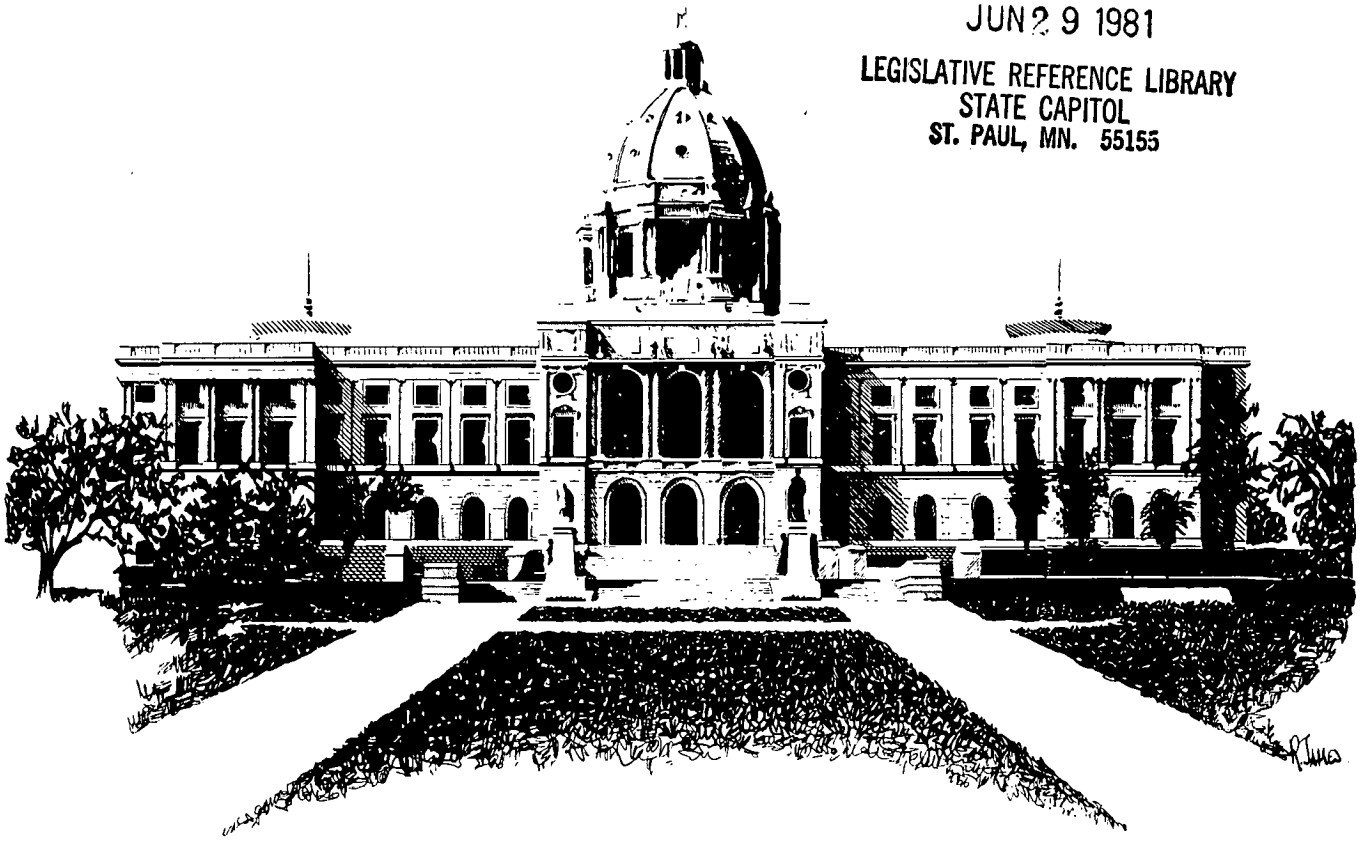
81 JUNE 29

STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 52

June 29, 1981

Pages 2083-2142

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 6		
1	Monday June 22	Monday June 29	Monday July 6
2	Friday June 26	Monday July 6	Monday July 13
3	Monday July 6	Monday July 13	Monday July 20
4	Monday July 13	Monday July 20	Monday July 27

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

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $120.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

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

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

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

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NOTICE

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

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

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

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

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

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

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

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EXECUTIVE ORDERS

Writ of Special Election

Writ of Special Election to Fill a Vacancy in the Office of State Representative of Legislative District 32B within the Counties of Olmstead and Dodge, State of Minnesota, and of a Special Primary Election to Nominate Candidates for Said Election

To the People of the State of Minnesota, and particularly of Legislative District 32B within the Counties of Olmstead and Dodge; to the Secretary of State of Minnesota; to the County Auditors of the above-named Counties; to all election officials of said District 32B; and to all others who may be concerned:

WHEREAS, a vacancy will occur in the Office of State Representative from District 32B of the State of Minnesota on June 14, 1981, caused by the resignation of the Representative, the Honorable Don L. Friedrich, by letter dated June 4, 1981; and

WHEREAS, a special election to fill said vacancy is necessary;

NOW, THEREFORE, I, ALBERT H. QUIE, AS GOVERNOR OF THE STATE OF MINNESOTA, acting under the authority and direction vested in me by the Minnesota Constitution, Article IV, § 4, and Minnesota Statutes, §§ 202A.61 to 202A.71, and other relevant statutes, do hereby direct:

1. That a special election to fill said vacancy be held in Legislative District 32B on Wednesday, the 15th day of July, 1981;

2. That a special primary election for the nomination of candidates for the office be there held on Wednesday, the 1st of July, 1981;

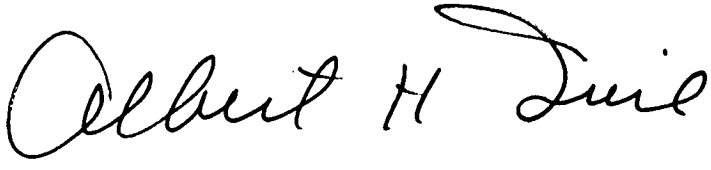
3. That affidavits and petitions of candidacy must be duly filed on or before Wednesday, the 24th day of June, 1981;

4. That the notices of this special election and special primary election be given, that the nomination and election of candidates be conducted and that all things pertaining thereto be done as provided by Minnesota Statutes, 1980, §§ 202A.61 to 202A.71 (1980), and other applicable provisions of law; and

5. That this Writ of Special Election be issued in my absence by Lt. Governor Lou Wangberg on June 15, 1981 and filed according to law with the Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of June, 1981.

Albert H. Quie, Governor
State of Minnesota



Executive Order No. 81-4

Establishing Procedures for Terminating the Provisions of Executive Order No. 81-2

I, LOU WANGBERG, Lieutenant Governor of the State of Minnesota, acting in the place of Governor Albert H. Quie, who is absent from the state, and in accordance with the authority vested in me by the constitution and applicable statutes, do hereby issue this executive order:

WHEREAS, on March 2, 1981, Governor Albert H. Quie issued Executive Order No. 81-2, a measure designed to reduce state spending to offset economic difficulties confronting the State of Minnesota; and

WHEREAS, Executive Order No. 81-2 has resulted in meaningful reductions in state spending to the benefit of the citizens of the State of Minnesota; and

WHEREAS, it is now appropriate to establish procedures for the termination of Executive Order No. 81-2 on an agency-by-agency basis in order to authorize reasonable expenditures while still assuring that state agencies adopt appropriate spending plans for fiscal year 1982;

NOW, THEREFORE, I ORDER:

1. That Executive Order No. 81-2 shall terminate effective July 1, 1981 with respect to state agencies, provided that such agencies have received written approval by the Commissioner of Finance, State of Minnesota, of their F.Y. 1982 spending plans.

2. That Executive Order 81-2 shall continue to apply to those agencies which do not have approval of their spending plans on July 1, 1981 until such time as that approval is granted.

Pursuant to Minnesota Statutes, § 4.035 (1980), this order shall be filed with the Secretary of State and published in the *State Register* and shall become effective on July 1, 1981.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 15 day of June, 1981.

Lou Wangberg, Lieutenant Governor

Emergency Executive Order No. 81-5

Providing for Emergency Assistance to Officials of Ramsey County

I, Lou Wangberg, Lieutenant Governor of the State of Minnesota, acting in the place of Governor Albert H. Quie, who is absent from the state, and in accordance with the authority vested in me by the constitution and Laws of the State of Minnesota, do hereby issue this executive order:

WHEREAS, the Sheriff of Ramsey County has requested assistance in preserving life and property in his county as a result of serious damage caused by tornadoes, high winds and other adverse weather conditions; and

WHEREAS, Ramsey County and other local officials have exhausted all available resources in their efforts to preserve life and property from destruction caused by such adverse weather conditions; and

WHEREAS, it is necessary for the preservation of life and property in Ramsey County that the state provide assistance to those county and local officials;

NOW, THEREFORE, I ORDER:

1. The Adjutant General of Minnesota shall order to active duty on and after June 14, 1981, in the service of the state, such elements of the military forces of the state as are necessary to assist Ramsey County and local officials in preserving life and property in Ramsey County. Those forces shall be utilized for such a period of time as is necessary to preserve life and property in Ramsey County.

2. The costs of subsistence, transportation, fuel, and pay and allowances of said individuals shall be defrayed from the general fund of the state as provided for in Minnesota Statutes, §§ 192.49, subd. 1; 192.51; and 192.52.

This order is effective retroactively to June 14, 1981, and shall remain in force until such date as elements of the military forces of the state are no longer required.

IN TESTIMONY WHEREOF, I hereunto set my hand this 15 day of June, 1981.

Lou Wangberg, Lieutenant Governor

PROPOSED RULES

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

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

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

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Administration
Board of Electricity

Proposed Rules Amending License and Renewal Fees

Notice of Intent to Adopt Rules without a Hearing
Request for Public Comment

Notice is hereby given that the Board of Electricity has proposed the following rules amending the fees charged for license; issuance and renewal. These rules are promulgated pursuant to Minn. Stat. §§ 214.06 subd. 1 (1980); 15.0412 subd. 4 (1980), as amended by Laws of 1981, ch. 357 § 25; 16A.128 (1980), as amended by Laws of 1981, ch. 357 § 26. These provisions authorize the Board of Electricity to adopt rules amending its fees without a public hearing when the total fees estimated to be received during the fiscal biennium will not exceed 110 percent of the sum of all direct appropriations, transfers in, and salary supplements for that purpose for the biennium.

No hearing will be held prior to the promulgation of these rules by the Board of Electricity. All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 30 days immediately following publicaton of this material in the *State Register* by writing to Executive Secretary, Board of Electricity, 1821 University Avenue, Room N-191, St. Paul, Minnesota 55104. The proposed rules may be modified if modifications are supported by the data and views submitted. Any written material received shall become part of the record in the final adoption of the proposed rules. Any person who desires to be notified when the proposed rules and record herein are submitted to the Attorney General should so inform the Executive Secretary of the board of Electricity. Publication is hereby ordered.

Rule as Proposed

4 MCAR § 11.032 Licenses, examination and renewal fees.

A. All licenses issued hereunder shall expire one year from the date of issuance, except that an electrical contractor's license shall expire on September 1 of each year.

B. The following fees shall be payable for examination, issuance and renewal:

1. For examination:
   - a. Class "A" Master – $35.00
   - b. Class "B" Master – $20.00
   - c. Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electrician – $10.00
2. For issuance of original license and renewal:
   - a. Class "A" Master –$35.00
   - b. Class "B" Master – $20.00
   - c. Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electrician – ~~$ 7.50~~ – $10.00

d. Electrical ~~Contractor's licenses shall be renewed on September 1st of each year. Original & renewal fee~~ Contractor ~~– $10.00~~ – $75.00

C. Any electrical contractor who seeks reissuance of his or her license after it has been revoked or suspended pursuant to rule Elec 26 shall submit a reissuance fee of $100.00 before the license is reinstated.

Office of Administrative Hearings Workers' Compensation Division

Proposed Temporary Rules Governing Workers' Compensation

Notice is hereby given that the Office of Administrative Hearings, Workers' Compensation Division, proposed the following temporary rules for the purpose of implementing the provisions of Laws of 1981, ch. 346, governing hearings involving Workers' Compensation. All interested persons may submit data and views on the proposed temporary rules for a period of 20 days. All submissions must be in writing and must be addressed to:

Duane R. Harves
Chief Hearing Examiner
Office of Administrative Hearings
1745 University Avenue
St. Paul, Minnesota 55104

The rules as proposed may be modified if the modifications are supported by the data and views submitted. Any written material submitted will become part of the record and will be submitted to the Attorney General.

Temporary Rules as Proposed

9 MCAR § 2.301 Scope and purpose.

The procedures contained herein shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota Workers' Compensation Laws, Minn. Stat. §§ 176.001 to 176.82, and the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411 to 15.052, as those provisions might apply.

9 MCAR § 2.302 General authority and definitions.

A. Assignment or transfer of cases. The chief hearing examiner has full responsibility for the assignment of cases for trial to the compensation judges. The chief hearing examiner may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign such cases if necessary to expedite the proceedings if no oral testimony has been received therein. To the extent practicable, supplemental proceedings (rehearings) shall be assigned to the compensation judge who heard the original proceedings except where the rehearing has been granted by the Workers' Compensation Court of Appeals contrary to the compensation judge's initial order, in which instance the rehearing may be assigned to another compensation judge.

B. Authority of compensation judges. In any case which has been regularly assigned to him/her for trial, a compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented to him/her and to issue such interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.

C. Definitions.

1. "Applicant" means the party initiating an application by the serving and filing of a petition.
2. "Calendar judge" means a workers' compensation judge from the Office of Administrative Hearings.
3. "Chief hearing examiner" means the chief hearing examiner of the Office of Administrative Hearings.
4. "Commissioner" means the commissioner of the Department of Labor and Industry.
5. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

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.

6. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

7. "Petition" means an application filed by or on behalf of an injured or deceased employee which initiates a contested workers' compensation case requiring assignment for hearing.

8. "Settlement judges" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR § 2.303 Parties.

A. Necessary parties. In all cases except cases arising from the death of an employee, any person, other than the injured employee, initiating a proceeding must join the injured person as a party, including in the petition the injured party's address, if known, and if not known, a statement of that fact.

For purposes of these rules, the following shall be deemed necessary parties:

1. The employee or dependents;

2. All insurers or self-insured named in the petition;

3. Any employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;

4. The State Treasurer, as custodian of the Special Compensation Fund, if petition is made pursuant to Minn. Stat. § 176.191, subd. 2.

B. Parties applicant. Any person in whom any right to relief is alleged to exist may appear, or be joined, as a party applicant, in any case or controversy before a settlement or compensation judge.

C. Parties defendant. Any person or insurer against whom the right to relief is alleged to esixt shall be named or joined as a defendant.

D. Parties in death cases. In death cases, all persons who might be considered dependents should either join or be joined as parties applicant or defendant so that the entire liability of the employer or the insurer may be determined in one proceeding.

E. Joinder of parties.

1. Upon a motion of any party or upon his/her own motion, a settlement or compensation judge may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall forthwith be served with copies of the order of joinder, the summary of evidence, if any, and the pleadings in the case.

2. Any party requesting joinder of additional parties shall make a motion for such joinder, serve a copy of the motion on all existing parties, and the party to be joined, and file the original with proof of service with the calendar judge no later than 45 days prior to the hearing date, unless the calendar judge allows a shorter time when the moving party has shown that the party is a necessary party, that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party, and that the joinder is necessary to a full and final determination of the rights or liabilities of all persons. When this motion is served on the party to be joined, it shall be accompanied by copies of all pleadings and a notice of the date, time and place set for a settlement conference, prehearing conference or hearing.

3. When a party requests joinder less than 45 days prior to the hearing date, the motion shall include an affidavit of the moving party stating the facts necessary to show cause why the lesser time should be allowed.

4. In cases where the calendar judge has denied the joinder because of the moving party's failure to meet the 45-day time requirement, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the applicant or applicant's attorney consents thereto.

5. All motions for joinder shall contain at least the following:

a. The party to be joined and its insurer, if any;

b. The date and nature of the claimed personal injury or impairment;

c. The detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;

d. The supporting medical opinions relied upon, if applicable; or

e. If the party to be joined is the Special Compensation Fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where applicable.

6. A party contesting joinder under these rules may do so by objection filed with the calendar judge within 10 days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

9 MCAR § 2.304 Pleadings.

A. Commencement of proceedings. Original proceedings for the adjudication of compensation rights and liabilities are

commenced by the service and filing of a petition as provided by Minn. Stat. § 176.305 and which shall be on forms provided by the commissioner. The petition shall certify that the prior notice of intention to initiate proceedings has been sent to the adverse party, pursuant to Minn. Stat. § 176.271, subd. 2, and the date of that notice. Supporting medical reports shall be attached to the petition.

B. Separate petitions for each injury. A separate petition shall be filed for each separate injury for which benefits are claimed even though the employer be the same in each case. Separate pleadings shall be filed in each case.

C. Consolidation of claims. All claims of all persons arising out of the same injury to the same employee shall be filed in the same proceeding.

D. Forms of petition. Petitions shall conform to the forms prescribed by the commissioner and provided by the division.

E. Declaration of Readiness to Proceed.

1. At the time the petition is filed with the commissioner, a Declaration of Readiness to Proceed shall be included. The declaration shall have been previously served either personally or by first class mail on all other parties.

2. Objections. Any objection to the proceedings requested by a Declaration of Readiness to Proceed shall be served and filed with the commissioner within ten (10) days after service of the declaration.

3. The Declaration of Readiness to Proceed shall be on a form provided by the Division and shall contain the following information:

a. The names of all parties applicant or defendant;

b. The geographic location requested for the hearing;

c. Whether a settlement conference is requested and the reasons therefor;

d. What issues remain to be determined;

e. Whether the applicant is presently receiving compensation payments;

f. The number of witnesses expected to be presented, divided between lay and medical witnesses;

g. An estimate of the number of hours necessary to complete the hearing;

h. A statement that all medical reports in the applicant's possession have been provided to the defendant(s);

i. A proof of service of the declaration; and

j. The typed or hand printed name of the person filing the declaration, together with the address and telephone number where the person filing can be reached between the hours of 8:00 a.m. and 4:30 p.m.

9 MCAR § 2.305 Settlement judge review and settlement conferences.

A. Upon the filing of a petition and a Declaration of Readiness to Proceed, the commissioner shall refer the case to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate, which determination shall be made within twenty (20) days of the date of filing.

B. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he/she shall notify all parties of the date, time and place where the settlement conference will be conducted. The settlement conferences shall be completed within sixty (60) days of the date of the filing of the Petition and the Declaration of Readiness to Proceed. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall return the file to the commissioner who shall refer the file to the chief hearing examiner within 10 calendar days of receipt of the file from the settlement judge.

C. If the settlement conference cannot be concluded within sixty (60) days, the settlement judge shall return the file to the commissioner who shall refer the file to the chief hearing examiner. Provided, however, that with the written consent of the applicant or his/her representative, the settlement judge may retain jurisdiction for an additional thirty (30) days for purposes of receiving a full settlement of all issues.

D. If the settlement judge determines that a settlement conference will not resolve the issues in the case or that, because the number of cases filed or scheduled for settlement conferences are such that a settlement conference cannot be concluded within

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the required time, the settlement judge shall return the file to the commissioner who shall refer the file to the chief hearing examiner within 10 calendar days of receipt of the file from the settlement judge.

E. Nothing contained in this rule shall preclude any party from requesting that a settlement conference be scheduled at any time prior to a hearing by a compensation judge, nor shall it prohibit the chief hearing examiner or calendar judge from setting a settlement conference on their own motion once the file has been received from the commissioner.

F. At any settlement conference conducted before a settlement, calendar or compensation judge, all parties shall attend and shall, if they are a representative of a party, be authorized to reach a full settlement on all or any issues in the case.

G. If, following a settlement conference, a full and final settlement has not been reached but the parties have reached agreement on any facts, legal or medical issues, or levels of benefits, the settlement, calendar or compensation judge presiding over the settlement conference shall, if he/she approves of those matters settled, issue an order confirming and approving those matters settled, which order shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once settled and approved may be reopened by the compensation judge upon motion of any party on the basis of newly discovered evidence or a material change in circumstances.

9 MCAR § 2.306 Motions to compensation judge.

A. Generally. All requests for action by the commissioner, a settlement, calendar of compensation judge other than petitions or answers shall be called motions. The caption of each motion shall contain the title and number of the case and shall indicate the type of relief sought.

B. Motion to reopen. Motions requesting that a matter be reopened shall set forth specifically and in detail the facts relied upon to establish good cause for reopening.

C. Motion to discontinue compensation.

1. A motion to discontinue compensation for temporary total disability filed pursuant to Minn. Stat. § 176.241 shall conform to the form provided by the division and shall contain the information required by law or rule of the commissioner.

2. Objections; hearing; interim order.

a. Written objections shall be filed with and contain the information required by law or rule of the commissioner.

b. Upon such timely objection and where it appears to the commissioner that the right to compensation may not have terminated, the motion to discontinue shall be referred to the chief hearing examiner who shall set the matter for hearing on a priority basis not less than ten (10) nor more than thirty (30) days from the date of the receipt of the motion and objection from the commissioner.

c. If complete disposition of the motion to discontinue cannot be made at such hearing, the compensation judge assigned thereto, based on the record before him/her including the allegations of the motion, the objection thereto, and the evidence (if any) at said hearing, shall forthwith issue an interim order directing whether compensation shall or shall not continue during the pendency of proceedings on the motion to discontinue. Said interim order shall not be considered a final order, and will not preclude a complete adjudication of the issues raised by the motion upon the full hearing of the case, after notice in the regular course and full opportunity to prepare.

d. Following the issuance of an interim order upon the motion to discontinue, the case shall be set by the chief hearing examiner in the customary manner upon the filing of an appropriate Declaration of Readiness by the employer or insurer.

9 MCAR § 2.307 Answers.

A. An answer to each petition shall be served and filed within twenty (20) days after service of the application unless a waiver has been obtained pursuant to Minn. Stat. § 176.321, subd. 3.

B. The answer used by parties shall conform to the form prescribed by the commissioner. A general denial is not an answer within this rule. The answer shall be accompanied by an affidavit of service upon the opposing parties. Evidence upon matters and affirmative defenses not pleaded by answer will be allowed only upon such terms and conditions as the compensation judge shall impose.

C. The answer shall contain the following:

1. Specific responses to allegations regarding the date and nature of the injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, matters in dispute, affirmative defenses and additional matters as deemed necessary by the answering party;

2. Any medical report upon which the answer is based, if available;

3. If a medical examination by the employer or insurer's doctor has not already been completed, the date, time and place for the exam which shall be scheduled to take place within 75 days from the date of service of the petition. Any request for an extension in time for scheduling the examination shall be subject to the approval of the calendar judge.

D. Requests for an extension of time within which to answer shall be made to a settlement judge who shall act on such requests on behalf of the commissioner.

9 MCAR § 2.308 Service.

A. Service by state. The commissioner, the chief hearing examiner, and settlement, calendar or compensation judges shall serve all notices, findings, orders, decisions or awards upon the parties or their attorneys or agents of record by first class mail at their addresses of record or by personal service. Service may also be satisfied by placing the materials to be served with the Central Mailing Section of the Department of Administration.

B. Service by parties. A party may accomplish service of any document either by first class mail or by personal service. Service of any document required to be served by a party may be served by the party's attorney or authorized agent. Upon filing of the document served, it shall be accompanied by an affidavit of service which shall be in the form accepted by the district courts.

C. Service by mail. Service of all documents and pleadings may be made by first class United States mail upon all parties to a proceeding whether residents of the same city, town or otherwise. Computation of time in such instances shall be in accordance with the provisions of Minn. Stat. § 645.15.

D. Service on attorney or agent. Service, except as may otherwise be provided by any law or other rules, shall be made only on attorneys or agents of record, unless the party is unrepresented, in which event service shall be made on such party.

E. Proof of service by parties. Proof of service by parties may be made by:

1. An affidavit of service in the form acceptable to the district courts; or
2. A written statement enclosed upon the document served and signed by the party making the statement; or
3. A letter of transmittal.

In each case, there shall be set forth the names and addresses of persons served, the fact as to whether such service was made personally or by mail, the date of service, the place of personal service or the address to which mailing was made.

9 MCAR § 2.309 Hearings.

A. Definition of hearing. A hearing may be either a settlement conference, a prehearing conference, or a regular hearing.

1. A settlement conference is a hearing set by a settlement judge. It is set for the primary purpose of providing assistance to the parties in resolving disputes and securing a settlement of all issues, and for the secondary purpose of assisting the parties in narrowing the issues and of expediting preparation and trial of a regular hearing if necessary. The conference may be conducted by telephone.

2. A prehearing conference may be required whether or not a settlement conference has been held. The purpose of a prehearing conference is to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of expediting preparation and trial if a regular hearing is necessary. A prehearing conference is conducted by a calendar or compensation judge. It may be conducted by telephone.

3. A regular hearing is a hearing set for the purpose of receiving evidence and is conducted by a compensation judge.

B. Notice of hearing. Notice of the time and place for hearing shall be provided to all parties to a case as required by § 2.308 A. except that oral or written notification of the date, time and place for a regular hearing which is given to the parties by a settlement, calendar or compensation judge at the time of a settlement or prehearing conference shall be sufficient notice. Such notice shall be given at least ten (10) days prior to the date of hearing, except:

1. Where notice is waived;
2. Where a different time is expressly agreed to by all parties; or
3. Where the notice is governed by contrary law or rule.

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D. Continuances.

1. Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are, therefore, not favored and will be granted only upon a clear showing of good cause. The parties are expected to submit for decision all matters in controversy at a single hearing and to produce at such hearing all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense.

2. When a continuance is to be requested prior to the hearing date, the party requesting the continuance shall have first contacted all other parties to determine whether mutual agreement to the continuance can be reached, and, if the continuance be granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, if the continuance request is made no less than ten (10) working days prior to the hearing date, the continuance shall be granted.

3. Requests for continuances shall be made to the compensation judge designated as the calendar judge. If all parties have not agreed to the continuance, the request shall be in writing in the form of a motion for continuance, served on all parties, and shall set a date, time and place for a hearing on the motion before the calendar judge when more than ten (10) working days prior to the regular hearing date. If less than ten (10) working days remain prior to the regular hearing date, notice of the motion may be made orally.

4. Good cause shall not include:

a. Where an insurer retains counsel on its own payroll, unavailability of the counsel assigned to the case because of engagement in another court or otherwise;

b. Where a law firm consists of more than one member, unavailability of the counsel assigned to the case because of engagement in another court or otherwise;

c. Unavailability of an individual law practitioner because of engagement in another court, if he has failed to notify the judge in charge of the trial court calendar of that court that he has been assigned to a date and time certain in a workers' compensation case;

d. Unavailability of a medical or other witness if the witness' deposition could have been taken between the time of receipt of the notice of the hearing date and the date of the hearing.

9 MCAR § 2.310 Intervention.

A. Any person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the settlement judge unless the case has been submitted to the chief hearing examiner for assignment, in which case the motion shall be submitted to the calendar judge. The motion shall be served on all parties either personally or by first class mail. Timeliness will be determined by the settlement, calendar or compensation judge in each case based on circumstances at the time of filing. The motion shall show how the moving party's legal rights, duties or privileges may be determined or affected by the case, shall set forth the grounds and purposes for which intervention is sought and shall indicate the moving party's statutory right to intervene if one should exist. The motion shall be accompanied by the following information, if applicable.

1. Itemization of disability payments showing the period during which the payments were or are being made, the weekly or monthly rate of the payments and the amount of reimbursement claimed;

2. A summary of the medical or treatment payments, broken down by medical or treatment creditor, showing the total bill submitted, the period of treatment covered by that bill, the amount of payment on that bill, and to whom the payment was made;

3. Copies of all medical or treatment bills on which some payment was made;

4. Copies of the worksheets or other information setting forth how the payments on medical or treatment bills were calculated;

5. A copy of the relevant policy or contract provisions upon which the claim for reimbursement is based.

B. Objection. Any party may object to the motion for intervention by serving and filing an objection with the appropriate judge within seven days of service of the motion, which objection shall state the party's reasons for objection.

C. The party requesting intervention or his/her attorney or representative shall attend all settlement or prehearing conferences and the regular hearing unless a written stipulation, signed by all parties, is filed with the appropriate judge stating that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case, and that, if the applicant is successful in proving the compensability of the claim, it is agreed that the sum shall be reimbursed to the intervenor. If no objection is filed, the intervention shall be deemed granted.

D. If an objection to intervention remains following settlement and prehearing conferences, the calendar judge shall enter an order ruling on the intervention which order shall be binding on the compensation judge to whom the case is assigned for a regular hearing.

E. At the regular hearing on the claim petition where intervention has been granted, the intervenor shall present his/her evidence in support of his/her claim after the applicant has rested, unless otherwise ordered by the compensation judge, in order that the issue of intervention may be promptly determined with no undue delay that may prejudice the rights of the original parties.

F. Failure to comply with any provision of this rule shall result in a denial of the claim for reimbursement.

9 MCAR § 2.311 Consolidation.

A. Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by any party to the calendar judge or upon the calendar judge's own motion if the calendar judge determines that separate cases present substantially the same issues of fact and law; that a holding in one case would effect the rights of the parties in another case; and that the consolidation would not substantially prejudice any party. Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the consolidation proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so adduced, such evidence shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the order of consolidation shall be similarly received with like force and effect.

C. Notice of order. Following an order for consolidation, the calendar judge shall forthwith serve on all parties a copy of the order for consolidation. The order shall contain, among other things:

1. A description of the cases for consolidation;
2. The reasons for consolidation;
3. Notification of a consolidated prehearing conference if one has been requested.

D. Objection to consolidation.

1. Motion for severance. Any party may object to consolidation by filing with the calendar judge, and serving upon all parties at least seven days prior to the regular hearing in the case, a motion for severance from consolidation, setting forth the petitioner's name and address, the title of his case prior to consolidation, and the reasons for his petition.

2. Determination. If the calendar judge finds that consolidation would prejudice the party moving for severance, he shall order such severance or other relief as he/she deems necessary.

E. Service of pleadings and decisions. Separate pleadings shall be filed and separate findings, orders, decisions and awards will be made and filed in each case consolidated for hearing.

9 MCAR § 2.312 Disqualification. Proceedings to disqualify a compensation judge shall be initiated by the filing of a motion for disqualification supported by affidavit or declaration under penalty of perjury stating in detail facts establishing grounds for disqualification of the compensation judge to whom a case or proceeding has been assigned. If the compensation judge assigned to hear the matter and the grounds for disqualification are known, the motion for disqualification shall be filed with the chief hearing examiner not more than ten (10) days after the moving party has received notice of the hearing. In no event shall any such motion be entertained after the swearing of the first witness. The motion shall be determined by the chief hearing examiner.

9 MCAR § 2.313 Prehearing procedures.

A. All cases shall be subject to a settlement conference or a prehearing conference whenever possible, at which all parties shall attend, unless a settlement judge or calendar judge orders otherwise. If parties are represented by attorneys, the attorneys who will actually appear at the hearing shall attend the settlement or prehearing conference, bringing with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and shall be prepared to arrange agreeable dates for the regular hearing.

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B. Prior to any settlement or prehearing conference, the parties shall discuss the possibility of settlement if they deem that a reasonable basis for settlement exists. Parties or attorneys appearing at a settlement or prehearing conference shall be prepared to participate in a settlement conference.

C. At the settlement or prehearing conference:

1. All parties shall be prepared to state the issues;

2. All parties shall state the names, and addresses if known, of all witnesses they intend to call;

3. All parties shall give notice of any amendments to pleadings that may still be necessary;

4. All parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after any settlement conference or prehearing conference shall be filed as soon as available prior to the regular hearing;

5. Each party shall state what exhibits, including, but not limited to photographs, motion picture films and documentary evidence intended to be used at the hearing, and copies of these exhibits shall be made available to opposing counsel no later than 10 days prior to the date of the regular hearing, provided, however, that if any party requests showing of motion picture films prior to the regular hearing, they shall pay the expense for such showing and may tax this expense in the same manner as other costs and disbursements;

6. If the employee plans to introduce hospital records into evidence, the employee or his attorney shall bring to the settlement or prehearing conference written authorizations for opposing counsel to examine those records if such authorizations have not previously been provided;

7. If the employee is claiming medical or other treatment expenses, the employee or the attorney shall state those expenses at the time of the settlement or prehearing conference, and shall furnish opposing counsel with copies of itemized bills for such expenses at least 10 days prior to the settlement or prehearing conference;

8. If the employee is claiming temporary total disability, the employee or attorney shall state at the settlement or prehearing conference the dates of time lost from work;

9. If the employee is claiming temporary partial disability, the employee or attorney shall state the dates of such claim, the approximate amount of such claim, and the names and addresses of the employers for whom the employee worked during the period of such claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall have been furnished at least 10 days prior to the scheduled settlement or prehearing conference; and, an itemized breakdown of the claim for temporary partial disability shall be submitted to the settlement or calendar judge and opposing counsel at least 10 days prior to the time of the settlement or prehearing conference;

10. The applicant or attorney for the applicant shall state whether payment has been made by any party other than the workers' compensation carrier for disability benefits, on medical or treatment expenses, or on funeral expenses. If payment has been made, the name and address of the party making payment shall be furnished to the settlement or calendar judge at the settlement or prehearing conference, together with any identifying policy or claim numbers;

11. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel at least 10 days prior to the settlement or prehearing conference, copies of the relevant wage records of the employee;

12. The applicant or attorney for the applicant shall furnish to the settlement or calendar judge, at the settlement or prehearing conference, a copy of his retainer agreement with the employee or dependents and shall state the amount of retainer fee paid. He shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minn. Stat. § 176.081.

D. At the time a case is first set for a settlement or prehearing conference, the settlement judge or calendar judge may order the parties to complete, serve on each other and file a prehearing statement which shall contain any of the items in C. above which the settlement or calendar judge deems appropriate. In making a determination on the requirement of the preparation of prehearing statements, the settlement or calendar judge shall take into consideration the number of parties involved in the case, the nature and extent of the medical issues, and the nature and extent of the type of disability claimed.

9 MCAR § 2.314 Discovery.

A. Demand. Each party shall, within 10 days of a demand by another party, disclose or furnish the following:

1. The names and addresses of all witnesses that a party intends to call at the regular hearing. All witnesses unknown at the time of said disclosure shall be disclosed as soon as they become known if a prior demand has been made.

2. Any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements which reproduction shall be at the expense of the party

requesting reproduction. Any party unreasonably failing upon demand to make the disclosure required by this rule, upon proper motion made to the compensation judge, shall be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

3. Medical privilege shall be deemed waived by the filing of the petition alleging injury or illness. Medical authorizations shall be furnished, upon demand, to adverse parties. Likewise, any and all medical reports shall be provided, upon demand, to all adverse parties. Written interrogatories may be utilized for the purposes of discovering medical information. When interrogatories are utilized, the Rules of Civil Procedure for the District Courts in the State of Minnesota shall apply.

B. Requests for admissions. A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least 15 days prior to the regular hearing and it shall be answered in writing by the party to whom the request is directed within 10 days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to make a written answer shall result in the subject matter of the request being deemed admitted.

C. Depositions. Pursuant to the provisions of Minn. Stat. § 176.411, subd. 2, depositions may be taken in the manner which the law provides for depositions in civil actions in the district courts for the state except where a compensation judge orders otherwise. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the calendar judge who shall determine whether the deposition should go forward. The calendar judge shall order the deposition to proceed if he/she finds that the request for the taking of the deposition has been shown to be needed for the proper presentation of a party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

Depositions for the purpose of preserving testimony or for presenting medical testimony due to the unavailability of the doctor shall be allowed. Such deposition testimony shall be taken prior to the regular hearing unless, for good cause shown, the party taking such deposition has obtained the permission of the calendar judge to take such deposition subsequent to the hearing.

The original copy of any deposition taken for purposes of presenting testimony in the case shall be filed with the settlement judge if the case is still pending before the settlement judge or with the Office of Administrative Hearings if the matter has been referred to the chief hearing examiner for assignment. The original copy of any deposition taken solely for purposes of discovery shall be sealed and filed as in the case of evidentiary depositions but shall not be reviewed or utilized in any fashion by the compensation judge unless the deposition shall be formally entered as evidence in the case.

D. Motions for additional discovery. Upon the motion of any party, the calendar judge may order discovery of any other relevant material or information, recognizing all privileges recognized at law. The calendar judge may order any means of discovery available pursuant to the Rules of Civil Procedure for the District Courts of the State of Minnesota provided that the request for such discovery can be shown to be needed for the proper presentation of a party's case, are not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

E. Penalties. Upon the failure of a party to reasonably comply with these rules relating to discovery or with an order of the calendar judge made pursuant to this rule, upon a motion properly made at the time of the hearing, the compensation judge assigned to the regular hearing shall make a further order as follows:

1. An order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order.

2. An order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting him/her from introducing designated matters in evidence.

F. Proprietary information. When a party is asked to reveal material which he/she considers to be proprietary information or trade secrets, he/she shall bring the matter to the attention of the appropriate judge, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

9 MCAR § 2.315 Motions for contribution or reimbursement.

A. Motions for contribution or reimbursement shall set forth in detail the allegations showing the basis of the claim for

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contribution or reimbursement against the additional employer or insurer named therein, shall be supported by medical evidence, and shall be signed and verified. The original motion shall be filed with the settlement judge if the matter is pending before the division or with the chief hearing examiner if the matter has been referred for assignment, together with proof of service upon the employee or his attorney and all additional employers or insurers named therein.

B. In all cases where a claim petition or other form of action is pending, said motion shall be filed no later than 30 days prior to a settlement or prehearing conference, and copies of all pleadings, including any notice of settlement or prehearing conference shall be served upon the additional employers or insurers by the party bringing said motion. In cases where no action is pending, the filing of the motion for contribution or reimbursement with the division shall initiate proceedings.

C. Within 10 days after being served with a copy of the motion for reimbursement or contribution, employers or their insurers, other than the paying party, may file a verified answer to the motion in accordance with the provisions of Minn. Stat. § 176.321 and, if not already set for settlement or prehearing conference, the matter shall be set for a settlement or prehearing conference in accordance with these rules.

D. The employee shall be deemed a necessary party to all of the proceedings and should be represented by an attorney of his/her choice. A copy of all motions or answers shall be duly served upon the employee and/or his/her attorney in accordance with Minn. Stat. § 176.321.

9 MCAR § 2.316 Subpoenas. Subpoenas may be obtained without charge from the Workers' Compensation Division or the Office of Administrative Hearings. The name and address and telephone number of the party or attorney requesting service of the subpoena shall be included on the subpoena before service is made. When service is made, service and witness fees shall be tendered in accordance with Minn. Stat. § 357.22.

Upon motion promptly made, and in any event at or before the time specified in the subpoena for compliance therewith, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if he/she finds it is unreasonable or oppressive.

9 MCAR § 2.317 The hearing.

A. A date and time certain will be assigned to each case. Notice of the hearing will be given as soon as the assigned date is known, but shall be given at least 10 days in advance of the hearing. The notice will include the place of hearing and the amount of time allowed for the hearing. Cases will be set for one location only, which shall be that most convenient for the petitioner, and adequate time will be allowed so that the case may be completely heard in one setting.

B. As soon as the parties are apprised of the date scheduled for hearing, they shall immediately notify all medical witnesses in writing and arrange for their presence or for the taking of their deposition pursuant to § 314 C.

C. The production of medical evidence in the form of written reports, by stipulation of the parties, is encouraged. These reports should include:

1. The date of the examination;
2. The history of the injury;
3. The patient's complaints;
4. The source of all facts set forth in the history and complaint;
5. Findings on examination;
6. Opinion as to the extent of disability and work limitations, if any;
7. Cause of the disability;
8. Medical treatment indicated;
9. Opinion as to whether or not permanent disability has resulted from the injury and whether or not it is stationary. If stationary, a description of the disability with a complete evaluation; and
10. The reason or reasons for the opinion or opinions.

D. Rights of parties. All parties shall have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony and argument with respect to the issues.

E. Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All oral testimony at the hearing shall be under oath or affimation. At the request of a party or upon his own motion, the compensation judge may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

F. Rules of evidence.

1. Pursuant to Minn. Stat. § 176.411, subd. 1, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure.

2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of any party, or a true and correct photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

3. Documentary evidence. Documentary evidence in the form of copies of excerpts may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

4. Notice of facts. The compensation judge may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

5. Examination of adverse party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent or an employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate them by leading questions and contradict and impeach them on material matters in all respects as if they had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his/her examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

G. The record.

1. The compensation judge shall maintain the official record, other than the stenographic notes of a hearing reporter if one was used, in each case until the issuance of his final order, at which time the record shall be maintained by the Office of Administrative Hearings until the time for appeal of the compensation judge's order has elapsed at which time the record shall be referred to the department.

2. The record in a compensation case shall contain:

a. All pleadings, motions and orders;

b. Evidence received or considered;

c. Offers of proof, objections and rulings thereon;

d. The compensation judge's findings of fact, conclusions and order;

e. All memoranda or data submitted by any party in connection with the case; and

f. A transcript of the hearing, if one was prepared.

g. The audio-magnetic recording tapes, if that device was used to record the hearing.

3. The transcript. The verbatim record shall be transcribed if requested by a party. If a transcription is made, the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge therefor. The charge shall be set by the chief hearing examiner and all monies received for transcripts prepared by the Office of Administrative Hearings shall be payable to the State Treasurer and shall be deposited in the State Office of Administrative Hearings' account in the State Treasury.

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, in his/her discretion, may continue the hearing to a future date and such oral notice on the record shall be sufficient.

I. Hearing procedure.

1. Compensation judge conduct. The compensation judge shall not communicate, directly or indirectly, in connection with any issue of fact or law with any party concerning any pending case, except upon notice and opportunity for all parties to participate.

2. Unless the compensation judge determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

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a. After opening the hearing, the compensation judge shall, unless all parties are represented by counsel, state the procedural rules for the hearing.

b. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

c. The party with the burden of proof may make an opening statement. All other parties may make such statements in a sequence determined by the compensation judge.

d. After any opening statements, the party with the burden of proof shall begin the presentation of evidence. That party shall be followed by the other parties in a sequence determined by the compensation judge.

e. Cross-examination of witnesses shall be conducted in a sequence determined by the compensation judge.

f. When all parties and witnesses have been heard, opportunity shall be afforded to present final argument, in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. Oral final argument shall not be recorded, unless requested by a party or upon the order of the compensation judge. Written memoranda shall, when allowed, be submitted simultaneously or sequentially and within such time periods as the compensation judge shall prescribe.

g. After final argument, the hearing shall be closed or continued if ordered by the compensation judge. If continued, it shall be either continued to a certain time and day, which shall be announced at the time of the hearing and made a part of the record, or continued to a date to be determined later, which must be upon not less than five days written notice to the parties.

h. The record of the case shall be closed upon receipt of the final written memorandum, transcript, if any, or late-filed exhibits which the parties and the compensation judge have agreed should be received into the record, whichever occurs latest.

J. Disruption of hearing.

1. Cameras. No television, newsreel, motion picture, still or other camera, and no mechanical recording devices, other than those provided by the Office of Administrative Hearings, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge and then subject to such conditions as the compensation judge may impose to avoid disruption of the hearing.

2. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the compensation judge shall read this rule to those persons causing such interference or disruption and thereafter proceed as he/she deems appropriate.

9 MCAR § 2.318 The compensation judge decision.

A. Basis for the decision.

1. The record. No factual information or evidence which is not a part of the record shall be considered by the compensation judge in the determination of the case.

2. Administrative notice. The compensation judge may take administrative notice of general, technical or scientific facts within his/her specialized knowledge in conformance with the requirements of Minn. Stat. § 15.0419, subd. 4 provided that notice of the taking of such administrative notice is given an opportunity and has been provided to all parties to rebut the facts sought to be noticed.

B. Compensation judge decisions.

1. Following the close of the record, the compensation judge shall prepare his decision and, upon completion, a copy of said decision shall be served upon all parties by personal service, by first class mail, or by depositing it with the Central Mailing Section, Publications Division, Department of Administration.

2. The compensation judge's decision shall contain the following:

a. The date, time and location of the hearing and compensation judge's name.

b. Appearances by parties, if pro se, or their attorneys, giving the full name and mailing address (including zip code) of each.

c. The date on which the record of the hearing closed.

d. A notice of the right of parties to appeal, how the appeal can be perfected, and a notice that a request for rehearing or reconsideration may be made and how such request can be accomplished.

e. A statement of the issues. This shall be a brief statement or the reason or reasons the hearing was necessary. This statement may be broken into sub-issues.

f. The decision shall contain findings of fact, conclusions and a decision on each issue rasied. In cases involving a multiplicity of issues, the compensation judge may organize the findings of fact, conclusions and decision by major sub-issues if he/she determines that organizing the decision in that manner will aid the reader in understanding the contents thereof.

C. Findings of fact.

1. Undisputed facts shall be included in the decision but may be disposed of a summary finding.

2. There shall be specific findings on all major, disputed facts.

3. Findings shall be express rather than inferential.

4. Findings shall be clear, concise and based solely on the evidence in the record before the compensation judge.

5. All facts necessary to reach a conclusion of law shall be included and shall be specific.

6. Findings shall not be a summarization of the position of parties but shall be a statement of the compensation judge's decision on what the facts are.

D. Conclusions.

1. Conclusions shall be based upon the specific findings of fact and the applicable law and shall not set forth new facts.

2. Conclusions shall be clear, concise and specific.

3. Conclusions shall not rest upon a point which was not raised at the hearing or in briefs or argument. If the compensation judge determines that some unexplored issue may be dispositive, he/she shall request supplementary briefs or memorandum.

4. Conclusions shall be stated with respect to all legal issues involved, whether disputed or not.

E. Order. The order shall be clear, concise and specific, and shall include a decision on all issues raised by the hearing.

F. Memorandums. In each case, the compensation judge shall file a memorandum as part of his order which shall state the rationale and support of the findings, conclusions and decisions on each issue in dispute. Memorandums shall include, where appropriate, the compensation judge's determination on credibility of witnesses.

G. Compensation judge decisions shall be clear and concise and shall be written in a prose style which can be read and understood by persons of average intelligence. English rather than Latin terms shall be used unless it is necessary to utilize the Latin terminology.

H. Any party may file a proposed decision with the compensation judge before the record is closed. Any proposed decision submitted shall conform to the provisions of these rules, shall be served on all other parties and shall be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable.

9 MCAR § 2.319 Rehearing and/or reconsideration.

A. When a compensation judge has issued his/her findings, conclusions and decision, his/her jurisdiction over the case shall end after the time in which to appeal to the Workers' Compensation Court of Appeals has expired, except for taxation of disbursements, unless the matter is re-referred to the compensation judge by the Court of Appeals or the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or the correction of a clerical error other action.

B. Motions for rehearing or reconsideration shall be filed with the compensation judge who heard the case if the time for appeal to the Court of Appeals has not expired, otherwise it shall be filed with the calendar judge. A motion for rehearing or reconsideration shall be denied if it contains no more than allegations of the statutory grounds for reconsideration, unsupported by specific references to the record and principles of law involved. The motion shall be served on all other parties who have been joined in the proceedings at the same time the motion is filed with the judge. Failure to provide proof of such service shall constitute valid grounds for dismissing the motion.

C. Newly discovered evidence and fraud allegations. Where reconsideration is sought upon the ground of newly discovered

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evidence which could not with reasonable diligence have theretofore been produced or on the ground that the decision had been procured by fraud, the motion must contain an offer of proof, specific and detailed, providing:

1. The names of witnesses to be produced;

2. A summary of the testimony to be elicited from such witnesses;

3. A description of such documentary evidence as is to be offered;

4. The effect it is contended such evidence will have on the record and on the prior decision;

5. As to newly discovered evidence, a full and accurate statement of the reasons why such testimony or exhibits could not reasonably have been discovered or produced before the filing of the decision.

A motion for reconsideration shall be denied if it fails to meet the requirements of this rule or if it is based upon cumulative evidence.

D. Where rehearing or reconsideration has been granted, and the case referred to a compensation judge for hearing, the compensation judge shall, upon the conclusion thereof, prepare a decision in the same fashion as required for decisions following original hearings.

9 MCAR § 2.320 Settlements.

A. Stipulations for settlement are allowed pursuant to Minn. Stat. § 176.521 and shall conform to that section and to the requirements of this rule.

B. All stipulations for settlement shall be filed within 30 days of the date the settlement was negotiated.

C. Stipulations for settlement shall be filed with and approved by a settlement judge of the Department of Labor and Industry if the case has not been referred to the chief hearing examiner.

D. Stipulations for settlement reached and agreed upon subsequent to the referral of the case to the chief hearing examiner shall be filed with the calendar judge.

E. Stipulations for settlement shall contain the following information:

1. A brief statement of all of the admitted material facts;

2. A detailed statement of the matters in dispute, setting forth the contentions of the parties, supported by all medical reports or other documents in the possession of each party pertaining to each issue;

3. The weekly wage and compensation rate of the employee;

4. An itemization of the sums, if any, previously paid by the employer and insurer;

5. A statement that all medical or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by the employee. The stipulation shall specifically state whether any third party has paid any of the expenses and, if payments have been made, shall include the name and address of such third party together with any identifying claim or policy number;

6. The number of weeks and rate of compensation and, in cases of permanent partial disability, the percentage loss or loss of use upon which the compromise agreement is based;

7. Where applicable, the amount payable by the employer and insurer to the workers' compensation division for the benefit of the Special Compensation Fund;

8. Where applicable, a statement that the employee has been fully advised of the provisions of Minn. Stat. §§ 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits;

9. Where applicable, a statement that the employee is claiming or waiving his/her right to make application for an award of attorney's fees against the employer or insurer pursuant to Minn. Stat. § 176.081, subd. 1 or 8, or Minn. Stat. § 176.191.

F. Stipulations for settlement of cases in which the employee or dependents have engaged in services of an attorney shall contain a statement of the amount of attorney's fees and an itemization of the costs incurred, specifying who will be responsible for payment of each cost. It shall be accompanied by a written petition for attorney's fees and costs providing sufficient information to show the reasonableness of the requested fees and costs in accordance with Minn. Stat. § 176.081. If no fees are requested, the stipulation shall so state.

G. Stipulations for settlement shall be accompanied by copies of all medical reports in the possession of the parties which have not previously been filed.

H. The parties involved in the settlement shall submit an Order Approving Stipulation prepared for signature by the applicable judge which shall be submitted with sufficient copies for all parties to receive if the settlement is approved.

I. The attorney representing the employee or dependents shall furnish a copy of the stipulation for settlement to his/her client at the time the client signs the stipulation.

J. Stipulations for settlement shall be signed by all parties as required by Minn. Stat. § 176.521.

K. The employer and insurer shall make payments pursuant to an award on stipulation within 14 days from the date the award on stipulation is served.

9 MCAR § 2.321 Attorney fees.

A. Whenever an employer or insurer receive notice that an attorney is representing an employee or dependent, 25% of the compensation, not including medical expense, shall be withheld pending an order determining the reasonable value of any claim for legal services or disbursements pursuant to Minn. Stat. § 176.081. Written notice that such compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the division at its Saint Paul office.

B. In applicable cases, the filing of a claim petition or an objection to discontinuance of compensation shall constitute an application for the award of attorney fees against the employer and insurer pursuant to Minn. Stat. § 176.081, subd. 7.

C. Application for determination and approval of any claim for legal services or disbursements may be filed by the employer or insurer, the employer dependents or the attorney. Application for attorney fees shall be by petition and shall be on a form prescribed by the Division. Any application shall disclose the amount of compensation withheld, the total fees or disbursements previously paid to said attorney or his associates and, if filed by the attorney or the employer dependents, the amount of any retainer fee paid. Applications filed by attorneys shall contain sufficient information to show the reasonableness of the requested fees in accordance with Minn. Stat. § 176.081, subd. 5 and shall be served by the attorney on all parties.

9 MCAR § 2.322 Taxation of disbursements.

A. Service of the request for taxation of disbursements shall be made upon the other parties, or their attorneys, by the taxing party.

B. The opposing party has five working days from the date of service upon him in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

C. If requested, a time for hearing before the calendar judge shall be fixed. A notice thereof shall be given to the parties by the calendar judge.

9 MCAR § 2.323 Second injury law.

A. Application for registration of physically impaired employees shall be on forms prescribed by the division and submitted pursuant to rules of the commissioner.

B. Should the commissioner deem the application unacceptable prior to the subsequent injury, the applicant may, within 60 days following receipt of notice of rejection, petition to the division, in writing, for hearing upon the application. A copy of said petition shall be served by the applicant upon the State Treasurer, custodian of the Special Compensation Fund, and upon the Attorney General. Upon receipt of said petition, the commissioner shall refer the matter to the chief hearing examiner for hearing which hearing shall be conducted by a compensation judge as provided by Minn. Stat. § 176.411, with right of appeal.

C. If a dispute arises following the notice of intention to claim reimbursement under Minn. Stat. § 176.131, subd. 6, the commissioner shall refer the matter to the chief hearing examiner who shall assign the matter to a compensation judge for hearing which hearing shall be conducted as provided by Minn. Stat. § 176.411, with right of appeal.

9 MCAR § 2.324 Other hearings. Pursuant to the provisions of Minn. Stat. § 15.052, subd. 3, all hearings not discussed herein but required to be conducted by a compensation judge of the Office of Administrative Hearings shall be conducted in substantial compliance with these rules provided, however, that in any dispute wherein an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota Workers' Compensation Law, the notice of hearing shall be given not less than five working days prior to the hearing date. The chief hearing examiner shall provide expedited assignment of compensation judges to these hearings and shall assign compensation judges to the hearings in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon thereafter as may be reasonable and practical.

9 MCAR § 2.325 Severability. If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end the provisions of these rules are declared severable.

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State Board of Education
Department of Education
Special Services Division

Proposed Amendments and Repeal of Rules Governing the State Education Placement Bureau (State Teacher Employment Bureau), 5 MCAR §§ 1.0460-1.0461 (EDU 460-461), and Repeal of EDU 462

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Board of Education 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).

The proposed rules govern the operation of the State Education Placement Bureau as authorized by Minn. Stat. §§ 121.25-121.28, which establish authority for the State Board of Education to operate such a bureau. For purposes of definition, the State Teacher Placement Bureau is hereafter called the "bureau" and persons registering with the bureau are called "applicants."

Proposed rule 5 MCAR § 1.0460 (Edu 460) establishes procedures for enrolling and reenrolling in the bureau, fee requirements, and time duration for persons enrolling in the bureau.

Proposed rule 5 MCAR § 1.0461 (Edu 461) establishes procedures related to collecting and maintaining recommendations related to educational employment. A period of time is established for maintaining and retaining an active file with the bureau. Procedures are established for providing notice of vacancies, credentials, recommendations, and reciprocity.

Edu 462 is proposed to be repealed as it relates to office practices and is not appropriately placed in rule.

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 provisions of Minn. Stat. § 15.0412, subd. 4-4f.

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

George B. Droubie, Manager
Personnel Licensing and Placement
610 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Telephone: (612) 296-2046

Authority for the adoption of these rules is contained in Minn. Stat. §§ 121.25-121.28. 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 from George B. Droubie upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, and 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 George B. Droubie.

A copy of the proposed rules is attached to this notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting George B. Droubie.

Howard B. Casmey, Secretary

Rules as Proposed

Chapter Twenty-Four: State ~~Education Placement~~ Teacher Employment Bureau (State ~~Teacher Employment~~ Education Placement Bureau)

5 MCAR § 1.0460 ~~EDU~~ 460 Enrollment.

A. Application. Enrollment with the State Teacher Placement Bureau ~~(hereafter called "the bureau")~~ shall be conditioned upon completion of the ~~application~~ enrollment form by a qualified applicant and the payment of the ~~registration~~ enrollment fee.

~~1.~~ A qualified applicant is one who meets the standards stated in Minn. Stat. § 121.26.

B. Fee. Within the limits of the law, the Commissioner of Education shall recommend to the State Board of Education the amount of the ~~registration~~ nonrefundable enrollment fee to be paid by the ~~teacher~~ applicant.

C. Time duration. Upon payment of the ~~registration~~ enrollment fee, the ~~teacher~~ applicant shall be entitled to the services of the bureau from the time of fee payment until the next October 1st. The ~~registration~~ enrollment period covered by the fee may be less than one year, but ~~may~~ shall not exceed one year.

D. Re-enrollment. Following the October 1st expiration of enrollment each year, applicants' papers will be held for nine months, until July 1st. If the applicant re-enrolls during the period between October 1st and July 1st of the following year, ~~he may~~ the applicant shall do so by completing a new ~~application~~ enrollment form and by paying the required fee. ~~If he re-enrolls~~ Re-enrollment after July 1st~~, it will be necessary to complete~~ shall require a new ~~application~~ completed enrollment form, ~~pay~~ the accompaniment of the required fee, and ~~secure~~ a new list of references.

E. Photograph. The bureau shall not require the ~~teacher~~ applicant to submit ~~his~~ a photograph nor shall the bureau show or send ~~his~~ the applicant's photograph to any school official.

5 MCAR § 1.0461 ~~EDU~~ 461 Credentials.

A. Recommendations. The bureau shall secure written recommendations relating to the preparation, experience, and character of the ~~registrant~~ applicant from ~~not more than~~ three persons who have been listed ~~by him~~ on the enrollment form. If the applicant re-enrolls within ~~the nine month~~ a five year period ~~(from October 1st to the following July 1st)~~ wherein recommendations are maintained in the files, those recommendations already on file ~~will~~ shall be used for references ~~who are listed again on the new enrollment form. If a person is not listed as a reference on the most recent enrollment form, his recommendation will be destroyed and~~ Only recommendations from the three persons named by the applicant on the most recent enrollment form ~~will~~ shall be maintained for the five year period. Recommendations from references no longer named by the applicant on the most recent enrollment form shall be destroyed.

~~B. Recommendations confidential. Recommendations which have been secured by the bureau shall not be shown to the registrant nor shall the information contained in the recommendations be divulged to him or to any other persons except employing officials.~~

~~C. Removal of recommendations. Recommendations will be removed from the file when writers are no longer included among the three persons on the most recent enrollment form or when the registrant does not re-enroll within nine months following the October 1st enrollment expiration.~~

B. ~~D. Registrant's~~ Applicant's file. When a ~~registrant~~ an applicant accepts a position, ~~his~~ the credentials shall be placed in the inactive file; the file ~~may~~ shall be reactivated upon the request of the ~~registrant~~ applicant at any time during the remainder of the enrollment year for which the applicant has paid the required fee.

C. ~~E.~~ Transfer ~~of registrants' inactive~~ and destruction of files. ~~After a time lapse of nine months following the expiration of the registrants' last enrollments each October 1st the bureau may transfer such inactive files to archives.~~

~~1. Destruction of registrants' files initiated prior to October 1st, 1969. Such files shall be maintained in accordance with the prior regulation. "After a time lapse of 20 years following the expiration of the registrant's last enrollment the bureau may destroy his inactive file."~~ After a time lapse of five years following the expiration of the applicant's last enrollment and in compliance with appropriate Minnesota Statutes, the bureau shall destroy the inactive file. During the intervening time, the ~~registrant~~ applicant may request, in writing, transfer of papers ~~in excess of the current three recommendations~~ to any ~~professional education~~ placement agency or re-enroll in the bureau.

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D. ~~F.~~ Notice of vacancies. ~~Registrants~~ Applicants shall be furnished information relative to vacancies ~~in from one to three areas where they have requested information and for which they state they are qualified~~ received by the bureau but should apply only for those positions for which the applicant holds or is eligible to hold Minnesota licensure.

E. ~~C.~~ Providing credentials. The bureau shall make credentials of ~~a registrant~~ an applicant available to employing officials of school districts upon their request or upon the request of the ~~candidate~~ applicant.

F. ~~H.~~ Recommendation of ~~registrants~~ applicants. The bureau shall not recommend ~~registrants~~ applicants for positions but shall present papers of ~~registrants~~ applicants which are on file to employing officials.

G. ~~I.~~ Reciprocity. The bureau may establish reciprocal relations with members of the Association for School, College, and University Staffing, and other noncommercial teacher placement agencies in Minnesota and other states. Papers from other agencies will no longer be maintained in bureau files.

Repealer. EDU 462 is repealed.

Energy Agency
Data and Analysis Division

Proposed Rules Relating to Reducing Demand and Increasing Supply of Petroleum Products during an Energy Supply Emergency

Notice of Hearing

Notice is hereby given that public hearings on the proposed rules will be held pursuant to Minnesota Statutes, § 15.0412, subd. 4, at the following locations on the dates indicated, commencing at the times listed and continuing until all persons representing themselves or associations or other interested groups have had an opportunity to be heard concerning the adoption of the proposed rules.

Room 137 Wilson Hall,
Itasca Community College,
1851 East Highway 169,
Grand Rapids, Minnesota;
August 18, 1981; 2:00 P.M. and 7:00 P.M.

Emergency Operations Center Room,
Law Enforcement Center,
710 South Front Street,
Mankato, Minnesota;
August 20, 1981; 1:00 P.M. and 7:00 P.M.

Large Hearing Room,
7th Floor American Center Building,
150 East Kellogg Boulevard,
Saint Paul, Minnesota;
August 24, 1981; 9:30 A.M. and 7:00 P.M.

All interested or affected persons will have the opportunity to participate. Oral or written data, statements or arguments may be submitted at the hearing. In addition, written materials may be submitted by mail to Hearing Examiner Allan W. Klein, Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104 (612) 296-8104. Unless a longer period not to exceed twenty calendar days is ordered by the hearing examiner at the hearing, the record will remain open for the inclusion of written material for five (5) working days after the hearing ends. The proposed rules are subject to change as a result of the rules hearing process. The agency therefore strongly urges those who may be affected in any manner by the substance of the proposed rules applicable to this hearing to participate in the rules hearing process.

A copy of the proposed rules is attached to this notice or is published on the pages following this notice in the *State Register*. One free copy of this notice and the proposed rules may be obtained by contacting David Miller at the Minnesota Energy Agency, 980 American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota 55101, telephone (612) 296-7043. Additional copies will be available at the door on the dates of the hearings.

The proposed rules set out the procedures and measures the state will use to deal with an energy supply emergency resulting from a shortage of petroleum products, including fuel oils and motor fuels. The rules include many measures which will be

available for reducing demand and increasing supply during energy emergency. The rules also set forth the state operating organization for energy emergencies and provide an appeals process for persons aggrieved by actions taken. Priority uses of petroleum products are established.

The agency is authorized to adopt the proposed rules by Minn. Stat. § 116H.08a (1980) and, primarily, Minn. Stat. § 116H.09 (1981).

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Baard within five (5) days after he/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 (5) hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

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

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

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

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.417 and 15.052 (1980) and by 9 MCAR §§ 2.101-2.113. Any questions regarding the procedures may be directed to the hearing examiner.

Rules as Proposed (all new material)

6 MCAR § 2.3101 Authority. These rules are authorized by Minn. Stat. § 116H.09 (1980). These rules will also meet, in part, federal requirements set forth in the Emergency Energy Conservation Act of 1979, Section 102, 42 United States Code, Sections 8511 to 8541 (1979).

6 MCAR § 2.3102 Purpose. These rules identify measures that may be used in the event of a petroleum supply emergency. The further purposes of these rules are: to protect the health and safety of the citizens of the state by ensuring that certain priority petroleum users have sufficient fuel to conduct essential activities; to facilitate the distribution of supplies to the public in a fair manner; to identify and authorize the actions to be undertaken by governmental agencies in an energy supply emergency; to describe the responsibilities of major employers and school district authorities in petroleum supply emergency planning and implementation; to establish an appeals system and procedures for exemptions from and exceptions to emergency measures; and to authorize the State Executive to provide for the public health, safety, and welfare during an energy supply emergency.

6 MCAR § 2.3103 Applicability of rules. These rules shall apply:

A. generally, during a declared Energy Supply Emergency. (see 6 MCAR § 2.3106);

B. generally, during a declared Energy Supply Alert (see 6 MCAR § 2.3105);

C. to the Minnesota Energy Agency when the agency is preparing to recommend that an Energy Supply Alert or an Energy Supply Emergency be declared.

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6 MCAR § 2.3104 Definitions. For purposes of 6 MCAR §§ 2.3101-2.3121 the terms defined in this rule have the meanings given them:

A. "Agency" means the Minnesota Energy Agency;

B. "Agriculture" means activities of establishments primarily engaged in food production, processing and sale classified under the industry code numbers specified below as set forth in Standard Industrial Classification Manual, 1972 edition:

1. Major Group 01—Crops, except for industry code nos. 0132 tobacco, and 0181 ornamental floriculture and nursery products.

2. Major Group 02—Livestock, except for animal specialties, industry code nos. 0271, 0272, and 0279.

3. Major Group 07—Agricultural Services, except for industry code nos. 0742 veterinary services for animal specialties, 0752 animal specialty services, 0781 landscape counseling and planning, 0782 lawn and garden services, and 0783 ornamental shrub and tree services.

4. Major Group 09—Fishing, Hunting, and Trapping.

5. Major Group 20—Food and Kindred products, except for all industry codes under Group 208 Beverages, and 2065 candy and other confectionary products.

6. Group 514—Groceries and Related Products (all industry codes found thereunder).

7. Group 515—Farm Product Raw materials (all industry codes found thereunder).

8. Major Group 54—Food Stores.

C. "Assistant director" means the assistant director of the Minnesota Energy Agency who heads the Data and Analysis Division;

D. "Baseline consumption" means the reasonable estimate of the amount of motor fuel consumed by employees or students in commuting to and from the worksite plus the amount of motor fuel consumed for a school's or an employer's travel, over a period which represents the normal level of operation. For determining baseline consumption any of the following methods shall constitute a representative period for the purpose of these rules:

1. the preceding 12 months, or

2. the most recent 3-year average, or

3. a 12-month "rolling base" where the most recent month's data is added and the thirteenth month's data deleted.

E. "Btu" means British thermal unit, a unit of energy measurement used for comparative purposes;

F. "Cargo, freight and mail hauling by truck, including newspaper deliveries" means: motor carriers for hire, licensed and operating under Minn. Stat. §§ 221.001 to 221.293; local cartage carriers, licensed and operating under Minn. Stat. § 221.296; interstate motor carriers, operating in Minnesota under Minn. Stat. §§ 221.61 to 221.68; mail hauling by any motor vehicle owned and operated by the U.S. Postal Service; and newspaper delivery by a motor vehicle identified as a newspaper carrier;

G. "Carpool" means a continuing travel arrangement by which three or more persons travel together in a vehicle owned or rented by one or more of such persons;

H. "Commercial building" means a building all of whose occupants are engaged in commerce, unless residential occupants have separate heating controls;

I. "Commercial vehicles" means vehicles registered and licensed in the commercial class with the Division of Driver and Vehicles Services of the Department of Public Safety, or vehicles which by their design, size or company identification or by the presence of specialized equipment, tools, or instruments of the trade or profession, or other evidence of commercial use are obviously being used for commercial purposes;

J. "Company-owned vehicles" means passenger automobiles, vans, and light trucks owned or leased by the employer;

K. "Consumer" means a person that consumes fuel oil, or motor fuel whether diesel fuel, gasoline, propane or alcohol;

L. "County or municipal fuel coordinator" means a person who has been appointed by the county board or city council to act as local fuel allocation resource person;

M. "Demand" means the quantity of products or services for which there are willing and able purchasers;

N. "Director" means the Director of the Minnesota Energy Agency;

O. "Division" means the Division of Emergency Services of the Department of Public Safety;

P. "Division Director" means the Director of the Division of Emergency Services;

Q. "Electric utility" means an entity engaged in the generation, transmission, or distribution of electric energy for sale;

R. "Emergency vehicle" means any of the following vehicles: a vehicle of a fire department or fire fighting unit; a publicly-owned law enforcement vehicle or privately-owned vehicle used by a law enforcement officer for police work under agreement, express or implied, with the local authority; a vehicle of a licensed emergency ambulance service, whether publicly or privately owned; an emergency vehicle of a municipality, department or public service corporation including emergency services vehicles approved by the chief of police of a municipality, the county sheriff, or the division director; a vehicle of a utility or contractor while performing emergency repairs or maintenance for electric, water, waste treatment, natural gas or telecommunications utilities and end-user primary services, and petroleum, petroleum products or natural gas pipelines or facilities; a vehicle of the state, county, municipal, or other subdivision of government used for snow removal, emergency road and traffic signal repair or search and rescue operations, or privately-owned vehicles of a contractor under contract to perform these services;

S. "Employer-provided parking" means a space such as a lot, garage, or other space, or portion thereof, which is used for the parking of commuter vehicles, and which is wholly or partly owned or leased by an employer or otherwise made available to its employees, except that this term shall not include park-and-ride facilities or customer parking provided by a retail or service establishment;

T. "Employment site" means a building, facility, complex or site at which employees work or study, or any combination of such buildings or sites which are geographically close;

U. "Energy production" means transportation by pipeline, transmission line, rail, barge or motor carrier of energy or primary fuel and the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy;

V. "Environmental standards" means the laws and regulations, both federal and state, intended to protect the environment;

W. "Essential government services" means court and judicial activities, jails and prisons, meetings of duly elected policital officials, operations of the Division of Emergency Services and the Emergency Operating Center, hearings of Local Energy Conservation Boards and the Office of Administrative Hearings, minimum services to provide AFDC, SSI and Social Security checks and other welfare payments including food stamps, and activities which provide life-sustaining services;

X. "Extracurricular Activities" means school-sponsored activities requiring transportation off-campus, except for the daily transportation of students to and from school;

y. "Flexible work hours" or "flextime" means a work system in which employees at an employment site have some discretion in their choice of working hours;

Z. "Forecast" means a projection of future demand or supply for a specified time period;

AA. "Fuel oil" means a liquid or liquefiable petroleum product with a flashpoint above 100°F which is used to generate heat or power including middle distillate oil or residual oil;

BB. "Health and residential care services" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped;

CC. "Highways" means Interstate, Trunk, County state-aid, County, and Municipal state-aid highways in Minnesota, as defined in Minn. Stat. § 160.02, subds. 2-5 and 7 (1980), and the Federal Aid Highways Act of 1956;

DD. "Home owner" means a person who has a vested legal or beneficial interest, jointly or severally, in a dwelling which is occupied by that person;

EE. "Jitney" means a spontaneous carpool formed by driving along an existing transit route and picking up riders for a fare or participating in a telephone ride exchange system. Jitneys supplement existing transit service;

FF. "Licensed motor vehicle dealer" means a motor vehicle seller or lessor licensed to do business under Minn. Stat. § 168.27, Subds. 2 to 25 (1980);

GG. "Middle distillate" means a derivative of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which has a fifty percent boiling point in the ASTM D86 standard distillation test falling between 370° and 700°F,

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except that kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in VV-F-815C of ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and specialty items such as solvents, lubricants, waxes, and process oil are excluded;

HH. "Military uses" means the activities of the armed forces of the United States and of the Minnesota Department of Military Affairs, the Office of Adjutant General, military reservations, installations, armories, air bases, and facilities owned or controlled by the state for military purposes and includes the national guard, the state guard, and any other organization or components of the organized militia authorized by Minn. Stat. Chs. 190 to 193 (1980), known as the Military Code;

II. "Moped" means a pedal bicycle or similar two-wheel vehicle propelled by a motor;

JJ. "Motorcycle" means a vehicle with two wheels in tandem, propelled by an internal combustion engine, and sometimes having a sidecar with a third wheel;

KK. "Motor fuel" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine;

LL. "Motor vehicle owner" means a person owning or renting a motor vehicle, or having exclusive use thereof, under a lease or otherwise, for a period greater than seven days;

MM. "Park-and-ride facility" means a parking facility the use of which is limited exclusively to the parking of commuter vehicles whose occupants transfer at the facility to transit or paratransit services;

NN. "Passenger transportation services" means: conventional public transit service which operates on a fixed route and is available to the public for a fare, intercity bus transportation, vanpools, subscription buses, tour and charter bus transportation, bus transportation of pupils for educational purposes, taxicabs licensed to conduct business in a municipality, air and rail passenger transportation except for air charter services, and special transportation services for the elderly or handicapped;

OO. "Permit-sticker" means a self-adhesive tag issued by the Department of Public Safety to designate the weekday on which a vehicle issued that sticker is prohibited from being operated;

PP. "Person" means an individual, firm, estate, trust, sole proprietorship, partnership, association, company, corporation, governmental unit or subdivision thereof, or a charitable or educational institution;

QQ. "Plant protection" means minimum plant maintenance necessary to secure buildings and prevent damage to equipment or plant property from inclement weather or loss of essential processes;

RR. "Prohibited day" means the day for which a vehicle owner has been issued a permit-sticker, designating it a "no-driving" day for that vehicle;

SS. "Residence" means the place where a natural person lives, including hotels and motels and buildings being used as emergency housing facilities;

TT. "Residual fuel oil" means the fuel oil commonly known as: No. 4, No. 5 and No. 6 fuel oils; Bunker C; Navy Special Fuel Oil; and all other fuel oils which have a fifty percent boiling point over 700°F in the ASTM D-86 standard distillation test;

UU. "Sanitation services" means: the collection and disposal for the public of solid or liquid wastes and hazardous wastes, whether by public or private entities; the maintenance, operation and repair of liquid purification and waste facilities; and the provision of a water supply by public utilities, whether private or publicly owned and operated;

VV. "Shortage" means a situation in which demand exceeds supply and normal market forces will not act to equalize supply and demand within a reasonable period;

WW. "Staggered work hours" means employee starting and quitting times stipulated at step intervals by the employer so that work arrival and departure times of employees on a single shift are spread over a period of at least two hours;

XX. "State set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state to meet emergencies and hardship needs under Minn. Stat. § 116H.095 (1981);

YY. "Subscription bus" means a transit service in which employers or groups of employees contract with a public or private bus operator to provide daily commuter service for a group of subscribers on a prepaid or daily fare basis, following a fixed route and a schedule tailored to meet the needs of the subscribers;

ZZ. "Supplier" means a firm or a part of a subsidiary of a firm (other than the Department of Defense) which presently supplies, sells, transfers, or otherwise furnishes (as by consignment) a petroleum product to wholesale purchasers or end users, including refiners, natural gas processing plants or fractioning plants, importers, resellers, jobbers and retailers;

AAA. "Telecommunications" means the repair, operation and maintenance of voice, data, telegraph, video and similar communication services for the public by a communications common carrier or by a firm providing the same service in direct competition with a communications common carrier;

BBB. "Tenant" means a person who occupies (but does not own) a dwelling under an oral or written agreement, lease, or contract, for a period of time, which requires the payment of rent;

CCC. "Vanpool" means eight or more persons commuting on a daily basis to and from work in a vehicle with a seating arrangement designed to carry eight to fifteen adult passengers; and

DDD. "Vehicle lessee" means a person, firm or corporation possessing a motor vehicle by lease.

6 MCAR § 2.3105 Energy supply alert. An energy supply alert shall be declared to inform Minnesota citizens of a potential energy shortage, encourage conservation, and initiate a state of readiness for the shortage.

A. An energy supply alert may be declared when the agency forecast indicates a reasonable likelihood that an energy supply shortage will occur within six months from the date of declaration.

B. The director shall have sole responsibility for declaring an energy supply alert.

6 MCAR § 2.3106 Energy supply emergency. An energy supply emergency is a state of declared emergency resulting from a shortage of energy resources, including petroleum products, natural gas, or electricity.

A. Minnesota Energy Agency. When the agency's forecast shows that short-term demand for a fuel or fuels exceeds the forecast of short-term supply and that a supply shortage will occur within three months, the director may recommend that an energy supply emergency be declared.

B. The Executive Council or Legislature. The Executive Council (consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State) or the Legislature has responsibility for declaring an energy supply emergency.

1. An energy supply emergency automatically expires in 30 days, unless renewed by the Legislature. Each renewed energy supply emergency may not continue for longer than 30 days, unless otherwise provided by law. Minn. Stat. § 116H.09, subd. 5 (1980).

2. Emergencies may be declared for all or part of the State and measures may be invoked accordingly. The declaration of emergency shall define the geographic area included in the energy supply emergency.

3. The declaration shall be promptly disseminated and brought to the attention of the general public by the Executive Council or Legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the Division, the Agency and the Secretary of State.

6 MCAR § 2.3107 Operating organization during an emergency.

A. Energy emergency operating center. During a declared energy supply emergency, the Division will set up an energy operating center.

1. The director of the emergency operating center will be the division director. The division director shall oversee the implementation of the emergency plan.

2. The emergency operating center will be located at a site designated by the division director and staffed by personnel from the division, the agency and other state agencies as deemed necessary by the division director and approved by the Governor.

B. Minnesota Energy Agency.

1. The agency shall assist the division by analyzing the energy supply situation, evaluating alternative courses of action included in the emergency plan, and advising on the proper time and sequence for implementing emergency measures.

2. The agency shall select and recommend to the Governor the least restrictive measures specified in 6 MCAR § 2.3114 A. to C., 6 MCAR § 2.3120 A. to H. and § 2.3121 A. to D. capable of eliminating a fuel shortage.

3. The assistant director of the agency shall review employer and school district conservation plans and certify those which meet the requirements set out in 6 MCAR § 2.3120 B. or C.

4. The director shall make the final decision on each appeal taken from measures contained in these rules.

C. Emergency services.

1. The division shall implement the energy emergency plan and coordinate the emergency operations of government agencies involved in energy supply emergency actions.

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2. The division shall use the regional and local fuel coordinators to coordinate emergency operations throughout the State.

3. By January 1, 1983, the division of emergency services shall develop an internal management and operations plan for implementing the measures contained in these rules.

D. The Governor may order any state agency or department to carry out the measures contained in these rules under the powers given the Governor in the Minnesota Civil Defense Act, Minn. Stat. Ch. 12.

6 MCAR § 2.3108 Local energy conservation board.

A. Each county and each city of the first class shall create a local energy conservation board to hear requests for exemptions or exceptions to the measures listed in 6 MCAR §§ 2.3114 A. and B., 2.3120 A. to H., except B. and C., and 2.3121 A. to E.

1. The Governor may order the creation of additional local energy conservation boards be established upon the agency's determination that additional boards are necessary to insure compliance with the timing provisions in 6 MCAR § 2.3109 C.

2. The appointment of additional local energy conservation boards and their conduct shall be governed by the procedures set forth in 6 MCAR §§ 2.3108 B. and 2.3109.

B. Members.

1. The chair of the county board of commissioners shall appoint a five-member county local energy conservation board which includes two elected officials from the county or municipalities within the county, a health professional, the county fuel coordinator and a member of the public. If the chair of the county commissioners is unable to fill the local conservation board from this list, additional members shall be selected from the public. The county attorney shall advise the local energy conservation board.

2. For cities of the first class and other designated municipalities, the chair of the city council shall appoint a five-member municipal local energy conservation board which includes two elected city officials, the city fuel coordinator, a health professional, and a member of the public. If the chair of the city council is unable to fill the local conservation board from this list, additional members shall be selected from the public. The city attorney shall advise the local energy conservation board.

C. Appointments to the local energy conservation board shall be named when an energy supply alert or energy supply emergency is declared. The appointer shall make reasonable efforts to avoid any conflict of interests in appointing the members of the local energy conservation board.

D. Three members shall constitute a quorum. The chair of the local energy conservation board shall be designated by the appointing authority.

6 MCAR § 2.3109 Appeals.

A. An appeal shall be delivered by mail or in person to the following location:

1. An appeal of mandatory measures, except those described in 6 MCAR §§ 2.3114 C. and 2.3120 B. and C., shall be heard by the local energy conservation board and should be directed to the county courthouse, or the mayor's office, whichever is appropriate.

2. An appeal from a decision not to certify an employer or school district conservation plan and an appeal from an order to implement an employer or school plan shall be heard by a hearing examiner appointed by the chief hearing examiner and shall be directed to the Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104.

3. An appeal of an order to curtail delivery of fuel oil, 6 MCAR § 2.3114 C., and an appeal of priority status shall be heard by a hearing examiner appointed by the chief hearing examiner and shall be directed to the State Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104.

4. An appeal from the petroleum supply emergency conservation rules shall be decided by the director and shall be directed to the Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

B. Content of appeal.

1. An appeal from an action taken pursuant to a declared energy supply emergency or under authority of these rules, shall be in writing and signed by the appellant. The appeal shall state:

a. full identification of appellant and where appellant can be located to receive notice of decision;

b. the action from which the appeal is made, including the individual or unit of government taking the action, and the date and nature of the action;

c. the bases of the appeal, including the reasons the appellant believes the action to be unjust or unwise;

d. the names and addresses of persons known to the appellant who might be adversely or beneficially affected by the outcome of the appeal;

e. the nature of the relief sought, whether reversal, modification, or some other relief.

2. The appeal of a decision not to certify an employer or school district conservation plan or of an order to implement all or any part of an approved conservation plan shall include a description of the existing or proposed conservation programs through which the employer or school district claims compliance with 6 MCAR § 2.3120 B. or C. In the case of an appeal from a decision not to approve 6 MCAR § 2.3120 B.9.a. employer plans (submitted after an energy supply emergency is declared), the appeal shall also contain documentation of the methodology on which the claim of motor fuel savings or program performance is based and a calculation of appellant's baseline consumption.

C. Timing and procedures.

1. Within three working days after receipt of an appeal, the local conservation board or hearing examiner, whichever is appropriate, shall set a hearing date. The hearing shall be held as soon as practicable but not later than seven working days after receipt of the appeal, unless appellant requests a later hearing date. The chair of the local conservation board (or designate), or the hearing examiner, shall notify all known affected persons, either verbally or in writing, of the appeal and the time and place for the hearing, not less than two working days before the hearing. An appeal shall be considered received when it has arrived at the appropriate location designated in 6 MCAR § 2.3109 A. A local energy conservation board may convene at any location within its jurisdiction for expediting appeals and decreasing the distance to the hearing for appellants.

2. The "Rules of Procedure for Contested Cases" found at 9 MCAR §§ 2.201-2.222 shall govern the conduct of the appeals.

3. The parties to an appeal from actions taken during a declared energy supply emergency shall be the appellant and the Emergency Operating Center. Appeals from a decision not to certify an employer or school district conservation plan shall name the Assistant Director as a party to the appeal.

4. A party may be represented by counsel.

5. An appellant subject to provisions of these rules must comply with all applicable mandatory measures or requirements pending a final decision on the appeal. A final decision shall be made under 6 MCAR § 2.3109 E.

6. Informal disposition of an appeal or any issue in an appeal may be made at any point in the proceeding by stipulation, agreed settlement, or consent order between the appellant and the emergency operating center. In the case of employer and school district conservation plans, the assistant director shall have the power to informally dispose of an appeal by agreement or consent order.

7. Failure of an appellant to appear after timely notice is sufficient cause for denial of an appeal.

8. The failure of the emergency operating center to appear at a hearing of a local energy conservation board on an appeal from an emergency measure shall not constitute a default or bar the director from reversing the board's decision so long as the director complies with the timing provisions in 6 MCAR § 2.3109 E. 3.

9. The hearing examiner or local energy conservation board may order a prehearing conference to be held at any time prior to a hearing, if a conference may simplify the issues or provide an opportunity for settlement. If a prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two working days before the date of the conference.

10. Appeals shall not be heard if received more than ten working days after the termination or expiration of the Energy Supply Emergency.

D. Hearings.

1. An appellant has a right to a hearing before the local energy conservation board, or the hearing examiner, whichever is appropriate. See 6 MCAR § 2.3108 A. At the hearing the parties may present and cross-examine witnesses, and present written evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal.

2. The local energy conservation board or the hearing examiner shall prepare an official record of each hearing. A party requesting a verbatim transcript of the hearing may bear the expense of preparing the transcript.

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3. The chair of the local energy conservation board and the hearing examiner shall use procedures set by the Office of Administrative Hearings at the hearing. The hearing examiner or local conservation board may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

E. Decision.

1. No factual information or evidence which is not part of the record shall be considered by the board or the hearing examiner in deciding an issue in an appeal, except that official notice may be taken of pertinent fact.

2. Within two working days after the hearing is closed, the local conservation board or the hearing examiner shall issue a recommended decision in writing, including the findings and conclusions on which the decision is based. A copy of the recommendation shall be served by first class mail on all parties to the appeal and delivered to the director with the whole record of the appeal. Service is effective on the postmark date.

3. The director may affirm or reverse a decision of a local conservation board or a hearing examiner or may remand the appeal for further hearing on specified parts. The director must notify the appellant of an intent to reverse or remand a decision within two working days after receipt of the recommended decision. The director shall issue a written statement setting forth the grounds for reversing a recommended decision no later than five working days after receipt of the recommendation, and a copy of the statement shall be served on the appellant and sent to the local conservation board or hearing examiner by first class mail. Failure of the director to give timely notice of intent to reverse or remand a recommended decision will act to automatically affirm the recommended decision.

4. The appellant may seek judicial review of a final decision of the director in accordance with the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411 to .052 (1980).

6 MCAR § 2.3110 Penalties.

A. Penalties for the violation of any provision of the plan are set out in Minn. Stat. § 116H.15 (1980).

B. Any person who violates the plan or knowingly submits false information in any report required by the plan shall be guilty of a misdemeanor. Maximum penalty is $500 or 90 days or both. Each day of violation shall constitute a separate offense.

C. The plan may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county where the violation takes place. The existence of an adequate remedy at law shall not be a defense to such an action.

D. A court which finds that a person has violated a requirement of the plan or has knowingly submitted false information in any report required by the plan, or has violated a court order issued pursuant to the plan may impose a civil penalty of not more than $10,000 for each such violation. These funds are payable to the general fund in the state treasury.

6 MCAR § 2.3111 Priority uses of fuel oil.

A. Purpose. The priority ranking set out below, and the allocation and conservation measures contained in 6 MCAR 2.3114 A. to C., are intended to reduce the demand for petroleum products used for heating and power generation and ensure that the necessary fuel requirements of higher priority consumers are met before the lower priority consumers.

B. Priority uses. In an energy supply emergency resulting from a shortage of fuel oil, highest priority uses are those essential for the health and safety of the citizens of the state. Uses within categories are not ranked by preference.

1. First priority fuel oil uses are:

   a. Health and residential care services;

   b. Residential heating;

   c. Passenger transportation;

   d. Plant protection;

   e. Emergency vehicles;

   f. Telecommunications;

   g. Energy production;

   h. Agriculture;

   i. Sanitation services; and

   j. Essential government services.

2. Second priority fuel oil uses are those necessary to minimize the economic disruption of a fuel oil shortage. Second priority fuel oil uses are:

   a. Cargo and freight hauling, except for the first priority uses as defined in 6 MCAR § 2.3111 B.1.

b. Personal motor transportation. Diesel powered automobiles shall be subject to all the provisions of the motor fuel measures described in 6 MCAR § 2.3111.

3. Third priority uses are those not essential for the immediate health and safety of the citizens of the State. These include:

a. Schools and religious institutions;

b. Government, except those services listed in 6 MCAR § 2.3111 B.1.;

c. Commerce, except those services listed in 6 MCAR § 2.3111 B.1.;

d. Industry, except those services listed in 6 MCAR § 2.3111 B.1.

4. In an energy supply emergency, suppliers shall be requested to deliver fuel oil to higher priority consumers before lower priority consumers, where no practicable substitute fuels are available.

5. Fuel oil users may apply for state set-aside product if fuel oil becomes otherwise unobtainable, according to state set-aside application procedures under 6 MCAR §§ 2.0101 to 2.0107. Preference shall be given higher priority consumers over lower priority consumers in the assignment of state set-aside product.

6 MCAR § 2.3112 Priority uses of motor fuel.

A. Purpose. The priority ranking set out below and the supply management and conservation measures contained in 6 MCAR §§ 2.3120 A. to H. and 2.3121 A. to E. are intended to reduce the demand for motor fuels and ensure that the necessary fuel requirements of first priority consumers are met before lower priority consumers.

B. Priority uses. In an energy supply emergency resulting from a shortage of gasoline, diesel fuel, or other petroleum product used as a motor fuel, higher priority uses are those necessary for protecting the health and safety of the citizens of the state, and minimizing the economic disruption of the state's economy. Uses within priority categories are not ranked according to preference.

1. First priority motor fuel uses are:

a. Military uses;

b. Emergency vehicles;

c. Energy production;

d. Sanitation services;

e. Telecommunications;

f. Agriculture;

g. Passenger transportation;

h. Cargo, freight, and mail hauling by truck, including newspaper deliveries; and

i. Aviation ground support vehicles.

2. Exemptions granted in 6 MCAR §§ 2.3120 A. to H., and 2.3121 A. to D., are based on the above list of first priority uses.

3. First priority consumers may apply for state set-aside product as provided under Minn. Stat. § 116H.095 (1981), if fuel supplies become otherwise unavailable. Applications for state set-aside shall be made according to set-aside application procedures under 6 MCAR §§ 2.0101 to 2.0107. Preference shall be given first priority motor fuel consumers in assignment of state set-aside product.

4. Users claiming an exemption under these rules or operating a vehicle under an exempt status must do so in good faith. Abuse of a vehicle's exemption status will constitute a violation of these rules and subject the user to the penalties described in 6 MCAR § 2.3110.

6 MCAR § 2.3113 Severe shortage. If the director determines that the supply shortfall of petroleum and petroleum products is so severe that the existing production and distribution system is incapable of providing adequate supplies to all first priority

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consumers of motor fuel or diesel fuel, then the director shall advise the Governor that deliveries to otherwise priority consumers be curtailed, so that higher priority consumers will be provided the necessary fuel to continue essential operations. The Governor may order the curtailment of priority consumers when in the Governor's judgment, the available supply best serves to preserve the health and safety of the citizens of the state when put to a higher priority use.

6 MCAR § 2.3114 Fuel oil emergency measures. Upon declaration of an energy supply emergency for petroleum, the Governor shall select from the following measures to reduce the shortage of fuel oil.

A. Voluntary measures:

1. Home owners and renters shall be requested to turn their thermostats back to between 62°F and 66°F during the day and 60°F and 58°F during the night and unoccupied hours, and shall be requested to set back water heater thermostats to between 105°F and 115°F (or the lowest setting). Residences occupied by persons for whom such a measure endangers health shall be warned not to comply with this measure. Such persons include the elderly and sick and children under the age of one.

2. Voluntary industrial, commercial, government, and residential conservation targets shall be established to reduce energy usage, including electricity and natural gas, especially during periods of peak usage.

3. Commercial and industrial establishments shall be requested to reduce their hours of operations where this action saves energy.

4. Commercial and industrial users shall be requested to release fuel oil from inventory supplies.

a. The Fuel Allocation Rules of Procedure (6 MCAR §§ 2.0101-2.0107) will be used to allocate voluntarily released inventory.

b. Suppliers shall be directed to deliver fuel oil supplies consisting of voluntary releases according to the system of priorities described in 6 MCAR § 2.3111 B.

5. Business, industrial and government institutions shall be requested to close nonessential buildings.

6. Public information efforts shall be used to instruct Minnesotans in fuel oil, natural gas and electricity saving measures. Regular information up-dates regarding the status and severity of the shortage shall be issued.

B. Mandatory measures.

1. Commercial buildings shall be ordered to comply with the standards that were set in the Emergency Building Temperature Restrictions (EBTR), 10 Code of Federal Regulations Part 490 (1979). Buildings which were exempted under EBTR are exempted from this rule.

2. Smoking within buildings shall be prohibited and reduction of the amount of outside air entering the building ventilation systems may be ordered.

3. Electric utilities with oil-fired generating facilities which are members of the Mid-Continent Area Power Pool shall be ordered to use oil of a quality not suitable for home heating or to shut down these plants and purchase power from the pool when power from non-petroleum-fired generating facilities is available from the pool.

4. Fuel oil suppliers shall be ordered to stop deliveries to large users (1000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

5. Business, industrial and government institutions which now burn middle distillate, natural gas, or propane and which have the capacity to burn residual oil shall be ordered to convert to residual oil during the emergency, unless such action is specifically prohibited by other law or rule of the Pollution Control Agency or other agency.

C. When the agency determines that actions listed in 6 MCAR § 2.3114 A. and B. have not been or will not be sufficient to eliminate the shortage the following measures may be selected by the Governor:

1. Owners/operators of commercial, industrial, and government buildings shall be ordered to reduce heating thermostats to 62°F during the day where such action does not violate Minnesota Rule MOSHC 41f., and 50°F at night or during unoccupied periods.

2. Temporary rules shall be ordered adopted or rules may be ordered suspended to relax environmental standards, where such action would yield significant fuel oil savings.

3. Delivery of fuel oil supplies to specific industries, including commerce and government, shall be ordered to be curtailed according to the following criteria. A curtailment order shall be in writing signed by the Division Director, and shall be delivered by registered mail to firms in the industry and area suppliers.

a. Order of curtailment will be based on an industry's energy-labor ratio, defined as the sum of natural gas and fuel oil consumption in Btu's per year per employee. The industry with the highest energy-labor ratio will be the first to be curtailed, and so on. Such action will be rescinded in reverse order according to the industry's energy-labor ratio.

b. First priority uses under 6 MCAR § 2.3111 B. will be the last to be curtailed. Second priority uses will be curtailed after third priority uses.

c. A firm may be exempted from curtailment of fuel oil deliveries if it can demonstrate it has reached the 1980 energy conservation targets established by the Department of Energy in 1977, under the Energy Policy and Conservation Act of 1975, if applicable, and that its energy-labor ratio is below the industry average. If no energy conservation targets exist, the firm must prove that its energy-labor ratio is significantly below the industry average because of conservation or conversion efforts. Exceptions may be granted on appeal pursuant to 6 MCAR § 2.3109.

d. A firm's energy-labor ratio shall be determined by dividing the consumption of natural gas and fuel oil per employee by the ratio of its local degree days to the statewide average degree days of 8400. The 30-year average of degree days shall be used.

e. The order of curtailment and energy-labor ratios for industry grouping and associated S.I.C. codes will be compiled by the agency and published biennially in the *State Register* during the month of October.

4. Homeowners and renters may be requested to close homes and move in with friends, relatives, or into emergency shelters. The Emergency Operating Center shall assist in this effort by designating shelters, aiding in securing homes, and providing emergency transportation.

5. Actions available for implementation under 6 MCAR § 2.3114 A. and B. will remain available under 6 MCAR § 2.3114 C.

6 MCAR § 2.3120 Motor fuel emergency measures. Upon declaration of an Energy Supply Emergency based upon a petroleum shortage, the Governor shall select from the following measures to reduce a motor fuel shortage.

A. Public information measure.

1. This measure is intended to conserve motor fuel through voluntary public conservation in response to a declared energy emergency, and through broad public application of vehicle efficiency improvements and ridesharing promoted through public service announcements, conservation demonstrations, and dissemination of energy-related literature.

2. Measure requirements.

a. The emergency operating center shall prepare and issue news releases to news media throughout the state containing at least the following:

(1) The specific cause or causes of the gasoline or petroleum shortage;

(2) Agency estimates of the shortfall of supplies expected for Minnesota;

(3) Agency estimates of the probable duration of the energy emergency; and

(4) A list of specific actions taken and measures imposed to reduce shortage.

b. Owners and operators of diesel-powered automobiles may be requested to substantially reduce or discontinue use of their diesel vehicles during severe fuel oil shortages.

c. The emergency operating center shall make available to large worksites, schools and local energy coordinators, literature which relates vehicle fuel economy to driving practices and vehicle maintenance.

3. The emergency operating center shall provide public service announcements to the media which emphasize the importance of individual and corporate efforts in conserving motor fuel and provide specific conservation tips.

B. Employer-based motor fuel conservation measure.

1. The purpose of this measure is to conserve motor fuel by requiring certain employers to reduce employee commuting and business-related motor fuel consumption in an energy supply emergency.

2. Applicability.

a. The following employers are required to comply with the provisions of this measure:

(1) Employers who have employment sites where 100 or more persons are employed during the course of any 24-hour period during a normal work week.

(2) All educational institutions at the post-secondary school level with a total combined student-facility commuting population of 200 or more persons, including colleges, universities, and vocational schools.

(3) State, county, and municipal governments who have employment sites where 50 or more persons are employed.

b. Employers having fewer employees at a location shall be encouraged to adopt strategies listed under this subsection or implement any other conservation activity which reduces employee commuting and business-related motor fuel consumption.

c. Technical assistance in the preparation of emergency motor fuel conservation plans will be provided by the agency upon request.

3. Employer plans may be submitted to the agency for each applicable site or in conjunction with a business consortium, community, local, municipal or county-wide plan, so long as each employer subject to this rule identifies the conservation strategies adopted for each work site and the program elements listed under 6 MCAR § 2.3120 B. 7.

4. Employers may choose to submit energy conservation plans to the Agency before the declaration of an energy emergency in the form and manner provided in paragraphs 5. or 6.

5. Employer emergency motor fuel conservation plan.

a. Employers may submit an emergency motor fuel conservation plan that demonstrates how employee commuting and business travel motor fuel consumption would be reduced during an energy supply emergency. The employee may choose conservation strategies which achieve the required reduction.

b. Employer plans must contain conservation strategies which taken together would reduce an employer's baseline consumption by 15 percent.

c. Employers submitting self-styled emergency motor fuel conservation plans shall include:

(1) a calculation of their baseline consumption as defined in 6 MCAR § 2.3104 D.,

(2) the expected motor fuel savings attributed to each selected strategies, and

(3) the plan elements described in 6 MCAR § 2.3120 B. 7.

d. Employers will be credited for travel reduction actions taken prior to submission of their plans that yield ongoing fuel savings.

e. The assistant director may decline to certify an employer plan submitted under this paragraph which fails to empirically support the level of savings attributed to each of the proposed activities. Self-styled employer plans may contain any of the strategies provided in paragraph 6.

6. Employer motor fuel reduction strategies.

a. Employers shall select at least four strategies from the Categories I and II, but in no case less than one from Category I.

b. Category I Strategies:

(1) Establish a carpool program for employees. An employer rideshare program may be independently-sponsored or provided in conjunction with a local or community ridesharing program. A rideshare program must minimally provide for; promotion of ridesharing through company bulletins, advertisements, and policies; the capability to match employees to carpools through rideboards, computer listings, or other methods which provide information necessary to match rideshare applicants; and a rideshare coordinator and who will be responsible for the sponsored program.

(2) Sponsor an employee vanpool program. An employer may purchase, rent, lease, or otherwise provide employees with vans for commuting to and from work. The employer may demonstrate an equivalent level of employee participation in an independent or employee-owned vanpool, but in any case shall maintain a participation rate of at least seven percent of total employment to qualify as providing a vanpool program.

(3) Provide an auxiliary transportation service (e.g., subscription bus or shuttle service) or participate in a consortium of two or more employers to provide the service. A qualifying auxiliary transportation service shall consist of:

(a) vehicle(s) with a minimum carrying capacity of 20 passengers,

(b) a participation rate equal to 50 percent of employees who live within a three mile radius of the worksite, and

(c) at least one commuter check point at least five miles from the worksite.

Employer-sponsored rideshare programs which fulfill the requirements of 6 MCAR § 2.3120 B.6.b. will be certified

by the agency. Employers may issue "identifying" rideshare stickers to qualifying employees' vehicles. Rideshare vehicles will be eligible to purchase fuel as priority vehicles under the flag system described in 6 MCAR § 2.3120 F. and will be exempt from the odd-even purchase restriction described in 6 MCAR § 2.3120 D.

d. Category II strategies:

(1) Adopt and enforce a parking management strategy which provides for preferential parking for high occupancy vehicles in employer parking lots or subsidizes at least 20 percent of the cost of contract parking in independently operated parking facilities for employee carpools, or both.

(2) Prohibit the use of company-owned vehicles for single-occupancy commuting and adopt a policy of using company vehicles for employee carpools.

(3) Purchase an electric or electric-hybrid vehicle.

(4) Promote transit use by employees through direct sale of transit passes at the worksite, fare subsidies, or display of direct and connecting routes serving the worksite.

(5) Provide facilities which promote employee commuting by bicycle or moped. These facilities might include:

(a) indoor or sheltered bicycle parking,

(b) high security bicycle parking,

(c) showers and dressing areas for bikers.

(6) Participate with a rideshare agency to provide jitney service to persons requesting travel to a destination on or near the route taken for business purposes. An employer-owned or employee-owned vehicle used for business purposes may be used for the jitney service.

(7) Institute flexible or staggered work hours.

(8) Participate in an independently-sponsored truck and bus fuel economy project which offers both energy-conscious-driver education and instruction on fuel-economizing vehicle maintenance and accessories. Employers choosing this strategy must maintain a fleet of at least ten vehicles used for cargo and freight hauling.

7. An employer submitting an emergency motor fuel conservation plan according to 6 MCAR § 2.3120 B.5. or 6. shall identify in its plan the following:

a. The carpool, vanpool or subscription bus program sponsored or subscribed to, and an estimate of the number of employees currently using and expected to use such services.

b. Title of the person or persons responsible for supervising each plan component.

c. The internal media to be used to inform employees of the employer's program;

d. The administrative assistance and inhouse resources that the employer will provide for employee ridesharing services;

f. The schedule for implementing chosen strategies; and

g. The personnel (by title or position) that will perform essential plant protection for the firm during a driving ban.

8. Employers shall institute all strategies contained in an approved employer conservation plan when the Governor orders the employer-based motor fuel conservation measure.

9. Employers who do not have an approved emergency motor fuel conservation plan before the declaration of an Energy Supply Emergency for motor fuel shall:

a. Submit to the agency within fifteen days after declaration of an Energy Supply Emergency for motor fuel a plan to reduce baseline consumption by at least fifteen percent over a period of three months or longer, or

b. Institute a compressed work week pursuant to an Executive Order of the Governor that designates the weekday on which employers not qualifying under 6 MCAR § 2.3120 B.5., 6., or 9.a., shall not perform or have an employee perform any activity related to the business except where:

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(a) Business- or employment-related activity can be performed at an employer's or employee's place of residence;

(b) Activities required in certain industrial processes must operate continuously to prevent long term or irreparable damage to a system or process; and

(c) Plant protection requires a minimum level of attention or surveillance.

c. The following businesses or governmental activities shall be exempt from a compressed work week regardless of 6 MCAR § 2.3120 B.9.:

(1) Public or private services essential to public health and safety such as health and residential care facilities, medical facilities, law enforcement activities, and emergency services;

(2) Agriculture;

(3) Energy production;

(4) Telecommunications; and

(5) Sanitation services.

C. School conservation measure.

1. The purpose of this measure is to conserve motor fuel by requiring schools to adopt strategies to reduce student commuting and school-sponsored activities in an energy supply emergency.

2. Applicability.

a. Each school district, as defined in Minn. Stat. §§ 122.01 to 122.541 (1980), and nonpublic school, as defined in Minn. Stat. § 123.932, subd. 3 (1980), which has a combined student-staff population of 100 persons or more, is required to comply with this measure.

b. The boards of all school districts, defined and empowered under the Education Code, Minn. Stat. chs. 120 to 129 (1980), and non-public school authorities, shall be responsible for submitting plans under this rule.

3. School boards shall submit to the agency within 18 months after the effective date of these rules, or within 45 days after declaration of an energy supply emergency, whichever comes first, an emergency motor fuel conservation plan as defined in paragraphs six or seven of this rule.

4. Nonpublic schools may fulfill the requirements of this rule by submitting a plan to the agency in one of the following forms:

a. A school-specific plan, or

b. A school association plan that contains strategies adopted by member schools, or

c. A signed agreement with a school district which states the nonpublic school's strategies and the person or position responsible for implementation of strategies adopted by the private school.

5. School districts or nonpublic school associations shall submit either a self-styled conservation plan as provided in paragraph 6 of this rule or a plan structured from the strategies provided in paragraph 7.

6. School emergency conservation plan: Option A.

a. School districts may submit a self-styled conservation plan including any conservation strategies that taken together would reduce baseline consumption by at least 15 percent during an energy supply emergency.

b. Self-styled conservation plans shall include:

(1) a calculation of the baseline consumption, defined in 6 MCAR § 2.3104 D.,

(2) the expected motor fuel savings attributed to each selected strategy, and

(3) the plan elements described in 6 MCAR § 2.3120 C.8.

c. School districts will be credited for travel reduction actions taken prior to submission of their plans that yield ongoing motor fuel savings.

d. The assistant director may decline to certify a school district or association plan submitted under this rule which fails to empirically support the savings attributable to each of the proposed actions. Self-styled school plans may include any of the strategies provided in paragraph 7. of this rule.

7. School emergency conservation plan: Option B reduction strategies.

a. School districts shall select at least three strategies from the following categories, provided that at least one strategy is from Category I.

b. Category I strategies. School districts shall implement Category I strategies upon the selection of this measure by the Governor in an energy supply emergency.

(1) Prohibit student parking on school grounds and request local authorities to pass or enforce parking restrictions in areas adjacent to a school for the duration of the emergency. Exemptions from the parking prohibition may be granted to students who:

(a) have no alternative transportation to school; or

(b) have special medical needs that prevent use of alternative methods of traveling to school; or

(c) have job requirements that demand access to automobile transportation, or

(d) are members of a carpool registered with the school rideshare coordinator.

(2) Postpone or cancel extracurricular activities (including athletic events) until the termination of an energy supply emergency for motor fuel.

(3) Cancel two school days for each 30-day declared energy emergency period.

c. Category II strategies. School Districts choosing Category II strategies (1), (2), (3), and (6) shall implement these strategies prior to or within 3 months after submitting their conservation plans to the agency.

(1) Establish or sponsor a student/staff rideshare program. A student/staff rideshare program may be organized independently or in conjunction with a local or community rideshare program. A rideshare program must provide for: promotion of ridesharing through school policies and newspapers or other publications, the capability to match students or staff carpools through rideboards, manual or computer listings, or other methods which provide information necessary to match rideshare applicants, and a school rideshare coordinator who will be responsible for the school ridesharing program.

(2) Adopt and enforce a parking management strategy which gives preferential parking to high occupancy vehicles in student parking lots or requires fees for parking on school grounds.

(3) Provide indoor or sheltered bicycle parking with a capacity for at least five percent of the student body.

(4) Eliminate on-the-road driver education for the period of the emergency.

(5) Cancel or reschedule some extracurricular activities. Selection of this strategy is not permitted if Category I—strategy (2) has been chosen and applies when the Governor orders the school conservation measure.

(6) Participate in an independently-sponsored school bus fuel economy program.

8. Emergency motor fuel conservation plans submitted by school districts shall include:

a. the title of the person or position responsible for implementing the plan during an energy supply emergency for motor fuel;

b. the internal media to be used to inform school staff and students of a school district program measure; and

c. the implementation schedule for category II strategies (1) (2), (3) and (6).

9. School districts shall implement all or part of their plans as specified by the division director upon order of the Governor.

D. Odd-even purchase requirement measure.

1. The purpose of the odd-even purchase requirement is to conserve motor fuel and facilitate the orderly purchase of motor fuel by alternating the days of purchase eligibility.

2. Applicability.

a. Retail sales and purchases of motor fuel shall be restricted to even-numbered days of the month for persons in possession of vehicles whose license plate numbers end in one of the even digits 0, 2, 4, 6, 8; and to odd-numbered days of the month for persons in possession of vehicles whose license plate numbers end in the odd digits 1, 3, 5, 7, and 9.

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b. Specialty and personalized license plates which display no ending numberal are deemed to be "odd" for purposes of the purchase requirement.

c. The restrictions in this rule shall not apply on the thirty-first day of any month or on the twenty-ninth day of February in a leap year.

3. Exemptions. The following vehicles shall be exempt from the odd-even purchase requirement. Motor fuel may be purchased for them on any day of the week.

a. Vehicles being driven for any first priority use defined in 6 MCAR § 2.3112. For the odd-even purchase requirement, vanpools will be those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency, vanpool services agency, or employer, or carrying at least eight passengers on a work commuting trip.

b. Ridesharing vehicles identified by employers with state certified conservation plans, as described in 6 MCAR § 3.2120 B.6.b.

c. Vehicles being used for commercial purposes, as defined in 6 MCAR § 2.3104 I.

d. Vehicles operated by handicapped person and displaying a handicapped license plate or other special identification.

e. Vehicles with out-of-state license plates.

f. Motorcycles and mopeds.

g. Vehicles not licensed for highway use.

h. Vehicles held for sale by a licensed motor vehicle dealer in the ordinary course of business.

i. Vehicles being operated by individuals under emergency circumstances which in the judgment of the ratailer demand an exception.

E. Minimum purchase requirement measure.

1. The purpose of this measure is to decrease vehicle lines at motor fuel retail outlets by reducing the frequency of fillups.

2. Measure requirements. Motor fuel shall not be sold, dispersed, or otherwise transacted by a motor fuel retailer for use in any vehicle unless:

a. The amount transacted and dispersed is at least five gallons.

b. In the event the quantity purchased is less than the five gallon minimum, the purchaser shall pay the retailer an additional amount so that the total transaction price is equal to the stated pump price times the five gallon minimum.

c. In any single transaction, not more than six gallons of motor fuel may be sold or dispensed into a container, other than the fuel tank of a vehicle, to be transported away from the premises of the retail seller. Such containers must meet applicable safety requirements.

3. A person selling motor fuel in transactions to which provisions of this section apply shall display at the point of sale notice of such provisions.

4. Both the motor fuel retailer and the vehicle operator are required to comply with the provisions of this section.

5. Exemptions. The following users are not required to purchase a minimum amount:

a. Vehicles being driven for first priority uses, as defined in 6 MCAR § 2.3112. For the minimum purchase requirement, vanpools are those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency or vanpool services agency, or carrying at least eight passengers on a work commuting trip.

b. Motorcycles and mopeds and similar three-wheeled vehicles.

c. Out-of-state licensed vehicles.

d. Vehicles held for sale or lease by licensed motor vehicle dealers in the ordinary course of business.

F. Flag requirement for motor fuel retailers.

1. The purposes of this measure are to signal to motorists availability of motor fuel for purchase at stations through the display of flags and to permit retailers to limit sales to priority users only.

2. Each motor fuel retail station shall clearly indicate its motor fuel supply and servicing status by displaying a flag of one of the three colors listed below. The flag should be clearly visible from at least 100 yards in each direction of the station.

a. A green flag indicates that motor fuel is available to the public subject to the purchase restrictions imposed by these

rules. A station flying a green flag cannot show preference to any customer, except that emergency vehicles may be allowed to move to the front of an existing line to be fueled.

b. A yellow flag indicates that motor fuel is available only to first priority vehicles, as defined in 6 MCAR § 2.3112, and to ridesharing vehicles which have been identified by employers according to the terms and provisions of a state-certified conservation plan, as described in 6 MCAR § 2.3120 B.

c. A red flag indicates a station is out of fuel and/or is closed. No motor fuel may be dispensed from a station flying a red flag, except to emergency vehicles, as defined in 6 MCAR § 2.3104 R.

G. Motor fuel availability measure.

1. The purpose of this measure is to assure that motor fuel is available for purchase at key locations throughout the state 24 hours a day and that these locations and their hours of operation are locally publicized.

2. Motor fuel retailers who have historically remained open 24 hours a day and provided emergency road service may apply for state set-aside product assignment according to the state set-aside application procedures authorized by Minn. Stat. § 116H.095 and 6 MCAR §§ 2.0101 to 2.0107.

3. The emergency operating center shall publicize the location of the stations participating in the availability program in local newspapers. This information will also be supplied to the AAA of Minnesota (American Automobile Association) and the Department of Economic Development's Tourist Information Center, both of which provide motor fuel availability information.

H. Strict enforcement of posted highway speed limits.

1. The purpose of this measure is to conserve motor fuel by strictly enforcing the current maximum speed limit on state highways.

2. Motorists shall strictly obey the maximum legal speed limit. Violations of the maximum legal speed limit during a declared energy supply emergency shall be subject to the additional penalities provided in 6 MCAR § 2.3110.

3. The Governor shall request state, county, and municipal law enforcement agencies to intensify speed limit enforcement through personnel assignments and increased road surveillance.

6 MCAR § 2.3121 Severe motor fuel emergency measures. When the agency determines that the measures listed in 6 MCAR § 2.3120 A. to H., have not eliminated or will not eliminate the shortage of motor fuel, the Governor may order any of the following measures.

A. Vehicle permit-sticker measure.

1. This measure is intended to conserve motor fuel by prohibiting the use of vehicles for one day per week.

2. Applicability.

a. Vehicle owners shall apply to the Department of Public Safety for a no-driving-day-designation permit-sticker. The applicant may select any day (Monday through Sunday) as the no-driving-day for his/her vehicle but must choose the same day for all vehicles owned. The owner must prominently display the sticker on each vehicle owned and driven during the term of this measure.

b. A vehicle rented or leased for a period exceeding seven days shall be considered owned by the lessee for purposes of this measure.

c. Upon the effective date of the vehicle permit-sticker requirement, all Minnesota-licensed motor vehicles subject to the requirement must display a permit-sticker in the lower right-hand corner of the front windshield.

3. Exemptions.

a. Vehicles being driven for any first priority use defined in 6 MCAR § 2.3112;

b. Vehicles held for sale or lease by a licensed motor vehicle dealer in the ordinary course of business;

c. Motorcycle and mopeds;

d. Short-term rental vehicles; and

e. Such other vehicles as the Governor may determine.

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4. Vehicle owners operating a motor vehicle under one of the qualifying exemptions listed above must apply to the Division of Driver and Vehicle Services (DDVS) of the Department of Public Safety for an exempt sticker. Exempt stickers issued by the DDVS must be prominently displayed on the vehicle for which the exempt permit was issued.

5. Vehicle rental agencies must apply for "exempt" stickers for vehicles rented for periods less than one week. Upon approval of a rental agency's application, DDVS will exempt stickers for designated rental vehicles. Vehicles rented or leased for use predominantly in Minnesota for periods exceeding seven days must be registered by the lessee.

6. The Governor may waive the requirement for the display of exempt permit-stickers for any vehicle class listed under paragraph three (3).

B. Recreational vehicle ban measure—Type I.

1. This measure is intended to conserve motor fuel by prohibiting the operation of certain recreational vehicles upon public roads and lands for limited periods during an energy supply emergency.

2. Measure requirements for a Type I recreational vehicle ban.

a. The use and operation of self-propelled vehicles with living quarters, designated and registered as class RV vehicles with the DDVS, and vehicles with living quarters, commonly non-motorized trailers, designated and registered as class RL vehicles, shall be prohibited for a period not to exceed 15 days during any 30-day declared energy emergency. A Type I ban may, however, be renewed for the maximum 15-day period for each 30-day period the energy supply emergency remains in effect.

b. The division director shall issue a statement to news media at least seven days prior to the effective date of the ban, explaining the class of vehicles subject to the ban, the duration of the ban, the penalties for violation of the ban, exemptions to the ban, the probable enforcement strategies to obtain compliance with this measure, and the appeals procedure for obtaining exception to the measure. The division director's statement is to receive widest possible distribution to inform the public of the ban.

c. Exceptions. Parties may apply to the local energy conservation board for an exception to this measure. Upon a determination by the board that the applicant should be granted an exception to the ban, the board shall recommend to the division director that an exempt-sticker be issued to the applicant. The division director, or designate, shall deliver to the applicant within three days after receipt of the local conservation board's favorable recommendation, an exempt sticker which must be displayed for the duration of the ban. The division director, or designate, shall not deliver an exempt sticker to the applicant, if the director serves notice of his/her intent to reverse the recommendation of the local energy conservation board as provided in 6 MCAR § 2.109 E.3.

C. Recreational vehicle ban measure—Type II.

1. The use and operation of snowmobiles upon public lands, rights-of-way, roads, trails, and waters subject to the state's proprietary interest, shall be prohibited for a period not to exceed 15 days during any 30-day declared energy supply emergency. A Type II ban may, however, be renewed for the maximum 15 day period for each 30-day period an energy supply emergency remains in effect.

2. The division director shall issue a statement to news media at least seven days prior to the effective date of the ban, which explains the class of vehicles subject to the ban, the geographic scope of the ban, the duration of the ban, the penalties for violation of the ban, any exemptions to the ban, the probable enforcement actions being taken to ensure compliance with the measure, and the appeals procedure for obtaining an exception to the measure. The division director's statement is to receive widest possible distribution to inform the public of the ban.

3. Exemptions. Parties who demonstrate that their snowmobiles are used for essential personal transportation or predominantly for commercial purposes, or that no practical alternative transportation exists, shall be granted exceptions to the ban by the local energy conservation board. Parties may apply for exceptions to this measure according to the appeals procedure described in 6 MCAR § 2.3109. Upon a determination by the board that an applicant should be granted an exception to the ban, the board shall recommend to the division director that an exempt sticker be issued to the applicant. The division director, or designate, shall deliver to the applicant within three days after receipt of the local conservation board's favorable recommendation, and exempt sticker which must be displayed for the duration of the ban. The division director, or designate, shall not deliver an exempt sticker to the applicant, if the director serves notice of his/her intent to reverse the recommendation of the local energy conservation board as provided in 6 MCAR § 2.3109 E.3.

D. Speed limit reduction measure.

1. This measure is intended to conserve motor fuel by reducing the maximum speed limit on all highways in Minnesota.

2. The Governor upon the advice of the agency shall order the Commissioner of Transportation to set a lower speed limit

on all highways in Minnesota. The Commissioner of Transportation shall lower the speed limit during an energy supply emergency pursuant to Minn. Stat. § 169.141 (1980).

3. Violation of the maximum limit during an energy supply emergency for motor fuel shall carry the additional penalties as provided in 6 MCAR § 2.3110.

4. The Governor may request state, county, and municipal law enforcement agencies to intensify speed limit enforcement activities through personnel assignments and increased road surveillance efforts.

E. Driving ban measure.

1. This measure is intended to conserve motor fuel by prohibiting the use and operation of all non-exempt motor vehicles for a specified 24-hour period.

2. Upon the agency's determination that a 24 hr. driving ban is necessary to reduce the demand for motor fuel, the Governor may order an emergency driving ban. Upon the Governor's order, the division director shall issue the order and a statement to the news media to be promptly disseminated and brought to the attention of the public. The statement shall state the designated date of the ban, the emergency services which will remain available during the ban, the enforcement actions to be taken, and the penalties imposed for violation of the ban. The statement shall be released at least five days prior to the imposition of the driving ban.

3. It shall be unlawful for anyone to operate a Minnesota-registered and licensed motor vehicle on public roads during the period of driving ban.

4. Exemptions. The following motor vehicle uses shall be exempt from a driving ban:

a. Emergency vehicles;

b. Sanitation services vehicles;

c. Aviation ground support vehicles;

d. Vehicles identified as required in 6 MCAR § 2.3120 B.7.g. and used by employees in commuting for the purposes of plant protection.

e. Vehicles used in providing or transporting employees for emergency medical care, residential care, telecommunications services, energy production, and news reporting;

f. Individuals who require daily medical treatment; and

g. Out-of-state licensed vehicles.

5. Any vehicle registered and licensed by the State of Minnesota and operated during a driving ban shall prominently display a sticker or card which clearly identifies that vehicle as exempt. The Governor may waive this requirement for any category of exempted user, for example, police, fire, ambulance, or aviation ground support vehicles.

6. The agency will issue guidelines for identification of exempt vehicles prior to a driving ban.

ADOPTED RULES

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

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

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

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

Pollution Control Agency
Air Quality Division

Adopted Amendments to 6 MCAR §§ 4.0033 B.7. and 4.0033 B.8.a., Standards of Performance for Coal Handling Facilities within Designated Areas

The rule amendments proposed and published at *State Register*, Volume 5, Number 41, pp. 1608-1609, April 13, 1981, (5 S.R. 1608) are adopted as proposed.

Pollution Control Agency

Notice of Correction to Adopted Amendments and Renumbering of WPC 14, 15, 24, and 25, and Adopted Repeal of WPC 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 23, 26, 29, 31, and 32

The amendments to WPC 14, WPC 15, WPC 24, and WPC 25 (6 MCAR §§ 4.8014, 4.8015, 4.8024, and 4.8025) and the repeal of WPC 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 23, 26, 29, 31 and 32 were proposed and published at *State Register*, Volume 4, Number 34, pp. 1330-1392, February 25, 1980, (4 S.R. 1330). The adopted amendments and repeal were published at *State Register*, Volume 5, Number 29, pp. 1136-1143, January 19, 1981 (5 S.R. 1136). The adopted amendments and repeal are hereby corrected as follows:

6 MCAR § 4.8024

Supplement 1

Class 7 Limited Resource Value Waters

. . . .

Buffalo River Watershed (No. 9)

Unnamed Ditch Lake Park	T139 R43 S4 T140 R43 S33

. . . .

Crow River Watershed (No. 17)

* Crane Creek Winsted	T117 R27 S14, 20, 21, 22 23, 24, 25

. . . .

Cottonwood River Watershed (No. 26)

* ~~Sleepy Eye Creek~~ ~~Wabasso~~	~~T110 R35 S7, 8, 9, 14~~ ~~15, 16~~ ~~T110, R36 S1, 2, 3, 12~~

Department of Public Welfare
Mental Health Bureau

Extension of Temporary Rule Governing Standards for Approval of Mental Health Centers and Mental Health Clinics for Insurance Reimbursement

The temporary rule published at *State Register*, Volume 5, Number 34, p. 1298, February 23, 1981, (5 S.R. 1298) and adopted at *State Register*, Volume 5, Number 44, p. 1774, May 4, 1981, (5 S.R. 1774) is continued in effect until September 30, 1981.

Department of Public Welfare
Mental Health Bureau

Adopted Rules Governing Grants for Community Support Services for Chronically Mentally Ill Persons

The proposed rule (12 MCAR § 2.014) published at *State Register*, Volume 5, Number 39, pp. 1537-1542, March 30, 1981, (5 S.R. 1537) is adopted with the following amendments:

J. The local match or ten percent of the total budget of the project shall consist of funds committed to the project. The fee income if any, may be counted as part of the local matching share.

L. 1. After a grant award is made, as long as state funds are used for allowable expenses as defined by this rule, budget revisions (including transfer between approved projects) and/or line item transfers totaling up to 10 percent of the project budget may be made with county board approval. Revisions in excess of 10 percent require both county board and department approval.

OFFICIAL NOTICES

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

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

Department of Administration
Cable Communications Board

Notice of Solicitation of Public Comments Regarding Revision of the Minnesota Cable Communications Board's Statewide Cable Communications Development Plan

Notice is hereby given that public comments in the above-entitled matter are being solicited by the Minnesota Cable Communications Board pursuant to Minnesota Statutes, § 238.05, subdivision 1.

The board will conduct public hearings concerning the Statewide Development Plan revision during its regular meetings on July 10, August 14, September 11, and October 9, 1981. Board meetings are scheduled to convene at 9:00 a.m., 500 Rice Street (at University Ave.) in Saint Paul.

Information concerning the plan may be obtained from and written comments may be submitted to the Board at 500 Rice Street, Saint Paul, MN 55103.

All interested or affected persons will have an opportunity to be heard.

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.

Department of Agriculture
Agronomy Services Division

Notice of Special Local Need Registration for Clean Crop Sevin 5 Bait

Pursuant to Minn. Stat. § 18.A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on June 12, 1981, issued a Special Local Need Registration for Clean Crop Sevin 5 Bait, manufactured by Platte Chemical Co., Inc., Fremont, NB 68025.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of the pesticide for control of cutworms and grasshoppers on sunflowers.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN #MN 81-0018) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 297-2745

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding this registration.

June 29, 1981

Mark W. Seetin, Commissioner

Notice of Special Local Need Registration for Hopkins Sevin Carbaryl Bait

Pursuant to Minn. Stat. § 18.A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on June 12, 1981, issued a Special Local Need Registration for Hopkins Sevin Carbaryl Bait, manufactured by Hopkins Agricultural Chemical Co., Madison, Wisconsin 53707.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of this pesticide for control of cutworm and grasshoppers on sunflowers.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN #MN 81-0017) is on file for inspection at:

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June 29, 1981

Mark W. Seetin, Commissioner

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

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Special Education Supervision and Staff to Student Ratios

Notice is hereby given that the Department of Education is seeking information or opinions from sources outside the agency in preparing to amend current rules governing special education supervision and staff to student ratios. The promulgation of these rules is authorized by Minnesota Statutes, § 120.17, subdivision 3, which requires the agency to adopt rules relative to size of classes and supervision and any other rules deemed necessary.

The Department of Education requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit written statements of information to:

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

All statements of information will be accepted until July 24, 1981. Any written material received by the State Department of Education shall become part of the record in the event that the rules are promulgated.

June 17, 1981

Howard B. Casmey, Commissioner

State Board of Investment
Investment Advisory Council

Notice of Regular Meeting

The Investment Advisory Council will meet Tuesday, June 30, 1981, at the MEA Conference Room, 41 Sherburne Avenue, Saint Paul.

State Board of Investment

Notice of Regular Meeting

The State Board of Investment will meet Tuesday, June 30, 1981, at 10:00 a.m., in the State Capitol, Room 130, Saint Paul.

Minnesota Water Resources Board

Notice of Hearing on the Proposed Kanaranzi Watershed District

A hearing on a petition for the establishment of the Kanaranzi Watershed District will begin at 9:30 a.m. on Thursday, July 9, 1981, in the High School Library of Adrian Community High School, 1415 Kentucky Avenue, Adrian, Minnesota 56110.

A complete notice of and order for hearing will be published in the *Worthington Daily Globe* on June 18 and 25, 1981; in the *Star-Herald*, Luverne, Minnesota, on June 17 and 24, 1981; and in the *Nobles County Review*, Adrian, Minnesota, on June 18 and 25, 1981.

Copies of the complete notice are also available from the Minnesota Water Resources Board's office at 555 Wabasha Street, Room 206, St. Paul, Minnesota 55102. (612 296-2840).

Department of Natural Resources
Soil and Water Conservation Board

Notice of Change of Meeting Date

The Minnesota Soil and Water Conservation Board has changed the date of their regular monthly meeting from July 14, 1981 to July 7, 1981. The Board will resume their regular schedule on August 11, 1981.

Pollution Control Agency
Solid and Hazardous Waste Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Solid Waste Management Planning Assistance Program Grants

Notice is hereby given that the Minnesota Pollution Control Agency is seeking information or opinions from sources outside the agency in preparing to promulgate amendments to 6 MCAR § 4.6085 governing the administration of the solid waste management planning assistance program. The promulgation of these rule amendments is authorized by Minn. Stat. § 115A.42, which requires the agency to administer the solid waste management planning assistance program.

The Minnesota Pollution Control Agency requests information and comments concerning the subject matter of these rule amendments. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Edward R. Meyer
Waste Management Assistance Section
Solid and Hazardous Waste Division
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

Oral statements will be received during regular business hours over the telephone at 612-297-3362 and in person at the above address.

All statements of information and comment shall be accepted until October 7, 1981. Any written material received by the Minnesota Pollution Control Agency shall become part of the record in the event that the rule amendments are promulgated.

Department of Public Service
Weights and Measures Division

Inspection Fees

Effective July 1, 1981

SCALES

Up to and including 30 lbs capacity	$ 9.00
Over 30 lbs capacity, up to and including 1,000 lbs	15.00
" 1,000 lbs " " " " " 4,000 lbs	30.00
" 4,000 lbs " " " " " 20,000 lbs	75.00
" 20,000 lbs " " " " " 60,000 lbs	110.00
Over 60,000 lbs capacity	150.00
VEHICLE scales and LIVESTOCK scales (minimum)	75.00
LAW ENFORCEMENT scales (minimum)	60.00
JEWELER'S, PHARMACEUTICAL and ANALYTICAL balances (including calibration of weights used in conjunction with balance)	40.00
RAILROAD TRACK scales (minimum)	225.00
GRAIN HOPPER scales (minimum)	150.00

LIQUID MEASURING DEVICES
Retail PETROLEUM PUMPS 12.00
Vehicle tank METERS and bulk METERS 35.00
LPG METERS and PUMPS 50.00
LINEAR MEASURING DEVICES
Fabric, Wire and Rope Measuring Machines 10.00
PLACING-IN-SERVICE PERMIT
Minimum fee for equipment calibration and administrative costs 25.00
LABORATORY CALIBRATIONS
Hourly fee only 47.00

HOURLY RATES

The above schedule of fees is based on the average amount of time required for an individual inspection. This average includes travel, equipment and administrative costs. When an inspection and test requires more than the average amount of time, or when the device under inspection is not specified in the above schedule, the inspector shall calculate the total charge based on the following hourly rates:

LIGHT DUTY UNIT:	$35.00
HEAVY DUTY UNIT:	40.00
LABORATORY:	47.00

STATE CONTRACTS

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

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

Department of Administration

Notice of Request for Proposals to Provide Diagnostic and Referral Services for the State Employee Assistance Program

Notice is hereby given that the Department of Administration intends to engage the services of a contractor in each of the following areas to provide diagnostic and referral services for state employees and their dependents: Bemidji, Brainerd, Cambridge, Crookston, Duluth, Faribault/Owatonna, Fergus Falls, Mankato, Marshall, Rochester, St. Cloud, Virginia/Range, Willmar and Winona.

The estimated amount of the contract in each of these areas will not exceed $4,000. Responses must be received by July 20, 1981.

Direct inquiries to:

Warren C. Gahlon
Director
State Employee Assistance Program
Suite 200 — Summit Bank Building
205 Aurora Avenue
St. Paul, Minnesota 55103
(612) 296-0765

Department of Public Service Utilities Division

Notice of Request for Proposal for Consultant Services Related to an Increase in Electric Rates

The Department of Public Service of the State of Minnesota is soliciting proposals from qualified consultants to assist it in performing work to be conducted in connection with the petition filed June 2, 1981 from Inter-City Gas Company for an increase in electric rates.

The consultant will be expected to perform the following tasks:

A. Aid and assist the department staff in preparation for cross-examination of witnesses for the utility and other intervenors who are testifying regarding costs of capital, capital structure, coverage requirements and other financial issues.

B. As a member of the department staff assigned to this case, develop and deliver direct testimony in response to the Inter-City Gas Company's proposal on each issue and present the department's recommendation on the issue.

C. Be prepared to develop and deliver rebuttal and/or surrebuttal testimony on the same issues, as required.

The estimated cost of this contract is $8,000.

The due date for proposals is July 15, 1981.

Direct inquiries to:

Ms. Linda Anthony
Contract Coordinator
Minnesota Department of Public Service
790 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101
612/297-2596

SUPREME COURT

Decisions Filed Friday, June 19, 1981

Compiled by John McCarthy, Clerk

51755/Sp. Shannon Marie Seim, a minor by her father and natural guardian David Seim and David Seim, individually, Appellant, v. Judith A. Garavalia, defendant and third party plaintiff, v. David Seim, *et al*, Third Party Defendants. Washington County.

Minn. Stat. § 347.22 (1980) imposes liability without fault, or strict liability, upon a violator of the statute. In addition, the legislature intended that this statute impose absolute liability upon a statutory violator notwithstanding the provisions of Minn. Stat. § 604.01 (1980), except for the statutory defenses of provocation and failure to peaceably conduct oneself in any place where one may lawfully be.

The lack of a transcript in this case precludes us from determining whether it is appropriate to grant a new trial on the issue of damages. The district court is conferred with jurisdiction to entertain motions on this question.

Reversed and remanded with directions. Sheran, C. J.

51890/Sp. State of Minnesota v. Onan A. Thompson, Appellant. St. Louis County.

Defendant's claim that evidence of his guilt was insufficient and his claim that he was prejudiced by a statement made in the state's closing argument are without merit. The court does not reach the issue of the possibly privileged nature, under the attorney-client privilege, of testimony adduced at trial, given the clear indication that such privilege, if any, was waived.

Affirmed. Sheran, C. J.

51684/Sp. Helen B. Differt, Appellant, v. Walter Rendahl, *et al.*, etc., Ralph W. Sample, *et al.*, etc., David Joerg and Ralph W. Sample, *et al.*, etc., defendants and third party plaintiffs, v. Thomas D. Differt, Third Party Defendant. Fillmore County.

The trial court lacked jurisdiction to hear a party's motion for a new trial when that party first moved for a new trial more than 15 days after serving notice upon opposing counsel of the filing of an order. Minn. R. Civ. P. 5903.

Affirmed. Sheran, C. J.

81-41/Sp. In the Matter of the Welfare of D. S. Hennepin County.

Evidence was sufficient to justify finding by juvenile court that appellant participated in delinquent act.

Affirmed. Sheran, C. J.

50574/Sp. Gene Foote, *et al.*, v. City of Crosby, Appellant. Crow Wing County.

Where removal of trees located on the boulevard within the platted right-of-way of a city street was necessary to a street improvement project, and if not removed, such trees clearly would obstruct the public's easement of travel, the trial court abused its discretion by enjoining removal.

Reversed. Todd, J. Dissenting, Yetka, J., and Wahl, J.

50940/Sp. Marjorie Congdon LeRoy a/k/a Marjorie Congdon Caldwell, Appellant, v. The Marquette National Bank of Minneapolis and William P. Van Evera and Thomas E. Congdon. Hennepin County.

Where an adverse party received adequate notice of the nature and scope of proceedings in substantial compliance with the requirements set forth in Minn. R. Civ. P. 7.02, a strict construction of the Rules of Civil Procedure is unwarranted.

Where the collateral is common stock and is of the "type customarily sold on a recognized market," the trial court did not err in awarding the trustees, as accommodation parties to a promissory note, a deficiency judgment even though the trustees never gave the debtor prior notice of the sale of the stock.

Affirmed. Todd, J.

51667/Sp. Robert F. Borchardt, deceased employee, v. Peterson Biddick, *et al.*, Relators. Workers' Compensation Court of Appeals.

Heirs of an employee who sustained work-related permanent partial disability in 1976 and died of a nonwork-related cause in October 1978 were entitled by Minn. Stat. § 176.021, subd. 3 (1978), to receive payment for ascertained permanent partial disability not paid to employee during his lifetime.

Affirmed. Todd, J.

51791/Sp. In the Matter of the Welfare of C. D. L. Hennepin County.

Evidence was sufficient to support finding that juvenile committed delinquent act, namely, unauthorized use of a motor vehicle.

Rule prohibiting use of juvenile adjudication to impeach a witness's credibility does not apply to juvenile court proceeding.

Affirmed. Todd, J.

50440/221 In the Matter of the Welfare of HGB, MAB, and DJB. Ramsey County.

Due process of law does not compel the physical attendance of a parent at a termination of parental rights proceeding.

Statutory changes in Minnesota law now make the best interests of the children an element for consideration by the court in termination proceedings.

The evidence justifies the termination order herein entered.

Affirmed. Todd, J. Dissenting, Otis, J., Yetka, J., and Sheran, C. J. Took no part, Amdahl, J.

50715/357 Dale Devine, *et al.*, Appellants, v. Darlen McLain, Howard Guckenberg, d.b.a. Al's Bar. Scott County.

When the violent act of a tavern patron which injures another patron is not foreseeable by the tavern owner, the tavern owner owes no duty to the injured patron.

Affirmed with instructions. Todd, J. Dissenting, Yetka, J., Scott, J., Wahl, J., and Sheran, C. J.

51163/Sp. State of Minnesota v. Jeffrey Phillip Salas, Appellant. Ramsey County.

The trial court properly refused to grant defendant's motion for a change of venue because the pretrial publicity in this case did not interfere with his right to a fair trial.

The trial court properly admitted testimony that showed defendant thought the victim was accusing him of having committed a prior crime.

The evidence justifies the jury's verdict of guilt for second-degree murder.

Affirmed. Yetka, J.

50917/Sp. Robert H. Bjorklund, Personal Representative of Estate of Robert T. Olson, deceased, Appellant, v. Aetna Casualty and Surety Company. Hennepin County.

Where an employee converts to his own use automobiles of his employer which are intended by the employer to be serviced, such conversion is not insured under a policy which excludes coverage from a loss occasioned by "someone causing the named insured to voluntarily part with the covered automobile by trick, scheme, or false pretense."

Affirmed. Otis, J. Dissenting, Todd, J., Wahl, J., and Scott, J.

Decision Filed Thursday, June 11, 1981

81-422/Sp. State of Minnesota v. Al G. Frost, Jr., Appellant. Hennepin County.

Trial court, in sentencing defendant for a crime committed before the Sentencing Guidelines became effective, did not improperly consider any "misinformation of constitutional magnitude."

Affirmed. Sheran, C. J.

STATE OF MINNESOTA

OFFICE OF THE STATE REGISTER

State Register and Public Documents Division
117 University Avenue
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FOR LEGISLATIVE NEWS

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

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

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

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

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

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