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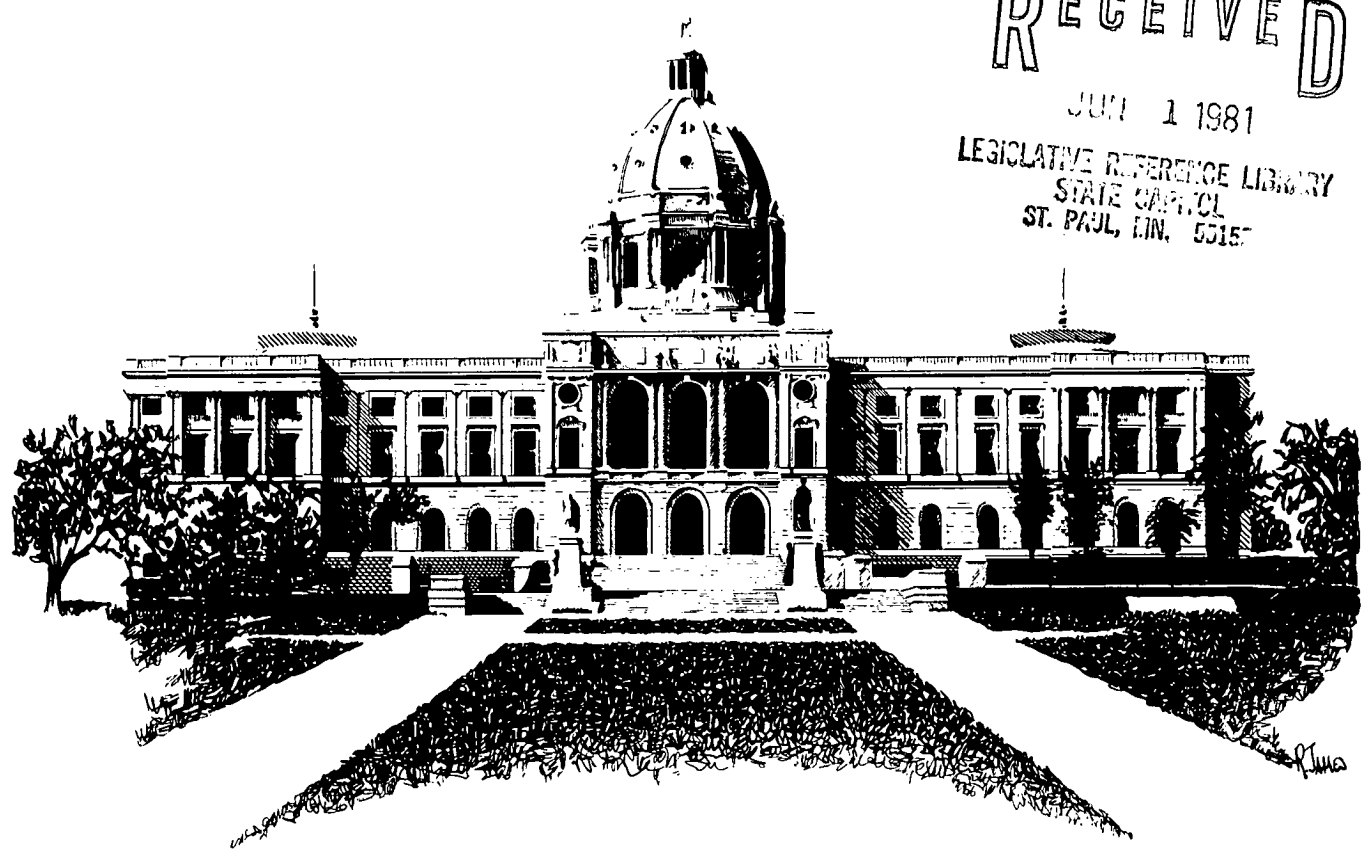
# STATE REGISTER

STATE OF MINNESOTA

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June 1, 1981

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Printing Schedule for Agencies

Table with 4 columns: Issue Number, Submission deadline for Executive Orders, Adopted Rules and Proposed Rules, Submission deadline for State Contract Notices and other Official Notices, Issue Date. Includes SCHEDULE FOR VOLUME 5 with dates from May 22 to June 29.

\*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...

\*\*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.

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

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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 listings of rule action in the **MCAR AMENDMENTS AND ADDITIONS** list on the following schedule:

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
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## 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.

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## Board of Accountancy

### Proposed Amendment to and Adoption of Rules Governing Licensure and Fees, Continuing Professional Education and the Professional Conduct of Certified Public Accountants and Licensed Public Accountants

#### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Board of Accountancy ("board") proposes to adopt the above-entitled rules without a public hearing. The board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the

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## PROPOSED RULES

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provisions of Minn. Stat. § 15.0412, subs. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Marian Flanagan  
Executive Secretary  
State Board of Accountancy  
500 Metro Square Building  
7th and Robert Streets  
Saint Paul, Minnesota 55101  
Telephone: (612) 296-7937

Authority for the adoption of these rules is contained in Minn. Stat. §§ 214.06, 214.12, and 326.18 (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules, has been prepared and is available from Ms. Flanagan upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Ms. Flanagan.

A copy of the proposed rules is attached to this notice. Additional copies may be obtained by contacting Ms. Flanagan.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) 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 \$250.00, 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 \$250.00, 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, 40 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

May 13, 1981

Leonard A. Rapoport, Chairman  
Minnesota Board of Accountancy

### Amendments as Proposed

Chapter One: Definitions and General (4 MCAR §§ 6.001-6.019)

4 MCAR § 6.001 Board. Board means the Minnesota State Board of Accountancy.

4 MCAR § 6.002 CPA. CPA means certified public accountant.

4 MCAR § 6.003 LPA. LPA means licensed public accountant.

~~4 MCAR § 6.003~~ 4 MCAR § 6.004 Certificate. Certificate means a certificate for a CPA or LPA issued by the board.

4 MCAR § ~~6.004~~ 6.005 Person. Person means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit or agency, other than a court of law.

4 MCAR § ~~6.005~~ 6.006 In public practice and rendering professional service. In public practice and rendering professional service mean:

A. When used in reference to a CPA or LPA, that he or as an employer performs professional accounting services for a fee within this state.

B. When used in reference to a CPA partnership or LPA partnership, that it performs professional accounting services for a fee within this state.

C. When used in reference to a CPA corporation or LPA corporation, that it performs professional accounting services for a fee within this state.

4 MCAR § ~~6.006~~ 6.007 **Contested case.** Contested case means a proceeding before the board in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after a board hearing.

4 MCAR § ~~6.007~~ 6.008 **Party.** Party means any person whose legal rights, duties or privileges may be determined in a contested case. The term party shall include the board except when the board participates in the contested case in a neutral or quasi-judicial capacity only.

4 MCAR § ~~6.008~~ 6.009 **License.** License means a license for a certified public accountant or licensed public accountant issued by the board.

4 MCAR § 6.010-6.019 [Unchanged.]

Chapters Two through Three [Unchanged.]

Chapter Four: ~~Licensure Certificate~~; Qualifications of Accountant (4 MCAR §§ 6.040-6.049)

~~Licenses Certificate~~; To Whom Granted

~~License~~; Granting Certificate; Examination

4 MCAR § 6.040 The following requirements are to be observed in submitting applications to the board for examination, re-examination, ~~for the certificate and license after completing experience~~, as certified public accountant and reciprocal certificate ~~and license~~ as certified public accountant .:

A. [Unchanged.]

B. [Unchanged.]

C. Applicants for CPA examination or re-examination not reaching the board 60 or more days prior to the initial examination date may, at the board's discretion, be deferred for consideration for a subsequent examination.

4 MCAR § 6.041 An application for CPA examination or re-examination shall expire five years from the date of the board's approval to sit for the initial examination. Once expired, the board may refuse to consider a new application or may require the applicant to be re-examined in all subjects.

4 MCAR § 6.042 [Unchanged.]

4 MCAR § 6.043 Examinations for CPA applicants.

A. [Unchanged.]

B. Ample notice will be given to each applicant of the time and place selected for holding the examination and each applicant must be present and prepared to engage in the work promptly at the hours appointed. An applicant who is unable to be present must notify the board as soon as reasonably possible. Failure to do so will be considered, at the discretion of the board, just cause for exclusion and forfeiture of the amount of the fee. An applicant who is unable to be present at the examination for which his application was approved, shall notify the board at least 60 days prior to a subsequent examination to which he desires to be admitted and furnish current information on forms provided by the board. Cheating on the examination is conduct unbecoming to a professional person and upon discovery will incur severe penalties. Instances of cheating during the course of the examination may, but shall not be limited to:

1. Communications between candidates inside or outside of the examination room, or copying another's answers.

2. Communication with others outside of the examination room.

3. Substitution by a candidate of another person to sit in the examination room in his stead and write one or more of the examination papers for him.

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## PROPOSED RULES

### 4. Use of crib sheets, notes or other unauthorized materials.

Penalties imposed for cheating may include the following: Grade of zero on the examination, immediate expulsion from the examination room, and temporary or permanent suspension of the candidate's right to take the examination again.

C. [Unchanged.]

D. [Unchanged.]

E. ~~In instances w~~Where an applicant has passed the examination, ~~prior to completion of his experience requirements, a letter will be issued to him by the board indicating that he has successfully completed the examination but that the certificate and license are being withheld until such requirements have been met. Upon completion of the required experience (or not more than ninety days prior thereto if the applicant is regularly engaged in public accounting employment expected to continue for the necessary period), the applicant shall submit on a form provided by the board a schedule of all experience not included in a prior application. After the board is satisfied that all experience and other requirements have been met a certificate as certified public accountant and license will~~ shall be issued to him without an additional fee. Such certificate shall indicate that this certificate is not a license to practice.

### 4 MCAR § 6.044 Re-examinations for CPA applicants.

A. through E. [Unchanged.]

### 4 MCAR § 6.045 Examination in other states for CPA applicants.

A. through B. [Unchanged.]

### 4 MCAR § 6.046 Education for CPA applicants.

A. through C. [Unchanged.]

### 4 MCAR §§ 6.047-6.049 [Unchanged.]

### Chapter Five: License Certificate without Examination (4 MCAR §§ 6.050-6.059)

4 MCAR § 6.050 Reciprocity. Ordinarily a reciprocal CPA certificate ~~and license~~ will not be granted unless the state of origin grants similar privileges to holders of Minnesota certificates ~~and licenses~~, and the applicant conforms to all requirements which would be imposed by the state or origin upon the holder of a Minnesota CPA certificate seeking reciprocal recognition in that jurisdiction.

### 4 MCAR §§ 6.051 through 6.052 [Unchanged.]

4 MCAR § 6.053 Application for a reciprocal CPA certificate must be supported by a statement of the applicant's need for a Minnesota certificate.

### 4 MCAR §§ 6.054-6.059 Unchanged

### Chapter Six: Qualifying Experience for CPA Examination and Granting of License for Certified Public Accountant and Licensed Public Accountant (4 MCAR §§ 6.060-6.069)

4 MCAR § 6.060 It is the intent of this requirement that the applicant should have had practical public accounting experience of reasonable variety and importance, requiring independent thought and judgment on important accounting, auditing and income tax matters, consistent with the competence generally expected of a certified public accountant or licensed public accountant.

### 4 MCAR §§ 6.061 through 6.069 [Unchanged.]

### Chapter Seven: License Licensure as Renewal of Certified Public Accountants or Licensed Public Accountants (4 MCAR §§ 6.070-6.079)

4 MCAR § 6.070 A license shall be granted to any person who meets the requirements of Minn. Stat. § 326.19, subd. (2) as a certified public accountant or Minn. Stat. § 326.191 as a licensed public accountant who applies for licensure on forms provided by the board.

~~4 MCAR § 6.070~~ 6.071 Each individual holder of an unrevoked Minnesota certificate or license as a Certified Public Accountant ~~and or Licensed Public Accountant license~~ who engages in or intends to be engaged in the practice of public accounting within the state of Minnesota during all or part of a calendar year is required to apply for and obtain from the board an annual license for that year. The application for the annual license and the appropriate fee shall be submitted to the board within thirty (30) days after engaging in public practice in any year ~~except that an individual shall be licensed for the balance of the year in which he received his certificate without payment of the fee.~~



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## PROPOSED RULES

4 MCAR ~~§ 6.071~~ 6.072 Each November the board will notify each current licensee ~~and each individual who has received a certificate during that year~~ of the license requirements for the succeeding year. However, it is the responsibility of each ~~certificate holder and~~ licensee in public practice to apply for a license and pay the appropriate fee.

4 MCAR ~~§ 6.072~~ 6.073 The following requirements are to be observed in making applications for annual license issued to an individual holder of a Minnesota certificate ~~and license~~.

A. through B. [Unchanged.]

4 MCAR ~~§ 6.073~~ 6.074 Failure to apply for license and pay the appropriate fee by a CPA or LPA at the beginning of the year in public practice shall be deemed unprofessional conduct and may be cause for suspension or revocation of his certificate ~~and license~~.

4 MCAR ~~§ 6.074~~ 6.075 The annual license granted by the Board to a licensee shall be prominently displayed in the principal office of the licensee.

4 MCAR ~~§ 6.075~~ 6.076-6.079 [Reserved for future use.]

Chapter Eight through Chapter Ten [Unchanged.]

Chapter Eleven: Fee for License and Renewal (4 MCAR §§ 6.110-6.119)

4 MCAR § 6.110 Applications shall be accompanied by fees in the following amounts:

- A. Application for certified public accountant examination by first time applicants. \$100.00.
- B. Application for certified public accountant re-examination in failed subjects. \$25.00 per subject but not in excess of \$100.00 (Accounting practice is considered to be two subjects.) 4 MCAR § 6.044 D. provides that applicants must apply for re-examination in all failed subjects.
- C. Application for reciprocal certificate and license for certified public accountant. \$75.00.
- D. Application for certificate and license for licensed public accountant. \$75.00.
- E. Application for reciprocal certificate and license for licensed public accountant. \$75.00.

4 MCAR §§ 6.111 through 6.119 [Unchanged.]

Chapters Twelve through Fourteen [Unchanged.]

Chapter Fifteen: Code of Professional Conduct (4 MCAR §§ 6.150-6.159)

4 MCAR § 6.150 In practice of accounting and in rendering professional accounting services a CPA and LPA shall adhere to the following code.

### DEFINITIONS

The following definitions of terminology are applicable wherever such terminology is used in the rules and interpretations. Board. The Minnesota State Board of Accountancy.

Certified Public Accountant or licensee. A person holding such certificate or license issued under the Accountancy Law of Minnesota.

Licensed Public Accountant or licensee. A person holding such certificate or license issued under the Accountancy Law of Minnesota.

Client. The person(s) or entity which retains a certified public accountant or his firm or a licensed public accountant or his firm, engaged in the practice of public accounting, for the performance of professional services.

Enterprise. Any person(s) or entity, whether organized for profit or not, for which a CPA or LPA provides services.

Firm. A partnership or professional corporation or association engaged in the practice of public accounting, including individual partners or shareholders hereof.

Financial statements. Statements and footnotes related thereto that purport to show financial position which relates to a point

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## PROPOSED RULES

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in time or changes in financial position which relate to a period of time, and statements which use cash or other incomplete basis of accounting. Balance sheets, statements of income, statements of retained earnings, statements of changes in financial position and statements of changes in owners' equity are financial statements.

Incidental financial data included in management advisory services reports to support recommendations to a client, and tax returns and supporting schedules do not, for this purpose, constitute financial statements; and the statement, affidavit or signature of preparers required on tax returns neither constitutes an opinion on financial statements nor requires a disclaimer of such opinion.

Institute. The American Institute of Certified Public Accountants.

Interpretations of Rules of Professional Conduct. Pronouncements issued by the Division of Professional Ethics to provide guidelines as to the scope and application of the Code of Professional Conduct.

Practice of public accounting. Holding oneself out to be a CPA or LPA and at the same time performing for a client one or more types of services rendered by public accountants.

Professional services. One or more types of services performed in the practice of public accounting.

### APPLICABILITY OF RULES

These rules are adopted under the authority granted by Minn. Stat. § 326.18 (1974) which delegates to the board the power and duty to make rules of professional conduct. The reliance of the public and the business community on sound financial reporting and advice on business affairs imposes on the accounting profession an obligation to maintain high standards of technical competence, morality and integrity. To this end, a certified public accountant or licensed public accountant shall at all times maintain independence of thought and action, hold the affairs of his clients in strict confidence, strive continuously to improve his professional skills, observe general accepted auditing standards, promote sound and informative financial reporting, uphold the dignity and honor of the accounting profession, and maintain high standards of personal conduct.

Acceptance of licensure as a CPA or LPA implies that the licensee has assumed an obligation to be diligent in the performance of professional service, and fair and honest in relations with clients, fellow practitioners and the public, and has a proper appreciation of his duties to the community and state. In recognition thereof the board has promulgated the following rules of professional conduct which each licensee agrees to regard as binding upon him.

[Remaining portion of Applicability of Rules unchanged.]

### INDEPENDENCE, INTEGRITY AND OBJECTIVITY

Rules 101 through 103 [Unchanged.]

### COMPETENCE AND TECHNICAL STANDARDS

Rules 201 through 204 [Unchanged.]

### RESPONSIBILITIES TO CLIENTS

Rules 301 through 304 [Unchanged.]

### OTHER RESPONSIBILITIES AND PRACTICES

Rules 401 through 409 [Unchanged.]

4 MCAR § 6.151 [Unchanged.]

### Chapter Sixteen: Continuing Education (4 MCAR § 6.160)

4 MCAR § 6.160 Continuing education rules. Pursuant to the provision of Minn. Stat. § 214.12 (1976), the board prescribes the following rules establishing requirements of continuing education to be met from time to time by licensees in order to maintain their professional knowledge and competence, as a condition to continuing to practice as certified public accountants or licensed public accountants. These rules shall become effective for certified public accountants on January 1, 1978, and for licensed public accountants on January 1, 1981.

A. through C. [Unchanged.]

D. Continuing education policies. The board has adopted the following policies to assist licensees in complying with the accountancy statute and rules as they pertain to continuing education:

1. Who must comply-exceptions.

a. [Unchanged.]

b. [Unchanged.]

c. Attorney-licensees ~~CPAs~~. Persons occupying the dual status of Attorney at Law and Certified Public Accountant or Licensed Public Accountant are excepted from continuing education requirements only if they do not engage in the practice of public accounting under their accounting licenses.

d. [Unchanged.]

2. Qualifying programs-credit hours granted.

a. through h. [Unchanged.]

3. through 5. [Unchanged.]

6. Reciprocity. An individual who holds a valid and unrevoked certified public accountant or licensed public accountant certificate issued by any state or political subdivision of the United States or a comparable certificate or degree issued by any foreign country; and who receives a license to practice in this state under the appropriate provisions of the accountancy law, will be required to comply with the continuing education requirement on a pro rata basis when his license is next renewed and each succeeding three year period thereafter.

7. through 8. [Unchanged.]

E. All certified public accountant licensees holding a license on or before December 31, 1977, may use acceptable continuing education programs from May 31, 1977, to meet the required number of hours for the first reporting period. All licensed public accountant licensees having made application for license on or before July 1, 1980, may use acceptable continuing education programs from January 1, 1980, to meet the required number of hours for the first reporting period.

Chapter Seventeen: 4 MCAR §§ 6.170-6.179 [Unchanged.]

Chapter Eighteen: 4 MCAR §§ 6.180-6.189 [Unchanged.]

Chapter Nineteen: 4 MCAR §§ 6.190-6.199 [Unchanged.]

Chapter Twenty: Professional Corporations (§§ 6.200-6.209)

4 MCAR § 6.200 A corporation shall not include the words "Certified Public Accountant," "Licensed Public Accountant," or the initials CPA or LPA in its corporate name.

4 MCAR § 6.201 through 6.209 [Unchanged.]

Chapter Twenty One: Contested Cases

4 MCAR § 6.210 [Unchanged.]

## Department of Agriculture Plant Industry Division

### Proposed Rules Governing Seed Potato Certification and Proposed Repeal of Existing Rules Agr 121-126

#### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment

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period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subdivisions 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modification is desired.

Authority for the adoption of these rules is contained in the Seed Potato Certification Law, Minn. Stat. § 21.118 (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

The new rules repeal the existing rules of the Department (AGR 121-126) and constitute an entirely new set of rules intended for the implementation, enforcement, and administration of the existing statute. Because the existing rules are difficult to read and understand, it is proposed that the entire set of rules be deleted. Thus, the proposed rules should be considered all new language. Most of the proposed new language, however, represents a reorganization and rewording of the present language for purposes of clarity. Due to the extent of the reorganization and rewriting it was felt that the proposed rules could be best presented by deleting the entire existing language and proposing the rules as all new language.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Copies of this notice and the proposed rules are available and may be obtained by contacting Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

May 15, 1981

Mark W. Seetin  
Commissioner of Agriculture

### Rules as Proposed for Repeal

AGR 121-126 [Proposed for repeal.]

### Rules as Proposed (all new material)

**3 MCAR § 1.0127 Purpose and authority.** Rules 3 MCAR §§ 1.0127-1.0135 provide standards for the inspection, certification, production, and marketing of certified seed potatoes in the State of Minnesota. The authority to adopt these rules is contained in Minn. Stat. § 21.118 (1980).

**3 MCAR § 1.0128 Definitions.** As used in 3 MCAR §§ 1.0127-1.0135, the following definitions apply unless the context clearly indicates otherwise.

- A. "Commissioner" means the Commissioner of Agriculture or the commissioner's authorized representative.
- B. "Department" means the Department of Agriculture.
- C. "Seed potato certification inspector" means an employee of the department authorized by the commissioner to inspect seed potato plants and tubers entered for certification.
- D. "Inspected" has the meaning given it in Minn. Stat. § 21.111, subd. 2 (1980).
- E. "Seed potatoes" has the meaning given it in Minn. Stat. § 21.111, subd. 5 (1980).
- F. "Certified" has the meaning given it in Minn. Stat. § 21.111, subd. 3 (1980).

G. "Certified seed potatoes" means potatoes which have been produced, graded, sacked or placed in bulk, and inspected and certified in accordance with 3 MCAR §§ 1.0127-0135.

H. "Farm" means a seed potato enterprise. It includes all land, equipment, storage facilities, and laborers used to produce certified seed potatoes.

I. "Field" means a plot of land on a farm on which potatoes are grown for certification. The potatoes shall be of one variety from one certified seed potato grower and shall be grown in physical separation from other fields.

J. "Lot" means a group of seed potatoes entered for certification that have passed the field inspection requirements. For the purposes of 3 MCAR §§ 1.0127-1.0135, a lot of potatoes also means that the group is of one variety, from one or more fields, grown on the same farm, and stored in physical separation from other lots.

K. "Crop" means all lots produced on a farm in one year.

L. "Tolerance" means a specified allowance for variation from the standards provided for diseases and physical defects, as provided in 3 MCAR §§ 1.0127-1.0135.

M. "Rejected" means that a field or lot fails to meet the standards provided for in 3 MCAR §§ 1.0127-1.0135.

**3 MCAR § 1.0129 General guidance.** The provisions of this section govern the production of potatoes for use as certified seed potatoes.

A. Seed potato certification. In order to produce certified seed potatoes, a grower must comply with the following procedures:

1. Potatoes entered for certification shall be inspected while growing in the field and again after harvest at the time of shipment. Certification shall be based upon visual inspection by the commissioner of sample plants and tubers from each field and lot. Certificates shall be issued to show the varietal purity, freedom from disease, and/or physical defects of the potatoes at the time of inspection.

2. Participation in the certified seed potato program shall be voluntary. The applicant may withdraw at any time. Farming and sanitation practices are the responsibility of the applicant. Certification and inspection under 3 MCAR §§ 1.0127-1.0135 shall be conducted by the commissioner. Failure of the applicant to comply with the requirements of 3 MCAR §§ 1.0127-1.0135 shall be cause for rejection of any field or lot. Potatoes from rejected fields or lots cannot be sold as certified seed potatoes.

B. Winter testing. In order to detect certain virus diseases, samples from all Foundation certified and Approved certified seed potato lots shall be winter-tested. In the event of serious malfunctions of the winter test, classification of lots as Foundation certified or Approved certified shall be based on the previous summer field readings.

C. Certified seed potato classes. There are three classes of Minnesota certified seed potatoes, differentiated by their tolerances for virus diseases.

1. The first class, Foundation certified seed potatoes, has stricter tolerances for virus diseases than do the other classes. This class shall be winter-tested.

2. The Approved certified seed potato class is the second class. Virus disease tolerances for these seed potatoes are less strict than those for Foundation certified seed potatoes. Approved certified seed potatoes shall also be winter-tested.

3. The third class, the Certified seed potato class, is not winter-tested.

D. Certified seed potato grades. Grades of certified seed potatoes are established according to the physical defects of the tubers. There are three grades used for shipping Minnesota certified seed potatoes.

1. The blue tag certified seed potato grade, the first grade, has tolerances for physical defects of the tubers stricter than the other grades. This grade may be used by growers of Foundation certified, Approved certified, and Certified seed potatoes. The blue tag grade may be used for intrastate and interstate shipments of certified seed potatoes.

2. The red tag certified seed potato grade is the second grade. This grade allows more physical defects of the tubers than the blue tag certified seed potato grade. It may be used by growers of Foundation certified, Approved certified, and Certified seed potato growers. The red tag grade may also be used for intrastate and interstate shipments of certified seed potatoes.

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3. The white tag certified seed potato grade is the third grade. The tolerances for physical defects of the tubers are determined by agreement between purchaser and seller of the certified seed potatoes. This grade may only be used by growers of Foundation certified and Approved certified seed potatoes. It may only be used for intrastate shipments of certified seed potatoes.

E. Zero tolerance for bacterial ring rot. Certification rules make provisions to allow the presence of certain diseases at levels sufficiently low as to preclude significant effects on certified seed potato value. For bacterial ring rot, there is a zero tolerance and the discovery of a single plant in the field or a tuber in storage infected with bacterial ring rot shall cause the rejection of the field or lot. The absence of a finding shall not be construed to mean that the field or lot inspected is free from the disease.

F. Warranty. A certification does not represent a warranty of any kind, express or implied, including merchantability, as to the quality of the crop produced from the certified seed potatoes. A certification represents only that the seed potatoes were produced, graded, sacked or placed in bulk, and inspected in accordance with 3 MCAR §§ 1.0127-1.0135.

**3 MCAR § 1.0130 Application and eligibility for inspection and certification.** The following procedures shall govern:

A. Application for inspection.

1. All potatoes planted on a farm shall be eligible and shall be entered for certification.

2. Application for inspection shall be made before June 16 each year on forms furnished by the commissioner or a seed potato certification inspector. Applications postmarked after June 15 but before July 1 shall be charged a fifty cents per acre late registration fee. No applications shall be accepted that are postmarked later than June 30. The commissioner may extend the deadline due to special circumstances affecting an area or large number of growers.

3. An application for the inspection of a field planted with purchased certified seed potatoes shall include a copy of the shipping point certificates or bulk seed certificates for the total amount of purchased certified seed potatoes planted.

4. A separate application shall be completed for each field planted.

5. No application for inspection shall be accepted from a grower in any community or county in which there is not sufficient acreage to warrant the expense of an inspection. Determination of sufficient acreage shall be made by the commissioner.

B. Seed potatoes eligible for Minnesota certification planting. A field shall not be inspected for certification unless both the seed potato variety and the particular lot planted have the authorization of the commissioner. Any well established, named, commercial variety shall be considered for certification if the variety has been described as to vine and tuber characteristics in a journal recognized by the commissioner and in accordance with the recommendations of the Potato Association of America. To be eligible for certification planting, seed potatoes shall be one of the following:

1. From Minnesota growers:

a. Foundation certified seed potatoes;

b. Approved certified seed potatoes; or

c. Certified seed potatoes. A grower may replant his own certified seed potatoes. The commissioner may authorize the planting of purchased certified seed potatoes if there is no source of Foundation certified or Approved certified seed potatoes available to the grower.

2. From non-Minnesota growers: Seed potatoes approved for certification planting by the certifying agency in another state or a Canadian province may be planted if tolerances for certification meet Minnesota tolerances for Approved or Foundation certified seed potatoes.

3. Seedling or numbered selections may be accepted for entrance into the certification system by special authorization of the commissioner. The applicant shall submit a written statement from the breeder or originator that the applicant has full and unrestricted rights to introduce the seedling or numbered selection into the commercial market, and that the seedling or numbered selection shall be named within a period of not more than three years from acceptance of application. If the seedling or numbered selection is not named at the end of three years from acceptance of the application, a two year waiting period shall pass before reentry into the certification program.

**3 MCAR § 1.0131 Requirements for certified seed potato production.** The following standards shall be met before potatoes may be classified as certified seed potatoes.

A. Field inspection. Certification shall be based upon information regarding the following: stand, general vigor, varietal purity, disease tolerances, and factors affecting field inspection. At least two field inspections shall be made of each field during the growing season. Additional inspections may be made if deemed necessary by the commissioner.

1. Stand. A field shall be rejected if there are a large number of plants missing due to disease.

2. General vigor. A field shall be rejected if it contains a large number of weak plants.

3. Varietal purity. A field shall be rejected if it contains any varietal mixture at the time of inspection, unless all varietal mixtures are removed by the grower before the next inspection.

4. Disease tolerances (percentage of infected plants). A field shall be rejected if it contains percentages of diseased plants in excess of those listed in the following table. The disease percentages listed are based on symptoms which are visible in the sample being inspected.

**Maximum Disease Tolerance Levels**

Diseases	First Inspection	Second and Subsequent Inspections
Severe mosaic (rugose, crinkle and leafrolling)	0.5%	0.3%
Spindle tuber	0.1%	0.1%
Leafroll	0.5%	0.3%
Total of above diseases	1.0%	0.5%
Yellow dwarf	0.5%	0.5%
Calico	0.5%	0.5%
Haywire	0.5%	0.5%
Witches broom	0.5%	0.5%
Total of above 4 diseases	0.5%	0.5%
Mild mosaic	2.0%	1.0%
Bacterial ring rot, field rejected if found	0.0%	0.0%

5. Factors affecting field inspection.

a. A field shall be rejected if any of the following are present to such an extent that satisfactory inspection for diseases cannot be made:

- (1) Early or late blight;
- (2) Blackleg or wilt of any kind;
- (3) Weeds;
- (4) Insect injury;
- (5) Chemical damage.

b. A field shall be rejected if any other conditions are present to such an extent that satisfactory inspection for diseases cannot be made.

B. Roguing. If any of the diseases listed in A. 4. of this rule are present in a field in amounts less than the maximum disease tolerance level, the infected plants shall be removed before the final inspection. If roguing is done after tubers form, the tubers from the rogued plants shall also be removed and destroyed.

C. Storage.

1. Lots shall not be stored in any warehouse where other potatoes are stored, nor shall they be stored under conditions of possible disease contamination. If more than one grower stores lots in the same warehouse, each grower's lots shall be properly identified by labeling the bin with the grower's name, address, variety, and amount in the bin. If the lots are to be stored in a public warehouse or storage unit not directly under the control of the grower, a complete record giving location of the storage unit, number of the bin, variety, and the quantity stored shall be sent to the commissioner when the lots are put into storage. If it is available, a copy of the warehouse receipt shall also be sent to the commissioner.

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2. Equipment used for grading and handling lots shall not be used for any other potatoes. If any equipment is used on other potatoes, the lots shall be rejected.

3. Any firm handling lots on contract shall label all bins containing lots with the name of the grower whose lots are being stored. Responsibility for proper labeling and subsequent handling rests with the firm. No certification tags or bulk certificates shall be issued until this is done.

4. Each grower shall submit a completed storage and yield report on each lot on forms furnished by the commissioner. Certification tags shall not be issued to growers who have not submitted the report.

### D. Tags, bulk certificates, seals.

1. Official blue, red, or white tags, bearing the grower's name and address, variety, and the crop year, shall be issued when the potatoes meet the certification requirements described in 3 MCAR § 1.0130 and 3 MCAR § 1.0131A-C.

2. Tags shall be fastened onto sacks with a metal seal so as to constitute a seal at the time the lots are prepared for shipment. No metal seal is required when a tag is machine sewn onto the sack. A special seal shall be placed on the conveyance doors in case of bulk shipments identified by a bulk certificate.

3. Tags shall be issued only to growers, except when lots are stored in a public warehouse or in a storage unit not under direct control of the grower. They shall be issued to the owner or manager of the storage unit upon receipt of written authorization from the grower.

4. Responsibility for ordering tags shall rest entirely with each grower.

E. Grading. All lots shall be inspected at the loading point whenever possible. If inspection at the loading point is impossible, request for grading inspection in transit shall be made. Every bagged lot or shipment offered for sale and bearing official certification tags shall be in new even-weight sacks. Bulk shipments shall be identified with a bulk certificate. Both bagged and bulk lots or shipments must meet grade standards specified in 3 MCAR § 1.0135.

1. Lots or shipments that fail to meet grade standards when inspected shall be reconditioned or;
  - a. If the lot or shipment is in sacks, the tags shall be removed under the supervision of a state or federal/state inspector before the lot or shipment is allowed to proceed to its destination.
  - b. If the shipment is in bulk, no bulk certificate shall be issued.
2. All costs of reconditioning to meet grade shall be borne by the shipper.

**3 MCAR § 1.0132 Requirements for Foundation certified seed potato production.** Foundation certified seed potatoes shall consist of potatoes which meet all the requirements of 3 MCAR § 1.0130 and 3 MCAR § 1.0131 as well as the following additional requirements.

A. A lot grown as and intended to be Foundation certified seed potatoes must remain under direct control of the grower for three years prior to being certified as Foundation certified seed potatoes.

B. Foundation certified seed potatoes shall be the only potatoes grown on the farm. They shall be grown from potatoes produced on a tuber unit seed plot.

C. Not more than two-tenths percent of any or all virus diseases shall be allowed on any field inspection. No spindle tuber is allowed.

D. A lot shall be kept under direct control of the grower. Such lots shall not be stored in any warehouse in which other potatoes are stored, unless authorization is granted by the commissioner.

E. A sample of each lot meeting the requirements of this rule shall be submitted for winter testing. Seed potato lots with winter test readings more than one-half percent of any or all virus diseases shall be removed from the Foundation certified seed potato class. Presence of spindle tuber, bacterial ring rot, or chemical damage shall also remove the lot from the Foundation certified seed potato class.

F. If bacterial ring rot is found in any field or lot, the crop is not eligible for certification planting the following year. Potatoes from other fields or lots may be eligible for certification planting if the equipment used in the production of the crop was thoroughly disinfected after it was used on each field or lot. Proof of disinfection must be filed with the commissioner. Authorization for certification planting the following year shall then be granted only to the grower himself and only if the lots meet all other requirements for planting.

G. Blue, red, or white tags with the word "Foundation" stamped across the front of the tag shall be issued only after all requirements of 3 MCAR § 1.0132 are met. In addition, the crop shall be at least the third crop grown following the year in which bacterial ring rot was found before becoming eligible to be tagged with Foundation tags.



**3 MCAR § 1.0133 Requirements for Approved certified seed potato production.** Approved certified seed potatoes shall consist of potatoes which meet all requirements of 3 MCAR § 1.0130 and 3 MCAR § 1.0131 as well as the following additional requirements:

A. Not more than three-tenths percent of any or all virus diseases shall be allowed on the final field inspection, except that no spindle tuber is allowed and up to five-tenths percent is allowed for mild mosaic.

B. A sample of the lot must meet the same winter test requirements as prescribed for Foundation certified seed potatoes in 3 MCAR § 1.0132 E.

1. In selecting lots for winter testing, the commissioner shall consider factors such as lots more than two years removed from the Foundation certified seed potato class, amount of disease found during field inspections, amount of varietal mixture rogued, proximity to fields having excessive amounts of disease, and other conditions which may jeopardize the value of the lots for certification planting.

2. If bacterial ring rot is found on the farm, before becoming eligible to submit a sample from future crops for winter testing, the grower shall either:

a. Dispose of the crop from the year bacterial ring rot was found and purchase all new Foundation certified or Approved certified seed potatoes; or

b. Produce at least two crops free from bacterial ring rot.

**3 MCAR § 1.0134 Fees.**

A. Fees shall be set by the commissioner in amounts necessary to carry out the seed potato certification service. Fees shall be reviewed annually and notice of the current fee schedule sent to growers from time-to-time.

B. Field inspection fees shall be paid at time of application for entry into the certification program.

C. Winter testing fees shall be paid before results are sent to the grower.

D. Fees for other disease testing shall be paid before results are listed in the Minnesota Seed Potato Certification Directory.

**3 MCAR § 1.0135 Minnesota certified seed potato grades and tolerances.**

A. Minnesota certified seed potato grades. Before becoming eligible for grading as certified seed potatoes, the requirements of 3 MCAR §§ 1.0130 and 1.0131 shall be met. In addition, Foundation certified seed potatoes shall meet the requirements of 3 MCAR § 1.0132. Approved certified seed potatoes shall meet the requirements of 3 MCAR § 1.0133. Grading and tagging or issuance of a bulk certificate are the final steps in the certification process.

1. Minnesota blue tag certified seed potato grade. To be graded as Minnesota blue tag certified seed potatoes, the potatoes shall meet the following requirements:

a. The potatoes shall be, at time of final inspection, one variety; fairly well-shaped; free from bacterial ring rot, powdery scab, freezing, black heart, and soft rot or wet breakdown; and free from injury by surface or pitted scab, and from damage caused by dirt or other foreign matter, second growth, growth cracks, air cracks, cuts, shriveling, sprouts, pitted scab, surface scab, russet scab, dry rot, other diseases, insects or worms, external discoloration caused from loss of skin, mechanical or other means, and from serious damage caused by sunburn, hollow heart, or internal discoloration (other than hollow heart).

b. Size. For round or intermediate shaped varieties, the maximum size shall be not more than 12 ounces and, unless otherwise specified, the minimum size shall be not less than 1-7/8 inches in diameter. For long varieties, the maximum size shall be not more than 14 ounces and, unless otherwise specified, the minimum size shall be not less than 1-3/4 inches in diameter. For all varieties, size "B", the minimum diameter shall be not less than 1-1/2 inches and the maximum size shall be not more than 2-1/4 inches in diameter.

c. Lot tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, are provided:

(1) For defects:

(a) 10% for potatoes seriously damaged by hollow heart;

(b) 10% for potatoes seriously damaged by sunburn;

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- (c) 5% for potatoes seriously damaged by internal discoloration (other than hollow heart);
- (d) 8% for potatoes injured by (slight) scab;
- (e) 10% for potatoes damaged by dirt or other foreign matter;
- (f) 10% for potatoes damaged by sprouts; and

(g) 6% for potatoes which fail to meet the remaining requirements of the grade provided, that included in this amount not more than the following percentages shall be allowed for the following defects:

(i) Soft rot, frozen, or wet breakdown	0.5%
(ii) Damage by surface or pitted scab	2.0%
(iii) Damage by dry rots	2.0%
(iv) Late blight tuber rot	2.0%
(v) Bacterial ring rot	0.0%
(vi) Powdery scab	0.0%

(2) For offsize:

- (a) 5% for potatoes which fail to meet the required or specified minimum size,
- (b) 10% for potatoes which fail to meet the required maximum size.

2. Minnesota red tag certified seed potato grade. To be graded as Minnesota red tag certified seed potatoes, the potatoes must meet the following requirements.

a. The potatoes shall be, at time of final inspection, of one variety; fairly well-shaped; and free from bacterial ring rot, powdery scab, freezing, black heart, and soft rot or wet breakdown, and from damage caused by second growth, growth cracks, air cracks, cuts, shriveling, sprouts, pitted scab, surface scab, dry rot, other diseases, insects or worms, external discoloration caused from loss of skin, mechanical or other means, and from serious damage caused by dirt or other foreign matter, russet scab, sunburn, hollow heart, or internal discoloration (other than hollow heart).

b. Size. For all varieties, the maximum size shall be not more than 14 ounces and unless otherwise specified, the minimum size shall be not less than 1- $\frac{7}{8}$  inches in diameter for round or intermediate shaped varieties and not less than 1- $\frac{3}{4}$  inches in diameter for long varieties. For all varieties, size "B," the minimum diameter shall be not less than 1- $\frac{1}{2}$  inches, and the maximum size shall be not more than 2- $\frac{1}{4}$  inches in diameter.

c. Lot tolerances. In order to allow for variations incident to proper grading and handling the following tolerances, by weight, are provided:

(1) For defects:

- (a) 10% for potatoes seriously damaged by hollow heart;
- (b) 10% for potatoes seriously damaged by sunburn;
- (c) 5% for potatoes seriously damaged by internal discoloration (other than hollow heart);
- (d) 20% for potatoes damaged by sprouts; and
- (e) 20% for potatoes which fail to meet the remaining requirements of the grade provided, that included in this amount not more than the following percentages shall be allowed:

- (i) 5% damage by surface or pitted scab
- (ii) 2% damage by dry rot

(iii) 6% serious damage for other defects other than sunburn, hollow heart, internal discoloration (other than hollow heart) provided, that of this six percent not more than the following percentages shall be allowed for the following defects:

(aa) Late blight tuber rot	2%
(bb) Soft rot, frozen, or wet breakdown	0.5%
(cc) Bacterial ring rot	0.0%
(dd) Powdery scab	0.0%

(2) For offsize:

- (a) 5% for potatoes which fail to meet the required or specified minimum size;
- (b) 10% for potatoes which fail to meet the required maximum size.

3. Minnesota white tag certified seed potato grade.

a. Minnesota white tag certified seed potato grade shall consist of Foundation certified or Approved certified seed potatoes which are graded according to agreement between seller and purchaser as to size and defects, except that not more than one-half percent of soft rot, frozen, or wet breakdown and two percent dry rot shall be allowed.

b. The use of the white tag certified seed potato grade shall be restricted to intrastate shipments.

B. Application of tolerance. The contents of individual containers, other than bulk conveyances, in the lot are subject to the following limitations provided that the averages for the entire lot are within the tolerances specified for the grade. An individual container in any lot may contain not more than double the tolerance specified except for sprouts and that at least one defective specimen, other than bacterial ring rot or powdery scab, and one offsize specimen may be permitted in any container.

C. Condition after transit. Deterioration developing in transit shall be considered as affecting condition and not grade.

D. Definitions. For the purpose of this rule, the following terms have the meaning given them unless the context clearly indicates otherwise:

1. "Mature" means that the outer skin (epidermis) does not loosen or "feather" readily during the ordinary methods of handling.

2. "Well-shaped" means the normal shape for the variety.

3. "Fairly well-shaped" means that the individual potato is not materially pointed, dumbbell-shaped, or otherwise ill-formed.

4. "Fairly clean" means that the individual potato is reasonably free from dirt, staining, or other foreign matter.

5. "Slightly dirty" means that the appearance of the individual potato is not materially affected by dirt, staining, or other foreign matter.

6. "Diameter" means the greatest dimension at right angles to the longitudinal axis. The long axis shall be used without regard to the position of the stem (rhizome).

7. "Soft rot or wet breakdown" means any soft, mushy, or leaky condition of the tissues.

8. "Surface" or "pitted scab", individually or in combination, which cover an area of more than two percent of the surface of the potato in the aggregate, or which cannot be removed without a loss of more than two percent of the total weight of the potato including the peel covering the defective area shall be considered injury.

9. "Damage" means any defect or combination of defects which materially affects the appearance of the individual potato or which cannot be removed without a loss of more than five percent of the total weight of the potato including the peel covering the defective area. Any one of the following defects or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

a. Russet scab when it materially detracts from the appearance of the individual potato;

b. Second growth or growth cracks which have developed to such an extent as to materially affect the appearance of the individual potato;

c. Air cracks which are deep, or shallow air cracks which materially affect the appearance of the individual potato;

d. Shriveling when the potato is more than moderately shriveled, spongy, or flabby;

e. Sprouting when the individual potato has sprouts over one inch in length;

f. Surface or pitted scab, individually or in combination, which covers an area of more than five percent of the surface of the potato in the aggregate, or causes a loss of more than five percent of the total weight of the potato including peel covering defective area;

**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.

## PROPOSED RULES

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g. Dirt if the individual potato has more than 50 percent of its surface affected by lightly caked dirt which is scattered, or more than 15 percent of its surface badly caked with dirt.

10. "Serious damage" means any defect or combination of defects which seriously affects the appearance of the individual potato or which cannot be removed without a loss of more than ten percent of the total weight of the potato including the peel covering the defective area. Any one of the following defects or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as serious damage:

- a. Russet scab when it seriously detracts from the appearance of the potato;
- b. Dirt when the appearance of the individual potato is seriously affected by caked or smeared dirt or other foreign matter;
- c. Cuts when both ends are clipped or when more than an estimated one-fourth of the potato is cut away from one end or when the remaining portion of the clipped potato weighs less than six ounces;
- d. Other cuts which seriously affect the appearance of the individual potato or which cannot be removed without a loss of more than ten percent of the total weight of the potato including peel covering defective area;
- e. Shriveling when the potato is excessively shriveled, spongy, or flabby;
- f. Surface or pitted scab, individually or in combination, which covers an area of more than twenty-five percent of the surface of the potato in the aggregate, or causes a loss of more than ten percent of the total weight of the potato including peel covering defective area.

## ADOPTED RULES

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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.

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## Department of Agriculture Dairy Industries Division

### Adopted Rules of the Department of Agriculture Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (3 MCAR §§ 1.1149-1.1167)

The rules published and proposed at *State Register*, Volume 5, Number 38, pp. 1480-1482, March 23, 1981 (5 S.R. 1480) are now adopted, with the following amendment.

#### Amendment as Adopted

3 MCAR § 1.1151 Egg nog flavored milk. Egg nog flavored milk is a milk product consisting of a mixture of at least 3.25 per cent butterfat, at least 0.5 per cent egg yolk solids, sweetener, and flavoring. Emulsifier and a maximum of 0.5 per cent stabilizer may be added. Egg nog flavored milk shall be pasteurized in approved and properly operating equipment so that every particle is heated and continuously held for the following minimum specified times and temperatures:

150°F. and held at or above this temperature for at least 30 minutes.

166°F. and held at or above this temperature for at least ~~46~~ 15 seconds.

# TAX COURT

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

## State of Minnesota

Combustion Engineering, Inc.,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

## Tax Court

In the Matter of the Appeal from the Commissioner's Order dated August 8, 1979, relating to penalties proposed for quarters ending 3/31/77, 6/30/77, 9/30/77 and 12/31/77.

Order dated May 12, 1981.

Docket No. 2991

The above matter was submitted for decision on the deposition of Gerome T. Caulfield taken March 25, 1980 and exhibits stipulated into evidence by the parties. The parties through their attorneys agreed to have this case decided on essentially the same record as the case of Moorman Manufacturing Company v. Commissioner, Docket No. 2957 because of identical issues and nearly identical facts. Written briefs were submitted to the Court and an oral argument was heard by the Tax Court en banc in the companion case of Moorman Manufacturing on April 16, 1981.

James R. Lande and John L. Krenn of Gray, Plant, Mooty, Mooty & Bennett, represented the Appellant.

Richard W. Davis, Special Assistant Attorney General, represented the Appellee.

### Issue

The issue is whether appellant should be assessed penalties under Minn. Stat. § 290.92, subd. 15(1) for failing to make monthly rather than quarterly deposits of estimated income tax withheld from employees.

### Decision

Penalties are assessed for failing to make monthly deposits of employee's withheld taxes for the first quarter for which the employer taxpayer is notified of default. All other penalties and interest are abated.

### Findings of Fact

1. Appellant is a Connecticut based corporation that does business with Minnesota utilities on energy-related matters.
2. When appellant first began to operate in Minnesota, the amount of its monthly state income tax withheld from employees was less than \$100 and did not require monthly returns and deposits, only quarterly returns.
3. Appellant at all times, until March 1978, filed timely quarterly returns, paying the withheld amount to the state.
4. The department, during this period, regularly sent appellant quarterly withholding report forms which appellant completed and returned with its quarterly deposit.
5. Once during 1973 and 1975 printed notices indicating the general provisions of the monthly withholding requirements were sent to employers with their quarterly report form.
6. During 1977, and sometime prior thereto, the monthly amounts withheld from appellant's employees' wages exceeded \$100 and appellant failed to make the monthly deposits required by Minn. Stat. § 290.92, subd. 6(1).
7. In March, 1978, the Department of Revenue informed appellant that as an employer collecting more than \$100 per month in withholding taxes it was required to make monthly, rather than quarterly, withholding reports and deposits.
8. Appellant immediately began filing monthly reports and deposits and has continued to do so.
9. Prior to March, 1978, no individual letter was sent to appellant requesting monthly deposits.
10. In May, 1978, the commissioner levied 25 percent penalties on appellant for failing to deposit its withholding on a monthly basis during the year 1977 based upon "willful neglect" under Minn. Stat. § 290.92, subd. 15(2).
11. After objection by appellant, the commissioner issued a revised order dated August 8, 1979 assessing penalties of 10 percent totaling \$15,614.23 against appellant for failure to make monthly deposits of income taxes withheld from the wages of its employees during 1977.
12. Appellant does not contest the fact that it failed to make the statutorily required monthly deposits.
13. The Order dated August 8, 1979 was timely appealed to this Court and is the matter under review in this proceeding.

**Conclusions of Law**

1. There is no evidence in the record that appellant is guilty of culpability or deliberate violation of the withholding statutes.
2. The imposition of penalties without interest for failing to make deposits of withheld taxes for January and February 1977 is hereby affirmed. All other penalties and interest are hereby abated.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

Earl B. Gustafson  
Judge of Tax Court

**Memorandum**

Appellant, Combustion Engineering, Inc., is a Connecticut based corporation which does business with Minnesota utilities on energy-related matters. Since it began operating in Minnesota it made quarterly deposits of income taxes withheld from its employees' wages. During the period in question it should have been making monthly deposits pursuant to Minn. Stat. § 290.92, subd. 6(1).

In March, 1978, the Department of Revenue informed appellant that as an employee collecting taxes it was required to make monthly, rather than quarterly, withholding reports and deposits. Appellant immediately began making monthly deposits and has continued to do so.

In May, 1978, the commissioner levied 25 percent penalties on appellant for failing to make monthly deposits during the year 1977. This was based on the "willful neglect" provision of Minn. Stat. § 290.92, subd. 15(2). This penalty was later reduced by an Order dated August 8, 1979 to 10 percent under Minn. Stat. § 290.92, subd. 15(1).

We hold that the assessment of penalties for more than one quarter under the circumstances of this case is inequitable and unjust and should be abated.

Minn. Stat. § 290.92, subd. 6(1), requires every employer to deduct and withhold Minnesota income taxes from its employees for each quarterly period and "if during any calendar month, other than the last month of the calendar quarter, the aggregate amount of the tax withheld under subd. 2a . . . exceeds \$100.00, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with the Commissioner of Revenue."

Minnesota Statute 290.92, subd. 15(1), provides a penalty for failure to make required monthly deposits as follows:

*If any tax required to be deducted and withheld under subdivision 2a . . . , or any portion thereof, is not paid to or deposited with the Commissioner within the time specified in subdivision 6 for the payment thereof, there shall be added thereto a penalty equal to 10% of the amount so remaining unpaid. Such penalty shall be collected as part of said tax, and the amount of said tax not timely paid, together with said penalty, shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid or deposited until paid. (Emphasis added)*

At all times prior to March 1978 appellant received quarterly report forms from the Department of Revenue and returned the completed forms along with its regular quarterly deposit. A general information book was sent with the quarterly forms in 1973 or 1974. This included information about the monthly deposit requirement if the amount withheld was over \$100.00. In 1973 and 1975 printed notices indicating the general provisions of the monthly withholding deposit requirements were sent to employers along with the quarterly forms. It seems clear from the record that appellant never received any type of letter or special notification that it was doing anything improper in regard to withholding deposits until March 1978. It immediately commenced making monthly deposits. Two months later a penalty for all of 1977 was levied.

The commissioner contends in his brief that the imposition of a penalty is automatic under Minn. Stat. § 290.92, subd. 15(1) and further contends that the abatement of penalties rests entirely within his discretion under Minn. Stat. § 290.92, subd. 15(10) and this Court has no authority to overrule his discretionary acts.

Automatic penalties do appear to be mandated by Minn. Stat. § 290.92, subd. 15(1) but the commissioner exercised his discretion in deciding what periods would be affected. The commissioner also had the power in 1979 to abate any civil penalties prescribed in the withholding tax statute if he found enforcement "would be unjust and inequitable." Minn. Stat. § 290.92, subd. 15(10). Incidentally, subd. 15(10) has now been repealed but the same discretionary power to abate penalties remains under Minn. Stat. § 270.07, subd. 1. If the abatement exceeds \$500.00, however, the approval of the Attorney General must be obtained. In this case the commissioner has declined to abate the penalties.

The Tax Court has been given specific statutory authority to review and redetermine the Commissioner's Orders on a de novo basis.

Minn. Stat. § 271.05 reads as follows:

The tax court shall have power to review and redetermine orders or decisions of the commissioner of revenue upon appeal therefrom in cases authorized by law.

In an appeal to the Tax Court from an Order of the Commissioner of Revenue, the scope of review is not narrowly limited to whether the commissioner abused his discretion and acted in an arbitrary and capricious manner. The review in the Tax Court is "de novo" under Minn. Stat. § 271.06, subd. 6, not the usual limited judicial review of administrative acts.

We feel that Minn. Stat. § 271.05 granting this Court power to review and redetermine orders and decisions of the Commissioner of Revenue coupled with our "de novo" review of any administrative determinations give us authority to abate these penalties.

In determining whether or not the penalties in this case should be abated we are applying the criterion in Minn. Stat. § 290.92, subd. 15(10) and Minn. Stat. § 270.07, subd. 1. Would the enforcement of penalties be "unjust and inequitable"?

The enforcement of penalties for more than one quarter would, in our opinion, be just that.

The penalties have not, in practice, been automatically imposed. On the contrary, they were not enforced for many years and when eventually imposed a decision was made as to the number of years or quarters that would be involved. They were initially enforced against only a select number, the taxpayers with large payrolls. Appellant was assessed penalties for four quarters while the taxpayer in the companion case decided today, *Moorman Manufacturing Company v. Commissioner*, was assessed penalties for two quarters.

This is not a case of attempted tax avoidance. The taxpayer, after consistently complying with what it perceived to be the proper procedure for making deposits was suddenly assessed with retroactive penalties amounting to \$15,614.23.

While we can find no evidence of culpability, or deliberate violation of the withholding statutes by appellant that justifies the assessment of any substantial penalties, we agree with the commissioner that some penalties are appropriate under Minn. Stat. § 290.92, subd. 15(1) because appellant has a responsibility to be aware of and act in compliance with the law.

It is our decision in this case and the companion *Moorman Manufacturing* case that penalties without interest should be assessed for one quarter only. In the instant case penalties without interest for failing to make the monthly deposits for January and February of 1977 are affirmed and all other penalties and interest are abated.

**State of Minnesota**

**County of Ramsey**

**Moorman Manufacturing Company,**

**Appellant,**

v.

**The Commissioner of Revenue,**

**Appellee.**

**Tax Court**

**Regular Division**

**In the Matter of the Appeal from the Commissioner's  
Order dated June 19, 1979 Relating to the Assessment of  
Penalties and Interest.**

**Docket No. 2957**

**Order dated May 12, 1981.**

The above matter came on for trial in the Tax Court Hearing Room in the City of St. Paul, Minnesota before the Honorable Jack Fena, who was then one of the Judges of the Court, on April 9, 1980. Subsequent to that, briefs were filed by the parties and Judge Fena's term of office ended February 2, 1981, before he had rendered his decision in the matter. The parties through their attorneys agreed to have the case submitted to another Tax Court Judge upon the transcript, briefs and other materials in the file but with a request for additional oral argument. The case was submitted to the Honorable Earl B. Gustafson, Judge of the Minnesota Tax Court. The additional oral arguments were heard on April 16, 1981 by all three judges, the Honorable John Knapp, the Honorable Carl A. Jensen and the Honorable Earl B. Gustafson.

Warren P. Eustis of Van Eps and Gilmore, P.A., represented the Appellant.

Richard W. Davis and James W. Neher, Special Assistants Attorney General, represented the Appellee.

**Issue**

The issue is whether Appellant should be assessed penalties under Minn. Stat. § 290.92, subd. 15(1) for failing to make monthly rather than quarterly deposits of estimated income tax withheld from employees.

**Decision**

Penalties are assessed for failing to make monthly deposits of employee's withheld taxes for the first quarter for which the employer taxpayer is notified of default. Penalties for subsequent quarters are abated where it appears taxpayer started compliance immediately after receiving the first specific notice of non-compliance.

**Findings of Fact**

1. Appellant is an Illinois corporation engaged in the manufacture and sale of animal feeds.

## TAX COURT

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2. Most of Appellant's products are manufactured at two plants in Illinois and most of its business is conducted outside the State of Minnesota.
3. Appellant has had salesmen and warehouses located in Minnesota and has been qualified to do business in Minnesota since 1942.
4. Since it commenced doing significant business in Minnesota and had employees located in Minnesota, the Appellant has always made quarterly deposits with the Department of Revenue of the Minnesota income tax withheld from employee's wages.
5. Quarterly report forms were regularly mailed by the Department of Revenue and completed and returned by Appellant with the quarterly deposit during the years 1973 to 1978.
6. Once during 1973 and 1975 printed notices indicating the general provisions of the monthly withholding deposit requirements were sent to employers with their quarterly report form.
7. No individual letter was sent to Appellant requesting monthly deposits.
8. On January 31, 1978 Appellee notified Appellant that twenty-five percent penalties and interest were owing under Minn. Stat. § 290.53 for "willful neglect" in failing to make monthly deposits in the first two quarters of 1977.
9. After protest by Appellant, the Commissioner of Revenue issued a revised proposed order dated March 13, 1979 finding Appellant was subject to a ten percent penalty under Minn. Stat. § 290.92, subd. 15(1).
10. After an unsuccessful protest by Appellant an Order for Assessment of Penalties and Interest was issued June 19, 1979 totaling \$7,945.33 for failing to make monthly deposits in the first two quarters of 1977.
11. Appellant does not contest the fact that it failed to make the statutorily required monthly deposits.
12. The Order dated June 19, 1979 was timely appealed to this Court and is the matter under review in this proceeding.

### Conclusions of Law

1. There is no evidence in the record that Appellant is guilty of culpability or deliberate violation of the withholding statutes.
2. The imposition of penalties without interest for failing to make deposits of withheld taxes for January and February 1977 is hereby affirmed. All other penalties and interest are hereby abated.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

Earl B. Gustafson, Judge  
John Knapp, Judge  
Carl A. Jensen, Judge

### Memorandum

Appellant, Moorman Manufacturing Company, is an Illinois corporation that deposited Minnesota income tax withheld from its employees' paychecks quarterly rather than monthly. It appears it has been doing this since income tax withholding was required. Under Minn. Stat. § 290.92, subd. 6, Appellant should have been depositing these withholdings with the commissioner monthly because the amounts withheld exceeded \$100.00.

On January 31, 1978, without prior notice, the Department of Revenue assessed Appellant a 25 percent penalty and interest for "willful neglect" in failing to make monthly deposits during the first two quarters of 1977. This penalty was later reduced by an Order dated June 19, 1979, to 10 percent under Minn. Stat. § 290.92, subd. 15(1).

We hold that the assessment of penalties for more than one quarter under the circumstances of this case is inequitable and unjust and should be abated.

Minn. Stat. § 290.92, subd. 6(1), requires every employer to deduct and withhold Minnesota income taxes from its employees for each quarterly period and "if during any calendar month, other than the last month of the calendar quarter, the aggregate amount of the tax withheld under subd. 2a . . . exceeds \$100.00, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with the Commissioner of Revenue."

Minnesota Statute § 290.92, subd. 15(1), provides a penalty for failure to make required monthly deposits as follows:

If any tax required to be deducted and withheld under subdivision 2a . . ., or any portion thereof, *is not paid to or deposited with the Commissioner within the time specified in subdivision 6 for the payment thereof, there shall be added thereto a penalty equal to 10% of the amount so remaining unpaid.* Such penalty shall be collected as part of said tax, and the amount of said tax not timely paid, together with said penalty, shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid or deposited until paid. (Emphasis added)

Throughout this period (1973-1978) the commissioner regularly mailed out quarterly report forms to employers. Appellant



always completed its quarterly report form and returned it to the Department of Revenue along with its regular quarterly deposit. A general information book was sent with the quarterly forms in 1973 or 1974. This included information about the monthly deposit requirement if the amount withheld was over \$100.00. In 1973 and 1975 printed notices indicating the general provisions of the monthly withholding deposit requirements were sent to employers along with the quarterly forms. Appellant, a large business organization, claims it has no record or information indicating that it received these notices, and claims that, in any event, it received no specific notice of monthly deposit requirements, and never received monthly reporting forms. It seems clear from the record that Appellant never received any type of letter or special notification that it was doing anything improper in regard to withholding deposits. Its first actual notification came in the form of a penalty assessment notification.

The commissioner contends in his brief that the imposition of a penalty is automatic under Minn. Stat. § 290.92, subd. 15(1) and further contends that the abatement of penalties rests entirely within his discretion under Minn. Stat. § 290.92, subd. 15(10) and this Court has no authority to overrule his discretionary acts.

Automatic penalties do appear to be mandated by Minn. Stat. § 290.92, subd. 15(1). The commissioner also had the power in 1979 to abate any civil penalties prescribed in the withholding tax statute if he found enforcement "would be unjust and inequitable." Minn. Stat. § 290.92, subd. 15(10). Incidentally, subd. 15(10) has now been repealed but the same discretionary power to abate penalties remains under Minn. Stat. § 270.07, subd. 1. If the abatement exceeds \$500.00, however, the approval of the Attorney General must be obtained. In this case the commissioner has declined to abate the penalties.

The Tax Court has been given specific statutory authority to review and redetermine the Commissioner's Orders on a de novo basis.

Minn. Stat. § 271.05 reads as follows:

The tax court shall have power to review and redetermine orders or decisions of the commissioner of revenue upon appeal therefrom in cases authorized by law.

In an appeal to the Tax Court from an Order of the Commissioner of Revenue, the scope of review is not narrowly limited to whether the commissioner abused his discretion and acted in an arbitrary and capricious manner. The review in the Tax Court is "de novo" under Minn. Stat. § 271.06, subd. 6, not the usual limited judicial review of administrative acts.

We feel that Minn. Stat. § 271.05 granting this Court power to review and redetermine orders and decisions of the Commissioner of Revenue coupled with our "de novo" review of any administrative determinations give us authority to abate these penalties.

In determining whether or not the penalties in this case should be abated we are applying the criterion in Minn. Stat. § 290.92, subd. 15(10) and Minn. Stat. § 270.07, subd. 1. Would the enforcement of penalties be "unjust and inequitable"?

The enforcement of penalties for more than one quarter would, in our opinion, be just that.

The penalties have not, in practice, been automatically imposed. On the contrary, they were not enforced for many years and when eventually imposed a decision was made as to the number of years or quarters that would be involved. They were initially enforced against only a select number, the taxpayers with large payrolls. Appellant was assessed penalties for two quarters while the taxpayer in a companion case decided today, *Combustion Engineering, Inc. v. Commissioner*, was assessed penalties for four quarters.

This is not a case of attempted tax avoidance. The taxpayer, after consistently complying with what it perceived to be the proper procedure for making deposits was suddenly, without prior notification, assessed with retroactive penalties amounting to \$7,945.33. There is every reason to believe that a simple letter or some other direct notification to Appellant to immediately commence making monthly deposits would have brought it into compliance with the deposit requirements of Minn. Stat. § 290.92, subd. 6. The commissioner contends the large numbers of non-complying taxpayers made it too burdensome to send individual letters requesting compliance. Certainly this would be no more burdensome than sending out a notice of assessment of penalties. Nevertheless, the Appellant has a responsibility to be aware of and act in compliance with the law.

While we can find no evidence of culpability, or deliberate violation of the withholding statutes by Appellant that justifies the assessment of any substantial penalties, we agree with the commissioner that some penalties are appropriate under Minn. Stat. § 290.92, subd. 15(1).

It is our decision in this case and the companion *Combustion Engineering* case that penalties without interest should be assessed for one quarter only. In the instant case penalties for failing to make the monthly deposits for January and February of 1977 are affirmed and all other penalties and interest are abated.

# STATE CONTRACTS

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

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

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## Department of Administration Information Services Bureau

### Notice of Availability of Contract for Back-up Programming Services

The Information Services Bureau of the Department of Administration of the State of Minnesota is requesting a proposal from qualified firms to provide back-up programming services to be used by the bureau on an as-needed basis. This may involve programming in COBOL, BAL, BASIC, or FORTRAN IV programming languages, with emphasis on COBOL and BAL. This may also involve coding for the report generators ASI-ST and DYLAKORE. These services may also include designing and coding the linkages to the TOTAL data base manager, and designing and coding for the interface to the on-line monitor CICS. This work may be on projects for any of forty-one (41) state agencies. Proposals for part of this work will be considered (i.e. responders are not required to commit to the entire \$850,000.00). However, the Bureau will not consider proposals for increments of less than \$150,000.00.

The bureau reserves the right to contract this work out to several responders, or to award the entire amount to one responder. The total amount expended for this activity will not exceed \$850,000.00 for a period of twelve (12) months (July 1, 1981 to June 30, 1982).

The full text of the Request for Proposal is available on request. Inquiries and responses should be directed to:

Norbert A. Bohn  
Information Services Bureau  
5th Floor, Centennial Building  
658 Cedar Street  
St. Paul, MN 55155  
(612) 296-6326

Responses must be received no later than 4:00 p.m., June 10, 1981.

## Department of Administration Information Services Bureau

### Notice of Availability of Contract for Back-up Systems Analysis

The Information Services Bureau of the Department of Administration of the State of Minnesota is requesting proposals from qualified firms to provide back-up systems analysis services to be used by the bureau on an as-needed basis. This will involve basic systems analysis using the PRIDE systems development methodology. This may involve back-up assistance to a staff analyst of the bureau on a specific phase of a project, or taking responsibility for specific phases of a project—this work to be assigned at the discretion of the bureau. This work may be on projects for any of forty-one (41) state agencies. The total amount expended for this activity will not exceed \$150,000.00, for a period of twelve (12) months (i.e., July 1, 1981 through June 30, 1982).

The full text of the Request for Proposal is available upon request. Inquiries and responses must be directed to:

Norbert A. Bohn  
Information Services Bureau  
5th Floor, Centennial Building  
658 Cedar Street  
St. Paul, MN 55155  
(612) 296-6326

Responses must be received no later than 4:00 p.m. June 10, 1981.

## **Department of Corrections Minnesota Correctional Facility—Stillwater**

### **Notice of Request for Proposals for Providing Food Services**

Notice is hereby given to request proposals for the professional management of our Food Service Activity at an annual cost not to exceed \$183,000. This proposal shall include all civilian personnel to operate the service. These proposals must be submitted by 4:30 p.m., June 22, 1981, to John Twohig, Assistant Institution Administrator. Please contact Mr. Twohig at 612-439-1910, Ext. 337, if interested.

## **Department of Corrections Victim Services Division**

### **Notice of Availability of Funds for Sexual Assault Services**

The Minnesota Department of Corrections has received an appropriation of \$318,750 from the Legislature to enable the department to award grants to providers of service to sexual assault victims during the fiscal year beginning July 1, 1981. A majority of the funds will be awarded to continue the services of existing programs. A minimal amount has been set aside for new proposals designed to provide services to populations now unserved or underserved.

The appropriation is intended to implement programs that will provide one or more of the following services: direct crisis intervention and support services to sexual assault victims, training programs, coordination of services of existing agencies, community education and development of services to meet the needs of special populations such as children, racial minorities, developmentally disabled and the elderly.

The deadline for proposals for the funds is Friday, June 26, 1981. Grant proposals will be reviewed.

Organizations interested in applying for a grant should contact the Minnesota Program for Victims of Sexual Assault, 430 Metro Square Building, St. Paul, Minnesota, 55101, (612) 296-7084.

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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.

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## **Office of the Secretary of State**

### **Notice of Vacancies in Multi-member State Agencies**

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-7876. Application deadline is June 23, 1981.

**CABLE COMMUNICATIONS BOARD** has one vacancy open for a public member. The board establishes rules and standards for cable communications in the state; approves service territories; provides consultant services; represents the state before the Federal Communications Commission. Members are appointed by the Governor and confirmed by the Senate; must file with Ethical Practices Board. Members may not be employed by or have financial interest in any cable communications company or subsidiaries; no more than 4 members may be of the same political party. Monthly meetings, 500 Rice St., St. Paul; members receive \$35 per diem plus expenses. For specific information; contact Cable Communications Board, 500 Rice St., St. Paul 55103; (612) 296-2545.

**MUNICIPAL BOARD** has one vacancy open for a member. Must be a resident of an area outside of the metro area. The board regulates all boundary adjustments between a city and the adjacent land, city, or township; regulates incorporations. Members are appointed by the Governor and confirmed by the Senate; must file with Ethical Practices Board. Monthly meetings;

## **OFFICIAL NOTICES**

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members receive \$50 per diem plus expenses. For specific information; contact Municipal Board, 165 Metro Square Bldg., St. Paul 55101; (612) 296-2428.

**MINNESOTA-WISCONSIN BOUNDARY AREA COMMISSION** has 4 vacancies open for citizens for staggered terms. The commission makes recommendations on the use, development and protection of the corridor of the St. Croix and Minnesota rivers that forms the interstate border of Minnesota and Wisconsin; assists the 2 states in their participation in federal programs affecting the rivers. Members are appointed by the Governor and confirmed by the Senate. Bi-monthly meetings; members reimbursed for expenses. For specific information contact Minnesota-Wisconsin Boundary Area Commission, 619-2nd St., Hudson, WI 54016 (612) 436-7131.

**CONTINUING EDUCATION ADVISORY TASK FORCE** has 3 vacancies open for a pharmacist. The task force studies continuing education programs for pharmacists, makes recommendations to the Board of Pharmacy. Members, appointed by the board. Quarterly meetings; members receive no compensation. For specific information contact Continuing Education Advisory Task Force: Board of Pharmacy, 717 Delaware St. S.E., Mpls. 55414. (612) 296-5411.

### **State Board of Education Department of Education Instruction Division**

#### **Notice of Intent to Solicit Outside Opinion Concerning a Proposed Rule Relating to Increasing the Minimum Clock Hour Junior High Science Requirement**

Notice is hereby given that the State Board of Education is considering adoption of a rule which would extend the clock hour requirement for the teaching of science in the junior high school from 240 hours to 360 hours in grades seven to nine.

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

Mr. Richard C. Clark  
Specialist, Science Education  
Minnesota State Department of Education  
642 Capitol Square Building  
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours at (612) 296-4071.

All statements of information and comment must be received by July 1, 1981. Any written material received by this date will become part of the record of any rules hearing held on this subject.

May 22, 1981

Howard B. Casmeay  
Secretary

### **Department of Natural Resources**

#### **Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Scott County**

##### **Notice of and Order for Hearing**

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minnesota Statutes, § 105.391, subd. 1 (1979) will be held in Prior Lake Senior High School, Prior Lake, Minnesota, on June 25 and 26, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Bill Schmokel, Assessors Office, Courthouse, Shakopee, MN 55379, Department of Natural Resources representative Karen Loechler, and Scott County Soil and Water Conservation District representative Wilmer Gruetzmacher, 326 Chestnut, Belle Plaine, MN 56011.

Each of the waters listed in this notice is the subject of a petition for hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minnesota Statutes, Section 105.391 (1979) and the criteria contained in Minnesota Statutes, Section 105.37, Subdivisions 14 and 15 (1979):

**A. Public Waters**

**1. Basins**

Number and Name	Section	Township	Range
70-8 : Unnamed	29,32	113	21
70-13 : Unnamed	19,20,29,30	114	21
70-27 : Unnamed	34	113	22
70-39 : St. Patricks Marsh	17-20	113	22
70-42 : Unnamed	20	113	22
70-49 : Unnamed	32,33	113	22
70-59 : Unnamed	9	114	22
70-65 : Buck Lake	16	114	22
70-71 : Unnamed	33,34	114	22
70-79 : Unnamed	28	115	22
70-110: Geis Lake	11-14	114	23
70-116: Strunks Lake	2,3,10,11	115	23
70-188: Unnamed	12	114	22
70-214: Unnamed	7,8	114	23
70-322: Unnamed	7,8	115	21

**2. Watercourses**

Name	Section	From Township	Range	Section	To Township	Range
Unnamed tributary	14 (Basin 110)	114	23	33	115	23

**B. Wetlands**

Number and Name	Section	Township	Range
70-18 : Unnamed	31	115	21
70-103: Unnamed	19,20	113	23
70-155: Unnamed	27	115	22
70-157: Unnamed	28,33	115	22
70-160: Unnamed	28	115	22
70-163: Unnamed	20	115	22
70-186: Unnamed	10,15	114	22
70-203: Unnamed	35	114	22
70-217: Unnamed	15	114	23
70-223: Unnamed	1,12	113	23
70-228: Unnamed	31,32	113	24
70-233: Unnamed	17,20	115	21
70-256: Unnamed	19	115	22
70-310: Unnamed	2,11	113	22
70-314: Unnamed	17,20	113	22

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minnesota Statutes, Sections 15.0424 and 15.0425.

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minnesota Statutes, § 105.42, subd. 1 (1979). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minnesota Statutes, § 105.391, subds. 10 and 12 (1979).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

# OFFICIAL NOTICES

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to

David B. Milles  
DNR—Division of Waters  
Third Floor, Space Center Building  
444 Lafayette Road  
Saint Paul, MN 55101  
Telephone: 612/297-2835

May 22, 1981

Joseph N. Alexander, Commissioner  
Department of Natural Resources

## Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Carver County

### Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minnesota Statutes, § 105.391, subd. 1 (1979) will be held in Courthouse Building, Board Room, Chaska, Minnesota, on June 22, 1981, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Earl Gnan, Norwood, MN 55368, Department of Natural Resources representative Karen Loechler, and Carver County Soil and Water Conservation District representative Larry Johnson Rt. 1, Box 82B, Cologne, MN 55322.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minnesota Statutes; § 105.391 (1979) and the criteria contained in Minnesota Statutes, § 105.37, subds. 14 and 15 (1979):

#### A. Public Waters

##### 1. Basins

Number and Name	Section	Township	Range
10-81 : Root Lake	8,9	116	25
10-82 : Swan Lake	9,16	116	25
10-226P: Firemen's Lake	5,8	115	23

##### 2. Watercourses

Name	Section	From Township	Range	Section	To Township	Range
Unnamed trib. from Hydes Lake	29	116	25	30	116	25

#### B. Wetlands

Number and Name	Section	Township	Range
10-47W : Unnamed	14	116	24
10-148W: Unnamed	4	117	25
10-165W: Unnamed	18	117	26
10-166W: Unnamed	7	117	26
10-179W: Unnamed	6,7	115	25
10-183W: Unnamed	8	115	26

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minnesota Statutes, §§ 15.0424 and 15.0425.

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minnesota Statutes, § 105.42, subd. 1 (1979). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minnesota Statutes, § 105.391, subds. 10 and 12 (1979).

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## OFFICIAL NOTICES

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to

David B. Milles  
DNR—Division of Waters  
Third Floor, Space Center Building  
444 Lafayette Road  
Saint Paul, MN 55101  
Telephone: 612/297-2835

May 22, 1981

Joseph N. Alexander, Commissioner  
Department of Natural Resources

STATE OF MINNESOTA  
OFFICE OF THE STATE REGISTER  
State Register and Public Documents Division  
117 University Avenue  
St. Paul, Minnesota 55155

**ORDER FORM**

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

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