scheduled for Tuesday, February 15, 2005, 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) 556-4062 after January 19, 2005, to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit written requests for a public hearing on the rules, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The hearing will be held on the date and at the time and places 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 554012138, 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. 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. This statement will be posted on the agency's website, www.taxes.state.mn.us, on or after December 20, 2004. 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 date on which 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: December 6, 2004

Daniel A. Salomone
Commissioner of Revenue

8130.4700 FOOD PRODUCTS, DRINKS, AND MEALS.

Subpart 1. **See repealer.**

Subp. 1a. **Applicable law.** *Minnesota Statutes*, section 297A.61, subdivision 3, paragraph (d), defines “sale and purchase” to include the preparation of food for a consideration. Taxable food includes prepared food as defined in *Minnesota Statutes*, section 297A.61, subdivision 31; soft drinks, as defined in *Minnesota Statutes*, section 297A.61, subdivision 32; candy, as defined in *Minnesota Statutes*, section 297A.61, subdivision 33; and all food sold through vending machines as defined in *Minnesota Statutes*, section 297A.61, subdivision 34. Dietary supplements as defined in *Minnesota Statutes*, section 297A.67, subdivision 2, are also taxable.

Under *Minnesota Statutes*, section 297A.67, subdivision 2, food and food ingredients, except for taxable food described in *Minnesota Statutes*, section 297A.61, subdivision 3, paragraph (d), are exempt from tax. Alcoholic beverages and tobacco are not food and food ingredients and are therefore subject to tax unless another exemption applies.

Subp. 2. **Food products and food ingredients.**

“Food products and food ingredients” as defined in *Minnesota Statutes*, section 297A.67, subdivision 2, are exempt.

A. Examples of items that qualify as exempt food or food ingredients include, but are not limited to, the following: cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products.

Exempt “food products and food ingredients” also include the following items: baking powder and soda, ~~breath mints~~, beverage powders, ~~candy~~, edible cake decorations, ~~cough drops~~, ~~crackerjacks~~, chips (potato, corn, etc.), chip dip, cooking oils, cooking wine, flavoring, ~~fizzies~~, freezer pop ingredients, food coloring, gelatin, ice cream, ~~fruit juices~~, ~~lozenges~~, malted milk powder, nuts, ~~dry, frozen, or concentrated nonalcoholic cocktail mixes (that is, cocktail mixes intended for consumption in combination with an alcoholic or other beverage)~~, raisins, ~~saccharin and other~~, artificial sweeteners, salad dressing, seasonings, condiments, herbs, relishes, sauces, gravies, sherbet, shortening, ~~soft drinks~~, vanilla, ~~vitamins~~, tonic water, ~~and charged~~, ice cubes, or unsweetened bottled or canned water.

B. Notwithstanding their inclusion in item A, food and food ingredients are subject to tax if they qualify as prepared food, a soft drink, candy, or food sold through vending machines.

C. Examples of items that do not qualify as food or food ingredients include nonedible cake decorations, Easter egg dye, garden seeds, pet food, and softener salt.

Subp. 3. **See repealer.**

Subp. 4. **See repealer.**

Subp. 5. **Soft drinks.**

A. “Soft drinks” means nonalcoholic beverages that contain natural or artificial sweeteners.

B. “Soft drinks” does not include beverages that contain milk or milk products; or soy, rice, or similar milk substitutes.

C. “Soft drinks” does not include beverages that contain more than 50 percent vegetable or fruit juice. Beverages that are labeled fruit juice, fruit drink, fruit ade, or fruit nectar are subject to tax when the percentage of fruit juice content is not specified.

D. Soft drinks are taxable regardless of serving size or the type of seller. For example, they are taxable whether they are sold by a grocery store, restaurant, or vending machine.

E. Examples of sweeteners are corn syrup, dextrose, invert sugar, sucrose, fructose, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, and artificial sweeteners. Sweeteners are taxable only when combined with another ingredient. They are not taxable when sold separately.

F. Examples of soft drinks are soda pop, bottled or canned water that contains sweeteners, coffee and tea drinks that contain sweeteners, root beer, nonalcoholic beer, and fruit drinks containing 50 percent or less fruit juice.

G. Examples of nontaxable items are apple cider; beverage powders or concentrates such as ground coffee, tea bags, and juice concentrate; carbonated and noncarbonated bottled or canned water that does not contain sweeteners regardless of container size; vegetable juices containing more than 50 percent vegetable juice, even if these beverages contain sugar; and coffee drinks that contain milk. These items are taxable if they are prepared by the seller, qualify as an alcoholic beverage, or are sold through a vending machine.

Subp. 6. **Candy.**

A. “Candy” means a preparation of sugar, honey, or other sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. All bars, drops, or pieces, not depending on size, are taxable.

B. “Candy” does not include food items that require refrigeration or that contain flour such as white, whole wheat, rice, corn, or brown flour, as long as the label lists “flour” as one of the ingredients.

C. Examples of sweeteners are corn syrup, dextrose, invert sugar, sucrose, fructose, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, and artificial sweeteners.

Proposed Rules

D. Examples of candy are caramelcoated popcorn, honey roasted and honey coated nuts, gum, breath mints, fruit rollups, marshmallows, sweet or semisweet cooking bars or chips, artificially sweetened candy, almond bark, glazed apricots, and chocolate-coated potato chips.

E. Examples of food items that are not candy include:

- (1) items that are not in the form of bars, drops, or pieces, including jam, jelly, honey, preserves, or syrup;
- (2) items that contain flour, including pretzels, cookies, or cake mix;
- (3) items that require refrigeration, including ice cream bars; and
- (4) items not combined with a sweetener, including nonsweetened dried fruit.

The foods listed in this item are taxable if prepared by the seller or sold through a vending machine.

Subp. 7. Meals served at hospitals, sanitariums, nursing homes, senior citizens' homes, and correctional, detention, and detoxification facilities.

A. Under *Minnesota Statutes*, section 297A.67, subdivision 4, meals or drinks served to patients, inmates, or persons residing at hospitals, sanitariums, nursing homes, senior citizens' homes, and correctional, detention, and detoxification facilities are exempt. This exemption applies when the meals or drinks are purchased, as well as sold, by these facilities. For purposes of this subpart, the definitions in subitems (1) to (6) apply:

(1) "Meals or drinks" means prepared food, soft drinks, and candy. As provided in item C, "meals or drinks" does not mean food sold through vending machines.

(2) "Hospital or sanitarium" means a hospital or sanitarium as defined in *Minnesota Statutes*, section 144.50, subdivision 2.

(3) "Nursing home" means a nursing home as defined in *Minnesota Statutes*, section 144A.01, subdivision 5, and a boarding care home as defined in part 4655.0100.

(4) "Senior citizens' home" means an establishment providing housing to adult residents, at least 80 percent of which are 55 years of age or older, and offering supportive services such as healthrelated services and social services. A senior citizens' home may be operated either for profit or on a nonprofit basis.

(5) "Correctional and detention facilities" means any facility or program under the direct control of the commissioner of corrections in which individuals are incarcerated, or any public or private facility licensed or certified by the Department of Corrections under *Minnesota Statutes*, section 241.021.

(6) "Detoxification facility" means a facility providing a program operating under *Minnesota Statutes*, section 254A.08.

B. All food served to patients and residents by hospitals, sanitariums, nursing homes, senior citizens' homes, and correctional, detention, and detoxification facilities is exempt, including optional meals and meals that are prepared by separate entities.

C. Food sold through vending machines, coffee shops, and cafeterias that operate in these facilities is subject to tax.

Subp. 8. Meals served at schools.

A. Under *Minnesota Statutes*, section 297A.67, subdivision 5, meals and lunches served at public and private elementary, middle, or secondary schools, as defined in *Minnesota Statutes*, section 120A.05, are exempt. "Meals and lunches" means prepared food, soft drinks, and candy. As provided in item D, "meals and lunches" does not mean food sold through vending machines. This exemption applies to meals and lunches when purchased as well as sold by the schools.

B. All meals and lunches served at elementary, middle, or secondary schools are exempt, including food that is prepared or served by separate entities and food that is purchased by employees or the general public.

C. Meals and lunches served to students at institutions of higher education are subject to sales tax unless provided to students under a board contract. For purposes of this subpart, "institutions of higher education" means colleges, universities, and private career schools. The exemption for board contracts applies only when a contract that includes the sale of meals and lunches exists between a student and an institution of higher education, or between a student and a residential student organization that is recognized by the institution, for an educational activity that takes place on the premises of that institution. The student is not required to be enrolled at the institution at which the activity is conducted. If the food is not provided as part of a board contract, the institution may only purchase the meals and lunches exempt for resale from a third party if the food is intended to be resold at retail. The rules in subitems (1) to (4) apply for purposes of the exemption for board contracts.

(1) Meals and lunches purchased under a prepaid contract, or where a lump sum charge is made for a set term of time, are considered meals and lunches furnished under a board contract.

(2) A board contract also includes a contract that provides lodging, meals and lunches, and tuition, separately or in combination, for a single charge.

(3) Meals and lunches are exempt when purchased with debit cards, "flex money," or "bonus bucks" issued either by the institution or by the recognized residential student organization, or when purchased by any other method authorized by the institution of higher education under a board contract.

(4) Meals and lunches that are not provided under a board contract include meals and lunches sold to faculty, other employees of the institution of higher education, and sponsors of conferences, sports camps, or other activities held on the premises of the institution.

Proposed Rules

Meals and lunches sold to student clubs or other organizations are subject to tax.

D. Food items sold through vending machines at all schools, including K-12 institutions and institutions of higher education, are taxable.

E. Administrative offices located off the school premises are not considered part of the school and prepared food, soft drinks, and candy served at those offices are taxable.

Subp. 9. Incidental meals at educational programs.

A. Meals and lunches that are provided as part of an educational service, such as a children's camp or a professional seminar, are generally not taxable. For purposes of this subpart, "meals and lunches" means prepared food, soft drinks, and candy. When meals and lunches are incidental to the total program fee, and charges for the meals and lunches are included in the fee to attend the program, the meals and lunches are not taxable to the program participants.

B. If the educational program purchases meals and lunches to serve to participants in the program, the program must pay sales or use tax on the meals and lunches purchased if participants are not billed separately for the meals and lunches. If the charges to participants for the meals and lunches are separately stated, they may be purchased by the educational program exempt for resale, and tax must be charged on the separately stated fees for the meals and lunches charged to participants.

Subp. 10. Meals provided to employees.

A. When an employer purchases prepared food, candy, or soft drinks, to provide to employees for no consideration, the prepared food, candy, or soft drinks provided to employees is exempt. The purchase of these items by the employer is taxable. When an employer in the business of selling prepared food, candy, or soft drinks provides these items free to employees, the employer owes use tax on its cost of the prepared food, candy, or soft drinks and all other taxable items, including disposable plates, soft drinks, napkins, cups, and flatware.

B. Notwithstanding this subpart, prepared food, candy, or soft drinks served to employees at K-12 schools, as provided in *Minnesota Statutes*, section 297A.67, subdivision 5, are exempt even if the employees are required to pay for the items.

Subp. 11. Purchases of equipment and products by vendors of meals or drinks. A vendor of meals or drinks must pay the tax on all purchases of equipment and products used or consumed in the business, including fixtures and reusable items such as linens, flatware, glassware, and towels. Vendors of meals are specifically excluded from the class of vendors considered to be engaged in production, as defined in *Minnesota Statutes*, section 297A.68, subdivision 2, paragraph (c). Consequently, sales of electricity, gas, and steam and all other items to vendors of meals are taxable, except for the sale of food products and nonreusable items. Nonreusable items such as souffle cups; straws; ice; swizzle sticks; paper products such as placemats, tablecloths, napkins, and doilies; paper, plastic, or wooden plates; cups; forks; toothpicks; or other items which are used or consumed by the customer as an integral part of the meal or drinks are considered sold with the meal. Sales of these nonreusable items to persons engaged in the business of selling meals or drinks are, accordingly, sales for resale.

EFFECTIVE DATES. The sale of nonalcoholic beer, as provided in part 8130.4700, subpart 5, item F, is taxable for sales beginning six months after this rule otherwise becomes effective, as provided in *Minnesota Statutes*, section 14.18, subdivision 1.

For board contracts entered into before the effective date of this rule, the provision in part 8130.4700, subpart 8, item

C, which exempts from sales tax the sale and purchase of meals and lunches under board contracts only when such a contract exists between a student and an institution of higher education for an activity that takes place on the premises of that institution, is effective one year after this rule otherwise becomes effective.

For contracts entered into between an educational program and program participants before the effective date of this rule, the provisions of part 8130.4700, subpart 9, item B, requiring that the program must pay sales or use tax on the meals and lunches purchased if participants are not billed separately for them, is effective one year after this rule otherwise becomes effective.

REPEALER. *Minnesota Rules*, parts 8130.0800; and 8130.4700, subparts 1, 3, and 4, are repealed.

Appointments

Minnesota Statutes, Section 15.06, Subd. 5. requires notice of the designation of a commissioner or acting commissioner, or the assumption of office by a temporary commissioner, shall be filed with the president of the senate and the speaker of the house with a copy delivered to the secretary of state and published in the next available edition of the *State Register*.

Department of Veterans Affairs

Notice of Appointment of Commissioner Michael Pugliese

NOTICE IS HEREBY GIVEN, pursuant to *Minnesota Statutes*, Section 15.06, Subd. 5, that Governor Tim Pawlenty appointed Michael Pugliese to the office of Commissioner of the Minnesota Department of Veterans Affairs effective December 9, 2004. He succeeds Commissioner Jeff Olson.

This appointment carries with it all rights, powers, duties, and emoluments granted by law and pertaining to this position until this appointment is superseded or annulled. The laws and rules governing the Department of Veterans Affairs are:

- *Minnesota Statutes*, Chapters 196, 197, 198
- *Minnesota Rules* 9050

Commissioner Pugliese resides at 4849 Park Avenue, Minneapolis, Minnesota 55417, Hennepin County, Congressional District Five.

He can be reached at the Minnesota Department of Veterans Affairs, Veterans Service Bldg., 2nd Floor, 20 West 12th Street, St. Paul, MN 55155. Telephone (651) 296-2783. He also can be reached at website: <http://www.mdva.state.mn.us>

Revenue Notices

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

Department of Revenue

Modification of Revenue Notice #1991-06: Sales/Use Tax - Isolated or Occasional Sales

Facts: Effective July 1, 1991, sales of tangible personal property primarily used in a trade or business do not qualify for the isolated or occasional sales tax exemption found in *Minnesota Statutes*, section 297A.6825, subd. 2. However, the following sales of assets used in a trade or business may qualify for the exemption: (1) if the sale occurs in a transaction subject to or described in Internal Revenue Code, (IRC) §§ 118, 331, 332, 336, 337, 338, 351, 355, 368, 721, 731, 1031, or 1033; or 1504(a); (2) the sale is between members of a controlled group as defined in § 1563(a) of the IRC; (3) the sale is a sale of farm machinery; (4) the sale is a farm auction sale; (5) the sale is a sale of substantially all of the assets of a trade or business; or (6) the sales of trade or business property made during the month of the sale and the previous 11 calendar months does not exceed \$1,000 the sale may still be eligible for the exemption. The conclusions reached in this revenue notice are based on the assumption that the sales described in each issue are not within one of the listed exceptions listed above IRC sections. For further examples, please refer to the Department Fact Sheet regarding isolated or occasional sales.

Issues and Conclusions:

1) What constitutes is the definition of a “trade or business”?

For purposes of this statute, “trade or business” includes means any activity carried on for the production of income from selling goods or performing services. However, organizations exempt from federal taxation under *Internal Revenue Code*, subchapter F, are only considered to be engaged in a trade or business to the extent the activity is unrelated to their exempt purposes. Examples of trades or businesses include home day care centers, farms, and apartment buildings or rental property. Government entities are not considered to be engaged in a trade or business since all of their activities are conducted to further a public purpose.

2) What does the term “primarily used” mean?

Revenue Notices

When an item is used for purposes other than trade or business use, the owner must determine what the primary use is when deciding whether or not to charge tax on the sale of the item. "Primarily used" means that the item is used at least 50 percent or more of its operating time, in the trade or business. If it is used less than 50 percent of the time in the trade or business, it will be considered not to be primarily used in the trade or business, and the sale of the item is eligible for the isolated or occasional sale exemption.

3) Who has to use the item primarily in a trade or business; the seller, the buyer, or both?

The seller's use of the equipment is the determining factor. It does not matter how the buyer will use the item.

4) Will business inventory sales now be subject to tax?

The sale of business inventory was never subject to the isolated/occasional sale exemption since the inventory was sold in the regular course of business. The seller must either charge sales tax, or accept an exemption certificate from the buyer.

5) When business assets, including both tangible personal property and other property (real property, intangibles, etc.), are sold for a lump-sum price, how will the seller determine the purchase price of the tangible personal property in order to charge sales tax?

If the seller has not separately stated the purchase price of the tangible personal property, the sales tax must be collected on the fair market value of the tangible personal property. The tax will only apply to those items which are considered tangible personal property. Items subject to ad valorem property tax, large and ponderous equipment, or items considered a permanent improvement to real property, are not subject to sales tax. However, these items are taxable if they are sold separately and removed from the underlying real property.

6) Does a sale actually have to be reported to the Internal Revenue Service under one of the listed IRC sections in order to be eligible for isolated/occasional sale exemption?

Yes, the sale must qualify and be reported as a transaction occurring under one of the listed Internal Revenue Code sections, in order to qualify for the isolated/occasional sale exemption.

7) If a trade or business closes and sells off its assets over a period of time (for example, a manufacturer closes down operations and over the next three years sells off the business assets), are these sales still eligible for isolated/occasional sale status?

No, these sales are not eligible for isolated/occasional sale status. ~~Since the assets were primarily used in a trade or business, their sale is taxable even though the trade or business is no longer in operation when the assets are finally sold. To qualify for the exemption, the trade or business must sell substantially all of its assets in a single transaction or in a series of related transactions that occur within the 12-month period beginning on the date of the first sale of assets. Any sales occurring after the end of the 12-month period are subject to the sales or use tax.~~

For purposes of this exemption, "trade or business" includes the assets of a separate division, branch or identifiable segment of a business if, before the sale, the income and expenses attributable to the separate division, branch, or segment could be separately ascertained from the books of account or record.

8) Are auctions of business property still eligible for the isolated/occasional sale exemption?

No, auctions ~~(including farm auctions)~~ of tangible personal property primarily used in a trade or business are no longer eligible for this exemption. The person at the auction who is responsible for collecting the sale money is also responsible for collecting and remitting the sales tax. This may be the auctioneer, the bank, the owner of the property, or any other person who collects the purchase price from the buyers. ~~Farm auction sales are exempt as isolated/occasional sales. For purposes of this exemption, farm auctions mean a public auction conducted by a licensed auctioneer if substantially all of the property sold consists of property used in the trade or business of farming and other property not used primarily in a trade or business such as household goods. If the equipment being sold is farm machinery, the 2.5 percent rate applies. The person responsible for remitting the tax must charge this rate only on farm machinery. If an auction includes farm machinery, nonfarm equipment, and nonbusiness items (such as tools, household goods, etc.), the 2.5 percent rate only applies to the farm machinery. The other items used in the trade or business (e.g., tools) would be subject to the 6.5 percent rate, and the nontrade or nonbusiness items (e.g., household goods) would be exempt.~~

9) Are sales of business assets on an Indian reservation subject to sales tax?

Sales of business assets occurring on an Indian reservation are taxable if the sale is made to a nontribal member or non-Indian. ~~The taxability of~~ Sales of business assets occurring on a reservation to a tribal member depends on whether that ~~tribe band~~ has a ~~tax refund~~ agreement with the state ~~which specifically provides that tribal members pay sales tax for purchases made on the reservation~~. If the ~~tribe band~~ has a ~~tax refund~~ agreement with such a provision, then these sales are taxable. If the ~~tribe band~~ does not have a ~~tax refund~~ agreement, the sales are not taxable. Sales to the tribal government are not taxable, ~~regardless of whether the tribe has a tax agreement~~.

Revenue Notices

10) Are garage sales still eligible for the isolated/occasional sale exemption?

Yes, sales at a garage sale are still eligible for this exemption if ~~the garage sale does not occur regularly, the person is not in the business of conducting garage sales, and no trade or business assets are sold at the sale.~~ If any trade or business assets are sold at the garage sale, sales tax is due only on those items.

11) What are the sales tax consequences when a bank or similar lender repossesses secured property primarily used in a trade or business?

The transfer to the bank is treated as a sale for resale as long as the bank will be reselling the item. The bank or other lender must collect and remit tax when it resells the items, since repossessed items are considered to be inventory in the possession of the financial institution. Sales of repossessed property by banks or other lenders were never subject to the isolated or occasional sale exemption.

12) Who is responsible for collecting and remitting the tax when a bankruptcy trustee sells off business property?

The bankruptcy trustee is responsible for collecting and remitting the sales tax. If the debtor possessed a sales tax permit, the tax must be reported under that permit. If the debtor did not possess a permit prepetition, the trustee must use the special occasional sale return provided by the Department. (See reporting procedure section following question #16.)

13) How will installment sales of business assets be treated?

The sale occurs when there is a transfer of title or possession. If the seller uses an accrual accounting basis, the tax must be reported when the sale is made. If the seller uses a cash accounting basis, the tax must be reported when the seller actually receives the payment. If the sale is a lease, tax is due on each lease payment as it becomes due. If the seller is leasing out the business property, the seller must obtain a sales tax permit and report the tax under the permit until the lease has ended.

14) When personal property is sold along with real property, it is subject to the state deed tax. Is the sales tax in addition to that state deed tax?

Yes, the sales tax on the personal property is in addition to any state deed tax which may be due on the transaction.

15) Are items of tangible personal property, such as washers, dryers and other appliances, sold incidental to the sale of an owner occupied residence (a homestead) or an owner occupied seasonal residence (a "cabin") subject to the sales tax as a sale of tangible personal property primarily used in a trade or business?

No, these items are not "used primarily in a trade or business" and thus are not subject to sales tax regardless of whether the owner sold the residence him or herself, through the services of a real estate broker, or by a bank or other financial institution that repossessed the residence and then sold it without any intermediary business use.

16) If a purchaser makes a purchase of stock in a corporation, is the purchaser considered to be purchasing the business assets of that corporation and thus subject to sales tax on the tangible personal property owned by that corporation?

This transaction is not subject to sales tax. The purchaser is considered to be buying intangible property (stock) and thus this is not a sale of tangible personal property. If the sale were structured as an asset sale rather than a stock sale, then the sales tax would be due on the price of the tangible personal property.

Reporting Procedures: If the seller already has a sales/use tax permit, the sale of the business assets must be reported on the return along with the seller's regular sales. If the seller does not have a permit, the seller must report the sales on a special occasional sale return available from the Department. This special return is due on or before the 20th day of the month following the month in which the sale is made. If the seller is making sales of business assets on a regular basis, the seller must apply for a sales tax permit and report sales on a monthly, quarterly, or annual basis until all of the assets are sold.

~~Dated August 12, 1991~~

Michael E. Bockhaus
Director, Appeals and Legal Services

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.

Department of Labor and Industry Labor Standards Unit

Notice of Certification of Truck Rental Rates and Effective Date Pursuant to *Minnesota Rules*, Part 5200.1105

On December 20, 2004 the commissioner certified the operating costs and the minimum truck rental rates for highway projects in the state's ten highway and heavy construction areas for trucks and drivers operating "four or more axle units, straight body trucks," "three axle units," "tractor only," and "tractor trailers." The certification by the commissioner came after Notice of Determination of Truck Rental Rates by the commissioner was published in the *State Register* on November 8, 2004 and the informal conference pursuant to *Minnesota Rules*, Part 5200.1105 to receive further public input prior to certification was held at the department on November 30, 2004.

The operating costs were certified by survey on a statewide basis. The operating cost for "four or more axle units, straight body trucks" to be \$35.22 per hour. The operating cost for "three axle units" was certified by survey to be \$28.56 per hour. The operating cost for "tractor only" was certified by survey to be \$31.08 per hour. The operating cost for "trailer only" was certified by survey to be \$11.46 per hour. The operating cost for "tractor trailers" was certified by survey is determined to be \$42.54 per hour.

Adding the prevailing wage for drivers of these four types of trucks from each of the state's ten highway and heavy construction areas to the operating costs, the minimum hourly truck rental rate for the four types of trucks in each area is certified to be as follows:

| | Tractor Trailer | 4 or More Axle | 3 Axle | Tractor Only |
|-----------|------------------------|-----------------------|---------------|---------------------|
| Region 1 | 72.84 | 60.73 | 58.21 | 61.38 |
| 5/1/2005 | 73.69 | 61.58 | 59.06 | 62.23 |
| Region 2 | 68.56 | 52.08 | 46.61 | 57.10 |
| 5/1/2005 | 69.41 | | | 57.95 |
| Region 3 | 68.06 | 54.66 | 53.92 | 56.60 |
| 5/1/2005 | | | 54.77 | |
| Region 4 | 60.26 | 52.46 | 46.52 | 48.80 |
| Region 5 | 63.31 | 56.96 | 50.30 | 52.15 |
| Region 6 | 71.04 | 63.17 | 56.41 | 59.58 |
| 5/1/2005 | 71.89 | 64.02 | 57.26 | 60.43 |
| Region 7 | 67.14 | 59.32 | 52.40 | 55.68 |
| Region 8 | 64.96 | 59.32 | 53.92 | 53.50 |
| 5/1/2005 | | | 54.77 | |
| Region 9 | 73.24 | 65.37 | 58.61 | 61.78 |
| 5/1/2005 | 74.09 | 66.22 | 59.46 | 62.63 |
| Region 10 | 59.64 | 60.73 | 53.92 | 48.18 |
| 5/1/2005 | | 61.58 | 54.77 | |

The operating costs, including the average truck broker fee paid by those survey respondents who reported paying truck broker fees, and the truck rental rates may also be reviewed by accessing the department's web site at www.doli.state.mn.us. Questions regarding the operational costs and truck rental rates can be answered by calling (651) 284-5091.

Official Notices

The minimum truck rental rates certified for these four types of trucks in the state's ten highway and heavy construction areas will be effective for all highway and heavy construction projects financed in whole or part with state funds advertised for bid on or after December 20, 2004.

Dated: December 20, 2004

M. Scott Brenner,
Commissioner

Minnesota Racing Commission

REQUEST FOR COMMENTS on Possible Amendment to Rules Governing Licensure, *Minnesota Rules*, 7870; Class C Licenses, *Minnesota Rules*, 7877; and Other Rules Proposed by Industry Groups

Subject of Rules. The Racing Commission requests comments on its possible amendment to rules governing horse racing. Proposed rule amendments include the following subjects: Removal of obsolete language regarding Class A licenses fees as addressed in *Minnesota Statutes*, section 240.10. Provision for the Jockey's Guild patch to be displayed on a jockey's attire. New language prohibiting physical contact between jockeys and/or another jockey's horse before, during or after a race.

Persons Affected. The amendment to the rules would likely affect jockeys working at a Minnesota racetrack.

Statutory Authority. The commission's statutory authority to amend these rules is set out in *Minnesota Statutes*, sections 240.08, Subd. 1, Occupational Licensing; 240.23, Rule Making Authority.

Public Comment. Interested persons or groups may submit comments or information on these planned rules in writing or orally until further notice is published in the *State Register* that the commission intends to adopt or to withdraw the rules. The commission has appointed an advisory committee to comment on the planned rules.

Rules Drafts. The commission has not yet prepared a draft of the planned rules amendments.

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

Richard G. Krueger, Executive Director
Minnesota Racing Commission
P.O. Box 630
Shakopee, MN 55379
Phone: (952) 496-7950,
Fax: (952) 496-7954
E-mail: richard.krueger@state.mn.us
TTY users may call the commission at 1-800-627-3529.

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.

Dated: December 2, 2004

Richard G. Krueger
Executive Director
Minnesota Racing Commission

State Grants & Loans

In addition to requests by state agencies for technical/professional services (published in the State Contracts Section), the *State Register* also publishes notices about grants and loans available through any agency or branch of state government. Although some grant and loan programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself. Agencies are encouraged to publish grant and loan notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Minnesota Historical Society Historic Preservation Grant Application Deadlines

The application deadline for the Minnesota Historical Society's F.Y. 2005 federal Certified Local Government (CLG) matching grants program is 4:30 p.m., Friday, February 18, 2005. Cities with local historic preservation ordinances, commissions, and programs certified by the State Historic Preservation Office and the National Park Service are eligible applicants. It is anticipated that a minimum of \$70,000 will be awarded.

There are seven areas of eligible program activity for this grants cycle. They are: 1.) Comprehensive Planning; 2.) Pre-Development; 3.) Survey; 4.) Evaluation; 5.) Local Designation Forms; 6.) National Register Nomination Forms; and 7.) Public Education. Projects that will receive special priority are those that: promote surveys in areas of known development activity in order to reduce project delays; promote continuing development of data for planning use; reflect the goals and strategies in the 2000 statewide preservation plan; result in local designations; and involve properties associated with the history of heretofore under-documented groups or communities (ethnic or racial minorities for example, but also other groups defining themselves as communities).

Instructions regarding the full range of eligible activities and information on the project selection process and selection criteria are found in the F.Y. 2005 CLG Grants Manual. To request a complete application package or for further information contact Mandy Skypala at (651) 296-5478, E-mail the Grants Office – mandy.skypala@mnhs.org, or write to the Grants Office, Minnesota Historical Society, 345 West Kellogg Blvd., Saint Paul, MN 55102-1906.

This program receives Federal funds from the National Park Service. Regulations of the U.S. Department of the Interior strictly prohibit unlawful discrimination in departmental Federally assisted programs on the basis of race, color, national origin, age, or disability. Any person who believes he or she has been discriminated against in any program, activity, or facility operated by a recipient of Federal assistance should write to: Director, Equal Opportunity Program, U.S. Department of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

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 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 Notice of Request for Proposal for Lease of Two (2) Existing or Newly Constructed Facilities for Operation of 16-Bed In-Patient Community-Based Units (ICBUs) for Mental Health Treatment Programs

NOTICE IS HEREBY GIVEN that the Department of Administration, on behalf of the Department of Human Services (DHS), is requesting proposals for lease of existing or newly constructed facilities for operation of 16-bed In-Patient Community-Based Units (ICBUs) for mental health treatment programs to be operated by State Operated Services (SOS) of DHS. At this time, interested parties may submit proposals for one or both of the following sites in accordance with the specific criteria outlined in the information package prepared for this project:

1 Unit in St. Peter, Minnesota or North Mankato, Minnesota

1 Unit in St. Cloud, Minnesota

To request the information package to prepare a proposal(s) please e-mail a request to Kathy.meyer@state.mn.us or fax a request to (651) 215-6245.

State Contracts

Interested persons or firms must send a non-binding letter of "intent to submit a proposal" no later than **4:30 p.m. (CST) Friday, January 7, 2005** to Kathy Meyer at **e-mail** kathy.meyer@state.mn.us or by **fax** at (651) 215-6245. The non-binding letter of intent to submit a proposal must include: (1) a subject line of "Request for Lease Proposal for Department of Human Services," 2) a statement that the potential responder intends to submit a proposal, and (3) a contact person, phone number, fax number and email address.

All 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) Friday, January 21, 2005**, as indicated by a notation made by the receptionist on receipt of proposal at the address noted in the RFP requirements.

Late proposals will not be considered.

Minnesota State Colleges and Universities (The System) Office of the Chancellor, Information Technology Services Request for Proposals for Products/Components & Upgrade two (2) – GS160 ALPAH Servers

The purpose of this solicitation is for The System's Information Technology Services (ITS) to request proposal to purchase equipment and off hour (after 9:00 am - 5:00 pm and/or weekends) installation to upgrade two of its GS160 ALPHA Servers by completing the build out a second hardware partition.

Department: Minnesota State Colleges and Universities, Office of the Chancellor

Sealed Proposals for: Products/Components & Upgrade two (2) – GS160 ALPAH Servers

Will be received by: James Dierich, Director IT Infrastructure

Minnesota State Colleges & Universities

Information Technology Services

ETC Building, Suite 300

1450 Energy Park Drive

St. Paul, MN 55108-5227

Fax: (651) 649-5770

E-mail: jim.dierich@csu.mnscu.edu

All responses to this RFP must be received no later than 4:00 p.m. on December 29, 2004.

For a complete copy of the Request for Proposal please visit our website at http://www.its.mnscu.edu/gs160_upgrade or call (651) 917-4712 and one will be mailed.

Department of Human Services Notice of Availability of Contracts for Evaluation of Integrated Services Pilot Projects

The Department of Human Services is soliciting proposals for the evaluation of Integrated Services pilot projects that will integrate the delivery of employment, health, and social services for MFIP families with serious and multiple issues interfering with their ability to become economically stable.

Funding for the evaluation is \$350,000 for the 3-year demonstration period (March 1, 2005 – December 31, 2007). Work is proposed to start March, 2005. It is anticipated that this will be a two-year contract with the possibility of a one year extension.

A Request for Proposals will be available on the DHS website at:

http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/dhs_id_047966.pdf

beginning December 20, 2004. Alternatively, an electronic or paper copy may be obtained by contacting Nancy Vivian at nancy.vivian@state.mn.us or (651) 296-5831. A letter of intent (Form F of the RFP found on the website) must be submitted to Scott Chazdon by e-mail by Friday, January 7, 2005. No proposal will be accepted unless a letter of intent has been filed. Proposals submitted in response to the Request for Proposals in this advertisement must be received at the address below no later than 4:00 p.m. on January 31, 2005. Late proposals will not be considered. Faxed or e-mailed proposals will not be considered.

Department of Human Services

Information Desk

444 Lafayette Rd.

St. Paul, MN 55155

Attention: Scott Chazdon, Program Assessment and Integrity Division

Please e-mail questions to Scott Chazdon at scott.chazdon@state.mn.us no later than January 7, 2005. Copies of all questions and answers will be provided by email by January 14, 2005 to everyone who requested a proposal. They will also be available on the DHS web site at: http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/DHS_id_000102.hcsp

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.

Minnesota State Lottery

Proposals Sought for Market Research Services

The Minnesota State Lottery will issue a Request for Proposal (RFP) on December 20, 2004, for Market Research Services. A copy of the RFP will be available on the Lottery's special website:

www.mnlottery.com/researchrfp/, or call/write:

Carolyn Ross, Purchasing Manager

2645 Long Lake Road

Roseville, MN 55113

Ph: (651) 635-8102

Fax: (651) 635-8188

E-Mail: carolyn_r@mnlottery.com

Department of Transportation

District Operations Division

Request for Proposal (RFP) for Cass Lake Safety Rest Area – SP 1102-60 and SP 1102-60A

Notice of availability for comprehensive architectural design services for Cass Lake Safety Rest Area. Responses to this advertisement become public information under the Minnesota Government Data Practices Act. This request does not obligate the State of Minnesota Department of Transportation to complete the work contemplated in this notice, and the department reserves the right to cancel this request for proposal. All expenses incurred in responding to this notice shall be borne by the responder.

The Minnesota Department of Transportation (Mn/DOT) plans to comprehensively reconstruct the Cass Lake Safety Rest Area. The Cass Lake Safety Rest Area serves motorists on Trunk Highway 2 in Cass County. The site is located on the east side of the City of Cass Lake. It is at the head of the Migizi Bike Trail and serves as a gateway to the Chippewa National Forest, the Leech Lake Indian Reservation and to the City of Cass Lake.

Mn/DOT is requesting proposals to provide professional and technical services for the design, construction document development and construction inspection/observation for a new building and site development at the existing Cass Lake Safety rest Area. Project scope of services includes architectural, mechanical, electrical and Heating, Ventilation, Air Conditioning (HVAC) systems designs and construction observation for a complete building.

The entire request for proposal is located at www.dot.state.mn.us/consult, under the Professional/Technical (Prof/Tech) Notices section.

NOTE: PROPOSALS WILL BE DUE ON JANUARY 25, 2005 AT 2:00 P.M. CENTRAL TIME.

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

State Contracts

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.

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.

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.

City of Frazee

Request for Proposals for Updated City Comprehensive Plan

Summary

The City of Frazee is seeking proposals from planning consultants to update the City's Comprehensive Plan. The current plan was drafted in 1999 but the plan was not formally adopted by the City Council.

Proposals must be received no later than 4:00 p.m. on Friday, January 14, 2005. Please submit six (6) copies of the proposal and any requests for information or a copy of the existing plan to:

Kelcey Klemm, City Clerk
P.O. Box 387
Frazee, MN 56544
Phone: (218) 334-4991
Email: frazee@loretel.net

A copy of the full RFP will be sent upon request. All proposals must be signed by a duly authorized individual. The City reserves the right to reject any or all proposals, to waive any irregularity in a proposal, and to accept or reject any item or a combination of items.

Non-State Contracts & Grants

Metropolitan Council

Notice of Invitation for Bids (IFB) for the Transportation and Disposal of Waste Incinerator Ash

Reference Number 04P117

The Metropolitan Council (Council) is requesting bids for Transportation and Disposal of Waste Incinerator Ash for the Metropolitan and Seneca Wastewater Treatment Plants.

The tentative schedule for this procurement is as follows:

Issue Invitation for Bids

December 20, 2004

Site Visit

January 6, 2005

Bids Due

January 18, 2005

Award Contract

February 2005

All firms interested in submitting bids for this contract and desiring to receive an IFB package are invited to make a request by e-mail, fax, mail or phone to:

Elizabeth Sund
Metropolitan Council
230 East Fifth Street
St. Paul, MN 55101
Phone: (651) 602-1169
Fax: (651) 602-1083
E-mail: elizabeth.sund@metc.state.mn.us

ServeMinnesota: National and Community Service

Announcement of 2005-2006 Request for Proposals for Minnesota Reading Corps Sites

For more information and to download application materials, visit: www.serveminnesota.org

Launched in the fall of 2004, the Minnesota Reading Corps provides new opportunities for schools, community organizations, and faith-based organizations to access the resources of AmeriCorps. Through this RFP, schools and organizations can apply for AmeriCorps members, full-time volunteers receiving a modest living stipend, to serve as Volunteer Coordinators for early literacy tutoring or reading tutoring programs involving children age three to grade three. Grants cover 1 year of operation beginning August or September 2005.

AmeriCorps Members receive a modest living allowance, training, health coverage, and child care (if qualified). After completing their service term, Members receive an education award of \$4,725 for full-time service or a pro-rated award for lesser service terms that can be used to repay student loans or pay for college, graduate school, or vocational training.

Application Deadline: Applications will be accepted on a rolling basis. Priority will be given to applications submitted by January 10, 2005. All applications must be received by June 1, 2005. For more information, please contact: Cindy Johnson, Reading Corps Project Coordinator (612) 333-7749, cindy@serveminnesota.org or Audrey Suker, Executive Director (612) 333-7738, audrey@serveminnesota.org.

ServeMinnesota was created in 1994 to give individuals a chance to serve their country by volunteering in their communities. ServeMinnesota gives every citizen the chance to help solve our state's biggest challenges in education, the environment, public safety, human needs, and homeland security.

For information about AmeriCorps and national service, visit ServeMinnesota (www.serveminnesota.org) and the Corporation for National and Community Service (www.nationalservice.org).

ServeMinnesota, 431 South 7th Street, Suite 2540, Minneapolis, MN 55415, (612) 333-7740.

University of Minnesota

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

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

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



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