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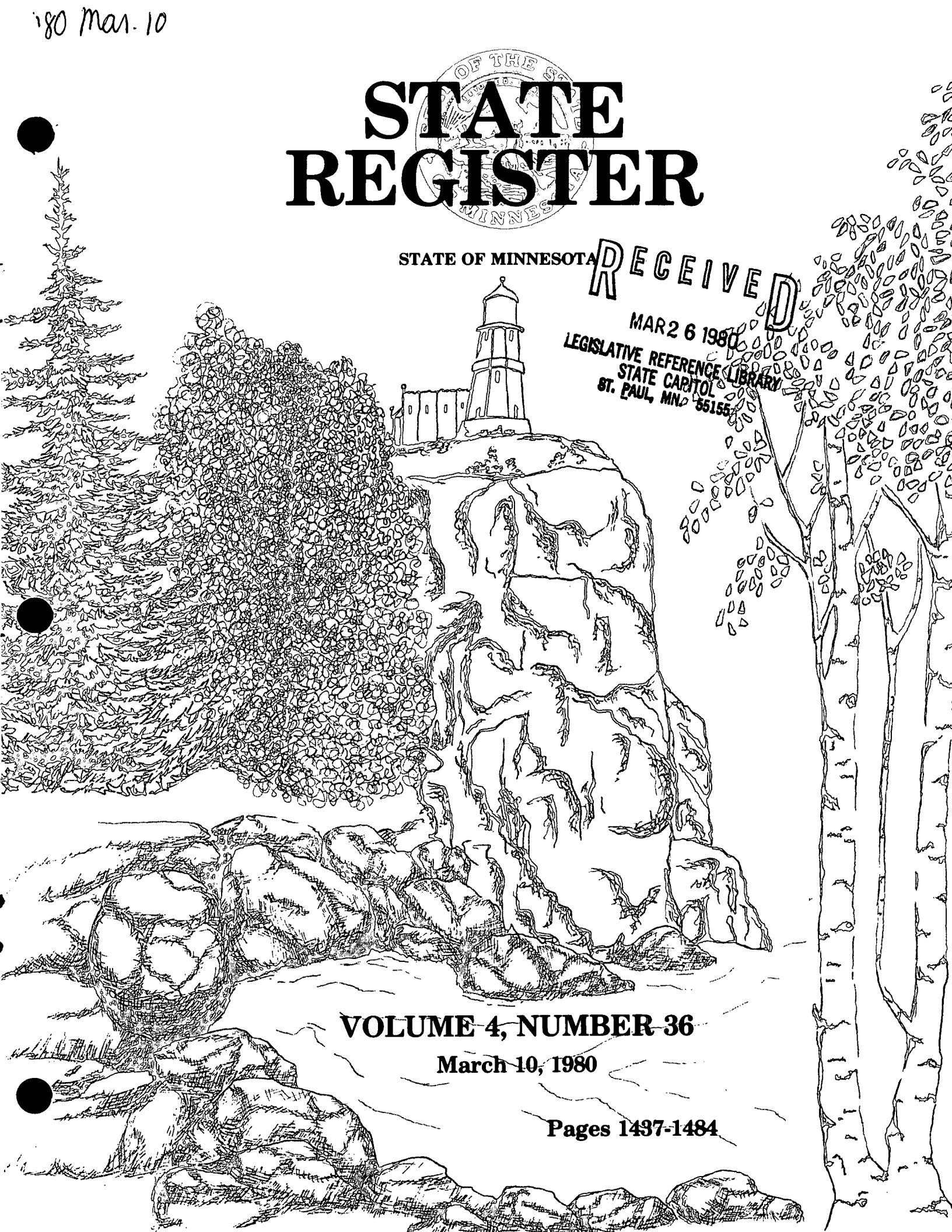
STATE REGISTER

STATE OF MINNESOTA



VOLUME 4, NUMBER 36

March 10, 1980

Pages 1437-1484

STATE REGISTER

Volume 4 Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 4		
37	Monday Mar 3	Monday Mar 10	Monday Mar 17
38	Monday Mar 10	Monday Mar 17	Monday Mar 24
39	Monday Mar 17	Monday Mar 24	Monday Mar 31
40	Monday Mar 24	Monday Mar 31	Monday Apr 7

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $118 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

Cover graphic: *Split Rock Lighthouse*, pen and ink drawing by Barbara J. Peterson.

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NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Proposed new rules (including Notice of Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the MCAR.

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PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

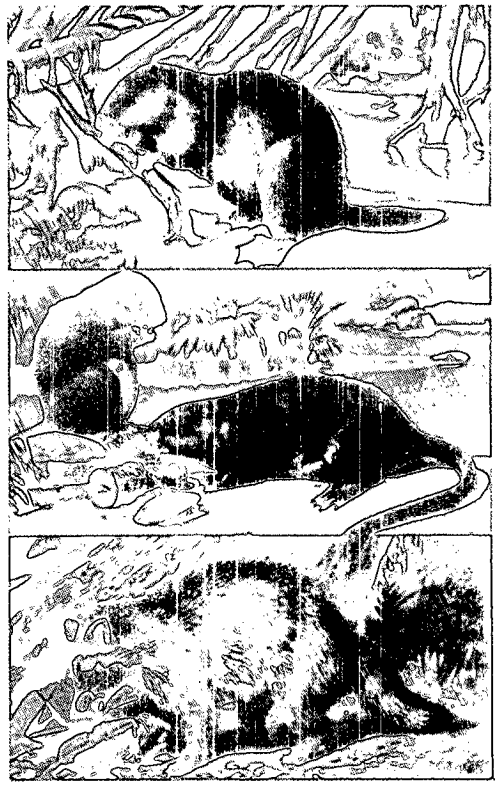
Department of Economic Security
Office of Economic Opportunity

Proposed Temporary Rule Governing Weatherization Assistance for Low-Income People

Request for Public Comment

Notice is hereby given pursuant to Minn. Stat. § 15.0412, subd. 5 (1978), that the Minnesota Department of Economic Security has proposed the following temporary rule governing the administration grants for the purpose of weatherizing the residences of low-income persons pursuant to Laws of 1979, Ex. Sess., ch. 2, § 37.

All interested may submit written comment or data on these rules to:



COLONIES OF BEAVER (pictured at top) abounded in the Minnesota country in the 1660s but became scarce after two centuries of fur trading. First French and later English and American trappers and traders collected beaver pelts for export. The bulk of the later fur trade consisted of pelts of muskrat (center) and raccoon (bottom) and buffalo hides. In time these animals also became scarce. (Drawings from Edward Knobel, *The Wild Animals of North America*, 1908, courtesy of MN Historical Society)

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

Alan L. Chapman, Weatherization Project Director
Minnesota Department of Economic Security
690 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Written statements submitted for consideration must be received by September 10, 1979. The proposed temporary rule may be modified if the modifications are supported by the data and views received by the department. The department shall submit to the Attorney General the proposed temporary rule as published, with any proposed modifications for review as to form and legality. The temporary rule shall take effect upon approval of the Attorney General.

The department will publish at *State Register* the Attorney General's decision and the adopted temporary rule upon receipt of the Attorney General's decision.

Rolf Middleton
Commissioner

Temporary Rule as Proposed

8 MCAR § 4.4010 Minnesota weatherization assistance for low-income people.

A. Purpose. The purpose of this rule is to develop and implement a supplementary state weatherization assistance program under authority granted by Laws of 1979, Ex. Sess., ch. 2, § 37 to supplement the "United States Department of Energy Weatherization Assistance for Low-Income Persons" program 42-USC § 6861 to 6872 at prescribed ~~level~~ levels in the dwellings of low-income persons in order both to aid those persons least able to afford higher utility costs and to conserve needed energy.

B. Administration of costs. Grants awarded under this part shall be administered in accordance with the following:

1. Federal Management Circular 73-2, 34 CFR 251, entitled "Audit on Federal Operations and Programs by Executive Branch Agencies";

2. Federal Management Circular 74-4, 34 CFR 255, entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments";

3. Federal Management Circular 74-7, 34 CFR 256, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments";

4. Office of Management and Budget Circular A-89 entitled "Catalog of Federal Domestic Assistance";

5. Office of Management and Budget Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects";

6. Office of Management and Budget Circular A-97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968";

7. Treasury Circular 1082, entitled "Notification to States of Grant-in-Aid Information";

~~8. Such procedures applicable to this part as DES/OEO may from time to time prescribe for the administration of grants;~~

~~9. Tools and equipment acquired with grant funds provided under this part shall be the property of the grantee.~~

8. ~~9.~~ U.S. Treasury Circular 1075.

C. Definitions. As used in this rule:

1. "Act" means the Energy Conservation and Production Act, Pub. L. 94-335. 90 Stat. 1125 *et. seq.* as amended.

2. "Administrator" means the Administrator of the U.S. Department of Energy.

3. "CAA" means a Community Action Agency.

4. "CETA" means the Comprehensive Employment and Training Act of 1973, 42 U.S.C. 2731 *et. seq.* as amended.

5. "Community Action Agency" means a private corporation or public agency established pursuant to the Economic Opportunity Act of 1964, Pub. L. 88-452 as amended, which is authorized to administer funds received from federal, state, local or private funding entities to assess, design, operate, finance and oversee anti-poverty programs.

6. "Commissioner" means ~~Administrator~~ Commissioner of the Department of Economic Security.

7. "Cosmetic items" means items which, when installed, will not reduce energy costs in a cost-effective manner, including, but not limited to, finishes, decorative fenestration materials and elevation materials such as aluminum siding, board and bat, clapboard, brick, shakes, or asphalt siding.

8. "DES/~~OEO~~ means Department of Economic Security~~, Office of Economic Opportunity~~.

9. "DOE" means the United States Department of Energy.

10. "Dwelling unit" means a house, including a stationary mobile home, and apartment, a group of rooms, or a single room occupied as separate living quarters.

11. "Elderly person" means a person who is 60 years of age or older.

12. "Family unit" means all persons living together in a dwelling unit.

13. "Grantee" means an entity named in the Notification of Grant Award as the recipient.

14. "Handicapped person" means any individual (a) who is a handicapped individual as defined in § 7(6) of the Rehabilitation Act of 1973, (b) who is under a disability as defined in § 1614(a) (3)(A) or 223(d) (1) of the Social Security Act or in § 102(7) of the Developmental Disabilities Services and Facilities Construction Act, or (c) who is receiving benefits under chapter 11 or 15 of Title 38, United States Code.

15. "Heating degree days" means a seasonal average of the climatological heating degree days for each weather station within a State~~, as determined by FEA~~.

16. "Heating or cooling source" means a device the operation of which can raise or lower temperatures within a dwelling unit as part of the permanent heating, ventilating and air conditioning system installed in the dwelling unit, including but not limited to furnaces, heat pumps, stoves, boilers, heaters, fireplaces, air conditioners, fans, and solar devices.

17. "Household" means the same as dwelling units.

18. "Indian tribe" means any tribe, band, nation or other organized group or community of ~~Native Americans,~~ American Indians, ~~including any Alaska native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub.L. 92203,85 Stat. 688 which (a) is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans; or (b)~~ that is located on, or in proximity to, a Federal or State reservation ~~or rancheria.~~ within the State of Minnesota.

19. "Law" means Minnesota Laws of 1979, Ex. Sess. ch. 2, § 37.

20. "Local applicant" means a CAA or unit of general purpose local government.

21. "Low income" means that total household income in relation to family size which:

a. Is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

b. Is the basis on which cash assistance payments have been paid during the preceding 12-month period under Title IV and XVI of the Social Security Act or applicable State or local ~~law.~~ rules.

22. "Mechanical equipment" means a control device or apparatus which is primarily designed to improve the heating or cooling efficiency of a dwelling unit, and which will be permanently affixed to an existing heating or cooling source, including but not limited to a flue damper, clock thermostat, filter, or replacement limit switches.

23. "Multi-family dwelling unit" means a dwelling unit which is located in a structure containing more than one dwelling unit.

24. "American-Indian" means a person who is a member of an Indian tribe.

25. "Number of low-income, owner-occupied dwelling units in the county" means the number of such dwelling units in a county, as determined by DES/OEO.

26. "Number of low-income, renter-occupied dwelling units in the county" means the number of such dwelling units in a county, as determined by DES/OEO.

27. "OEO Director" means the Director of ~~Office of Economic Opportunity/~~Intergovernmental relations of the Department of Economic Security ~~(OEO/DES)~~.

28. "One perm" means a unit of permeance which will allow one grain of water vapor to pass per square foot per hour per inch of mercury vapor pressure difference, through a barrier.

29. "Rental dwelling unit" means a dwelling unit occupied by a person who pays rent for the use of the dwelling unit.

30. "Separate living quarters" are those in which the occupants do not live and eat with any other persons in the structure and which have either (a) direct access from the outside of the building or through a common hall, or (b) complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

31. "Single-family dwelling unit" means a structure containing no more than one dwelling unit.

32. "State" means the State of Minnesota.

33. "Repair materials" means items necessary for the effective performance or preservation of weatherization materials. Repair materials include but are not limited to, lumber used to frame or repair windows and doors which could not otherwise be caulked or weatherstripped, and protective materials, such as paint, used to seal materials installed under this program.

34. "Sub-grantee" means a weatherization project which receives a grant of funds awarded under this Rule from a grantee.

35. "Tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Native Americans which is controlled, sanctioned, or chartered by such governing body.

36. "Unit of general purpose local government" means any city, county, town, parish, village or other general purpose political subdivision of a state.

37. "Vapor barriers" means membranes used to retard vapor movement.

38. "Weatherization crew" means a group of weatherization crew ~~labors~~ laborers with a weatherization supervisor.

39. "Weatherization crew laborer" means a person that performs weatherization improvements and minor repairs on households eligible for assistance under this rule.

40. "Weatherization materials" means—

a. Caulking and weatherstripping of doors and windows:

b. Furnace efficiency modifications limited to:

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(1) Replacement burners designed to substantially increase the energy efficiency of the heating system;

(2) Devices for modifying fuel openings which will increase the energy efficiency of the heating system; and

(3) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

c. Clock thermostats;

d. Ceiling, attic, wall, floor, and duct insulation;

e. Water heater insulation;

f. Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat reflective window and door materials; and

g. The following insulating or energy conserving devices or technologies:

(1) Skirting;

(2) Items to improve attic ventilation;

(3) Vapor barriers; and

(4) Materials used as a patch to reduce infiltration through the building.

41. "Weatherization project" means a project conducted in a single geographical area which undertakes to weatherize dwelling units that are thermally inefficient.

42. "Weatherization supervisor" means a person who inspects, analyzes, evaluates, and performs complicated weatherization and repair activities and is responsible for crew ~~laborer's~~ laborers' conduct, performance and weatherization crew laborer evaluations.

~~43. "Weatherization supervisor crew ratio" means one weatherization supervisor for each weatherization crew.~~

43. "Regional Clearinghouse" means the local Regional Development Commission which has the authority under Title IV of the Intergovernmental Cooperation Act of 1968.

D. Allocation of funds

1. The Department of Economic Security/~~Division of Economic Opportunity~~ shall provide financial assistance to Community Action Agencies or other eligible agencies upon submission and acceptance by DES/~~OEO~~ of ~~as work plan.~~ an application as defined under Part H. The funds are available through ~~June 30, 1980.~~ the end of the state fiscal year.

2. The DES/~~OEO~~ shall determine the allocation for each county in accordance with the following formula:

a. $\frac{X + 2Y + Z}{4}$ = county's allocation

Where: X = the county's percent of state fuel type used (weighted average).
Y = the county's percent of state households with incomes less than $5,000.
Z = the county's percent of total state degree days.

~~The formula weights:~~
~~X = 25%~~
~~Y = 50%~~
~~Z = 25%~~

b. The weighted average fuel-use factors, namely "x" (Ref. D 2 A) ~~was~~ were determined using this formula:

$$\frac{10a + 9B + 8c}{3}$$

Where: a = number of households in county using natural gas.
b = number of households in county using propane.
c = number of households in county using fuel oil.

The number of households in each county using each type of fuel for space heating shall be based on data from the 1970 Census of Housing, Volume I, Part 25.

c. The low income factor for the formula shall be derived from the 1970 Census.

~~d. Degree day data shall be based upon data from the National Oceanic Atmospheric Administration; where more than one reading was available for a county, the readings shall be averaged; where no readings are available for a county an average of degree days for all surrounding counties shall be used.~~

E. American Indian Reservation Allocations. Counties with American Indian reservations shall proportion a ratio of their allocation to the reservations based on the number of American Indians in the reservations in that county as a percent of the total population in that county. This allocation shall be based on data from the 1970 Census.

F. Reallocation of funds. In the event there are unexpended state grant funds from this law at a local deliverer ~~at~~ on June 30, 1980 such unexpended funds shall be reallocated to all local deliverers using the allocation formula.

G. Eligible applicants.

1. The commissioner shall insure that funds received under this law shall be allocated to a ~~GAA or to other appropriate and qualified entities~~ local applicants in the geographical area so that funds are allocated to a geographical area served by local applicant delivering the DOE Weatherization Program.

~~a. Funds are allocated to a geographical area served by a CAA local applicant delivering the DOE Weatherization Program, and~~

~~b. Priority in the allocation of funds will be given to a CAA in the in the geographical area the CAA does not normally serve.~~

2. Paragraph (1)~~(a)~~ of this section shall not apply if the commissioner or the Director of Inter Governmental Relations~~, or the OEO Director on behalf of the Commissioner,~~ determines, on the basis of a public hearing, that the plan carried out by the ~~CAA~~ local applicant has been ineffective in meeting the purpose of the ~~statute~~ law. Notice of the public hearing shall be made 10 days prior to the hearing in two (2) local newspapers in the deliverer's service area.

3. In making a determination pursuant to paragraph

G.2. of this rule, the commissioner, or ~~OEO Director~~ the Director of Intergovernmental Relations, acting on behalf of the commissioner, shall evaluate the performance of the CAA and shall consider:

a. The extent to which the weatherization project achieves the goals of the law in a timely fashion.

b. The adherence to the plan developed by the CAA.

c. The quality of work performed.

d. The number, qualifications, and experience of staff members.

e. The ability to secure volunteers, training participants and public service employment workers, pursuant to CETA.

H. Local applications.

1. To be eligible for financial assistance under this rule, a local applicant shall submit an application or plan, combining federal DOE funds, state funds, and any other funds used to support the plan to the commissioner not later than September 30 of each year. The commissioner shall review each timely application and if the submission otherwise complies with the applicable provisions of this rule, approve a final budget and issue a notice of grant award.

2. Each application shall include:

a. The name and address of the local agency or office responsible for administering the program.

b. A detailed description of the manner in which the minimum program requirements will be met which shall include the manner in which each such local agency or office shall develop and implement procedures to insure that:

(1) Financial assistance provided under this rule will be used to supplement and not supplant federal DOE funds.

(2) No dwelling unit may be weatherized without documentation that the dwelling unit is an eligible dwelling unit as provided in this rule.

(3) Priority through a documented needs assessment is given to identifying and providing weatherization assistance with first priority given to eligible fuel oil users, elderly and handicapped low-income persons. The documented needs assessment shall include the identifiable potential number of households which should be provided such assistance by county broken down into segmented categories: eligible elderly, handicapped, minorities, single family dwelling units, rental units, and types of fuel used.

c. The total number of dwelling units proposed to be weatherized with grant funds in total and by county served, from all sources during the budget period for which assistance is to be provided. First priority shall be to homes heated with fuel oil. The total number of dwelling units completed shall include no less than 25% elderly, 10% handicapped and 10% rental units.

d. The description of the outreach process used to obtain applications.

e. A schedule for implementation which shall indicate the number of dwelling units which are expected to be weatherized by month and a crew scheduling process used to efficiently complete the dwelling units.

f. A separate budget for federal, state and other funds shall include a justification and explanation of any amounts requested for expenditures for materials, equipment, or tools. The budget categories shall be identified as federal, state, and local.

g. An estimate by number and dollar amount of manpower from all sources to be used in implementing the weatherization plan.

(1) If the plan involves hiring weatherization crew labor, there must be a detailed explanation as to why CETA labor is not available or how crew labor supplements CETA labor already available and why it is needed. It must include how much labor is needed, the number of job slots program funds will support, a job analysis for each labor slot and the size of the crews under which these slots shall be utilized.

(2) If the plan includes hiring weatherization crew supervision, it must include a comparable wage survey for similar job positions, a job analysis for the position, ~~T~~the number of such positions, the total cost or amount of the state funds that will be supporting the wage of the supervisor and what size crews the position will supervise. The weatherization supervisory ratio shall apply to all crews.

h. There shall be mechanisms detailing the processes whereby the agency governing board of directors reviews and signs off on a quarterly assessment of the local project effectiveness before an application can be accepted.

i. ~~(1)~~ The plan shall be submitted for Regional Clearinghouse review.

I. Plan amendment. If the grantee determines that it cannot fulfill its obligations under the plan in whole or part, the grantee may request an amendment or revision of the existing approved plan and resubmit a new plan or amendments within 30 days after written notice of request for reconsideration. The request from the grantee must be in writing detailing its specific views with supporting data and arguments.

J. Allowable expenditures.

1. To the maximum extent practical, the grant funds provided under this part shall be used for administration, ~~Ad-~~

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~~ministration,~~ the purchase of labor, supervision, materials, equipment, and/or tools and/or related matter. Allowable expenditures shall be limited to:

a. The cost of purchase, delivery and storage of weatherization materials. The cost, determined by a local deliverer which shall not exceed an average dollar value per dwelling unit established by that grantee in that grantee's plan, of:

(1) Transportation of weatherization materials, tools, equipment and work crews to a storage site and to the site of the weatherization work.

(2) Maintenance, operation and insurance of vehicles used to transport weatherization materials.

(3) Maintenance of tools and equipment.

(4) Purchase or lease of tools, equipment and vehicles except that any purchase over established amounts referred to in Federal Management and Budgets (OMB) and Federal Management Circulars (FMC) 73-4, FMC 74-4, and FMC 74-7 must have prior approval of the State ~~in every instance.~~ of DES. Tools and equipment acquired with grant funds provided under this part shall be the property of the grantee.

(5) The cost of employment of supervisory personnel.

(6) The cost of employment of weatherization crew labor.

(7) The cost not to exceed $100 per dwelling unit, of incidental repairs, including repair materials and repairs to the heating source necessary to make the installation of weatherization materials effective.

(8) Building permits where applicable.

b. The cost of liability insurance for weatherization projects for personal injury and property damage.

c. Allowable administrative expenses ~~include~~ limited to those ~~as spelled out~~ set forth in the grantee's approved plan.

d. Grant funds awarded under this part shall not be used for any of these purposes:

(1) To weatherize a dwelling unit which has been weatherized previously with grant funds from DOE or state assistance under the ~~law~~ program or this rule unless such dwelling unit has been damaged by fire, flood, or an act of God and repair of the damage to weatherization materials is not paid for by insurance.

(2) To weatherize a dwelling unit which is vacant or designated for acquisition or clearance by a federal, state, or local government program within twelve months from the date weatherization of the dwelling unit would be scheduled to be completed; or

(3) To purchase cosmetic items or a heating or cooling source. No dwelling unit can be exclusively weatherized with only state funds. State funds must be spent in coordination with DOE funds.

K. Oversight responsibility.

1. The commissioner, or the ~~OEO Director~~ Director of Intergovernmental Relations, on behalf of the commissioner, shall monitor and evaluate the operation of projects carried out by the grantees receiving financial assistance under this part through on-site inspections, or through other means. ~~in order to insure the effective provision of weatherization assistance for the dwelling units of low income persons.~~

2. The DES/~~OEO~~ shall also carry out periodic evaluations of weatherization programs carried out by the grantee.

3. The commissioner, the ~~OEO~~ Director of Intergovernmental Relations or appropriate DES/~~OEO~~ duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under ~~this act~~ the law.

4. The commissioner shall conduct, on an annual basis, an audit of the pertinent records of any grantee receiving financial assistance under this part.

L. Record keeping. Each grantee receiving state financial assistance under this part shall keep such records as the commissioner shall require, including records which fully disclose the amount and disposition by each grantee of funds received under this rule, the total cost of the weatherization project to implement the grantee plan for which such assistance was given or used, including all sources and amounts of funds for such project or program, and such other records as the commissioner deems necessary for an effective audit and performance evaluation. Such record keeping shall be in accordance with Federal Management Circular 74-4 and any further requirements of this ~~Rule~~ rule or such requirements as the commissioner may otherwise establish ~~under the terms and conditions of the contracts awarding grants under the rule~~ consistent with this rule.

M. Monthly reports. Each grantee receiving financial assistance under this part shall submit a monthly program performance report and a monthly financial report to the commissioner. The program performance report shall describe by stated priority: (a) The number of dwelling units weatherized, (b) The average cost per dwelling unit in State dollars under this rule, (c) The average cost per dwelling in Federal DOE funds, (d) The average cost per dwelling with all funds (State, DOE, and local), (e) Outreach efforts, (f) Any other information the commissioner feels relevant, including information routinely submitted to the federal government in order to effectively monitor the progress of the grantee.

~~N. Energy consumption report. Each grantee shall develop and maintain a reporting system that shall will provide for the detection of any change in energy consumption in dwelling units which are weatherized by financial assistance pursuant from to the law and rule part. The information and supporting data must be annualized and submitted to the OEO Director in a report no later than February 1, 1980 of each year.~~

N. ~~O.~~ Standards and techniques for weatherization. Only weatherization materials which meet or exceed the following standards shall be purchased with funds provided under this rule. The standards shall be:

Insulation-Mineral Fiber	
Blanket/Batt	Conformance to F.S. HH-I-521E and AST C 665-70
Board	Conformance to F.S. HH-I-526C and ASTM C612-70 or C726-72
Duct Material	Conformance to F.S. HH-I-558B
Loose-fill	Conformance to F.S. HH-I-1030A and ASTM C764-73
Insulation-Mineral	
Cellular	Conformance to F.S. HH-I-529B
Aggregate Board	Conformance to F.S. HH-I-551E and
Cellular Glass	ASTM C552-73
Perlite	Conformance to F.S. HH-I-574A and ASTM C549-73
Vermiculite	Conformance to F.S. HH-I-585B and ASTM C516-67
Insulation-Organic Fiber	
Cellulose—Type I	Conformance to F.S. HH-I-515C and ASTM C739-73 (Loose-fill)
Cellulose—Type II	Conformance to ASTM C739-73 (Loose fill) and fire safety requirements
Vegetable	Conformance to F.S. HH-I-528B and fire safety requirements
Board and Block	Conformance to F.S. LLL-I-535A and ASTM C208-72 and fire safety requirements.
Insulation-Organic	
Cellular Polystyrene	
Board	Conformance to F.S. HH-1524B and ASTM C578-69 and fire safety requirements
Urethane Board	Conformance to F.S. HH-I-503A and ASTM C591-69 and fire safety requirements
Flexible Unicellular	Conformance to F.S. HH-I-573B and ASTM C534-70 and fire safety requirements
Insulation-Air Spaces	
Reflective	Conformance to F.S. HH-I-1252A
Storm Windows	
Aluminum Frame	Conformance to ANSI A134.3-1972
Wood Frame	Conformance to Section 3 of NWMA Industry Standard I.S.2-73
Rigid Vinyl Frame	Conformance to NBS Product Standard PS26-70 and performance guarantee
Frameless Plastic Glazing	Required Minimum Thickness, 6 mil (0.006 in.)
Storm Doors	
Aluminum	Equivalent to ANSI A134.4-1972
Wood	
Pine	Conformance Section 3 of NWMA I.S.5-73
Fir, Hemlock, Spruce	Conformance to Section 3 of FHDA/5-75
Hardwood veneered	Conformance to Section 3 of NWMA I.S.1-73
Rigid Vinyl	Conformance to NBS Product Standard PS26-70 and performance guarantee
Caulks and Sealants	Commercial Availability
Weatherstripping	Commercial Availability
Vapor Barriers	Conformance to ASTM c755-73
Materials used as a patch to reduce infiltration through the building	Commercial Availability
Clock Thermostats	Commercial Availability
Skirting	Commercial Availability

2. A weatherization project shall apply the approaches to weatherization contained in Project Retro-Tech. DOE Conservation Paper No. 28, including the energy conservation techniques therein.

3. Attics shall have ventilation added so there is at least 1 square foot of free air space for every 150 square feet of attic.

4. A vapor barrier of 1 perm or more shall exist on all surfaces to be insulated except when there is existing insulation.

O. ~~P.~~ Eligible dwellings. No dwelling unit shall be eligible for weatherization assistance under this part unless it is occupied by a family unit:

1. Whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget; or

2. Which contains a member who has received assistance payments under Title IV or XVI of the Social Security Act or applicable state or local law during the 12 month period preceding the determination of eligibility for weatherization assistance.

P. ~~Q.~~ Granting process. Once the application for grant has been approved, the commissioner shall notify the grantee of such approval and any conditions shall be thereto. A grant

[2]F.S.—federal specification

[3]For fire safety requirements, see Section 2.1.3.1

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

contract shall be signed by the commissioner or ~~OEO~~ the Director of Inter-governmental Relations, and the authorized local agency representative. The grant contract shall indicate report requirements and other grant requirements shall be met prior to any obligation of funds. Payments on grant contracts shall be made on the basis of grantee activity in the program. Cash on hand in excess of 30 days program requirements shall not be delivered.

Payments to grantees shall be reviewed in comparison to expenditures to determine cash needs. Expenditures shall be reported monthly on forms to be supplied by DES. Grantees shall be required to project next month's cash needs on the previous month's expenditure report.

Q. ~~R.~~ Fiscal responsibility. No funds shall be released to a grantee receiving financial assistance under this rule until it has submitted to the ~~OEO~~ Director of Intergovernmental Relations a statement certifying the assisted grantee has an established accounting system with internal controls adequate to safeguard their assets which has an operating efficiency and reliable account data, does promote operating efficiency and encourage compliance with prescribed management policies and has such additional fiscal responsibility and accounting requirements as the Intergovernmental Relations ~~OEO~~ Director may ~~establish~~ require consistent with these rules. The statement may be furnished by a Certified Public Accountant, a duly licensed public accountant or, in the case of a public agency, the appropriate public financial officer who accepts responsibility for providing required financial services to that agency. ~~If the grantee does not have such a statement certifying its financial responsibility, it may receive funds under this rule until October 1, 1979, and must by October 1, 1979, submit to the OEO Director such a statement or be ineligible for further assistance until such certifying statement is submitted to the Director of Intergovernmental Relations.~~

R. ~~S.~~ Severability. The provisions of this rule shall be severable and if any phrase, clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and the applicability thereof to any person or circumstances shall not be affected thereby.

Department of Education Special Education Division

Proposed Rules of the Board of Education Governing the Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiple Handicapped Sensory Impaired Students (5 MCAR §§ 1.0133-1.0138)

Notice of Hearing

Notice is hereby given that a public hearing will be held in the above entitled matter at the Huckleberry Inn, 2519 North Lyndale in Faribault, Minnesota 55021, on April 23, 1980, commencing at 9:00 a.m. The proposed rules are subject to change as a result of the rule hearing process. The agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the rule hearing process.

Following the agency's presentation at the hearing all representatives of associations or other interested groups and all interested and affected persons will have an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. In addition, whether or not an appearance is made at the hearing, written statements may be submitted to Peter C. Erickson, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-8118 either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

The board estimates that there will be no cost to local bodies in the State to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will present evidence to justify both the

need for and the reasonableness of the rule/rules as proposed. The agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing you may request notification by sending a written request to the hearing examiner (in case of the hearing examiner's report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

A copy of the rules is attached hereto. One free copy may be obtained by writing to Wilfred D. Antell, Ed.D., Assistant Commissioner of Education, 802 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

The Board's statutory authority to promulgate these rules is provided by Minn. Stat. § 128A.02, subd. 6, as amended by Laws of 1979, ch. 339, Art. III, § 17.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any one month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, telephone (612) 296-5615.

January 15, 1980

Howard B. Casmey, Secretary
Board of Education

Rules as Proposed (all new material)

Chapter Seven-A: Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiple Handicapped Sensory Impaired Students

5 MCAR § 1.0133 Definitions. The following terms used throughout these rules shall have the following meanings ascribed to them.

A. The definitions of these terms shall be as stated in EDU 120 B. (5 MCAR § 1.0120 B.)

1. Special education services;
2. Handicapped persons;
3. Least restrictive alternatives;
4. Recognized professional standards;
5. Proposed action;
6. Nondiscrimination;
7. Formal educational assessment; and
8. Individual educational program plan.

B. In addition, these terms shall have the following meanings ascribed to them.

1. "State residential schools" as used in these rules shall mean either or both the Minnesota School for the Deaf and the Minnesota Braille and Sightsaving school, which are operated by the State Board of Education pursuant to Minn. Stat. ch. 128A.

2. "Residential schools' administrator" shall mean the administrator of the Minnesota state residential schools as defined in Minn. Stat. § 128A.02., subd. 3., or his/her designee.

3. "Resident school district," also referred to as "district", shall mean the district where the handicapped student's parent or legal guardian resides or the district designated by the commissioner as provided in Minn. Stat. § 120.17, subds. 6 and 8a.

4. "Admit" shall mean the action taken by the state residential schools in accepting the placement of a student and agreeing to provide appropriate educational services to the student.

5. "Transfer" shall mean the action taken by the state residential schools in dismissing a student from placement and the termination of the responsibility for providing the appropriate educational services to the student.

6. "Periodic review" as used in these rules shall mean a review which shall be conducted by the state residential schools, at least twice a year, to determine the appropriateness of a

student's individual education plan and if appropriate, revise its provisions.

7. "Annual review" as used in these rules shall mean a review which shall be conducted by the state residential schools and reviewed at a formal meeting. The review shall be held at least once a year to examine a student's individual education program and if appropriate, revise its provisions. This may be counted as one of the required periodic reviews during the year in which it is conducted.

8. "Admission and transfer team" as referred to in these rules shall mean the individuals who are required to participate in a formal meeting to develop, review or revise a handicapped student's individual education program and/or to determine whether to admit or transfer the student to or from the state residential schools.

9. "Formal notice" as used in these rules shall mean a written statement served upon the student's parent or guardian so as to fulfill the requirements of procedural safeguards.

10. "Serve" or "service" as used in these rules shall mean the in hand delivery or the first class mailing to the last known address of a written notice. Service by mail is complete upon mailing.

11. "Parent" shall mean a parent, a guardian, a person acting as a parent of a child, or a legally appointed guardian. The term does not include the state if the child is a ward of the state.

12. "Days" shall mean calendar days between the official beginning and ending dates of the school year at the state residential schools. All procedures relating to but not limited to assessments, reassessments, individual education program plans, periodic reviews, conciliation conferences and hearings that are initiated for a student in placement at the state residential schools before the end of the school year must be completed within the required time period, even if that time period extends beyond the end of the official school year. In addition, applications for admission shall be processed in accordance with 5 MCAR § 1.0134 at any time during the year, even if these procedures extend beyond the end of the official school year.

5 MCAR § 1.0134 Admission procedures.

A. Referral and application.

1. Application for admission shall be made by the resident school district, hereinafter also referred to as the district, to the state residential schools' administrator on the appropriate forms provided by the commissioner and may be made at any time during the calendar year.

2. Prior to application for admission, the district shall have completed for each student for whom admission is sought, the following procedures as established by EDU 124-129 (5 MCAR §§ 1.0124-1.0129):

a. a formal educational assessment consistent with the provisions of EDU 124 (5 MCAR § 1.0124) shall have been conducted and the special education needs of the pupil determined;

b. a student staffing consistent with the provisions of EDU 125 (5 MCAR § 1.0125) shall have been conducted;

c. a review of the student's current level of performance and the determination of the special education service needs shall have been made and the district shall have developed a statement of annual goals and objectives for the student. The district shall have reviewed the programs and services available to the district and shall have stated reasons why an appropriate education in the least restrictive alternative cannot be provided or reasonably made available by the district; and

d. the parent and the district shall:

(1) have agreed that the district is unable to provide an appropriate program and that a referral for placement at the state residential schools is appropriate; or

(2) if the parent and district do not agree that a referral to the state residential schools is appropriate, a local due process hearing pursuant to EDU 129 (5 MCAR § 1.0129) shall have been held. Before the state residential schools shall consider the student for admission, the decision, resulting from the hearing process must be that the resident school district is unable to provide an appropriate program and that a referral for admission to the state residential schools is appropriate.

B. Referral, review and admission meeting.

1. Within seven days of receipt of a referral for admission, the residential schools' administrator shall:

a. review the referral information and determine whether additional assessment or other information is needed.

b. request in writing from the district any additional information that is needed.

2. The residential schools' administrator shall:

a. schedule the team meeting which shall be conducted within 30 days of receipt of complete referral information pursuant to 5 MCAR § 1.0134 A.2. and at a time that is mutually acceptable to the state residential schools and the parent; and,

b. serve a written notice of the team meeting to the parent and the district in accordance with the provisions of 5 MCAR § 1.0136 prior to conducting the admission meeting.

3. To determine whether an appropriate individual educational program plan can be developed by the state residential schools to appropriately meet the educational needs of the student in the least restrictive alternative, the state residential schools' administrator shall:

a. appoint participants from the state residential schools' staff to serve on the admission and transfer team. The team shall include at a minimum an administrator of the appropriate education program or his/her designee, an administrator of the appropriate residential program or his/her designee, one appropriate teaching staff person, and other related services staff persons as deemed appropriate by the state residential schools' administrator.

b. schedule an admission and transfer team meeting which shall include the state residential schools' required participants, the parent, the student if appropriate, and other persons as deemed appropriate by the residential schools' administrator and may include a representative of the resident school district if the district chooses to participate.

c. upon request of the parent, determine whether it is appropriate to involve additional state schools' staff on the admission and transfer team; and whether it is appropriate to include someone who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural or handicapping differences of the student.

4. If the parent cannot attend the admission meeting:

a. the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and

b. an admission staffing shall be conducted without a parent in attendance if the residential schools' administrator is unable to convince the parent to attend.

5. The admission and transfer team shall determine whether placement at the state residential schools will appropriately meet the educational needs of the student in the least restrictive alternative. This determination shall be based on:

a. the complete referral information;

b. any additional information supplied by the parent;

c. other relevant information and reports;

d. the record of the decision of the student's resident school district pursuant to Minn. Stat. § 120.17, subd. 3.b. and Minn. Stat. § 128A.05, subd. 1 and 2;

e. interpretation of the data in accordance with the requirements of nondiscrimination pursuant to EDU 120 B. (5 MCAR § 1.0120 B.) and recognized professional standards; and

f. the team's development of an appropriate individual educational program plan, or the team's determination that an appropriate individual educational program plan cannot be developed by the state residential schools.

C. Admission procedures and development of program.

1. The admission and transfer team shall recommend to the state residential schools' administrator that:

a. the state residential schools can appropriately meet the educational needs of the student in the least restrictive alternative and that the student be admitted pursuant to the parent's written approval of the team's proposed individual educational program plan; or

b. the state residential schools cannot appropriately meet the educational needs of the student as the least restrictive alternative and that the student not be admitted to the state residential schools, based upon the team's determination that an appropriate individual educational program for the student at the state residential schools cannot be developed.

2. If the student is recommended to be admitted to the state residential schools, the admission and transfer team shall develop a proposed individual education program plan listing the services that the student will receive at the state residential schools.

The proposed individual educational program plan shall be prepared in writing; be based on the assessment data, the district's statement of goals and objectives, and other appropriate information; be consistent with the requirement of nondiscrimination and the principle of the least restrictive alternative; and shall include:

a. the names of the persons on the team;

b. a description of the education service needs of the student as determined by the team;

c. a statement of annual goals und periodic review objectives for the education services to be provided including the criteria for attainment of the objectives;

d. the plan for, location of, and frequency of periodic review of the progress in reaching the prescribed educational objectives;

e. the reasons for the type of education program including type of services to be provided, the location, amount of time, starting date, anticipated duration of services, and the names and school telephone numbers of those personnel responsible for providing the services. In accordance with the principle of least restrictive alternatives, the proposed action shall be substantiated as the most appropriate in terms of the students' educational needs;

f. the changes in staffing, transportation, facilities, curriculum, methods, materials, and equipment and other services that will be made to permit successful accommodation and education of the student in the least restrictive alternative; and

g. a description of any activities in which the student will participate in environments which include nonhandicapped students.

3. Based upon the recommendations of the admission and transfer team admission meeting, the state residential schools' administrator shall:

a. admit the student to the state residential schools pursuant to the parent's written approval of the individual educational program plan; or

b. deny the student admission to the state residential schools; and

c. provide formal notice to the parent and to the district of the determination to admit or to deny admission in accordance with the provisions of 5 MCAR § 1.0136. The notice shall be served within 14 days of the admission and transfer team admission meeting.

4. If the determination is to admit the student pursuant to the parent's written approval of the individual educational program plan, the initial notice shall include the proposed individual educational program plan and shall state that the parent shall agree in writing to this individual educational program plan.

5. If the parent does not give written approval to the individual educational program plan within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

6. If the parent continues to object to the proposed individual educational program plan, the parent may initiate an impartial due process hearing in accordance with 5 MCAR § 1.0138.

7. If within 30 days after serving the formal notice, which shall include the proposed individual educational program plan, no response or objection is obtained from the parent, or if agreement has not been reached in conciliation conference and no hearing is requested in accordance with 5 MCAR § 1.0138, efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure. This action shall not be interpreted to mean that application for admission of the same student cannot be made at a future date if such application is deemed appropriate by the parent and the resident school district in accordance with procedures as established by EDU 124-129 (5 MCAR §§ 1.0124-1.0129).

8. If the determination is to deny the student admission to the state residential schools, the residential schools' administrator shall send a formal notice to the parent and the resident district which shall inform them of the decision to deny admission based upon the schools' determination that an appropriate individual educational program plan cannot be developed by the state residential schools.

9. If the parent objects to the action to deny admission, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

10. If the parent continues to object to the action to deny admission, the parent may initiate an impartial due process hearing in accordance with 5 MCAR § 1.0138.

5 MCAR § 1.0135 Periodic review, reassessment and transfer procedures.

A. Periodic review and annual review.

1. The state residential schools shall conduct periodic reviews of the individual education program plan and shall determine:

a. the degree to which the goals and objectives as identified in the educational program plan are being achieved;

b. the appropriateness of the educational program plan as it relates to the student's current needs; and

c. what modifications, if any, need to be made in the program plan.

2. There shall be at a minimum one periodic review and one annual review each year; the initial periodic review shall be made at the time specified in the program plan.

3. Periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other designees of the state residential schools as may be needed to insure an informed and adequate review.

4. The annual review shall be an admission and transfer team meeting held to review a student's individual educational program plan and if appropriate revise its provisions.

5. The results of periodic reviews and annual reviews shall be included in the student's school records and a copy sent to the parent and to the district. This copy shall inform the parent that he/she may request a conference to review the student's program plan at any time and the procedure to do so.

6. The reviews shall be conducted in accordance with the requirements for nondiscrimination pursuant to EDU 120 B. (5 MCAR § 1.0120 B.) and recognized professional standards.

B. Reassessment.

1. The state residential schools shall conduct an educational reassessment according to the procedures specified for formal educational assessments in EDU 124 B. (5 MCAR § 1.0124 B.) at least once every two years. In the year that the reassessment is conducted the meeting following the reassessment may meet the requirement for one of the two reviews required pursuant to 5 MCAR § 1.0135 A.

2. A reassessment shall be conducted before the state residential schools propose a transfer from the schools.

3. A reassessment may be conducted at parent request, unless the state residential schools determine that there has been a recent and adequate assessment or reassessment.

C. Transfer.

1. The admission and transfer team shall recommend to the state residential schools' administrator that a student be dismissed from placement at the state residential schools when it has been determined that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

2. This determination shall be made based upon the results of an educational reassessment.

3. Based upon the recommendations of the admission and transfer team staffing, the state residential schools' administrator shall:

a. dismiss the student from placement at the state residential schools pursuant to the parent's written consent to this proposed action; and

b. provide written notice of the determination to transfer the student from placement at the state residential schools to the parent and the resident school district in accordance with the provisions of 5 MCAR § 1.0136 within 14 days of the admission and transfer team staffing. The notice shall state that no such change shall be made without written parental consent.

c. if the parent does not give written consent to the transfer of the student from educational placement at the state residential schools within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

d. if the parent continues to object to the proposed action, the parent may initiate an impartial due process hearing in accordance with the provisions of 5 MCAR § 1.0138; or

e. if the parent continues to refuse to provide written consent to the transfer, but does not initiate a due process hearing, the state residential school shall schedule a due process hearing in accordance with 5 MCAR § 1.0138.

D. Admission and transfer team meeting.

1. A meeting which shall include the required state residential schools participants, the parent, the student if appropriate, and may include a representative of the resident school district and other persons as deemed appropriate by the residential schools' administrator shall be conduced:

a. to develop a recommendation regarding a student's application for admission.

b. to develop a current individual educational program plan for each student in attendance;

c. to review the results of the required biennial reassessment or to review the results of reassessment that may be conducted in addition to the required biennial reassessment;

d. prior to the state residential schools proposing the transfer of a student from educational placement at the state residential schools based upon reassessment data and the determination that the appropriate program in the least restrictive alternative is not available at the state residential schools; and

e. to review the results of a reassessment within 30 days after the expiration of the period allowed for parental response, unless the parent objects to the reassessment through the procedures provided in these rules.

2. Formal notice in accordance with the provisions of 5 MCAR § 1.0136 shall be provided to the parent and the district 14 days prior to conducting an admission and transfer team meeting.

3. If the parent cannot attend the admission and transfer team meeting:

a. the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and

b. an admission and transfer team meeting shall be conducted without the parent in attendance if the residential schools' administrator is unable to convince the parent to attend.

5 MCAR § 1.0136 Formal notices to parents.

A. The provisions of EDU 127 A. (5 MCAR § 1.0127 A.) shall apply to formal notices sent to parents of students enrolled at the state residential schools.

B. Prior to the admission meeting, pursuant to 5 MCAR § 1.0134 B. the state residential schools shall prepare and send a formal notice to the parent and the resident school district which shall:

1. include the reasons for the meeting and the persons who have been asked to be in attendance;

2. inform the parent of his/her right to request and receive copies of all records or other written information that is in the state residential schools' possession regarding his/her child;

3. inform the parent of his/her right and the procedure and time to participate in developing his/her child's education program, and/or to provide information relative to the child's assessment and the development of the program plan;

4. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments and data or results from a knowledgeable state residential schools' employee, and for that conference to be held in private;

5. inform the parent of his/her right and the procedure and time to include such person(s) described in EDU 125 A. (5 MCAR § 1.0125 A.), including a person who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student, on the team that interprets the assessment data and/or develops the individual education program plan; and

6. inform the parent that the state residential schools shall proceed with the admission and transfer team meeting in order to consider the student's application for admission unless the parent objects in writing on the response form within 14 days after service of the notice.

7. include a response form on which the parent may indicate his/her objection to the proposed admission and transfer

team meeting and which identifies the designee of the state residential schools to whom the response form should be mailed or given and to whom questions may be directed.

8. state that if the parent objects in writing to the admission meeting, the state residential schools shall consider that the student's application for admission to the state residential schools has been withdrawn by the parent effective on the date of the signing of the objection response form; and

9. inform the parent that if the student's application is withdrawn, the decision regarding the placement of the student shall be determined by the parent and the resident school district in accordance with EDU 120-129 (5 MCAR §§ 1.0120-1.0129).

C. When the state residential schools propose to admit a student pursuant to the parent's written approval of the proposed individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

1. include a copy of the student's proposed individual educational program plan as described in § 1.0134 C.3.;

2. inform the parents of his/her right and time and procedure to request and to receive interpretation of the educational program plan from a knowledgeable school employee and for that conference to be held in private;

3. state that the parent's written consent shall be given to the individual educational program plan and the signed plan shall be returned to the state residential schools' administrator within 14 days of receipt of the notice if the student is to be admitted to the state residential schools;

4. state that the student shall be admitted to the state residential schools upon receipt by the state residential schools' administrator of the individual educational program plan with the parent's signature affixed;

5. inform the parent that the state residential schools shall not proceed to admit the student without the written consent of the parent to the proposed individual educational program plan;

6. inform the parent that if he/she objects to the proposed individual educational program plan that a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held at a mutually convenient time;

7. inform the parent that if he/she objects to the educational plan during or after the initial conciliation conference, he/she has a right to initiate an impartial due process hearing in accordance with procedures set forth in 5 MCAR § 1.0138;

8. inform the parent that he/she has the right to be represented by counsel or another person of their choosing at the conciliation conference or the impartial due process hearing;

9. inform the parent that he/she may obtain an independent educational assessment at his/her own expense; and

10. include a response form on which the parent may indicate his/her objection to the proposed individual educational program plan and identify the designee of the state residential schools to whom the response form should be mailed or given and to whom questions should be directed.

D. When the state residential schools deny a student admission to placement at the state residential schools based on the school's determination that an appropriate individual educational program plan cannot be developed by the state residential schools. The state residential schools shall prepare and serve a formal notice which shall:

1. state that based on the admission and transfer team's review of the student's complete referral information, and the school's determination that an appropriate individual program plan cannot be developed by the state residential schools, the team's recommendation is that placement at the state residential schools cannot appropriately meet the educational needs of the student in the least restrictive alternative and the student is denied admission;

2. inform the parent that if he/she objects to the action of the state residential schools to deny admission, a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held; and

3. inform the parent that if he/she objects to the action to deny admission during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in 5 MCAR § 1.0138.

E. Prior to conducting an assessment or reassessment, refusing to conduct an assessment or reassessment, initiating a significant change in or refusing to make a significant change in a state residential schools' student's individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

1. if the proposed action pertains to assessment or reassessment, include the reasons for assessment or the refusal to assess, how the results may be used if the assessment is conducted, a general description of the procedures to be used, and where and by whom the assessment will be conducted;

2. include a copy of the student's current individual educational program plan;

3. inform the parent of his/her rights to review and receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

4. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments and data or results from a knowledgeable state residential schools' employee and for that conference to be held in private;

5. inform the parent of his/her right and the procedure and time for him/her to participate as a team member in developing and determining the child's educational program and/or to provide information relative to his/her assessment and the development of the educational program plan;

6. inform the parent of his/her right, the procedures, and the time within which to have included on the team that interprets the assessment data and/or develops the individual educational program plan, such person(s) as described in EDU 125 A.

(5 MCAR § 1.0125 A.) including a person who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

7. inform the parent that he/she may obtain an independent assessment at his/her own expense;

8. inform the parent that the state residential schools shall proceed with the proposed action unless the parent objects on the enclosed response form or otherwise in writing within 14 days after service of the notice;

9. inform the parent that if he/she objects to the proposed assessment or reassessment or proposed change in the educational program in writing, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137;

10. inform the parent that if the parent objects to the proposed action during or after the initial conciliation conference they may have an impartial due process hearing in accordance with 5 MCAR § 1.0138;

11. inform the parent that he/she has the right to be represented by counsel or another person of his/her choosing at the conciliation conference or the impartial due process hearing;

12. include a statement assuring that the student's educational program will not be changed as long as the parent objects to the proposed action in the manner prescribed by these rules; and

13. include a response form on which the parent may indicate his/her approval of or objection to the proposed action and identify the state residential schools' employee to whom the response form should be sent and to whom questions may be directed;

F. When the state residential schools propose the transfer of the student out of educational placement at the state residential schools pursuant to 5 MCAR § 1.0135 C., the state residential schools shall prepare and serve formal notice to the parent and the resident school district which shall:

1. state that based on reassessment of the student and the recommendations of an admission and transfer team meeting, the state residential schools propose to dismiss the student from placement at the state residential schools pursuant to the written consent of the parent to this proposed action;

2. inform the parent of his/her right to request and to receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

3. inform the parent of his/her right and the procedure and time period within which to request and to receive interpretations of assessment or reassessment procedures, instruments and data on results from a knowledgeable state residential schools' employee and for that conference to be held in private;

4. inform the parent that he/she may obtain an independent assessment at his/her own expense;

5. include a response form on which the parent may indicate his/her approval of or objection to the proposed transfer from placement at the state residential schools and which states that the form shall be returned to the state residential schools' administrator within 14 days of receipt of the notice;

6. inform the parent that the state residential schools shall not proceed with the proposed transfer from placement of the student without prior written consent of the parent;

7. inform the parent that if he/she gives written consent the student shall be dismissed from placement at the state residential schools at the time specifically stated in the proposed transfer from placement;

8. inform the parent that if he/she objects to the proposed transfer from placement in writing, a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held;

9. inform the parent that if he/she objects to the proposed transfer from placement during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in 5 MCAR § 1.0138; and

10. inform the parent that if he/she continues to refuse to provide written permission to the transfer, the state residential schools shall schedule a hearing in accordance with 5 MCAR § 1.0138;

11. state that the child's educational placement will not be changed as long as the parent objects to the proposed transfer from placement in the manner prescribed in these rules.

G. The state residential schools' administrator shall notify the district of residence whenever:

1. the parent determines that the students' application to the state residential schools is withdrawn prior to the student being admitted;

2. the student is denied admission to the state residential schools' programs;

3. the parent has removed the student from the state residential schools' program after he/she has been admitted; and

4. a student is graduated from the state residential schools or will not continue attending the school because he/she has attained the age of 21 years prior to September 1 of the next official school year.

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

5 MCAR § 1.0137 Conciliation conference.

A. When a conciliation conference shall occur:

1. If the parent does not object in writing to a proposed action within 14 days after service of a notice pursuant to 5 MCAR § 1.0136 and the proposed action is not admission to or transfer from the state residential schools, the proposed action shall take place. If such written objection is made, the state residential schools' administrator shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time mutually convenient to the parent and the state residential schools' representatives and shall be held within 14 days after receipt of the written objection. There may be more than one such conference and the parent may request a hearing under 5 MCAR § 1.0138 at any time after the first conciliation conference is held.

2. If the parent does not give written approval to the proposed individual educational program plan developed in accordance with 5 MCAR § 1.0134 C.3.d. within 14 days after the service of the notice, the residential schools' administrator shall arrange for a conference with the parent for the purpose of reviewing the plan and conciliating the matter. The conference shall be held at a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14 day period for parent response.

3. If the parent does not give written consent to the proposed transfer of the student from placement at the state residential schools in accordance with 5 MCAR § 1.0135 C. within 14 days after service of the notice pursuant to 5 MCAR § 1.0136 E., the residential schools' administrator shall arrange for a conference with the parent for the purpose of conciliating the matter. The conference shall be held at a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14 day period for parent response.

B. Memorandum. Within seven days of the final conciliation conference the state residential schools shall serve the parent with a written memorandum which shall:

1. inform the parent of the state residential schools' proposed action following the conference;

2. inform the parent that if he/she continues to object to the proposed action he/she has a right to an impartial due process hearing in accordance with the provisions of 5 MCAR § 1.0138 and state the procedure and time in which to request the hearing, including a request form on which the parent may request the hearing, and the identification of the state residential schools' employee to whom the written request form or other written request for hearing is to be mailed, and to whom questions and documents or requests relating to the hearing may be directed; and

3. inform the parent that if he/she does not request a hearing on the written request form or otherwise in writing pursuant to 5 MCAR § 1.0138, within seven days after receipt of the notice, the state residential schools shall proceed with the proposed action unless the proposed action is to admit the student to or to transfer the student from placement at the state residential schools; and

4. inform the parent if agreement has not been reached in conciliation conference and no hearing is requested in accordance with 5 MCAR § 1.0138, efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure;

5. inform the parent that if the proposed action is transfer of the student from placement at the state residential schools, when the parent continues to refuse to provide written permission, the state residential schools shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response.

5 MCAR § 1.0138 The hearing.

A. Initiation of the hearing. A parent or the state residential schools may initiate an impartial due process hearing when either party continues to object to a proposed action and conciliation has not been achieved through one or more conciliation conferences pursuant to 5 MCAR § 1.0137. The resident school district may be party to the hearing. The decision of the hearing officer shall be rendered not more than 45 days from the date of the receipt of the request for the hearing. The hearing officer may grant specific extensions of time beyond the 45 day period at the written request of either party.

B. Notice.

1. Written notice of the time, date and place of all hearings shall be given to all parties by the state residential schools at least 14 days in advance of such hearings; and the hearing shall be held at a time, date, and place mutually convenient to all parties.

2. Within seven days of receipt of the parent's written request for a hearing, the state residential schools shall serve the parties with a written notice of rights and procedures relative to the hearing which shall inform the parent:

a. that the hearing shall take place before an impartial hearing officer appointed by the commissioner;

b. that they will receive notice of time, date and place of the hearing seven days in advance of the hearing which will be held within 30 days after the written request;

c. of the hearing rights of the respective parties including the following:

(1) The hearing shall be closed unless the parent requests an open hearing.

(2) The parties shall have the right to representatives of their own choosing, including legal counsel in preparation of and at the hearing. The state residential schools shall inform the parent of any free or low cost legal or relevant services available in the area.

(3) Not less than seven days prior to the hearing, the parent or his/her representative(s), as the case may be, shall be given access to all of the state residential schools' records and such other records pertaining to the child that are authorized to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment upon which the proposed action may be based.

(4) At least seven calendar days prior to the hearing the parent shall receive from the state residential schools a brief resume of additional material allegations referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to 5 MCAR § 1.0136 or 5 MCAR § 1.0137 B. If such material allegations or information relating thereto are not so disclosed, it shall be left to the person conducting the hearing to determine if those material allegations may be introduced or considered.

(5) Within seven days after written request any party shall receive from the other parties a list of witnesses who may be called to testify at the hearing. Such list shall be filed with the person(s) conducting the hearing. Such lists may be modified at any time but each party shall be notified if modification occurs.

(6) All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the state residential schools, resident school district or any other person who may have evidence relating to the proposed action, and to confront, and to cross examine any such witness. Any such request shall be made to the state residential schools, and to the person whose attendance is requested at least seven days in advance of the hearing. Such written requests shall also be filed with the hearing officer at the time of hearing.

(7) The parent shall have the right to call his/her own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports or other information.

(8) All parties shall have the right to confront and cross examine witnesses.

(9) If the person conducting the hearing determines at the conclusion of the hearing that there remain disputes of fact which, in the interest of fairness and the child's educational needs, require the testimony of additional witnesses, or if the hearing officer concludes that alternative educational programs and opportunities have not been sufficiently considered, he or she may continue the hearing for not more than 14 days, for the purpose of obtaining the attendance of such witnesses or considering such alternative programs and opportunities. The parties' right to cross examination and confrontation and other applicable rights and procedures set forth herein shall continue and be given full force and effect.

d. that at the hearing the burden of proof is on the state residential schools to show that the proposed action is justified on the basis of the student's educational needs or his/her current educational performance, or presenting handicapping conditions taking into account the presumption that placement in a regular public school class with special education services is preferable to removal from the regular classroom;

e. that a record shall be kept of the hearing and shall be made available at cost to the parent if the decision is appealed;

f. that the hearing officer shall make a written decision based only on evidence received and introduced into the record at the hearing. Such decisions shall be rendered not more than 45 days from the receipt of the request for the hearing. The proposed action will be upheld only upon showing by the state residential schools of a preponderance of the evidence. A proposed action that would result in the child being removed from a regular education program may be sustained only when and to the extent the nature or severity of the handicap is such that a regular education program would not be satisfactory and the child would be better served in an alternative program. Consideration of alternative regular educational programs shall also be given;

g. that the decision of the hearing officer is binding on all parties;

h. that pending the decision, the student's education program shall not be changed unless the parent and the parties agree otherwise;

i. that the parent has the right to have the child present at the hearing; and

j. that the parent shall receive a copy of the hearing officer's written findings, conclusion and decision.

C. Hearing officers.

1. The hearing shall take place before an impartial hearing officer appointed by the commissioner.

2. The hearing officer shall not be a member of the state board of education, state department of education, an employee of either the student's resident school district or the state residential schools or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualifies as a hearing officer is not an employee of the state solely because the person is paid by the state department of education or the state residential schools to serve as a hearing officer.

3. If a hearing officer requests an independent educa-

tional assessment of a child, the cost of the assessment shall be at state residential schools' expense. All expenses of the hearing, except for the parent's and resident school district's attorney's fees; the cost of a copy of the record of the hearing if requested by the parent; or other expenses incidental to the parent's, child's, or resident school district's participation in the hearing, shall be paid by the state residential schools.

4. The hearing officer shall be empowered to subpoena any persons or papers he/she deems necessary for an adequate review of the appropriateness of the proposed action which is the subject of the hearing.

D. Prehearing review by the hearing officer.

1. Not less than seven days prior to the hearing, the person conducting the hearing shall be mailed copies of:

a. notices and memoranda prepared by the state residential schools pursuant to 5 MCAR § 1.0137 sent to the parent;

b. written information concerning the educational assessment or reassessment and copies of any parties' tests, evaluations, or other admissible reports or written information relating to such assessment or reassessment, or the proposed action;

c. a copy of the student's current and proposed individual educational program plan; and

d. other information from the state residential schools, or parent as the hearing officer may have requested at a prior date provided that a copy of such information is provided to all parties, and further provided that such information is made a part of the hearing record;

e. the provisions of b. and c. do not apply when the hearing concerns a proposed action to assess or reassess.

2. Upon receipt of the information set forth in 1. above, the hearing officer:

a. shall review the same for compliance with these rules;

b. may meet with the parties together prior to the hearing;

c. may require the state residential schools to perform an additional educational assessment or reassessment;

d. may require an independent educational assessment of the student at the expense of the state residential schools;

e. may require the state residential schools to propose an alternative individual educational program plan;

f. may require the state residential schools to send additional notice to the parent;

g. may do such additional things necessary to achieve compliance with these rules;

h. may extend the hearing date for up to 15 days to achieve the purposes of this paragraph;

i. may grant specific extension of time beyond the 45 day period at the request of either party.

E. Hearing procedures.

1. The hearing officer shall preside over and conduct the hearing and shall rule on procedural and evidentiary matters, and his or her decision shall be based solely upon the evidence introduced and received into the record.

2. The state residential schools shall bear the burden of proof as to all facts and as to grounds for the proposed action.

3. One purpose of the hearing is to develop evidence of specific facts concerning the educational needs, current educational performance, or presenting handicapping conditions of the person as they relate to the need for the proposed action. Consistent with the rights and procedures set forth herein, nothing in the rules shall limit the right of the hearing officer to question witnesses or request information.

4. A tape recording, stenographic record, or other record of the hearing shall be made.

5. As appropriate to the pending matter, the hearing officer shall consider evidence related to:

a. the state residential schools' decision to deny admission to the student for the purpose of providing an educational program. The state residential schools shall demonstrate by a preponderance of the evidence that based upon the schools' determination an appropriate individual educational program plan cannot be developed by the state residential schools.

b. the state residential schools' proposal to assess or reassess or refusal to assess or reassess as set forth in 5 MCAR § 1.0135 B. The state residential schools shall demonstrate by a preponderance of the evidence that the educational assessment or reassessment is justified as a step toward the possible initiation of or change in the student's educational placement or provision of services; or the state residential schools shall demonstrate by a preponderance of the evidence that refusal to assess or reassess is justified by the proximity in time, appropriateness and adequacy of the most recent assessment or reassessment.

c. the state residential schools' proposal to initiate or refusal to initiate services as set out in the student's individual educational program plan. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed action is consistent with the current educational needs of the student.

d. the state residential schools' proposal to transfer the student. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed transfer is consistent with the current educational needs and presenting handicapping conditions of the student.

6. The hearing officer shall sustain, modify or reject a proposed action based on consideration of all the evidence received at the hearing.

F. The decision of the hearing officer. Not more than 45 days from the receipt of the request for a hearing, except where extensions of time have been granted and then at a time not to exceed 45 days plus the number of days added by the extensions,

the hearing officer shall prepare a written decision based on evidence received and introduced into the record at the hearing. Such decision shall address itself to the following:

1. Decisions regarding admission. The hearing officer shall sustain the decision to deny admission of the student to the state residential schools upon a showing by the state residential schools by a preponderance of evidence that an appropriate individual educational program plan cannot be developed by the state residential schools.

2. Decisions regarding assessment or reassessment:

a. the hearing officer shall sustain a proposed assessment or reassessment of the student as set forth in 5 MCAR § 1.0135 B. upon a showing by the state residential schools by a preponderance of the evidence which demonstrates that there are facts, relating to the student's performance in his/her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified as a step toward the possible initiation of or change in the student's educational placement or program, including special education services, which will provide an educational program appropriately suited to the student's needs;

b. the hearing officer shall sustain the refusal to assess or reassess upon a showing by the state residential schools by a preponderance of evidence which demonstrates that there are facts which indicate reasonable grounds to believe that there has been recent and adequate assessment or reassessment of the student by qualified professionals; and

c. consistent with the standards, requirements, and principles set forth in statute and these rules, the hearing officer shall have the authority, based on all the evidence received at the hearing, to modify the proposed assessment or reassessment procedures in order to insure compliance with the requirement of nondiscrimination.

3. Decisions regarding individual educational program plan:

a. in deciding if the proposed action is to be sustained, in whole or part, the educational needs of the student shall be determinative. However, there shall be a presumption that among alternative programs of education, that to the maximum extent appropriate, a primary placement in a regular public school class and program with appropriate special education services is preferable to removal from the regular classroom;

b. the hearing officer shall sustain the individual educational program plan of the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the student's individual educational program plan represents educational services appropriate to the student's educational needs in the least restrictive alternative. This decision shall be made in accordance with the principle at least restrictive alternatives; and

4. Decisions regarding transfer: The hearing officer shall sustain the decision to transfer the student from placement at the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

5. All hearing officer decisions shall:

a. contain written findings of fact, and conclusions of law, including a statement of the controlling facts upon which the decision is made in sufficient detail to appraise the parties on the basis and reason for the decision;

b. state the amount and source of any additional state expenditures necessary to implement the decision;

c. be based on the standards and principles set forth in Minn. Stat. § 120.17, subd. 3a., and 5 MCAR § 1.0138 G.; and

d. be binding on all parties.

6. All decisions shall be filed with the Commissioner of Education and shall be sent by mail to the parties.

G. Effective date of the action and appeals.

1. The decision of the hearing officer shall be binding on all parties and shall become effective 30 days after service of the decision unless the decision is appealed in a civil action.

2. The hearing officer may grant specific extensions of time beyond the 45 day period set out in these rules at the request of any party provided that no extension may be granted for the filing of a civil action.

Department of Public Service

Proposed Rules Governing Gas and Electric Utilities' Access to Customer Premises

Notice Of Second Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Large Hearing Room, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, on Tuesday, April 15, 1980 commencing at 9:30 AM and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materi-

als may be submitted at the hearing. In addition, written material may be submitted by mail to Hearing Examiner Harry Seymour Crump, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8111 either before the hearing, or within five working days after the close of the hearing unless the hearing examiner orders a longer period not to exceed 20 calendar days.

Copies of the proposed rules are now available and one free copy may be obtained by writing to or calling the Department of Public Service, attention Randall D. Young, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone (612) 296-7526. Copies will also be available at the door on the date of the hearing.

The proposed rule (a copy of which is attached hereto), if adopted, would provide reasonable standards for utilities to follow when entering customer premises. The agency's authority to promulgate the proposed rule is contained in Minn. Stat. §§ 216B.04; 216B.05, subd. 2; 216.09; and 216B.23.

This will be a rehearing of this matter. The original hearing was held on Wednesday, June 20, 1979, at the same location. Testimony was given and evidence presented on all sides of the issue. The hearing examiner made his recommendation which the Public Service Commission accepted. However, due to a deficient Notice of Hearing, the proposed rule could not be adopted. This proposed rule is the result of the testimony received at the June 20, 1979 hearing. All of the testimony and evidence received as a result of the original hearing will be entered into the record at this hearing. Thus, you need not appear to repeat testimony offered at the June 20, 1979 hearing. If you wish to review the record of the original hearing, it is available for viewing Monday through Friday from 8:30 a.m. to 4:30 p.m. at:

790 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota
(Contact: Elaine Wachholz)

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1978) any individual: (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The statute provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

The commission anticipates that fifty persons may attend the hearing and that one hour will be necessary for it to present its evidence at the hearing.

Mary L. Harty
Executive Secretary

Rule as Proposed

4 MCAR § 3.0304 Uniform access.

A. A utility shall not enter a customer's premises if:

1. The customer has not consented; or

2. The utility has not obtained a court order authorizing entry; or

3. An emergency situation involving imminent danger to life or property does not reasonably appear to exist.

B. A customer shall be deemed to have consented to entry if:

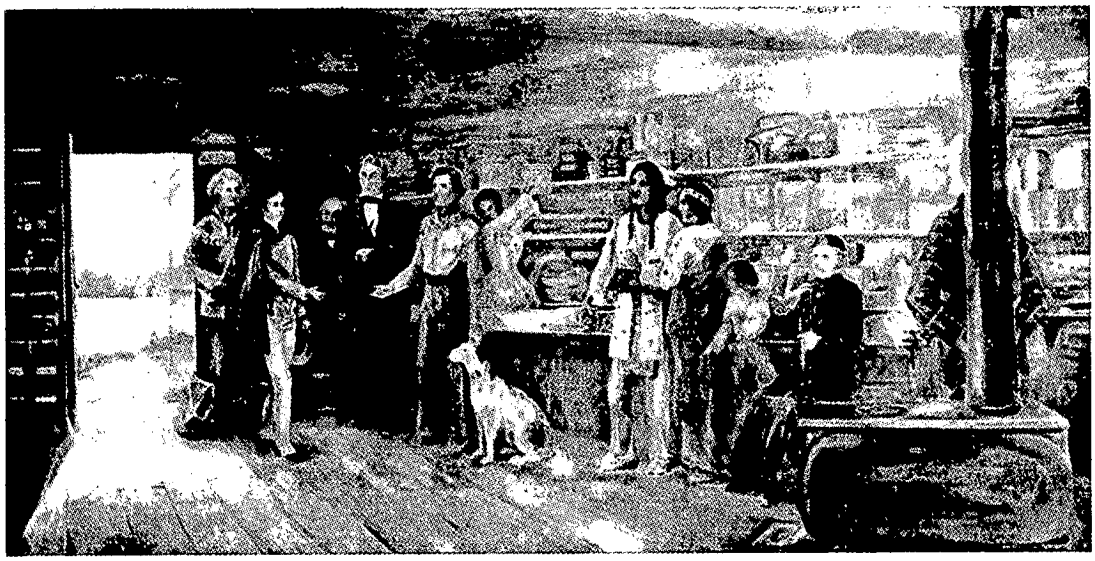
1. The customer has agreed orally or in writing in advance of entry that the utility may enter the customer's premises on a particular occasion; or

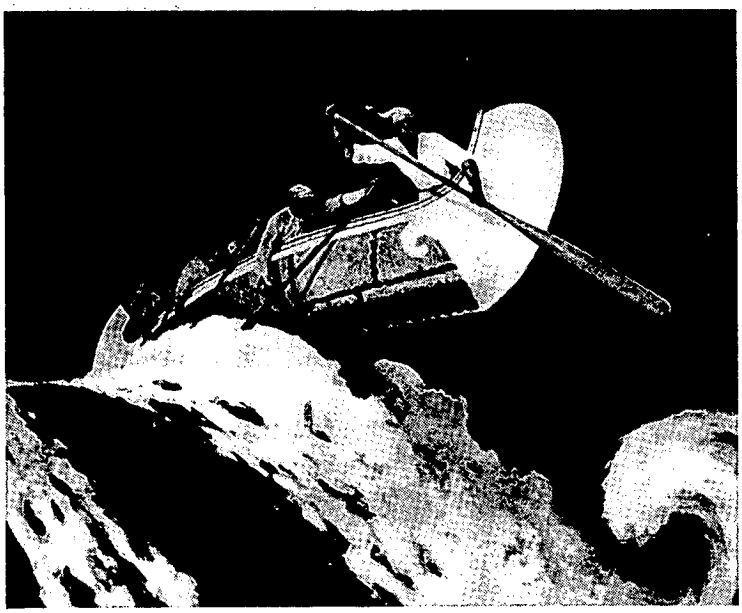
2. The customer has agreed in writing that the utility may enter the customer's premises to read its meter or service utility equipment at reasonable times and occasions if the premises are unlocked, or if the customer has supplied a key. The form of agreement shall state in large easy-to-read print "YOU DO NOT NEED TO SIGN THIS AGREEMENT IN ORDER TO OBTAIN SERVICE" and shall further provide that the agreement is revocable at will by the customer.

3. The customer is on a non-residential rate and the portion of the premises entered is open to the general public.

C. For the purpose of this rule "premises' means buildings and structures and land surrounding the buildings which is not accessible except through a locked gate.

D. A utility shall notify the jurisdictional law enforcement agency before entering the customer's premises without the customer's consent unless it would be unreasonable under the facts and circumstances to do so.





Fur Trading in Minnesota. It was an enterprise which involved varied entrepreneurs representing varied backgrounds in the early 1800s. Above, Joseph Nicollet stopped at the American Fur Company post at Crow Wing. Below, Afro-Americans were among voyageurs who transported packs of furs and trade goods. (Courtesy Minnesota Historical Society.)

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

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Public Welfare
Merit System
Extension of Adopted Temporary Rules Governing the Minnesota Merit System

Notice is hereby given that temporary rules 12 MCAR §§ 2.490a and 2.491a governing the Minnesota Merit System are extended for 90 days through June 9, 1980. These rules were proposed and published at *State Register*, Volume 4, Number 19, p. 759, November 12, 1979 (4 S.R. 759); approved by the Office of the Attorney General on December 12, 1979; filed with the Office of the Secretary of State on December 17, 1979; and published at *State Register* as adopted temporary rules on December 31, 1979, Volume 4, Number 26, p. 1065 (4 S.R. 1065).

Minnesota State Agricultural Society
Rules Governing the Operation and Management of the Minnesota State Fair and the Minnesota State Fair Grounds

Chapter One: General

S.F. 1.1 Authority. These rules are promulgated pursuant to authority granted the Minnesota State Agricultural Society by Minn. Stat § 37.16.

Because the Minnesota State Agricultural Society is not an agency of state-wide jurisdiction, these rules will not be contained in the Minnesota Code of Agency Rules (MCAR).

S.F. 1.2 Definitions. For purposes of these rules, the following definitions shall apply:

A. Board of Managers: The Board of Managers of the Minnesota State Agricultural Society, which is responsible for the management and control of the Minnesota State Fair.

B. Commercial exhibitor: Any person or firm which shows goods, machinery or services for advertising purposes from an assigned Fairgrounds location during the period of the State Fair. Institutions or individuals operating under Commercial Exhibit Contracts are permitted to take orders, but may not accept payment for future delivery or make deliveries from their assigned premises.

C. Competitive exhibitor: Any person or firm which enters animals or articles for competitive exhibition at the State Fair.

D. Concessionaire: Any person or firm which sells, makes deliveries, and/or accepts deposits for future delivery on or from an assigned Fairgrounds location during the period of the State Fair.

E. Department superintendent: That employee of the State Fair who is head of a specific State Fair department and reports to the Secretary—General Manager.

F. Gratis space use permit: The space rental contract with institutions or individuals whose exhibits, in the discretion of the Space Rental Department, qualify as educational or as a service to the Fairgoing public. No retail sales, deposits, deliveries or order taking will be allowed under the terms of this type of space rental agreement.

G. Merchandise permit: The license issued by the State Fair to vendors who desire to solicit orders for and/or deliver articles of food and merchandise to concessionaires at the State Fair. Such a permit does not authorize retail sales of any kind.

H. Minnesota State Agricultural Society (State Fair): The Public Corporation and Department of State charged with the responsibility for management of the State Fairgrounds and the conduct of the annual Minnesota State Fair.

I. Secretary—General Manager: The Secretary—General Manager of the Minnesota State Fair is the chief operating officer of the State Fair.

J. Space rental committee: The committee of three or more members of the Board of Managers, designated by the President.

K. State Fairgrounds: That certain area of land in Ramsey

County, Minnesota defined and described in Minn. Stat. § 37.01 and other real estate parcels as recorded with Ramsey County Register of Deeds, including the area outside as well as inside the fenced portion thereof.

S.F. 1.3 All pay gates. Entry into the Minnesota State Fair shall be solely contingent upon the presentation and surrender of a valid ticket of admission in accordance with the most current schedule of gate prices as established by the Board of Managers. Only properly identified emergency vehicles with crew, such as police, fire and ambulance, as well as properly identified State Fair service vehicles with crew, shall be exempted from this rule when engaged in legitimate emergency or service duty which requires passage through State Fair admission gates.

S.F. 1.4 Gate Controls. Outside gates and exhibit buildings of the Minnesota State Fair will be open to visitors on days and during operating hours as set by the Board of Managers. Persons not involved in the preparation for or teardown of exhibits at the State Fair may be prohibited from entering the Fairgrounds during the preparation and teardown period. Outside gate admission fees will be charged during night-time (non-operation) hours with the same fee schedule in effect as during day-time (operating) hours. Persons entering the grounds during non-operating hours, in addition to paying established gate fees, will be required to provide proof of their having business on the grounds during said non-operating periods. Exhibitors, concessionaires and/or employees, such as watchmen, etc., wishing to enter or remain on the grounds during the overnight period must first obtain an overnight badge from the appropriate State Fair Department Superintendent. No badge will be issued without proper identification.

S.F. 1.5 Pass-out gates. A pass-out system is operated by the State Fair at several of its outside gates. Persons exiting through these gates may, upon request, have their hand and/or vehicle stamped for readmittance without additional charge. Re-admittance will be honored the same day as issuance only.

S.F. 1.6 Admission prices. The State Board of Managers shall annually review and establish outside gate admission prices for persons and vehicles, including specific fee exemptions and discounts for special groups such as children, seniors, employees, exhibitors and concessionaires.

S.F. 1.7 Vehicle restrictions. Maximum vehicle speed limits on the State Fairgrounds, as well as appropriate allowances and restrictions dealing with vehicle parking, delivery hours, restricted areas, tow-away zones and impound arrangements, shall be established by the Secretary—General Manager. The Secretary—General Manager shall provide for the placement of such traffic control signals and signs on the State Fairgrounds as deemed necessary for the proper safety, protection and control of the Fairgrounds and the public thereon. When any police officer finds a vehicle illegally parked on the Fairgrounds, he is authorized to provide for the removal and impoundment of such vehicle. Cost of removal and storage shall be borne by the vehicle's owner.

S.F. 1.8 Pedestrian right-of-way. When walking on or about any street, sidewalk or other area generally open to the public on the State Fairgrounds, pedestrians shall have at all times the right-of-way as against all vehicles, other than identifiable emergency vehicles. Drivers of all vehicles, other than identifiable emergency vehicles, shall yield the right-of-way to any and all pedestrians on the Fairgrounds.

S.F. 1.9 Two-wheeled and track vehicles: Two-wheeled vehicles, such as bicycles, motorcycles, motorscooters, etc., will not be allowed on the Minnesota State Fairgrounds during the period of the annual State Fair unless such two-wheeled vehicles are on display in an exhibit contracted by the Society and, in such case, said two-wheeled vehicles must be kept in exhibit location and may not, under any circumstances, be operated on the streets of the Fairgrounds. Track-type vehicles, including snowmobiles, may not be operated anywhere on the Fairgrounds at any time of the year without the express authorization and approval of the Secretary—General Manager.

S.F. 1.10 Bannering, picketing, interfering. No person or group of persons shall banner, picket or engage in any other activities on the State Fairgrounds before or during the annual State Fair which in any way interfere with a concessionaire's or commercial exhibitor's preparing or conducting his concession or exhibit or which interfere with the free movement of any State Fair patron.

S.F. 1.11 Handing out materials. The sale, posting or distribution of any merchandise, products, promotional items and printed or written materials except from a fixed location on the Fairgrounds approved by the Space Rental Department Superintendent shall be prohibited. Those merchandise, products, promotional items and printed or written materials which are authorized by the Space Rental Department Superintendent for sale or distribution from a fixed location shall not be handed out to any State Fair patron unless requested by that patron.

S.F. 1.12 Advertising vehicles. The operation or parking of any sound trucks or vehicles upon which any advertising signs, political or otherwise, have been affixed in any manner shall be prohibited within or without the fenced off areas of the Fairgrounds. Nothing in this rule shall be construed as being applicable to lettered service trucks advertising a firm or its products while making necessary deliveries of merchandise or service to concessionaires or commercial exhibitors on the State Fairgrounds, or to the normal advertising on bumpers and windows of motor vehicles.

S.F. 1.13 Conflict of interest. No manager, officer or employee of the State Fair shall:

A. Enter into any contract between himself and the State Fair other than his contract of employment.

B. Have or acquire any financial interest, whether direct or indirect, in any contract between the State Fair and any concessionaire, commercial exhibitor, performer, vendor or contractor.

C. Engage or participate in personal business or financial transactions that conflict with his obligations and interests as a member of the Board of Managers, officer or employee of the State Fair, or the interests of the State Fair.

D. Be entitled to any special consideration involving the storage of vehicles and materials on the State Fairgrounds or the use of Fair buildings, machinery, or equipment, except as may be specifically provided by his contract of employment as approved by the Board of Managers.

E. Be allowed to purchase any materials for himself or herself through use of the name, credit or account of the State Fair.

S.F. 1.14 Use of vehicles by Fair employees. All vehicles used by managers, officers or employees of the State Fair in connection with the operation of the State Fair shall:

A. Be the property of the manager, officer or employee, in which the State Fair shall have no interest and shall be under no obligation for upkeep, fuel, oil or repairs; or

B. Be used by the State Fair as part of a service contract, through rental or on a courtesy basis; or

C. Be the sole property of the State Fair to be used only on State Fair business.

No vehicle shall be rented by the State Fair from any of the said managers, officers or employees. All expenses incurred involving the use of privately-owned vehicles of managers, officers or employees while in the conduct of the State Fair business shall be claimed on official expense account blanks.

S.F. 1.15 Equal employment opportunities. The following policies concerning fair and equal employment shall be followed by the State Fair:

A. It shall be the policy of the State Fair to foster the employment of all individuals with the State Fair in accordance with their fullest capacity and ability, regardless of race, color, creed, religion, sex, national origin, disability, age, marital status or status with regard to public assistance, and to safeguard their right to hold employment with the State Fair without discrimination; and

B. Every contract for or on behalf of the State Fair for materials, supplies or construction and/or space rental contracts for commercial sale or exhibit purposes may be cancelled or terminated by the State Fair when discrimination on account of race, color, creed, religion, sex, national origin, disability, age, marital status or status with regard to public assistance, exists in the hiring or employment of common or skilled labor by the contractor pursuant to the contract for or on behalf of the State Fair.

S.F. 1.16 Acceptance of gift. No employee of the State Fair shall personally accept from a person or company that does business with the State Fair, any gift, gratuity, cash, merchandise or thing of value.

S.F. 1.17 Hiring of relatives. No relative of a State Fair employee or a relative of a member of the Board of Managers shall be given preferential treatment in being promoted or being hired for employment at the State Fair. When bona fide business reasons require, such as security or sound cash handling policies, relatives may be precluded from working in the same State Fair Department.

Chapter Two: Space Rental

S.F. 2.1 Length of space rental contracts. Space rental contracts are for the designated period of the annual State Fair and, unless otherwise agreed in writing, commence on the first day and expire with the close of the Fair each year. Such contracts cannot be sold, transferred or assigned without the written approval of the State Fair.

S.F. 2.2 Renewal policy. In order to attract and maintain high-quality concessions and exhibits, it is the policy of the Minnesota State Fair to annually extend to the concessionaires and commercial exhibitors from the prior year's State Fair the opportunity to renew their space rental contracts for the next State Fair. However, the State Fair reserves the right to refuse to renew any space rental contract, when in the sole discretion of the State Fair management, such action is in the best interest of the State Fair and its patrons. Concession and commercial exhibit contract renewals are normally made on the basis of a renewal for the same space, purpose, products, and ownership as in the prior year. Grounds or space alterations or other changes may make it necessary to eliminate certain previously available space from one year to the next. In such instances, the State Fair reserves the right to offer substitute locations or discontinue contracts entirely. The State Fair reserves the right to not renew any space rental contract where the concessionaire or commercial exhibitor has violated any regulation of the State Fair or any state or federal law.

S.F. 2.3 Renewal procedures. As close to November 1 as is practical, the Space Rental Department will send renewal applications to concessionaires and commercial exhibitors from the prior year's Fair. The applications must be returned within 30 days of mailing to guarantee renewal. Any request for approval of a change in location, purpose, or products must be noted on the renewal application.

S.F. 2.4 Space rental rates. General policy determinations governing the rates charged for concession and commercial exhibit space at the State Fair shall be set by the Board of Managers and shall be implemented by the staff of the Space Rental Department.

S.F. 2.5 New application policy. Application forms will be

available and new applications for concession or commercial exhibit space at the Fair shall be accepted by the Space Rental Department beginning on January 1 of each year. Normally there are more applications for space than space available and the Space Rental Department, in its review of these applications, shall exercise its best judgment in determining what is in the best interest of the State Fair and its patrons. Among the factors to be considered by the Space Rental Department in reviewing new applications shall be the health and safety of the Fairgoing public, the extent to which the proposed product or service duplicates those of existing concessions, geographic mix and balance of products and services on the Fairgrounds, the product originality and overall quality of the proposed concession or commercial exhibit, the experience and financial stability of the applicant, and such other factors as the Space Rental Department deems appropriate in determining the best interests of the State Fair and its patrons.

S.F. 2.6 Space rental decisions. The following kinds of decisions of the Space Rental Department shall be in writing and shall be approved by the Secretary—General Manager and the Director of Operations:

A. A determination not to renew a concession or exhibit contract;

B. A determination to grant a renewal with certain changes as to location, purpose, and products;

C. A determination approving or denying a new application for a space rental contract; and

D. A determination approving or denying the proposed sale, transfer or conveyance of any interest in a concession or exhibit at the State Fair.

S.F. 2.7 Space rental review. Any member of the public adversely affected by a decision of the Space Rental Department shall have the right to petition the space rental committee for review of such decision. The review shall be initiated by any such person submitting a request for review in writing to the Secretary—General Manager within 20 days of the date of the letter of action taken by the Space Rental Department. The Secretary—General Manager shall set a meeting of the committee within 45 days thereafter, at which time the committee shall review the matter with the State Fair staff and the person requesting review. If the committee determines that the person was improperly or unfairly handled by the Space Rental Department, it shall have the authority to direct the Space Rental Department to take such remedial steps as the committee deems fair and appropriate. After final disposition of any matter reviewed pursuant to this regulation, the committee shall report such disposition to the board. Requests for review received by the Secretary—General Manager after August 1, will be heard after that year's Fair.

S.F. 2.8 Construction and maintenance of improvements. Any new construction of or alteration to concession or commercial exhibit buildings, booths, tents or enclosures must be approved in advance by the Space Rental Department. A concessionaire or commercial exhibitor intending to erect or alter such a facility shall submit complete plans and specifications to the Space Rental Department, showing that the proposed construction will be in compliance with applicable building codes and will be of an appropriate design and appearance. All tents must be flameproofed and accompanied by a letter of certification showing annual treatment for flameproofing by an approved vendor. The management shall from time to time engage qualified engineering personnel to inspect and evaluate the structural condition of buildings on the grounds. Changes and/or maintenance as shall be ordered by said engineering personnel to insure structural stability and public safety must be accomplished by lessee within a reasonable specific time limit or structure may be ordered closed, removed, or torn down at the expense of the owner.

S.F. 2.9 Off-season use of improvements on grounds. State Fair owned buildings may not be used by concessionaire or commercial exhibitor for storage or any other purpose during the non-fair period without the written approval of the Space Rental Superintendent. Privately owned structures on the grounds may only be used by their owners during the non-fair period for storage of furniture, equipment and supplies used by that person as a part of his State Fair concession or commercial exhibit. Such structures may be used for other purposes only with the written approval of the space rental superintendent.

S.F. 2.10 Ownership of improvements. All buildings, tents, booths, or other enclosures, whether portable or permanently affixed to State Fair property, are personal and not real property. The use of any such improvements on the Fairgrounds is subject to the space rental contract and the regulations of the State Fair. All portable improvements must be removed from the Fairgrounds by September 13 following the Fair or they will be removed or torn down by the State Fair. In the event, for any reason whatsoever, the State Fair determines that the space rental contract for a concession or commercial exhibit involving an improvement permanently affixed to State Fair property shall not be renewed and that the permanent improvement should be removed from the grounds, the State Fair shall give written notice to the owner and provide a reasonable time for the removal of the permanent improvement and restoration of the underlying real property. Failure to remove the permanent improvement within the time specified by the State Fair shall result in the forfeit of all claims to the permanent improvement and the State Fair may take possession of or remove the same, charging any expense for removal and restoration to the owner.

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

S.F. 2.11 Multiple ownership of concessions and commercial exhibits. It is the policy of the Board of Managers to have as many different persons as is possible and practical participating as commercial exhibitors and concessionaires at the State Fair. The board discourages ownership of multiple concessions by any one person, partnership or corporation. Owners of multiple concessions or commercial exhibits will not be allowed to enter into additional space rental contracts unless there are compelling facfors which indicate that it would be in the best interest of the Fair and the fairgoing public to do so.

S.F. 2.12 Approval of transfers. A concessionaire or commercial exhibitor may transfer his interest in a concession or commercial exhibit contract when, in the judgment of the Space Rental Department, it is in the best interest of the Fair and the fairgoing public to continue to have that concession or exhibit participate in the Fair. A concessionaire or commercial exhibitor desiring to transfer his interest in a space rental contract should so notify the Space Rental Department in writing. The Space Rental Department shall approve, deny or otherwise respond in writing to the request for transfer within 20 days after the receipt thereof. In reviewing a request for such a transfer, the Space Rental Department shall consider, among other things, the quality of any structures or improvements and the quality of any products or services involved. After approval of a request for transfer, a concession or commercial exhibit contract will be entered into with a proposed purchaser or transferee upon satisfaction of the following conditions:

A. The fact that the concession or commercial exhibit has been approved for transfer has been posted for 30 days at the State Fair Space Rental Department. The purpose of this posting is to advise members of the public who are interested in obtaining a concession or commercial exhibit at the Fair that the particular concession or commercial exhibit is available for transfer; and

B. A full and appropriate financial disclosure has been made in writing concerning the transfer of the concession or commercial exhibit and any personal property involved; and

C. The transaction does not violate the State Fair's policy concerning multiple ownership of concessions and exhibits; and

D. The proposed purchaser or transferee has adequate experience and financial stability to successfully own or operate a concession at the State Fair; and

E. The proposed transaction is in the best interest of the Fair and is consistent with the health, safety and enjoyment of the fairgoing public.

S.F. 2.13 Use of space. A commercial exhibitor or concessionaire must confine his business, and the promotion and advertising of same on the Fairgrounds to the space assigned him. Failure to comply with this rule will subject commercial exhibitor or concessionaire to forfeiture of space privileges without reimbursement.

S.F. 2.14 Risk of loss. The State Fair assumes no liability for loss or damage to any property of the exhibitor or concessionaire due to fire, tornado, weather conditions, theft, vandalism, or other causes. It is suggested that a commercial exhibitor or concessionaire bringing property or goods onto the State Fairgrounds protect such property or goods by appropriate insurance.

S.F. 2.15 Prize drawings. The following will apply to all concessionaires and commercial exhibitors who intend to hold a sign-up prize drawing at the State Fair:

A. All concessionaires and commercial exhibitors who intend to hold a prize drawing must first obtain permission from the Space Rental Superintendent and obtain from him the necessary forms; and

B. Drawings must be completed during the period of the State Fair. Only the advertised prize may be awarded and no further drawing or purchase shall be necessary for the person to be eligible for the prize drawing; and

C. All concessionaires or commercial exhibitors who conduct prize drawings must submit to the Space Rental Department, within two weeks after the close of the Fair, a written statement listing the name, address and prize delivered to each winner; and

D. If persons signing up for a prize drawing are subject to sales appointments, contracts or calls because they have signed up for a prize drawing, this must be indicated in writing at the drawing registration point; and

E. All persons or companies which do not comply with this rule may be subject to removal from the grounds and/or forfeiture of contract as the State Fair may elect.

S.F. 2.16 Merchandise permits. Parties desiring merchandising permits for the designated period of the annual State Fair must obtain such permits from the office of the space rental superintendent. Delivery trucks not properly identified with said merchandise permits shall be prohibited from entering the grounds at any time during the period of the State Fair.

S.F. 2.17 Regulation of conduct and activities. The society recognizes that the State Fair is a proper forum for the free exchange of ideas necessary to a free society, yet reserves the right to regulate all activities, concessions and exhibitions on the Fairgrounds with regard to time, manner and place in pursuance of its valid interest in maintaining peace and order and protection of the general public. Concessionaires and commercial exhibitors shall comply with all applicable state and federal laws and must be familiar with the procedures and information set forth in the space rental information manual.

S.F. 2.18 Sales tax permit. Concessionaires and commercial exhibitors involved in taxable retail sales shall be responsible for obtaining a Minnesota State Sales Tax Permit. Non-compliance with Minnesota tax laws may be grounds for cancellation of space and/or denial of renewal.

Chapter Three: Competitive Exhibits

S.F. 3.1 Exhibition times. Times for the setup of entries, the dismantling and removal of entries and the hours of public

viewing will be set annually by the competitive exhibits coordinator and will be stated in individual department premium books.

S.F. 3.2 Responsibility for exhibits. The State Fair will use diligence to protect livestock and articles entered for exhibition, after their arrival and placement, but under no circumstances will it be responsible for any loss, injury or damage done to or caused by any animal or article on exhibition. It is the responsibility of the competitive exhibitor to obtain appropriate insurance for any damages due to or caused by the exhibit and to indemnify and hold the Fair harmless against any claim arising out of incidents involving the exhibit. Removal or pickup of exhibits at established times as stated in individual department premium books, entry blanks and/or entry receipts, shall be the responsibility of the competitive exhibitor. The State Fair shall not be responsible for any exhibit not removed or picked up at established time and will dispose of all exhibits not removed or picked up within one year of such established time.

S.F. 3.3 Livestock Sanitary Board. The exhibition of livestock shall be under the supervision of the Minnesota Livestock Sanitary Board and its applicable rules and regulations will be complied with in full. Health requirements for individual departments will be set forth in their respective premium books.

S.F. 3.4 General entry requirements. Competitive exhibitors must file proper entry blanks with any applicable fees prior to the designated closing date for entries. The State Fair reserves the right to refuse entries or prohibit the exhibition of animals or articles entered if the showing of such animals or articles is contrary to law, or violative of the Fair's valid interest in providing for the health, safety and protection of the fairgoing public. Exhibits entered in the wrong lot or category may be transferred prior to judging at the discretion of the department superintendent to the proper lot or category of competition. Deception of any type by an exhibitor, as determined by the judge or department superintendent, will ban the exhibitor from any further competition and result in the forfeiture of all premiums. Mechanical or artistic articles must be entered in the name of the artist, inventor, manufacturer or maker.

S.F. 3.5 Animal entry requirements. When animals are entered for competition by an entity other than an individual, that entity (whether a corporation, partnership, breeding establishment or other form) must have been in existence as of the closing date of entries. Appropriate documentation showing the status of the entity must be available for inspection by the department superintendent. All animals entered under a breed classification must be recorded in a breeding association recognized as representative of the particular breed. The competitive exhibitor must produce a certificate of registry at the request of the department superintendent. All animals shown must be owned by the competitive exhibitor from the time of making entry, except as otherwise provided in special rules of the department.

S.F. 3.6 Judges. No person who is a competitive exhibitor can act as judge in a class in which he or she is competing. Judges shall be responsible for reading and understanding the general rules and all special rules applicable to the department or class in which they are to serve.

S.F. 3.7 Interference with judging. Judges shall report to the department superintendent any competitive exhibitor who in any way, whether in person or by agent or employee, interferes with them or shows any disrespect to them during the judging. The department superintendent may, at his discretion, exclude any such competitive exhibitor from further competition. The Secretary-General Manager may withhold from such competitive exhibitor any or all premiums that have been awarded and may also exclude such competitive exhibitor from further competition at the Fair.

S.F. 3.8 Award books. Judges and persons acting as clerks to the judges must use special care, after awards have been made, to record the proper names in the award books. The judge, department superintendent and clerk recording the awards of the department must sign the award book at the close of each class immediately after all awards in such class have been made.

S.F. 3.9 Qualification of entries. If there is any question as to the regularity of an entry or the right of any animal or article to compete in any lot or category, the judge or judges shall report same to the department superintendent in charge for adjustment. Judges shall place a reserve award in each lot. Should any animal or article awarded a prize be disqualified, the animal or article awarded the next lower prize shall graduate into the next higher position, if in the opinion of the judge, it is worthy of such prize. Judges must not award a prize to an unworthy exhibit. No premium or distinction of any kind shall be given to any animal or article that is not deserving.

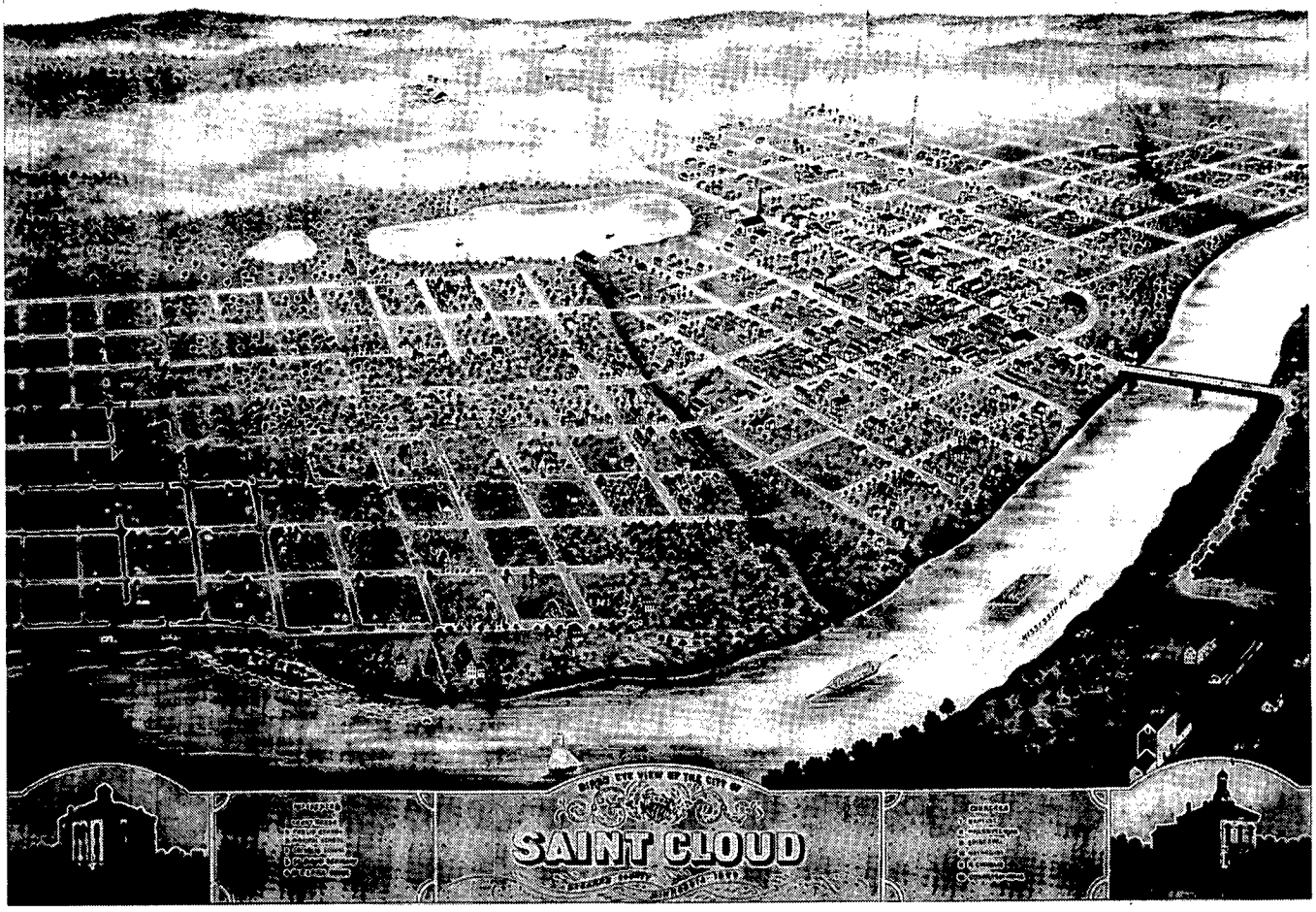
S.F. 3.10 Finality of decisions. In judging livestock, the decision of the official State Fair veterinarian and judge as to soundness shall be final. The decision of the judge shall be final in all cases, except when mistake, fraud, misrepresentation or collusion, not known at the time of the award is discovered. In such cases, the Secretary-General Manager shall take appropriate action or refer the matter to the Board of Managers.

S.F. 3.11 Interpretation of rules. A faithful observance of all rules governing the exhibit will be required, and when in doubt as to the application or meaning of a rule, the department superintendent in charge shall interpret such a rule. This opinion when required by either a competitive exhibitor or judge must be reduced to writing and returned to the competitive exhibits coordinator with the award books.

S.F. 3.12 Protests and appeals. All protests from a decision of a judge must be filed with the Secretary-General Manager within five (5) hours after the award has been made. An award is deemed to have been made when the notation of the decision of the judge is entered into the department award book. All protests must be made in writing and must be accompanied by a deposit of twenty ($20.00) dollars. The protest must state plainly and specifically the facts upon which the complaint or appeal is based. The right to appeal will lie only when it is charged that the award has been made in violation of the rules governing the exhibit, or when it is charged that the decision of the judge has been influenced or interfered with by another person. No protest or appeal based upon the statement that the judge or judges are incompetent or have overlooked an animal or article will be considered. The twenty ($20.00) dollar deposit will be returned only if the protest or appeal is upheld.

S.F. 3.13 Late showing of exhibit. No animal or exhibit will be judged or awarded a prize if it is not ready for judging and promptly brought into the showring when the lot is called or the exhibit category is judged.

S.F. 3.14 Premium money. Cash premiums awarded will be paid by check made out to the exhibitor and mailed to the post office address as stated on the entry blank. Competitive exhibitors may forfeit all premium money if exhibits are removed from the grounds prior to the official time of release. The Board of Managers reserves the right to make reductions in premiums if the financial conditions of the Minnesota State Fair make such reductions necessary.



St. Cloud has grown a bit since pioneer days when this lithograph drawn by Albert Ruger represented how the city looked in 1869. (Photo courtesy of the Minnesota Historical Society).

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the attorney general in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the attorney general, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

Bunge Corporation and
Bunge Export Corporation, **Appellants,**

-vs-

The Commissioner of Revenue, **Appellee.**
Docket No. 2510 **Order dated February 21, 1980**

Appellant Bunge Corporation is a grain dealer and exporter of grain and other agricultural commodities with its legal and commercial domicile in New York. Appellant Bunge Export Corporation is a wholly-owned subsidiary of Bunge Corporation qualified under the federal Internal Revenue Code for tax treatment as a domestic international sales corporation (DISC). By his Order dated August 8, 1977 the Commissioner of Revenue disallowed deductions for commissions and interest paid by Bunge Corporation to its DISC, Bunge Export Corporation. The Commissioner claims that payment of commissions to the DISC are not payment for services actually rendered and are therefore not deductible as an "ordinary and necessary" business expense under Minn. Stat. § 290.09, subd. 2. The commissioner also contends that Minn. Stat. § 290.34, subd. 1 authorizes the Commissioner to disregard the DISC commission/dividend/loan arrangements and transactions because they have the effect of improperly reducing Bunge Corporation's net income attributable to this state.

Appellants claim both commission and interest payments are proper deductions.

Clinton A. Schroeder and John P. James of Gray, Plant, Mooty, Mooty & Bennett, for Appellants,
C. H. Luther, Deputy Attorney General, for Appellee.

Decision

The Order of the Commissioner of Revenue dated August 8, 1977 is hereby affirmed in part and modified in part.

Findings of Fact

Earl B. Gustafson

The essential findings of fact were stipulated between the parties as follows:

1. Bunge Corporation is a corporation formed under the laws of the State of New York, with principal offices at One Chase Manhatten Plaza, New York, New York 10005. New York is both its legal and commercial domicile.

2. Bunge Corporation is a major buyer, processor, seller and exporter of agricultural commodities with business operations in numerous states, one of which is Minnesota, and in foreign countries. It pays Minnesota income tax based upon the three factor apportionment formula of Minn. Stat. § 290.19. The apportionment factors in the years in question, as adjusted by the Commissioner in certain minor respects which are accepted by Bunge Corporation, were as follows:

	Tangible Property	Payroll	Sales	Average	Weighted Ratio
1973	9.1645%	6.6503	6.3101	7.3750	6.7893
1974	7.9234	4.8046	6.9582	6.5621	6.7799
1975	8.2693	4.3422	3.8162	5.4759	4.5631
1976	11.1950	4.6973	3.8722	6.5882	5.0944

3. Bunge Corporation timely filed its Minnesota income tax returns for the years 1973 through 1976.

4. The adjustments in Bunge Corporation's taxes in question here are based upon an audit report dated July 1, 1977. A combination Proposed Changes in Tax Liability and Order Determining Tax Liability was sent by the Commissioner of Revenue to Bunge Corporation on or about July 1, 1977. The Order being appealed is dated August 8, 1977 and the Notice of Appeal was timely filed on November 7, 1977.

5. Bunge Corporation's and Bunge Export Corporation's taxable year is a fiscal year ending March 31. References herein to particular years are to the taxable year ending on March 31 of said years. This appeal relates to Minnesota income taxes for the years 1973 through 1976.

6. In 1971, Contress enacted the DISC Statute, Sections 991 through 997 of the Internal Revenue Code, 26 U.S.C. Section 991-97, Revenue Act of 1971, P.L. 92-178, Section 501, 85 Stat. 497 (December 10, 1971). These sections prescribe the special federal income tax treatment of corporations and shareholders of corporations which qualify thereunder as Domestic International Sales Corporations (DISCs) for taxable years beginning on or after January 1, 1972.

7. In March, 1972 Bunge Corporation organized Bunge Export Corporation to take advantage of the federal DISC statute. Bunge Export Corporation is a wholly owned subsidiary corporation of Bunge Corporation formed under the laws of the State of Delaware, with its principal office at the principal office of Bunge Corporation at One Chase Manhatten Plaza, New York, New York 10005. Delaware to its legal domicile and New York its commercial domicile.

8. On March 27, 1972, Bunge Export Corporation and Bunge Corporation entered into an agreement making Bunge Export Corporation the commission sales agent of Bunge Corporation with respect to sales which give rise to Qualified Export receipts as defined in the DISC statute. The contract has been in force continuously beginning April 1, 1972. The commission payments by Bunge Corporation to Bunge Export Corporation which are at issue were all made pursuant to this agreement. The agreement reads as follows:

Bunge Export Corporation
One Chase Manhatten Plaza
New York, New York 10005

Dear Sirs:

This is to confirm our agreement, effective April 1, 1972, appointing you our sales agent with respect to the sales of commodities, goods and services (including, but not limited to, grains, meals and oilseeds, vegetable oils, tallow, lard and greases, machinery and equipment, and technical services) which give rise to Qualified Export Receipts as such term is defined in Section 993 (a) of the Internal Revenue Code of 1954 (the "Code").

You shall receive commissions with respect to such sales in an amount equal to the maximum amount permitted to be received under the inter-company pricing rules of Section 994 of the Code. Payment of such commissions will be made to you within 90 days after March 31 of each year, or at such earlier time or times or from time to time as required by the Internal Revenue Service.

You will maintain your own bank accounts and separate books and records. We will solicit orders for such commodities, goods and services in our own name and also handle all billings and collections.

The term of this agreement shall be from April 1, 1972 to March 31, 1973, and shall be renewed from year to year thereafter unless either party shall give the other 60 days notice of termination prior to the end of any year. This agreement shall be deemed to include any other provisions and shall, from time to time, be required by the Internal Revenue Service, as of the date such provisions may be required in order for the parties hereto to obtain the maximum benefits of Section 991 *et seq.* of the Code.

If the foregoing properly sets forth our agreement please sign and return the copy of this letter.

Very truly yours,
BUNGE CORPORATION

By_____(Signature)_____
Vice President

ACCEPTED:
BUNGE EXPORT CORPORATION

By_____(Signature)_____
Vice President

9. Among the resolutions adopted by the Bunge Export Corporation Board of Directors at its meeting on March 27, 1972 was the following:

RESOLVED, that the officers of this corporation, or any one of them acting alone, be and they hereby are authorized and directed to execute such documents and to take such action and do such things as may be necessary or proper for the corporation to elect to be treated, and to qualify, as Domestic International Sales Corporation (DISC), as defined in Section 992 of the Internal Revenue Code of 1954, as of April 1, 1972 and thereafter.

Bunge Export Corporation did elect to be a DISC effective April 1, 1972. That election has been in effect continuously thereafter.

10. Shortly after March 27, 1972, Bunge Export Corporation opened one or more bank accounts. Thereafter during the period in question Bunge Export Corporation has maintained bank accounts continuously in one or more of Morgan Guaranty Trust Co., First National City Bank and Chemical Bank, each located in New York City. No other bank accounts have been maintained and at no time has Bunge Export Corporation had funds in Minnesota.

11. Bunge Export Corporation has its own books and records.

12. Bunge Export Corporation is authorized by its Certificate of Incorporation to engage in any business permissible for a Delaware corporation. It was organized and has been utilized for the sole purpose of enabling Bunge Corporation to receive the federal income tax benefits authorized in Sections 991 through 997 of the Internal Revenue Code, 26 U.S.C. Sections 991-97. It has no employees of its own. All of the sales for which it received the commissions described herein were made by employees of Bunge Corporation. All billings and collections with respect to those sales were made by employees of Bunge Corporation. The books and records of Bunge Export Corporation are kept by employees of Bunge Corporation. Bunge Export Corporation pays no salaries, for all persons performing actions on Bunge Export Corporation's behalf are employees of and paid by Bunge Corporation. Bunge Export Corporation has performed no functions other than engaging in those transactions related to its operation as a commission DISC: it receives the DISC sales commissions and interest from Bunge Corporation and interest from investments, which funds are deposited in its bank accounts; it repays one-half of those commissions an interest to Bunge Corporation as DISC dividends; it purchases and sells short-term and long-term notes of Private Export Funding Corporatio (PEFC); it holds the usual directors and shareholders meetings connected with the operation of a corporation; it maintains books and records to reflect its activities; and it files federal income tax returns on Form 1120-DISC. All assets of Bunge Export Corporation are owned by it in its own right.

13. Bunge Export Corporation reported to the Internal Revenue Service on Form 1120-DISC that its income and expenses in the fiscal years in question have been as follows:

	1973	1974	1975	1976
Income:				
Commissions from Bunge Corporation	$5,252,427	$51,053,488	$47,480,053	$ 8,915,920
Interest from Bunge Corporation		330,093	4,027,822	2,448,104
Interest from PEFCO Obligations		8,539	85,448	1,354,728
Total Income	$5,252,427	$51,392,120	$51,593,323	$12,718,752
Deductions:	—	15	—	—
Net Income	$5,252,427	$51,392,105	$51,593,323	$12,718,752

14. Bunge Export Corporation has no property in Minnesota, has made no Minnesota sales and has never filed a Minnesota Income Tax Return.

15. The amounts of the commissions paid to Bunge Export Corporation by Bunge Corporation have been determined in accordance with the terms of the agreement set out in paragraph 8.

16. The affairs of Bunge Export Corporation have been managed so that most of the commission payments received from Bunge Corporation have immediately been lent back to Bunge Corporation. Such loans have been short term loans evidenced by promissory notes payable within the fiscal year in which made. Bunge Export Corporation's interest income from Bunge Corporation is interest on those loans to Bunge Corporation and, in one instance, on commissions receivable from Bunge Corporation.

17. In addition to making the loans to Bunge Corporation as set forth in paragraph 16, Bunge Export Corporation has invested funds in obligations of Private Export Funding Corporation (PEFCO), on which it has earned interest income. The PEFCO obligations are guaranteed by the Export-Import Bank of the United States. PEFCO is completely independent of Bunge Corporation and subsidiaries.

18. The affairs of Bunge Corporation and Bunge Export Corporation have been conducted continuously in such a manner as to attempt to maintain Bunge Export Corporation's qualification as a DISC. This requires that thousands of sale transactions be reviewed as made to determine whether the revenue will be "qualified export receipts" under the DISC provisions and, if so, that the transaction be properly structured to demonstrate qualification. The officers of Bunge Corporation and Bunge Export Corporation believe that Bunge Export Corporation has qualified as a DISC continuously since April 1, 1972 and that status is not questioned by the Commissioner.

19. Bunge Corporation, in computing its net income for federal income tax purposes and its net income subject to apportionment for Minnesota income tax purposes, deducted the commissions payable to Bunge Export Corporation pursuant to the agreement set out in Paragraph 8 and interest payable to Bunge Export Corporation as follows:

	Deduction Claimed	
Year Ended	Commissions	Interest
March 31, 1973	$ 5,252,427	$ —
March 31, 1974	51,053,488	330,093
March 31, 1975	47,480,053	4,027,822
March 31, 1976	8,915,920	2,448,104

20. Bunge Corporation, in computing its net income for federal income tax purposes, included as taxable dividends from Bunge Export Corporation, dividends which were declared and paid as follows:

Recognized In Year Ended	Declared	Paid	Amount
3-31-73	12-10-73	12-14-73	$ 2,626,214
3-31-74	12-03-74	12-15-74	25,696,053
3-31-75	12-01-75	12-15-75	25,796,662
3-31-76	12-08-76	12-15-76	6,359,376

On its Minnesota income tax returns, Bunge Corporation reported the aforesaid dividends as non-apportionable net income.

21. The commissioner disallowed the deductions referred to in paragraph 19 in each year in question, thereby increasing the net income subject to apportionment for Minnesota income tax purposes by the amounts of the disallowed deductions.

22. The Commissioner adjusted the income of Bunge Corporation to disregard completely dividends from Bunge Export Corporation by reducing the net income and the non-apportionable net income of Bunge Corporation by the amount of the disregarded dividends.

23. The adjustments referred to in paragraphs 21 and 22 are the only matters in dispute. The amounts in question are those shown in paragraphs 19 and 20. The issues are precisely the same in all respects except amount for all four years.

24. The Minnesota income tax law contains no provisions giving special tax treatment to a DISC similar to the special tax treatment provided for federal income tax purposes in the federal DISC statute, Internal Revenue Code Sections 991-997. The only provision in the Minnesota income tax law relating to DISCs is contained in § 290.19, subd. 1a, which provides in relevant part:

Sales made by or through a corporation which is qualified as a domestic international sales corporation under Section 992 of the Internal Revenue Code, as amended through December 31, 1976, shall not be considered to have been made within this state.

25. No regulation relating to the taxation of DISCs has been promulgated by the Minnesota Department of Revenue. No ruling or other administrative pronouncement of any kind with respect to the taxation of DISCs has been filed with the Minnesota Secretary of State.

26. It is the Commissioner's position that the DISC commission/dividend arrangements between Bunge Corporation and its wholly-owned subsidiary Bunge Export Corporation artificially reduce the apportionable income of Bunge Corporation (i.e., the income attributable to this state), and that the effect and result of Bunge Corporation's paying the DISC commissions to Bunge Export Corporation on its export sales of commodities is that Bunge Corporation receives less for the sale of those commodities than the fair price which it might otherwise obtain therefor, since its sales receipts are reduced by the amount of the DISC commissions paid to Bunge Export Corporation. Consequently, the Commissioner contends that M.S. Section 290.34, subdivision 1, authorizes the Commissioner to disregard the DISC commission/dividend arrangements between Bunge Corporation and its wholly-owned subsidiary Bunge Export Corporation, and to determine the amount of Bunge Corporation's income so as to reflect what the Commissioner contends it would have been but for those DISC commission/dividend arrangements, which the Commissioner contends cause its taxable net income to be understated.

27. Except as provided in paragraph 26, the Commissioner does not contend that any sales made by Bunge Corporation were made at other than fair, arm's length prices and the parties agree that for purposes of this proceeding all sales by Bunge Corporation shall be considered to have been made at fair, arm's length prices except to the extent, if any, that the commissions payable to Bunge Export Corporation require a different conclusion.

28. The Commissioner does not contend that any purchases made by Bunge Corporation were made at other than fair, arm's length prices and the parties agree that for purposes of this proceeding all purchases by Bunge Corporation shall be considered to have been made at fair, arm's length prices.

29. The parties agree that the commission, interest and dividend transactions referred to herein are the only transactions between Bunge Corporation and Bunge Export Corporation which are relevant to this proceeding.

30. The parties agree that the commissions and the interest were paid by Bunge Corporation to Bunge Export Corporation in accordance with the terms of agreements between them; that Bunge Corporation had no legal obligation to make the commission payments to Bunge Export Corporation other than that created by the agreement set out in paragraph 8; and that the interest payments by Bunge Corporation to Bunge Export Corporation were required by the terms of the agreement between them.

Conclusions of Law

1. Commission payments made by Bunge Corporation to Bunge Export Corporation should be disallowed in computing Bunge Corporation's net income prior to apportionment for Minnesota income taxes as not being "ordinary and necessary" business expenses under Minn. Stat. § 290.19, subd. 2(a).

2. Dividends paid by Bunge Export Corporation to Bunge Corporation should not be included in Bunge Corporation's income prior to apportionment for Minnesota income taxes.

3. Interest payments made by Bunge Corporation to Bunge Export Corporation are allowable deductions in computing Bunge Corporation's net income under Minn. Stat. § 290.09, subd. 3(a).

Memorandum

The major question raised by this appeal is whether commission payments made by a parent corporation to its subsidiary DISC qualify as "ordinary and necessary" business deductions under Minnesota income tax law.

We find they do not.

The Appellants are Bunge Corporation, a major buyer and seller of agricultural commodities and Bunge Export Corporation, its wholly-owned subsidiary. Bunge Export Corporation qualifies under federal income tax law as a domestic international sales corporation, commonly known by the acronym "DISC." The payments in dispute are transfers of cash from Bunge Corporation, the parent corporation, to Bunge Export Corporation.

In 1971 congress enacted the DISC provisions, Sections 991 through 997 Internal Revenue Code, 26 U.S.C., Sections 991-997, for the expressed purpose of encouraging exports by U.S. corporations. This DISC statute allows U.S. corporations to defer federal income tax on 25 percent of the profits they earn in the export business by authorizing them to form a subsidiary corporation, as was done in this case, and assign up to 50 percent of its export business profits to this DISC. These payments to the subsidiary DISC are called "commissions." The federal DISC law further requires the subsidiary to return half of the "commissions" each taxable year to the parent as dividends so that 25 percent of the profits are treated as income to the parent and the remaining 25 percent remains in the DISC subsidiary free from federal income taxation until such time as they may be distributed back to the parent corporation.

Bunge Corporation, following the federal DISC law, formed the Bunge Export Corporation as its subsidiary DISC and has made commission payments to it totaling $112,701,188 during the taxable years under review, 1973, 1974, 1975 and 1976. It also paid interest of $6,806,019 on loans it received from its DISC. Bunge Corporation pays a Minnesota income tax on the approximately 5 or 6 percent of its total business that is allocated to the State of Minnesota by the three factor apportionment formula in Minn. Stat. 290.19. The Commissioner of Revenue claims that the payment of these "commissions" and interest are not allowable deductions under Minnesota law while the Appellants maintain they are. These differing views put taxes of $666,101 in dispute.

The threshold issue for us to consider is whether cash transfers made by a corporation to its DISC subsidiary for the sole purpose of minimizing federal taxes under a federally encouraged export program qualify as "ordinary and necessary business expenses" under Minn. Stat. § 290.09, subd. 2(a). This is a question of first impression in Minnesota. The only other state that has apparently considered a similar case is Kentucky. The Kentucky Board of Tax Appeals disregarded the payment made to a DISC subsidiary and included the income in the parent corporation's apportionable net income because a specific Kentucky statute authorized the state to consider the parent corporation's business and the subsidiary's business as unitary in nature. *The Early Daniel Company, Inc. V. Department of Revenue*, Kentucky Board of Tax Appeals, July 17, 1978, C.C.H. Kentucky Tax Reports, 201-509.

To qualify as deductions under Minnesota law the commission payments made to Bunge Export Corporation have to represent compensation for services actually rendered. This is what is required by Minn. Stat. § 290.09, subd. 2(a) which reads in material part as follows:

> Subd. 2. Trade or business expenses; expenses for production of income. (a) In General. There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including
>
> (1) A reasonable allowance for salaries or other *compensation for personal services actually rendered;* (Emphasis added,)

Bunge Export Corporation is a separate legal entity but for all intents and purposes is a "paper" corporation. It has no employees of its own and no payroll. All of the sales on which these commissions are paid are made by Bunge Corporation employees and all of the collections are made by Bunge Corporation. The books and records of the DISC are kept by Bunge Corporation. Even the cash transfers that are made to Bunge Export Corporation, the DISC, and qualify for federal tax deferment are immediately returned to the parent Bunge Corporation in the form of loans. Bunge Export has performed no functions other than engaging in those transactions related to its operation as a commission DISC. Payments of $112,701,188 to a corporation that has no employees and, in fact, is providing no actual services would not come within any definition of "reasonable compensation" for services rendered. Appellants did not, in fact, take these "commission" payments as business deductions under federal law. Claimed deductions for what are in essence a camouflaged assignment of income are not considered ordinary and necessary expenses under federal law. *Audano v. United States*, 428 F. 2d 251 (5th Cir. 1970), *B. Forman Company v. Commissioner of Internal Revenue*, 453 F. 2d 1144 (2nd Cir. 1972.) The fact that the taxpayer is contractually bound to make the payment does not render it an ordinary expense. *Interstate Transit Lines v. Commissioner of Internal Revenue*, 319 U.S. 590, 63 S.Ct. 1279, 87 L.Ed. 1607 (1943).

Appellants contend that these payments should be considered "ordinary and necessary business expenses" under Minnesota law because Appellants, by making these payments, are participating in a federally sponsored and encouraged program promoting exports. As worthy an objective as this may be as a matter of public policy, the Minnesota Legislature has not, as yet, seen fit to enact similar tax deferment legislation, nor to our knowledge has any other state.[1]

The law is well settled in Minnesota that although Minnesota income tax law is patterned after the Federal Internal Revenue Code, changes in the Federal law are not automatically incorporated in the Minnesota Statutes. This can only be done by action of the Minnesota Legislature. The rule that a state legislature may not delegate its legislative powers to the federal government, especially in the area of taxation, is clearly expressed in *Wallace v. Commissioner of Taxation*, 289 Minn. 220, 184 N.W. 2d 588 (1971):

> In considering the issue of whether a change in Federal law may alter the force and effect of provisions in a prior state law governing the same subject, it may be said that the principle which controls is that a state legislature may not delegate its legislative powers to any outside agency, including the Congress of the United States. The reason for this rule is that changes in the foreign legislation may not fit the policy of the incorporating legislature and the person subjected to the changed law would be denied the benefit of the considered judgment of his legislature on the matter. The basic objection derives from the principle that laws should be made by elected representatives of the people responsible to the electorate for their acts. That principle is expressed in Minn. Const. art 9, Section 1, which states in part: "The power of taxation shall never be surrendered, suspended or contracted away." See, 16 Am.Jur. (2d) Constitutional Law, Section 245; Annotations, 133 A.L.R. 401; 79 L.Ed. 474, 504 166 A.L.R. 516, 518, 42 A.L.R. (2d) 797.289 Minn. 220, 226.

The DISC commissions paid by Bunge to Bunge Export were not incurred in connection with Bunge's regular business activities as a buyer, processor, seller and exporter of agricultural commodities. That business was carried on in exactly the same way as it had been before Bunge Export came into existence. This was, in essence, an assignment of a portion of its income to Bunge Export in order to shelter 25 percent of its export business profits from the federal income tax.

This was legal and proper under the special federal DISC statute, but since Bunge Export rendered no personal services to earn its DISC commissions, those commissions are not deductible as an ordinary and necessary business expense under Minn. Stat. § 290.09, subd. 2(a).

Turning now to other issues, Appellant argues forcefully that the Commissioner has no authority under Minn. Stat. § 290.34 to issue the order being appealed which had the effect of disregarding the commission/dividend/loan arrangements between Bunge and its DISC, Bunge Export. Appellant claims Minn. Stat. § 290.34 can only be invoked to stop some kind of fraudulent or illegal tax avoidance scheme. We do not read this statute as necessarily requiring a finding of fraud or impropriety. Minn. Stat. § 290.34, subd. 1 reads, in pertinent part, as follows:

> When any corporation liable to taxation under this chapter conducts its business in such a manner as . . . to reduce the income attributable to this state by selling the commodities or services in which it deals at less than the fair price which might be obtained therefor, ... the commissioner of revenue may determine the amount of its income so as to reflect what would have been its reasonable taxable net income but for the arrangements causing the understatement of its taxable net income . . . . having regard to the fair profits which, but for any agreement, arrangement or understanding might have been or could have been obtained from such business.

[1]Several states have enacted statutes recognizing the existence of DISC corporations as being separate corporate entities from their parent. See, e.g., Md. Code Ann. art. 81, Sec. 280A; Ohio Rev. Code Ann. Sec. 5733.04 (I) (6); Mass. Laws Ann. ch. 63, Sec. 38G; N.Y. Tax Law, Sections 209-11; Va. Code Ann., title 58, Sec. 58-151.013; Conn. Stat. Ann. Sections 12-214 and 12-218.

In addition, Minn. Stat. § 290.46 gives the Commissioner general authority to investigate and redetermine the income tax as reported on a taxpayer's return and adds, "The tax computed by him on the basis of such examinations and investigation shall be the tax to be paid by such taxpayer."

We do not find the actions or procedures followed by the Commissioner as being unauthorized or in violation of either procedural or substantive due process. Beyond that, what has preceded this appeal is not as important as it might be if this were an appellate court limited only to a review of the record of prior proceedings. This is not our function. Under Minn. Stat. § 271.06, subd. 6, Tax Court hearings are de novo and under Minn. Stat. § 271.05 the Tax Court is given power to review and redetermine orders or decisions of the Commissioner. This is exactly what we are doing in this case.

The remaining issue of substance is the treatment that should be accorded the interest payments Bunge made to its DISC, Bunge Export. The Commissioner argues these interest payments should be ignored and not allowed as a deduction in figuring Bunge Corporation's net income subject to apportionment. We disagree. Loans were actually made and evidenced by promissory notes. Bunge Corporation actually paid this interest totaling $6,806,019 to Bunge Export. Interest payments were required by the terms of the agreement between the two corporations. Minnesota income tax is clear under these facts. Interest paid or accrued within the taxable year on indebtedness is deductible. Minn. Stat. § 290.09, subd. 3(a). Interest on money borrowed from a third party would received the same treatment.

Appellants raised a number of other objections in their briefs which can be summarized as follows:

1. The assessment is improper because it was made pursuant to an attempt by the Commissioner to legislate.
2. The assessment and the ruling upon which it is based are improper for failure to follow the Minnesota Administrative Procedure Act.
3. The assessment is improper because it violates the United States Constitution in the following respects:

A. Requiring payment of the assessment would be a taking of property without due process of law.

B. The procedures followed were so defective as to violate the due process clause.

C. The assessment unconstitutionally discriminates against interstate and foreign commerce.

D. The Commissioner's refusal to give effect to transactions involving DISCs on the ground that they are tantamount to tax evasion violates the commerce and supremacy clauses.

E. The assessment is invalid because it is founded upon an unfair apportionment of Bunge Corporation's income between Minnesota and non-Minnesota activities.

4. Minnesota cannot directly tax the income of Bunge Export Corporation and not be allowed to do so indirectly.

We have considered all of these additional issues raised by Appellants and find them lacking in merit.

After a careful review of the facts as stipulated, we have concluded that the commission payments made to Bunge Export Corporation should be disallowed as not being "ordinary and necessary" business expenses under Minn. Stat. § 290.09, subd. 2(a). To avoid double taxation of the same income the dividends returned by Bunge Export, the DISC, to Bunge Corporation should not be included in its income prior to any apportionment for Minnesota income taxes. We further order the Commissioner to allow Bunge Corporation to deduct the interest payments actually made to Bunge Export Corporation under Minn. Stat. § 290.09, subd. 3(a).

Earl B. Gustafson, Judge

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Metropolitan Council

Notice of Request for Proposals for Aerial Photography Services for the Metropolitan Council of the Twin Cities Area

Notice is hereby given that the Metropolitan Council is requesting proposals for aerial photography coverage of the entire Seven (7) County metropolitan Area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties). The photographs are to be flown in the spring of 1980 before spring foliage is out. Photographic prints and reproducibles are to be provided by the contractor at a scale of one inch equals 800 feet and shall be delivered to the Metropolitan Council on or before August 1, 1980. All proposals must be received no later than 8:00 a.m., on March 21, 1980.

Copies of the Request for Proposals may be obtained from the Metropolitan Council, 300 Metro Square Building, St. Paul, Minnesota 55101. Inquiries regarding this request should be directed to Michael Munson, Contract Manager (612) 291-6331.

Department of Natural Resources Minerals Division

Notice of Request for Proposals for Study of Feasibility of Reclaiming Mined Peatlands through Natural Revegetation

Notice is hereby given that the Department of Natural Resources intends to engage the services of a consultant to conduct field studies on the reestablishment of vegetation on mined peatland in Minnesota. The intent of this project is to identify those processes that inhibit or encourage plant invasion and growth on mined peatlands. The project is to be completed by December 31, 1981. Costs should not exceed $20,000. Proposals must be submitted no later than March 31, 1980.

Direct inquiries to:

Department of Natural Resources
Division of Minerals
Box 45, Centennial Office Building
St. Paul, Minnesota 55155
Attn: Norman Aaseng
(612) 296-4807

State Planning Agency Developmental Disabilities Planning Office

Notice of Request for Proposals for Case Management Project

The Developmental Disabilities Planning Office announces that it is seeking proposals from eligible public or private/non-profit organizations with the interest and capacity to undertake the following task: to implement a project that will provide a point of access to basic human service programs needed by individuals having a developmental disability, Case Management services, follow-along services that ensure that the changing needs of the DD person and/or family are recognized and appropriately met, coordination services which provide access to other services, information on programs and services and monitoring of the person's progress.

Funding for this project is for a maximum of $200,000.00 for the first year, with future funding contingent upon how well project goals are met, and upon the availability of continuing federal support for developmental disability demonstration projects.

The Request for Proposal guidelines to be used in the preparation of an application are available upon written request from the address listed below. Deadline for the receipt of applications is April 11, 1980 (whether post-marked or hand-carried). To obtain a Request for Proposal packet, please write to:

Case Management RFP, Marylee Fithian
Developmental Disabilities Planning Office
State Planning Agency
Room 200
Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

State Planning Agency Environmental Quality Board

Notice of Request for Proposals for Professional Service Contract

The Environmental Quality Board requires the service of a qualified consultant to conduct a study and present a documented report, mapping and visual materials on "Assessing the Generic and Site Specific Alternatives of Undergrounding High and Extra-high Voltage Transmission Electric Facilities in Minnesota."

Estimated fee range—not to exceed $50,000.00

Time of contract award—April 21, 1980

Firms/individuals desiring consideration should send their proposal to:

Robert D. Cupit
Power Plant Siting
Minnesota Environmental Quality Board
15 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
612/296-2169

Request for Proposal is available on request.

All responses should be sent in no later than 5:00 p.m., April 7, 1980. Late responses will not be accepted.

Notice of Request for Proposals for Professional Service Contract

The Environmental Quality Board requires the service of a qualified consultant to conduct a study and present a documented report on "An Assessment of Cogeneration Potential." This study will assess the potential for cogeneration in Minnesota in general and southern Minnesota in particular.

Estimated fee range: $75,000.00

Time: Contract award April 18, 1980.

Firms/individuals desiring consideration should send their response to:

Gregg Larson
Power Plant Siting Program
Environmental Quality Board
15B Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-9037

Request for Proposal is available on request.

All responses should be sent in no later than 5:00 p.m., March 31, 1980. Late responses will not be accepted.

Notice of Request for Proposals for Professional Service Contract

The Environmental Quality Board requires the services of a qualified consultant to conduct a study and present a documented report on the "Right-of-Way Compatibility Analysis." This project will address the technical, economic and institutional issues associated with the use of or paralleling of existing rights-of-way—transmission, highway, railroad, pipeline, communication—and up-grading existing transmission facilities.

Estimated fee range: $35,000.00

Time: Contract award April 11, 1980.

Firms/individuals desiring consideration should send their response to:

Larry Hartman
Power Plant Siting Program
Environmental Quality Board
15B Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-5089

Request for proposal is available on request.

All responses should be sent in no later than 5:00 p.m., April 1, 1980. Late responses will not be accepted.

Department of Veterans Affairs
Minnesota Veterans Home —Hastings

Notice of Medical and Dental Services Contracts Available— Fiscal Year 1980

In accordance with Laws of 1978, ch. 480, the Department of Veterans Affairs, Minnesota Veterans Home—Hastings is publishing notice that the contracts listed below are available and will be awarded for the remainder of Fiscal Year (ending June 30, 1980).

A. Medical Services

B. Dental Services

1. Notice is hereby given that the Minnesota Veterans Home —Hastings intends to engage the services of licensed individuals to provide medical and dental services to the residents of the Minnesota Veterans Home—Hastings. The estimated amounts of the individual contracts are outlined below:

a. Medical Services	$12,500
b. Dental Services	5,500

Inquiries and formal expressions of interest should be submitted by March 31, 1980 to:

Dick Dobrick, Superintendent
Minnesota Veterans Home—Hastings
1200 East 18th Street
Hastings, Minnesota 55033

Department of Public Welfare
Chemical Dependency Programs Division

Notice of Request for Proposals to Study Outcome and Cost for Chemical Dependency Services

Notice is hereby given that the Chemical Dependency Programs Division, Department of Public Welfare, is requesting proposals from public and private organizations to devise and conduct an evaluation of selected chemical dependency services. The purpose of this project is to produce a report that examines:

1) comparative success in treatment outcomes;

2) comparative unit costs of program components; and average costs of clients served.

The estimated amount of the contract(s) for **each** part will be $75,000. The total contract will not exceed $150,000. Responses must be received by 4:30 p.m., March 31, 1980.

The formal RFP may be requested and inquiries should be directed to:

Ms. Terri Seppala, Supervisor
Planning, Research and Evaluation Section
Welfare-Chemical Dependency Programs Division
658 Cedar, 4th Fl., Centennial Office Building
St. Paul, MN 55155
(612) 296-4605

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

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

State Arts Board

Notice of Intent to Solicit Outside Opinions or Information Relating to Amendments to Rules on Standards and Procedures for Obtaining Grants and Other Forms of Assistance

Notice is hereby given that the Minnesota State Arts Board is soliciting information and opinions from sources outside of the agency for the purpose of preparing amendments to the existing rules related to standards and procedures for obtaining grants and other forms of assistance. The Minnesota State Arts Board is interested in clarifying existing rules related to eligibility and review standards and the right of appeal for grant applicants.

Any persons desiring to submit data or views on the subjects may do so either orally or in writing. All written submissions will become part of the record in any subsequent hearing.

All written or oral information and comment should be addressed to:

Ms. Mary Sulerud
Information Officer, Minnesota State Arts Board
2500 Park Avenue
Minneapolis, Minnesota 55404

All statements of information and comment must be received by April 15, 1980.

February 28, 1980

Department of Education Special Services Division Office of Public Libraries and Interlibrary Cooperation

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Governing Multi-county Multi-type Library Cooperation Development and Operating Grants Programs

Notice is hereby given that the Department of Education, Special Services Division, Office of Public Libraries and Interlibrary Cooperation, is drafting rules to implement Laws of 1979, ch. 334, art. IX, §§ 9-10, which provides development and operating grants for multi-county multi-type library systems. Proposed rules would specify application and review procedures, computation formulas for operating grants, eligibility criteria for grants, and audit requirements.

All interested or affected persons or groups may submit information on this subject. Written or oral information and comment should be addressed to:

Mr. William G. Asp, Director
Office of Public Libraries and Interlibrary Cooperation
301 Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101

Written statements will be made part of the public hearing record.

February 26, 1980

Howard B. Casmey
Commissioner of Education

Environmental Quality Board

Notice of Public Information Meeting and Acceptance of Transmission Line Routes for Public Hearing for a 345,000 Volt High Voltage Transmission Line from Sherco Substation to the Benton County Substation

NOTE: This notice contains information about the acceptance by the Minnesota Environmental Quality Board of high voltage transmission line (HVTL) routes for public hearing. The HVTL has been proposed by the Northern States Power Company and will extend from the Sherco substation to the Benton County substation. This notice also serves to provide notice of the preparation of an Environmental Impact Statement for the proposed HVTL. In addition, this notice also serves to provide notice of a public information meeting which will be held to describe the project and public participation procedures used in the transmission line routing process as prescribed by Minnesota law.

On February 21, 1980, the Minnesota Environmental Quality Board (MEQB) formally accepted and ordered for public hearing ten (10) routes and route segments submitted by the Northern States Power Company, the Citizens Route Evaluation Committee and the MEQB's Power Plant Siting staff. The routes and route segments vary in length from 3.5 to 19.7 miles and are illustrated on the accompanying map. A route can be a strip of land up to a mile and a quarter wide in which the line may be constructed. A right of way differs from a route in that it is the actual easement obtained by the utility on which the HVTL is constructed. Right of way width requirements will vary from 90 feet (where the HVTL parallels other rights of way) to 150 feet. In most cases, a final right of way is not designated by the MEQB so as to afford landowners and the utility room for negotiation on final placement of the line.

The process the MEQB will follow in designating this route is described in the MEQB Rules "Routing High Voltage Transmission Lines and Siting Large Electric Power Generating Plants" (6 MCAR §§ 3.071-3.082, effective June 12, 1978). In addition an Environmental Impact Statement (EIS) will be prepared by the MEQB in cooperation with the U.S. Department of Agriculture, Rural Electrification Administration. The EIS will be prepared in accordance with MEQB Rules "Environmental Review Program (Environmental Impact Statements)" (6 MCAR §§ 3.021-3.047 effective May 29, 1977). **A public information meeting will be held at the Clearview Elementary School near Clear Lake to describe the project and the MEQB process in detail.**

Background Information

Copies of the application, rules governing the process and the Power Plant Siting Act are available at the public libraries in St. Cloud, the Monticello Branch of the Great River Regional Library in Monticello, and at the Santiago State Bank in Becker.

As other information about this project becomes available, it will also be placed there.

Public Advisor

A public advisor has been appointed to assist and advise the public in how to participate in the route designation process. Her name is Jane Anderson. She can be contacted at 550 Cedar Street, St. Paul, Minnesota 55101, telephone (612) 296-9923.

Information Meeting

Power Plant Siting staff, together with representatives from the U.S. Department of Agriculture Rural Electrification Administration will conduct a public meeting to explain the power line project, routing process and EIS requirements. The meeting date and location are as follows:

March 17, 1980 Monday 7:30 p.m. Clearview Elementary School Cafeteria

Clearview Elementary School is located one mile west of the community of Clear Lake on State Highway 24.

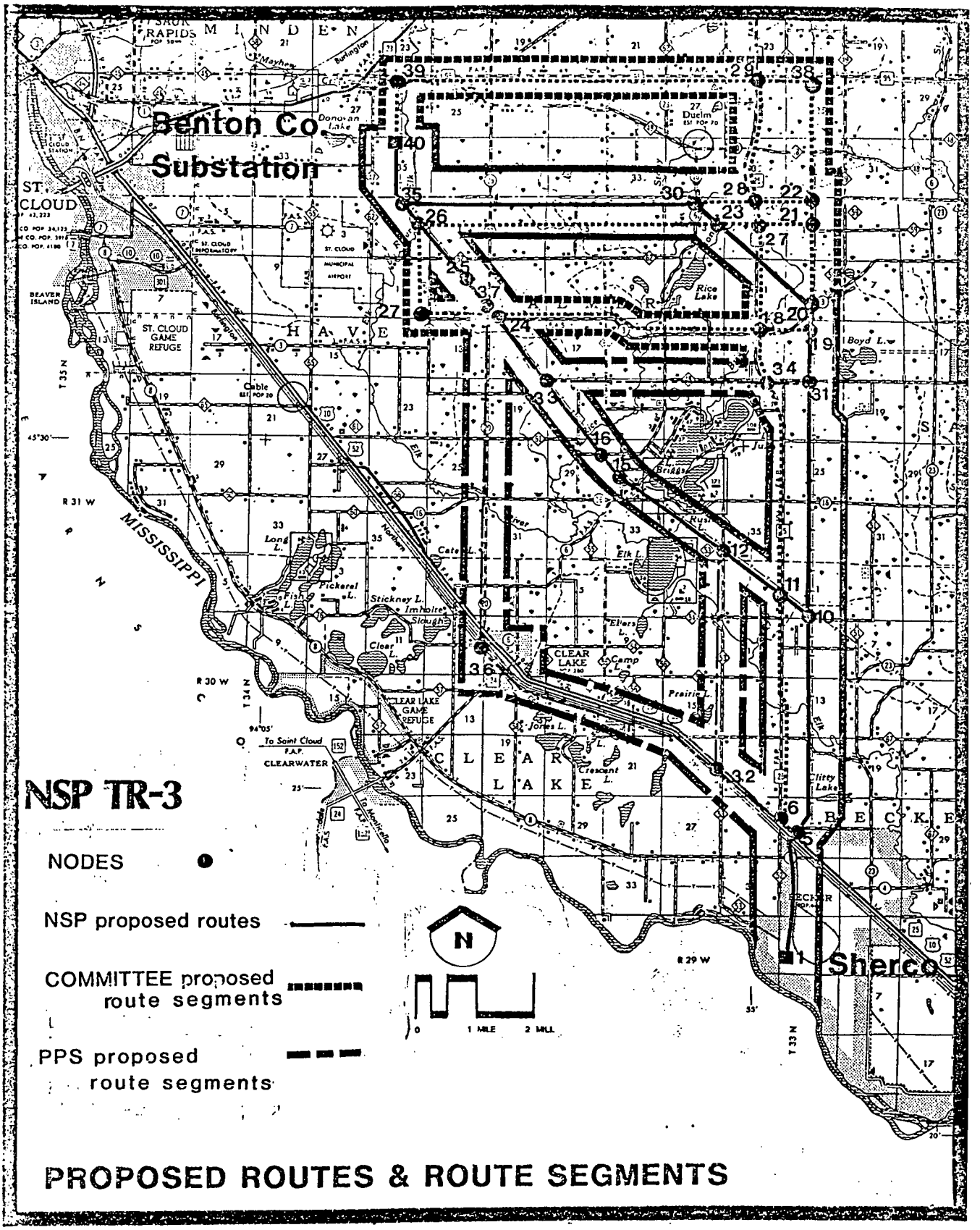
Public Hearings

Formal public hearings on the route proposal will be held at a later date which will be announced in local newspapers at least 10 days in advance but no earlier than 45 days prior to such hearings. Persons who wish to receive a notice of these hearings should contact Mr. Richard Paton, Project Manager, at the EQB address below.

Minnesota Environmental Quality Board
550 Cedar Street, Room 15
St. Paul, Minnesota 55101
Telephone (612) 297-2606

February 26, 1980

Arthur Sidner, Chairman
Environmental Quality Board



PROPOSED ROUTES & ROUTE SEGMENTS

Department of Health Emergency Medical Services Section

Application for Licensure by Hennepin County Medical Center Ambulance Service

A complete application for a license to expand the primary service area of Hennepin County Medical Center Ambulance Service has been received by the Minnesota Department of Health. This expansion of ambulance services includes the following new bases of operation:

Minnetonka —Minnetonka Fire Station
14550 Minnetonka Blvd.
Minnetonka, MN

Richfield —Richfield Fire Station #2
6700 Portland Ave. So.
Richfield, MN

Hopkins —Hennepin County Public Works
320 Washington Ave. So.
Hopkins, MN

St. Louis Park —St. Louis Pk. Police Station
5005 Minnetonka Blvd.
St. Louis Pk., MN

Methodist Hospital
6500 Excelsior Blvd.
St. Louis Pk., MN

The Cities of Chanhassen, Eden Prairie, Shorewood, Spring Park, Minnetonka Beach, Tonka Bay, Excelsior, Greenwood, Deephaven, Woodland and St. Anthony are also included in the expanded primary service area which will be served by the Hennepin County Medical Center Ambulance Service. Each Municipality, County, Community Health Service Agency and any other person wishing to comment on this application must provide written recommendations to the Health Systems Agency (The Metropolitan Health Board) before the close of business on April 9, 1980.

The Metropolitan Health Board has scheduled the local hearing required under Minnesota Statutes 144.802 for March 19, 1980. Written recommendations should be sent to Bobbie Droen, Metropolitan Health Board, 300 Metro Square Building, 7th and Robert, St. Paul, Minnesota 55101, (612) 291-6490.

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Concerning Review of the Existing Rules NPC 1 Definitions, Severability and Variances for Noise Pollution Control and NPC 2 Noise Standards

Extension of Comment Period

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) has extended the comment period for the above-captioned rules from March 3, 1980 to April 4, 1980. (Original notice published November 26, 1979 in the *State Register*.

Terry Hoffman
Executive Director

Board of Teaching

Notice of Intent to Solicit Outside Opinion Concerning a Proposed Rule Relating to the Licensure of Teachers of Driver and Traffic Safety Education

Notice is hereby given that the Board of Teaching is seeking information or opinions from sources outside the board in preparing to propose the adoption of a rule governing the licensure of teachers of driver and traffic safety education. Any interested persons may submit data or views on this subject in writing or orally to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2415

Any written material received by the board shall become part of the hearing record in the event that the rule governing this subject is promulgated.

February 11, 1980

Kenneth L. Peatross, Executive Secretary
Board of Teaching

SUPREME COURT

Decisions Filed Friday, February 29, 1980

Compiled by John McCarthy, Clerk

49529, 49570/407 William E. Cobb, Appellant (49570), vs. Midwest Recovery Bureau Company, defendant and third party plaintiff, Mack Financial Corporation, third party defendant, Appellant (49529). Clay County.

Where the secured party has repeatedly accepted late payments, the secured party is required to give notice that strict compliance with the contract terms will be required in the future under threat of contract termination and repossession of the collateral, despite a contract clause which states that a waiver of one breach does not waive any contract remedies for future breach and despite a contract clause which prohibits modification of the contract except by a signed writing.

Repossession was wrongful as a matter of law where the secured party had accepted every payment late, where no notice of either intent to repossess or contract termination was given, and where no demand for payment in full was made.

Where the initial repossession was wrongful, releases signed by plaintiff to procure the return of his truck are invalid because they are unsupported by consideration.

Punitive damages are not appropriate where a defendant acts under a good faith, reasonable interpretation of Minnesota law or where a defendant's conduct is merely negligent.

Affirmed in part and reversed in part. Otis, J. Took no part, Todd, J.

49833/31 Vickey Werner, widow of Jack Werner, deceased, vs. Olmsted County, et al, Relators. Workers' Compensation Court of Appeals.

Minn. Stat. § 176.111, subd. 21 (1978), providing that the combined total of weekly government survivor benefits and workers' compensation death benefits shall not exceed 100 percent of the weekly wage being earned by the deceased employee at the time of the injury causing his death, does not authorize inclusion of the survivors benefits received by the dependents of a deputy sheriff pursuant to Minn. Stat. § 353.657 (1978) in determining the amount of workers' compensation death benefits to which the dependents are entitled.

Affirmed. Otis, J.

48679/54 State of Minnesota vs. Sheldon Joseph Sailor, Appellant. St. Louis County.

Evidence of defendant's guilt held sufficient to support the verdict.

Prosecutor's cross-examination of defendant about his pretrial silence concerning his alibi, while erroneous under *State v. Billups*, 264 N.W.2d 137 (Minn. 1978), filed after the trial, was not prejudicial.

Affirmed. Peterson, J.

48590/14 (1979) State of Minnesota, petitioner, Appellant, vs. Everett F. Keezer and Wallace James Kier. Anoka County.

Neither the Treaty of Greenville nor the Treaty of Prairie du Chien exempt Chippewa Indians from state licensing requirements for ricing in the Neds Lake Area.

Reversed. Kelly, J. Dissenting, Wahl, J., Otis, J.

49733/437 Roy A. Berg, et al, vs. Xerxes-Southdale Office Building Co., etc., Appellant, Western Life Insurance Company, et al. Hennepin County.

Future estimates and projections should be considered actionable or not in fraud, depending upon whether they accurately reflect surrounding past and present circumstances.

Absent proof of an agency relationship allowing one partner to act on behalf of the others, the issue of whether members of a limited partnership unreasonably relied upon a financial statement must be determined as a matter of fact based upon each partner's personal circumstances.

Where a party to a contract has partially performed it before discovering the falsity of the representation which induced him to enter into it, he is not obliged to retrace his steps, but may complete performance without waiving his claim of fraud.

Reversed and remanded. Todd, J.

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OFFICE OF THE STATE REGISTER

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FOR LEGISLATIVE NEWS

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

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

This week—weekly interim bulletin of the House. Contact House Information Office, Room 8 State Capitol, St. Paul, MN 55155, (612) 296-2146.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office.