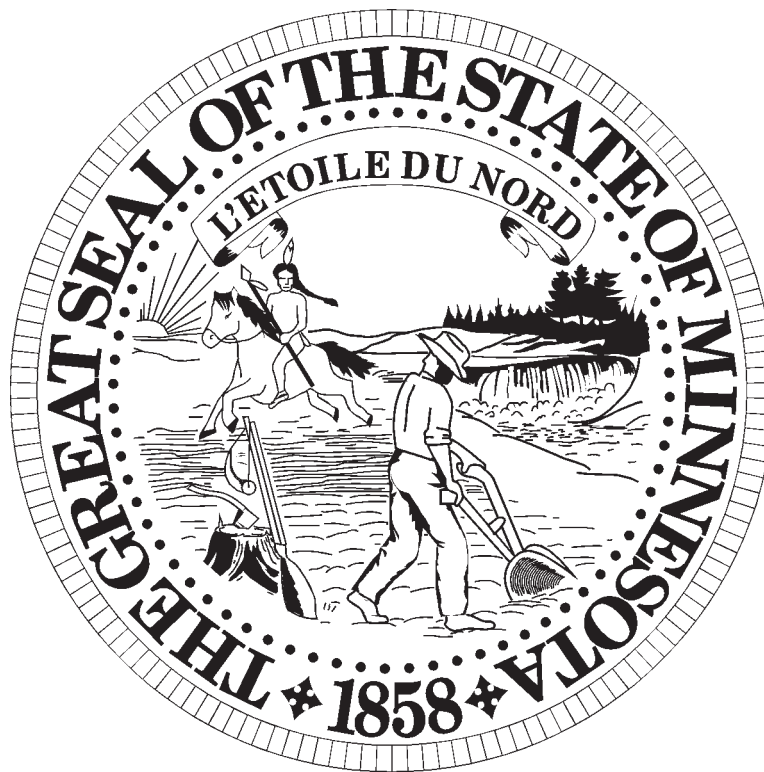


State of Minnesota

State Register



Rules and Official Notices Edition

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State Register

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

- proposed, adopted, exempt, expedited emergency and withdrawn rules
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- appointments
- proclamations and commendations
- commissioners' orders
- revenue notices
- official notices
- state grants and loans
- contracts for professional, technical and consulting services
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# 29	TUESDAY 17 JANUARY	Noon Tuesday 10 January	Noon Wednesday 4 January 2006
# 30	Monday 23 January	Noon Tuesday 17 January	Noon Wednesday 11 January
# 31	Monday 30 January	Noon Tuesday 24 January	Noon Wednesday 18 January

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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

Volume 30, Issues # 27-28, Monday 9 January 2006 756

Proposed Rules

Human Services Department

Proposed Repeal of Obsolete Provisions and Rules on Child Care Fund; Prenatal Risk Assessment and Care Services; Parental Fee Schedule for Child Care; Professional Services Advisory Committee and Payment Amount for Case Management Services..... 757

Commissioners' Orders

Labor and Industry Department

AMENDED ORDER # 12-1900-16739-10: In the Matter of the Petition of the Minnesota Pipe Trades Association for a Declaration that the Interim Approval for Air Admittance Valves Issued by the Commissioner of the Minnesota Department of Health is an Unadopted Rule..... 759
 Withdrawal of Interim Approval for Air Admittance Valve..... 763

Natural Resources Department

Designation of All-terrain Vehicle Trails Within or Contiguous to Designated Wildlife Management Areas in Aitkin, Beltrami, and Marshall Counties, Minnesota..... 764
 Designation of All-terrain Vehicle Trails Within or Contiguous to Designated Wildlife Management Areas in Beltrami and Marshall Counties..... 768

Official Notices

Agriculture Department

Plant Protection Division: Request for Comments on Possible Amendments to Rules Governing Seed Potato Certification..... 770

Comprehensive Health Association

Meeting of the Enrollee Appeal Committee January 11, 2006.... 770

Human Services Department

Health Care Purchasing and Delivery Systems Division, Health Care Administration: Maximum Allowable Costs of Medical Assistance Outpatient Prescribed Drugs..... 770
 Health Services and Medical Management: Request for Information (RFI) – Evidence Based Authorization and Utilization Management of High-technology Imaging Procedures..... 771

Public Employees Retirement Association (PERA)

Meeting of the Board of Trustees January 12, 2006..... 772

Revenue Department

Third Meeting of the Utility Rules Advisory Committee January 19, 2006..... 772

Teachers Retirement Association (TRA)

Meeting January 18, 2006..... 772

State Grants and Loans

Employment and Economic Development Department (DEED)

Minnesota Job Skills Partnership Training Grant Deadlines..... 773

Health Department

Office of Rural Health and Primary Care, Minnesota Rural Pharmacy Planning and Transition Grant Program: Notice of Grant Availability..... 769

Housing Finance Agency

Request for Proposals Administrators for the Home Rental Rehabilitation Program..... 769

State Contracts

Administration Department

Business Assistance..... 771

College and Universities, Minnesota State (MnSCU)

Anoka-Ramsey Community College: Extended Deadline and Request for Research Study Proposals..... 775
Hennepin Technical College: Request for Proposals to Update the Existing Campus Master Facilities Plan..... 775

Human Services Department

Continuing Care Administration: Request for Proposals for Employee Engagement Assessment, Leadership Training, and Support..... 776
 Disability Services Division (DSD): Requests for Proposals to Develop and Recommend a Budget Methodology..... 776

State Board of Investment

Request for Private Money Management Firms to Manage Pension Assets..... 777

Department of Transportation (Mn/DOT)

Potential Availability of Contracting Opportunities for a Variety of Highway Related Technical Activities (the "Consultant Pre-Qualification Program")..... 777
 Professional/Technical Contract Opportunities..... 778

Non-State Contracts & Grants

City of Edina

Public Safety: Request for Proposal for Public Safety Computer Aided Dispatch, Records Management and Mobile and Field Reporting System..... 778

Hennepin County

Request for Proposals for Environmental Assessment on Trunk Highway 55..... 778

Metropolitan Council

Request for Proposals for Victoria and St. Bonifacius Interceptor Improvements Design and Construction Support..... 778

Metropolitan Council - Metro Transit

Request for Proposals for Design and Construction Support Services for 28th Avenue Parking Facility..... 779

University of Minnesota

Subscribe to Bid Information Service (BIS)..... 779

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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.

Rules Index, Volume 30, Issues # 27-28

TUESDAY 3 January 2006 to Monday 9 January 2006

Education Department

3400.0020, s. 27; .0100, s. 1, 3, 3a, 4; .0130, s. 2a;
9505.0185; .0491, s. 7, 8 (proposed repealer)..... 756

Natural Resources Department

6262.1000 (adopted expedited emergency)..... 704
6264.0300; .0400 (adopted exempt)..... 697
6264.0300 s. 43, 50 (repealed exempt)..... 697

Human Services Department

9505.0185; .0491, s. 7, 8; 3400.0020, s. 27; .0100, s. 1, 3,
3a, 4; .0130, s. 2a (proposed repealer)..... 756
9505.0353 (proposed)..... 756

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.

Department of Human Services

Proposed Repeal of Obsolete Provisions and Rules on Child Care Fund; Prenatal Risk Assessment and Care Services; Parental Fee Schedule for Child Care; Professional Services Advisory Committee and Payment Amount for Case Management Services

NOTICE OF INTENT TO REPEAL OBSOLETE RULES UNDER *MINNESOTA STATUTES*, SECTION 14.3895

Proposed Repeal of Obsolete Provisions and Rules on Child Care Fund; Prenatal Risk Assessment and Care Services; Parental Fee Schedule for Child Care; Professional Services Advisory Committee and Payment Amount for Case Management Services, *Minnesota Rules*, parts 3400.0020, subpart 27; 3400.0100, subparts 1, 3, 3a, and 4; 3400.0130, subpart 2a; 9505.0185; 9505.0353, subparts 2 and 3; and 9505.0419, subparts 7 and 8

Introduction. The Department of Human Services plans to use the process created in *Minnesota Statutes*, section 14.3895, to repeal the obsolete rules or the obsolete portions of the rules that are listed above. The Department has identified these rules or portions of rules as obsolete in its annual obsolete rule reports. *Minnesota Statutes*, section 14.3895, therefore allows the Department to repeal these rules or portions of rules by publishing notice in the *State Register*. If 25 or more people submit a written request for a formal rulemaking, however, the Department will have to follow the formal rulemaking requirements in *Minnesota Statutes*, chapter 14, including the preparation of a statement of need and reasonableness and the opportunity for a hearing, before it can repeal these obsolete rules.

Agency Contact Person. Comments or questions on the rules, requests for copies of the rules, and written requests for a formal rulemaking must be submitted to the agency contact person. The agency contact person is: Jodi Pope, Department of Human Services, Appeals and Regulations Division, 444 Lafayette Road, St. Paul, Minnesota, 55155-3816; **Telephone:** (651) 284-4204; **Fax:** (651) 297-3173; **E-mail:** jodi.pope@state.mn.us. **TDD** users may call the Minnesota Relay Service at 711 or (800) 627-3529. For the speech-to-speech relay, call (877) 627-3848.

Subject of Rules, Statutory Authority to Repeal the Rules, and Reason Why the Rules are Obsolete. The rules or portions of rules that the Department proposes to repeal as obsolete concern the Child Care Assistance and Medical Assistance Programs. *Minnesota Statutes*, section 14.3895, gives the agency the statutory authority to repeal these rules. A copy of the rules that the Department proposes to repeal is attached to this notice as mailed. A free copy of the rules proposed for repeal also is available from the agency upon request. A copy of the rules also has been posted on the Department's website. An explanation as to why each rule or portion of rule is obsolete is listed below.

Proposed Rules

1. *Minnesota Rules*, part 3400.0020, subpart 27, defined the term “half-day basis” as child care provided for less than or equal to five hours per day. In the past, providers could be paid a half-day rate if they provided care on a half-day basis. *Minnesota Statutes*, section 119B.13, subdivision 1, however, now provides that the Child Care Assistance Program can pay only hourly, full-day, and weekly rates. See *2003 Minnesota Laws, 1st Special Session*, ch. 14, art. 9, § 22 (adding reference to allowed payment rates). Because the Child Care Program can no longer pay providers on a half-day basis, the definition of the term “half-day basis” is obsolete.

2. *Minnesota Rules*, part 3400.0100, subparts 1, 3, 3a, and 4 established the copayment fee schedule for the Child Care Assistance Program. This fee schedule has been replaced by a statutory fee schedule and therefore is obsolete. See *2005 Minnesota Laws, 1st Special Session*, ch. 4, art. 3, § 19 (2005 copayment fee schedule); *2003 Minnesota Laws, 1st Special Session*, ch. 14, art. 9, § 36 (2003 copayment fee schedule).

3. *Minnesota Rules*, part 3400.0130, subpart 2a, describes the rate bonus that the Child Care Assistance Program formerly could pay to accredited child care providers. The statutory language authorizing this bonus was repealed in 2003, however, and the Program no longer can pay an accreditation bonus. See *2003 Minnesota Laws, 1st Special Session*, ch. 14, art. 9, § 38 (repealing authorization for accreditation bonus). Consequently, part 3400.0130, subpart 2a, is now obsolete.

4. *Minnesota Statutes*, section 256B.04, subdivision 15, gives the commissioner the authority to make decisions about the reasonableness and necessity of medical services provided under medical assistance by consulting with a professional services advisory group or by consulting with a health care consultant. *Minnesota Rules*, part 9505.0185, governs the professional services advisory committee that was created to provide consultation to the commissioner on the medical necessity of medical assistance services. The commissioner, however, has never actually consulted this committee and, instead, has always made medical necessity decisions by consulting a health care consultant. In addition, any benefits that would have resulted from the input of the professional services advisory group would have been duplicative of those already provided to the commissioner through the input of the Medicaid Citizens Advisory Committee. In any event, the statutory authority for the existence of this advisory committee expired in June, 2003. See *Minnesota Statutes* § 15.059, subd. 5 (the existence of an advisory committees expires on the date specified in the statute creating the committee or on June 30, 2003, whichever is sooner). Consequently, the rule governing this advisory group is obsolete.

5. *Minnesota Rules*, part 9505.0353, subpart 2, requires providers of prenatal services to medical assistance recipients to complete a prenatal risk assessment on a form supplied by the Department and to return this form to the Department. The Department, however, now receives the information on the risk assessment form from the Pregnancy Risk Assessment Monitoring System. Consequently, the provisions in part 9505.0353, subpart 2, requiring providers to also submit the risk assessment information on the Department form are obsolete. These provisions also impose an unnecessary and duplicative obligation on prenatal service providers.

6. *Minnesota Rules*, part 9505.0353, subpart 3, provides that the listed prenatal services can be provided to a medical assistance recipient if prior authorization is obtained. Prior authorization, however, no longer is required for these prenatal services. Consequently, this rule is obsolete. See *Minnesota Statutes* § 256B.0625, subd. 14 (medical assistance covers preventative services including prenatal services); subd. 25 (commissioner must publish list of services requiring preauthorization in state register); *Minnesota Health Care Programs Provider Manual*, ch. 5, www.dhs.state.mn.us/main/groups/buisness_partners/documents/pub/DHS_id_000094.hcsp (listing services requiring prior authorization).

7. *Minnesota Rules*, part 9505.0491, subparts 7 and 8, established guidelines for setting payment rates under the Medical Assistance Program for case management services for persons with serious and persistent mental illness and children with severe emotional disturbance. These rates now are established in statute and these rule provisions therefore are obsolete. See *Minnesota Statutes* § 256B.0625, subd. 20 (establishing payment methodology for case management services for persons with serious and persistent mental illness and children with severe emotional disturbance).

Request for a Formal Rulemaking. You may request that the agency undertake a formal rulemaking to repeal these obsolete rules. Your request for a formal rulemaking must be in writing and must be received by the agency contact person by 4:30 p.m. on March 10, 2006. Your written request for a formal rulemaking must include your name and address. You must identify the portion of the rules proposed to be repealed to which you object or state that you oppose the repeal of 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 formal rulemaking must be undertaken. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Proposed Rules

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.

Repeal and Review of Rules. If the agency does not receive 25 requests for a formal rulemaking, the agency may repeal the obsolete rules after the end of the 60-day comment period. The rules and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality.

Dated: January 9, 2006

Kevin Goodno, Commissioner
Department of Human Services

9505.0353 PRENATAL CARE SERVICES.

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

Subp. 2. **Risk assessment.** To be eligible for medical assistance payment, a provider of prenatal care services shall complete a risk assessment for a recipient for whom the services are provided. The risk assessment must be completed at the recipient's first prenatal visit and on a form supplied by the department. ~~The provider shall submit the completed form to the department when the provider submits the first claim for payment of services to the recipient.~~

Subp. 3. **Additional service for at risk recipients.** The services in items A to C shall be provided to a recipient if the recipient's risk assessment identifies the services as medically necessary because of her at risk status ~~and if prior authorization is obtained.~~

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

REPEALER. Minnesota Rules, parts 3400.0020, subpart 27; 3400.0100, subparts 1, 3, 3a, and 4; 3400.0130, subpart 2a; 9505.0185; and 9505.0491, subparts 7 and 8, are repealed.

Commissioners' Orders

Various agency commissioners are authorized to issue "commissioner's orders" on specified activities governed by their agency's enabling laws. See the *Minnesota Statutes* governing each agency to determine the specific applicable statutes. Commissioners' orders are approved by assistant attorneys general as to form and execution and published in the *State Register*. These commissioners orders are compiled in the year-end subject matter index for each volume of the *State Register*.

Department of Labor and Industry

AMENDED ORDER # 12-1900-16739-10: In the Matter of the Petition of the Minnesota Pipe Trades Association for a Declaration that the Interim Approval for Air Admittance Valves Issued by the Commissioner of the Minnesota Department of Health is an Unadopted Rule

By Petition filed July 8, 2005, the Minnesota Pipe Trade Association (MPTA or "Petitioner") seeks an order directing the Department of Labor and Industry ("the Department") to cease enforcement of an unadopted rule. The Department filed a written response on July 22, 2005. On that same date, the Administrative Law Judge invited Studor, Incorporated (Studor), a North American distributor of air admittance valves (AAVs), to submit a response because of Studor's direct involvement in seeking the Interim Approval at issue in this matter. On July 27, 2005, Studor filed a Petition to Intervene and that petition was granted. On August 12, 2005, Studor filed a response to the Petition. On September 2, 2005, the Minnesota Plumbing, Heating and Cooling Contractors (MPHCC) and the Minnesota Mechanical Contractors Association (MMCA) requested permission to intervene. The parties submitted letter briefs on whether the intervention should be allowed, and the ALJ granted the intervention requests of MPHCC and MMCA on September 19, 2005. The Petitioner responded to the responses of the Department and Studor on September 22, 2005. Oral argument was heard on September 29, 2005. The record closed on October 6, 2005, with the filing of correspondence.

Frank Vogl and Edward P. Sheu, Attorneys at Law, Best & Flanagan, LLP, 225 South Sixth Street, Suite 4000, Minneapolis, MN 55402-4690, represented the Petitioner, and Intervenors MPHCC and MMCA. Jocelyn F. Olson, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, represented the Department of Labor and Industry. Gary A. Van Cleve,

Commissioner's Orders

Attorney at Law, Larkin, Hoffman, Daly & Lindgren, Ltd., 1500 Wells Fargo Plaza, 7900 Xerxes Avenue South, Minneapolis, MN 55431-1194, represented Intervenor Studor.

Based upon all of the filings by the parties, the oral argument, and for the reasons set out in the Memorandum which follows,

IT IS HEREBY ORDERED THAT:

1. The Department of Labor and Industry cease enforcement of the document entitled "Interim Approval for Air Admittance Valve as an Alternate Fixture, Appurtenance, Material or Method."
2. The Department publish this decision in the State Register.
3. The Department shall bear the costs associated with this proceeding.

Dated: January 3, 2006

Signed: Steve M. Mihalchick
Administrative Law Judge

NOTICE

This decision is the final administrative decision under *Minnesota Statutes* § 14.381. It may be appealed to the Minnesota Court of Appeals under *Minnesota Statutes* §§ 14.44 and 14.45.

MEMORANDUM

The Minnesota Pipe Trades Association has brought a petition before the Office of Administrative Hearings pursuant to *Minnesota Statutes* § 14.381. Petitioner is an association of nine pipe trade unions representing employees who work in the plumbing industry in the state of Minnesota. The Petition maintains that the "Interim Approval for Air Admittance Valve as an Alternate Fixture, Appurtenance, Material or Method" ("Interim Approval") issued by the Department of Health in October of 2004 is an unadopted rule. The Petition requests that the Administrative Law Judge order the Department of Labor and Industry to cease enforcement of the Interim Approval.

The Department and Studor oppose the Petition and argue that the Interim Approval of the AAV was an appropriate determination made under the provision in the Plumbing Code that allows for the approval of "alternate" fixtures, material or methods. According to the Department and Studor, the Interim Approval of AAVs is not an unadopted rule but rather the legal result of the application of a duly adopted rule provision to specific facts under which alternate products or methods may be approved.

Regulatory Background

The Minnesota Plumbing Code, *Minnesota Rule* ch. 4715, prescribes minimum standards for all new plumbing installations, including additions, extensions, alterations and replacements connected to a water or sewage disposal system. The Code sets forth the principles of proper plumbing methods, specifies acceptable materials, and outlines installation procedures that will ensure sanitary conditions. Until May 16, 2005, the Plumbing Code was administered by the Minnesota Department of Health (MDH). After that date, responsibilities relating to the Plumbing Code were transferred to the Department of Labor and Industry.¹

Minnesota Rule 4715.0330, subp. 1, provides that the "administrative authority" may approve the use of "alternate" fixtures, appurtenances, materials and methods that are not "expressly approved" or "expressly prohibited" by the Code. The "administrative authority" is defined as either: 1) the governing body of a unit of government that adopts and maintains a comprehensive plumbing enforcement program that includes enforcement of the Minnesota Plumbing Code; or 2) the head of the state agency administering the Code.²

To obtain approval of an "alternate" fixture or material, a person must, prior to installation or use, submit to the administrative authority "such proof as may be required to determine whether such fixture, appurtenance, material or method is of such design or quality, or both, as to appear to be suitable, safe, and sanitary for the use for which it is intended."³ If the administrative authority determines that it does appear to be suitable, safe, and sanitary for the use which it is intended, the administrative authority may permit such use.

Factual Background

Studor is a North American distributor of Air Admittance Valves (AAVs). AAVs are devices used as vent terminals for individual and branch fixtures in plumbing drainage systems.⁴ AAVs are an alternative to the traditional plumbing method of venting each plumbing fixture out through the roof of the building. Such "open pipe venting" provides for multiple openings to allow air into a building's plumbing system to avoid air pressure differences that may cause the loss of water from water trap seals and may allow sewer gas into the building. AAVs, on the other hand, are one-way valves installed on plumbing drainage systems that allow air to enter the plumbing drainage system without a vent extended to the outside air.⁵ The AAV is designed to allow air to enter the plumbing system when a negative pressure develops in the system, preventing siphonage of water from water trap seals. The device is designed to close by gravity under no-flow conditions or under positive internal pressure, i.e., sewer backup, preventing sewer gas from escaping into the building.⁶ However, every AAV system does have at least one open pipe vent extended through the roof of the building to relieve positive pressure to prevent forcing of trap seals through back pressure.⁷ According to Studor, the AAV is a cost-effective alternative to labor-intensive and expensive venting

systems that rely exclusively on open pipe vents.⁸

AAVs are not expressly approved for use by the Minnesota Plumbing Code. On January 23, 2001, Studor President Jack Beuschel appeared before the Minnesota Department of Health's Plumbing Advisory Council to request approval of the AAV as an alternate method or material under *Minnesota Rule 4715.0330*.⁹ The Advisory Council makes recommendations regarding new products, materials and methods of plumbing.¹⁰ The Advisory Council noted concerns about testing of the product and tabled its decision to review submitted material.¹¹ On May 22, 2001, Beuschel again appeared before the Advisory Council seeking approval of the AAV.¹² The Advisory Council expressed concerns about the ability of the AAV to seal properly under static conditions. The Advisory Council denied Studor's request for product approval.¹³ Studor subsequently submitted to the Advisory Council third-party testing results and again requested the AAV be approved as an alternate material under Rule 4715.0330.¹⁴

By letter dated October 26, 2001, then Commissioner of Health Jan Malcolm denied Studor's request for approval of the AAV as an alternate material or method under Rule 4715.0330.¹⁵ Commissioner Malcolm cited to the requirements in the Code that each vent terminal be extended to the outer air (Rule 4715.0220 (I))¹⁶ and that vent pipe terminals pass through the roof (Rule 4715.2530, subp. 2) as support for MDH's interpretation that the installation of an AAV is "something expressly prohibited by the Minnesota Plumbing Code." According to Commissioner Malcolm, a rule revision would be required to approve use of AAVs in jurisdictions where the Plumbing Code applies. Commissioner Malcolm informed Studor that the next planned revision of the Minnesota Plumbing Code would occur in 2002.

In October of 2002, MDH did propose amendments to the Minnesota Plumbing Code.¹⁷ MDH declined, however, to make any revisions to the rules to address the use of AAVs. A rulemaking hearing before Administrative Law Judge Kathleen Sheehy was held on December 6, 2002. Neither the rule amendments as proposed nor the rule amendments adopted provided for the use of AAVs. However, a representative of Studor appeared at the hearing and presented testimony and evidence about the suitability and safety of AAVs. In its post-hearing comments, MDH listed several grounds for rejecting any proposal to amend the rules to permit the use of AAVs including concerns about AAVs failing and allowing the release of sewer gas into a building because the "various testing and listing standards do not assure us that AAVs are as safe as traditional venting systems."¹⁸

Administrative Law Judge Kathleen Sheehy issued her Rule Report on February 3, 2003. ALJ Sheehy found that because one of the principles of the Plumbing Code requires venting of each terminal to the air outside the building, it "precludes the use of AAVs as alternative methods of venting the plumbing system."¹⁹ ALJ Sheehy also found, however, that the record as a whole supported the conclusion that AAVs that are properly tested to ASSE/ANSI standards function in a manner that is as safe as the traditional method of open pipe venting and she strongly recommended that MDH reconsider its position on AAVs.²⁰ On February 5, 2003, the Chief Administrative Law Judge issued his Report in which he stated the following regarding the use of AAVs:

AAVs are not allowed under the existing plumbing code, and the department did not propose to allow them in the amended code, either as an approved or alternate material or method. In addition, the existing code, at part 4715.0200 (I), contains a provision, which, as a practical matter, precludes the use of AAVs as alternative methods of venting. That provision is not proposed for amendment in this proceeding.²¹

Approximately 15 months later, on May 13, 2004, the MDH issued the "Air Admittance Valve – Alternative Material Approval by the Commissioner of Health, May 11, 2004." After several revisions of the language, the Commissioner of Health announced on October 8, 2004, that she "along with manufacturers of air admittance valves have arrived with an agreement to allow the use of air admittance valves in Minnesota."²² The agreement took final form as an "Interim Approval" on October 29, 2004. The Interim Approval is in effect "until this matter is reviewed for a possible rule revision in the Minnesota Plumbing Code."

Legal Analysis

Minnesota Statutes § 14.381, subd. 1(a) allows for the filing of a petition seeking an order of an administrative law judge that an agency is "enforcing or attempting to enforce a policy, guideline, bulletin, criterion, manual standard, or similar pronouncement as though it were a duly adopted rule." Subdivision 1(b) of the statute provides that "an agency determination is not considered to be an unadopted rule when the agency enforces a law or rule by applying the law or rule to specific facts on a case-by-case basis." If the administrative law judge finds that the agency is enforcing an unadopted rule, the administrative law judge must direct the agency to cease enforcement of the unadopted rule.²³

A rule is defined as "every agency statement of general applicability and future effect . . . adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure."²⁴ Generally, when an agency's interpretation of a statute or rule coincides with the plain meaning of that statute or rule, the agency is not deemed to have engaged in rulemaking.²⁵ In other words, if an agency statement is consistent with the plain meaning of the statute interpreted, the agency action is authorized by the statute itself and the fact that no rule was adopted does not render the statement invalid.²⁶ However, when an agency's announced policy is inconsistent with the statute or a rule, the courts have often invalidated that policy.²⁷ And where the policy makes new law without the public input required by rulemaking under the APA, the policy will be invalidated.²⁸

The question presented is whether the Interim Approval issued by the MDH is an unadopted rule or whether it meets the criteria of

Commissioner's Orders

Minnesota Statutes § 14.381, subd. 1(b) by applying an already existing formally adopted rule (4715.0330) to specific facts on a case-by-case basis. In other words, is the Interim Approval an unadopted rule or is it an authorized application of Rule 4715.0330 to specific facts?

The alternate fixture approval procedure set forth in the Minnesota Plumbing Code at *Minnesota Rule* 4715.0330, subds. 1 and 2 provides as follows:

Subpart 1. Approval of alternate fixtures. The administrative authority may approve the use of fixtures, appurtenances, materials, and methods of a type not expressly approved, nor expressly prohibited by, this code after determination that such fixtures, appurtenances, material, or method is of such design or quality, or both, as to appear to be suitable, safe, and sanitary for the use for which it is intended.

Subpart 2. Proof of suitability of fixture. Any person desiring to install or use a fixture, appurtenance, material, or method of a type not expressly authorized nor expressly prohibited by this code shall, prior to such installation or use, submit to the administrative authority such proof as may be required to determine whether such fixture, appurtenance, material, or method is of such design or quality or both, as to appear to be suitable, safe, and sanitary for the use for which it is intended. If the administrative authority determines that it does appear to be suitable, safe, and sanitary for the use which it is intended, it may permit such use.

The Petitioner argues that the Commissioner of Health did not have the authority to approve AAVs as an alternate fixture or material because the Plumbing Code expressly prohibits the use of AAVs. The Minnesota Plumbing Code includes 23 principles entitled “Basic Plumbing Principles.”²⁹ The ninth principle, (item I), states as follows: “Each vent terminal shall extend to the outer air and be so installed as to minimize the possibilities of clogging and the return of foul air into the building.” Petitioner contends that since AAVs do not vent to the outer air as required by the Code, they are expressly prohibited and cannot be used as an alternative method.³⁰ According to the Petitioner, any vent system that does not comply with the basic principles of the Code must be considered “expressly” prohibited.

The Department and Studor argue that AAVs are not expressly prohibited by the Code. The Code contains express prohibitions of certain types of plumbing devices, but does not mention AAVs.³¹ According to the Respondents, what the Petitioner is really arguing is that AAVs are prohibited by implication. The alternate fixture approval rule, however, requires an express prohibition. Because AAVs are not expressly prohibited by the Code, Respondents maintain that the Commissioner had the authority to approve their use as an alternate fixture and that such approval was the end result of the Commissioner’s proper application of the alternate fixture approval provision to the specific facts of this case.

After reviewing the record and considering the arguments of counsel, the Administrative Law Judge concludes that AAVs are expressly prohibited by the Plumbing Code and cannot be approved as an alternative fixture or method under *Minnesota Rule* 4715.0330. The Code expressly requires that vent terminals extend to the outer air. AAVs do not vent to the outside air. They do not comply with one of the basic principles of plumbing and therefore are expressly prohibited from being used as an alternate method.

Even if AAVs are not expressly prohibited by the Plumbing Code, the Administrative Law Judge concludes that the Interim Approval issued by the Commissioner of Health is not a permissible application of the alternate approval process set forth at *Minnesota Rule* 4715.0330. The language of *Minnesota Rule* 4715.0330 suggests that the alternate fixture approval process is meant to be applied on a case-by-case basis to the specific facts of individual requests. Subdivision 2 requires that “any person desiring to install or use a fixture” that is not expressly approved or prohibited in the Code demonstrate that the fixture appears safe for the use intended. The administrative authority may permit “such use” if it does appear safe. The process is meant to allow the approval of a request to use an alternate fixture brought by a person for a specific use. Thus, for example, if AAVs were not expressly prohibited by the Plumbing Code, it would be appropriate for the administrative authority to approve the use of an AAV in a particular building. The Interim Approval issued by MDH, however, is not the result of an individual application for a specific use. Instead, it is an “agreement” of general applicability reached after protracted negotiations between MDH, Studor and manufacturers of AAVs. The result is a general or global change to the Plumbing Code that authorizes the use of an alternate fixture or method that does not comply with existing plumbing principles set forth in the Code. Such an across-the-board change that is inconsistent with the Plumbing Code may only be accomplished by amending the rules through formal rulemaking under the Administrative Procedure Act. The alternate fixture approval process may not be used to circumvent rulemaking under the APA.

In addition, the Interim Approval does not meet the exception for unadopted rules provided for in *Minnesota Statutes* § 14.381, subd. 1(b). Contrary to the claims of the Department, this is not a situation where the agency is applying a longstanding provision of the Plumbing Code to specific facts on a case-by-case basis. Case-by-case determinations involve specific facts applied to specific parties.³² Here, the Interim Approval is an announced statement of general applicability and future effect, not a case-by-case determination. As such it meets the definition of “rule” under *Minnesota Statutes* § 14.02, subd. 4, without having been adopted by the procedures set forth in the APA.

The ALJ concludes that the Interim Approval is an unadopted rule that may not be enforced absent formal rulemaking under the APA. The Department is ordered to cease enforcement of the Interim Approval.

S.M.M.(Footnotes)

- ¹ Department of Administration Reorganization Order No. 193.
- ² Minn. R. 4715.0100, subp. 2.
- ³ Minn. R. 4715.0330, subp. 2.
- ⁴ Department's Ex. B.
- ⁵ Report of the Administrative Law Judge, Finding No. 77 at p. 22 (February 3, 2003); Beuschel Aff. ¶ 2.
- ⁶ Id.
- ⁷ Beuschel Aff. ¶ 2.
- ⁸ Beuschel Aff. ¶ 3.
- ⁹ Leitheiser Aff. ¶ 7.
- ¹⁰ Minn. R. 4715.0330, subp. 4.
- ¹¹ Beuschel Aff. ¶ 8 and Ex. D.
- ¹² Beuschel Aff. ¶ 9.
- ¹³ Beuschel Aff. ¶ 9 and Exs. F and G.
- ¹⁴ Beuschel Aff. Ex G.
- ¹⁵ Letter submitted by Petitioner and received at oral argument hearing on September 29, 2005.
- ¹⁶ Subsequently renumbered as Minn. R. 4715.0200 (I).
- ¹⁷ 27 State Register 582 (October 21, 2002).
- ¹⁸ Hansen Aff. Ex. C, Report of the Administrative Law Judge, Finding No. 92 at p. 25 (February 3, 2003).
- ¹⁹ Hansen Aff. Ex. C, Report of the Administrative Law Judge, Finding Nos. 84 and 85 at p.24 (February 3, 2003).
- ²⁰ Id., Finding No. 102.
- ²¹ Hansen Aff. Ex. D Report of the Chief Administrative Law Judge (February 5, 2003).
- ²² Hansen Aff. Ex. B.
- ²³ Minn. Stat. § 14.381, subd. 2.
- ²⁴ Minn. Stat. § 14.02, subd. 4.
- ²⁵ Cable Communications Board v. Nor-west Cable Communications Partnership, 356 N.W.2d 658, 667 (Minn. 1984).
- ²⁶ Sellner Manufacturing Co. v. Commissioner of Taxation, 202 N.W.2d 886, 888-89 (Minn. 1972); Good Neighbor Care Centers v. Dep't of Human Services, 428 N.W.2d 397, 402 (Minn. App. 1988), review denied, (Minn. 1988).
- ²⁷ Swenson v. State Department of Public Welfare, 329 N.W.2d 320, 324 (Minn. 1983).
- ²⁸ Johnson Brothers Wholesale Liquor Co. v. Novak, 295 N.W.2d 238, 243 (Minn. 1980).
- ²⁹ Minn. R. 4715.0200.
- ³⁰ The Petitioner cites to other provisions of the Code that also prescribe open pipe venting to outside air, such as Minn. R. 4715.0920 (requiring that all traps be protected from siphonage and back pressure by properly installed vent pipes), and Minn. R. 4715.2510 (requiring trap seals be protected against siphonage and backpressure by the appropriate use of soil or waste stack or vents.)
- ³¹ See Minn. R. 4715.0960, "Traps Prohibited," and Minn. R. 4715.2420, "Prohibited Fittings and Connections."
- ³² In re Hibbing Taconite Co., 431 N.W.2d 885, 894-95 (Minn. App. 1988).

Department of Labor and Industry Withdrawal of Interim Approval for Air Admittance Valve

The Minnesota Commissioner of Health issued an "Interim Approval for Air Admittance Valve as an Alternate Fixture, Appurtenance, Material, or Method" (hereinafter "Interim Approval") dated October 8, 2004. This Interim Approval referred to Minnesota Rule 4715.0330, which is part of the Minnesota Plumbing Code. Under Minnesota Department of Administration Reorganization Order No. 193, the responsibilities for administering the Minnesota Plumbing Code were transferred from the Minnesota Department of Health to the Minnesota Department of Labor and Industry on May 16, 2005. On January 3, 2006, Administrative Law Judge Steve M. Mihalchick issued an Amended Order that, among other things, requires the Minnesota Department of Labor and Industry to cease enforcement of the Interim Approval.

The Interim Approval is hereby withdrawn, effective on the date this withdrawal is signed by the Minnesota Commissioner of Labor and Industry.

Dated: January 4, 2006

M. Scott Brener, Commissioner
Minnesota Department of Labor and Industry

Commissioners' Orders

Minnesota Department of Natural Resources DECISION RECORD

OFFICIAL NOTICE AND ORDER: Designation of All-terrain Vehicle Trails Within or Contiguous to Designated Wildlife Management Areas as Specified in *Minnesota Statutes, Section 97A.133, subd. 3*

DESIGNATION OF ALL-TERRAIN VEHICLE TRAILS IN WILDLIFE MANAGEMENT AREAS ON LANDS UNDER THE AUTHORITY OF THE COMMISSIONER IN AITKIN, BELTRAMI AND MARSHALL COUNTIES, MINNESOTA

NOTICE PUBLISHED: JANUARY 3, 2006
EFFECTIVE DATE: DECEMBER 31, 2006

NOTICE IS HEREBY GIVEN that the Commissioner of the Minnesota Department of Natural Resources orders the designation of all-terrain vehicle trails as identified in the "*Phase II Plan*", attached hereto and incorporated herein, for state lands under the authority of the commissioner located in Aitkin, Beltrami and Marshall Counties of Minnesota. Trail designations are made pursuant to *Minnesota Statutes, Section 97A.133, subd. 3*. This order supercedes and replaces the *Phase I Plan* and order (*Cite 29 SR 323*).

WHEREAS:

1. *Minnesota Statutes, Section 97A.133, Subd. 3* directs the commissioner of natural resources to identify, designate and sign all-terrain vehicle trails in order to connect trails, forest roads and public highways to provide reasonable travel for all-terrain vehicles in areas of historic all-terrain vehicle use, including trails that are within or contiguous to designated Wildlife Management Areas located on lands acquired by the state pursuant to *Minnesota Statutes, Chapter 84A*.
2. The commissioner consulted with wildlife management area users, including both motorized and non-motorized trail users, in identifying and evaluating trails for designation in accordance with procedures specified by *Minnesota Laws 2002, Chapt. 353, Sect. 8*.
3. The agency solicited and received written comments and submissions on the proposed trail designations and incorporated these as appropriate into the *Phase II Plan*.
4. All notice and procedural requirements in *Minnesota Statutes*, and other applicable rules and law have been complied with.
5. The all-terrain vehicle trail designations are both needed and reasonable.

NOW THEREFORE, IT IS ORDERED that the all-terrain vehicle trail segments, contained in the attached *Phase II Plan*, as noticed in the *State Register* and filed with the Secretary of State, are hereby designated pursuant to authority vested in me by Minnesota Law.

IT IS FURTHER ORDERED that the designation of said all-terrain vehicle trail segments shall become effective on December 31, 2006. This order supercedes and replaces the *Phase I Plan* and order. (*Cite 29 SR 323*)

Dated: December 12, 2005

Gene Merriam, Commissioner
Department of Natural Resources

Attached: *Phase II ATV Trail Plan for Aitkin, Beltrami & Marshall Counties.*

Signed copy on file w/MN Secretary of State – Refer to No. 0601345

PHASE II PLAN / ATV TRAILS

AITKIN COUNTY

Soo Line Railroad Right of Way. Begins on the old rail grade and proceeds 0.5 mile in the SW1/4 Section 22, T47N, R 26W.

BELTRAMI COUNTY

Big Grass #1. Begins at the southwest corner of Section 7, T158N, R38W, proceeds east 2.5 miles, then proceeds north 0.5 miles, then northwest 0.75 miles, then north 0.5 miles for a total of 4.25 miles.

Big Grass #1a. Begins at the SW corner of the Section 10, T158N, R38W then proceeds east 0.5 miles.

Big Grass/Northwood #5. Begins at the northwest corner of Section 31, T158N, R38W then proceeds south 1.5 miles.

Big Grass #3. Begins at the southeast corner of Section 36, T158N, R38W then proceeds north for a distance of 1.0 mile.

Big Grass #4. Begins at the northeast corner of Section 35, T158N, R38W. It proceeds south 1.25 miles.

Northwood #1. Begins at the southeast corner of Section 12, T157N, R38W, proceeds north 1.4 miles.

Northwood #2. Begins at the southeast corner of Section 8, T157N, R38W, then proceeds west 1.75 miles. There will be a seasonal closure in effect from March 15th to July 15th annually along this segment due to nesting birds.

Northwood #3. Begins at the southeast corner of Section 8, T157N, R38W, proceeds north 1.0 mile.

Northwood #6. Begins at the northwest corner of the NE 1/4 Section 20, T157N, R38W. It proceeds east for 0.5 miles, it then turns south for a distance of 0.5 miles for a total distance of 1.0 miles.

Northwood-Benville #5. Begins at the NW corner of Section 4, T156N, R38W and proceeds east 2.2 miles.

Benville #1a. Begins at the southeast corner of NENE1/4 Section 9, T156N, R38W and proceeds north 0.25 mile, then west 0.5 mile for a total length of 0.75 miles.

Benville #1b. Begins at the southwest corner of Section 4, T156N, R38W and proceeds north 1.0 mile.

Spruce Grove #1. Begins at the southeast corner of NE1/4 Section 30, T156N, R37W and then proceeds north 2.25 miles.

Spruce Grove #2. Begins at the southeast corner of the NE1/4 Section 30, T156N, R37W. The trail proceeds west for a distance of 1.0 mile.

Hamre-Lee #5. Begins at the northeast corner of Section 20, T155N, R37W and proceeds west 4.0 miles.

Hamre #1. Begins at the northeast corner of Section 10, T155N, R37W and proceeds south 0.5 mile.

Hamre #2. Begins at the northwest corner of Section 11, T155N, R37W and proceeds east 1.0 mile.

Hamre #3. Begins at the northwest corner of Section 16, T155N, R37W and then proceeds east 3.5 miles.

Hamre #4. Begins at the northeast corner of Section 17, T155N, R37W and then proceeds south 1.75 miles.

Hamre #6a. Begins at the southeast corner of Section 18, T155N, R37W and then proceeds north 0.5 mile.

Hamre #6b. Begins at the southeast corner of NENE1/4 Section 18, T155N, R37W and then proceeds north 0.5 mile.

Commissioner's Orders

Hamre #7. Begins at the SE corner of NE SE1/4 Section 22, T155N, R37W and proceeds north 0.25 mile.

Hamre #9. Begins at the southeast corner of Section 26, T155N, R37W and then proceeds north 0.25 miles.

Hamre #10. Begins at the northwest corner of Section 33, T155N, R37W and proceeds west 0.1 mile, then south 0.5 miles, then east 1.0 mile for a total of 1.6 miles.

Hamre #11. Begins at the northeast corner of Section 33, T155N, R37W and then proceeds south 0.5 mile.

Hamre #12. Begins at the northeast corner of the NWNE1/4 Section 3, T155N, R37W. The trail proceeds west 0.75 mile, then south 1.0 mile for a total distance of 1.75 miles.

Hamre #13. Begins at the NE corner of the NW1/4 Section 9, T155N, R37W. It proceeds west 1.0 mile.

Hamre #13a. Begins at the southeast corner of the NESE1/4 Section 8, T155N, R37W, then proceeds north for 0.25 miles on grade. The segment then moves to the east side of Homme Road and continues north for 0.50 miles to its terminus at the northwest corner of Section 9, T155N, R37W for a total distance of 0.75 miles.

Hamre #14. Begins at the northwest corner of Section 32, T155N, R37W. It proceeds east 0.9 mile.

Hamre #15. Begins at the northeast corner of Section 10, T155N, R37W. It proceeds west 0.5 miles.

Hamre #16. Begins at the NE corner of the SE1/4 Section 22, T155N, R37W. It proceeds west 1.0 mile.

Hamre #17. Begins at the southwest corner of Section 22, T 155N, R37W. It proceeds north for a distance of 0.5 miles.

Hamre # 18. Begins at the northeast corner of the SE1/4 of Section 21 T155N, R37W. It proceeds west for a distance of 1.0 mile.

Lee #1. Begins at the southeast corner of the NE1/4 of Section 33, T155N, R38W, then proceeds north, then northwesterly 1.6 miles.

Lee #2a. Begins at the northwest corner of Section 26, T155N, R38W and then proceeds east 2.0 miles.

Lee #2b. Begins at the NW corner of NENW1/4 Section 28, T155N, R38W, then proceeds east 1.25 miles.

Lee #2c. Begins at the southeast corner of Section 21, T155N, R38W and proceeds north 1.5 miles.

Lee #3. Begins at the southeast corner of Section 7, T155N, R38W, then proceeds west 0.75 miles.

Lee #4. Begins at the southeast corner of Section 6, T155N, R38W, then proceeds west 0.5 mile.

Lee #5. Begins at the southeast corner of Section 22, T155N, R38W then proceeds north 3.0 miles.

Lee #6. Begins at the southeast corner of Section 14, T155N, R 38W and proceeds north 1.75 miles.

Lee #7. Begins at the NW corner of Section 11, T155N, R38W and proceeds east for a distance of 0.75 mile.

Lee #8. Begins at the SE corner of Section 6, T155N, R38W and proceeds north for a distance of 0.5 mile.

Lee #9. Begins at the northwest corner of NENE1/4 Section 26, T155N, R38W and proceeds south 1.0 mile.

Lee #10. Begins at the northeast corner of NWNE1/4 Section 29, T155N, R38W and proceeds west 1.5 miles.

Lee #11. Begins at the NW corner of Section 26, T155N, R38W and proceeds south for a distance of 1.0 mile.

Commissioner's Orders

MARSHALL COUNTY

East Park #1. Begins at the intersection of Marshall County Road 118 and the south section line of section 36, T158N, R44W. It proceeds west 170 feet to the southwest corner of section 36, T158N, R44W. It then proceeds north to the NW corner of the SW1/4 section 36, T158N, R44W for a total distance of 0.5 miles.

East Park #2. Begins along the old road alignment for Marshall County 118 in the south ½ of section 36, T158N, R44W. The old road was removed when the new road was straightened along this reach leaving the old road tread way as a corridor of disturbance suitable for an ATV trail. The total distance is 0.5 miles.

Huntly #6. Begins southwest corner of Section 27, T158N, R43W, proceeds east 0.75 miles.

Huntly #7. Begins at the southwest corner of Section 27, T158N, R43W, proceeds north 0.75 miles.

Huntly #8 Begins at southwest corner of Section 9-T158N, R43W, proceeds north 0.25 mile.

Como #2. Begins at the crossing of Marshall County Road 48 on the Section line between 15/14, T158N, R42W, then proceeds south 0.25 miles.

Como #5a. Begins at the southwest corner of the NW1/4 Section 17, T158N, R42W and proceeds north 0.5 mile.

Como #5b. Begins at the southwest corner of the NW1/4, Section 17, T158N, R42W and proceeds east 0.5 mile.

Como #8. Begins southwest corner of 32, T158N, R42W, then proceeds 0.25 mile north.

Linsell #3a. Begins southwest corner of NW1/4, Section 15, T158N, R39W. It proceeds north 0.5 miles.

Linsell #4. Begins at the northwest corner of Section 22, T158N, R39W, then proceeds east 0.5 mile.

Linsell #7. Begins at the SE corner of NENE1/4 Section 10, T158N, R39W, then proceeds north 0.5 miles.

Linsell #8. Begins at the northwest corner of Section 15, T158N, R39W. It proceeds east 0.5 mile.

Linsell #9. Begins at the northeast corner Section 12, T158N, R39W. It proceeds south 0.5 mile.

Linsell #10. Begins on southeast corner of Section 24, T158N, R39W. It proceeds north 1.5 miles.

Moylan/Eckvol #2. Begins at the southwest corner of Section 34, T156N, R40W, then proceeds east 1.0 mile.

Moylan/Eckvol #3. Begins at the SW corner of Section 36, T156N, R40W, then proceeds east 0.5 miles.

Espelie #1. Begins at the southeast corner of Section 6, T155N, R39W, then proceeds north 0.25 miles.

Espelie-Valley #2. Begins at the southeast corner of the NENE1/4 Section 6, T155N, R39W, then proceeds north 0.5 mile.

Espelie/Valley #2a. Begins at the southwest corner of Section 5, T155N, R39W and proceeds east 0.5 miles, then north 0.5 mile, then east 0.5 mile, then north 0.25 mile, then west 0.5 mile, then north 0.25 mile, then west 0.25 mile, then north 0.5 mile and then west 0.25 mile to its terminus at the northwest corner of the SW1/4 Section 32, T156N, R39W for a distance of 3.5 miles.

Espelie #3. Begins at the southeast corner of Section 26, T155N, R39W, and proceeds west 0.75 miles.

Espelie #4. Begins at the northeast corner of Section 34, T155N, R39W, then proceeds west 1.5 miles.

Espelie #7. Begins at the southwest corner of Section 11, T155N, R39W, then proceeds north 1.0 mile.

Commissioner's Orders

Espelle #8. Begins at the southwest corner of Section 11, T155N, R39W, then proceeds east 0.25 miles.

Espelle #11. Begins at the northeast corner of Section 25, T155N, R39W and proceeds west 0.5 mile.

Espelle #12. Begins at the northeast corner Section 8, T155N, R39W and proceeds west 0.5 mile.

Espelle #13. Begins at the northeast corner Section 18, T155N, R39W and proceeds west 0.75 mile.

Espelle #14. Begins at the southeast corner Section 8, T155N, R39W and proceeds west 1.0 mile.

Espelle #15. Begins at the southeast corner of the NENE1/4 Section 7, T155N, R39W and proceeds north 0.25 mile, then west 0.75 mile for a total distance of 1.0 mile

Espelle #16. Begins at the southwest corner of Section 7, T155N, R39W and proceeds north 0.5 mile, then crosses to the southeast corner NE1/4 Section 12 and proceeds north 0.5 mile, then west 0.25 mile for a total distance of 1.25 miles.

Espelle #17. Begins at the northwest corner of the NE1/4 Section 25, T155N, R39W and proceeds south 1.0 mile; then west 0.5 mile, then north 0.5 mile, then east 0.5 mile for a total distance of 2.5 miles.

Moylan #1a. Begins at the NW corner of the NE1/4 Section 9, T155N, R40W then proceeds east 0.75 mile.

Moylan #1b. Begins at the NW corner of NE1/4, Section 9, T155N, R40W. It proceeds south 0.25 miles.

Moylan #1c. Begins at the northeast corner of the NWNW1/4, Section 10, T155N, R40W, it proceeds south for a distance of 0.35 miles.

Minnesota Department of Natural Resources DECISION RECORD

OFFICIAL NOTICE AND ORDER: Designation of All-terrain Vehicle Trails Within or Contiguous to Designated Wildlife Management Areas as Specified in *Minnesota Statutes, Section 97A.133, subd. 3.*

UNDESIGNATION OF ALL-TERRAIN VEHICLE TRAILS IN WILDLIFE MANAGEMENT AREAS ON LANDS UNDER THE AUTHORITY OF THE COMMISSIONER IN BELTRAMI AND MARSHALL COUNTIES, MINNESOTA

NOTICE PUBLISHED: JANUARY 3, 2006
EFFECTIVE DATE: FEBRUARY 1, 2006

NOTICE IS HEREBY GIVEN that the Commissioner of the Minnesota Department of Natural Resources orders the undesignation of all-terrain vehicle trails as identified in the "*Phase I Plan, ATV Trail Undesignations*", attached hereto and incorporated herein, for state lands under the authority of the commissioner located in Beltrami and Marshall Counties of Minnesota. Trail designations are made pursuant to *Minnesota Statutes, Section 97A.133, subd. 3*. This order supercedes and replaces the *Phase I Plan* and order (*Cite 29 SR 323*).

WHEREAS:

1. *Minnesota Statutes, Section 97A.133, subd. 3* directs the commissioner of natural resources to identify, designate and sign all-terrain vehicle trails in order to connect trails, forest roads and public highways to provide reasonable travel for all-terrain vehicles in areas of historic all-terrain vehicle use, including trails that are within or contiguous to designated Wildlife Management Areas located on lands acquired by the state pursuant to *Minnesota Statutes, Chapter 84A*.

2. The commissioner consulted with wildlife management area users, including both motorized and non-motorized trail users, in identifying and evaluating trails for designation or undesignation in accordance with procedures specified by *Minnesota Laws 2002, Chapt. 353, Sect. 8*.

Commissioner's Orders

3. The agency solicited and received written comments and submissions on the proposed trail (un)designations and incorporated this information as appropriate into the *Phase I and Phase II Plans*.
4. All notice and procedural requirements in Minnesota Statutes, and other applicable rules and law have been complied with.
5. The all-terrain vehicle trail undesignations are both needed and reasonable.

NOW THEREFORE, IT IS ORDERED that the all-terrain vehicle trail segments, contained in the attached *Phase I Plan - ATV Trail Undesignations*, as noticed in the State Register and filed with the Secretary of State, are hereby undesignated pursuant to authority vested in me by Minnesota Law.

IT IS FURTHER ORDERED that the designation of said all-terrain vehicle trail segments shall become effective on February 1, 2006. This order supercedes and replaces the *Phase I Plan* and order (*Cite 29 SR 323*).

Dated: December 12, 2005

Gene Merriam, Commissioner
Department of Natural Resources

Attached: *Phase I ATV Trail Undesignations in Beltrami & Marshall Counties.*

Signed copy on file w/MN Secretary of State – Refer to No. 0601346

PHASE I PLAN: ATV TRAIL UNDESIGNATIONS

BELTRAMI COUNTY

Benville #1, east/west. Begins at the southeast corner of SW ¼ Section 4, T156N, R38W then proceeds west 0.5 miles.

Benville #1, north/south. Begins at the southwest corner of the NW ¼ Section 10, T156N, R38W and proceeds north 0.25 miles.

Hamre #1. Begins at the southwest corner of Section 11, T155N, R37W and then proceeds north 0.5 miles.

Hamre #3. Begins at the northeast corner of Section 13, T155N, R37W and then proceeds west 0.5 miles.

Hamre #6. Begins at the northeast corner of SE ¼ Section 18, T155N, R37W and then proceeds north 0.25 miles.

Hamre #11. Begins at the southeast corner of Section 28, T155N, R37W and then proceeds north 0.5 miles.

Lee #3. Begins at the southwest corner of Section 8, T155N, R38W then proceeds east 0.5 miles.

Lee #4. Begins at the northwest corner of NE NW ¼ Section 7, T155N, R38W then proceeds east 0.25 miles.

MARSHALL COUNTY

Como #7. Begins at the southwest corner of SE SW ¼ Section 31, T158N, R42W, then proceeds 0.75 mile east.

Moylan/Eckvol #2. Begins at the northwest corner of Section 2, T155N, R40W, then proceeds east 0.25 miles.

Espelie-Valley #2. Begins at the southeast corner of the NESE ¼ Section 31, T156N, R39W then proceeds north 0.25 mile.

Espelie #8. Begins at the southwest corner of SESW ¼ Section 11, T155N, R39W then proceeds east 0.25 miles.

Official Notices

Pursuant to *Minnesota Statutes* §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

The *State Register* also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

Minnesota Department of Agriculture

Plant Protection Division

REQUEST FOR COMMENTS on Possible Amendments to Rules Governing Seed Potato Certification, *Minnesota Rules* 1510.2355

Subject of the Rule. The Minnesota Department of Agriculture requests comments on its planned amendments to rules governing seed potato certification. The department is considering amendments that will allow potatoes with “hollow heart” to be certified if “hollow heart exempt” is indicated on the certificate and tag.

Persons Affected. The amendments to rules would likely affect seed potato growers and potato growers using Minnesota certified seed potatoes. The department does not contemplate appointing an advisory committee to comment on the planned rules.

Statutory Authority. Minnesota Statutes, section 21.118 requires the commissioner to adopt rules to carry out the purposes of and enforce the provisions of the seed potato certification section of Chapter 21.

Public Comment. Interested persons or groups may submit comments or information on the possible rules in writing or orally until 4:30 p.m. on March 10, 2006. The department has not prepared a draft of the planned amendments. Written or oral comments, questions, requests to receive a draft proposed rules when prepared, and requests for more information on the possible rules should be addressed to: Willem Schrage, Minnesota Department of Agriculture, 312 4th Ave NE, East Grand Forks, MN 56721, Phone: (218) 773-4956, **Fax:** (218) 773-4959, **E-mail:** willem.schrage@state.mn.us TTY users may contact the Department of Agriculture through Minnesota Relay Service at (800) 627-3529.

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

Dated: December 22, 2005

Jim Boerboom, Assistant Commissioner
Department of Agriculture

Minnesota Comprehensive Health Association

Notice of Meeting of the Enrollee Appeal Committee

NOTICE IS HEREBY GIVEN that a meeting of the Minnesota Comprehensive Health Association’s (MCHA), Enrollee Appeal Committee will be held at 10:00 a.m. on Wednesday, January 11, 2006, at the MCHA executive office located at 5775 Wayzata Blvd., Suite 910, St. Louis Park, MN.

This meeting may be closed to the public, if so requested by the appellant(s), pursuant to *Minnesota Statutes* 62E.10, subd. 4.

For additional information, please call Lynn Gruber at (952) 593-9609.

Department of Human Services

Health Care Purchasing and Delivery Systems Division

Health Care Administration

Public Notice of Maximum Allowable Costs of Medical Assistance Outpatient Prescribed Drugs

NOTICE IS HEREBY GIVEN to recipients, providers of services, and to the public of additions to the state Medical Assistance maximum allowable cost (state MAC) list for certain outpatient prescribed drugs.

At least once each calendar year, the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services, publishes a federal upper limit (FUL) payment schedule for many commonly prescribed multiple-source drugs. The federal upper limit is set at a rate equal to 150 percent of the published price for the least costly therapeutic equivalent that can be purchased by pharmacists. This FUL payment schedule constitutes the federal MAC list. For many multiple-source drugs that are not on the federal MAC list, the Department establishes a state MAC list. Additionally, the Department imposes a state MAC for many multiple-source drugs that are on the federal MAC list, as long as the savings are at least as much as the savings would be using the federal MAC list.

The Department requires Medical Assistance pharmacy providers to submit their usual and customary costs. Pharmacy providers are reimbursed at the lower of: 1) the federal or state MAC, plus a dispensing fee; 2) the submitted usual and customary charge to the general public; or 3) a discount off of average wholesale price, plus a dispensing fee.

On January 13, 2003 at 27 SR 1117-1130, the Department published the MAC list, listing the federal and state MACs. Additional changes to the state MAC list were published on February 18, 2003 (27 SR 1331-1334), March 3, 2003 (27 SR 1386-1393), April 21, 2003 (27 SR 1583-1584), August 4, 2003 (28 SR 102-103), October 13, 2003 (28 SR 505-506), October 20, 2003 (28 SR 528-529), December 15, 2003 (28 SR 784-785), January 26, 2004 (28 SR 934-935), March 8, 2004 (28 SR 1089-1090), April 5, 2004 (28 SR 1232), April 19, 2004 (28 SR 1313-1314), May 3, 2004 (28 SR 1367-1368), August 9, 2004 (29 SR 173), August 23, 2004 (29 SR 224-225), November 8, 2004 (29 SR 510), November 15, 2004 (29 SR 534-535), February 7, 2005 (29 SR 923-924), February 14, 2005 (29 SR 951-952), March 7, 2005 (29 SR 1038-1039), April 11, 2005 (29 SR 1174-1175), June 27, 2005 (29 SR 1607), July 18, 2005 (30 SR 49-50), August 15, 2005 (30 SR 147), August 29, 2005 (30 SR 226-227), October 17, 2005 (30 SR 402-403), November 14, 2005 (30 SR 511-512), and December 12, 2005 (30 SR 617-618).

Effective January 18, 2006, the Department will add the following outpatient prescribed drugs to the state MAC list:

<u>GCN</u>	<u>Drug Name</u>	<u>Strength</u>	<u>MAC Price</u>
63101	Hydrocodone Bit-Ibuprofen	200-7.5MG	\$.8635
08251	Misoprostol	100 mcg	\$.462
08250	Misoprostol	200 mcg	\$.660

These additions are made to bring Medical Assistance reimbursement to pharmacists more closely in line with the actual acquisition cost of the drugs listed above. The Department estimates that there will be a state savings of \$9,000 for State Fiscal Year 2006 (July 1, 2005 through June 30, 2006).

This notice is published pursuant to *Code of Federal Regulations*, Title 42, section 447.205, which requires publication of a notice when there is a rate change in the methods and standards for setting payment rates for Medical Assistance services.

Written comments and requests for information may be sent to Jarvis Jackson, R.Ph., Interim Pharmacy Program Manager, Health Care Purchasing and Delivery Systems Division, Minnesota Department of Human Services, P.O. Box 64984, St. Paul, Minnesota 55164-0984; **phone:** (651) 431-2504 or **E-mail:** jarvis.jackson@state.mn.us.

Department of Human Services

Health Services and Medical Management

Request for Information (RFI) – Evidence Based Authorization and Utilization Management of High-technology Imaging Procedures

Project Overview

The Department of Human Service (DHS) requests information on the availability of evidence-based software and/or other services that could be used to review provider requests for authorization of outpatient high-technology imaging services including positive emission tomography (PET) scans, magnetic resonance imaging (MRI), computed tomography (CT), and nuclear cardiology and for other utilization management. The department is interested in learning about tools which would focus on the *referring/ordering provider*, rather than the provider performing the imaging procedure or reading the results.

In addition, the department is interested in learning about other forms of utilization management, including tracking both utilization and ordering patterns in the area of high-technology imaging. The department has seen a significant increase in the number of procedures ordered during the past five years.

Please submit six (6) paper copies of your response. Please limit responses to a total of 10 pages. The DHS will request additional information, if necessary.

Submit responses to:

Minnesota Department of Human Services
Health Services and Medical Management

Official Notices

Patricia Wagstrom Purcell, Policy Consultant
P.O. Box 64984
St. Paul, MN 55164-0984

E-mail responses will not be considered. All information must be received no later than the end of business on February 6, 2006. If you have questions, please **e-mail:** patricia.wagstrom-purcell@state.mn.us or **call** (651) 431-2497.

This is not a bid. No contract will result from this solicitation.

All materials submitted become the property of the State of Minnesota, Department of Human Services. Materials shall not be returned to the responder.

Public Employees Retirement Association (PERA) Notice of Meeting of the Board of Trustees

A meeting of the Board of Trustees of the Public Employees Retirement Association (PERA) will be held on Thursday, January 12, 2006, at 9:30 a.m., in the PERA offices, 60 Empire Drive, Room 117, Saint Paul, Minnesota.

Department of Revenue Notice of Third Meeting of the Utility Rules Advisory Committee

The Utility Rules Advisory Committee will hold its third meeting on Thursday, January 19, 2006 from 9:00 a.m. to 4:00 p.m. at the Minnesota Department of Revenue. For further information contact:

Harriet Sims
Appeals and Legal Services Division
Minnesota Department of Revenue
600 North Robert Street
St. Paul Minnesota, 55146-2220
Telephone: (651) 556-4085
Fax: (651) 296-8229
E-mail: harriet.sims@state.mn.us
TTY users may call the Department at Minnesota Relay 711

Information concerning the rules is posted on the Department of Revenue's website:

http://www.taxes.state.mn.us/taxes/other_supporting_content/rule_report.shtml

Teachers Retirement Association (TRA) Notice of Meeting January 18, 2006

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Wednesday, January 18, 2006 at 1:00 p.m. in Suite 400, 60 Empire Drive, St. Paul, MN to consider matters which may properly come before the Board.

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.

Department of Employment and Economic Development (DEED) Minnesota Job Skills Partnership Training Grant Deadlines

The Minnesota Job Skills Partnership (MJSP) Board solicits grant proposals from accredited educational and training institutions for training programs designed for specific private, for-profit businesses. Proposals will be accepted for the Job Skills Partnership Grant Program, the Pathways Program, the MJSP Pre-Development Program, and the Healthcare and Human Service Training Program.

Due to limited funding, priority will be given to training projects that are innovative and create new educational capacity and projects that have significant economic development impact. A participating business is limited to one active grant in each grant program at any given time, with the exception of businesses that have multiple locations or businesses engaged in projects that involve a consortium of businesses.

The deadline for submission of proposals is 4:30 p.m. on February 20, 2006, DEED MJSP, 1st National Bank Bldg., 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351. No late proposals will be considered. Ten final copies must be submitted at that time for consideration at the MJSP Board meeting to be held April 3, 2006. It is important to use the current application forms that are available on the web at <http://www.deed.state.mn.us/mjsp/forms.htm> or by calling the Job Skills Partnership at (651) 296-2953 or 1-800-657-3858.

Open for application on a continuous basis are the MJSP Short Form, which is for grants to accredited educational or training institutions of \$50,000 or less and is intended to help small businesses, and the Hire Education Loan Program (HELP) to assist Minnesota businesses with training needs for new or existing employees. The loan may be up to \$250,000 and the business is required to contract for the training with an accredited Minnesota public or private training institution.

Minnesota Department of Health Office of Rural Health and Primary Care Minnesota Rural Pharmacy Planning and Transition Grant Program Notice of Grant Availability

The Office of Rural Health and Primary Care, Minnesota Department of Health, is seeking grant applications from rural communities and health care providers (hospitals, clinics, pharmacies, long-term care institutions, or other health care facilities) for the Minnesota Rural Pharmacy Planning and Transition Grant Program. The program is intended to preserve access to prescription medication and the skills of a pharmacist in rural areas.

A total of \$180,000 is available and the maximum grant amount is \$50,000. Applications are due March 3, 2006. Information is online at <http://www.health.state.mn.us/divs/chs/grants.htm> For more information contact Mark Schoenbaum at (651) 282-3859, **E-mail:** mark.schoenbaum@health.state.mn.us

By mail: P.O. Box 64882, St. Paul, Minnesota 55164-0882

By courier: 85 E. Seventh Place, Suite 220, St. Paul, Minnesota 55101

Minnesota Housing Finance Agency Request for Proposals Administrators for the Home Rental Rehabilitation Program

The Home Investment Partnership Program (HOME) was created under the National Affordable Housing Act of 1990 (NAHA). The Program provides the Minnesota Housing Finance Agency (MHFA) with federal funds to be used in a variety of ways to meet affordable housing needs in the state. One of those affordable housing needs is addressed through MHFA's HOME Rental Rehab program. This program provides both deferred and forgivable loans for the specific purpose of providing funds to assist with moderate rehabilitation of affordable multifamily rental housing developments. Upon completion of rehabilitation these units should provide low and moderate income individuals and families with rental housing units which are decent, safe, energy efficient and affordable.

State Grants & Loans

As of January 3, 2006, (MHFA) is pleased to announce that it is accepting applications for local marketing, processing and administration of its 2006 HOME Rental Rehabilitation Program. In 2006, MHFA will make available approximately \$9 million under the MHFA's HOME Rental Rehabilitation Program. The following terms and conditions apply for the HOME Rental Rehabilitation Program:

- All HOME developments requiring \$100,000 or more in HOME funds will receive a 0 percent deferred loan that will be coterminous with the developments existing first mortgage. These larger developments have no matching funds requirement; they could obtain 100 percent financing as long as eligible rehabilitation costs do not exceed \$14,000 per unit. The properties will be monitored for affordability and property standards compliance for a term of five years commencing upon rehabilitation completion. Repayment is required upon sale, transfer, payment in full of the first mortgage or upon maturity of the first mortgage.

- All HOME developments needing less than \$100,000 in HOME funds will receive a loan that is forgiven after complying with all HOME Rental Rehab program affordability and property standard requirements for five years after completion of rehabilitation. Borrowers are required to meet a minimum 25 percent matching fund requirement of all HOME eligible costs.

- Properties containing more than one building on a single site that are under common ownership and management will be considered as one development.

- All developments receiving project-based rental assistance will have restrictive covenants placed against the property, requiring the owner to continue to participate in the rental assistance program for as long as the assistance is made available.

Applicants are required to demonstrate their qualifications to administer the program, discuss other resources that they may be able to use to assist developments, and identify the geographic areas in which they propose to offer the program. Administrators that currently participate in the program and are making application are ineligible if they have not originated a HOME loan within the past two (2) years. Applicants are required to prepare in writing a fee schedule for services to deliver the program to property owners. If selected, administrators will be responsible for monitoring their developments during the five (5) year compliance period. Administrators will receive a fee for monitoring based on number of units in the development. MHFA will select administrators primarily on their administrative capacity to deliver and administer the HOME Rental Rehab program per Federal Standards. In addition MHFA will take under consideration your organizations ability to deliver and market the HOME Rental Rehab program. Selected administrators are required to attend the 2006 HOME Rental Rehabilitation Training Workshop scheduled for February 7, 2006, at the MHFA in St. Paul, Minnesota.

NOTE: The program is not available in areas which receive a separate entitlement of HOME funds. Those areas are the cities of Minneapolis, St. Paul, and Duluth and the counties of Anoka, Dakota, Ramsey, Washington, Hennepin, St. Louis, Cook, Itasca, Koochiching, and Lake.

Interested applicants should request an Application for Administrative Authority or direct any questions concerning the application process to the following:

Minnesota Housing Finance Agency
Crystal Carlson
400 Sibley Street
St. Paul, MN 55101
(651) 296-8064 or (800) 657-3701

Applications must be received by MHFA no later than 4:30 PM, January 31, 2006. No faxes will be accepted and no deliveries will be accepted after 4:30 PM of the deadline date.

This Request for Applications (RFA) is subject to all applicable federal, state and municipal laws, rules and regulations. MHFA reserves the right to modify or withdraw the RFA at any time and is not able to reimburse any applicant for costs incurred in preparation or submittal of applications.

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 Business Assistance

You get so much more with a subscription to the *State Register*. It brings you almost \$3 billion a year in state government business and contracts. It's all in an easy to use format, with helpful LINKS, a simple special contracts section to review, and indices for handy reference. Subscriptions cost \$180 a year (normal cost \$260), or about \$3.50 per issue. Here's what you receive:

- **Contracts & Grants Open for Bid**
- **Indexes to Vols. 29, 28 and 27**
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- **Index to Vol. 30**
- **Easy Access to *State Register* Archives**

It's all E-mailed to you, on Friday, instead of waiting for Monday's issue. Contact Jessie Rahmeyer, our subscriptions manager, at (651) 297-8774, or **Fax:** (651) 297-8260, or **E-mail:** jessie.rahmeyer@state.mn.us

Colleges and Universities, Minnesota State (MnSCU) Anoka-Ramsey Community College

Extended Deadline and Request for Research Study Proposals

NOTICE IS HEREBY GIVEN that Anoka-Ramsey Community College will receive proposals for a "Comprehensive Name Choice Idea Generation and Research Study" to choose a new name for the college. Specifications will be available on December 27, 2005 on the website <http://www.anokaramsey.edu/IT/proposal.cfm>. Copies of the specifications can also be obtained from Mary Jacobson at 763-433-1315 or mary.jacobson@anokaramsey.edu. Sealed proposals must be received by Laura Anderson (Room C140) at Anoka-Ramsey Community College, 11200 Mississippi Blvd., Coon Rapids, MN 55433 by 3:00 p.m. on January 20, 2006. Bid openings will be in the cafeteria of Anoka-Ramsey Community College at 3:00 p.m. on January 20, 2006. Anoka-Ramsey Community College reserves the right to reject any or all proposals, or portions thereof, or to waive any irregularities or informalities, in proposals received.

College and Universities, Minnesota State (MnSCU) Hennepin Technical College

Request for Proposals to Update the Existing Campus Master Facilities Plan

NOTICE IS HEREBY GIVEN that Hennepin Technical College is seeking proposals to update the existing Campus Master Facilities Plan. The plan should define current and future space needs, physical plant capacity and infrastructure, and new technology needs.

Deadline for receipt of proposals: January 31, 2006 – 3:00 PM

Copies of the Request for Proposal are available from:

Larry McAtee, Hennepin Technical College
1820 Xenium Lane North
Plymouth, MN 55441
Tel. 763-550-7143
Fax 763-550-7198
E-mail: lgmcatee@district287.org

This Request for Proposal does not obligate the state/college to complete the proposed project and reserves the right to cancel the solicitation if in either's best interest.

State Contracts

Minnesota Department of Human Services

Continuing Care Administration

Notice of Request for Proposals for Employee Engagement Assessment, Leadership Training, and Support

NOTICE IS HEREBY GIVEN that the Minnesota Department of Human Services is requesting proposals to conduct an employee engagement assessment and provide leadership training and support.

A responder must have substantial experience in employee engagement surveys, leadership and engagement training and support, including individualized instruction for supervisors and managers. The selected responder, if any, will be required to:

- 1) Develop and implement an engagement survey of 15 or fewer questions;
- 2) Develop and implement a comprehensive communication plan to share results of the survey and next steps;
- 3) Develop the web site for conducting and posting survey assessment and results;
- 4) Develop an employee database of results;
- 5) Develop the continuum of leadership support and training;
- 6) Provide training materials;
- 7) Consult and assist in developing in internal support structure for sustainability.

Work is proposed to start on approximately March 6, 2006. A Request for Proposals will be available at and at the e-mail list below. **A written request (by e-mail) is required to receive the Request for Proposal.** The Request for Proposal can be obtained from:

Amy Dellwo
Department of Human Services
Continuing Care Administration
444 Lafayette Road North, St. Paul, MN 551553846
Phone: (651) 431-2585
E-mail: *Amy.Dellwo@state.mn.us*

or at the following website until January 30, 2006:

http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/DHS_id_000102.hcsp

Proposals submitted in response to this Request for Proposals must be received at the address above no later than **4:00 p.m., Central Time, January 30, 2006. Late proposals will not be considered.** Fax or e-mailed proposals will **not** be considered.

This request does not obligate the State to complete the work contemplated in this notice. The State reserves the right to cancel this solicitation. All expenses incurred in responding to this notice are solely the responsibility of the responder.

Minnesota Department of Human Services

Disability Services Division (DSD)

Requests for Proposals to Develop and Recommend a Budget Methodology

Requests for Proposals to Develop and Recommend a Budget Methodology for Consumer Directed Community Supports (CDCS) across all disability waivers including the Community Alternative Care (CAC) Waiver, Community Alternatives for Disabled Individuals (CADI), Mental Retardation or Related Conditions (MR/RC) Waiver and Traumatic Brain Injury (TBI) Waiver.

Description of Contract: It is the goal of this project to develop a standard way to identify budget amounts for people accessing CDCS under the waivers.

This project should improve equitability for all people receiving CDCS within constraints of the established budget methodology; assure cost neutrality for CDCS, and the waiver programs; take into consideration parental responsibilities for children at different ages; take into consideration the impact of physical disabilities, medical needs, behavioral needs, transitional needs, functioning level, natural supports; assure that the budget methodology will address the health, safety and welfare needs of all people receiving CDCS.

Estimated Cost: \$300,000
Contracting Agency: Department of Human Services
Location of Work: Statewide

Response to this solicitation is due no later than 3/3/2006 at 4:00 PM

To receive a copy of the complete solicitation, contact:

Name: Jolayne Lange
Phone: (651) 431-2428
TTY: 711 or 1 (800) 627-3529
E-mail: jolayne.lange@state.mn.us

State Board of Investment

Request for Private Money Management Firms to Manage Pension Assets

The Minnesota State Board of Investment (MSBI) retains private money management firms to manage a portion of the pension assets and other accounts under its control. Firms interested in managing domestic stock, international stock, domestic bond or global bond portfolios for the MSBI are asked to write to the following address for additional information:

External Manager Program
Minnesota State Board of Investment
60 Empire Drive, Suite 355
St. Paul, MN 55103-3555
Telephone: (651) 296-3328
Fax: (651) 296-9572
E-mail: minn.sbi@state.mn.us

Please refer to this notice in your written request.

Department of Transportation (Mn/DOT)

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 Ron Bisek at (651) 296-1361 for persons who are hearing or speech impaired by calling the Minnesota Relay Service at (800) 627-3529.

Mn/DOT, working in conjunction with the Consultant Reform Committee, the Minnesota Consulting Engineers Council, and the Department of Administration, has developed the Consultant Pre-qualification Program as a new method of consultant selection. The ultimate goal of the Pre-Qualification Program is to streamline the process of contracting for highway related professional/technical services. Mn/DOT anticipates that most consultant contracts for highway-related technical activities will be awarded using this method, however, Mn/DOT also reserves the right to use RFP or other selection processes for particular projects. Nothing in this solicitation requires Mn/DOT to complete or use the Consultant Pre-qualification Program.

Mn/DOT is currently requesting applications from consultants. Refer to Mn/DOT's Consultant Services web site, indicated below, to see which highway related professional/technical services are available at this time. Following the advertisement of particular category of services, applications will be accepted on a continual basis.

All expenses incurred in responding to this notice will be borne by the responder. Response to this notice becomes public information under the Minnesota Government Data Practices.

Consultant Pre-Qualification Program information, application requirements and application forms are available on Mn/DOT's **web site** at: <http://www.dot.state.mn.us/consult>

Send completed application material to:

Ron Bisek
Consultant Services
Office of Technical Support
Minnesota Department of Transportation
Consultant Services
395 John Ireland Boulevard, Seventh Floor North, Mail Stop 680
St. Paul, MN 55155

Note: DUE DATE: APPLICATION MATERIAL WILL BE ACCEPTED ON A CONTINUAL BASIS.

State Contracts

Department of Transportation (Mn/DOT)

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 Edina

Public Safety

Request for Proposal (RFP) for Public Safety Computer Aided Dispatch (CAD), Records Management (RMS) and Mobile and Field Reporting System

The City of Edina is soliciting proposals for the purchase of a state-of-the-art, integrated Computer Aided Dispatch, Records Management and Mobile and Field Reporting System. The total project will include the selection and acquisition of software and hardware, installation, training and maintenance costs to replace or upgrade the current system.

Proposals are due no later than 4:00 PM Friday, February 10, 2006

Proposals must be in conformance with specifications which are available electronically at <http://www.edina-rfp.com>. Vendors interested in receiving a copy of the RFP document and specifications should register at this site.

Hennepin County

Request for Proposals for Environmental Assessment on Trunk Highway 55

Sealed proposals will be received in the office of Hennepin County Purchasing and Contract Services Division, A-2205 Government Center, Minneapolis, Minnesota 55487-0225, until 4:00 P.M., Wednesday, February 8, 2006 for a project to prepare and receive Federal Highway Administration (FHWA) approval for an Environmental Assessment (EA) and to produce a preferred alternate layout that defines right of way limits on Trunk Highway (T.H.) 55 from I-494 to the Crow River.

Proposals will be available from Hennepin County Purchasing (612) 348-3181 and from the Hennepin County Purchasing web page at: www.co.hennepin.mn.us under Your County Government / Doing Business with Hennepin County / Contract Opportunities.

Metropolitan Council

Notice of Request for Proposals (RFP) for Victoria and St. Bonifacius Interceptor Improvements Design and Construction Support

Contract Number 06P001

The Metropolitan Council is requesting proposals for Victoria and St. Bonifacius Interceptor Improvements Design and Construction Support.

Issue Request for Proposals
Receive Proposals

January 17, 2006
February 17, 2006

Non-State Contracts & Grants

*Contract negotiated, executed, NTP
Period of performance*

**April, 2006
April, 2006 to April, 2011**

All firms interested in being considered for this project and desiring to receive an RFP package are invited to submit a Letter of Interest to:

Harriet Simmons, Senior Administrative Assistant,
Contracts and Procurement Unit
Metropolitan Council
230 East Fifth Street
Mears Park Centre
St. Paul, MN 55101
Phone: (651) 602-1086
Fax: (651) 602-1083
E-mail: harriet.simmons@metc.state.mn.us

Metropolitan Council - Metro Transit Request for Proposals for Design and Construction Support Services for 28th Avenue Parking Facility

Metro Transit, a division of the Metropolitan Council, is seeking the services of a qualified firm for Design and Construction Support Services for 28th Avenue Parking Facility. The project includes professional services for the design, bidding, and construction of the 28th Avenue Parking Facility. The project consists of a multi-level parking facility to accommodate approximately 1,475 parking spaces. The facility will be located over an existing Metro Transit parking lot, located at 28th Avenue and 82nd Street in Bloomington, Minnesota, adjacent to the 28th Avenue Station of the Hiawatha Light Rail Transit system.

The RFP will be issued during the week of January 9, 2006.

A Pre-Proposal Conference will be held at 9:00 AM on January 23, 2006 in the 1st Floor Conference Room at Metro Transit's Heywood Office, 560 6th Avenue North, Minneapolis, MN 55411.

Proposals are due by 2:00 p.m. on February 6, 2006.

Firms interested in receiving the Request for Proposals document should contact:

Christopher Gran, Director of Purchasing
Metro Transit
515 N. Cleveland Avenue
St. Paul, MN 55114
Phone: (612) 349-5060
Fax: (612) 349-5069
E-mail: christopher.gran@metc.state.mn.us

University of Minnesota Subscribe to Bid Information Service (BIS)

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 free. Visit our website at bidinfo.umn.edu or call the BIS Coordinator at (612) 625-5534.

Request for Bids/Proposals are also available to the public 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.

