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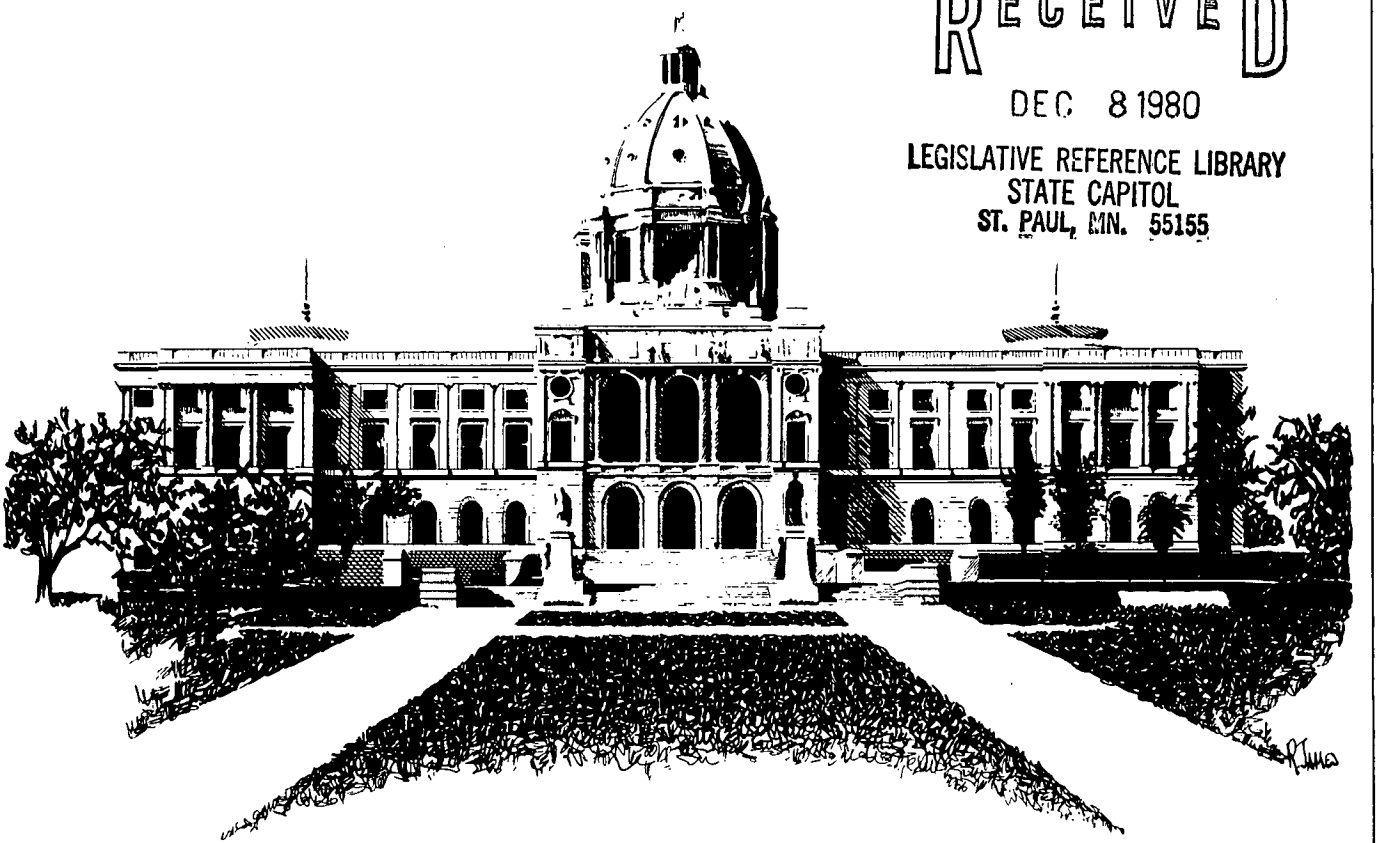
STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 23

December 8, 1980

Pages 911-954

STATE REGISTER

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 5		
24	Monday Dec 1	Monday Dec 8	Monday Dec 15
25	Monday Dec 8	Monday Dec 15	Monday Dec 22
26	Monday Dec 15	Monday Dec 22	Monday Dec 29
27	Monday Dec 22	Monday Dec 29	Monday Jan 5

*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 and notices of intent to adopt rules without a public hearing 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, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55103, 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 $120.00 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.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

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: *Minnesota State Capitol*, ink drawing by Ric James.

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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:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A 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 lisitngs 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.

MCAR AMENDMENTS AND ADDITIONS

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.

Public Hearings on Agency Rules
December 15-19, 1980

Date	Agency and Rule Matter	Time & Place
Dec. 16	Energy Agency Establishment of the MN Energy Conservation Service Program Hearing Examiner: Allan Klein	9:30 a.m., Large Hearing Room 83 State Office Building, 435 Park Street, St. Paul, MN

Department of Commerce
Securities and Real Estate Division

Proposed Rules and Forms Relating to the Minnesota Securities Act

Notice of Intent to Adopt, Amend and Repeal Rules Without a Public Hearing

Notice is hereby given that, pursuant to her authority under Minn. Stat. § 80A.25 (1978), the Commissioner of Securities and Real Estate intends to adopt, repeal and amend rules and forms relating to the Minnesota Securities Act (Minn. Stat. ch. 80A).

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.

The commissioner desires that the proposed rules and forms be adopted, repealed and amended without a public hearing in accordance with Minn. Stat. § 15.0412 (1978), as amended by Laws of 1980, ch. 615, § 7.

A free copy of the proposed rules and material relating to the proposed forms may be obtained from the commissioner's office. Those interetsed in submitting comment pertaining to the proposed rules and forms may do so within 30 days of the publication of this notice in the *State Register*. Additionally, if during the 30-day comment period, seven or more persons make a written request for a hearing on the proposed rules and forms, the commissioner will hold a public hearing in accordance with Minn. Stat. § 15.0412, subd. 4 (1978), as amended by Laws of 1980, ch. 615, § 6. A request for a copy of the proposed rules and/or material relating to the proposed forms, all comments, any requests for a hearing and all questions regarding the proposed rules and forms, should be directed to:

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
Department of Commerce
500 Metro Square Building
Saint Paul, Minnesota 55101
Telephone: (612) 296-5689

The proposed rules and forms may be modified by the commissioner if the modifications are supported by the data and views submitted during the 30-day comment period, provided the modifications do not result in substantial change.

The commissioner has prepared a Statement of Need and Reasonableness which contains a summary of the evidence justifying both the need for, and the reasonableness of, the proposed rules and forms. The Statement of Need and Reasonableness is available for inspection by the public, during regular business hours, at the above address.

If no hearing is required, the commissioner will submit to the Attorney General the proposed rules and forms and notice as published in the *State Register*, the rules and forms as proposed for adoption, any *written* comments received by the commissioner during the 30-day comment period, and the Statement of Need and Reasonableness for the rules and forms. On the same day these materials are submitted to the Attorney General, the commissioner will notify any person who has requested that the commissioner inform him or her of when these materials have been submitted to the Attorney General. Any person wishing to be so notified should contact Mr. Hardy, at the address listed above.

A copy of the existing Securities and Real Estate Division rules may be obtained from the Department of Administration, Documents Division, 117 University Avenue, Saint Paul, Minnesota 55155, (612) 296-2874.

Finally, Minn. Stat. ch. 10A (1978), as amended, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) 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 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, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

November 20, 1980

Mary Alice Brophy
Commissioner of Securities and Real Estate

Amendments as Proposed

SDiv 2006 (b) It shall constitute a "manipulative, deceptive or other fraudulent device or contrivance" within the meaning of ~~Section~~ Minn. Stat. § 80A.03 (1978), as amended, for a broker-dealer or agent to recommend the purchase or sale of any security or to furnish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium (as defined in this rule) unless:

(1) The issuer has filed a registration statement under ~~Sections~~ Minn. Stat. §§ 80A.09, 80A.10 or 80A.11 (1978), as amended, which became effective ~~not~~ less than 90 calendar days prior to the day on which such broker-dealer or agent publishes or submits the quotation to the quotation medium, provided that such registration statement has not thereafter been the subject of

a stop order which is still in effect when the quotation is published or submitted, and such broker-dealer has in his records a copy of the prospectus or offering circular used in connection with the registration, or

SDiv 2009 Upon termination of the activities of a licensed person, the broker-dealer or issuer shall, within ~~five~~ ten business days, notify the commissioner in writing of the termination stating the reason therefor ~~and including the license~~.

SDiv 2010 "Successor" for the purpose of ~~Minnesota Statutes 1973, Section~~ Minn. Stat. § 80A.05, subd. 2 (1978), as amended, includes any person succeeding to the business of a licensed broker-dealer or investment adviser under the following circumstances:

(a) When a licensee is a partnership, and a change in the membership of the partnership occurs which, under the law of the jurisdiction in which such partnership is formed, results in the creation of a new legal entity. This paragraph shall not apply, however, if more than one-half of the members of the predecessor partnership are no longer partners after such change in partnership;

(b) When a partnership or individual incorporates or otherwise changes its form of legal organization;

(c) When an entity formed under the laws of the particular jurisdiction changes the jurisdiction in which it is incorporated, organized or formed;

(d) When a licensee changes its name; or

(e) Upon the consolidation or merger of a licensee~~.~~ , or in the case of the acquisition of substantially all of the assets of a licensee, unless the transactions are entered into for the purpose of evading the operation of the licensing requirement.

SDiv 2012 ~~(c) If any person required to pass an examination under paragraphs (a) or (b) of this section shall fail such examination, he may reapply to take the examination a second time thirty days after the date on which he was first examined, and a third time ninety days after the date he was first examined. No person shall be permitted to take any examination more than three times except as the Commissioner may in his discretion permit for good cause shown.~~

(c) ~~(d)~~ Any broker-dealer, agent or investment adviser whose most recent license has been terminated for a period of ~~one year~~ two years or more immediately preceding the filing of a new application and who has not been actively engaged as a broker-dealer or agent respectively during that period shall be required to satisfactorily complete an examination prescribed by the commissioner, or an examination for principals or agents respectively given by the New York Stock Exchange, the National Association of Securities Dealers Inc., or the Securities and Exchange Commission.

~~(e) The time and place at which the examination may be taken shall be determined by the Commissioner.~~

SDiv 2013 (c) [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2013 (c) The net capital requirements for broker-dealers, as set forth in this Rule, shall be calculated in conformance with 17 C.F.R. section 240-15c3-1, as amended.

SDiv 2014 (c) ~~No investment adviser's license shall be issued or renewed unless the investment adviser shall have first posted with the Commissioner a surety bond in the amount of $25,000, on such form as the Commissioner may prescribe.~~ Any investment adviser who has custody of, or discretionary authority over, any assets of any client shall have first posted with the commissioner a surety bond in the amount of $25,000, on such form as the commissioner may prescribe.

SDiv 2014 (d) Any appropriate deposit of cash or security shall be accepted in lieu of any bond required by this section. An appropriate deposit requires, in the case of deposited securities, that such securities have a market value equal to 120 percent of the amount of the bond which would otherwise be required, and represent an interest in, or debt of, any of the persons whose securities are exempt from registration under ~~Minnesota Statutes, Section~~ Minn. Stat. § 80A.15, subd. 1, Clauses (a), (b), (c), (d) or (e) (1978), as amended. At no time shall the market value of the securities on deposit be less than 105 percent of the amount of the required bond. Any deposit of cash, or securities under this clause shall be made with an escrow agent, and under such terms and conditions as the commissioner deems appropriate, and shall remain with the depository for a period of three years after the last securities transaction conducted by the licensee or the effective date of any bond acquired by the licensee, whichever first occurs. The commissioner may allow an irrevocable letter of credit in lieu thereof.

SDiv 2014 (e) The provisions of SDiv 2014 (a) and (b) do not apply to any agent employed by a broker-dealer who continuously

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maintains net capital of not less than $100,000. SDiv. 2014 (c) does not apply to any investment adviser who continuously maintains net capital of not less than $100,000.

SDiv 2015 (d) (1) Every broker-dealer shall keep and preserve any written, printed or other advertisement which is published in connection with the offer or sale of a security or which is reasonably intended to encourage individuals or others to engage the services of the broker-dealer or any of its agents.

(2) The practices deemed deceptive or misleading pursuant to SDiv 2123 (c) shall likewise be deemed deceptive or misleading when employed by or on behalf of a broker-dealer.

SDiv 2015 (e) ~~(d)~~ Every broker-dealer shall preserve all records, files, communications and other information required by this SDiv 2015 for a period of not less than three years, the first two years in an easily accessible place and form. After the first two years, a photograph on film may be substituted for the records for the balance of the required time.

SDiv 2016 (j) (1) Every investment adviser shall keep and preserve any written, printed or other advertisement which is published in connection with the offer or sale of a security or which is reasonably intended to encourage individuals or others to engage the services of the investment adviser.

(2) The practices deemed deceptive or misleading pursuant to SDiv. 2123 (c) shall likewise be deemed deceptive or misleading when employed by or on behalf of an investment adviser.

SDiv 2016 (k) Every investment adviser shall preserve all records, files, communications and other information required by this rule for a period of not less than three years, the first two years in an easily accessible place and form. After the first two years, a photograph on film may be substituted for the records for the balance of the required time.

SDiv 2017 (a) Every broker-dealer shall, within 90 days following the close of either its fiscal or accounting year, submit an annual report to the commissioner in such form, and containing such information as the commissioner shall prescribe. At a minimum, the report shall contain audited financial statements certified by an independent certified public accountant consisting of a balance sheet, income statement, and reconciliation of surplus prepared in accordance with generally accepted accounting principles.

SDiv 2018 [Proposed for repeal; number reserved for future use.]

SDiv 2019 (b) (1) "Offering circular" means an offering circular ~~complying~~ in compliance with the requirements of ~~Rule 256 and Form 1 A under~~ the Securities Act of 1933 and the rules and forms promulgated thereunder.

SDiv 2022 (a) (1) Where the offering of securities is not firmly underwritten, and in the opinion of the commissioner, the protection of public investors so requires, the commissioner may require as a condition of registration, unless reason for exception can be demonstrated, that all or a portion of the proceeds from the sale of the securities registered ~~shall~~ be impounded with an impoundment agent satisfactory to the commissioner. ~~In cases where the offering of the securities is not firmly underwritten, the commissioner shall require, unless reason for exception can be demonstrated, that the proceeds be impounded. The conditions of impoundment shall be determined by the commissioner in each case.~~

SDiv 2024 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2024 So long as a registration is effective, the issuer shall, if possible, notify the commissioner in writing prior to or simultaneously with the occurrence of any of the following events, but in no event later than 10 days following the occurrence thereof:

(a) A decision to file for bankruptcy, enter receivership or any other similar proceeding;

(b) The cessation of business activities;

(c) A default on any payment of principal, interest, sinking fund installment or other similar payment, for a period of over 30 days, with respect to any indebtedness of the registrant or any of its subsidiaries exceeding five percent of the total assets of the registrant and its consolidated subsidiaries; or

(d) Any other event, occurrence or transaction which may or will have a material adverse effect upon the financial stability of the issuer.

SDiv 2025 (a) ~~Except as provided in paragraph (c) of this section, within 30 days after the end of each six month period following the effective date of the registration statement under Minnesota Statutes, Section 80A.11, the issuer or other person for whose account the securities covered by such registration statement are offered or sold except for registered investment companies, shall file a report of sales in such form as the Commissioner shall prescribe. A final report containing the same~~

~~information required by such form shall be made upon completion or termination of the offering and may be made prior to the end of the six month period in which the last sale is made.~~

~~(b) Any registrant filing reports with the Securities and Exchange Commission which contains substantially the same information as is required by the form prescribed by the Commissioner and which are filed at substantially the same time as the report required by paragraph (a) of this section is required to be filed may file, in lieu of the report required by the Commissioner's form, the report filed with the Securities and Exchange Commission.~~ Every issuer or its agent shall immediately notify the commissioner in the event of a sale of securities in excess of the amount registered. Under no circumstances shall the notice be more than 30 days after the date on which the oversale occurred.

SDiv 2025 (b) ~~(c)~~ If, by the terms of the order for registration, the offering period or the term of any impoundment agreement entered into in connection with the registration is less than six months, the final report required by paragraph (a) of this section shall be filed within 10 days after the date the offering or impoundment agreement terminates pursuant to the order of registration.

SDiv 2027 (a) So long as a registration statement is effective, the issuer shall file an annual report in such form, and containing such information as the commissioner prescribes. At a minimum, the annual report shall contain the following:

(1) The date of the report and fiscal year covered by the report;

(2) The exact name of the issuer;

(3) The state or other jurisdiction of incorporation or organization;

(4) The address of the issuer's principal executive offices;

(5) The telephone number of the issuer;

(6) A description of all sales of unregistered securities made within the fiscal year covered by the report including:

(aa) The type of securities sold;

(bb) The number and dollar amount of securities sold;

(cc) The persons or class of persons to whom such securities were sold;

(dd) The market price of the securities sold on the date of sale, if applicable;

(ee) The name of any broker-dealer or agent participating in such sale, and the amount of commissions or other remuneration paid, if applicable; and

(ff) The exemptions claimed for any such sales;

(7) A description of all securities of the issuer repurchased or otherwise reacquired by the issuer within the fiscal year covered by the report;

(8) The names and addresses of all officers and directors, or persons occupying similar status or performing similar functions;

(9) A description of the business of the issuer, including its products and services, competitive conditions, sources of supply, the number and general function of employees, its market area, and any other factors which materially affect the business or operations of the issuer;

(10) A summary of operations for the fiscal year covered by the report including, without limitation, gross revenues, cost of goods sold or services provided, net income, debt service and earnings per share of each class of equity security outstanding, together with a comparison of similar figures for the fiscal year preceding the fiscal year covered by the report. The comparison required by this paragraph may be presented in columnar form;

(11) A brief description of the location and general character of plants, mines and other materially important physical properties of the issuer;

(12) A description of any material legal proceedings pending against the company;

(13) An explanation of any increase or decrease in the number of outstanding securities, in any class, of the issuer;

(14) The approximate number of holders of record of each outstanding class of equity securities;

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(15) A list in tabular form of the name and address of each executive officer, and any person known to the issuer who beneficially owns 10 percent or more of any class of outstanding voting securities of the issuer, showing for each the title of the class owned, the type of ownership, the amount owned and the percent of class owned;

(16) A list in tabular form of the amount of remuneration received and the capacity in which such remuneration was received for each executive officer and director;

(17) A list and description of the number and exercise price of all options outstanding which are beneficially owned by any officer or director;

(18) A description of any transactions in the last fiscal year or any currently pending transaction to which the issuer or any of its subsidiaries was a party and in which any director, officer, ten percent shareholder or any affiliate had or will have a direct or indirect material interest, and a description of the nature of such interest; and

(19) Financial statements complying with the requirements of SDiv. 2132 of these regulations.

(b) (1) Any issuer filing annual reports under the Securities Exchange Act of 1934 ~~or the investment Company Act of 1940~~ may file, in lieu of the report required by paragraph (a) of this section, a duplicate copy of the annual report filed with the Securities and Exchange Commission.

(2) Any issuer filing reports under the Investment Company Act of 1940 may file, in lieu of the report required by paragraph (a) of this section, a current updated prospectus as filed with the Securities and Exchange Commission or a copy of the annual report required to be filed with the Securities and Exchange Commission.

(c) The annual report or prospectus required by this section shall be filed on or prior to the 90th day (or 120th day in the case of issuers registered under the Investment Company Act of 1940) following the close of the issuer's fiscal year, except that if the information required by ~~item~~ SDiv 2027(a) (19) is not reasonably available at such time, such information may be filed on or before the 150th day following the close of the issuer's fiscal year.

SDiv 2028 Application.

Regulations under this section of the act are divided into separate subchapters based upon the type of security involved. However, SDiv 2029-2041 shall apply to all securities, and should be followed in all instances unless they are inconsistent with another regulation in the appropriate subchapter for the type of security proposed to be registered. In that instance, the subchapter requirements will apply. ~~Reg.~~ SDiv 2028 to 2109 shall not apply to securities or transactions exempted by ~~Minnesota Statutes, 1973 Supplement, Section~~ Minn. Stat. § 80A.15, subds. 1 or 2 (1978), as amended, nor shall they apply to securities registered by notification.

Subchapter 1 Equity Securities Regulation SDiv 2029-2041

Subchapter 2 Senior Securities Regulation SDiv 2042-2046

Subchapter 3 Investment Companies Regulation SDiv 2047-2057

Subchapter 4 Real Estate Limited Partnerships SDiv 2058-2066

Subchapter 5 Oil and Gas Programs SDiv 2067-2080

Subchapter 6 Cattle Feeding Programs SDiv 2081-2089

Subchapter 7 Real Estate Investment Trusts SDiv 2090-2109

Subchapter 8 Commodity Pool Guidelines 4 MCAR §§ 1.2140 to 1.2145

SDiv 2029 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2029 Minimum investment required.

(a) Unless an issuer or its predecessors have demonstrated profitable operations for two of the three fiscal years prior to registration, determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary items, the "fair value of the equity investment" of such issuer shall be at least 10 percent of the first $1 million and 5 percent thereafter of the "equity investment" which would result from the sale of all the securities proposed to be offered.

(b) "Fair value of the equity investment" shall mean the higher of:

(1) the total of all sums irrevocably conveyed to the issuer in cash, together with the reasonable value of all tangible assets irrevocably conveyed to the issuer, and together with an evaluation by a qualified independent appraiser of intangible assets including, but not limited to, patents, licenses, technologies, trademarks, and technical or professional services contributed by the promoters, as adjusted by the retained earnings of the issuer subsequent to the dates of such conveyances, payments or contributions, or

(2) the total shareholders' equity as set forth in a certified balance sheet prepared in accordance with SDiv 2132, less the value assigned to any intangible assets which have not been independently evaluated.

(c) "Equity investment" shall mean the sum of:

(1) the "fair value of the equity investment" plus

(2) an amount equal to the net proceeds which would be received by the issuer upon completion of the offering, assuming the maximum aggregate amount of securities registered are sold.

(d) An appraisal or other evaluation used for the purposes of complying with the minimum equity investment may not be reflected in any form, either in the prospectus or in the issuer's financial statements or any footnotes thereto, unless it conforms with generally accepted accounting principles.

SDiv 2030 Cheap stock.

(a) ~~The quantity of cheap stock, expressed as a percentage of the total number of shares to be outstanding after the proposed offering, shall not exceed the following percentages, depending on the "fair value of the equity investments" as defined in SDiv 2029(b):~~

~~Equity Investment~~	~~Cheap Stock~~
~~15 percent~~	~~30 percent~~
~~20 percent~~	~~40 percent~~
~~30 percent~~	~~60 percent~~
~~40 percent~~	~~80 percent~~
~~45 percent~~	~~90 percent~~

~~In the case of a "minimum-maximum" offering, the allowable ratio, of 1 to 2, between the fair value of the equity investment and stock shall not be exceeded at any time.~~ The amount of "cheap stock" allowable, based upon the "fair value of the equity investment" as defined in SDiv 2029(b), shall not exceed three times the first 10 percent of equity investment and two times any further equity investment to a maximum number of shares of cheap stock allowable of 90 percent of the total number of shares to be outstanding after the proposed offering.

SDiv 2030 (c) ~~Cheap stock does not include securities which have been outstanding more than three years at the time of the proposed registration, if the issuer had been in active, continuous business operation for more than three years immediately prior to the proposed registration.~~ Cheap stock does not include:

(1) securities which have been outstanding more than three years at the time of the proposed registration, provided that the issuer of its predecessors have been in active, continuous business operation for more than three years immediately prior to the proposed registration;

(2) securities of an issuer which (a) had earnings during the fiscal year prior to registration or (b) had earnings during two of the three fiscal years prior to registration, as determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary income, if such earnings are in an amount equal to 4 percent of the proposed public offering price on all outstanding shares of the same class at the date of application for registration; or

(3) securities previously issued pursuant to a registration under Minn. Stat. ch. 80A.

SDiv 2031 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2031 Employee and Director Options and Other Forms of Compensation through Receipt of Securities.

(a) Outstanding options to all employees and directors shall not exceed 20 percent of the to be outstanding common shares of the issuer unless a majority of the shareholders, excluding officers, directors, employees, and their spouses have approved a larger percentage, provided further that:

(1) the exercise price shall be no less than 100 percent of the fair market value on the date of the grant; and

(2) no such options in excess of 10 percent of the to be outstanding shares are granted to any individual who, immediately

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before such option is granted, owns stock possessing more than 10 percent of the total combined voting power or value of all classes of stock of the issuer.

(b) No shares shall be issued to employees or directors unless they shall have paid fair market value therefor, in cash, other than pursuant to the provisions of paragraph (a) of this section, unless: they are issued under the same terms and conditions as shares are issued to all holders of the same class of securities of the issuer, or unless a majority of shareholders, excluding officers, directors, employees and their spouses, have approved the issuance.

SDiv 2036 Interest of management and others in certain transactions.

(a) The prospectus or offering circular should describe briefly any material interest, direct or indirect, of any of the following persons in any material transactions during the last three years, or in any material proposed transactions, to which the registrant or any of its subsidiaries was, or is to be, a party:

(1) Any affiliate of the registrant.

(2) Any associate or affiliate of any of the foregoing persons.

Official instructions and other applicable interpretations or rules promulgated by the United States Securities and Exchange Commission ~~pursuant to Form S-1~~ will be deemed to apply to this regulation.

SDiv 2039 Speculative issues.

As a condition to permitting any offering involving securities which the commissioner shall deem speculative, the commissioner may require any one or more of the following:

(a) that the prospectus or offering circular conspicuously state on its cover or the following two printed pages that the securities offered thereby are speculative or a brief description of the material risks involved in the purchase of the securities with a cross-reference to further discussion (in greater detail) in the body of the prospectus and/or that each investor receive a statement concerning the speculative nature of the securities, sign a copy thereof, and file same with the commissioner;

(b) that the prospectus or offering circular conspicuously state on its cover or the following two printed pages that the offering involves substantial dilution of the book value of the common stock from the public offering price and further state within its body, in reasonable detail, the amount and nature of such dilution;

SDiv 2050 Speculative activities.

The policy stated or followed by any investment company of engaging in any material respect in any of the following or related speculative activities, whether individually or in combination, and the relatively greater risks or costs involved in such activities, shall be disclosed or clearly referred to in bold face type on the cover or the following two printed pages of the prospectus or on a prospectus supplement satisfactory in form to the commissioner:

(a) Borrowing money for investment in securities, excluding borrowing for temporary purposes.

(b) Purchasing securities for short-term trading but excluding money market funds or other investment companies whose portfolio holdings consist substantially of debt instruments.

(c) Purchasing restricted securities as herein defined.

(d) Purchasing put or call options or combinations thereof.

(e) Short selling of securities, excluding short selling against the box.

SDiv 2051 [Proposed for repeal; number reserved for future use; relating to the maximum annual expenses paid or incurred by an investment company.]

SDiv 2052 Minimum capitalization.

An investment company having net assets of less than $1,000,000 or an affiliated investment adviser with less than an aggregate of $100,000,000 under management may not qualify its securities for registration unless:

(a) the securities are being offered pursuant to a firm underwriting commitment which will, upon expiration of the initial offering period, capitalize the fund at not less than $1,000,000; or

(b) all proceeds of the offering are deposited in an escrow account, subject to their return in full to the investors if the minimum capitalization of $1,000,000 is not achieved within three months after the date of the offering.

SDiv 2057 Closed end investment companies.

(b) No closed-end fund shall be registered for public offering in this state unless such fund adheres to, and discloses in its prospectus, each of the following policies:

(1) The fund shall not at the time of purchase, as to 100% of its total assets:

(aa) invest more than 30% of its total assets in restricted debt securities; unless permitted by the commissioner upon proper justification;

(bb) invest more than 15% of its total assets in all forms of illiquid securities, including, but not limited to, commodities, real estate, general and limited partnership interests, oil and gas interests, options and warrants, puts, calls, straddles, spreads, and restricted securities, except as provided in (1) above;

(cc) invest in securities carrying more than 10% of the voting rights of any issuer;

(dd) invest in more than 10% of the equity securities of any one issuer:

(ee) invest more than 10% of its total assets in the securities of real estate investment trusts or other investment companies, provided that investments in excess of 10% may be permitted by the commissioner upon a showing that such investments involve no duplication to management or advisory services with those of the fund.

(2) The fund shall not at any time, as to 75% of its total assets, invest more than 5% of such assets in the securities of any one issuer, exclusive of government securities.

(3) The fund shall not effect any brokerage transactions in its portfolio securities with any broker-dealer affiliated directly or indirectly with its investment adviser or manager, unless such transactions (including the frequency thereof, the receipt of commissions payable in connection therewith, and the selection of the affiliated broker-dealer effecting such transactions) are not unfair or inequitable to the shareholders of the fund.

(c) Notwithstanding paragraph (b) above, because of the possible risk to the investor, no closed end fund which engages in any of the following or related speculative activities shall be registered for public offering in this state unless the appropriate disclosure is made in bold face type on the cover of both the preliminary and final prospectuses, or on a prospectus supplement satisfactory in form to the commissioner, as follows:

"These securities may involve a high degree of risk because the fund is authorized:

(1) to engage in short term trading resulting in portfolio turnover greater than 100 percent annually (see page ____).

(2) to leverage more than 10 percent of its total assets (see page _____).

(3) to invest more than 5 percent of assets in restricted securities exclusive of debt securities (see page ____).

(4) to engage in short sales, excluding short sales against the box (see page ____).

(5) to invest more than 5 percent of its total assets in foreign securities where the fund must pay an interest equalization tax.

(6) in relation to ~~85~~ 75 percent of its total assets, to invest more than 5 percent of such assets in any one issuer."

SDiv 2113 [Proposed for repeal; number reserved for future use.]

SDiv 2115 (c) For the purpose of determining the number of sales which have been made, or will have been made upon completion of a proposed distribution under Section 80A.15 Subdivision 2(a), only those sales which would be ~~included within the scope~~ subject to the registration provisions of Chapter 80A, as determined by ~~Section~~ Minn. Stat. § 80A.27, shall be included.

(d) For purposes of this rule, time shall be computed pursuant to Minn. Stat. § 645.15 (1978), as amended.

SDiv 2117 The terms "financial institution or institutional buyer" contained in ~~Section~~ Minn. Stat. § 80A.15, subd. 2(g) (1978), as amended, ~~do not ordinarily include a Small Business Investment Company unless it can be demonstrated that it possesses adequate sophistication with respect to the specific offer and sale~~ include but are not limited to: (1) any corporation with a class of equity securities registered under Section 12(g) of the Securities Exchange Act of 1934, as amended, (2) any single investor who purchases $100,000 or more of an issue with respect to such sale, provided the purchase is for cash and payment is made at the time of the sale, and (3) a Small Business Investment Company.

SDiv 2118 (b) The limitation of 25 purchasers contained in § 80A.15, subd. 2(h) is waived in connection with any ~~limited~~ distribution resulting in sales to not more than 35 persons in this state in connection with any offering being made in compliance

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with Rule 146 promulgated by the Securities and Exchange Commission [17 C.F.R. Section 230.146 ~~(1975)~~] ~~if such offering complies in all respects with that Rule~~ or rules promulgated under section 3(b) of the Securities Act of 1933, if such offering is in compliance with any such rules.

SDiv 2118 (c) The exemption contained in § 80A.15, subd. 2(h) is withdrawn for any security representing an interest in or formed for the purpose of investing in any oil and gas venture, or any partnership, joint venture, group or association formed principaliy for the purpose of exploring for oil and gas or developing oil and gas reserves unless said security is sold in compliance with Rule 146 promulgated by the Securities and Exchange Commission. [17 C.F.R. Section 230.146 ~~(1975)~~].

SDiv 2118 (d) The exemption contained in Section 80A.15, Subdivision 2(h) is withdrawn for any security representing an interest in, or formed for the purpose of investing in, any animal breeding, animal feeding, animal leasing or similar venture, unless said security is sold in compliance with Rule 146 promulgated by the Securities and Exchange Commission. [17 C.F.R. Section 230.146 ~~(1975)~~].

SDiv 2118 (g) (2) For purposes of this rule, "public distribution" means ~~a public~~ an offering registered under the Securities Act of 1933 or exempted by Regulation A of Section 3(b) of that act, provided, however, that ~~this rule shall not apply to~~ a public distribution does not include exchange offers or ~~offers~~ the exercise of options pursuant to a plan approved, or proposed to be approved by shareholders.

SDiv 2118 (j) The requirement of Minn. Stat. § 80A.15, subd. 2(h)(1) is hereby waived in connection with any distribution of securities pursuant to any employer savings, stock purchase, pension, profit sharing or similar benefit plan, or self-employed person's retirement plan.

SDiv 2118 (k) The exemption contained in § 80A.15, subd. 2(h) is conditioned on the use of an offering circular or other documents offering full disclosure in connection with each offer or sale.

SDiv 2118 (l) For the purpose of this rule, time shall be computed pursuant to Minn. Stat. § 645.15 (1978), as amended.

SDiv 2119 Offers, but not sales ~~of any industrial revenue bond~~ for which a registration statement has been filed under ~~Sections 80A.01 to 80A.31~~ Minn. Stat. ch. 80A, are hereby exempted from registration pursuant to ~~Section~~ Minn. Stat. § 80A.15, subd. 2(i) (1978), as amended, provided, however, that any such written offer may be made only by, or only if accompanied by, the most recent preliminary or the final prospectus on file with the commissioner.

SDiv 2122 (a) Any offer or sale by an affiliate of the issuer thereof is hereby exempted from registration pursuant to ~~Section~~ Minn. Stat. § 80A.15, subd. 2(o) (1978), as amended, if the following conditions are met prior to any such offer or sale:

(1) if the sale is subject to Rule 144 of the Securities and Exchange Commission:

(aa) a registration statement is in effect with respect to securities of the same class of such issuer and

(bb) the sale is made pursuant to Rule 144 promulgated by the Securities and Exchange Commission and

~~(cc) a copy of Form 144 is transmitted to the Commissioner contemporaneous with its transmittal to the Securities and Exchange Commission and,~~

(cc) ~~(dd)~~ all annual, ~~quarterly~~ or other reports required by ~~Section~~ Minn. Stat. § 80A.12 (1978), as amended, or any rule thereunder have been filed or distributed during the twelve months preceding such sale (or for such shorter period for which the issuer was required to file such reports), or

(2) if the sale is not subject to Rule 144:

(aa) a registration statement is in effect with respect to securities of the same class of such issuer and

(bb) a statement of the facts called for by Form 144 has been furnished to the commissioner concurrent with the placing with a broker-dealer of an order to execute a sale (if a broker-dealer is used) or at the time of the offer (if a broker-dealer is not used) and,

(cc) all annual ~~,quarterly,~~ or other reports required by § 80A.12 or any rule thereunder have been filed or distributed during the twelve months preceding such sale (or for such shorter period for which the issuer was required to file such reports).

SDiv 2123 Advertising material. (a) Definition. "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, or similar communications media, including film strips or motion pictures, published in connection with the offer or sale of a security.

(b) Certain advertisements to be filed. All sales and advertising literature and promotional material including that material required to be preserved pursuant to SDiv 2015 (d) (1), other than that exempted by this rule, shall be governed by the following:

(1) ~~The applicant shall file with the Commissioner, at least five days before its intended dissemination, one copy of each item of literature or material~~ Any such material shall, upon the written request of the commissioner, be filed with the commissioner prior to being disseminated.

SDiv 2123 Advertising material.

(e) Violations. Any person, including any broker-dealer or agent thereof, investment advisor or issuer who knowingly prepares, distributes or causes to be issued or published any sales literature which is knowingly inaccurate, false, misleading or tending to mislead in any material respect or otherwise in violation of the provisions herein may be held responsible and accountable therefor in any administrative or civil proceeding arising under the act or these rules.

SDiv 2124 Every registration statement and prospectus for a security which is ~~not~~ registered as required under chapter 80A, and is exempt from registration by § 3 (a) (11) of the Securities Act of 1933 as amended ~~or exempted by section 3 thereof~~ shall bear, on the front page of such registration statement or prospectus, the following language in capital letters and boldface type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE MINNESOTA SECURITIES AND REAL ESTATE DIVISION NOR HAS THE DIVISION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

SDiv 2125 (b) (1) In recommending to a customer the purchase, sale or exchange of any security, a broker-dealer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts~~, if any,~~ disclosed by such customer as to his financial situation and needs.

SDiv 2125 (d) (1) No broker-dealer, investment adviser, agent or employee of any of the above shall effect with or for any customer's account ~~in respect to which such broker-dealer or his agent or employee is vested with any discretionary power~~ any transactions of purchase or sale which are excessive in size, amount or frequency in view of the financial resources and character of such account.

SDiv 2125 (e) If a broker-dealer buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit.

SDiv 2126 Any rescission offer described in ~~Section~~ Minn. Stat. § 80A.23, subd. ~~3~~ 8 (1978), as amended, shall normally be accompanied by a document meeting the requirements of a prospectus for a registration by qualification. Said document shall, in addition, clearly disclose any material facts concerning the alternatives available to the offeree.

SDiv 2135 Incorporation by reference.

Whenever a reference is made in SDiv 2000 to ~~SDiv. 2137~~ 4 MCAR § 2151 to a federal or state statute, rule, decision or opinion, such reference shall be deemed to refer to the version of the statute, rule, decision or opinion as of ~~April 15, 1974 except that any such reference contained in SDivs. 2077, 2079, 2089, 2099, 2110, 2113-2119, 2122, 2126 and 2137 shall be to the version as of July 15, 1975~~ December 1, 1980.

Amendments to the Minnesota Securites Act Forms as Proposed

Form 101, "APPLICATION FOR INVESTMENT ADVISER'S LICENSE." [Proposed for repeal.] The following form is proposed as a substitute:

Form ADV, "APPLICATION FOR REGISTRATION AS AN INVESTMENT ADVISER OR TO AMEND SUCH AN APPLICATION UNDER THE INVESTMENT ADVISERS ACT OF 1940", as referred to at 17 C.F.R. § 279.1 (1980), as amended.

Form, "Quarterly Report." [Proposed for repeal.]

Form BD, "APPLICATION FOR BROKER/DEALER'S LICENSE." [Proposed for repeal.] The following form is proposed as a substitute:

Form BD, "UNIFORM APPLICATION FOR REGISTRATION, LICENSE OR MEMBERSHIP AS A BROKER-DEALER OR TO AMEND SUCH AN APPLICATION UNDER THE SECURITIES EXCHANGE ACT OF 1934, OR UNDER THE

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LAWS OF THE JURISDICTIONS OR UNDER THE CONSTITUTIONS AND RULES OF THE SELF-REGULATORY ORGANIZATIONS ACCEPTING THIS FORM", as referred to at 17 C.F.R. § 249.501 (1980), as amended.

Rules as Proposed (all new material)

4 MCAR § 1.2127 Amendments "Requiring an order of the commissioner," pursuant to Minn. Stat. § 80A.28, subd. 3, (1978), as amended, shall mean any change in the language of the currently effective "order" of registration or licensing, including, by way of example:

A. A change in the name of the registrant, whether an issuer, broker-dealer or investment adviser;

B. A change in price, if equity securities are involved;

C. A change in interest rate, if debt securities are involved;

D. A change in type or class of security registered.

Subchapter 8: Commodity Pool Guidelines (4 MCAR §§ 1.2140-1.2145)

4 MCAR § 1.2140 Definitions. As used in these rules, the following terms shall mean:

A. Commissioner. The Commissioner of Securities and Real Estate.

B. Adviser. A person who for any consideration engages in the business of advising others, either directly or indirectly, as to the value, purchase, or sale of commodity futures contracts or commodity options.

C. Capital contributions. The total investment in a program by a participant or by all participants, as the case may be.

D. Clearing broker. Any person who engages in the business of effecting transactions in commodities futures contracts for the account of others or for his own account.

E. Commodity futures contract. A contract providing for the delivery or receipt at a future date of a specified amount and grade of a traded commodity at a specified price and delivery point.

F. Net assets. The total assets, less total liabilities, of the program determined on the basis of generally accepted accounting principles. Net assets shall include any unrealized profits or losses on open positions, and any other credit or debit accruing to the program but unpaid or not received by the program.

G. Net asset value per unit. The net assets divided by the number of units outstanding.

H. Net profits. The sum of:

1. The net of any profits and losses realized on all trades closed out during the period.
2. The net of any unrealized profits and losses on open positions as of the end of the period, minus,
3. The net of any unrealized profits or losses on open positions as of the end of the preceding period,
4. All expenses incurred or accrued during the period and
5. Cumulative net realized losses, if any, carried forward from preceding periods.

I. Organization and offering expenses. All expenses incurred by the program in connection with and in preparing a program for registration and subsequently offering and distributing it to the public, including, but not limited to, total underwriting and brokerage discounts and commissions (including fees of the underwriter's attorneys), expenses for printing, engraving and mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositories and experts; and expenses of qualification of the sale of securities under federal and state law, including taxes and fees and accountants' and attorneys' fees.

J. Participant. The holder of a program interest.

K. Person. A natural person, partnership, corporation, association or other legal entity.

L. Program. The limited partnership, joint venture or incorporated organization formed and operated for the purpose of investing in commodity futures contracts.

M. Program interest. A limited partnership or other form of ownership in a program.

N. Pyramiding. A method of using all or a part of an unrealized profit in a commodity futures contract position to provide margin for additional commodity futures contracts of the same or related commodities.

O. Sponsor. Any person directly or indirectly instrumental in organizing a program or any person who will be responsible for the management of a program. Sponsor shall include an adviser or a clearing broker who pays any portion of the organizational expenses of the program, a general partner, and any other person who regularly performs or selects the persons who perform

services for the program. Sponsor does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of the units. The term "sponsor" shall be deemed to include affiliates of any sponsor otherwise coming within this definition.

P. Valuation date. The date as of which the net assets of the fund are determined.

R. Valuation period. A regular period of time between valuation dates.

4 MCAR § 1.2141 Requirements of sponsors, advisers, and clearing brokers.

A. Experience. Any person providing management, advisory, or clearing services to the program shall have at least three years of relevant experience in the area of trading commodity futures contracts. Such experience must include the trading of commodity futures contracts for others or must otherwise demonstrate sufficient knowledge of such person to perform the services proposed and to carry out the program policies and objectives.

B. Financial condition. The financial condition of a sponsor must be commensurate with any financial obligations assumed in the offering and in the management and operation of the program. At a minimum, the net worth shall be the greater of:

1. An amount equal to 5 percent of the participants' capital in all existing programs in which a sponsor or an affiliate has potential liability, plus 5 percent of the total subscriptions in the program being offered, or

2. Fifteen percent of the gross amount of the current offering with respect to offerings of less than $2,500,000. If the offering exceeds $2,500,000, the net worth must be at least 10 percent of the gross amount of the offering, up to $1 million of net worth, but in no case less than $50,000. Net worth of individual sponsors shall be determined exclusive of home, furnishings and automobiles. Audited balance sheets of sponsors shall be furnished except that in the event a sponsor is an individual, an unaudited balance sheet prepared by a certified public accountant and signed and sworn to by such individual sponsor may be accepted for the purpose of determining required net worth. Also, evaluation will be made of contingent liabilities to determine the appropriateness of their inclusion in the computation of net worth.

C. Investment in the program. A sponsor must make a permanent investment in the program equal to the lesser of 3 percent of the public investors' interest or $50,000.

D. Tax ruling or opinion. A program organized in the form of a limited partnership must obtain a favorable tax ruling from the Internal Revenue Service or favorable opinion of qualified tax counsel in a form acceptable to the commissioner concerning the tax status as a limited partnership. A favorable tax ruling or opinion is one which concludes that the program will be treated as a partnership for tax purposes.

E. Liability and indemnification. The sponsor(s) shall not attempt to pass on to participants the liability imposed upon a sponsor by law except that the program agreement may provide for indemnification of the sponsor(s) under the following circumstances and in the manner and to the extent indicated:

1. In any threatened, pending or completed action, suit, or proceeding to which a sponsor was or is a party or is threatened to be made a party by reason of the fact that he is or was a sponsor of the program (other than an action by or in the right of the program), the program may indemnify such sponsor against expenses, including attorneys' fees, judgments and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if the sponsor acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program, and provided that his conduct does not constitute gross negligence, wilful or wanton misconduct, or a breach of his fiduciary obligations to the participants. The termination of any action, suit or proceeding by judgment, order or settlement shall not, of itself, create a presumption that the sponsor did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the program;

2. In any threatened, pending or completed action or suit by or in the right of the program, to which a sponsor was or is a party or is threatened to be made a party, involving an alleged cause of action by a participant or participants for damages arising from the activities of a sponsor in the performance of management of the internal affairs of the program as prescribed by the program agreement or by the law of the state of organization, or both, the program may indemnify such sponsor against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program as specified in this clause, except that no indemnification shall be made in respect of any claim, issue or matter as to which the sponsor shall have been adjudged to be liable for negligence, misconduct, or breach of fiduciary obligation in the

performance of his duty to the program as specified in this clause, unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper;

3. To the extent that a sponsor has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in E.1. or E.2., or in defense of any claim, issue or matter therein, the program shall indemnify him against the expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith; and

4. Any indemnification under E.1. or E.2., unless ordered by a court, shall be made by the program only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that indemnification of the sponsor is proper in the circumstances because he has met the applicable standard of conduct set forth in E.1. and E.2.

F. Additional requirements. Any sponsor, adviser, or clearing broker must present evidence that it is or will be in compliance with applicable licensing or registration requirements under the Commodity Exchange Act, as amended.

4 MCAR § 1.2142 Standards.

A. Disclosures. In view of the limited transferability, the relative lack of liquidity, and the high risk of loss of many commodity pool programs, suitability standards related to the risks to be undertaken will be required for the participants, and must be set forth in both the prospectus and a written instrument to be executed by each participant. The prospectus shall set forth the investment objectives of the program, a description of the type of participant who could benefit from the program and the suitability standards to be applied in marketing the program.

B. Sales to appropriate persons. A sponsor and each person selling program interests on behalf of a sponsor shall make every reasonable effort to assure that those persons being offered or sold the interests meet the suitability standards set forth in this section. The following shall be evidence thereof:

1. That the participant has the capacity of understanding the fundamental aspects of the program, which capacity may be evidenced by the following:

   a. The nature of employment experience;

   b. The education level achieved;

   c. Access to advice from qualified sources, such as an attorney, accountant or tax adviser; and

   d. Prior experience with investments of a similar nature;

2. That the participant has an apparent understanding:

   a. Of the fundamental risks and possible financial hazards of the investment;

   b. Of the lack of liquidity of the investment;

   c. That the investment will be directed and managed by the sponsor; and

   d. Of the tax consequences of the investment;

3. That the participant can bear the financial risks involved.

C. Maintenance of suitability records. A sponsor shall retain for at least three years all records necessary to substantiate the facts that program interests were sold only to participants for whom such securities were suitable. The commissioner may require a sponsor to obtain from the purchaser a letter justifying the suitability of such investment.

D. Minimum Investment. The minimum subscription shall not be less than $2,500 and shall be paid in cash at the time of purchase. Assessments of any kind shall be prohibited.

4 MCAR § 1.2143 Fees, compensation and expenses.

A. Organizational and offering expenses. All organizational and offering expenses, including commissions, incurred in order to sell program interests shall be reasonable. In no event shall these expenses exceed 15 percent of the gross proceeds of the offering.

B. Compensation.

1. Maximum expenses. The aggregate annual expenses of every character paid or incurred by a program, including management and advisory fees based on the net assets of the program but excluding commodity brokerage commissions, incentive fees, legal, audit and extraordinary expenses, calculated at least quarterly on a basis consistently applied, shall be reasonable but in no event shall exceed one-half of 1 percent of the program's net assets per month; provided a sponsor shall not receive a management fee if he receives any portion of the brokerage commissions under B.3.

The sponsor(s) shall reimburse the program quarterly for the amount by which such aggregate monthly expenses exceed the amounts herein provided, up to an amount not exceeding its management and advisory fees for the period for which reimbursement is made, prior to publication of the program's quarterly report and shall promptly notify the commissioner if the aggregate expense limitation is exceeded by reason of any extraordinary expenses.

2. Incentive fees. A sponsor or adviser will be entitled to an incentive fee. The total of the incentive fee shall not exceed 15 percent of the net profits of the program, calculated not more often than quarterly on the valuation date, over the highest previous valuation date. For purposes of this calculation, program losses shall be carried forward but shall not be carried back.

3. Brokerage commissions. The program shall seek the best price and services available in its commodity futures brokerage transactions. The program shall not effect any transactions in commodities futures contracts with any clearing broker affiliated directly or indirectly with a sponsor or with any adviser providing the sponsor with research information, recommendations, or other services which might be of value to any sponsor, unless such transactions are effected at competitive brokerage rates. In no event will the program be allowed to enter into any exclusive brokerage contract. If any person receives any portion of the brokerage commissions from program operations, the adviser may not be affiliated with such person. The commissioner may require the program to file periodic reports concerning all brokerage transactions.

4. Other income. Any interest or other income earned by any portion of the program assets shall accrue solely to the benefit of the program or the management fee shall be reduced by any amount which does not so accrue.

5. Expenses of the program. All expenses of the program shall be billed directly to and paid by the program. Reimbursements (other than for organizational and offering expenses) to any person or affiliate shall not be allowed, except for reimbursement of the actual direct costs to the sponsor or affiliate of legal and audit services used for or by the program. Expenses incurred in connection with administration of the program, including but not limited to salaries, rent, travel expenses and such other items generally falling under the category of overhead, shall not be charged to the program.

4 MCAR § 1.2144 Rights and obligations of participants.

A. Meetings. Meetings of the participants may be called by a sponsor or by participants holding more than 10 percent of the then outstanding units for any matters for which the participants may vote as set forth in a program agreement. Such call for a meeting shall be deemed to have been made upon receipt by a sponsor of a written request from holders of the requisite percentage of units stating the purpose of the meeting. The sponsor shall deposit in the United States Mails within 15 days after receipt of said request, written notice to all participants of the meeting and the purpose of such meeting, which shall be held on a date not less than 30 nor more than 60 days after the date of mailing of said notice at a reasonable time and place.

B. Voting rights of participants. The program agreement must provide that holders of a majority of the then outstanding units may, without the necessity for concurrence by the sponsor(s), vote to:

1. Amend the program agreement,

2. Dissolve the program,

3. Remove a general partner and elect a new general partner,

4. Elect a new general partner if a general partner elects to withdraw from the program, and

5. Cancel any contract for services with any sponsor or an affiliate without penalty upon 60 days written notice. A general partner shall not withdraw from a partnership without 90 days prior written notice thereof to the participants.

C. Access to program records.

1. The program agreement shall require the maintenance of a list of the names and addresses and interests owned of all participants at the principal office of the program. Such list shall be made available for the review of any participant or his representative at reasonable times, and upon request, either in person or by mail. A participant or his representative shall be furnished a copy of such list upon payment of the cost of reproduction and mailing.

2. The participants and their representatives shall be permitted access to all records of the program, after adequate notice, at any reasonable time. Records shall be maintained and preserved for a period of not less than six years.

D. Annual and periodic reports.

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1. The program agreement shall provide for the transmittal to each participant of an annual report, within 120 days after the close of the fiscal year, containing at least the following information:

a. A balance sheet as of the end of its fiscal year and statements of income, participants' equity, and changes in financial position for the year then ended, all of which shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion (without material qualification) of an independent certified public accountant or independent public accountant.

b. A statement showing the total fees, compensation, brokerage commissions and expenses paid by the program, segregated as to type, and stated both in aggregate dollar terms and as a percentage of net assets.

2. Participants shall be furnished with quarterly reports, which may be unaudited, containing the same information required in D.1.a. and D.1.b. within 60 days after the end of the quarter.

3. All participants shall be provided all information necessary for the preparation of the participants' income tax returns by not later than March 15 of each year.

4. The net assets of the program shall be calculated daily and the net asset value per unit shall be made available upon the request of a participant.

4 MCAR § 1.2145 Disclosure and marketing requirements.

A. Minimum program capital. The minimum amount of funds required to activate a program shall be sufficient to accomplish the objectives of the program, including diversification. Any minimum less than $500,000, after deduction of any organizational and offering expenses, including commissions, will be presumed to be inadequate to diversify. Provision must be made for the return to participants of 100 percent of paid subscriptions in the event that the established minimum to activate the program is not reached. All funds received prior to activation of the program must be deposited with an independent custodian, trustee or escrow agent whose name and address shall be disclosed in the prospectus.

B. Sales literature. Sales literature, sales presentations (including prepared presentations to prospective participants at group meetings) and advertising used in the offer of sale of program interests shall conform in all applicable respects to the requirements of filing, disclosure and adequacy currently imposed by SDiv. 2125 on sales literature, sales presentations and advertising used in the sale of corporate securities.

C. Contents of the prospectus.

1. Information on the cover page. There should be set forth briefly on the cover page, or the following two printed pages of the prospectus, a summary which should include the following: the title and general nature of the program interests being offered; the minimum and maximum aggregate amount of the offering; the minimum and maximum amount of net proceeds; the subscription price; the period of the offering; the maximum amount of any sales or underwriting commissions to be paid (or if none, whether such commissions are to be paid by the sponsor(s).

2. Sales to appropriate persons. There shall be set forth a description of the type of person who could benefit from the program and the suitability standards to be applied in marketing it.

3. Definitions. Technical terms used in the prospectus should be defined in a glossary.

4. Risk factors. A participant should be advised in a carefully organized series of short, concise paragraphs, under subcaptions where appropriate, of the risks to be considered before making an investment in a program. The paragraphs should include a cross reference to further information in the prospectus.

5. Business experience. The business experience of the principal officers of all sponsors shall be prominently disclosed in the prospectus. Such disclosure shall indicate their business experience for the past 5 years. Disclosure shall also be made regarding the experience of any commodity trading adviser and any clearing broker who is utilized by the program. The terms of any material contracts entered into by the program shall be summarized in the prospectus.

6. Compensation. All direct and indirect fees and compensation of every type and from every source which may be paid by the program to any person shall be summarized in tabular form in one location in the forepart of the prospectus. A sponsor shall not receive any compensation, direct or indirect, other than that disclosed in the compensation section.

7. Use of proceeds. The prospectus shall state the purposes for which the proceeds of the program are intended to be used and the approximate amount intended to be used for each such purpose.

8. Investment objectives and policies.

a. Describe the investment objectives and policies of the program, indicating which policies may be changed by the sponsor(s) without a vote of the participants.

b. Describe the plan for distribution of income of the program.

9. Prior performance.

a. The previous relevant program experience of any sponsor or adviser shall be disclosed in the prospectus for all programs during the past three years which:

(1) Involved a public offering registered under state or federal securities laws;

(2) Involved a private or limited offering.

b. Information on previous programs shall include, but not be limited to, the following:

(1) Identification of the program, including the name and location;

(2) The effective date of the offering, the date it commenced operations and the date of dissolution or termination or, if it is continuing, that fact;

(3) The total amount of units, the gross amount of capital raised by the program, the number of participants, and the dollar amount of investment of the sponsor, if applicable;

(4) Income credited and cash distributed to participants and to any sponsor, adviser, or clearing broker;

(5) Compensation and fees to any sponsor, segregated as to type;

(6) Compensation and fees paid to other relevant parties such as advisers and clearing brokers;

(7) The net asset value per unit as of the end of each valuation period previously used;

(8) Such additional or different disclosures of the success or failure of the programs as may be permitted or required by the commissioner.

c. All of the foregoing information shall be set forth on a cumulative basis for each program in tabular form wherever possible and include a brief description of any material differences between a prior program and the program to be offered.

d. The following caveat should be prominently featured in the presentation of the foregoing information: "It should not be assumed that participants in the offering covered by this prospectus will experience returns, if any, comparable to those experienced by participants in prior programs."

e. The foregoing information shall be supported in the application for registration by an affidavit that the performance summary is a fair presentation of the information contained in the audited financial statement or the federal income tax returns of the program or in other reports or data.

10. Conflicts of interest and transactions with affiliates.

a. Any conflicts of interest between the program and any sponsor, adviser, clearing broker or any affiliate thereof, must be fully disclosed. This would include, at a minimum the following:

(1) Any conflicts arising out of involvement with previous programs;

(2) Any conflicts arising out of involvement in the area of activities not related to the management, advising or other services performed for commodity pools;

(3) Any other agreements, arrangement or transactions, proposed or contemplated, that may be a potential conflict of interest;

(4) The sponsor shall also be required to disclose the steps that will be taken to alleviate any real or potential conflict of interest;

(5) If the program pays higher than the minimum commission rates for commodity brokerage transactions, such fact shall be set forth along with a justification.

b. Certain material conflicts of interest are presumed to be sufficient to render the proposed program incapable of accomplishing its stated objectives in the best interest of the participants and shall be controlled as follows:

(1) No loans may be made by the program to any sponsor or any other person;

(2) The funds of a program shall not be commingled with the funds of any other person. Funds used to satisfy margin requirements will not be considered commingling;

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(3) No rebates or give ups may be received by any person nor may any person participate in any reciprocal business arrangements which could circumvent these guidelines. Furthermore, the prospectus and program agreement shall contain language prohibiting the above as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing with affiliates or other interested parties;

(4) The program agreement shall prohibit the commodity trading adviser or any other person acting in such capacity from receiving an advisory fee if they share or participate, directly or indirectly, in any commodity brokerage commissions generated by the program;

(5) The maximum period covered by any contract of the program with any adviser, clearing broker, sponsor or affiliate thereof shall not exceed one year. Any contract must be terminable without penalty upon 60 days written notice by the program, which provisions shall be set forth in the program agreement;

(6) Any other agreement, arrangement or transactions, proposed or contemplated, may be restricted in the discretion of the commissioner if it would be considered unfair to the participants in the program.

11. Federal tax consequences. The prospectus shall disclose the following tax aspects:

a. Tax treatment of the program;

b. Tax treatment of the participants;

c. Method of allocation of losses or profits and cash distributions;

d. Any other pertinent information applicable to the tax aspects of the investment; and

e. The possibility that the filing of state tax returns will be required in the states in which interests are held.

12. Commodities futures markets. At a minimum, the prospectus should disclose the following characteristics of the commodities markets:

a. That the commodities markets are extremely volatile and the risk of loss is great;

b. The procedures used in trading commodities futures contracts including, but not limited to, the margin requirements on the commodities to be invested in by the program, the exchanges or board of trade on which the program anticipates trading, and a description of the applicable exchange requirements.

13. Licensing and regulation. The prospectus shall disclose any licensing or registration requirements of the program, including those imposed by the Commodity Futures Trading Commission.

14. Prohibitions. The prospectus shall disclose that the program agreement specifically prohibits the following activities:

a. A program shall not engage in pyramiding;

b. A program shall not utilize borrowing;

c. A program shall not enter into an open position during a delivery month;

d. A program shall not permit the investment of its funds deemed "customer's funds" under the Commodity Exchange Act, as amended, in any securities other than as permitted by the Commodity Futures Trading Commission;

e. A program shall not commit more than 15 percent of its equity in the trading account at any time for margin in any one commodity irrespective of the delivery month. For this purpose gold and silver bullion, coins and futures contracts shall be considered one commodity;

f. A program's trading policy shall specifically exclude the purchasing, selling, writing or trading in commodity options or purchasing or selling securities, other than those mentioned in C.14.d.;

g. A program shall not engage in cash commodity transactions unless the cash commodity is fully hedged;

h. A sponsor shall not commit more than two-thirds of the net assets of a program as margin for commodity futures contracts and the balance of such assets shall be retained in cash or cash equivalent to apply as needed for additional margin or for redemption;

i. A sponsor shall not permit the churning of the program's account so as to generate a commission for itself or for the benefit of any other person.

15. Notification. Each participant shall be notified within seven business days from the date of any decline in the net value per unit to less than 50 percent of the amount on the last valuation date. Included in the notification shall be a description of the participants' voting rights pursuant to 4 MCAR § 1.2143B.

16. Material changes. Any material changes in the program's basic investment or trading policies or structure shall require prior written approval by a majority of program interests held by participants. This shall include, specifically, any transfer or withdrawal of any sponsor's required interest in the program.

17. Summary of any limited partnership agreement or other program agreement.

18. Legal proceedings. Briefly describe any legal proceedings to which the program or any person is or was a party which is material to the program and any material legal proceedings between any sponsor and participants in any prior program of the sponsor.

19. Financial information required on application. A sponsor and the program shall provide as an exhibit to the application for registration or where indicated below shall provide as part of the prospectus, the following financial information and financial statements:

a. Balance sheet of the program. As part of the prospectus, a balance sheet of the program as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or an independent public accountant, and an unaudited balance sheet as of a date not more than 90 days prior to the date of filing;

b. Balance sheet of a sponsor.

(1) Corporate Sponsor. A balance sheet of a corporate sponsor as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or an independent public accountant and an unaudited balance sheet as of a date not more than 90 days prior to the date of filing. Such statements shall be included in a prospectus,

(2) Individual Sponsor. A balance sheet for each individual sponsor as of a time not more than 90 days prior to the date of filing an application; such balance sheet may be audited and should conform to generally accepted accounting principles and shall be signed and sworn to by such sponsor. A representation of the amount of such net worth must be included in the prospectus;

c. Statement of income for corporate sponsor. A statement of income for the last fiscal year of a corporate sponsor (or for the life of a corporate sponsor, if less) prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or independent public accountant, and an unaudited statement for any interim period ending not more than 90 days prior to the date of filing an application.

4 MCAR § 1.2146 Miscellaneous provisions.

A. Fiduciary duty. The program agreement shall provide that the sponsor(s) shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in its immediate possession or control, and that it shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the program.

B. Redemptions. The program shall provide an opportunity at least quarterly for the redemption of program interests at the net asset value as of the valuation dates upon the written request of any participant. The participant must notify a sponsor of his intent to redeem at least 30 days prior to the redemption date. The prospectus and program agreement must indicate the valuation dates for redemption. Such requests must be honored within 30 days following the valuation date, unless the quantity of redemptions would be detrimental to the tax status of the program. In that case, redemptions may be selected by lot, and participants notified within 30 days whether or not their program interests were redeemed. The program agreement may provide for the suspension of redemptions if the effect of substantial redemptions would impair the ability of the program to operate in pursuit of its objectives.

4 MCAR §§ 1.2147-1.2149 Reserved for future use.

4 MCAR § 1.2150 Waiver.

A. The requirements of subchapters 4, 5, 6, 7, and 8 may be waived by the commissioner upon proof of substantial compliance with rules, statements of policy or guidelines of national or regional securities regulatory organizations composed of securities administrators of this and other states.

B. Any such waiver shall be based upon a determination by the commissioner that compliance with such rules, statements of policy or guidelines is:

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1. consistent with the purposes fairly intended by the policy and provisions of Minn. Stat. §§ 80A.01 to 80A.31 (1978), as amended,

2. appropriate for the protection of investors, and

3. promotive of uniformity of regulation.

4 MCAR § 1.2151 A diamond, ruby, emerald, or sapphire constitutes an "investment gem" pursuant to Minn. Stat. § 80A.14(j) (1978), as amended.

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

Proposed Temporary Rule Governing Special Education Procedures for Decisions on Formal Notice to Parents

Request for Public Comment

Notice is hereby given that the State Board of Education has proposed the following temporary rule for the purpose of implementing the provisions of Minn. Stat. §§ 120.17, as amended; 124.62, subd. 1(5) and subd. 2; 20 U.S.C. § 1401, *et seq.*, and the corresponding federal regulations, 45 C.F.R. part 121a.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the State Register by writing to:

Wayne A, Erickson, Manager
Special Education Section
802 Capitol Square Building
St. Paul, Minnesota 55101

The temporary rule may be revised on the basis of comments received.

Any written material received shall become part of the record and the final adoption of the temporary rule.

November 21, 1980

Howard B. Casmey
Commissioner of Education

Temporary Rule as Proposed

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

5 MCAR § 1.0127 Formal notice to parents.

A. General notice provisions.

5. All notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of all of the procedural safeguards available to parents under the provision of these rules. All notices must:

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~~ obtain 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.~~ However, a district may initiate a due process hearing to show that its assessment is appropriate. If the final decision is that its assessment is appropriate, the parents still have the right to an independent assessment, but not at public expense.

Pollution Control Agency
Water Quality Division

Proposed Temporary Rule Governing Sewage Sludge Disposal

Request for Public Comment

Notice is hereby given that the Minnesota Pollution Control Agency has proposed the following temporary rule for the purpose of implementing provisions of Laws of 1980, ch. 564, art. XI, sect., 6, relating to sewage sludge disposal.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register* by writing to:

Rodney E. Massey, P.E.
Chief, Ground Water Section
Division of Water Quality
Minnesota Pollution Control Agency
1935 W. County Rd. B2
Roseville, Minnesota 55113
Phone: (612) 296-7218

The temporary rule may be revised on the basis of comments received. Any written material received shall become part of the record in the adoption of the temporary rule.

Since temporary rules can remain in effect by law, for no more than 180 days from their effective date, permanent rules will be proposed and a public hearing will be held on the proposed permanent rules at some time in early 1981. A formal Notice of Hearing will appear at the appropriate time in the *State Register*.

Terry Hoffman
Executive Director
Minnesota Pollution Control Agency

Temporary Rule as Proposed

6 MCAR § 4.8050 Disposal of sewage sludge.

6 MCAR § 4.8050 Temporary sewage sludge disposal standards

A. Intent. Improper design, location and operation of sewage sludge disposal facilities adversely affect the public health, safety and welfare by causing pollution, impairment and destruction of the state's natural resources. In accordance with the authority granted in Minn. Laws of 1980, ch. 564, art. XI, § 6, this rule establishes temporary standards for the design, location and operation of sewage sludge disposal facilities and provides procedures for administration of this rule. It is the intent of this rule to maximize the beneficial use or recycling of sewage sludge.

B. Definitions. For the purpose of this role, the following terms shall have the meanings defined herein:

Agency—the Minnesota Pollution Control Agency.

Animal feed—Any crop grown for consumption by animals, such as pasture crops, forage, and grain.

Available nitrogen—Nitrogen which can be readily absorbed by growing plants or leached by percolating waters.

Background soil pH—The pH of the soil prior to the addition of substances intended to alter the hydrogen ion concentration.

Cation exchange capacity—A measure of the potential quantity of readily exchangeable positive ions that the soil can attract and retain, expressed in milliequivalents per 100 grams of soil. (See Appendix A)

Class A Sewage Treatment System—As determined using 6 MCAR § 5.002.

Continuous storage—The storage of sewage sludge for a period greater than six months at a facility not located at the place of sewage sludge generation. Sewage sludge is continuously delivered and removed from the facility on a regular rotational basis depending on the surplus of or demand for sewage sludge.

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Crops for direct human consupmtion—Crops that are consumed by humans without processing to minimize pathogens prior to distribution to the consumer.

Dewatered sewage sludge—Sewage sludge with sufficient solids content such that it has no free water and can be transported and handled as a solid material.

Director—The Executive Director or other designated representative of the Minnesota Pollution Control Agency.

Disease vector—Rodents, flies, and mosquitoes capable of transmitting disease to humans.

Disposal—As defined in Minnesota Laws of 1980, ch. 564, art. I, § 3, subd. 9, which is the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

Food-chain crops—Tobacco, crops grown for human comsumption, and animal feed for animals whose products are consumed by humans.

Heavy metals—Usually, but not always, those metals which have specific gravities greater than 5.0; including but not limited to, cadmium (Cd), chromium (Cr), copper (Cu), lead (Pb), mercury (Hg), nickel (Ni), and zinc (Zn).

Hundred year flood plain—As defined in 6 MCAR § 4.8051 for flood plain, which is, the areas adjoining a watercourse which has been or hereafter may be covered by a large flood known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100 year recurrence interval.

Incorporation—The mixing of sewage sludge with topsoil, concurrent with application or within 48 hours thereafter, by means such as injection, discing, mold-board plowing, chisel plowing or rototilling.

Interim storage—The storage of dewatered sewage sludge for a period of six months or less at a landspreading sewage sludge disposal facility not located at the place of sewage sludge generation. Sewage sludge is delivered to the facility with intentions of being landspread as soon as conditions permit, where it cnanot be immediately spread because of soil conditions, snow depths, wet periods, cropping seasons, or periods of conflicting land use.

Landspreading—Placement of sewage sludge in or on soil at rates where the quantity of nutrient and non-nutrient elements and soil conditioning materials is consistant with the biochemical assimilative capacity of the soil-plant systems.

Leachate—Liquid that has passed through or emerged from sewage sludge or sewage sludge amended soil and contains soluble, suspended or miscible materials removed from such wastes.

Lease—Any oral or written agreement between a political subdivision and a landowner.

Pasture crops—Crops such as legumes, grasses, grain stubble and stover which are consumed by animals while grazing.

Pathogens—Organisms, chiefly microorganisms, including viruses, but also including all forms of animal parasites, that are capable of producing an infection or disease in a susceptible host.

Perched water table—As defined in 6 MCAR § 4.8022.

Person—As defined in Minn. Stat. § 116.06, subd. 8, which is any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity, but does not include the Pollution Control Agency. Pursuant to Minnesota Laws of 1980, ch. 564, art. I, § 3, subd. 23, person shall also not include the Waste Management Board.

Political subdivision—As defined in Minnesota Laws of 1980, ch. 564, art. I, § 3, subd. 24, which is any municipality, corporation, governmental subdivision of the state, local government unit, special district, or local or regional board, commission, or authority authorized by law to plan or provide for waste management.

Process to further reduce Pathogens (PFRP)—Composting—Using the within-vessel composting method, the sewage sludge is maintained at operating conditions of 55°C or greater for three days. Using the static aerated pile composting method, the sewage sludge is maintained at operating conditions of 55°C or greater for three days. Using the windrow composting method, the sewage sludge attains a temperature of 55°C or greater for at least 15 days during the composting period and during the high temperature period, there must be a minimum of five turnings of the windrow.

Heat drying—A process by which dewatered sewage sludge cake is dried by direct or indirect contact with hot gases, and moisture content is reduced to

10 percent or lower. Sewage sludge particles must reach temperatures in excess of 80°C, or the wet bulb temperature of the gas stream in contact with the sewage sludge at the point where it leaves the dryer must be in excess of 80°C.

Heat treatment—a process by which liquid sewage sludge is heated to temperatures of 180°C for 30 minutes.

Thermophilic aerobic digestion—A process by which liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions at residence times of 10 days at 55-60°C, with a volatile solids reduction of at least 38 percent.

Other methods—Other methods or operating conditions are acceptable if pathogens and vector attraction of the sewage sludge (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the above methods.

Process to Significantly Reduce Pathogens (PSRP)—Aerobic digestion—A process conducted by agitating sewage sludge with air or oxygen to maintain aerobic conditions at residence times ranging from 60 days at 15°C to 40 days at 20°C, with a volatile solids reduction of at least 38 percent.

Air drying—A process by which liquid sewage sludge is allowed to drain and/or dry on underdrained sand beds, or paved or unpaved basins in which the sludge is at a depth of nine inches. A minimum of three months is needed, two months of which temperatures average on a daily basis above 0°C.

Anaerobic digestion—A process conducted in the absence of air at residence times ranging from 60 days at 20°C to 15 days at 35°C to 55°C, with a volatile solids reduction of at least 38 percent.

Composting—Using the within-vessel, static aerated pile, or windrow composting methods, the sewage sludge is maintained at minimum operating conditions of 40°C for 5 days. For four hours during this period the temperature exceeds 55°C.

Lime stabilization—A process by which sufficient lime is added to produce a pH of 12 after 2 hours of contact.

Other methods—Other methods or operating conditions are acceptable if pathogens and vector attraction of the sewage sludge (volatile solids) are reduced to an extend equivalent to the reduction achieved by any of the above methods.

Root crops—Plants whose edible parts are grown below the soil surface.

Sewage sludge—As defined in Minnesota Laws of 1980, ch. 564, art. I, § 3, subd. 29, which is the solids and associated liquids in municipal wastewater which are encountered and concentrated by a municipal wastewater treatment plant for disposal at a sewage sludge disposal facility. Sewage sludge does not include incinerator residues and grit, scum, or screenings removed from other solids during treatment.

Sewage sludge disposal facility—As defined in Minnesota Laws of 1980, ch. 564, art. I, § 3, subd. 30, which is property owned or leased by a political subdivision and used for interim or final disposal or landspreading of sewage sludge.

a. Dedicated sewage sludge disposal facility is any facility that is devoted to and managed for the primary function of sewage sludge storage, composting, or landspreading.

b. Non-dedicated sewage sludge disposal facility is any facility that is devoted to and managed for the primary function of crop production, around which sewage sludge landspreading and interim storage is scheduled and managed.

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Sewage Sludge Solids—The total, oven-dry (105°C) solids in sewage sludge.

Soil pH—A measure of the acidity or alkalinity of soil. A soil pH value of 7.0 is neutral.

Soil texture—The relative proportion of the soil separates sand, silt and clay.

Coarse texture—USDA textural classification sands, loamy sands and sandy loams.

Medium texture—USDA textural classification loams, silt loams, and silts.

Fine texture—USDA textural classification clay loams and clays.

Spray application—Liquid sewage sludge application by sprinkling devices such as center pivots and stationary or movable spray irrigation mechanisms.

Surface application—Sewage sludge spread on the surface of the land and not incorporated into the soil within 48 hours of application.

Ten year flood plain—The lowland and relatively flat areas adjoining surface waters which are inundated by a flood, which can be expected to occur, on an average, of once in ten years; or the land area to which flood waters have a ten percent chance of inundating in any given year.

USDA—United States Department of Agriculture.

Water table—As defined in 6 MCAR § 4.8022 with the exception of a perched water table condition which will not be considered as a water table.

C. Applicability.

1. This rule shall apply only to persons identified in C.2. utilizing sewage sludge disposal practices which involve landspreading, composting or storage. Incineration of sewage sludge is governed by 6 MCAR § 4.0028. Disposal of sewage sludge in sanitary landfills is governed by 6 MCAR §§ 4.6001-4.6011.

2. Paragraphs F. and G. shall apply to:

a. All political subdivisions.

b. All persons who own or operate dedicated sewage sludge disposal facilities.

3. Permits and letters of approval.

a. The following persons shall obtain a State Disposal System Permit pursuant to this rule subject to the following conditions if the sewage sludge disposal facility is not presently permitted or approved by the agency:

(1) Class A Sewage Treatment Systems, Other Than Systems Under The Control of The Metropolitan Waste Control Commission.

(a) If a political subdivision owns the sewage sludge disposal facility, the political subdivision shall be the applicant and permittee.

(b) If a person other than a political subdivision owns the dedicated sewage sludge disposal facility, the owner, the operator, and the political subdivision shall be co-applicants and co-permittees.

(2) Metropolitan Waste Control Commission Sewage Treatment Systems.

(a) If the Metropolitan Waste Control Commission owns the sewage sludge disposal facility, the Metropolitan Waste Control Commission and the Metropolitan Council shall be co-applicants and co-permittees.

(b) If a person other than the Metropolitan Waste Control Commission owns the dedicated sewage sludge disposal facility, the owner, the operator, and the Metropolitan Waste Control Commission shall be co-applicants and co-permittees.

b. If a political subdivision, including the Metropolitan Waste Control Commission, operates a Class A Sewage Treatment System and a person other than the political subdivision owns the non-dedicated sewage sludge disposal facility, the political subdivision shall obtain a Letter of Approval pursuant to this rule if the sewage sludge disposal facility is not presently permitted or approved by the agency.

c. Applicants required under C.3.a.(1) and under C.3.b. by political subdivisions other than the Metropolitan Waste Control Commission shall be submitted within 60 days of the effective date of this rule. If such applications are submitted in a timely manner and if such person is in compliance with Sections F and G of this rule, such persons shall not be deemed in violation of the Permit or Letter of Approval requirements of this rule. Permits required under C.3.a.(2) and Letters of Approval required of the Metropolitan Waste Control Commission under C.3.b. shall be issued prior to the usage of the proposed sewage sludge disposal facility.

D. Contents of applications for Letter of Approval and Permit.

1. Applications for Letters of Approval for non-dedicated sewage sludge disposal facilities shall include the following specific information, plus any other information necessary to determine the potential impact of the proposed facility on ground water, surface water, soil, vegetation or air.

a. Sewage sludge characterization, to include:

(1) Description of the method, retention times, temperatures, and chemical doses used to stabilize the sewage sludge.

(2) Physical and chemical characteristics of the sewage sludge to include:

(a) total solids.

(b) total volatile solids.

(c) pH.

(d) nitrogen (kjeldahl, ammonia, and nitrate).

(e) total heavy metals (zinc, copper, lead, nickel, cadmium, chromium, mercury).

(f) total polychlorinated biphenyls (PCBs).

(g) other parameters that may be necessary include:

(i) soluble salts.

(ii) specific microorganism populations.

(iii) fats, oils and greases.

(iv) toxic organic compounds.

(3) Description of industrial contributors to the sewer system which may discharge toxic organic chemicals, the type and quantity of chemicals discharged, evaluation of the concentrations of such chemicals in the sewage sludge and the significance of such concentrations.

b. Site characterization, to include:

(1) Copies of soil survey maps, if available, topographic maps, plat maps delineating the boundaries of the specific landspreading area and providing the legal description, including township, range, section and quarter sections.

(2) Acreage of the site.

(3) Name and address of landowner.

(4) Map or aerial photo which shows the location of and approximate distance to each of the following features, if within ¼ mile of the site:

(a) surface waters, including dry runs, streams, springs, flowages, ponds, lakes, or wetlands.

(b) ten year flood plains for non-dedicated facilities and hundred year flood plains for dedicated facilities.

(c) sinkholes, caves, rock outcrops, mines, pits or quarries.

(d) potable water supply wells or surface intakes.

(e) places of habitation, business or recreational areas.

(f) property lines.

(g) road rights of way.

(h) airports.

(5) Approximate degree (percent) of landslopes at the site.

(6) Approximate depths to ground water and bedrock.

(7) Approximate quantity of sewage sludge previously applied at site.

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(8) Soil test results from at least one composite sample for each 40 acres of landspreading area. Required parameters include:

(a) USDA classification.

(b) organic matter percent.

(c) extractable phosphorus (Bray's No. 1 Extractment).

(d) exchangeable potassium (ammonium acetate extractant).

(e) pH (1:1 w/w soil-water suspension).

(f) lime requirement to pH 6.5.

(g) soluble salts (specific conductance-mmhos/cm).

(h) cation exchange capacity (as estimated from the procedures set out in Appendix A).

c. Facility management, to include:

(1) Description of the proposed method(s) of sewage sludge disposal.

(2) Name and address of the person who will be operating and managing the proposed sewage sludge disposal facility.

(3) Description of the lease for the site.

(4) Maximum annual application rate (tons of sewage sludge solids/acre/year, based on nitrogen or cadmium additions whichever is limiting).

(5) Description of the crops to be grown or dominant vegetation at the site and the intended use of the crops.

(6) Estimated cumulative sewage sludge loading rate at the site (tons of sewage sludge solids/acre, based on cumulative heavy metal limits).

(7) Description of how public access to the site is proposed to be limited.

d. Provisions for interim sewage sludge storage at the site when it is unavailable or inaccessible for immediate landspreading.

(1) Description of the necessity for storage at the site.

(2) Location of the storage area delineated on maps submitted pursuant to D.1.b.(1) of this rule.

(3) Description of how sewage sludge is to be stored.

(4) Acreage of the sewage sludge storage area.

(5) Quantity of sewage sludge to be stored.

(6) Expected duration of storage before landspreading.

(7) Description of precautions or practice to minimize or prevent leachate, runoff or nuisance conditions from the storage area.

2. Application for permit. Applications for State Disposal System Permits for dedicated sewage sludge and disposal facilities shall include the following specific information, plus any other information necessary to determine the potential impact of the facility on ground water, surface water, soil, vegetation or air.

a. Sewage sludge characterization as prescribed in D.1.a. of this rule.

b. Site characterization as prescribed in D.1.b. of this rule, plus the following information:

(1) Description of surface and subsurface characteristics at and within ¼ mile of the site. Specific characteristics that shall be considered include soils, surficial and bedrock geology, surface waters, surface and subsurface drainage and ground water elevations and flow.

(2) A discussion of the potential for surface runoff or drainage from the facility to surface water and/or low areas having shallow water tables. A description of any provisions or practices that will be utilized to control surface runoff or drainage.

(3) A discussion of the potential for leachate generation during and following rainfall events and subsequent movement to ground water. A description of the provisions or practices that will be utilized to control leaching and protect ground water quality.

(4) A discussion of the potential for pathogen movement from the proposed facility to the surrounding

environment via wind currents and disease vectors. A description of the provisions or practices that will be utilized to control pathogen dispersions.

(5) A discussion of the potential for odor generation impacting the surrounding area. A description of the provisions or practices that will be utilized to control odors. Land use and zoning within ¼ mile of the facility shall also be described.

c. Information prescribed in D.1.b.(7) and (8), need not be submitted for composting or continuous storage sewage sludge disposal facilities, but a map showing the locations of and distance to all nursing homes and hospital within ½ mile shall be submitted.

d. Description of management provisions at landspreading sewage sludge disposal facilities as prescribed in D.1.c. of this rule.

e. Description of management and operational provisions at composting sewage sludge disposal facilities which shall include:

(1) Types of bulking agent to be used.

(2) Ratio of sewage sludge to bulking agent.

(3) Method to be used for mixing the sewage sludge with the bulking agent.

(4) Estimated temperatures that the compost will attain and the period of time the temperatures will be sustained.

(5) Length of time compost will be cured.

(6) The quantity and source of sewage sludge to be delivered to the facility on a weekly or monthly basis, whichever is more applicable.

(7) A comprehensive survey of proposed and potential users and markets of the sewage sludge compost. A description of the methods and areas of distribution.

f. Description of management and operational provisions at continuous storage sewage sludge disposal facilities as prescribed in D.1.d. of this rule. Also, the quantity and source of sewage sludge to be delivered to the facility on a weekly or monthly basis, whichever is more applicable.

E. Administration of Letter of Approval and Permit Programs.

1. Administration of State Disposal System Permit for dedicated sewage sludge disposal facilities shall be governed by rule 6 MCAR § 4.8036.

2. Administration of Letters of Approval for non-dedicated sewage sludge disposal facilities shall be governed by the following procedures:

a. Review. All applications shall be reviewed for completeness by the director. If the application is incomplete or otherwise deficient, the director shall promptly advise the applicant of such incompleteness or deficiency. Further processing of the application may be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency.

b. Preparation of preliminary determinations. The director shall make a preliminary determination regarding a completed application. This preliminary determination shall include a proposed determination to issue or to deny the approval sought in the application.

(1) If the preliminary determination is to deny an approval, the director shall notify the applicant in writing and include the specific reasons for denial. The applicant may request an appearance before the Agency to appeal the denial pursuant to Agency rules of procedure, 6 MCAR § 4.3003.

(2) If the preliminary determination is to issue an approval, the procedures set out in E.2.c. and E.2.d. shall apply.

c. Public participation.

(1) The director shall provide notice of the application and a copy of the draft Letter of Approval to the following persons and other persons known by the Director to have an interest in the proposed approval.

(a) Applicant.

(b) Owner and occupier of land proposed to be used for sewage sludge disposal.

(c) City or township and county officials of area where sewage sludge disposal facility is located.

(2) Any interested person, including the applicant, may within 14 days following the date of issuance of the notice submit written comments on the application and the proposed approval to the director.

(3) All written comments submitted during the comment period shall be retained and considered in the formulation of final determinations concerning the application.

d. Final determination.

(1) The director shall attempt to resolve all comments prior to a final determination concerning the application. If such comments have been resolved, the director shall issue or deny the approval.

(2) If all comments cannot be resolved, the application shall be presented to the agency who shall issue or deny the approval.

(3) All persons submitting comments on the application and the proposed approval shall be notified of the final determination concerning the application.

e. Denial of approval. Approval shall be denied if:

(1) The proposed sewage sludge disposal facility does not comply with this rule and other applicable state or federal laws or rules; or

(2) Such approval is likely to cause pollution, impairment or destruction of the air, water, land or other natural resources of the state and there is a feasible and prudent alternative.

f. Modification, suspension and revocation of Letters of Approval. A Letter of Approval may be modified, suspended or revoked in accordance with the requirements of 6 MCAR § 4.8036.

g. Duration of approvals. The Letter of Approval shall establish the term of the Approval. In no case shall such term exceed the term of the political subdivision's National Pollutant Discharge Elimination System or State Disposal System sewage treatment system permit.

h. Enforcement. A Letter of Approval issued to a political subdivision pursuant to this rule shall become part of the political subdivision's National Pollutant Discharge Elimination System or State Disposal System sewage treatment system permit and shall be enforceable to the same extent as the permit.

F. Requirements for sewage sludge disposal facilities used for landspreading of sewage sludge.

1. Disease control. The landspreading of sewage sludge shall be managed in such a manner to minimize the potential for disease transmission to animals and humans.

a. Sewage sludge shall, at a minimum, be treated by a Process to Significantly Reduce Pathogens (PSRP) prior to landspreading.

b. Sewage sludge shall be treated by a Process to Further Reduce Pathogens (PFRP) in the following cases:

(1) If crops for direct human consumption are to be grown within 18 months of sewage sludge application and there will be contact between the sewage sludge and the edible portion of the crop.

(2) Public access to the landspreading facility is not controlled for 12 months.

c. If sewage sludge is to be applied to land used for pasturing livestock or for growing forage crops, the pasturing or harvesting of the crop shall not be permitted for at least one month following the last sewage sludge application unless the sewage sludge was treated by a PFRP.

2. Soil pH and cadmium application. The landspreading sewage sludge shall be managed in such a manner to minimize the potential for cadmium uptake by food-chain crops.

a. The pH of the soil/sewage sludge mixture shall be 6.5 or greater at the time of each sewage sludge application or shall be adjusted to and maintained at 6.5 or greater immediately after sewage sludge application and before growing food-chain crops.

b. Annual cadmium application shall not be more than 0.5 pounds per acre on land used for the production of tobacco, leafy vegetables or root crops grown for human consumption. For other food-chain crops, the annual cadmium application shall not exceed two pounds per acre.

c. Cumulative cadmium application shall not exceed:

SOIL CATION EXCHANGE CAPACITY (meq/100g)	MAXIMUM CUMULATIVE CADMIUM APPLICATION (LBS/A)	
	BACKGROUND SOIL pH LESS THAN 6.5*	BACKGROUND SOIL pH 6.5 OR GREATER
0-5	5	5
5-15	5	10
> 15	5	20

* For soils with a background pH of less than 6.5, the cumulative cadmium application rate can be the same as for soils with a background pH of 6.5 or greater provided that the pH of the soil/sewage sludge mixture is adjusted to and maintained at 6.5 or greater whenever food-chain crops are grown.

3. Cumulative heavy metal additions. The total quantity of sewage sludge applied to a facility shall be managed in such a manner to prevent excessive heavy metal accumulation in the soil and subsequent potential plant and food-chain toxicity. Sewage sludge application to a facility shall be terminated when the sum addition of any one metal equals the level given below for that particular metal and soil.

Metal	Total Heavy Metal Addition (LBS/A) Soil Cation Exchange Capacity (meq/100g)		
	0-5	5-15	> 15
Lead	500	1000	2000
Zinc	250	500	1000
Copper	125	250	500
Nickel	50	100	200

4. Sewage sludge application rates. The landspreading of sewage sludge shall be conducted in such a manner to minimize nitrate movement to ground water and minimize the build-up of soluble salts in soil.

a. Sewage sludge application rates, combined with other nitrogen sources, shall supply no more nitrogen than the amount required by the crop to be grown. The rate of sewage sludge application shall be determined using the method outlined in Appendix B.

b. Sewage sludge application to a facility shall be suspended whenever the electrical conductivity of a saturation extract of soil exceeds four millimhos/centimeter (soluble salt test).

5. Persistent organic chemical limitations. The landspreading of sewage sludge shall be managed in such a manner to minimize the build-up of polychlorinated biphenyls (PCBs) and other persistent organic chemicals in soil.

a. Sewage sludge containing concentrations of PCBs equal to or greater than 10 mg/kg (dry weight) shall be incorporated into the soil when applied to land use for producing food-chain crops.

b. Sewage sludge containing concentrations of PCBs equal to or greater than 50 mg/kg (dry weight) shall not be landspread.

c. Sewage sludge application rates and the operation of a facility shall be managed such that the threat of contamination by toxic organic chemicals to surface water, ground water, soil and vegetation is minimized.

6. Separation distances. The landspreading of sewage sludge shall be managed in such a manner as to include adequate buffer zones. The buffer zones shall suitably isolate the facility, thereby reducing potential impacts to neighboring residents, potable water supplies, ground water and surface waters.

a. For medium and fine textured soils, at least 3 feet of soil shall exist between the soil surface and the water table and/or bedrock. For coarse textured soils, this separation distance shall be at least 6 feet.

b. A distance of at least 200 feet from any potable water supply well, with the exception of test or monitoring wells, shall be maintained.

c. A distance of at least 50 feet from any property line or road right-of-way shall be maintained.

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d. A distance of at least 500 feet from any place of habitation or business or area used for recreational purposes shall be maintained, unless written permission is obtained from the appropriate party.

e. Separation distances prescribed in parts c. and d. above shall be increased 6-fold where sewage sludge is applied by pressurized spray.

f. A distance of at least 300 feet from any dry run, pond, lake, stream, spring, flowage, or ten year flood plain shall be maintained where sewage sludge is surface applied during the months of May to October, inclusive. This separation distance shall be doubled (600 feet) where sewage sludge is surface applied during the months of November to April, inclusive.

g. A distance of at least 100 feet from any dry run, pond, lake, stream, spring, flowage, or ten year flood plain shall be maintained where sewage sludge is injected or immediately incorporated into the soil.

7. Interim sewage sludge storage. The stockpiling of dewatered sewage sludge at a facility shall be managed in such a manner to minimize the potential for adverse environmental effects. The sewage sludge stockpiled at a facility shall be landspread as soon as possible.

a. Sewage sludge stockpiles shall be placed at least 1000 feet from any place of habitation, business, area used for recreation, or potable water supply well, unless written permission is obtained from the appropriate party.

b. Sewage sludge stockpiles shall be placed at least 1000 feet from any dry run, pond, lake, stream, spring, flowage, or ten year flood plain, unless the stockpiles are bermed to a height of 1 foot or if the stockpiles are downgradient from the features mentioned, in which case the separation distance may be reduced to 200 feet.

c. Sewage sludge stockpiles shall not be allowed on land with greater than 2% slope, unless the stockpiles are bermed to a height of 1 foot, in which case the maximum land slope may be increased to 6%.

d. Sewage sludge shall not be stockpiled on soils of permeability greater than 6 inches per hour, unless the stockpiles are underlain by an impervious or absorbent material, such as clay, crushed and packed limestone, plastic, straw or woodchips.

e. A minimum distance of 6 feet shall exist between the soil surface and the water table wherever sewage sludge is stockpiled.

f. Interim storage of sewage sludge is prohibited for a period in excess of six months.

8. Prohibited sites and other limitations

a. Sewage sludge shall not be disposed of on or into any cave, sinkhole, mine, gravel pit, or quarry, or wetland, or on any land without the owner's permission.

b. Sewage sludge shall not be applied to coarse sands or gravel soils.

c. Organic soils (peat) shall not be utilized for sewage sludge application unless adequately drained.

d. Individual surface applications of liquid sewage sludge shall not exceed:

coarse textured soil —25,000 gallons per acre
medium textured soil—15,000 gallons per acre
fine textured soil—10,000 gallons per acre

e. Sewage sludge shall not be applied to land that is to be left in fallow during the summer months (May to September, inclusive).

f. Surface application of sewage sludge shall not be allowed on land with a slope greater than 6%. Subsurface application or immediately incorporated application of sewage sludge shall not be allowed on land with a slope greater than 12%.

g. Sewage sludge shall be applied to land in such a manner as to provide uniform spreading (application) over the entire site.

h. The boundary of an application site shall be identified with the use of conspicuous flags placed every 100 feet along its border unless apparent boundaries, such as fence rows, roads, tree lines, steep slopes, etc., exist.

9. Requirement for record-keeping and annual reporting.

a. A record-keeping system shall be initiated and maintained by the political subdivision to verify compliance with the rules and limitations herein. The information recorded in such a system shall include the following:

(1) Required sewage sludge composition data pursuant to D.1.a.

(2) Soil test data for application sites used during the year, pursuant to D.1.b.(8).

(3) The location of the site on a topography or soil survey map and the number of acres to which sewage sludge was applied.

(4) The amount of sewage sludge applied (tons sewage sludge solids/acre).

(5) The amount of available nitrogen applied per year (lbs/acre).

(6) The amount of cadmium, zinc, lead, nickel, and copper applied per year and cumulatively (lbs/acre).

(7) Vegetation grown on each site during the year.

(8) A description of any adverse environmental, health, or social effects, complaints, management problems, or other difficulties encountered during the year due to sewage sludge disposal.

(9) Results of any other required monitoring, i.e., ground water, soils, vegetative tissue, etc.

(10) A report of any action not in conformance with the Letter of Approval, Permit, or this rule.

b. The records and information prescribed above shall be organized into a report to be submitted annually to the Agency no later than 60 days following the end of the reporting year (by March 1).

G. Requirements for sewage sludge disposal facilities used for composting and/or continuous storage of sewage sludge.

1. Disease control.

a. Sewage sludge shall be treated by a PSRP and/or by a PFRP prior to storage or composting, unless, in the case of composting, the composting operation qualifies as a PSRP or a PFRP.

b. Composting sewage sludge disposal facilities shall not be located within ¼ mile of any hospital or nursing home.

c. Public access to composting and continuous storage sewage sludge disposal facilities shall be controlled.

2. General limitations.

a. The operation of a continuous storage sewage sludge disposal facility shall be conducted in such a manner as to minimize ground water and surface water pollution, soil contamination, public health, safety and welfare hazards, and nuisance conditions.

b. The operation of a composting sewage sludge disposal facility shall be conducted in such a manner as to minimize ground water and surface water pollution, soil contamination, public health, safety and welfare hazards, and nuisance conditions.

c. Necessary precautions and safeguards shall be undertaken in the disposal/distribution of sewage sludge compost such that ground water and surface water pollution, soil contamination, public health, safety and welfare hazards, and nuisance conditions are minimized.

d. The removal and final disposal of sewage sludge from a continuous storage sewage sludge disposal facility shall comply with all requirements and limitations set forth in Section F of this rule.

e. A facility used for sewage sludge composting or continuous storage shall not be utilized as a facility for final disposal. Sewage sludge or sewage sludge compost shall be removed from the facility regularly (periodically) for final disposal.

3. Record-keeping and annual reporting.

a. A record-keeping system shall be initiated and maintained by the permittee to verify compliance with the requirements and limitations herein. The information recorded in such a system shall include the following:

(1) Required sewage sludge composition data as outlined in D.1.a. of this rule.

(2) The quantity of sewage sludge delivered to the facility.

(3) The quantity of sewage sludge or sewage sludge compost removed from the facility.

(4) A list of the locations to which the sewage sludge or sewage sludge compost was delivered to after removal from the composting or continuous storage sewage sludge disposal facility.

(5) A description of the precautions and safeguards employed in the disposal/distribution of sewage sludge compost.

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(6) Results of any required monitoring, i.e., ground water, surface water, soil, etc.

(7) A description of any adverse environmental, health, or social effects, complaints, management problems, or other difficulties encountered due to the operation of the sewage sludge facility.

(8) A report of any action not in compliance with the Permit or this rule.

b. The records and information prescribed above shall be organized into a report to be submitted quarterly to the agency no later than 60 days following the end of the reporting quarter.

H. Severability. If any provision of this rule or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions of this rule or application of any other part of this rule which can be given effect without application of the invalid provision. To this end the provisions thereof are declared to be severable.

I. Variance. In any cases where upon application of the responsible person or persons, the agency finds that by reason of exceptional circumstances the strict enforcement of any provision of this rule would cause undue hardship, that disposal of the sewage sludge is necessary for the public health, safety or welfare, or that strict conformity with this rule would be unreasonable, impractical or not feasible under the circumstances, the agency in its discretion may permit a variance therefrom upon such conditions as it may prescribe for prevention, control or abatement of pollution in harmony with the general purpose of this rule and the intent of applicable state and federal laws.

Appendix A
Estimate of Soil Cation Exchange Capacity

Using the values of soil texture and organic matter percentage, as determined by appropriate soil test procedures, a particular soil's cation exchange capacity can be estimated by using the table given below:

Cation Exchange Capacity
(milliequivalents/100 gms)

	Soil Organic Matter Level		
Texture	Low (<2%)	Medium (2-4%)	High (>4%)
Coarse	0-5	5-15	5-15
Medium	5-15	5-15	>15
Fine	>15	>15	>15

NOTE: It is recognized that soil cation exchange capacity (CEC) is not the only factor important in setting levels of metal additions to soil. It is used as an index which is proportional to the ability of a soil to minimize or limit heavy metal availability. Other soil chemical processes that are proportional to exchange reactions and also reduce the availability of heavy metals are sorption and precipitation reactions and metal complexation.

Appendix B
Determination of Sewage Sludge Application Rate Based on Crop Nitrogen Requirements

Sewage sludge application rates shall be based upon sewage sludge nitrogen availability, carry-over nitrogen supplied by past sewage sludge applications, available nitrogen added by manures or fertilizers, soil texture, and crop nitrogen requirements and yield goals.

Step 1

Based on cropping practices and soil texture, determine the maximum allowable nitrogen level from Table 1 or 2.

Step 2

Determine carry-over nitrogen from the previous years sewage sludge application using the following formula:

$$\text{Carry-over N} = (\%\ \text{organic sewage sludge N}) \times \frac{\text{(lbs./acre)}}{\text{(tons sewage sludge solids applied per acre)}}$$

If sewage sludge was not applied the previous year, carry-over nitrogen is zero.

Step 3

Subtract carry-over nitrogen and nitrogen added from other sources (e.g. fertilizer, animal manure) from the maximum allowable nitrogen level.

Step 4
Determine the available nitrogen in sludge using the appropriate formula in Table 3.

Step 5
Divide the maximum allowable nitrogen level (lbs./acre) from Step 3 by the available nitrogen in sludge (lbs./ton) from Step 4 to obtain the sewage sludge applications rate in ton of solids per acre per year.

TABLE 1
Maximum Allowable Nitrogen Levels for Various Crops, Yields and Soil Textures

Crop	Yield/Acre	Maximum Allowable Nitrogen Level (lbs./acre) Soil Texture Coarse	Medium	Fine
Alfalfa	4 ton	180	210	230
	6 ton	280	340	370
Barley	80 bushel	100	110	120
Bluegrass	3 ton	180	210	230
Corn	75 bushel	100	120	130
	100 bushel	130	150	160
	125 bushel	150	180	190
	150 bushel	180	210	230
	175 bushel	210	250	270
Oats	75 bushel	80	90	100
	100 bushel	130	150	160
Soybeans	30 bushel	120	140	150
	40 bushel	180	210	230
	50 bushel	230	270	300
	60 bushel	280	340	370
Wheat	50 bushel	100	120	130
	75 bushel	160	180	190

Table 2

Degree of Vegetative Cover	Maximum Allowable Nitrogen Level (lbs/acre) Soil Texture Coarse	Medium	Fine
High density	75	100	125
Low density	50	75	100

Table 3
Formulas for Determination of Available Nitrogen in Sewage Sludge (pounds of available nitrogen per ton of sewage sludge solids)

Type of Stabilization	Application Method	Formula
Digested	Surface . . .	(% organic — N × 4) + (% NH_3 — N × 10)
	Incorporated or Injected . . .	(% organic — N × 4) + (% NH_3 — N × 15)
Chemically or Physically Stabilized or Unstabilized	Surface . . .	(% organic — N × 6) + (% NH_3 — N × 10)
	Incorporated or Injected . . .	(% organic — N × 6) + (% NH_3 — N × 15)

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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 Corrections

Adopted Amendments to Rule Governing Adult Halfway Houses

The rules proposed and published at the *State Register*, Volume 5, Number 13, page 484, September 29, 1980 are (S.R. 484) now adopted as proposed.

Pollution Control Agency
Solid Waste Division

Adopted Rule for the Administration of the Minnesota Solid Waste Management Planning Assistance Program

The rule proposed and published at *State Register*, Volume 5, Number 10, pp. 379-384, September 8, 1980, (5 S.R. 379) is now adopted with the following amendments:

Amendments as Adopted

6 MCAR § 4.6085 Rule for the administration of the Minnesota solid waste management planning assistance program.

C.1.b. establish a siting procedure and development program to assure the orderly location, development, and financing of new or expanded solid waste facilities and services sufficient for a prospective ten year period, including (a) estimated costs and implementation schedules, (b) proposed procedures for operation and maintenance, (c) estimated annual costs ~~of~~ and gross revenues and (d) proposals of the use of facilities after they are no longer needed or usable; and,

D.3. Eligible projects.

a. The agency shall consider grant eligible all projects which are reasonably designed to result in the development and publication of an acceptable plan, as defined in ~~B.1.~~ C.1. of this rule.

E. Grant application procedures.

2. For grants to be awarded during all fiscal years other than that described in ~~D.2.~~ E.1.:

a. Preliminary grant applications. [reserved].

b. Final grant applications. [reserved].

G. Agency review of grant applications and award of grants.

1.b.(2)(d) The agency is authorized to delegate to the director the authority to issue grants under this program. If the agency delegates such authority to the director, the agency review provisions set out in ~~b.(2)(ii) and (iii)~~ b.(2)(b) and (c) are waived.

H. Grant agreement.

1. The grant agreement shall incorporate by reference the final grant application submitted to the agency in accordance with ~~E.1.d.~~ F.1. of this rule.

4. The grant agreement shall include a payment schedule. This payment schedule shall provide for reimbursement of stated travel costs~~,~~ in a manner described in the grant agreement~~,~~ and shall require that ten percent of each payment made under the grant agreement (except reimbursable travel costs) be retained by the agency until the director determines that the report submitted under the grant is an acceptable plan. If the director determines that a report is deficient, the director shall

notify the grantee of the deficiency. The agency shall pay the withheld ten percent of the grant as soon as the deficiency is corrected and the director determines that the report is an acceptable plan.

5. The grant agreement shall provide that~~, subject to the approval of the director,~~ the grantee shall be authorized to enter into contracts to complete the work specified in the grant. The grant agreement shall further require that all such contracts name the agency as a third-party beneficiary to that contract.

SUPREME COURT

Decisions Filed Friday, November 21, 1980

Compiled by John McCarthy, Clerk

50856/Sp. State of Minnesota vs. Edward M. St. John, Appellant. Hennepin County.

Trial court did not err in admitting eyewitness identification testimony challenged as being product of unnecessarily suggestive identification procedures, other-crime evidence to prove identity, and evidence of defendant's prior convictions for impeachment purposes, and trial court did not err in refusing to admit expert testimony on the unreliability of eyewitness identification testimony.

Affirmed. Peterson, J. Concurring specially, Otis, J.

51395/Sp. State of Minnesota vs. Mark Alan Boley, Appellant. Freeborn County.

Under the facts of this case the offense of escape from custody, committed within moments after an on-the-scene arrest but before defendant was booked, was part of the same behavioral incident as the offense of attempted burglary for which defendant was arrested. Accordingly, under Minn. Stat. § 609.035 (1978), the 2½-year concurrent prison sentence for the lesser offense, an attempted burglary, is vacated.

Convictions affirmed; sentence for attempted burglary vacated. Scott, J.

50939/Sp. Auralia Klimmek vs. Independent School District No. 487 and Western National Mutual Insurance Co., Relators. Workers' Compensation Court of Appeals.

An amendment effective August 1, 1975, which deleted from Minn. Stat. § 176.151 (1974) a provision requiring an employee who had received workers' compensation to bring an action for further compensation within eight years from the date he last received compensation applies to any claim arising which had not been barred by the amendment.

Affirmed. Wahl, J.

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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. 2306: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of December 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 December, 1980, is fifteen and one-half (15.50) 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 December, 1980, is fifteen and one-half (15.50) percentage points.

November 26, 1980

Michael J. Pint
Commissioner of Banks

ETHICAL PRACTICES BOARD

Advisory Opinion #74 Re: Hennepin County Ballot Questions

Approved by the Ethical Practices Board on November 14, 1980

Issued to:

Richard A. Forschler, Esq.
Larkin, Hoffman, Daly & Lindgren, Ltd.
Attorneys at Law
1500 Northwestern Financial Center
7900 Xerxes Avenue South
Minneapolis, MN 55431

Re: Hennepin County Ballot Questions

#74. A corporation may spend directly in excess of $100.00 on a ballot question in Hennepin County, Minneapolis or Bloomington by registering a political fund with the filing office in Hennepin County. A corporation may make a contribution to a registered committee or fund organized solely to promote or defeat a ballot question without having to register its own political fund.

The full text of the opinion is available upon request from the office of the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, (612) 296-5148.

Advisory Opinion #75 Re: Non-campaign Disbursement, Recounts

Approved by the Ethical Practices Board on November 14, 1980

Issued to:

Mr. Arthur W. Seaberg
313 Degree of Honor Building
St. Paul, MN 55101

Re: Non-campaign Disbursement, Recounts

#75. When a principal campaign committee pays for a recount, it is to be reported as a non-campaign disbursement.

The full text of the opinion is available upon request from the office of the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, (612) 296-5148.

Health Department
Emergency Medical Services Section

Application by Owatonna Ambulance Service for Licensure

On August 5, 1980, Owatonna Ambulance Service, Inc., 2440 St. Paul Road, Owatonna, Minnesota 55060, filed application for a license to operate an Advanced Life Support service at the above stated address in which they now serve as a Basic Life Support service. This notice is given pursuant to Minnesota Statutes 1979, § 144.802, subdivision 3, which requires that any service wishing to offer a new type of service shall apply to the Commissioner of Health to do so.

Each municipality, county, community health service agency and any other person wishing to make any objections to or statements of support for this application pursuant to Minnesota Statutes § 144.802 may be made in writing to Conrad Smith, Southeastern Minnesota Health Systems Agency, 303 Marquette Bank Building, Rochester, MN. 55901.

These statements must be received before the close of business on January 8, 1980.

The Health Systems Agency will then make recommendation to the commissioner to either grant or deny a license or recommend that a modified license be granted. The Health Systems agency shall make the recommendations and reasons available to any individual requesting them.

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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.