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Albert H. Quie
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David Zunker
Information Officer

James J. Hiniker, Jr.
Commissioner
Department of Administration

Paul Hoffman, Robin PanLener
Editorial Staff

Stephen A. Ordahl
Director
State Register and
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Roy Schmidtke
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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:

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Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
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EXECUTIVE ORDERS

Executive Order No. 80-10

Providing for the Establishment of the Governor's Committee on Appointments; Repealing Executive Order Nos. 79-1 and 80-5

I, ALBERT H. QUIE, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, qualified persons should be encouraged to serve on boards and committees of state agencies; and

WHEREAS, opportunities for such service should be increased for citizens of Minnesota; and

WHEREAS, women, youth, minorities, elderly, handicapped, and others who traditionally may not have served on such boards and committees should be encouraged to serve;

NOW, THEREFORE, I Order:

1. That there be established a Governor's Committee on Appointments to State Multi-Member Agencies (boards, commissions, councils, committees, authorities, and task forces) and that the committee consist of fifteen (15) citizens; one (1) member from each congressional district and seven (7) members at large. The Governor may also appoint fifteen (15) alternate members of the committee. There shall be a chair and vice chair selected by the Governor from among the members of the committee.

2. That the committee shall assist the Governor in considering applicants for appointments to multi-member agencies as provided in *Minnesota Statutes*, Section 15.0596, and that it may consider applicants for other advisory committees and task forces.

3. That the committee recommend to the Governor the names of the applicants it deems most qualified and best able to serve the interests of the people of Minnesota.

4. That the congressional district members may establish procedures for identifying potential applicants and gathering information from other persons in their congressional districts.

5. That the fifteen (15) committee members or their official designees may be reimbursed for expenses as provided in *Minnesota Statutes*, Section 15.0593 (1978).

6. That the members and official designees be appointed by and serve at the pleasure of the Governor for terms of one (1) year and until their successors have been appointed.

7. That the committee shall establish its own rules of procedures.

EXECUTIVE ORDERS

Pursuant to *Minnesota Statutes*, Section 4.035, this Order shall be effective fifteen (15) days after its publication in the *State Register* and filing with the Secretary of State and shall expire in two (2) years.

IN TESTIMONY WHEREOF, I hereunto set my hand this 27th day of October, 1980.

Albert H. Jui

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
 2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
 3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

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 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Public Welfare Bureau of Social Services Bureau of Mental Health

Proposed Repeal of Rules Relating to the Administration of Child Care Facilities Act Grant-In-Aid and the Reimbursement for Mentally Ill Patients Relocated by the Closing of Hastings State Hospital

Notice of Intent to Repeal Rules without A Public Hearing

Notice is hereby given that the Department of Public Welfare intends to repeal rules 12 MCAR § 2.009, Administration of Child Care Facilities Act Grants-In-Aid, and 12 MCAR § 2.017, Reimbursement for Mentally Ill Patients Relocated to Community Placement by the Closing of Hastings State Hospital.

All persons have 30 days in which to submit comment on the proposed repeal. The rules may be modified if the modifications are supported by the data and views submitted (meaning, in this case, that the department may decide not to repeal the rules).

Any person may also, within the 30-day period, make a written request for a hearing on either of the rules. The written request should be specific as to which rule a hearing is desired on. If seven or more persons make a written request for a hearing on either of the rules, a public hearing will be held according to the provisions of Minn. Stat. § 15.0412. All comments will be

reviewed by the Department of Public Welfare and, if no hearing is required, then by the Office of the Attorney General, Administrative Division.

A copy of the rule(s) being repealed and/or a copy of the Statement of Need and Reasonableness pertaining to each rule is now available from the Department of Public Welfare. The Statement of Need and Reasonableness includes rationale justifying both the need for and reasonableness of the proposed repeal. These copies may be obtained from the contact person listed below for each rule.

12 MCAR § 2.009 (DPW Rule 9) governed the Commissioner of Public Welfare's distribution of grant funds made available by the Legislature for child day care facilities pursuant to Minn. Stat. §§ 245.83 to 245.87 (1978). This rule sets forth the functions of the State Day Care Council and the local child care advisory councils in their advisory capacity to the commissioner with regard to the expenditure of the grant funds. The rule also sets forth the formula for the distribution of the funds, the purpose of the grants, and the kind of grants that could be made.

The need to repeal this rule arises because of the amendment of Minn. Stat. § 245.84, subd. 1 (Supp. 1979) authorizing county boards rather than the Commissioner of Public Welfare to make these grants. The DPW Rule 9 formula for distribution of grant funds is no longer needed since these funds are distributed to county boards under the Community Social Services Act, Minn. Stat. §§ 256E.01 to 256E.12 (Supp. 1979), and are distributed by a formula established in that Act.

It is proposed that this rule be repealed as of January 1, 1980 to correspond with the effective date of the Community Social Service Act legislation.

Persons desiring to make written comments on the rule or desiring to make a written request for a public hearing or having a question about the content of the rule should address their correspondence to:

Jerry Ferguson
Bureau of Social Services
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155

12 MCAR § 2.017 governed state financing for costs of care for mentally ill persons who were inpatients at the Hastings State Hospital on May 20, 1977 and were placed in community facilities pursuant to Minn. Laws of 1977, ch. 453 § 21.

The rule set forth the standards for the awarding of grants, services eligible for inclusion in individual discharge treatment plans and for reimbursement, and conditions for reimbursement.

The need to repeal this rule arises because it governed a final and non-recurring state appropriation pursuant to Minn. Laws of 1977, ch. 453, § 21, and Minn. Laws of 1978, ch. 793, § 30, subd. 2. All of the funds have been allocated and no additional appropriations are anticipated for this purpose. It is proposed that this rule be repealed as of October 1, 1980.

Persons desiring to make written comment on this rule or desiring to make a written request for a public hearing or having a question about the content of the rule should address their comments to:

Terry Sarazin
Bureau of Mental Health
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155
(612) 296-2710

Persons desiring to be notified when the hearing file (the rules to be repealed, this notice, the Statements of Need and Reasonableness, and copies of the public comments) is submitted to the Attorney General, Administrative Division, may either call or write Linda Nelson, Department of Public Welfare, Centennial Office Building, St. Paul, Minnesota 55155, (612) 296-2854. The Attorney General shall approve or disapprove the rule as to form and legality and determine whether a substantial change has been made concerning the action originally proposed.

The repeal of 12 MCAR § 2.009 and 12 MCAR § 2.017 will not affect spending by local public bodies.

Arthur E. Noot
Commissioner of Public Welfare

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

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.

State Board of Education Department of Education Special and Compensatory Education Division

Adopted Rules Governing the Standard and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

The rules proposed and published at *State Register*, Volume 4, Number 33, pp. 1289-1305, February 18, 1980 (4 S.R. 1289) are adopted as proposed with the following amendments:

Amendments as Adopted

Chapter Seven: Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

5 MCAR § 1.0120 B.15. "Days" shall be construed to exclude Saturdays, Sundays, and days school is not in session ~~unless otherwise provided herein.~~ when used in 5 MCAR §§ 1.0121-1.0127. "Days" shall be construed to mean calendar days when used in 5 MCAR §§ 1.0128 and 1.0129.

5 MCAR § 1.0122 B.1. Teachers. Every teacher who teaches a special class must hold a special class license appropriate to the type of handicapped children she or he is teaching. ~~Until the requirement to hold an early childhood special education license becomes effective in accordance with board of teaching rules, special class teachers licensed to teach kindergarten age handicapped children shall be considered qualified to teach pre-kindergarten handicapped children.~~

5 MCAR § 1.0124 B.4.a. must be provided in accordance with the provisions of 5 MCAR §§ 1.0127 A. and B. prior to conducting a formal educational assessment or reassessment or when the district receives a parent's written request to conduct a formal educational assessment or reassessment. In cases where a district receives a parent's written request to conduct a formal assessment or reassessment, the district shall serve notice of ~~their~~ its decision within ten days of their receipt of the written request;

5 MCAR § 1.0127 A.5.e. inform the parents that they may:

- (1) obtain an independent assessment at their own expense;
- (2) request from the district information about where an independent assessment may be obtained;
- (3) request that an independent assessment be conducted at public expense in which case the district has the option of denying such a request. When a district denies such a request, the parents may request a conciliation conference and due process hearing to resolve the disagreement.

5 MCAR § 1.0127 A.5.g. inform the parents that if they object to the proposed action in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parents refuses to attend the conference and the proposed action is not an initial action as defined in 5 MCAR §§ 1.0120 B.20. and 21., the school district will proceed with the proposed action;

5 MCAR § 1.0127 A.5.s. inform the parents that the hearing shall be closed unless the parents requests an open hearing;

5 MCAR § 1.0127 A.5.t. inform the parents that they have a right to obtain a record of the hearing including the written findings of fact and decisions whether or not they appeal.

5 MCAR § 1.0127 B.4. inform the parents that the district will not proceed with the initial formal assessment as defined in 5 MCAR § 1.0120 B., without prior written consent of the child's parents;

5 MCAR § 1.0127 C.2. inform the parents that the school district will not proceed with the initial placement and provision of service(s) as defined in 5 MCAR § 1.0120 B. without prior written consent of the child's parents;

5 MCAR § 1.0127 C.3. inform the parents that except for the initial placement and provision of service(s), the district will proceed with the proposed placement and provision of service(s) unless the parents objects in writing on the enclosed "response form" or otherwise in writing within ten days after the receipt of the notice.

5 MCAR § 1.0128 A.2. If the parent refuses to provide prior written consent as set forth in 5 MCAR § 1.0127 B.4. and 5 MCAR § 1.0127 C.2. within ten days after the receipt of the notice and response form, the providing school district shall arrange for a conference with the parent for the purposes of reviewing the reasons for the proposed action, reviewing the parent's suggestions and concerns and conciliating the matter. Each conference shall be held at a time and place mutually convenient to the parent and school district representatives and the initial conference shall be held within ten days after the expiration of the ten day period for parent response. In cases where the parents fails to attend the initial conciliation conference, the district may choose to schedule additional conciliation conferences.

5 MCAR § 1.0128 C. "~~Days~~" when used in 5 MCAR § 1.0128 means calendar days.

5 MCAR § 1.0129 B.2.c. inform the parents of the following rights and responsibilities:

5 MCAR § 1.0129 B.2.c.(1) of their right to receive a list of persons who will testify on behalf of the district concerning a proposed action within five days of the date the district receives their written request for the list of persons testifying.

~~(1) of their right to receive from the school district(s), within five days of the district's receipt of the parent's written request for a hearing, a list of persons who will testify on behalf of the district concerning the proposed action;~~

5 MCAR § 1.0129 B.2.g. that unless the district and parents agree otherwise, the student shall not be denied initial admission to school and that the student's education program shall not be changed, as long as the parents object to the proposed action in the manner prescribed by these rules.

5 MCAR § 1.0129 C.3. The hearing officer shall not be a school board member or employee of the school district where the child resides or of the child's school district of residence, an employee of any other public agency involved in the education or care of the child, 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 district solely because the person is paid by the district to serve as a hearing officer.

5 MCAR § 1.0129 C.4. If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at district expense. All expenses of the hearing, except for the parents' and resident school district's attorney's fees or other expenses incidental to the parents or resident school district participation in the hearing, shall be paid by the providing school district.

5 MCAR § 1.0129 E.1. The hearing should be closed unless the parents request an open hearing.

5 MCAR § 1.0129 E.1.-6. Renumber as 5 MCAR § 1.0129 E.2.-7.

5 MCAR § 1.0129 I. "~~Days~~" when used in 5 MCAR § 1.0129 means calendar days.

Pollution Control Agency

Adopted Rule Relating to Standards of Performance for Coal Handling Facilities in Designated Areas

The rule 6 MCAR § 4.0033, proposed and published at *State Register*, Volume 4, Number 16, pp. 623-626, October 22, 1979, (4 S.R. 623) is adopted with the following amendments:

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

ADOPTED RULES

Amendments as Adopted

6 MCAR § 4.0033 Standards of performance for coal handling facilities within designated areas.

B. Standards of performance for certain coal handling facilities. The owner or operator of a new or existing coal handling facility which is located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth shall perform the following abatement measures unless otherwise exempt by portions of this rule:

1. Access areas, roads, parking facilities.

a. Install asphalt or concrete surfaces or chemical agents on all active truck haul roads of the coal handling facility when the coal throughput by truck is 200,000 tons or greater. All paved roads and areas shall be cleaned to minimize the discharge to the atmosphere of fugitive particulate emissions. Such cleaning shall be accomplished in a manner which minimizes resuspension of particulate matter. Access areas surrounding coal stockpiles and parking facilities which are located within a coal handling facility shall be treated with water, oils, or chemical agents ~~suppressants~~.

4. Barge or vessel loading stations.

a. When the amount of coal loaded into barges or vessels at a given facility is 200,000 tons per year or greater, conveyor systems shall utilize loadout spouts with remote control capability for movement sideways, up and down, and telescoping so as to decrease as much as practical the vertical free fall of coal at all times during the loadout operation. Choke feeding devices, flood loading or other equivalent equipment or methods may be installed as alternates on conveyor systems to control fugitive emissions. Crane and shovels shall be operated so as to minimize the vertical free fall of coal. ~~Control fugitive particulate emissions during loading by the above reference methods so as not to exceed 20% opacity.~~

D. Standards of performance for pneumatic coal-cleaning equipment and thermal dryers at any coal handling facility.

1. Pneumatic coal-cleaning equipment. The owner or operator of a coal handling facility shall not cause to be discharged into the atmosphere from any pneumatic coal-cleaning equipment any gases which:

- a. Contain particulate matter in excess of 0.040 g/dscm (0.018 gr/dscf); or
- b. Exhibit ~~20~~ 10 percent opacity or greater.

E. Exemptions.

~~1. Visible emission (opacity) requirements of B.4.a. this rule shall not apply when the wind speed is greater than 25 miles per hour, as determined by a one hour average or hourly recorded value at the nearest official station of the U.S. Weather Bureau or by wind speed instruments on or adjacent to the site.~~

~~2. During freezing temperatures, owners or operators shall not be required to apply water or dust suppressants.~~

G. Performance test method. Unless another equivalent method is approved by the Director, any person required to conduct performance tests for coal handling facilities shall utilize the following test methods, as referenced in 40 C.F.R. Part 60, Appendix A as in force on the effective date of this rule:

1. Method 1 for example and velocity traverses.
2. Method 5 for the concentration of particulate material and moisture content.
3. Method 9 for the visual determination of the opacity of emission from stationary sources.

Department of Public Welfare Social Services Bureau

Adopted Rule Governing Day Care for Children and Repeal of 12 MCAR § 2.162 Governing Allocation of Title XX Funds to County Welfare Boards

Rule 12 MCAR § 2.162, Allocation of Title XX Funds to County Welfare Boards, published and proposed for repeal at *State Register*, Volume 4, Number 25, pp. 1024-1026, December 24, 1979 (4 S.R. 1024) is repealed as proposed.

Rule 12 MCAR § 2.209, Day Care for Children, proposed and published at *State Register*, Volume 4, Number 25, pp. 1018-1024, December 24, 1979 (4 S.R. 1018) is adopted with the following amendments:

Amendments as Adopted

12 MCAR § 2.209 A.3.h. Direct Day Care Service Provider—A person or entity who provides ~~direct~~ care for one or more children for pay in a home or center as a substitute for the parent(s) of the children.

A.3.1. Local Child Care Advisory Committee (CCAC)—A citizen's citizens' group approved by the commissioner to advise the local social service agency on day care services.

a. The Child Care Advisory Committee.

B:1.a.(1) The local CCAC shall serve no less than one county but may, by agreement of the County Boards of Commissioners or Human Services Boards, encompass two or more contiguous counties ~~within the boundaries of one Governor's Economic Region.~~

B.1.a.(2) Composition of a CCAC. The membership of the CCAC shall be no fewer than seven persons and shall be representative of the racial minorities, ethnic groups, socioeconomic groups and geographical area served. The membership shall be volunteer ~~and will serve without compensation but may be reimbursed for expenses~~ but may be compensated for participation in functions of official business if the social service agency(s) should wish to implement such a plan. Reimbursement for expenses and compensation shall be determined by the agency(s). The membership shall include:

B.1.b.(1) Lead Agency Designation. The commissioner shall ~~biannually,~~ biannually designate a local social service agency or other community agency to serve as the lead agency for the local CCAC.

B.1.b.(2)(b)(i) Notification. Within 30 days after notification by the commissioner, the lead agency or designated agency shall notify, by written announcement, all licensed child care providers and, by public notice, all other interested persons in the geographic area of its intent to ~~reorganize~~ develop or redevelop the local CCAC.

B.1.b.(2)(b)(iii) When a new or reestablished CCAC has been organized, the county board(s) (or human service board(s) where such boards have responsibility for social services) ~~board(s)~~ within the geographic service area shall review and recommend to the Commissioner approval or disapproval of the CCAC applicant within 60 days of the applicant's request for approval. Reasons for approval or disapproval shall be stated in writing to the applicant and the Commissioner.

B.2.a.(2)(b) There shall be ongoing support service ~~providers~~ resources that provide professional expertise and training to all direct and indirect service providers ~~who lack skills in working with the kinds of children and parents being served.~~

B.2.b. Planning and coordination. Each social service agency shall provide or purchase planning and coordination services to ensure a system of information and referral of direct day care service providers to parents, as well as other community services; consultation and technical assistance to providers seeking funding from existing resources; coordination between direct day care service providers, day care resources and community and governmental agencies, needs assessments, and planning for training activities.

C.1.b. Family Day Care Homes. The local social service agency shall inform all ~~inquiries~~ inquirers regarding family day care licensure of the standards as defined in 12 MCAR § 2.002 and provide the necessary consultation and inspections pursuant to the requirements in the licensure standards. If the applicant meets the family day care licensing requirements, the local social service agency shall recommend the home to the state agency for state licensure.

C.2.b.(1) The local social service agency is responsible for certification of family day care homes and group family day care homes that meet federal requirements ~~(Federal Interagency Day Care Requirements {(FIDCR)} and federal regulations).~~

C.2.b.(2) Relative and one-family exemptions from licensing do not apply when federal funds are used.

C.2.b.(3) Unless the local social service agency has determined that the home or provider do not have the capability of providing a healthy and safe environment for the children in care, the following providers need not meet licensing and certification requirements to receive payment from federal funds:

C.2.b.(3)(a) Providers who provide child care three hours or less in a 24-hour period.

C.2.b.(3)(b) Providers who give less than 30 days of care in any 365 day period.

C.2.b.(3)(4) The local service agency shall provide information regarding certification to each family day care or group family day care provider and provide consultation and services to those who wish to be certified to care for children placed by the social service agency. If they meet the federal requirements, the agency shall certify them and shall recertify them annually. If at any time after certification, the local social service agency determines that a family day care provider does not meet the requirements for certification, the local social service agency shall revoke the certification.

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

ADOPTED RULES

~~C.2.b.(3)~~(5) Records shall be maintained by the county agency on forms developed by the state agency as documented evidence that the home meets certification requirements.

C.2.c.(2) Unless the local social service agency has determined that the provider does not have the capability of providing a healthy and safe environment for the children in care, the following providers need not meet the certification requirements to receive payment from federal funds:

C.2.c.(3)(a)(i) The provider shall be at least 18 years of age. A waiver of this standard may be granted by the local social service agency to a younger person (other than a child) who possesses sufficient maturity to assure compliance with standards of care required by this rule and who has an adult on call for emergency assistance. In any event, there shall be no more than two preschool children placed in the care of a person under 18 years at any one time.

C.2.c.(3)(a)(iii) The provider shall supply evidence to the local agency that he/she has had a negative intradermal tuberculin test or chest X-ray within the past year. If the test is negative, ~~they~~ he/she need not have one thereafter. If the test is positive, the provider must have a chest X-ray each year for five years.

C.2.c.(3)(a)(v)(aa) Has committed an act of child battering, child abuse or molesting as defined by the Child Abuse Reporting Law;

C.2.c.(3)(a)(v)(bb) Uses alcohol or drugs, such that its effects are ~~detrimental to the children~~ evident they during the hours the children are in care, or has an uncontrolled addiction to drugs or alcohol, either currently or within the past 12 months;

C.2.c.(3)(a)(vi) The in-home provider shall provide nutritionally sound meals that follow the family's feeding plan, observing hours and kinds of food as planned by parent(s). When parents do not provide foods in the four basic food groups, the provider has the responsibility of alerting the parents to the nutritional requirements of young children.

C.2.c.(3)(b)(ii) The in-home provider shall provide care for no more than ~~12~~ 14 hours per day. A waiver of this standard ~~may~~ shall be granted by the local agency for a family emergency or other similar circumstances until the parent or agency has had the opportunity to plan more comprehensive care by a homemaker for the child(ren). The waiver shall not exceed a period of five ten days for any one situation or circumstance.

C.2.e. Appeal of certification denial, nonrenewal or revocation. The local social service agency shall promptly notify by certified mail or personal service any applicant or day care provider whose certification is proposed to be denied, revoked, or not renewed by the local social service agency. This notification shall state the grounds for such action and shall inform the applicant or provider of his/her right to appeal the action. Any applicant or provider whose certification is proposed to be denied, revoked or not renewed may appeal to the commissioner by mailing written notice of appeal to the commissioner within 20 days after receipt of the proposal for denial, revocation, or nonrenewal. Upon receiving a timely written notice of appeal, the commissioner shall give the applicant or provider reasonable notice and opportunity for a prompt hearing in accordance with Minnesota Statutes §§ 15.0418-15.0422. If the commissioner finds that the health, safety, or rights of children in day care are in imminent danger, he shall immediately suspend the provider's certification, subject to subsequent notice and hearing as provided in this paragraph.

D.4.a. The local social service agency shall inform the parent(s) about the eligibility requirements for free day care services and sliding fee rates for those not eligible for free services but eligible for partial pay for services on a sliding fee schedule financial assistance with the payment of day care services as described in the agency's social service plan.

D.4.b. The local social service agency shall plan with the parents parent(s) to develop the child's service plan as a basis for selecting a certified day care center or provider that has a program and environment that meets the child(s) individual developmental needs.

D.4.c.(3) The parent(s) shall be given an opportunity to recommend to the local social service agency which day care he/she wishes to use for the care of the children child or may recommend an alternative that meets certification standards and more nearly fits the family and children's child's needs.

D.4.e. The local social service agency shall ~~provide~~ assume responsibility for health and dental assessments for each child placed in day care as part of a casework plan, determine parental or agency responsibility for payment of the service, and assist parents of these children in making arrangements for treatment as recommended by the person(s) making the assessment(s).

E.1.c. ~~On an annual basis, the local social service agency~~ When the local social service agency has been trained, it shall make available a competency-based assessment for each family day care provider who makes application for an assessment. The department shall furnish the necessary materials and training for agency staff to initiate the program.

SUPREME COURT

Decisions Filed Friday, October 31, 1980

Compiled by John McCarthy, Clerk

48033, 48116, 48127/272 (1979) Polaris Industries, a Division of Textron, Inc., Appellant (48116), vs. Plastics, Inc., defendant and third party plaintiff, vs. Aetna Casualty and Surety Company, third party defendant, and Fusion Rubbermaid Corporation, third party defendant, Appellant (48033, 48127). Ramsey County.

Prejudgment interest is proven where damages for breach of warranty are readily ascertainable and uncomplicated, and essentially reflect bookkeeping items of expense.

Lost profits resulting from a breach of warranty are not recoverable where such damages cannot be segregated from other variable and imponderable factors adversely affecting the operation of the aggrieved party's business.

Where it has not been explicitly established by the form of verdicts whether or not liability to a machine manufacturer is based on the independent negligence of a parts manufacturer or is vicarious as to one who has provided the parts manufacturer defective ingredients, it was proper for the court to determine that the liability was vicarious and award the parts manufacturer indemnity.

Affirmed in part, reversed in part, and remanded. Otis, J. Took no part, Amdahl, J., and Simonett, J.

50556/Sp. City of Minnetonka, petitioner, Appellant, vs. Clarence Dwight Carlson, et al. Hennepin County.

This court will reverse a trial court's findings only if, upon review of the entire record, we are left with a firm and definite conviction that a mistake has been made. The trial court's findings on compensation awarded to the owners' attorney, upon the municipality's abandonment of the condemnation action, are well supported by the evidence. This court will therefore not substitute its judgment for that of the district court.

Affirmed. Scott, J. Dissenting, Sheran, C. J. Took no part, Amdahl, J., and Simonett, J.

50468/Sp. State of Minnesota vs. Jerry Helterbride, Appellant. Stearns County.

Defendant was not denied his right to a speedy trial.

Trial court did not abuse its discretion in refusing to permit expert testimony on the unreliability of the eyewitness identification testimony.

Defendant, by failing to object to instruction that the issue of identification was the real issue for the jury to decide, is deemed to have forfeited his right to have the propriety of the instruction considered on appeals.

Affirmed. Amdahl, J.

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.

Department of Education Instruction Division

Notice of Request for Proposals for Evaluation of the Nutrition Education and Training Program

The Minnesota Department of Education is seeking proposals which will design and implement an evaluation of the Nutrition Education and Training Program. Primarily summative evaluation will be required in the evaluation plan. Project monitoring, progress reports and a final report are required.

STATE CONTRACTS

The estimated amount of the contract is \$17,000 for a nine month period.

Final submission date of completed proposal: 4:30 p.m., December 3, 1980.

For formal Request for Proposal document, interested parties should contact:

Judith Cipolla
Department of Education
638 Capitol Square Building
550 Cedar Street
St. Paul, Mn. 55101
(612) 296-1443

Department of Health

Notice of Request for Proposal for Financial Analyses

The Minnesota Department of Health is soliciting bids from qualified individuals or firms to perform an analysis of the financial condition of hospitals in Minnesota. The analysis is composed of two parts: (a) the computation of 26 financial ratios and (b) a time series analysis of data covering four years, 1976-1979.

The Request for Proposal can be obtained from:

Fredric L. Sattler
Director, Hospital Rate Review Program
Minnesota Department of Health
717 S.E. Delaware Street S.E.
Minneapolis, Minnesota 55440
(612) 296-5572

Department of Natural Resources Minerals Division

Notice of Sale of State Peat Lease

Notice is hereby given that a lease sale to remove peat in swamp fund lands located in 629 acres, more or less, of the West Central Lakes Bog, St. Louis County, Minnesota will be held in Room 130 of the State Capitol Building, St. Paul, Minnesota, at 8:30 o'clock a.m. CST on December 9, 1980.

The Commissioner of Natural Resources, Box 45, Centennial Office Building, St. Paul, MN 55155, will receive sealed bids and applications for a lease to remove peat under the authority of Minnesota Statutes, § 92.50 (1978), up to the time specified below.

Each application and bid must be submitted in a bid envelope obtained from the Division of Minerals and each sealed bid envelope must be enclosed in another envelope and delivered to the Commissioner of Natural Resources, Attention: Division of Minerals, Box 45, Centennial Office Building, St. Paul, MN 55155. Bids must be received by 4:30 o'clock p.m. CST on December 8, 1980 and no bids received after that time will be considered.

At the time specified for the lease sale, the commissioner, together with the State Executive Council, will publicly open the bids and announce the amount of each bid separately. A lease will be awarded by the commissioner, with approval of the State Executive Council, to the highest responsible bidder; but no bids will be accepted that do not equal or exceed the base royalty rates set forth in the prospectus. The right is reserved to the state, through the Executive Council, to reject any or all bids. All bids not accepted will become void.

In the absence of satisfactorily demonstrated past technical and financial competence to perform under similar circumstances, the commissioner may require bidders to submit information relating to their technical and financial competence to perform under the state's lease to remove peat. If the commissioner makes such a request of a bidder, the information shall be submitted by the bidder within 30 days after the date of the commissioner's request.

Application and bid forms, bid envelopes, instructions on how bids are to be submitted, and copies of the prospectus may be obtained from the Department of Natural Resources, Division of Minerals Offices at Box 45, Centennial Office Building, St. Paul, Minnesota 55155, or Box 567, Hibbing, Minnesota 55746.

October 31, 1980

Joseph N. Alexander, Commissioner
Department of Natural Resources

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.

Department of Commerce Banking Division

Bulletin No. 2292: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for November 1980

Notice is hereby given that pursuant to Minn. Stat. § 47.20, subd. 4a, the maximum lawful rate of interest for conventional home mortgages for the month of November, 1980, is fifteen (15.00) percentage points.

Further, pursuant to Senate File No. 273, Chapter 373, 1980 Session Laws, as it amended Minn. Stat. § 47.20, the maximum lawful rate of interest for contracts for deed for the month of November, 1980, is fifteen (15.00) percentage points.

October 29, 1980

Michael J. Pint
Commissioner of Banks

Environmental Quality Board Power Plant Siting and Transmission Line Routing Program

Notice of Annual Hearing

9:00 a.m. to Noon
Saturday, November 29, 1980
Conference Room A
Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

The Environmental Quality Board will hold its annual public hearing, as required by the 1977 Power Plant Siting Act, Minnesota Statutes, § 116C.58, on Saturday, November 29, 1980 in St. Paul, Minnesota. The public hearing is designed to afford interested persons an opportunity to be heard regarding any aspects of the board's activities and duties or policies pursuant to the Act.

The hearing will emphasize the report of last year's statewide Power Plant Siting Advisory committee entitled *Options for Electric Energy Supply*.

All persons will be afforded the opportunity to be heard through the presentation of oral or written statements.

The report, and other documents related to the power plant or high voltage transmission line site designation processes, are available at the following address:

Minnesota Environmental Quality Board
550 Cedar Street, Room 100
St. Paul, Minnesota 55101
Telephone: 612/296-2503

OFFICIAL NOTICES

Ethical Practices Board

Notice of Meeting

Friday, November 14, 1980

Room 14

State Office Building

9:00 a.m.

Preliminary Agenda

1. Minutes (October 8, 1980)
2. Chairperson's Report
3. Legal Counsel's Report
4. Search Committee Report
5. Advisory Opinion Request #74—Richard A. Forschler, Larkin, Hoffman, Daly & Lindgren
6. Acting Director's Report
 - a) Financial Report
 - b) Waiver Requests
 - c) Post-Election Wrap-up (outstanding reports; status of desk audits)
7. Other Business
8. Executive Session Pursuant to Minn. Stat. § 10A.02, subd. 11

Minnesota State Retirement System

Regular Meeting, Board of Directors

The regular quarterly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, November 21, 1980 at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Department of Revenue Property Equalization Division

Notice of Intent to Solicit Outside Opinion Regarding the Method of Valuation to Be Applied to Utility Property

The Department of Revenue is seeking information and opinions from sources outside the department in preparing to modify or revise existing rules governing the valuation and assessment of electric, gas distribution and pipeline companies.

The Department of Revenue is currently making a determination of the fair market value of the operating property of these utility companies using the unit value method. Revision or modification to the existing rules may include such items as:

- 1) Increased depreciation allowance.
- 2) Revised capitalization rates.
- 3) Adjusted income streams.
- 4) Modifications to the "Average Cost per K.W. of Installed Capacity" Concept.
- 5) Obsolescence allowances.
- 6) Distribution of value to special taxing districts.
- 7) Other factors which are pertinent to the valuation of utility property.

Any interested persons may submit data or comments on this subject by writing to:

Gerald D. Garski, Manager
State Assessed Properties
Property Equalization Division

Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Any materials received by the department shall become a part of the hearing record at the time that revisions to the rules are promulgated. Any comments, views or data must be received by December 31, 1980 to be considered before the revised rules are drafted.

October 22, 1980

Clyde E. Allen, Jr.
Commissioner of Revenue

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-7876. Application deadline is November 25, 1980.

Board on Aging has one vacancy open immediately. The board coordinates and handles federal funds for programs for the aging, and makes grants to local community service agencies. Members are appointed by the governor, and receive \$35 per diem plus expenses. For specific information, contact Board on Aging, Suite 204, Metro Square Building, St. Paul 55101; (612) 296-2770.

Consumer Advisory Council on Vocational Rehabilitation has one vacancy open immediately for a business representative. The council advises the Assistant Commissioner for Vocational Rehabilitation on policy for rehabilitation services. Members are appointed by the Commissioner of Economic Security, and receive \$35 per diem. For specific information, contact Consumer Advisory Council on Vocational Rehabilitation, 3rd Floor, Space Center Building, St. Paul 55101; (612) 296-1822.

Waste Management Board

Notice of Intent to Prepare Minnesota Waste Management Board List for Future Rulemaking Hearings

In accordance with Minnesota Laws of 1980, Chapter 615, the Minnesota Waste Management Board is establishing a list of persons to receive official notice of its rulemaking proceedings. That law requires each agency or department to establish and maintain such a list to replace the existing Secretary of State's list.

If you wish to receive notice of rulemaking proceedings of the Minnesota Waste Management Board, please notify the board in writing. You will then receive notice of any rulemaking proceeding initiated after that date. Please note that this procedure will put you *only* on the list of the Minnesota Waste Management Board; other agencies and departments will be establishing their own lists. Please send your written request to the following address:

Minnesota Waste Management Board
Attention: Sharon Decker
123 Thorson Building
7323 — 58th Avenue North
Crystal, Minnesota 55428

October 31, 1980

Robert G. Dunn, Chairman
Waste Management Board

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
(612) 296-8239

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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.

Perspectives—Publication about the Senate. Contact Senate Information Office.

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, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

3

Legislative Reference Library
Room 111 Capitol

Interoffice