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STATE REGISTER

STATE OF MINNESOTA

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*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.

**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.

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

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
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The listings are arranged in the same order as the table of contents of the MCAR.

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PROPOSED RULES

Pursuant to Minn. 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 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce Insurance Division

Proposed Amendments to Rules Relating to the Solicitation of Proxies, Consents, or Authorizations

Notice of Intent to Amend Rules without a Public Hearing

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

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

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30 day comment period.

Persons who wish to submit comments or a written request for a public hearing should mail them to: Bill Howard, Insurance Division, 500 Metro Square Building, St. Paul, MN 55101.

Any person who desires to be informed when these proposed rules are submitted to the Attorney General for approval may make this request in writing to the above named person.

William Howard
Assistant Commissioner of Insurance

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- 4 MCAR § 1.9259 Proxy requirements.

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.

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4 MCAR § 1.9269 Schedule C; information required in information statement.

4 MCAR § 1.9270 Alternative compliance.

4 MCAR §§ 1.9271-1.9274 [Reserved for future use.]

~~Ins 30~~ 4 MCAR § 1.9255 Application of Regulations rules.

A. Domestic stock and mutual insurers. These regulations are applicable Rules 4 MCAR §§ 1.9255-1.9269 apply to each domestic stock insurer (which shall include, including a domestic stock and mutual insurer as defined in Minnesota Statutes, Sections Minn. Stat. §§ 61A.33 to 61A.36), which has any class of equity security held of record by 100 or more persons; provided, however, that these regulations. Rules 4 MCAR §§ 1.9255-1.9269 shall not apply to any insurer if 95% percent or more of its equity securities are owned or controlled by a parent or an affiliated insurer and the remaining securities are held of record by less than 500 persons. A domestic stock insurer which files with the Securities and Exchange Commission forms of proxies, consents and authorizations complying with the requirements of the Securities Exchange Act of 1934, as amended, and the applicable regulations promulgated thereunder shall be exempt from these regulations 4 MCAR §§ 1.9255-1.9269.

~~Ins 31~~ Disclosure of Equivalent Information.

B. Written statement. Unless proxies, consents or authorizations in respect of any class of equity security securities of a domestic insurer subject to Minn. Reg. Ins. 30 A. are solicited by or on behalf of the management of such the insurer from the holders of record of such security the securities in accordance with these regulations 4 MCAR §§ 1.9255-1.9269 and the schedules hereunder prior to any annual or other meeting of such the security holders, such the insurer shall, in accordance with these regulations 4 MCAR §§ 1.9255-1.9269 and such further regulations as other rules the commissioner may adopt, file with the commissioner and transmit to all equity security holders of record information substantially equivalent to that information which would be required to be transmitted if a solicitation were made. Such insurer shall transmit a written information statement containing the information specified in Minn. Reg. Ins. 33(d) to every equity security holder who is entitled to vote in regard to any matter to be acted upon at the meeting and from whom a proxy is not solicited on behalf of the management of the insurer; provided, that in the case of a class of securities in unregistered or bearer form, such statement need be transmitted only to those security holders whose names and addresses are known to the insurer who are entitled to vote in regard to any matter to be acted upon at the meeting and from whom a proxy is not solicited a written information statement containing the information specified in 4 MCAR § 1.9269 (Schedule C).

4 MCAR § 1.9256 Definitions.

A. Applicability. For the purposes of 4 MCAR §§ 1.9255-1.9269, the terms defined in this rule have the meanings given them unless the context otherwise requires.

B. Affiliate. An "affiliate" of, or a person affiliated with, a specified person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

C. Associate. The term "associate" used to indicate a relationship with any person means any corporation or organization, other than the issuer or a majority-owned subsidiary of the issuer, of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity security; any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity; and any relative or spouse of the person, or any relative or the spouse, who has the same home as the person or who is a director or officer of the issuer or any of its parents or subsidiaries.

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D. Beneficial owner. The term "beneficial owner" includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares voting power including the power to vote or direct the voting of a security, or investment power including the power to dispose of or direct the disposition of the security.

E. Control. The term "control," including the terms "controlling," "controlled by" and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities by contract or otherwise.

F. Issuer. The term "issuer" means the issuer of the securities in respect of which a proxy is solicited.

G. Last fiscal year. The term "last fiscal year" means the last fiscal year of the issuer ending prior to the date of the meeting for which proxies are to be solicited.

H. Officer. The term "officer" means the president, secretary, treasurer, any vice president in charge of a principal business function such as sales, administration or finance and any other person who performs similar policy-making functions for the insurer.

I. Parent. A "parent" of a specified person is an affiliate controlling the person directly, or indirectly through one or more intermediaries.

J. Person. The term "person" means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or government or political subdivision thereof. As used in this paragraph, the term "trust" includes only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

K. Proxy statement. The term "proxy statement" means the statement required by 4 MCAR § 1.9258, whether or not contained in a single document.

L. Solicitation. The terms "solicit" and "solicitation" include:

1. any request for a proxy, whether or not accompanied by or included in a form of proxy;
2. any request to execute, not to execute or revoke a proxy; or
3. the furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy. The terms do not apply to the furnishing of a form of proxy to a security holder upon the unsolicited request of the security holder, the performance by the issuer of acts required by 4 MCAR § 1.9262, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

4 MCAR § 1.9257 Solicitations to which rules apply. Rule 4 MCAR § 1.9264 applies to every solicitation that is subject to 4 MCAR § 1.9255. Rules 4 MCAR §§ 1.9256-1.9263 and 1.9265 apply to every solicitation that is subject to 4 MCAR § 1.9255 except the following:

A. any solicitation made otherwise than on behalf of the issuer where the total number of persons solicited is not more than ten;

B. any solicitation by a person in respect of securities carried in his name or in the name of his nominee, otherwise than as voting trustee, or held in his custody, if the person:

1. receives no commission or remuneration for the solicitation, directly or indirectly, other than reimbursement of reasonable expenses;
2. furnishes promptly to the person solicited a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who shall furnish copies thereof for this purpose and who shall, if requested, defray the reasonable expenses to be incurred in forwarding the material; and
3. does no more than impartially instruct the person solicited to forward a proxy to the person, if any, to whom the

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person solicited desires to give a proxy, or impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date;

C. any solicitation by a person in respect of securities of which it is the beneficial owner;

D. any solicitation through the medium of a newspaper advertisement which informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy and any other soliciting material and does no more than name the issuer, state the reason for the advertisement, and identify the proposal or proposals to be acted upon by security holders; or

E. any solicitation which the commissioner finds for good cause should be exempted from this rule or any part thereof.

~~Ins 33~~ 4 MCAR § 1.9258 Information to be furnished to security holders.

~~(a)~~ A. Proxy statement. No solicitation subject to ~~these regulations~~ 4 MCAR §§ 1.9255-1.9269 shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in ~~Minn. Reg. Ins 41~~ 4 MCAR § 1.9267 (Schedule A).

~~(b)~~ B. Annual report. If the solicitation is made on behalf of the ~~management of the insurer~~ issuer and relates to an annual meeting of security holders at which directors are to be elected, each proxy statement furnished pursuant to ~~section (a) of this regulation~~ A. shall be accompanied or preceded by an annual report ~~(in preliminary or final form) to such security holders containing such financial statements for the last fiscal year as are referred to in Schedule SIS, Stockholder Information Supplement, as promulgated by the National Association of Insurance Commissioners, under the heading "Financial Reporting to Stockholders."~~ Subject to the foregoing requirements with respect to financial statements, the annual report to security holders may be in any form deemed suitable by the management. The report shall comply with the requirements of 1.-7.

1. The report shall contain in comparative columnar form such financial statements for the last two fiscal years, prepared on a consistent basis, as will in the opinion of the management adequately reflect the financial position of the issuer at the end of each year and the results of its operations for each year. Consolidated financial statements of the issuer and its subsidiaries shall be included in the report if they are necessary to reflect the financial position and results of operations of the issuer and its subsidiaries, but in that case the individual statements of the issuer may be omitted. The commissioner shall, upon the request of the issuer, permit the omission of financial statements for the earlier of the two fiscal years upon a showing of good cause.

2. The financial statements for the last two fiscal years required by 1. shall be prepared in a manner acceptable to the commissioner.

3. The report shall include in comparative columnar form a summary of issuer's operations or the operations of the issuer and its subsidiaries consolidated, or both as appropriate, for each of the last five fiscal years of the issuer, or the life of the issuer and its predecessors if less.

4. The report shall contain a brief description of the business or businesses done by the issuer and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the issuer and its subsidiaries.

5. The report shall identify each of the issuer's directors and officers and shall indicate the principal occupation or employment of each of them and the name and principal business of any organization by which they are employed.

6. The report shall identify the principal market in which securities of any class entitled to vote at the meeting are traded, stating the range of bid and asked quotations for each quarterly period during the issuer's two most recent fiscal years, and shall set forth each dividend paid during the two-year period.

7. Subject to the requirements of 1.-6., the report may be in any form deemed suitable by management and the information required by 3.-6. may be presented in an appendix or other separate section of the report if the attention of security holders is called to this presentation. The requirement of B. shall not apply to solicitations made on behalf of the management before the financial statements are available if solicitation is being made at the time in opposition to the management and if the management's proxy statement includes an undertaking in bold face type to furnish the annual report to all persons being solicited at least 20 days before the date of the meeting.

~~(c)~~ C. Information to commissioner. Two copies of ~~each~~ the report sent to the security holders pursuant to ~~this regulation~~ 4 MCAR §§ 1.9255-1.9269 shall be mailed to the commissioner solely for his information not later than the date on which ~~such~~ the report is first sent or given to security holders or the date on which preliminary copies of solicitation material are filed with the commissioner pursuant to ~~Minn. Reg. Ins 36(a)~~ 4 MCAR § 1.9261, whichever date is later.

~~(d) If no solicitation is being made by management of the insurer with respect to any annual or other meeting, such insurer shall mail to every security holder of record at least twenty days prior to the meeting date, an information statement as required by Minn. Reg. Ins 31, containing the information called for by all of the Items of Schedule A, other than Items 1, 3 and 4 thereof, which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting. If such information statement relates to an annual meeting at which directors are to be elected, it shall be accompanied by an annual report to such security holders in the form provided in section (b) of this regulation.~~

D. Information to beneficial owners. If the issuer knows that securities of any class entitled to vote at a meeting with respect to which the issuer intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, bank or voting trustee, or their nominees, the issuer shall require of the record holder at least ten days prior to the record date for the meeting of security holders whether other persons are the beneficial owners of the securities and, if so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply the material to beneficial owners. The issuer shall supply the record holder in a timely manner with additional copies in the quantities, assembled in the form and at the place, the record holder reasonably requests in order to address and send one copy of each to each beneficial owner of securities so held. The issuer shall pay, upon the request of the record holder, its reasonable expenses for mailing the material to security holders to whom the material is sent.

~~Ins 35-4 MCAR § 1.9259 Proxy requirements as to proxy and information statement.~~

~~(a) A. Form.~~ The form of proxy ~~(1)~~ shall:

1. Indicate in boldface type whether or not the proxy is solicited on behalf of the ~~management~~, ~~(2)~~ shall issuer's board of directors and not by whom it is issued;

2. Provide a specifically designated blank space for dating the proxy; and

~~(3) shall~~ 3. Identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the ~~management~~ issuers or security holders. No reference need be made to proposals as to which discretionary authority is conferred pursuant to ~~section (e) of this regulation~~ C.

~~(b) B. Ballots.~~ Means shall be provided in the proxy for the person solicited to specify by ballot a choice between approval or disapproval of, or abstention with respect to, each matter or group of related matters referred to ~~therein in it~~, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not ~~so~~ specified in the form of proxy states in boldface type how it is intended to vote the shares ~~or authorization~~ represented by the proxy in each ~~such~~ case.

~~(c) C. Authority to vote in elections.~~ A form of proxy which provides both for ~~elections to office~~ election of directors and for action on other specified matters shall be prepared so as ~~to clearly to~~ provide, by a box or otherwise, means by which the security holder may withhold authority to vote for ~~elections to office~~ election as a director. Any ~~such~~ form of proxy which is executed by the security holder in ~~such this manner so~~ as not to withhold authority to vote for ~~elections to office~~ of all nominees shall be deemed to grant ~~such this authority~~ for all nominees for which a vote is not withheld, provided if the form of proxy so states this in boldface type.

~~(d) D. Discretionary authority conferred.~~ A proxy may confer discretionary authority with respect to ~~other matters which may come before the meeting, provided the persons on whose behalf the solicitation is made are not aware a reasonable time prior to the time the solicitation is made that any other matters are to be presented for action at the meeting and provided further that a specific statement to that effect is made in the proxy statement or in the form of proxy.~~ any of the following matters:

1. matters to be presented at the meeting but not known by the person making the solicitation within a reasonable time before the solicitation if a specific statement to that effect is made in the proxy statement or form of proxy;

2. approval of the minutes of the prior meeting if approval does not amount to ratification of the action taken at that meeting;

3. the election of any person to any office for which a bona fide nominee is named in the proxy statement and the nominee is unable to serve or for good cause will not serve;

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PROPOSED RULES

4. any proposal omitted from the proxy statement and form of proxy pursuant to 4 MCAR §§ 1.9263 C. or 1.9264; or
5. matters incident to the conduct of the meeting.

(e) E. Authority not conferred. No proxy shall confer authority (†) to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (‡) to vote at any annual meeting, other than the next annual meeting (or any adjournment thereof), to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders. A person is not a bona fide nominee unless he has consented to being named in the proxy statement and to serve if elected.

F. Voting. The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the securities represented by the proxy will be voted and that where the person solicited specifies by means of ballot provided pursuant to section (b) and (c) of this regulation B. and C. a choice with respect to any matter to be acted upon, the ~~vote~~ securities will be voted in accordance with the specifications ~~so made~~.

~~(g) The information included in the information statement or proxy statement shall be clearly presented, and the statements made shall be divided into groups according to subject matter, with appropriate headings. All printed information statements or proxy statements shall be clearly and legibly presented.~~

4 MCAR § 1.9260 Presentation of information in proxy statement.

A. Organization. The information included in the proxy statement shall be clearly presented and divided into groups according to subject matter. The various groups of information shall be preceded by appropriate headings.

B. Disclosure of deadline for inclusion of proposal in proxy statement. All proxy statements shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting must be received by the issuer for inclusion in the issuer's proxy statement and form of proxy relating to that meeting. The date shall be calculated in accordance with the provisions of 4 MCAR § 1.9263 A. If the date of the next annual meeting is subsequently advanced by more than 30 calendar days or delayed by more than 90 calendar days from the date of the annual meeting to which the proxy statement relates, the issuer shall, in a timely manner, notify security holders of the change, and the date by which proposals of security holders must be received.

~~Ins 36~~ 4 MCAR § 1.9261 Material required to be filed.

~~(a)~~ A. Preliminary soliciting material. Two preliminary copies of the information statement or the proxy statement, form of proxy, and any other soliciting material to be furnished to security holders concurrently ~~therewith~~ with it, or the information statement pursuant to 4 MCAR § 1.9269, shall be filed with the commissioner at least ten days prior to the date definitive copies of ~~such~~ the material are first sent or given to security holders, or ~~such~~ a shorter period prior to that date ~~as the commissioner may authorize~~ authorizes upon a showing of good cause ~~therefor~~.

~~(b)~~ B. Additional preliminary soliciting material. Two preliminary copies of any additional soliciting material, relating to the same meeting or subject matter, to be furnished to security holders subsequent to the proxy statement shall be filed with the commissioner at least two days ~~(, exclusive of Saturdays, Sundays or and holidays),~~ prior to the date copies of ~~such~~ this material are first sent or given to security holders, or ~~such~~ a shorter period prior to that date ~~as the commissioner may authorize~~ authorizes upon a showing of good cause ~~therefor~~.

~~(c)~~ C. Soliciting material. Two definitive copies of the information statement or the proxy statement, form of proxy, and all other soliciting material, in the form in which ~~such~~ the material is furnished to security holders, shall be filed with, or mailed for filing to, the commissioner not later than the date ~~such~~ the material is first sent or given to ~~the~~ any security holders.

~~(d)~~ D. Revised material. Where ~~any information statement or the~~ proxy statement, form of proxy, or other material filed pursuant to this ~~regulation~~ rule is amended or revised, ~~two one~~ of the copies of the amended or revised material filed pursuant to this rule shall be marked to indicate clearly show such and precisely the changes made.

~~(e)~~ E. Information that need not be filed. Copies of replies to inquiries from security holders requesting further information and copies of communications which do no more than request that forms or proxy ~~theretofore~~ previously solicited be signed and returned need not be filed pursuant to ~~this regulation~~ 4 MCAR §§ 1.9255-1.9269.

~~(f)~~ F. Discretionary filings. Notwithstanding the provisions of ~~sections (a) and (b) of this regulation A., B. and of section (c) of Minn. Reg. Ins 40~~ 4 MCAR § 1.9266 E., preliminary copies of soliciting material in the form of speeches, press releases, and radio or television scripts may, ~~but need not,~~ be filed with the commissioner prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the commissioner as required by ~~section (c) of this regulation~~ C. not later than the date ~~such~~ the material is used or published. The provisions of ~~sections (a) and (b) of this regulation A., B. and of section (c)~~

of Minn. Reg. Ins 40 shall 4 MCAR § 1.9266 E. apply, however, to any reprints or reproductions of all or any part of such this material.

4 MCAR § 1.9262 Mailing communications for security holders.

A. Duties of issuer. If the management of the issuer has made or intends to make any solicitation subject to this rule, the issuer shall perform any of the acts in B. and C. requested in writing with respect to the same subject matter or meeting by any security holder who is entitled to vote at least one percent of the votes entitled to be voted on the matter and who defrays the reasonable expenses incurred by the issuer in the performance of the act or acts requested.

B. Information required. The issuer shall mail or otherwise furnish to the security holder, as promptly as practicable after the receipt of the request:

1. a statement of the approximate number of record owners and, to the extent known to the issuer, the approximate number of beneficial owners of any class of securities, any of whom have been or are to be solicited on behalf of the management, or any group of whom the security holder shall designate; and

2. an estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to the owners.

C. Material furnished by security holder.

1. Copies of any proxy statement, form of proxy and other communication furnished by the security holder shall be mailed by the issuer to the security owners specified in B.1. the security holder designates.

2. The material furnished by the security holder shall be mailed with reasonable promptness after receipt of the material to be mailed, the envelopes or other containers therefor, and postage or payment for postage. The issuer need not mail any material prior to the first day on which solicitation is made on behalf of the issuer.

3. The issuer shall not be responsible for the proxy statement, form of proxy or other communication.

D. Alternative compliance. In lieu of performing the acts specified in B. and C., the issuer may furnish promptly to the security holder a reasonably current list of the names and addresses of any of the record owners and, to the extent known to the issuer, the beneficial owners the security holder designates along with a schedule of the handling and mailing costs if the schedule has been supplied to the issuer.

4 MCAR § 1.9263 Proposals of security holders.

A. Inclusion in proxy statement and form of proxy. If any holder of the securities of an issuer, hereafter referred to as the "proponent," notifies the issuer in writing not less than 90 days before the issuer's annual meeting of his intention to present a lawful proposal for action at a forthcoming meeting of the issuer's security holders and at the time of the notice the proponent is entitled to vote at least one percent of the votes entitled to be voted on the proposal, the issuer shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide for the specification of approval or disapproval of the proposal. The proxy statement shall also include the name and address of the proponent.

B. Statement of support. If the issuer opposes any proposal received from a proponent, it shall, at the request of the proponent, include in its proxy statement a statement of the proponent of not more than 200 words in support of the proposal.

C. Omissions. The issuer may omit a proposal and any statement in support of it from its proxy statement and form of proxy under any of the following circumstances:

1. the proponent has submitted more than one proposal in connection with a particular meeting;

2. the proposal is more than 300 words in length;

3. the proposal or the supporting statement is contrary to any provision of this rule or the schedules hereto, including 4 MCAR § 1.9264 which prohibits false or misleading statements in proxy soliciting materials;

4. the proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the issuer, its management, or any other person;

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5. the proposal deals with a matter not significantly related to the issuer's business, a matter beyond the issuer's power to effectuate, a matter relating to the conduct of the ordinary business operations of the issuer, or an election to office;

6. the proposal is counter to a proposal to be submitted by the issuer at the meeting, the proposal has been rendered moot, or the proposal relates to specific amounts of cash or stock dividends;

7. the proposal is substantially duplicative of a proposal previously submitted to the issuer by another proponent, which proposal will be included in the management's proxy material for the meeting; or

8. substantially the same proposal has previously been submitted to security holders in the issuer's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding five calendar years and received less than five percent of the total number of votes cast in respect thereof at the time of its most recent submission.

D. Notice of omission. If the issuer intends to omit any proposal from its proxy statement or forms of proxy, it shall notify the proponent in writing of its intention at least ten days before the issuer's preliminary proxy material is filed pursuant to 4 MCAR § 1.9261 A.

~~Ins 38~~ 4 MCAR § 1.9264 False or misleading statements. No proxy statement, form of proxy, notice of meeting, information statement, or other communication, written or oral, subject to ~~these regulations~~ 4 MCAR §§ 1.9255-1.9269 shall contain any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements ~~therein~~ in it not false or misleading or necessary to correct any statement in any earlier communication with respect to the same meeting or subject matter which has become false or misleading.

~~Ins 39~~ 4 MCAR § 1.9265 Prohibition of certain solicitations. No person making a solicitation which is subject to this ~~regulation~~ rule shall solicit any undated or postdated proxy or any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder.

~~Ins 40~~ 4 MCAR § 1.9266 Special provisions applicable to election contests.

(a) A. Applicability. This ~~regulation shall apply~~ rule applies to any solicitation subject to ~~these regulations~~ 4 MCAR §§ 1.9255-1.9269 by any person or group for the purpose of opposing a solicitation subject to 4 MCAR §§ 1.9255-1.9269 by any other person or group with respect to the election or removal of directors at any annual or special meeting of security holders.

(b) B. Participant or participant in a solicitation.

(1) 1. For purposes of this ~~regulation rule~~ rule the terms "participant" and "participant in a solicitation" include: (A) the ~~insurer~~ issuer; (B) any director of the ~~insurer~~ issuer, and any nominee for whose election as a director proxies are solicited; (C) ~~or any other person, acting alone, or with one or more other persons, committees, or groups, in organizing, directing or financing the solicitation.~~

(2) 2. For the purpose of this ~~regulation rule~~ rule the terms "participant" and "participant in a solicitation" do not include: (A) a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; (B) any person or organization retained or employed by a participant to solicit security holders, or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties; (C) any person employed in the capacity of attorney, accountant, or advertising, public relations or financial advisor, and whose activities are limited to the performance of his duties in the course of such that employment; (D) any person regularly employed as an officer or employee of the ~~insurer~~ issuer, or any of its subsidiaries or affiliates who is not otherwise a participant; or (E) any officer or director of, or any person regularly employed by, any other participant, if such the officer, director, or employee is not otherwise a participant.

(c) C. Filing of information required by Schedule B.

(1) 1. No solicitation subject to this ~~regulation rule~~ rule shall be made by any person other than the ~~management of an insurer~~ management of an issuer unless at least five business days prior ~~thereto~~ to it, or such any shorter period as the commissioner ~~may authorize~~ authorizes upon a showing of good cause ~~therefor~~, there has been filed with the commissioner, by or on behalf of each participant in such the solicitation, a statement in duplicate containing the information specified in ~~Minn. Reg. Ins 42~~ 4 MCAR § 1.9268 (Schedule B) and a copy of any material proposed to be distributed to security holders in furtherance of such the solicitation. ~~Where preliminary copies of any materials are filed, distribution to security holders should be deferred until the Commissioner's comments have been received and complied with.~~

(2) 2. Within five business days after a solicitation subject to this ~~regulation rule~~ rule is made by the ~~management of an insurer~~ management of an issuer, or such any longer period as the commissioner ~~may authorize~~ authorizes upon a showing of good cause ~~therefor~~,

there shall be filed with the commissioner by or on behalf of each participant in ~~such~~ the solicitation, other than the ~~insurer~~ issuer, a statement in duplicate containing the information specified in ~~Schedule B~~ 4 MCAR § 1.9268.

~~(3)~~ 3. If any solicitation on behalf of ~~management~~ the issuer or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to ~~this section C.~~ this section C. in opposition ~~thereto~~ to it, a statement in duplicate containing the information specified in ~~Schedule B~~ 4 MCAR § 1.9268 shall be filed with the commissioner by or on behalf of each participant in ~~such~~ the prior solicitation, other than the ~~insurer~~ issuer, as soon as reasonably practicable after the commencement of the solicitation in opposition ~~thereto~~ to it.

~~(4)~~ 4. If, subsequent to the filing of the statements required by ~~subsections (1), (2) and (3) of this section 1.-3.,~~ subsections (1), (2) and (3) of this section 1.-3., additional persons become participants in a solicitation subject to this ~~regulation~~ rule, there shall be filed with the commissioner, by or on behalf of each ~~such~~ such person, a statement in duplicate containing the information specified in ~~Schedule B~~ 4 MCAR § 1.9268, within three business days after ~~such~~ such the person becomes a participant, or ~~such~~ any longer period as the commissioner ~~may authorize~~ authorizes upon a showing of good cause ~~therefor~~.

~~(5)~~ 5. If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to ~~such~~ the statement shall be filed promptly with the commissioner.

~~(6)~~ 6. Each statement and amendment ~~thereto~~ to it filed pursuant to ~~this section C.~~ this section C. shall be part of the public files of the commissioner.

~~(d)~~ D. Solicitations prior to furnishing required written proxy statement. Notwithstanding the provisions of ~~Minn. Reg. Ins 33 (a) 4 MCAR § 1.9258 A.,~~ a solicitation subject to this ~~regulation~~ rule may be made prior to furnishing security holders a written proxy statement containing the information specified in ~~Minn. Reg. Ins 41 4 MCAR § 1.9267 (Schedule A) with respect to such the solicitation; provided that if:~~

~~(1)~~ 1. the statements required by ~~section (e) of this regulation E.~~ section E. are filed by or on behalf of each participant in ~~such the~~ the solicitation;

~~(2)~~ 2. no form of proxy is furnished to security holders prior to the time the written proxy statement required by ~~Minn. Reg. Ins 33(a) 4 MCAR § 1.9258 A.~~ is furnished ~~such~~ to those persons; provided, however, that. This subsection (2) shall paragraph does not apply where a proxy statement then meeting the requirements of ~~Minn. Reg. Ins 41 4 MCAR § 1.9267 (Schedule A) has been furnished to security holders;~~

~~(3)~~ 3. at least the information specified in ~~Items 2(a) and 3(a) of Schedule B~~ C.2. and 3. of the statements required by C. to be filed by each participant, or an appropriate summary thereof, is included in each communication sent or given to security holders in connection with the solicitation;

~~(4)~~ 4. a written proxy statement containing the information specified in ~~Minn. Reg. Ins 41 4 MCAR § 1.9267 (Schedule A) with respect to a solicitation is sent or given security holders at the earliest practicable date.~~

~~(e)~~ E. Filing requirements of solicitations prior to furnishing required written proxy statement ~~filing requirements.~~ Two copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by ~~Minn. Reg. Ins 33(a) 4 MCAR § 1.9258 A.~~ shall be filed with the commissioner in preliminary form at least five business days prior to the date definitive copies of ~~such the~~ such the material are first sent or given to ~~such these~~ such these persons, or ~~such any~~ any shorter period as the commissioner ~~may authorize~~ authorizes upon a showing of good cause ~~therefor~~.

~~(f)~~ F. Application of ~~this Section E.~~ to annual report. Notwithstanding the provisions of ~~Minn. Reg. Ins 33(b) and (e) 4 MCAR § 1.9258 B.,~~ two copies of any portion of the annual report referred to in ~~Minn. Reg. Ins 33(b) 4 MCAR § 1.9258 B.~~ which comments upon or refers to any solicitation subject to this ~~regulation~~ rule, or to any participant in any such solicitation, other than the solicitation by the management, shall be filed with the commissioner as proxy material subject to ~~these regulations 4 MCAR §§ 1.9255-1.9269. Such~~ This portion of the report shall be filed with the commissioner in preliminary form at least five business days prior to the date copies of the report are first sent or given to security holders.

~~Ins 41 4 MCAR § 1.9267 Schedule A;~~ information required in proxy statement.

A. Requirement. The proxy statement shall contain the information required by B.-V.

~~Item 1-~~ B. Revocability of proxy. State whether or not the person giving the proxy has the power to revoke it. If the right of

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revocation before the proxy is exercised is limited or is subject to compliance with any formal procedure, briefly describe ~~such~~ the limitation or procedure.

~~Item 2-~~ C. Dissenters' right of appraisal. Outline briefly ~~the any~~ rights of appraisal or similar rights of dissenting security holders with respect to any matter to be acted upon and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect ~~such~~ these rights. Where ~~such~~ these rights may be exercised only within a limited time after the date of the adoption of a proposal, the filing of a charter amendment, or other similar act, state whether the person solicited will be notified of ~~such~~ the date.

~~Item 3-~~ D. Persons making solicitations.

1. Paragraphs a.-b. apply to solicitations not subject to 4 MCAR § 1.9266.

~~(a)~~ a. If the solicitation is made by the ~~management of the insurer~~ issuer, so state. Give the name of any director of the ~~insurer~~ issuer who has informed the ~~management~~ issuer in writing that he intends to oppose any action intended to be taken by the ~~management~~ issuer and indicate the action which he intends to oppose.

~~(b)~~ b. If the solicitation is made otherwise than by the ~~management of the insurer~~ issuer, ~~so state and give~~ the names and addresses of the persons by whom and on whose behalf it is made ~~and the names and addresses of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.~~

~~(c)~~ c. If the solicitation is to be made otherwise than by use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state ~~(1)~~ the material features of any contract or arrangement for ~~such~~ the solicitation and identify the parties, and ~~(2)~~ the cost or anticipated cost ~~thereof~~ of it.

d. State the name of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.

2. Paragraphs a.-f. apply to solicitations subject to 4 MCAR § 1.9266.

a. State by whom the solicitation is made and describe the methods employed and to be employed to solicit security holders.

b. If regular employees of the issuer or any other participant in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed and the manner and nature of their employment for this purpose.

c. If specially engaged employees, representatives or other persons have been or are to be employed to solicit security holders, state the material features of any contract or arrangement for the solicitation and identify the parties, the cost or anticipated cost of it, and the approximate number of the employees or employees of any other person and the name of the other person who will solicit security holders.

d. State the total amount estimated to be spent and the total expenditures to date for or in connection with the solicitation of security holders.

e. State who will bear the cost of the solicitation. If reimbursement will be sought from the issuer, state whether the question of the reimbursement will be submitted to a vote of security holders.

f. If the solicitation is terminated pursuant to a settlement between the issuer and any other participant in the solicitation, describe the terms of the settlement, including the cost or anticipated cost of it to the issuer.

~~Item 4-~~ E. Interest of certain persons in matters to be acted upon.

1. For solicitations not subject to 4 MCAR § 1.9266, describe briefly any substantial interest, either direct or indirect, ~~by security holdings or otherwise, of any director, nominee for election for director, officer and, if the solicitation is made otherwise than on behalf of management, each person on whose behalf the solicitation is made~~ of each of the following persons, in any matter to be acted upon other than elections to office;

a. if the solicitation is made on behalf of the issuer, each current director or officer of the issuer;

b. if the solicitation is not made on behalf of the issuer, any person who would be a participant in a solicitation, except the issuer, or an officer, director, or nominee of the issuer;

c. each nominee for election as a director of the issuer; and

d. each associate of the foregoing persons.

2. For solicitations subject to 4 MCAR § 1.9266, describe briefly any substantial interest, either direct or indirect, of

each participant, except the issuer in any matter to be acted upon at the meeting, and include with respect to each participant the information or an adequate summary thereof, required by 4 MCAR § 1.9268 C.1., C.4., D., E.2., and E.3.

Item 5. F. Voting securities and principal holders of them.

(a) 1. State, as to each class of voting securities of the insurer entitled to be voted at the meeting, the number of shares outstanding and the number of votes to which each class is entitled.

(b) 2. Give the date as of which the record list of security holders entitled to vote at the meeting will be determined. If the right to vote is not limited to security holders of record on that date, indicate the conditions under which other security holders may be entitled to vote.

(c) 3. If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights:

- a. make a statement that they have such these rights and;
- b. describe the rights;
- c. state briefly the conditions precedent to the exercise thereof of them and;
- d. if discretionary authority to cumulate votes is solicited, so indicate.

4. Furnish the following information as of the most recent practicable date, in substantially the tabular form indicated, with respect to any person or group of persons who is known to be the beneficial owner of more than five percent of any class of securities; and all directors and nominees, naming them, and directors and officers of the issuer as a group, without naming them:

<u>1</u> <u>Title of</u> <u>Class</u>	<u>2</u> <u>Name of</u> <u>Beneficial</u> <u>Owner</u>	<u>3</u> <u>Amount and</u> <u>Nature of</u> <u>Beneficial</u> <u>Ownership</u>	<u>4</u> <u>Percent of</u> <u>Class</u>
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5. If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the issuer has occurred since the beginning of its last fiscal year, state the following: the name of the person who acquired control; the amount and the source of the consideration used by the person; the basis of the control; the date and a description of the transaction which resulted in the change of control and the percentage of voting securities of the issuer now beneficially owned directly or indirectly by the person who acquired control; and the identity of the person from whom control was assumed. Describe any arrangements which may at a subsequent date result in a change of control of the issuer.

Item 6. Nominees and G. Directors and executive officers. If action is to be taken with respect to the election of directors, furnish the following information required by I.-11., in tabular form to the extent practicable, with respect to each person nominated for election as a director and each other person whose term of office as a director will continue after the meeting. If the solicitation is made on behalf of persons other than the issuer, the information required need be furnished only as to nominees of the persons making the solicitations.

(a) Name each such person, state when his term of office or the term of office for which he is a nominee will expire, and all other positions and offices with the insurer presently held by him, and indicate which persons are nominees for election as directors at the meeting.

(b) State his present principal occupation or employment and give the name and principal business of any corporation or other organization in which such employment is carried on. Furnish similar information as to all of his principal occupations or employments during the last five years, unless he is now a director and was elected to his present term of office by a vote of security holders at a meeting for which proxies were solicited under this regulation.

(c) If he is or has previously been a director of the insurer, state the period or periods during which he has served as such.

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(d) State, as of the most recent practicable date, the approximate amount of each class of equity securities of the insurer or any of its parents, subsidiaries or affiliates, other than directors' qualifying shares, beneficially owned directly or indirectly by him. If he is not the beneficial owner of any such securities, make a statement to that effect.

1. List the names and ages of all directors and officers of the issuer and all persons nominated or chosen to become directors or officers; indicate all positions and offices with the issuer held by each person; state his term of office as director or officer and any period during which he has served as officer or director; briefly describe any arrangement or understanding between him and any other person pursuant to which he was or is to be selected as a director, officer, or nominee, and name this person.

The information regarding officers need not be furnished in proxy or information statements if the information is furnished in a separate item in the issuer's annual report to stockholders.

2. State the nature of any family relationship not more remote than first cousin between any director, officer, or person nominated or chosen by the issuer to become a director or officer and also any similar family relationship between the person and any officer or director of any of the issuer's parents, subsidiaries or other affiliates.

3. State the principal occupations and employment during the past five years of each director and each person nominated or chosen to become a director or officer and the name and principal business of any corporation or other organization in which the occupations and employment were carried on.

4. Indicate other directorships held by each director or person nominated or chosen to become a director.

5. Describe any legal proceedings which have occurred during the past five years or which are pending which are material to an evaluation of the ability or integrity of any director or person nominated to become a director or officer of the issuer.

6. Describe any of the following relationships which exist:

a. if the nominee or director is, or has within the last two full fiscal years been, an officer, director or employee of, or owns, or has within the last two full fiscal years owned, directly or indirectly, in excess of a one percent equity interest in any firm, corporation or other business or professional entity:

(1) which has made payments to the issuer or its subsidiaries during the issuer's last full fiscal year or which proposes to make payments to the issuer or its subsidiaries during the current fiscal year in excess of one percent of the issuer's consolidated gross revenues for its last full fiscal year;

(2) to which the issuer or its subsidiaries were indebted at any time during the issuer's last fiscal year in an aggregate amount in excess of one percent of the issuer's total consolidated assets at the end of the fiscal year;

(3) to which the issuer or its subsidiaries have made payments during the entity's last fiscal year or to which the issuer or its subsidiaries propose to make payments during the entity's current fiscal year in excess of one percent of the entity's consolidated gross revenues for its last full fiscal year;

(4) in order to determine whether payments made or proposed to be made exceed one percent of the consolidated gross revenues of any entity other than the issuer for the entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director;

(5) in calculating payments for property and services the following may be excluded:

(a) payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a public utility at rates or charges fixed in conformity with law or governmental authority;

(b) payments which arise solely from the ownership of securities of the issuer and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received;

(6) in calculating indebtedness for purposes of (2), debt securities which have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association may be excluded;

b. the nominee or director is a member or employee of, or is associated with, a law firm which the issuer has retained in the last two full fiscal years or proposes to retain in the current fiscal year where fees paid or anticipated to be paid by the issuer are material to either the law firm, the issuer, or both;

c. the nominee or director is a director, partner, officer or employee of any investment banking firm which has performed services for the issuer other than as a participating underwriter in a syndicate in the last two full fiscal years or which the issuer proposes to have perform services in the current year; or

d. the nominee or director is a control person of the issuer, other than solely as a director of the issuer.

7. State whether or not the issuer has standing audit, nominating, and compensation committees of the board of directors, or committees performing similar functions. If the issuer has the committees, however designated, identify each committee member, state the number of committee meetings held by each committee during the last fiscal year and describe briefly the functions performed by the committees. If the issuer has a nominating or similar committee, state whether the committee will consider nominees recommended by shareholders and describe the procedures to be followed by shareholders in submitting these recommendations.

8. State the total number of meetings of the board of directors, including regularly scheduled and special meetings, which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of the total number of meetings of the board of directors held during the period for which he has been a director, and the total number of meetings held by all committees of the board on which he served during the periods that he served.

9. If a director has resigned or declined to stand for reelection to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the issuer on any matter relating to the issuer's operations, policies or practices, and if the director has furnished the issuer with a letter describing the disagreement and requesting that the matter be disclosed, the issuer shall state the date of resignation or declination to stand for reelection and summarize the director's description of the disagreement.

If the issuer believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

10. With respect to those classes of voting stock which participated in the election of directors at the most recent meeting at which directors were elected:

a. state the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors; and

b. disclose in tabular format, the percentage of total shares cast for and withheld from the vote for or, where applicable, cast against, each nominee, which respectively were voted for and withheld from the vote for, or voted against, the nominee. When groups of classes or series of classes vote together in the election of a director or directors, they shall be treated as a single class for the purpose of the preceding sentence.

11. Instructions.

a. Calculate the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors, referred to in 10.a. by dividing the total shares cast for and withheld from the vote for or, where applicable, voted against, the director in respect of whom the highest aggregate number of shares was cast by the total number of shares outstanding which were eligible to vote as of the record date for the meeting.

b. No information need be given in response to 10. unless, with respect to any class of voting stock or group of classes which voted together, five percent or more of the total shares cast for and withheld from the vote for or, where applicable, cast against any nominee were withheld from the vote for or cast against the nominee.

c. If an issuer elects less than the entire board of directors annually, disclosure is required as to all directors if five percent or more of the total shares cast for and withheld from the vote for or, where applicable, cast against any incumbent director were withheld from or cast against the vote for the director at the meeting at which he was most recently elected.

d. No information need be given in response to 10. if the issuer has previously furnished to its security holders a report of the results of the most recent meeting of security holders at which directors were elected which includes a description

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of each matter voted upon at the meeting and a statement of the percentage of the shares voting which were voted for and against each matter and the information which would be called for by 10. If an issuer has previously furnished these results to its security holders, this fact should be set forth in a letter accompanying the filing of preliminary proxy materials with the commissioner.

~~Item 7. H. Remuneration and Other Transactions with Management and Others~~ of directors and officers. Furnish the information reported or required in ~~Item 4 of Schedule SIS, Stockholder Information Supplement, as promulgated by the National Association of Insurance Commissioners, under the heading "Information Regarding Management and Directors"~~ required by 1.-7. if action is to be taken with respect to ~~(a) the election of directors; (b) any bonus, profit sharing or other remuneration plan, contract or arrangement in which any director, nominee for election as a director, or officer of the insurer will participate (c); any pension or retirement plan in which any such person will participate; or (d) the granting or extension to any such person of any options, warrants or rights to purchase any securities other than warrants or rights issued to security holders, as such, on a pro rata basis. If the solicitation is made on behalf of persons other than the management issuer, the information shall required need be furnished only as to Item 4-A of the aforesaid heading of Schedule SIS nominees of the persons making the solicitation and associates of the nominees.~~

1. Current remuneration. Furnish the information required in Exhibit 4 MCAR § 1.9267 H.1.b.-1., in substantially the tabular form specified, concerning all remuneration of the persons and groups in a. and b. for services in all capacities to the issuer and its subsidiaries during the issuer's last fiscal year, or, in specified instances, certain prior fiscal years.

a. Furnish the required information concerning each of the five most highly compensated officers or directors of the issuer as to whom the total remuneration required to be disclosed in Columns C1 and C2 of Exhibit 4 MCAR § 1.9267 H.1.b.-1. would exceed \$50,000, naming each person.

b. Furnish the required information concerning all officers and directors of the issuer as a group, stating the number of persons in the group without naming them.

Exhibit 4 MCAR § 1.9267 H.1.b.-1.
Current Remuneration

<u>(A)</u> <u>Name of individual or</u> <u>number of persons in</u> <u>group</u>	<u>(b)</u> <u>Capacities in which</u> <u>served</u>	<u>(C)</u> <u>Cash and cash equivalent</u> <u>forms of remuneration</u>	<u>(D)</u> <u>Aggregate of contingent</u> <u>forms of remuneration</u>
		<u>(C1)</u> <u>Salaries, fees,</u> <u>directors' fees,</u> <u>commissions, and</u> <u>bonuses</u>	<u>(C2)</u> <u>Securities or</u> <u>property,</u> <u>insurance benefits,</u> <u>reimbursement, or</u> <u>personal benefits</u>

Columns (C1), (C2) and (D) should contain with respect to each person or group of persons specified in 4 MCAR § 1.9267 H.1.a. and b. a dollar amount which reflects the total of all items of remuneration described in the heading to that column including those items set forth in the subparagraphs of that column.

COLUMN (C)

Include all cash and cash equivalent forms of remuneration received during the fiscal year and all such amounts accrued during the fiscal year which, with reasonable certainty, will be distributed or vested in the future.

COLUMN (D)

Include all contingent forms of remuneration the distribution, vesting, and measurement of which is subject to future events. Report only amounts relating to the latest fiscal year, not amounts accrued in previous periods.

COLUMN (C1)

Salaries, bonuses, fees, and commissions

COLUMN (C2)

Securities, property, insurance benefits or reimbursement, personal benefits (Perquisites)

1. All cash remuneration distributed or accrued in the form of salaries,

1. Spread between the acquisition price, if any, and fair market price of securities

1. Amount expensed for financial reporting purposes representing

commissions, bonuses and fees for services rendered.

2. Compensation earned for services performed in the latest fiscal year even if it is deferred for future payment.

3. Payments received in the latest fiscal year but earned in prior years which were deferred until the latest year, if such amounts were not shown in an earlier proxy statement or annual report to stockholders.

or property acquired under any contract, plan or arrangement.

2. Cost of any life insurance premiums, health insurance premiums and medical reimbursement plans. Premiums for nondiscriminatory plans generally available to all salaried employees are excluded.

3. Personal benefits (perquisites) not directly related to job performance, excluding benefits provided on a nondiscriminatory basis, valued on the basis of cost to the issuer of providing these benefits.

a. If unreasonable effort or expense is required to determine the amounts of personal benefits, they may be omitted if their aggregate value does not exceed \$10,000 for each officer.

b. If the amount of personal benefits exceeds ten percent of the amount of total remuneration or \$25,000, whichever is less, the amount and a brief description of the benefits must be disclosed in a footnote.

4. Vested company contributions to thrift, profit sharing, pension, stock purchase and similar plans.

non-vested contributions, payments, or accruals under any pension or retirement plans, annuities, employment contracts, deferred compensation plans including Internal Revenue Service qualified plans, unless the amount for the individual cannot be separated in which case a footnote is required indicating the percentage which contributions to the plan bear to participant's total remuneration.

2. The amount expended for financial reporting purposes under any incentive compensation plans (long-term income plans), such as stock appreciation rights, stock options, performance share plans, where payout is based on objective standards or stock value.

In subsequent years, if the corporation credits compensation expense for financial reporting purposes as a result of a decline in the value of contingent compensation, Column D may be reduced by a corresponding amount. A footnote explaining such action should be included.

3. The amount expended for financial reporting purposes for any nonvested contribution payment or accrual to stock purchase plans, profit sharing, and thrift plans whether or not they are qualified under the Internal Revenue Code.

c. The provisions of 1.a. and b. include transactions between the issuer and a third party when the primary purpose of the transaction is to furnish remuneration to the persons specified in that paragraph. Other transactions between the issuer and third parties in which persons specified in 1.a. and b. have an interest, or may realize a benefit, generally are addressed by other disclosure requirements concerning the interest of management and others in certain transactions. Paragraph 1. does not require disclosure of remuneration paid to a partnership in which any officer or director was a partner; any such transaction should be disclosed pursuant to other disclosure requirements and not as a note to the remuneration table presented pursuant to 1.

d. The issuer may provide additional disclosure through a footnote to the table, through additional columns, or otherwise, describing the components of aggregate remuneration in such greater detail as is appropriate.

2. Proposed remuneration.

a. Briefly describe all remuneration payments proposed to be made in the future pursuant to any existing plan or arrangement to the persons and groups specified in 1. As to defined benefit or actuarial plans with respect to which amounts are not included in the table, include a separate table showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications.

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b. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the issuer and which are available generally to all salaried employees.

3. Remuneration of directors. Describe any standard or special arrangements by which directors of the issuer are compensated for services as a director. State the amount of compensation.

4. Options, warrants, or rights.

a. Furnish the information required by Exhibit 4 MCAR § 1.9267 H.4.a.-1. as to all options to purchase securities from the issuer or its subsidiaries which were granted to or exercised by the persons and groups specified in 1.a. since the beginning of the issuer's last fiscal year, and as to all options held by such persons as of the latest practicable date.

Exhibit 4 MCAR § 1.9267 H.4.a.-1. shows as to certain directors and officers and as to all directors and officers as a group:

- (1) the amount of options granted since the beginning of the issuer's last full fiscal year;
- (2) the amount of shares acquired since that date through the exercise of options;
- (3) the amount of shares of the same class sold during the period; and
- (4) the amount of shares subject to all unexercised options held as of the most recent practicable date.

Exhibit 4 MCAR § 1.9267 H.4.a.-1.
Options to Purchase Securities
From Issuer or Subsidiaries

	<u>Name</u>	<u>Name</u>	<u>Name</u>	<u>All Directors and Officers as a Group</u>
<u>Title of securities</u>				
<u>Granted—19-- to date:</u>				
<u>Number of shares</u>
<u>Average per share option price</u>	\$. . . .	\$. . . .	\$. . . .	\$. . . .
<u>Exercised—19-- to date:</u>				
<u>Number of shares</u>
<u>Aggregate option price of options exercised</u>	\$. . . .	\$. . . .	\$. . . .	\$. . . .
<u>Aggregate market value of shares on date options exercised</u>	\$. . . .	\$. . . .	\$. . . .	\$. . . .
<u>Sales—19-- to date:</u>				
<u>Number of shares</u>

(Sales by directors and officers who exercised options during the month, day, and year to the date of the proxy material.)

<u>Unexercised at 19--:</u>				
<u>Number of shares</u>
<u>Average per share option price</u>	\$. . . .	\$. . . .	\$. . . .	\$. . . .

In addition, during the period employees were granted options for . . . shares at an average price per share of \$. . . .

b. Instructions.

(1) All figures in Exhibit 4 MCAR § 1.9267 H.4.a.-1. should be adjusted, where applicable, in accordance with the terms of the options to reflect stock splits and to give effect to share dividends.

(2) Other tabular presentations are acceptable if they include the necessary data. Tabular presentation may not be needed if only a very few options have been granted.

(3) (a) Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed \$10,000 for any officer or director named in answer to I., or \$40,000 for all officers and directors as a group, H. need not be answered with respect to options granted to the person or group.

(b) Where the total market value on the dates of purchase of all securities purchased through the exercise of options during the period specified does not exceed \$10,000 for any person or \$40,000 for a group, H. need not be answered with respect to options exercised by the person or group.

(c) Where the total market value as of the latest practicable date of the securities called for by all options held at that time does not exceed \$10,000 for any person or \$40,000 for a group, H. need not be answered with respect to options held as of the specified date by the person or group.

(4) The term "options" as used in 4. includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given.

(5) The extension, regranting or material amendment of options shall be deemed the granting of options within the meaning of (4).

(6) If the options relate to more than one class of securities the information shall be given separately for each class.

5. Indebtedness of management.

a. State as to each of the following persons who was indebted to the issuer or its subsidiaries at any time since the beginning of the last fiscal year of the registrant the largest aggregate amount of indebtedness outstanding at any time during that period; the nature of the indebtedness outstanding and the transaction in which it was incurred; the amount of the indebtedness outstanding as of the latest practicable date; and the rate of interest paid or charged on it:

- (1) each director or officer of the issuer;
- (2) each nominee for election as a director; and
- (3) each associate of the director, officer or nominee.

b. The requirements of 5. do not apply to:

- (1) any person whose aggregate indebtedness did not exceed \$10,000 or one percent of the issuer's total assets, whichever is less, at any time during the period specified; or
- (2) indebtedness under an insurance policy.

6. Transactions with management.

a. Describe briefly any transaction since the beginning of the issuer's last fiscal year or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming the person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of the interest:

- (1) any director or officer of the issuer;
- (2) any nominee for election as a director;
- (3) any security holder who is known to the issuer to own of record or beneficially more than ten percent of any class of the issuer's voting securities; and
- (4) any relative or spouse of any of the foregoing persons, or any relative of the spouse, who has the same home as the person or who is a director or officer of any parent or subsidiary of the issuer.

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b. Describe briefly any material legal proceedings to which the person is a party adverse to the issuer or any of its subsidiaries or has a material interest adverse to the issuer or any of its subsidiaries.

c. No information need be given in response to 6. as to any remuneration or other transaction reported in response to 1.-5., or as to any transaction with respect to which information may be omitted pursuant to those provisions.

d. No information need be given in answer to 6. as to any transaction where:

(1) the rates or charges involved in the transaction are determined by competitive bids, or at rates or charges fixed in conformity with law or governmental authority;

(2) the transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(3) the amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed \$40,000; or

(4) the interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

e. It should be noted that H. calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in the transaction by reason of the position or relationship. A person does not have a material indirect interest in a transaction within the meaning of this paragraph where:

(1) the interest arises only (a) from the person's position as a director of another corporation or organization, other than a partnership, which is a party to the transaction; or (b) from the direct or indirect ownership by the person and all other persons specified in this paragraph of less than a ten percent equity interest in another person, other than a partnership, which is a party to the transaction; or (c) from both the position and ownership;

(2) the interest arises only from the person's position as a limited partner in a partnership in which he and all other persons specified in this paragraph had an interest of less than ten percent; or

(3) the interest of the person arises solely from the holding of an equity interest, including a limited partnership interest but excluding a general partnership interest, or a creditor interest in another person which is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to the other person.

(4) Instructions.

(a) In describing any transaction involving the purchase or sale of assets by or to the issuer or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost of them to the seller. Indicate the principle followed in determining the issuer's purchase or sale price and the name of the person making the determination.

(b) Information shall be furnished in answer to H. with respect to transactions not excluded above which involve remuneration from the issuer or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of the persons arises solely from the ownership individually and in the aggregate of less than ten percent of any class of equity securities of another corporation furnishing the services to the issuer or its subsidiaries.

7. Transactions with pension or similar plans.

a. Describe briefly any transactions since the beginning of the issuer's last fiscal year, or any presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the issuer, or any of its parents or subsidiaries was or is to be a party, in which any of the persons specified in 6. or the issuer or any of its subsidiaries had or is to have a direct or indirect material interest naming the person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of the interest.

b. No information need be given in answer to 7. with respect to:

(1) payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

(2) payment of remuneration for services not in excess of five percent of the aggregate remuneration received by the specified person during the issuer's last fiscal year from the issuer and its subsidiaries; or

(3) any interest of the issuer or any of its subsidiaries which arises solely from its general interest in the success of the plan.

c. Instructions.

(1) The provisions of 6.d. shall apply to this paragraph.

(2) Without limiting the general meaning of the term "transaction" there shall be included in answer to 7. any remuneration received or any loans received or outstanding during the period, or proposed to be received.

I. Matters related to accounting. If the solicitation is made on behalf of the issuer and relates to an annual meeting of security holders at which directors are to be elected or financial statements are included, furnish the information contained in I.-5.

1. If the issuer's financial statements are not certified by independent public or certified accountants, so state.

2. If the board of directors has no audit or similar committee, so state.

3. If the issuer's financial statements are certified by independent public or certified accountants, so state and provide the following information:

a. The name of the principal accountant selected or being recommended to shareholders for election, approval or ratification for the current year. If no accountant has been elected or recommended, so state and briefly describe the reasons therefor.

b. The name of the principal accountant for the fiscal year most recently completed if different from the accountant selected or recommended for the current year or if no accountant has been elected or recommended for the current year.

c. If a change in accountants has taken place since the date of the proxy statement for the most recent annual meeting of shareholders, so state, and, if in connection with the change a material disagreement in connection with financial disclosure between the accountant and issuer has occurred, the disagreement shall be described. Prior to filing the preliminary proxy materials with the commissioner which contains or amends the description, the issuer shall furnish the description of the disagreement to any accountant with whom the disagreement has occurred. If that accountant believes that the description of the disagreement is incorrect or incomplete, he may include a brief statement, not to exceed 200 words, in the proxy statement presenting his view of the disagreement. This statement shall be submitted to the issuer within ten business days of the date the accountant receives the issuer's description.

d. The proxy statement shall indicate whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year are expected to be present at the stockholders' meeting with the opportunity to make a statement if they desire to do so and whether or not the representatives are expected to be available to respond to appropriate questions.

e. If any change in accountants has taken place since the date of the proxy statement for the most recent annual meeting of shareholders, state whether the change was recommended or approved by any audit or similar committee of the board of directors if the issuer has such a committee, or the board of directors if the issuer has no such committee.

4. For the fiscal year most recently completed, describe each professional service provided by the principal accountant and state the percentage relationship which the aggregate of the fees for all nonaudit services bear to the audit fees, and, except as provided in 5., state the percentage relationship which the fee for each nonaudit service bears to the audit fees. Indicate whether, before each professional service provided by the principal accountant was rendered, it was approved by, and the possible effect on the independence of the accountant was considered by, any audit or similar committee of the board of directors, and for any service not approved by an audit or similar committee, the board of directors.

5. Instructions.

a. For purposes of 5., all fees for services provided in connection with the audit function, including reviews of quarterly reports, may be computed as part of the audit fees. Indicate which services are reflected in the audit fees computation.

b. If the fee for any nonaudit service is less than three percent of the audit fees, the percentage relationship need not be disclosed.

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c. Each service should be specifically described. Broad general categories such as "tax matters" or "management advisory services" are not sufficiently specific.

d. Describe the circumstances and give details of any services provided by the issuer's independent accountant during the latest fiscal year that were furnished at rates or terms that were not customary.

e. Describe any existing direct or indirect understanding or agreement that places a limit on audit fees for the current or future years, including fee arrangements that provide fixed limits on fees that are not subject to reconsideration if unexpected issues involving accounting or auditing are encountered. Disclosure of fee estimates is not required.

Item 8- J. Bonus, profit sharing and other remuneration plans; pension and retirement plans. If action is to be taken with respect to any bonus, profit sharing, or other remuneration plan of the insurer or any pension or retirement plan, furnish the following information: contained in 1.-6.

(a) A brief description of 1. Describe briefly the material features of the plan; identify each class of persons who will participate therein, in it; indicate the approximate number of persons in each such class; and state the basis of such the participation.

(b) The amounts which would have been distributable under the plan during the last calendar year to (1) each person named in response to Item 7 of this schedule, (2) directors and officers as a group, and (3) to all other employees as a group, if the plan had been in effect.

(c) If the plan to be acted upon may be amended (other than by a vote of security holders) in a manner which would materially increase the cost thereof to the insurer or to materially alter the allocation of the benefits as between the groups specified in paragraph (b) of this item, the nature of such amendments should be specified.

Item 9- Pension and Retirement Plans. If action is to be taken with respect to any pension or retirement plan of the insurer, furnish the following information:

(a) A brief description of the material features of the plan, each class of persons who will participate therein, the approximate number of persons in each such class, and the basis of such participation.

(b) State (1) the approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid, and the estimated annual payments necessary to pay the total amount over such period; (2) the estimated annual payment to be made with respect to current services, and (3) the amount of such annual payments to be made for the benefit of (i) each person named in response to Item 7 of this schedule, (ii) directors and officers as a group, and (iii) all other employees as a group.

2. Furnish the information, in addition to that required by this paragraph and H., necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past five years, for (a) each director or officer named in answer to H. I. who may participate in the plan to be acted upon; (b) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (c) all employees, if employees may participate in the plan.

(c) 3. If the plan to be acted upon may can be amended (other otherwise than by a vote of security holders) in a manner which would materially stockholders to increase the cost thereof of it to the insurer issuer or materially to alter the allocation of the benefits as between the groups specified in subparagraph (b) (3) of this item, directors and officers on the one hand and employees on the other hand, state the nature of such the amendments should be specified which can be made.

4. With regard to any bonus, profit sharing or other remuneration plan on which action is to be taken, furnish the following information:

a. state separately the amounts which would have been distributable under the plan during the last fiscal year of the issuer to directors and officers, and to employees if the plan had been in effect; and

b. state the name and position with the issuer of each person specified in H. I. who will participate in the plan and the amount which each person would have received under the plan for the last fiscal year of the issuer if the plan had been in effect.

5. With regard to any pension or retirement plan on which action is to be taken furnish the following information:

a. state the approximate total amount necessary to fund the plan with respect to past services, the period over which the amount is to be paid and the estimated annual payments necessary to pay the total amount over the period; the estimated annual payment to be made with respect to current services; and the amount of the annual payments to be made for the benefit of directors, officers, and employees; and

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b. state the name and position with the issuer of each person specified in H. 1. who will be entitled to participate in the plan; the amount which would have been paid or set aside by the issuer and its subsidiaries for the benefit of the person for the last fiscal year of the issuer if the plan had been in effect; and the amount of the annual benefits estimated to be payable to the person in the event of retirement at normal retirement date.

6. Instructions.

a. If action is to be taken with respect to the amendment or modification of an existing plan, J. shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

b. The following instructions shall apply to 2.:

(1) information need only be given with respect to benefits received or set aside within the past five years;

(2) information need not be included as to payments made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits; and

(3) if action is to be taken with respect to any plan in which directors or officers may participate, the information called for by H.4. shall be furnished for the last five fiscal years of the issuer and any period subsequent to the end of the latest fiscal year, in aggregate amounts for the entire period for each person and group. If any named person, or any other director or officer, purchased securities through the exercise of options during the period, state the aggregate amount of securities of that class sold during the period by the named person and other directors and officers as a group. The information called for by this instruction is in lieu of the information since the beginning of the issuer's last fiscal year called for by H.4. If employees may participate in the plan to be acted upon, state the aggregate amount of securities called for by all options granted to employees during the five-year period and, if the options were other than "restricted" or "qualified" stock options or options granted pursuant to an "employee stock purchase plan", as these terms are defined in the Internal Revenue Code §§ 422-424, as amended through the effective date of this rule, state that fact and the weighted average option price per share. The information called for by this instruction may be furnished in the form of the table set forth in Exhibit 4 MCAR § 1.9267 H.4.a.-1.

c. If the plan to be acted upon is set forth in a written document, three copies of it shall be filed with the commissioner at the time preliminary copies of the proxy statement and form of proxy are filed.

d. The information called for by H.5.a.(3) or H.5.b.(2) need not be given as to payments made on an actuarial basis pursuant to any group pension plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

~~Item 10. K. Options, warrants or rights. If action is to be taken with respect to the granting or extension of any options, warrants or rights (all referred to herein as "warrants") to purchase securities of the insurer issuer or any subsidiary or affiliate, other than warrants issued to all security holders on a pro rata basis, furnish the following information- contained in 1.-4.~~

(a) 1. State the following:

a. the title and amount of securities called for or to be called for, by the options;

b. the prices, expiration dates, and other material conditions upon which the ~~warrants~~ options may be exercised;

c. the consideration received or to be received by the ~~insurer, issuer or subsidiary or affiliate~~ for the granting or extension of the ~~warrants, and~~ options;

d. the market value of the securities called for or to be called for by the ~~warrants, options~~ as of the latest practicable date; and

e. in the case of options, the federal income tax consequences of the issuance and exercise of the option to the recipient and to the issuer.

(b) If known, 2. State separately the amount of securities called for or to be called for by ~~warrants~~ options received or to be received by the following persons, naming each ~~such~~ person:

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~~(1)~~ a. each person director of officer named in response to Item 7 of this schedule, answer to H.1.;

b. each nominee for election as a director of the issuer;

c. each associate of the directors, officers, or nominees; and

~~(2)~~ d. each other person who will be entitled to acquire five received or is to receive ten percent or more of the securities called for or to be called for by such warrants the options received or to be received by all directors and officers of the issuer as a group, without naming them.

~~(e) If known, state also the total amount of securities called for or to be called for by such warrants received or to be received by all directors and officers of the insurer as a group and all other employees, without naming them.~~

3. In addition to that required by K. and H., furnish the information necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past five years, for each director or officer named in answer to H.1. who may participate in the plan to be acted upon; all present directors and officers of the issuer as a group, if any director or officer may participate in the plan; and all employees, if employees may participate in the plan.

4. Instructions. The provisions of a.-d. apply to k.

a. The term option includes any option, warrant or right.

b. The provisions of l. and 3. do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

c. The provisions of J.6.b. shall also apply to 3.

d. If the options described in answer to K. are issued pursuant to a plan which is set forth in a written document, three copies of it shall be filed with the commissioner at the time preliminary copies of the proxy statement and form of proxy are filed.

~~Item 11-~~ L. Authorization or issuance of securities otherwise than for exchange.

~~(a)~~ If action is to be taken with respect to the authorization or issuance of any securities otherwise than for exchange for outstanding securities of the insurer issuer, furnish the information contained in 1.-4.

1. State the title, and amount and description of the securities to be authorized or issued.

~~(b)~~ 2. If the securities are other than additional shares of common stock of a class outstanding, furnish a brief summary of the following, if applicable: dividend, voting, liquidation, preemptive, and conversion rights; redemption and sinking fund provisions; interest rate and date of maturity.

~~(c) If the securities to be authorized or issued are other than additional shares of common stock of a class outstanding, the Commissioner may require financial statements comparable to those contained in the annual report.~~

3. Describe briefly the transaction in which the securities are to be issued, including a statement as to the nature and approximate amount of consideration received or to be received by the issuer; and the approximate amount devoted to each purpose, as far as is determinable, for which the net proceeds have been or are to be used. If it is impracticable to describe the transaction in which the securities are to be issued, state the reason, indicate the purpose of the authorization of the securities and state whether further authorization for the issuance of the securities by a vote of security holders will be solicited prior to the issuance.

4. If the securities are to be issued otherwise than in a general public offering for cash, state the reasons for the proposed authorization or issuance and the general effect of it upon the rights of existing security holders.

M. Modification of or exchange of securities. If action is to be taken with respect to the modification of any class of securities of the issuer, or the issuance or authorization for issuance of securities of the issuer in exchange for outstanding securities of the issuer, furnish the information contained in 1.-5.

1. If outstanding securities are to be modified, state the title and amount of the securities. If securities are to be issued in exchange for outstanding securities, state the title and the amount of securities to be so issued, the title and the amount of outstanding securities to be exchanged, and the basis of the exchange.

2. Describe any material differences between the outstanding securities and the modified or new securities.

3. State the reasons for the proposed modification or exchange and the general effect of it upon the rights of existing security holders.

4. Furnish a brief statement as to arrears in dividends or defaults in principal or interest in respect to the outstanding securities which are to be modified or exchanged and other information appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

5. Outline briefly any other material features of the proposed modification or exchange. If the plan of proposed action is set forth in a written document, file copies of it with the commissioner at the time the preliminary proxy material is filed.

~~Item 12.~~ N. Mergers, consolidations, acquisitions and similar matters. (a) Furnish the information contained in 1.-3. of action is to be taken with respect to a merger, consolidation, acquisition, or similar matter, furnish in brief outline the following information:

~~1. The rights of appraisal or similar rights of dissenters with respect to any matters to be acted upon. Indicate any procedure required to be followed by dissenting security holders in order to perfect such rights.~~

~~2. The material features of the plan or agreement.~~

~~3. The business done by the company to be acquired or whose assets are being acquired.~~

~~4. If available, the high and low sales prices for each quarterly period within two years of each class of security which will be materially affected of the insurer and of each other company involved in the merger, consolidation or acquisition.~~

~~5. The percentage of outstanding shares which must approve the transaction before it is consummated.~~

~~b. For each company involved in a merger, consolidation or acquisition, the following financial statements should be furnished.~~

~~1. A comparative balance sheet as of the close of each of the last two fiscal years.~~

~~2. A comparative statement of operating income and expenses for each of the last two fiscal years and, as a continuation of each statement, a statement of earnings per share after related taxes and cash dividends paid per share.~~

~~(3) A pro forma combined balance sheet and income and expenses statement for the last fiscal year giving effect to the necessary adjustments with respect to the resulting company: any plan for: the merger or consolidation of the issuer into or with any other person or of any other person into or with the issuer; the acquisition by the issuer or any of its security holders of securities of another issuer; the acquisition by the issuer of any other going business or of the assets thereof; the sale or other transfer of all or any substantial part of the assets of the issuer; or the liquidation or dissolution of the issuer.~~

1. Outline briefly the material features of the plan. State the reasons for it and the general effect of it upon the rights of existing security holders. If the plan is set forth in a written document, file three copies of it with the commissioner at the time preliminary copies of the proxy statement and form of proxy are filed.

2. Furnish the information contained in a.-h. as to the issuer and each person to be merged into the issuer or into or with which the issuer is to be merged or consolidated or the business or assets of which are to be acquired or which is the issuer of securities to be acquired by the issuer in exchange for all or a substantial part of its assets or to be acquired by security holders of the issuer. What is required is information essential to an investor's appraisal of the action proposed to be taken.

a. Describe briefly the business of the person.

b. State the location and describe the general character of the plants and other important physical properties of the person. The description is to be given from an economic and business standpoint, as distinguished from a legal standpoint. Portfolio or investment assets of an issuer need not be disclosed.

c. Furnish a brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the issuer or of the person, and as to the effect of the plan thereon and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

d. Furnish a tabulation in columnar form showing the existing and the pro forma capitalization.

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e. Furnish in columnar form for each of the last five fiscal years an historical summary of earnings and show per share amounts of net earnings, dividends declared for each year and book value per share at the end of the latest period.

f. Furnish in columnar form for each of the last five fiscal years a combined pro forma summary of earnings, as appropriate in the circumstances, indicating the aggregate and per-share earnings for each year and the pro forma book value per share at the end of the latest period. If the transaction establishes a new basis of accounting for assets of any of the persons included in the accounting, the pro forma summary of earnings shall be furnished only for the most recent fiscal year and interim period and shall reflect appropriate pro forma adjustments resulting from the new basis of accounting.

g. To the extent material for the exercise of prudent judgment in regard to the matter to be acted upon, furnish the historical and pro forma earnings data specified in e. and f. for interim periods of the current and prior fiscal years, if available.

h. Instructions. The provisions of 2. shall not apply if the plan described in answer to 1. involves only the issuer and one or more of its totally-held subsidiaries.

3. As to each class of securities of the issuer, or of any person specified in 2., which is admitted to dealing on a national securities exchange or with respect to which a market otherwise exists and which will be materially affected by the plan, state the high and low sale prices, or, in the absence of trading in a particular period, the range of the bid and asked prices for each quarterly period within two years. This information may be omitted if the plan involves merely the liquidation or dissolution of the issuer.

O. Financial statements.

1. If action is to be taken with respect to any matter specified in L.-N., furnish financial statements of the issuer and its subsidiaries complying with the requirements of 4 MCAR § 1.9258 B.1.-3. including schedules of supplementary profit and loss information. The statements may be omitted with respect to a plan described in answer to N. if the plan involves only the issuer and one or more of its totally-held subsidiaries.

2. If action is to be taken with respect to any matter specified in N.2., furnish for each person specified, other than the issuer, financial statements complying with the requirements of 4 MCAR § 1.9258 B.1.-3.

3. The commissioner may, upon the request of the issuer, permit the omission of any of the statements required in O. where the statements are not necessary for the exercise of prudent judgment in regard to any matter to be acted upon, or may permit the filing in substitution therefor of appropriate statements of comparable character. The commissioner may also require the filing of other statements in addition to, or in substitution for, the statements required in O. in any case where the statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise material for the exercise of prudent judgment in regard to any matter to be acted upon. In the usual case, financial statements are deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but are not deemed material where the matter to be acted upon is in the authorization or issuance of common stock, otherwise than in an exchange, merger or consolidation, acquisition or similar transaction.

4. The proxy statement may incorporate by reference any financial statements contained in an annual report sent to security holders with respect to the same meeting as that to which the proxy statement relates, if the financial statements substantially meet the requirements of O.

P. Acquisition or disposition of property. If action is to be taken with respect to the acquisition or disposition of any property, furnish the information contained in 1.-4.

1. Describe briefly the general character and location of the property.

2. State the nature and amount of consideration to be paid or received by the issuer or any subsidiary. To the extent practicable, outline briefly the facts bearing upon the question of the fairness of the consideration.

3. State the name and address of the transferor or transferee as the case may be, and the nature of any material relationship of the person to the issuer or an affiliate of the issuer.

4. Outline briefly any other material features of the contract or transaction.

~~Item 13. Reinstatement~~ Q. Restatement of accounts. If action is to be taken with respect to the restatement of any asset, capital, or surplus account of the issuer, furnish the following information- contained in 1.-4.

~~(a)~~ 1. State the nature of the restatement and the date as of which it is to be its effective date.

~~(b)~~ 2. Outline briefly the reasons for the restatement and ~~for~~ the selection of the particular effective date.

~~(e)~~ 3. State the name and amount of each account, including any reserve accounts, affected by the restatement and the effect of the restatement ~~thereon~~ on it. Tabular presentation of the amounts shall be made when appropriate, particularly in the case of recapitalizations.

4. To the extent practicable, state whether and the extent, if any, to which the restatement will, as of the date of it, alter the amount available for distribution to the holders of equity securities.

R. Action with respect to reports. If action is to be taken with respect to any report of the issuer or of its directors, officers or committees or any minutes of meetings of its stockholders, furnish the information contained in 1. and 2.

1. State whether or not the action constitutes approval or disapproval of any of the matters referred to in the reports or minutes.

2. Identify each of the matters which it is intended will be approved or disapproved and furnish the information required by the appropriate provisions of this rule with respect to each matter.

~~Item 14.~~ S. Matters not required to be submitted. If action is to be taken with respect to any matter which is not required to be submitted to a vote of security holders, state the nature of ~~such~~ the matter, the ~~reason~~ reasons for submitting it to a vote of security holders and what action is intended to be taken by the management in the event of a negative vote on the matter ~~of~~ by the security holders.

~~Item 15.~~ T. Amendment of charter, by-laws, or other documents.

1. If action is to be taken with respect to any amendment of the ~~insurer's~~ issuer's charter, by-laws or other documents as to which information is not required ~~above~~ 4 MCAR §§ 1.9255-1.9267, state briefly the reasons for and general effect of ~~such~~ the amendment ~~and the vote needed for its approval.~~

2. Instruction. Where the matter to be acted upon is the classification of directors, state whether vacancies which occur during the year may be filled by the board of directors to serve only until the next annual meeting or may be filled for the remainder of the full term.

U. Other proposed action. If action is to be taken with respect to any matter not specifically referred to in 4 MCAR §§ 1.9255-1.9267 describe briefly the substance of each matter in substantially the same degree of detail as is required by F.-T.

V. Vote required for approval. As to each matter which is to be submitted to a vote of security holders, other than elections to office or the selection or approval of auditors, state the vote required for its approval.

~~Item 42.~~ 4 MCAR § 1.9268 Schedule B; information to be included in statements filed by or on behalf of a participant ~~(other than the insurer)~~ issuer in a proxy solicitation in an election contest.

A. Requirement. The proxy statement shall contain the information required by B.-F.

~~Item 1.~~ Insurer B. Issuer. State the name and address of the ~~insurer~~ issuer.

~~Item 2.~~ C. Identity and background.

~~(a)~~ 1. State ~~the following:~~

~~(1)~~ your name and business address-

~~(2)~~ and your present principal occupation or employment and the name, principal business and address of any corporation or other organization in which ~~such~~ this employment is carried on.

~~(b)~~ 2. State ~~the following:~~

~~(1)~~ your residence address-

~~(2)~~ and information as to all material occupations, positions, offices or employments during the last ten years, giving

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starting and ending dates of each and the name, principal business and address of any business corporation or other business organization in which each ~~such~~ occupation, position, office or employment was carried on.

~~(c)~~ 3. State whether or not you are or have been a participant in any other proxy contest involving this ~~insurer~~ company or other companies within the past ten years. If so, identify the principals, the subject matter and your relationship to the parties and the outcome.

~~(d)~~ 4. State whether or not, during the past ten years, you have been convicted in a criminal proceeding (, excluding traffic violations or similar misdemeanors), and, if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. A negative answer to this paragraph need not be included in the proxy statement or other proxy soliciting material.

~~Item 3.~~ D. Interest in securities of the ~~insurer~~ issuer.

~~(a)~~ 1. State the amount of each class of securities of the ~~insurer~~ issuer which you own beneficially, directly or indirectly.

~~(b)~~ 2. State the amount of each class of securities of the ~~insurer~~ issuer which you own of record but not beneficially.

~~(c)~~ 3. State with respect to all securities of the ~~insurer~~ issuer purchased or sold within the past two years, the dates of ~~acquisition or sale~~ on which they were purchased or sold and the amounts ~~acquired~~ purchased or sold on each date.

~~(d)~~ 4. If any part of the purchase price or market value of any of the securities specified in ~~paragraph (c) of this item 3.~~ is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding ~~such~~ the securities, so state and indicate the amount of the indebtedness as of the latest practicable date. If ~~such~~ the funds were borrowed or obtained otherwise than pursuant to a margin account or bank loan in the regular course of business of a bank, broker or dealer, briefly describe the transaction, and state the names of the parties.

~~(3)~~ 5. State whether or not you are a party to any contracts, arrangements or understandings with any person with respect to any securities of the ~~insurer~~ issuer, including ~~but not limited to~~ joint ventures, loan or option arrangements, puts or calls, guarantees against ~~loss~~ losses or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. If so, name the persons with whom ~~such~~ the contracts, arrangements, or understandings exist and give the details ~~thereof~~ of them.

~~(f)~~ 6. State the amount of securities of the ~~insurer~~ issuer owned beneficially, directly or indirectly, by each of your associates and the name and address of each ~~such~~ associate.

~~(g)~~ 7. State the amount of each class of securities of any parent, subsidiary or affiliate of the ~~insurer~~ issuer which you own beneficially, directly or indirectly.

~~Item 4.~~ E. Further matters.

~~(a)~~ 1. Describe the time and circumstances under which you became a participant in the solicitation and state the nature and extent of your activities or proposed activities as a participant.

~~(b)~~ 2. Describe briefly, and where practicable state the approximate amount of, any material interest, direct or indirect, of yourself and of each of your associates in any material transactions since the beginning of the ~~insurer's~~ company's last fiscal year, or in any material proposed transactions, to which the ~~insurer~~ company or any of its subsidiaries or affiliates was or is to be a party.

~~(c)~~ 3. State whether or not you or any of your associates have any arrangement or understanding with any person

~~(1)~~ with respect to any future employment by the ~~insurer~~ issuer or its subsidiaries or affiliates; or

~~(2)~~ with respect to any future transactions to which the ~~insurer~~ issuer or any of its subsidiaries or affiliates will or may be a party.

If so, describe ~~such~~ the arrangement or understanding and state the names of the parties ~~thereto~~ to it.

~~Item 5.~~ F. Signature. The statement shall be dated and signed in the following manner:

I certify that the statements made in this statement are true, complete, and correct, to the best of my knowledge and belief.

Date

(Signature of participant or authorized representative)

4 MCAR § 1.9269 Schedule C; information required in information statement.

A. Contents. The information statement shall contain the information required by B.-G.

B. Limitation. Where any provision other than F. calls for information with respect to any matter to be acted upon at the meeting, the provision need be answered only with respect to proposals to be made by the issuer.

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C. Information required by 4 MCAR § 1.9267. Furnish the information called for by 4 MCAR § 1.9267 except A., B., D. and E. which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting.

D. Statement that proxies are not solicited. The following statement shall be set forth on the first page of the information statement in bold face type:

“WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY.”

E. Date, time and place of meeting. State the date, time and place of the meeting of security holders, unless the information is otherwise disclosed in material furnished to security holders with the information statement.

F. Interest of certain persons in or opposition to matters to be acted upon.

1. Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

- a. each person who has been a director or officer of the issuer at any time since the beginning of the last fiscal year;
- b. each nominee for election as a director of the issuer; and
- c. each associate of the foregoing persons.

2. Give the name of any director of the issuer who has informed the management in writing that he intends to oppose any action to be taken by the management at the meeting and indicate the action which he intends to oppose.

G. Proposals by security holders. If any security holder entitled to vote at the meeting has, not less than 90 days before the issuer's annual meeting, submitted to the issuer a proposal which is accompanied by notice of his intention to present the proposal for action at the meeting, make a statement to that effect, identify the proposal and indicate the disposition proposed to be made of the proposal by the management at the meeting.

4 MCAR § 1.9270 Alternative compliance. Notwithstanding the provisions of 4 MCAR §§ 1.9255-1.9269, the commissioner may permit the solicitation of proxies, consents, or authorizations if the manner of solicitation and the form of proxy, proxy statement and other documents used in the solicitation comply with the National Association of Insurance Commissioner's Model Regulation and the Schedules thereto.

4 MCAR §§ 1.9271-1.9274 [Reserved for future use.]

Repealer. Rules Ins 32 and 34 are repealed.

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ADOPTED RULES

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

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

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

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

Department of Health Health Systems Division

Adopted Rules Implementing, Enforcing, and Administering the Minnesota Certificate of Need Act, Minn. Stat. §§ 145.832-145.845, and Repealing State Planning Agency Certificate of Need Rules, 10 MCAR §§ 1.201-1.210.

The rules proposed and published at *State Register*, Volume 5, Number 44, pages 1729-1752, May 4, 1982 (5 S.R. 1729) are now adopted with the following modifications:

Rules as Adopted

7 MCAR § 1.661 General provision.

A. Purpose.

1. These rules, 7 MCAR §§ 1.661 to 1.665, are intended to govern the implementation, enforcement and administration of the Minnesota Certificate of Need Act. The rules do not repeat provisions of the Act which are clear and complete without rules; therefore, the Act should be read with the rules. References to the Act are made in these rules in order to assist the public in cross-referencing the Act with the rules.

2. The commissioner has, within the limits of the Act, developed review procedures and criteria which involve a minimum period of time, require only essential information, and involve the least cost for the applicant, the health systems agency (HSA), and the department. These rules promote health planning cooperation by health care facilities and health systems agencies before the certificate of need review and encourage health system innovations and alternatives, as well as beneficial price competition.

B. Definitions. The definitions contained in Minn. Stat. § 145.833 apply to the terms as used in these rules. Some of the terms defined in Minn. Stat. § 145.833 are also defined in these rules in order to clarify certain sections or parts of the statutory language. Unless the context clearly requires otherwise, the following terms shall have the meanings ascribed to them:

1. "Act" means the Minnesota Certificate of Need Act, Minn. Stat. §§ 145.832 to 145.845.

2. "AIP" means annual implementation plan as defined in the Act, Minn. Stat. § 145.833, subd. 11.

3. "Application" means the submission by a person of the information required by 7 MCAR § 1.663 A. in requesting the issuance of a Certificate of Need.

4. "Capital expenditure" means any expenditure, regardless of type of financing mechanism, including gifts, donations and other philanthropic activities, utilized to purchase, acquire, renovate, remodel or substantially alter or modify real property, buildings, fixtures, equipment or a service. Whenever real property, buildings, fixtures or equipment are acquired by capitalized lease or any type of rental agreement, that capital expenditure for lease or rental agreement shall be the fair market value of the real property, buildings, fixtures or equipment at the date upon which the agreement is executed. Expenditures which, under generally accepted accounting principles, are properly chargeable as an expense of operation and maintenance are not capital expenditures. Capital expenditures include the total of all anticipated expenditures for a single undertaking with interdependent or interrelated components whether or not any individual expenditure exceeds the threshold of the Act.

5. "Category," as used in Minn. Stat. § 145.833, subd. 5(a)(2), means classification of beds within a health care facility according to licensure (such as, general hospital, psychiatric, alcoholic, nursing home, boarding care home and supervised living) or classification of beds within a health care facility according to certification status under the provisions of Title XVIII and ~~XIX~~ of the Social Security Act (such as skilled nursing care, intermediate nursing care and intermediate care for the mentally retarded and persons with related conditions) as found in 42 United States Code, Section 1395x(e), hospital; Section

1395x(f), psychiatric hospital; Section 1395x(g), tuberculosis hospital; and Section 1395x(j), skilled nursing facility; and in Title XIX of the Social Security Act in 42 United States Code, Section 1396a (a) (28), skilled nursing facility; Section 1396d(c), intermediate care facility; and Section 1396d(d), intermediate care facility for the mentally retarded.

6. "Commissioner" means the Commissioner of Health and includes any duly authorized representative of the commissioner.

7. "Construction or modification" means:

a. Any erection, building, alteration, renovation, reconstruction, conversion of any existing building, modernization, improvement, expansion, extension or other acquisition by or on behalf of a health care facility which:

(1) Requires a total capital expenditure in excess of \$150,000; or

(2) Changes the bed capacity of a health care facility by more than ten beds or more than ten percent of the facility's total licensed bed capacity, whichever is less, over a two year period following the most recent bed capacity change, in a way which:

(a) Increases the total number of beds; or

(b) Changes the distribution of beds among various categories; or

(c) Relocates beds from one physical facility or site to another;

b. Any capital expenditure in excess of \$150,000 by or on behalf of a health care facility, which is used to acquire diagnostic or therapeutic equipment. If the equipment is being updated rather than totally replaced, the capital expenditure will shall be based upon considered to be the cost of the equipment parts to be replaced, or added plus the cost of manufacturer's labor and installation, as well as any related financing costs incurred which are considered, according to generally accepted accounting principles, to be incurred;

c. Any expansion or extension of the scope or type of existing health service by a health care facility which requires a capital expenditure in excess of \$50,000 during any consecutive 12 month period for that service. Change in scope or type of existing service means the difference between the range and nature of the present service and the range and nature of the services contemplated under the proposal. An expansion or extension does not occur if there the result is solely increased efficiency of operations or increased square footage or spatial allocation. An expansion or extension shall occur if at least one of the following factors is directly associated with required by or a direct result of the proposed project:

(1) ~~An~~ A material increase in volume of services provided;

(2) The ability to perform treatments or procedures not previously performed;

(3) ~~An~~ A material increase in personnel associated with the capital expenditure;

(4) A material change in proportion of patient mix; or

(5) A material change in geographic source ~~or~~ of referrals to the facility;

d. Any establishment of a new health care facility;

e. Any reviewable predevelopment activity by or on behalf of a health care facility; or

f. Any establishment by a health care facility of a new institutional health service, other than a home health service, which is to be offered in or through that facility and which was not offered on a regular basis in or through that facility prior to the twelve months before that service ~~which~~ will be offered under the terms of the proposal.

8. "Direct patient care service" means any health service designed to provide diagnosis, treatment, nursing, preventive care, rehabilitative care or habilitative care to any person.

9. "Exemption" means the decision by the commissioner to authorize an HMO or health care facility to proceed with a project reviewable under the Act, without request for a waiver or application for a certificate of need.

10. "Evidence" means any exhibit, oral or written testimony or other data or information submitted to an HSA prior to the close of the public hearing for the purpose of affecting the determination of whether a certificate of need should be issued.

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11. "Health maintenance organization" or "HMO" means any organization which operates or proposes to operate pursuant to Minn. Stat. §§ 62D.01 to 62D.29.

12. "Hearing body" means:

- a. The governing body of an HSA;
- b. In the case of the Metropolitan Council, the Metropolitan Health Board; or
- c. For HSAs other than the Metropolitan Council, a project review committee, the membership of which ~~conforms to~~ complies with the requirements of Minn. Stat. § 145.845, clauses (2), (3), (4) and (5) and 7 MCAR § 1.661 C.2.b.(2).

13. "HSA" means health systems agency as defined in the Act, Minn. Stat. § 145.833, subd. 7.

14. "HSP" means health systems plan as defined in the Act, Minn. Stat. § 145.833, subd. 10.

15. "Institutional health service" means any health service as defined in the Act, Minn. Stat. § 145.833, subd. 3, wherever and however that health service is provided.

16. "Long range development plan" means a health care facility's written description of its present and anticipated configuration of health services which is developed in consideration of the HSP for the health care facility's health service area.

17. "On behalf of" means in the ~~interests~~ principal interest of, at the behest of, or for the principal benefit of, a health care facility ~~or other entity~~.

18. "Patient" means any person receiving care in a health care facility and is synonymous with the term "resident."

~~18.~~ 19. "Predevelopment activity" means any activity by or on behalf of a health care facility or any person which involves architectural designs, plans, working drawings, specifications, feasibility studies, surveys, site acquisitions, contractual agreements, legal services, fund-raising and any other related pursuit and which occurs with intention to embark upon a program of construction or modification.

a. "Reviewable predevelopment activity" means any predevelopment activity which occurs with intention to offer or develop a new institutional health service if:

(1) The predevelopment activity would require an expenditure in excess of \$150,000; or

(2) The predevelopment activity involves any arrangement or commitment for financing the new institutional health service.

b. "Non-reviewable predevelopment activity" means any predevelopment activity not included in ~~7 MCAR § 1.661~~ 7 MCAR § 1.661.

~~19.~~ "Patient" means any person receiving care in a health care facility and is synonymous with the term "resident."

20. "Project" means the proposed construction or modification. Project is used synonymously with proposal.

21. "Provider" means any person:

a. Whose primary occupation involves, or involved within the last 12 months previous to appointment to the HSA, provision of health services to individuals or the administration of health care facilities or other health service activities;

b. Who is, or was, within the 12 months previous to appointment to the HSA, employed by a health care facility as a health or mental health professional;

c. Who has a fiduciary interest in or position with a health care facility or other entity which has the provision of health services as its primary purpose;

d. Who has, or has had within the twelve months previous to appointment to the HSA, a material financial interest (more than one-fifth of the person's gross annual income) from any one or a combination of the following:

(1) Fees or other compensation for research into or instruction in the provision of health care;

(2) Producing or supplying drugs or other materials, articles or devices for individuals in the provision of, research into, or instruction in health care;

(3) Issuing any policy or contract of ~~individual or group~~ individual or group a health insurance company, a health service plan or a health maintenance organization;

(4) Any other material financial interest in rendering of a health service; or

e. Who is a spouse of an individual described in items a., b., c. or d. above.

22. "Recommendation of the HSA" means the report of the HSA to the commissioner which contains its recommendation as to what action should be taken with respect to judging applications if an application is complete or

incomplete, if a project is subject to review, if a waiver should be granted or if a certificate of need should be issued. The recommendation includes submission to the ~~commission~~ commissioner of all information presented by the applicant and delineation of all ~~rationale~~ rationales developed by the HSA to support its recommendation.

23. "Region" means the geographic area designated by the Secretary of the United States Department of Health and Human Services upon recommendation of the Governor to be under the jurisdiction of an HSA for the purposes of health systems planning.

24. "Requester" means a licensed medical doctor or a group of licensed medical doctors, however legally organized.

25. "State Health Plan" means the document, developed by the ~~SPA~~ Department of Energy, Planning and Development pursuant to 42 United States Code, Section 300m-3 (c)(2)(A) and (B), which addressed statewide health needs and incorporates the HSPs of all Minnesota HSAs ~~pursuant to 42 U.S.C. 300k, Section 1524(e)(2)(A and B).~~

~~26. "SPA" means the State Planning Agency established pursuant to Minn. Stat. §§ 4.10 to 4.17.~~

C. Membership of health systems agencies and their governing bodies.

1. Membership of HSA. HSAs may specify in their corporate bylaws provisions regarding eligibility for membership, categories of members and similar items.

2. Membership ~~for~~ of the HSA governing body.

a. Each HSA shall select from its membership a governing body to conduct its business and to carry out its duties and functions. The Metropolitan Council shall use its health board to advise it; ~~and may delegate any of its functions and duties to the health board and its staff.~~ The establishment of a governing body shall not prohibit any delegation of HSA duties and functions to staff except as provided in these rules. Documentation of any such delegation shall be filed with the commissioner.

b. The membership of the governing body; and the health board of the Metropolitan Council shall, in addition to complying with the requirements of Minn. Stat. § 145.845:

(1) Be chosen by election or other appropriate method approved by ~~SPA~~ the Department of Energy, Planning and Development and consistent with provisions of ~~42 U.S.C. 300k, et seq.~~ 42 United States Code, Section 3001-1 for a term of office not to exceed three years. No director may serve more than six consecutive years.

(2) Include only residents of, or individuals having their principal place of business in, the region in which the HSA has jurisdiction.

c. The membership of all HSA committees or subcommittees making recommendations to the governing board of an HSA or the Health Board of the Metropolitan Council on proposals for a certificate of need shall consist of a majority of consumers, and it shall include ~~representatives of the interests of providers.~~

D. Conflicts of interest.

1. No HSA member or other person who assists the HSA in the review of a project may participate at any level of review, formally or informally, or in discussing or voting upon any project for a certificate of need if a conflict of interest exists. Persons having a conflict of interest, however, may participate in the proceedings in the same manner as any party who is not a member of a hearing body; or the Metropolitan Council.

2. A conflict of interest exists when a person:

a. Has a direct or indirect financial interest in the applicant;

b. Has a contract or has had within the preceding twelve months a contractual, creditor or consultative relationship with the applicant;

c. Is an employee, director, trustee, officer or has another fiduciary relationship with the applicant; or

d. Is a spouse of any person ~~listed in~~ falling under a., b., or c. above.

3. A person who is a member of a hearing body or the Metropolitan Council and who has a conflict of interest shall declare it in writing to the HSA before it starts its review of the application or when it becomes apparent to him that he has such a conflict:-

4. Any person may question the HSA orally or in writing as to whether or not a conflict of interest exists in regard to any

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person involved in the review of a project on behalf of an HSA. The HSA shall determine in such case whether a conflict of interest exists. ~~Its findings shall be included in the recommendation of the HSA.~~

5. Any person who has a conflict of interest ~~as determined pursuant to 7 MCAR § 1.661 D.3. and 4.~~ shall be so identified in the recommendation of the HSA.

6. The minutes of the HSA hearing or meeting at which a project is being considered shall record a person having a conflict of interest as "absent" rather than "abstaining due to conflict of interest." Such a person shall not be counted in determining whether a quorum is present for consideration of the application being reviewed.

7. Nothing in this rule precludes any HSA from adopting bylaws or other procedures for determining conflicts of interest which are more stringent than these rules.

E. Ex parte communication.

1. "Ex parte communication" means a written or oral communication by any person as to the merits of an application which is not in a hearing record and with respect to which notice to all parties is not given. The term does not include any requests for status reports on any application, or any communication among HSAs, the SPA Department of Energy, Planning and Development and the commissioner or their staffs which relates solely to information found in a hearing record, the Act, these rules or any application or request for formal action under the Act.

2. Ex parte communication to or among the HSAs, the SPA Department of Energy, Planning and Development, the commissioner or their staffs and any other party, is prohibited, except when the communication relates to an allegation of material misrepresentation, inaccuracy or omission in information necessary to determine whether an action under the Act should be taken.

3. Ex parte communication received by the HSA, SPA Department of Energy, Planning and Development or commissioner shall not be considered in the review of the project and shall not be part of the record, except as provided under E.2.

F. Extension of review period.

1. The applicant, the HSA or the commissioner may request that the time periods for review as prescribed in the Act and these rules be extended.

2. The party requesting the extension shall notify the other two parties in writing specifying the length of the extension and the reasons therefor.

3. Within five working days of receipt of the request, the other two parties shall notify the requesting party in writing whether they agree to the extension. If all three parties agree to the extension, the new time period shall be in effect. If the parties do not agree to the extension, the time periods in effect prior to the making of the request shall remain in effect.

~~4. Time periods shall be deemed directory and not mandatory.~~

G. Time computation.

1. ~~In computing~~ Computation of any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included shall be controlled by Minn. Stat. §§ 645.15 and 645.151. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

2. Whenever a person has the right or is required to do some act ~~or take some proceeding~~ within a prescribed period after the service of a document upon him, or whenever some service is required to be made in a prescribed period before a specified event, and the document is served by mail, the time period for exercising that right or performing that action shall begin to run, under the terms described above, upon receipt of the document and not upon it being mailed. However, an act or event which must be accomplished within a specific time period, shall be considered complete upon mailing of the document.

3. Time periods prescribed under these rules shall be deemed directory and not mandatory.

H. Evasions.

1. A project is a single undertaking when its component parts have been jointly planned, when financing arrangements are made to cover the entire project or when component parts are so interdependent or interrelated that separate review would be inconsistent with the purpose of the Act. No health care facility may divide a single project into separate components in order to evade the cost limitations of Minn. Stat. § 145.833, subd. 5. Division of a single project shall be deemed to have occurred if either of the following conditions exists:

a. Components which have been jointly planned are separated; or

b. Components which are so interdependent or interrelated that they could not feasibly be undertaken separately are separated.

2. The annual capital expenditure budget or long range development plan of the health care facility or health maintenance organization does not necessarily, in and of itself, constitute a single undertaking.

~~I. Interpretation of rules. Interpretation of these rules shall be governed by the provisions of Minn. Stat. ch. 645 except insofar as its provisions are in conflict with the definitions or other provisions of the Act or these rules which relate to construction or interpretation of these rules.~~

7 MCAR § 1.662 Determination of applicability and waivers.

A. Submission of notice of intent.

1. ~~Any person shall submit a notice of intent to the appropriate HSA when planning~~ If a person intends to embark upon a program of construction or modification*, as defined in Minn. Stat. § 145.833, subd. 5 and 7 MCAR § 1.661 B.7., prior to engaging in any predevelopment activities with respect to the program of construction or modification, that person shall submit a notice of intent to the appropriate HSA.

2. The notice of intent shall be submitted in writing to the HSA at least 60 days prior to the submission of an application. No HSA ~~shall~~ may accept or act upon an application until proper notice has been given.

3. Within ten days of receipt of a notice, the HSA shall forward a copy of such notice to the commissioner and to ~~SPA~~ the Department of Energy, Planning and Development. Upon receipt of a notice proposing construction or modification, the HSA shall notify the applicant of the schedule for submission of a certificate of need application as established pursuant to 7 MCAR § 1.663 A.

4. The notice of intent shall:

a. Identify the nature of:

- (1) Architectural services;
- (2) Professional consulting services; ~~or~~ and
- (3) Fund-raising services;

b. Identify the name, address, contact person, and planned commencement date for activities listed above;

c. Describe the proposed construction or modification;

d. Estimate the capital expenditure associated with the construction or modification;

e. Specify the intended location or neighborhood of the project; and

f. Estimate the date of commencement of the construction or modification.

5. A notice of intent submitted by an applicant shall not preclude any other person from submitting a notice of intent for a similar undertaking.

6. A notice of intent shall be valid for a one year period within which time an application or an updated notice of intent may be submitted to the HSA.

7. If the applicant provides written verification that the necessity for an application could not have been reasonably anticipated 60 days prior to submission of an application for a certificate of need, the commissioner may reduce the time requirement for advanced submission of a notice of intent to less than sixty days.

B. Determination of applicability.

1. Written determination of applicability of the Act shall be made by the commissioner when an informational request for such determination is submitted from any person directly affected by the proposed construction or modification. Such request may be submitted at any time regardless of whether a notice of intent has been submitted. The foregoing shall not prohibit the commissioner from making his own determination, regardless of whether a notice of intent has been submitted, as to whether a proposed undertaking is subject to review under the Act as part of his general authority to enforce the provisions of the Act.

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2. The HSA or the commissioner, when necessary to obtain all relevant information in order to make a recommendation or to make the final determination respectively, may request additional clarifying information about the proposed undertaking. Any information requested shall relate to the provisions of Minn. Stat. § 145.833, subd. 5, and to 7 MCAR § 1.661 B.7. Failure to supply the information in a timely manner shall be sufficient grounds for determining that the proposed undertaking is subject to the Act.

3. Upon receipt of a request for determination of applicability, the HSA shall, within 30 days, submit a recommendation to the commissioner as to the applicability of the Act to the subject of the request. Within 30 days of receipt of the recommendation from the HSA, the commissioner shall review the matter and the HSA recommendation and shall notify the applicant in writing as to whether the Act is applicable to the subject of the request and the reasons for the decision.

C. Acquisition of equipment by physicians.

1. A requester proposing to purchase, lease, or otherwise acquire diagnostic or therapeutic equipment which requires a total capital expenditure in excess of \$150,000 for one or more related items of diagnostic or therapeutic equipment shall submit a notice to the HSA and the commissioner of the proposed equipment acquisition. Such notice shall contain the following information:

- a. The legal structure or organization of the requester;
- b. A description of the equipment which is proposed to be acquired;
- c. The proposed location of the equipment;
- d. The estimated capital expenditure necessary to acquire the equipment as well as an estimate of those capital expenditures needed for installation and other related costs;
- e. The source of funds to be used to acquire the equipment;
- f. The source and estimated volume of patients utilizing the proposed equipment for the first three years of operation;
- g. The party responsible for the operation of the proposed equipment;
- h. The recipient of revenue generated by the proposed equipment;
- i. The party responsible for any financial losses from the operation of the proposed equipment;
- j. Delineation and description of the nature of any proposed existing formal or informal arrangement with a health care facility for use of equipment, including the proportions of total patients who will be either inpatients or outpatients of a health care facility during the time such equipment will be used on or for them; and
- k. Whether the requester desires a public hearing.

2. Within 20 days of receipt of the notice, the commissioner shall decide whether the information submitted pursuant to 7 MCAR § 1.662 C.1. is complete.

a. If the commissioner decides that the information is not complete, he shall immediately notify the requester and specify in detail why the information is incomplete and what additional data must be submitted. A determination of incompleteness may occur under the following conditions:

- (1) The items specified in 7 MCAR § 1.662 C.1. have not been fully answered or the answers need clarification; or
- (2) The answers provided raise additional questions which must be answered in order to fully understand the situation.

b. The 60 day period in which the commissioner must decide whether the proposed acquisition is designed to circumvent the Act shall ~~not~~ commence to run ~~until the commissioner determines that the notice is complete~~ upon receipt of the notice, or, if the commissioner determines that the notice is incomplete pursuant to 7 MCAR § 1.662 C.2.a., upon receipt of the additional information required to complete the notice.

3. Within twenty days after the commissioner determines the notice is complete, the HSA shall forward comments to the commissioner regarding the proposed acquisition of the equipment and may request that a hearing be held.

4. If a hearing is requested by the requester or the HSA, a public hearing shall be held pursuant to the Administrative Procedure Act. The hearing results shall be considered to be fact-finding and advisory to the commissioner.

5. The following ~~factors~~ direct or circumstantial evidence shall be considered in determining whether a proposed acquisition is designed to circumvent the Act:

- a. The existence of an explicit agreement to circumvent the Act;
- ~~b.~~ The projected proportion of patients who will use the equipment while also being inpatients or outpatients of a

health care facility, if such inpatient use is not on a temporary basis, such as a result of a natural disaster, major accident or equipment failure;

~~b.~~ c. The existence of a relationship between the requester and a health care facility for purposes of making available the proposed equipment to the health care facility;

~~e.~~ d. The needs ~~for~~ of a health care facility to purchase such equipment if the proposed equipment were not acquired by the requester;

e. The past occurrence of a denial of a certificate of need for the same or similar equipment to a health care facility the patients of which would receive health services from the requester as a result of the proposed acquisition;

f. The financial ability of a health care facility to purchase or acquire the same or similar equipment, if patients of the health care facility would receive health services from the requester as a result of the proposed acquisition;

g. The past or present existence of an intention to acquire such equipment, as expressed in its long range development or other plan, on the part of a health care facility, the patients of which would receive health services from the requester as a result of the proposed acquisition;

~~d.~~ h. The accrual to a health care facility of material benefit from the proposed acquisition ~~to a health care facility and that, if the acquisition were made by the health care facility, the project would be reviewable under the Act; or and~~

~~e.~~ i. The existence of other information which shows that the acquisition of the equipment ~~will result in circumvention of~~ is designed to circumvent the Act.

6. Within 60 days of determining the notice to be complete, the commissioner shall review the notice, any hearing record and hearing examiner recommendation and any information submitted by the requester, HSA and other persons, and make a decision as to whether the proposed acquisition is designed to circumvent the Act. The applicant and the HSA shall be informed in writing of the commissioner's ~~decisions~~ decision and underlying rationale.

7. If the commissioner decides that the proposed acquisition is designed to circumvent the Act, a certificate of need must be obtained according to the process described by the Act and these rules.

D. Waivers.

1. A proposed construction or modification involving an existing health care facility may be granted a waiver based upon the information forwarded by the HSA with its recommendation and the determination of the commissioner that the factors in 7 MCAR § 1.662 D.2. are substantially fulfilled and that any one of the following situations exists:

a. The proposed construction or modification falls within the situations described in Minn. Stat. § 145.835, subd. 4(a) or (b).^{*} Additional examples or items that come ~~with~~ within subd. 4(b) are business related equipment, telephone systems, energy conservation measures, warehouse storage, activities space, ~~real estate~~ site acquisition and other projects of a like nature.

b. The proposed project is solely for acquisition of diagnostic or therapeutic equipment which is to replace existing equipment only when the existing and replacement equipment have approximately the same capabilities.

c. The proposed project:

(1) is subject to Minn. Stat. § 145.833, subd. 5 (a)(2) which governs changes in bed capacity of a health care facility; ~~**~~ and

(2) is not reviewable under any other provisions of the Act or these rules; ~~and~~

(3) ~~If approved, would have no material impact on health planning consideration or on the provisions of health services within the facility's health service area.~~

d. The proposed project is solely to conduct reviewable predevelopment activity pursuant to 7 MCAR § 1.661 B.4~~8~~19.a.

e. The proposed project is solely for acquisition of an existing health care facility and the change is not reviewable under the provisions of the Act other than 7 MCAR § 1.661 B.7.a.(1).

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2. Waiver shall be granted for projects involving eligible situations if the following factors ~~shall be~~ are substantially fulfilled ~~as a prerequisite for granting of waivers:~~

a. The proposed project shall not result in an increase in patient charges of more than five percent over existing charges in either the average charge for all patients or the average charge for those patients who will benefit from the project; provided, for proposed waiver of changes in bed categories involving federal certification status of nursing homes, the proposed project shall not result in an increase in patient charges of more than 20 percent over existing charges in either the average charge for all patients or the average charge for those patients who will benefit from the project. ~~The five percent percentages shall be calculated after including any projected inflation increases based upon; for hospitals, the allowable increase limit established by the commissioner pursuant to 7 MCAR § 1.504 and, for other health facilities, a comparable inflation indicator established by a government agency.~~

b. The applicant has documented that the project:

- (1) Is not unnecessarily duplicative of similar services in the facility's service area;
- (2) Will ~~not be underutilized~~ adequately utilized compared with minimal utilization rates consistent with the efficient delivery of health care; and
- (3) Will ~~not otherwise result in an ineffective or inefficient operations~~ effective and efficient operation.

c. The proposed project conforms to the facility's long range development plan, if any, and to the guidelines, criteria and goals for such services in the applicable HSP, AIP and the State Health Plan.

d. The applicant is not a health care facility against whom proceedings pursuant to Minn. Stat. § 144.55 or 144A.11 have been initiated. This factor shall not be considered if the proposed construction or modification is intended to correct, to the extent practicable, the causes of the violations.

3. The request for a waiver shall be submitted by the applicant to the HSA at the same time as submission of a notice or intent for a proposal would have been submitted ~~and.~~ In situations in which the applicant has previously submitted a notice of intent alone, nothing shall preclude the applicant from submitting an amended or updated notice of intent concurrently with the waiver request. The waiver request shall include the following information:

- a. Description of the project;
- b. Estimated capital expenditures;
- c. Annual operating budget of the current year;
- d. Anticipated impact of the project on facility costs and patient charges; and
- e. Information pertaining to the factors for a waiver specified in 7 MCAR § 1.662 D.2.b.

4. The HSA shall not proceed with a recommendation until complete information is received. If any additional information is requested of an applicant, it shall be relevant to the eligibility standards specified in 7 MCAR § 1.662 D.1. and the factors specified in 7 MCAR §§ 1.662 D.2.

5. Within 30 days of the receipt of a request accompanied by complete information, the HSA shall submit to the commissioner its recommendation for granting or denying the waiver. This recommendation shall be accompanied by supporting rationale based on the applicable item in 7 MCAR § 1.662 D.1. and the factors in 7 MCAR § 1.662 D.2. and all information submitted by the applicant.

6. Within 30 days of receipt of the recommendation of the HSA, the commissioner shall notify the applicant and the HSA of the decision.

7. Emergency waivers may be granted by the commissioner if the need for the project is a result of fire, tornado, flood, storm damage or other similar disasters.

a. The applicant shall submit a written request for an emergency waiver to the commissioner with a corresponding copy sent to the HSA. This request shall describe the project, estimated cost and type of disaster which occurred.

b. Within three working days, the HSA shall forward a recommendation and comments to the commissioner.

c. Within five working days of the receipt of the request from the applicant, the commissioner shall notify the applicant and HSA of the decision to grant or deny an emergency waiver.

d. An emergency waiver shall be granted if the need for the project is a result of fire, tornado, flood, storm damage or other similar disaster, and if both of the following conditions are found to exist:

- (1) Adequate health care facilities are not available for the people who previously used the applicant facility; and

(2) The projected repair does not exceed the guidelines and goals for such services in the applicable health systems plan or State Health Plan.

e. A request for an emergency waiver shall be limited in nature and scope to only those repairs necessitated by fire, tornado, flood, storm damage or similar disasters.

8. For purposes of Minn. Stat. § 145.842 and for the periodic reports in 7 MCAR § 1.664 E. of these rules, granting of a waiver of certificate of need review shall be considered to have the same effect as issuance of a certificate of need.

9. The applicant shall resubmit a request for a waiver if the construction or modification for which a waiver was initially granted is not commenced, as described in 7 MCAR § 1.664 C., within 18 months of the granting of waiver or within 90 days of the granting of an emergency waiver.

10. A project may not be separated into component parts if the granting of a waiver for one part would not subject the remaining parts to certificate of need review and if, when all parts are taken together, the project constitutes a single undertaking which is reviewable under the Act. If, however, the remaining component parts of a project would still be subject to review, a waiver may be requested for a specific component part of a project.

7 MCAR § 1.663 Review process, procedures, and criteria.

A. Submission and contents of application for certificate of need.

1. The commissioner shall establish a schedule specifying dates when applications may be submitted to the applicable HSA. The schedule may be revised periodically by the commissioner subject to a 60 day notice which shall be printed in the State Register and shall be provided to each HSA by written notice. The schedule shall provide that all applications may be submitted ~~not~~ as specified but in no case less frequently than every 30 days.

2. Fourteen copies of an application for certificate of need shall be submitted. The HSA, immediately upon receipt of the application, shall send a copy to both the commissioner and the ~~SPA~~ Department of Energy, Planning and Development.

3. The application shall be submitted on a form prepared by the commissioner and available through the HSA. Forms shall be printed for:

a. Hospitals;

b. Nursing homes and boarding care homes; ~~and~~

c. Supervised living facilities certified or proposing to be certified as intermediate care facilities for the mentally retarded and persons with related conditions. This form shall allow substitution of acceptable alternative sets of pertinent information which have been prepared for the Department of Public Welfare to carry out its responsibility for determination of need, location and programming for the mentally retarded and for the purposes of program licensure and rate setting. In order to be acceptable substitutes, alternative sets of information shall be identifiable according to the topics specified in 7 MCAR § 1.663 A.4.; and

d. Other applicants.

4. The following information and other clarifying information shall be considered to be germane to the project and shall be in a prescribed form, as related to each type of application described in 7 MCAR § 1.663 A.3.

a. Description of the project.

(1) A description of any building or services to be constructed, modified or provided, including a comparison to existing building and services.

(2) A description of the present number and kinds of staff positions and those new staff positions to be created by the project, as well as the basis for anticipation of the successful recruitment of these new staff positions.

(3) A statement from the architect or other construction specialist describing the status of the project's conformance with applicable building codes and state licensure and federal certification requirements for physical plants.

(4) A description of the methods and projected costs of providing energy for operating the project, as well as methods of conserving energy.

(5) A statement of the anticipated dates for commencement and completion of the project.

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b. Financial aspects of the project.

(1) Capital expenditures and financing.

(a) The estimated total capital expenditure for the project. There shall be a breakdown of the total capital expenditure based upon the following eight categories. The information provided with respect to each category shall include the major component expenditures within the category.

- (i) Predevelopment activity;
- (ii) Site acquisitions;
- (iii) Land improvements;
- (iv) New construction of buildings;
- (v) Renovations of buildings;
- (vi) Fixed equipment;
- (vii) Movable equipment; and
- (viii) Financing costs and any contingencies.

(b) A description of the effect of this project on the general solvency of the applicant, including the future effect on financial indicators, including ratio of debts to total assets, operating revenue to total assets, operating revenue to fixed assets, total revenue to fixed assets and interest to total expense plus interest.

(c) A description of the availability and method of financing, including the amount of all projected loans, refinancing of existing debt (if any), estimated interest rate and the projected debt service amount as a percentage of the cost per patient day, or, for hospitals, as a percentage of cost per adjusted admission, as defined in 7 MCAR § 1.472 U.

(2) Operating costs. An estimate of the total annual operating costs upon completion of the project for at least five years. The total annual operating costs shall include anticipated salary requirements of new staff. The estimated costs shall conform with the cost centers and other requirements of at least one of the following:

~~(i)~~ (a) The requirements for cost allocation under Title XVIII of the Social Security Act, 42 U.S.C. § 1395, et seq. United States Code, Section 1395x and 42 Code of Federal Regulations, Sections 405.401-405.406 and 405.453;

~~(ii)~~ (b) The requirements for cost allocation under Title XIX of the Social Security Act, 42 U.S.C. § United States Code, Section 1396a, et seq. and 42 Code of Federal Regulations, Sections 405.401-405.406 and 405.453;

~~(iii)~~ (c) The requirements for cost allocation under Minn. Stat. §§ 144.695-144.703 (Minnesota Hospital Rate Review System); or

~~(iv)~~ (d) The cost allocation requirements utilized in generally accepted reports by applicants to any other agency or program of the State of Minnesota.

(3) Revenue.

(a) An estimate of the total annual revenue of the health care facility upon completion of the project for at least five years.

(b) A description of the anticipated effect of the project for the first five years of operation on the total patient charges per ~~outpatient~~ patient visit or service if applicable, and in the case of hospital projects, the total patient charges per adjusted admission as defined in 7 MCAR § 1.472 U. Average patient charges by service which are affected by the project shall be detailed.

(c) Where a health care facility does not already exist, a projection of the anticipated patient charges for the first five years of operation.

c. Geographic area to be served.

(1) A narrative description of and graphic identification of the health care facility's service area or areas, in terms of standard political boundaries.

(2) An identification of patient origin data, local surveys and other sources utilized in determining the service area of the project.

d. Requirements of the population served.

(1) Current and projected population for the ~~next~~ anticipated life of the project or 20 years, whichever is less, by

applicable demographic categories, such as age, sex and occupational status, which will be served by the project and identification of sources of the information.

(2) Incidence and prevalence rates of diagnoses or conditions within the population related to the services proposed.

(3) The impact of the project upon the health needs of people who have traditionally experienced difficulties in obtaining equal access to health care.

(4) A description of the applicant's performance during the past five years related to access to health services including:

(a) Extent to which the facility met its obligations, if any, under federal regulations or state rules requiring provision of uncompensated care, community services or access to programs receiving federal financial assistance;

(b) The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and

(c) The range of methods by which a person may have access to its services, such as, outpatient services, admission by house physicians or admission by physicians in the community.

e. Relationship to other health care facilities.

(1) Existing institutions within and contiguous to the proposed project that offer, or propose to offer, the same or similar service;

(2) The occupancy or utilization rates of the similar existing institutions during the past five years, only if such information is accessible to the applicant. Determination of incompleteness shall not be made solely because the applicant is unable to provide occupancy or utilization information for existing institutions due to inaccessibility of such information to the applicant;

(3) The anticipated effect that the project will have on existing facilities and services; and

(4) The relationship of the project to health professional training programs, biomedical and behavioral research projects and medical referral facilities.

f. A description of the applicant's participation, if any, in consumer choice health plans and programs with which the applicant participates including any other methods for offering health services based upon giving the purchaser choices in services and knowledge about the price and quality of such health services. The description shall include:

(1) Current and five-year projected number of consumers involved and

(2) Methods of Procedures by which public information regarding ~~cost~~ price and quality of health services will be made available to potential consumers and payors.

g. Anticipated need for the facility or service to be provided by the project and identification of the factors which create the need, including at least the following:

(1) Data, information and findings collected by the applicant which establish need for each service component of the project; and

(2) Relationship of the project to the facility's long range development plan.

h. Occupancy and utilization rates.

(1) Occupancy rates for the health care facility, based on both licensed beds and on beds which are set-up and staffed, for the following:

(a) Each of the past five years;

(b) Each of the preceding 12 months; and

(c) Each of the first five years after completion, including explanation of assumptions.

(2) Utilization rates for the health services related to the projected project for the following:

(a) Each of the past five years;

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(b) Each of the preceding 12 months; and

(c) Each of the first five years after completion, including explanation of assumptions.

i. A copy of all survey reports during the last three years of operation from the Minnesota Department of Health, as well as voluntary survey groups, related to the quality of care provided by the health care facility during the past three years of operation or from other quality assurance programs recognized in federal or state laws, such as the accreditation program of the Joint Commission on Accreditation of Hospitals.

j. Alternatives which were considered and found not to be acceptable as a substitute for the project and the reasons why they were determined to be unacceptable.

k. Relationship of project to the HSP, AIP and State Health Plan including established planning objectives pertaining to cost, availability, accessibility, need, quality and financial viability of health services.

B. Determination of completeness.

1. Within ten days of the receipt of an application the HSA shall review the application's contents and forward a recommendation to the commissioner and ~~SPA~~ the Department of Energy, Planning and Development as to whether it is complete. If the recommendation states that the application is incomplete, the HSA shall identify the sections which it found to be incomplete, and explain why it concluded that they were incomplete. A determination of incompleteness may occur under the following conditions:

a. The items specified in 7 MCAR § 1.663 A.4. have not been fully addressed or the information needs clarification.

b. The information provided raises ~~additional~~ definite questions which must be answered directly relevant to the proposed project and which are critical and essential in order for the HSA and commissioner to perform their review under the Act and these rules.

2. Within ten days of receipt of the recommendation from the HSA, the commissioner, after reviewing the application in conjunction with the HSA recommendation and comments, shall notify the applicant, HSA and ~~SPA~~ Department of Energy, Planning and Development in writing as to whether the application is complete. If the application is declared incomplete, the applicant shall be informed what additional information must be submitted.

a. If the applicant submits the required additional information to the HSA, ~~SPA~~ Department of Energy, Planning and Development and commissioner within five working days of receipt of the commissioner's determination, the commissioner shall review the new information and notify the applicant, HSA and ~~SPA~~ Department of Energy, Planning and Development within five working days of receipt of the new information as to whether the application is complete. The result of this clause is that the application may be found to be complete without being deferred to another cycle of reviews.

b. If the required information is submitted after five working days, but within 60 days of receipt of the commissioner's determination, the complete review will be made according to the schedule specified pursuant to 7 MCAR § 1.663 A.1. The result of this clause is that the application is considered for completeness in the next cycle of the commissioner's completeness determination process.

c. If an applicant has not fully responded to a request for additional information within 60 days of the request, the incomplete application shall be returned to the applicant.

3. A determination that an application is complete shall mean only that information has been given pertaining to each component part of the application as prescribed in 7 MCAR § 1.663 A.4. Determination that the application is complete shall carry no implication with respect to the quality of the information nor shall it preclude the HSA or the commissioner from requesting additional clarifying information during the review period.

4. The 60 day review period on the HSA level shall commence on the date that the HSA receives the notice from the commissioner that the application has been determined to be complete.

C. HSA hearing process and procedures for determining recommendations on certificate of need applications. No proposal may be reviewed nor may any recommendation on an application be made by an HSA in a manner which does not comply with the Act or these rules.

1. Upon determination by the commissioner that the application is complete, the HSA shall schedule the date, time and place of a public hearing at which a determination will be made as to whether to recommend issuance of a certificate of need.

2. Notice of the hearing shall be published in a legal newspaper as required in Minn. Stat. § 145.837, subd. 2(2). The notice shall contain a brief description of the project and the date, time and place of the hearing. A separate notification shall be mailed to all other affected persons, including at least the applicant, any contiguous HSA and all health care facilities located in the applicant's proposed service area. This separate notification shall contain information similar to that in the published notice,

except that contiguous HSAs shall be requested to provide written comment prior to the public hearing or to appear at the public hearing to offer an opinion as to the need for the project and the factual basis for that opinion.

3. A hearing body shall conduct the public hearing. The chairman of the hearing body, or a member designated by the chairman, shall be the presiding officer and shall conduct the hearing and rule on all motions and on the admissibility of all evidence and testimony. The presiding officer shall designate a hearing secretary who shall tape record the proceedings and provide to the commissioner a verbatim transcript or a written summary of the hearing.

4. A majority of the members of the hearing body shall constitute a quorum. No hearing may be held ~~or~~, nor recommendation made ~~or~~ nor any other action be taken unless a quorum is present.

5. The hearing body, if other than the governing body of the HSA, shall forward its recommendation, findings of fact, conclusions and all evidence to the governing body, which shall vote on the project as required in 7 MCAR § 1.663 C.7. The governing body shall not hear or receive evidence other than that forwarded by the committee unless it holds an additional hearing after first publishing a notice of hearing pursuant to the Act and 7 MCAR § 1.663 C.2.

6. All interested persons shall be given the opportunity to be heard, to be represented by counsel, to present any relevant oral or written evidence and to examine and cross-examine witnesses. The applicant and any person who testifies orally or otherwise submits evidence or testimony at the hearing shall be subject to questioning by any member of the hearing body. All relevant evidence shall be heard and considered, and the inadmissibility of such evidence in a court of law shall not be grounds for its exclusion. Evidence presented in the form of governmentally issued or sponsored planning documents, studies and guidelines, such as the State Health Plan and health systems plans, shall be ~~given substantial weight but shall not be considered conclusive~~ specifically considered. The hearing may be recessed to another day if the hearing body ~~find~~ finds that additional evidence or time is necessary. When the presiding officer determines that all available and relevant evidence has been heard, the hearing body shall then commence its deliberations.

7. The hearing body, if other than the governing body of the HSA, and the governing body, after receipt of a hearing body's recommendation and necessary deliberation, shall vote on the project as follows:

a. After a motion has been made with respect to the project, each member present and qualified to vote, including the chairman or presiding officer, shall vote, or abstain from voting, on the motion. The vote of each member, or the fact of his abstention, shall be recorded in the minutes of the hearing or meeting.

b. No member may vote on behalf of a member not present.

c. A motion for approval of a project shall not pass unless a majority of the members voting, including abstentions, vote in favor of the motion. Failure to obtain a majority vote in favor of approval shall constitute the recommendation of denial.

d. An approval of the project with revisions may be recommended based upon findings of fact, conclusions and supporting evidence pursuant to 7 MCAR § 1.663 G.

(1) Within 30 days after the receipt of the HSA recommendation, the applicant shall notify the HSA and the commissioner by certified mail as to whether it accepts or rejects the revisions.

(2) If the applicant does not respond or rejects the revisions, the recommendation of the HSA to the commissioner shall remain as a recommendation for approval with revision including the findings of fact and conclusions which support revision of the application.

8. The recommendation of the HSA shall be forwarded to the commissioner and ~~SPA~~ the Department of Energy, Planning and Development in the format prescribed in 7 MCAR § 1.663 G.

9. If the applicant decides to withdraw from the review, it shall so inform the HSA and the commissioner in writing.

D. Consolidated review of life support transportation service projects. If a project subject to review under the Act is also subject to review under the process described in Minn. Stat. § 144.802 for the licensure of life support transportation services, a single consolidated review of the project may occur in conformance with Minn. Stat. §§ 144.802 and 145.836 and the ~~recommended process described in attachment~~ commissioner will make available to anyone who requests it a recommended process for consolidated review. In order to facilitate consolidated review of such projects, the HSA shall, upon agreement of the applicant pursuant to Minn. Stat. § 145.837, subd. 3, extend its certificate of need review period from 60 to 90 days to coincide with the 90 day life support transportation service licensure review period prescribed in Minn. Stat. § 144.802, subd.

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3(d). Within that 90 day period, the HSA shall make both recommendations to the commissioner. If mutual agreement pursuant to Minn. Stat. § 145.837, subd. 3, cannot be reached, the HSA shall attempt to make both the licensure and certificate of need recommendations within the 60 day period. If the HSA finds that making both recommendations within the 60 day period is not possible, it shall make the certificate of need recommendation within the 60 day period and a separate licensure recommendation within 90 days, as ~~requested~~ required by Minn. Stat. § 144.802, subd. 3(d).

E. Review criteria. In reviewing a proposal, the HSA and the commissioner shall consider all evidence in the record and shall evaluate the evidence based upon the following factors, where applicable. In addition, these factors shall be specifically addressed in the findings of fact and conclusion required by 7 MCAR § 1.663 G.

1. Health plans and population needs.

a. The relationship of the project to, and the degree to which it is consistent with, the applicable HSP, AIP and State Health Plan.

b. The relationship of the project to, and the degree to which it is consistent with, the applicant's long range development plan.

c. The need for the project as determined by past, present and future utilization data with specific attention given to the following:

- (1) Utilization rates of similar facilities within the facility's health service area for the most recent five years;
- (2) Utilization rates of the existing facility or service for the most recent five years; and
- (3) Five-year projected utilization rate for the proposed expanded facility or service.

d. The need for the project based upon the population requirements of the affected service area with specific attention given to the following:

(1) The population required to support the project, examined by demographic categories such as age, sex and occupational status;

(2) Incidence and prevalence rates of diagnoses or conditions within the population related to the services proposed by the project;

(3) The contribution of the project in meeting the health needs of people who have traditionally experienced difficulties in obtaining equal access to health care, in particular low income persons, racial and ethnic minorities, women, handicapped persons and other groups identified as priorities in the HSP. If the project involves a reduction, elimination or relocation of a health service and the project is otherwise reviewable under the Act, consideration shall be given to the extent which the project will affect the ability of affected members of these above priority groups to obtain needed health care.

(4) The past performance of the applicant in meeting its obligations, if any, under the applicable federal regulations or state rules requiring provisions of uncompensated care, community service or access by minorities and handicapped persons to programs receiving federal financial assistance, including the existence of any substantiated civil rights access complaints against the applicant.

(5) The extent to which Medicare, Medicaid, and medically indigent patients are served by the applicant.

(6) The extent to which the applicant offers a range of methods by which a person may have access to its services, such as, outpatient services, admission by house physicians or admission by personal physicians in the community.

2. Alternative approaches and system-wide effects.

a. The availability and adequacy of other less costly or more effective health care facilities and services which may serve as alternatives or substitutes for the whole or any part of the project.

b. The relationship of the project to the existing health care system in the area, including the possible economies and improvements which may be derived from operation of joint, cooperative or shared health care resources. Specific consideration shall be given the following:

(1) The effect of the project on use, capacity, and supply of existing health care facilities and services.

(2) The possibility of increasing referrals to other health care providers to achieve higher utilization of existing resources.

(3) The degree to which the project facilitates the development of an integrated system of services among health care providers.

(4) The possibility of consolidating services with other health care providers.

(5) The existence of formal arrangements established between the applicant and other health care providers to provide similar or supporting services to that being proposed.

c. Preferred alternative uses of resources included in the application, including such resources as health care providers, management personnel and funds for both capital and operational needs, for the provision of other health services by the applicant, as identified by the applicable HSP, AIP and State Health Plan.

d. The effect of the project on the clinical needs of health professional training programs in the area, including access of such programs to the project.

e. The needs for and availability of services and facilities for osteopathic physicians and patients.

3. Price competition among similar services. Improvements or innovations in the financing and delivery of the proposed health services which foster price competition in a way that promotes quality assurance and cost effectiveness. Such consideration shall include:

a. The degree of participation by the applicant in consumer choice health plans ~~and programs~~, such as health maintenance organizations and preferred medical provider programs, and other methods for offering health services based upon giving the purchaser choices in services and knowledge about the price and quality of such health services; and

b. The existence of ~~methods~~ procedures by which public information regarding ~~cost~~ price and quality of health services will be provided to potential consumers and payors.

4. Applicant and project attributes.

a. The availability of resources, including health manpower, management personnel, physical facilities and funds for capital and operating needs for the project.

b. The immediate and long-term financial feasibility of the project with specific analysis of the following:

(1) The comparison of the anticipated revenues with the anticipated expenses including an analysis of whether or not the estimated revenues and expense appear accurate; and

(2) The impact of the project upon the immediate and long-term financial solvency of the facility.

c. The impact of the project on operational costs and patient charges with specific analysis of the following:

(1) The reasonableness of the proposed cost of the project compared to similar projects; and

(2) The reasonableness of proposed operating costs and impact on patient costs and charges compared with similar services in similar health care facilities.

d. The organizational and other relationship of the project to ancillary or support services including an analysis of the following:

(1) The availability of necessary ancillary or support services and arrangements made by the applicant for provision of those services;

(2) The development of multi-institutional arrangements for sharing support services.

e. The costs and methods of providing energy for the operation of the project including consideration of methods for conserving energy.

f. The quality of care as reflected in the most recent survey reports from the Minnesota Department of Health and other ~~generally accepted survey organizations~~ quality assurance programs recognized in federal or state laws, such as the accreditation program of the Joint Commission on Accreditation of Hospitals.

5. ~~Special considerations~~ needs and circumstances. ~~The review criteria specified above shall be considered in light of the special needs and circumstances of any applicant meeting at least one of the descriptions listed in this section as it relates to the project.~~

a. The special needs and circumstances of medical teaching, research facilities and referral facilities which provide a substantial portion of their services or resources, or both, to individuals outside of the health service area. Consideration shall also be given as to whether:

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(1) The instruction, studies or consultation provided by the applicant is coordinated with other medical teaching, research facilities and referral facilities in the multi-health service area served by the applicant; and

(2) The project contributes to meeting the health services needs of the residents of the health service area.

b. The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need for which local conditions offer special advantages.

c. The special needs of hospitals to convert excess beds to long-term care or other alternative functions, but only where the termination of all acute care services is proposed and only if a need for the number of proposed long-term care beds can be shown to be consistent with the HSP.

F. Revisions.

1. A project may be revised by the applicant, the HSA or the commissioner at any time during the review process if:

a. The revision is acceptable to the HSA and the applicant; and

b. The revision is within the scope of the project as initially proposed.

2. For purposes of the Act and these rules, a revision shall be considered to be within the scope of the project as initially proposed if the revision is clearly and closely related to the proposed construction or modification and does not directly involve health services, physical plant, equipment or other services unrelated to the project as initially proposed.

G. Content of record. After making its recommendation, the HSA shall submit to the commissioner three copies of the complete record, absent the application which is part of the record and previously submitted to the commissioner. It shall include at least the items listed in this rule and when forwarded to the commissioner shall be in the following order:

1. A cover letter which includes:

a. Pertinent dates relating to the review including, but not limited to, dates of submission of application, determination of completeness, meetings of project review committee, holding of the public hearing and recommended action by the HSA;

b. Description of the project;

(1) If the project voted upon by the HSA is the same as proposed in the application, a summary only shall be provided; or

(2) If prior to the vote of the HSA, the project has been revised upon agreement of the HSA and applicant, a detailed description as revised shall be provided.

c. Estimated capital cost of the project; and

d. The recommendation of the HSA limited solely to a statement whether or not a certificate of need should be issued, denied or issued with revisions. Any revision shall be stated.

2. Proof of publication of the notice of the public hearing;

3. A summary of evidence presented at the public hearing;

4. The recommendation of the HSA which shall contain the following parts:

a. Findings of fact which shall be based upon each applicable review criterion in 7 MCAR § 1.663- E.; provided, however, that for each project recommended for approval, written findings shall take into account the current accessibility of the facility as a whole and shall be based upon the criteria listed in 7 MCAR § 1.663 E.1.d. (1), (3), (4), (5) and (6);

b. Conclusions which shall be based on the findings of fact;

c. A recommendation which shall be based on conclusions; and

d. A record of the vote of each member of the HSA on all motions made with regard to the project.

5. Copies of all written evidence considered by the HSA as follows:

a. HSA staff reports and attachments;

b. Committee reports and attachments;

c. Any relevant correspondence between the HSA and the applicant;

d. All additional evidence submitted by the applicant, if not inserted into specific sections of the application; and

e. Any relevant evidence submitted by other affected persons including comments from contiguous HSAs.

H. Determination by commissioner.

1. The role of the commissioner in deciding whether or not a certificate of need should be issued is that of a final, independent decision maker. While the commissioner must base his review on the record presented by the HSA, his review is not merely in an appellate capacity and thus he is not required to adopt the HSA recommendation merely because it is supported by evidence in the record.

2. The commissioner shall review the application and the record presented by the HSA. The review shall include a determination as to whether the procedural requirements of the Act and these rules have been substantially met. The review by the commissioner may include other information not in the HSA record but only in order to assess the necessity of a remand to the HSA for further consideration.

3. Within 30 days of receipt of the recommendation of the HSA, the commissioner shall make one of the following decisions based upon the record as considered in light of the review factors in 7 MCAR § 1.663 E.

a. Issue a certificate of need. If the commissioner's decision is consistent with the HSA recommendation, the commissioner may adopt the findings and conclusions of the HSA by reference.

b. Issue a ~~revised~~ certificate of need based upon a revised application.

(1) The commissioner may issue a decision ~~conditionally approving a project for a certificate of need provided that the HSA and applicant agree to specified revisions based upon a revised application.~~ Rationale shall be set forth for each revision proposed by the commissioner. ~~The decision shall also specify that the application shall be denied or remanded if the applicant or HSA reject the revisions.~~

(2) If the commissioner proposes a revision of the project, notice shall be mailed to the applicant and the HSA so informing them. Within 30 days after receipt, the applicant and the HSA shall inform the commissioner in writing as to whether or not they accept the revision.

(3) Upon the request of the HSA and the applicant, during the 30 days, the commissioner may amend his ~~final~~ decision by modifying the revisions as proposed ~~with the approval of the HSA and the applicant.~~

(4) The 30 day period in which reconsideration can be requested pursuant to Minn. Stat. § 145.838, subd. 2, or judicial review pursuant to Minn. Stat. §§ 15.0424 and 145.838, subd. 3, shall commence to run after receipt by the commissioner of the written notice specifying whether or not the HSA and applicant accept the revisions ~~proposed by the commissioner,~~ or if no notice is received, at the end of the 30 day period provided for in ~~section b~~ 7 MCAR § 1.663 H.3.b.(2).

(5) If the HSA and applicant accept the revision, the commissioner shall issue a certificate of need and notify the HSA and ~~SPA~~ Department of Energy, Planning and Development.

(6) If the applicant or the HSA rejects the revision, the project shall be considered by the commissioner solely based upon the merits of the application and the record as proposed prior to the rejected revision, without prejudice due to rejection of the revision.

c. Deny a certificate of need. If a project is denied, the commissioner shall set forth in writing rationale for the action and notify the applicant, the HSA and the ~~SPA~~ Department of Energy, Planning and Development. If the commissioner's decision is consistent with the HSA recommendation, the commissioner may adopt the findings and conclusions of the HSA by reference.

d. Remand the application to the HSA.

(1) A remand may occur if, during the review of the HSA record, the commissioner finds that one or more of the following conditions exist and determines that a remand will materially aid in the decision-making process.

(a) Findings of fact were not supported by the record;

(b) Findings of fact were based on inaccurate information in the record;

(c) Significant issues relating to review criteria and other provisions of rules were not addressed by the HSA;

(d) Significant evidence within the record was not addressed by the HSA;

(e) Conclusions were not supported by findings of fact;

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- (f) Conclusions were based on inaccurate findings of fact;
- (g) Significant conclusions were not drawn from findings of fact; ~~or~~
- (h) The recommendation was not supported by the conclusions; ~~or~~
- (i) The existence of circumstances which arose under 7 MCAR §§ 1.661 E.2. and 1.663 H.2.

(2) The commissioner shall provide the HSA and the applicant with written rationale for the remand action and instructions for further HSA review.

(3) Within 60 days of receipt of the remand, the HSA shall comply with the commissioner's instructions, hold another public hearing to review the project and forward a recommendation to the commissioner and the ~~SPA~~ Department of Energy, Planning and Development.

1. Determination by the commissioner: life support transportation service projects. For projects subject to review under the Act and also subject to review under the process described in Minn. Stat. § 144.802 for the licensure of life support transportation services, the commissioner shall make a certificate of need decision as provided in 7 MCAR § 1.663H.3. If the HSA submits a certificate of need recommendation and indicates that the life support transportation service licensure recommendation will be submitted separately, ~~and~~ the decision of the commissioner to issue a certificate of need in such a case shall not constitute a decision by the commissioner to issue a life support transportation service license.

7 MCAR § 1.664 Post determination actions.

A. Post determination appeals.

1. If the decision of the commissioner is consistent with the recommendation of the HSA, any person aggrieved by the decision may seek judicial review pursuant to Minn. Stat. § 145.838, subd. 3.

2. If the decision of the commissioner is contrary to the recommendation of the HSA, any person may, pursuant to Minn. Stat. § 145.838, subds. 2 and 3, either request the commissioner to reconsider his decision or seek judicial review.

a. A reconsideration request shall be submitted to the commissioner in writing within 30 days after receipt of the decision by either the HSA or the applicant. The request shall address the applicable condition specified in Minn. Stat. § 145.838, subd. 2(a) to (d). Within 30 days after receiving the reconsideration request, the commissioner shall determine whether to reconsider his decision.

b. If the commissioner determines his decision should be reconsidered, the matter shall be remanded to the HSA. The HSA shall conduct a new public hearing. The record of the second hearing shall include the record of ~~the~~ each previous hearing~~(s)~~ on the application. The HSA shall issue a new recommendation within 60 days of receipt of the remand from the commissioner.

c. If the commissioner determines that his decision should not be reconsidered, the HSA or the applicant may within 30 days request an administrative hearing pursuant to Minn. Stat. § 145.838, subd. 2.

3. Any aggrieved person may seek judicial review of the commissioner's decision rendered pursuant to Minn. Stat. § 145.838, subd. 1 or of the hearing examiner's decision rendered pursuant to Minn. Stat. § 145.838, subd. 2 by instituting an action pursuant to Minn. Stat. § 15.0424.

B. Amendment of certificate.

1. After a certificate of need has been issued and before completion of the project, an applicant may find it desirable or necessary to modify the approved project. The types of changes in or modifications to a project are described in 7 MCAR § 1.664 B.2., 3., and 4. When more than one type of a proposed change or modification is proposed falls into more than one of the types prescribed below ("immaterial," "minor," "significant"), the change shall be reviewed according to the type of change category which is most stringent. The effect of those changes on the issued certificate of need are as follows:

a. Changes and ~~modification~~ modifications which are immaterial in nature or result (see 7 MCAR § 1.664 B.2.) shall not require any additional certificate of need review.

b. Changes and modifications which are minor in nature or result (see 7 MCAR § 1.664 B.3.) shall not be made unless the commissioner, after review and recommendation by the HSA, issues an amended certificate of need. The review conducted by the HSA and commissioner shall be limited to determining whether or not the changes or modifications are minor as defined in 7 MCAR § 1.664 B.3., that the changes or modifications fall within the scope of the project as initially approved for a certificate of need, and that the evidence supporting the certificate of need as initially issued supports the changes or modifications.

c. Changes and modifications which are significant in nature or results (see 7 MCAR § 1.664 B.4.) require the submission of a new application and require a full certificate of need review.

2. The following are immaterial changes:

a. Changes in spatial allocation or design;

b. Change in architectural plans to correct a facility's structural deficiencies or to comply with governmental rules or regulations;

c. An increase of less than 10% in the capital expenditure of the project, excluding inflation costs not projected at the time of application for a certificate of need; or

d. Other changes in project detail which will nevertheless result in the implementation of the project as approved.

3. The following are minor changes:

a. An increase of at least 10% but ~~not more~~ less than 20% of the capital expenditure of the project, excluding inflation costs not projected at the time of application for a certificate of need;

b. Deletions of portions of the originally approved project;

c. Change in financing mechanism which increases the cost of financing;

d. Change in the selection of health services equipment, if not technologically different from that approved in the certificate; or

e. Change in bed capacity of a facility in a manner which increases the total number of beds, or distributes beds among various categories, by fewer than ten beds or ten percent of the licensed bed capacity, whichever is less.

4. The following are significant changes:

a. An increase equal to or in excess of 20% of the capital expenditure of the project, excluding inflation costs not projected at the time of application for a certificate of need;

b. Change in the type or scope of health service which was originally approved in the certificate;

c. Change in the selection of health services equipment, if technologically different from that approved in the certificate;

d. Change in the geographical location, if such change is relevant to the commissioner's reasons for approval of the certificate of need project; or

e. Change in bed capacity of a facility by more than ten beds or ten percent of the licensed bed capacity; or

f. Changes in the project which raise new material issues not previously considered by the HSA or commissioner related to:

(1) Guidelines, criteria or goals of comprehensive health planning in the applicable HSP, AIP or the State Health Plan;

(2) The quality of care as reflected in survey reports from the Department of Health and in other quality assurance programs recognized in federal and state laws;

(3) The proposed operating cost compared with similar services in similar health care facilities; or

(4) Unnecessary duplication of health care facilities and health services as reflected in governmentally issued or sponsored planning documents, studies or guidelines.

5. The applicant, prior to implementing any minor change in the project, shall submit a written request for an amended certificate to the HSA.

a. The request shall contain a narrative comparison of the approved project and the proposed changes, a description of the cost implications and rationale for the proposed changes.

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b. Within 30 days, the HSA shall review the request and forward all information submitted, a recommendation and rationale to the commissioner.

c. Within 30 days of receipt of the HSA recommendation, the commissioner shall review the applicant's request and the recommendation of the HSA and notify the applicant and the HSA in writing of the decision and reasons therefor.

6. The issuance of an amended certificate of need shall not result in the extension of the 18 month period which the applicant has to commence the project under the original certificate of need.

7. If a proposed amendment is not approved, the applicant shall either proceed under the certificate of need as initially issued or shall proceed through a full certificate of need review as a new applicant.

C. Expiration of certificate.

1. Notification of termination date. Pursuant to Minn. Stat. § 145.839, each certificate of need or waiver shall specify the termination date ~~pursuant to Minn. Stat. § 145.839.~~

2. Renewal of certificate or waiver.

a. If a project which had been granted a certificate of need or waiver has not commenced within 18 months, the applicant may submit information to the HSA and commissioner which updates the application and may request renewal of the certificate or waiver for a period up to 18 months.

b. Within 30 days of receipt of the request for renewal of the certificate of need or waiver, the HSA shall submit a recommendation to the commissioner as to whether the project or the reasons for approving the project have ~~changed~~ materially ~~changed or been materially affected~~ since the issuance of the certificate or waiver. If neither the project nor the reasons for approving the project have changed, renewal of the certificate ~~of~~ or waiver shall be recommended.

c. Within 30 days of receipt of the HSA recommendation regarding renewal, the commissioner shall determine whether renewal shall be granted based upon the HSA recommendation regarding renewal. Renewal may be granted for a period up to 18 months.

3. In the case of a construction project, the commissioner shall use all of the following criteria in determining whether the project has commenced:

a. Whether final working drawings and specifications have been approved by the Minnesota Department of Health;

b. Whether construction contracts have been let;

c. Whether a timely construction schedule has been developed stipulating dates for the beginning, various stages and completion of construction;

d. Whether all zoning and building permits have been secured;

e. Whether significant physical alteration of the site has been made and is continuing in accordance with the construction schedule; and

f. Whether other factors related to the above conditions exist.

4. In the case of a project solely involving the acquisition of equipment, the commissioner shall consider the following factors in determining whether the project has commenced:

a. Whether a final purchase order or lease arrangement for all component parts of the equipment has been executed; and

b. Whether the equipment has been delivered and installed or a firm delivery date has been set and a specific schedule has been established for commencing procedures.

5. In the case of offering of a service which does not require facility construction or equipment acquisition, the commissioner shall consider the following factors in determining whether the project has commenced:

a. Whether the new service has been introduced within the facility; and

b. Whether appropriate personnel, as set forth in the application, have been identified and an employment arrangement has been executed for commencing services on a specific schedule.

D. Transfer of certificate or waiver.

1. A certificate of need or waiver shall not be transferred independently of the project with which it is associated. A certificate of need or waiver and the associated project shall not be transferred without the prior approval of the commissioner. A transfer shall be approved by the commissioner if the information submitted pursuant to this section indicates that there will be no material changes in the project as originally approved in the certificate of need or waiver that has been issued.

2. An entity proposing to purchase or otherwise acquire the project and associated certificate of need or waiver shall apply for a transfer by submitting the following information to the HSA and the commissioner:

- a. A statement that it agrees to be bound by all the terms and conditions of the certificate of need or waiver originally granted for the project;
- b. The financial aspects portion of a certificate of need application or waiver request; and
- c. A list of any changes or modifications it proposes to make in the project.

3. Within 30 days after receipt of this information, the HSA shall review the transfer request and shall submit its recommendation to the commissioner. Within 30 days after receipt of the recommendation, the commissioner shall inform the entity requesting the transfer, the HSA and the SPA Department of Energy, Planning and Development as to whether or not the transfer has been approved and the reasons for the decision.

E. Periodic report.

1. Within 60 days after completion of a project for which a certificate of need was issued or a waiver granted, the applicant shall submit actual capital expenditure information related to the project to the commissioner and the HSA. The information submitted shall compare the estimated costs as outlined in the application with actual costs. A breakdown of costs, as specified in 7 MCAR § 1.663 A.4.b.(1)(a), shall be submitted.

2. If a discrepancy of more than 5% exists between estimated and actual costs in any of the reported line items or the total project cost, the applicant shall explain why the discrepancy occurred and indicate the additional impact on operating costs and patient charges resulting from the additional capital expenditures related to the project.

3. Completion of a project shall mean the earlier of the following:

- a. The last payment for construction costs and other fees related to the project is made, not including debt service related to the project; or
- b. The involved service is used for its intended purpose.

4. If the involved service is used for its intended purpose before the last related payment is made, an interim report shall be submitted utilizing actual and projected expenditures. In this case, the final report shall be submitted within 60 days after the last payment is made. Additional periodic reports may be required in connection with a revision to a project according to 7 MCAR § 1.663 F.

5. The requirements of this section shall apply to certificates of need and waivers issued or granted since August 1, 1979. If the project was completed prior to the effective date of these rules, the report shall be submitted within 60 days after the effective date of these rules.

~~**F. Investigations.** For the purposes of enforcement of the Act, the commissioner shall have access to all financial and other records of any entity subject to the Act.~~

7 MCAR § 1.665 Applications from health maintenance organizations.

A. An HMO shall be subject to certificate of need review, unless exempt under 7 MCAR § 1.665 C., if it proposes, or undertakes on behalf of an inpatient health care facility, a project involving:

1. Any erection, building, alteration, reconstruction, modernization, improvement, extension, lease, equipment purchase or other acquisition related to inpatient institutional health services which requires, or would require if purchased, a total capital expenditure in excess of \$150,000, and which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance;

2. The obligation of any capital expenditure related to a change in the bed capacity of a health care facility by more than ten beds or more than ten percent of the facility's total licensed bed capacity, whichever is less, over a two year period following the most recent bed capacity change, in a way which:

- a. Increases or decreases the total number of beds;
- b. Redistributes beds among various categories; or

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

ADOPTED RULES

c. Relocates beds from one physical facility or site to another.

3. The obligation of any capital expenditure which is associated with:

- a. The addition of an institutional health service which was not offered within the previous twelve months; or
- b. The termination of an institutional health service.

4. The addition of an institutional health service which was not offered during the twelve month period before the month in which the service would be offered, and which entails annual operating costs of at least \$75,000; or

5. Acquisition of an existing health care facility if the institutional health services or bed capacity, according to 7 MCAR § 1.665 A.2., will be changed as a result of the acquisition.

B. The following entities may qualify for exemption from certificate of need review if the conditions of 7 MCAR § 1.665 C. are met.

1. An HMO;

2. A combination of HMOs;

3. A health care facility which primarily serves inpatients if it is:

a. Owned, or proposed to be owned, by an HMO or HMOs; or

b. Governed by a controlling body which is composed of over fifty percent principal officers or board members of the HMO or HMOs; or

4. A health care facility, or a portion of a health care facility, leased by an HMO or HMOs for a term of at least 15 years.

C. The conditions which must be met to qualify for exemption are:

1. The applicant shall be "qualified" under Title XIII of the Public Health Services Act, 42 U.S.C. § United States Code, Section 300e or the applicant shall satisfactorily document to the commissioner that the HMO or HMOs ~~have~~ has substantially fulfilled the requirements of Title XIII of the Public Health Services Act, 42 U.S.C. § United States Code, Section 300e.

2. At least 50,000 persons shall be enrolled in the pertinent HMO(s) and shall have reasonable access to the proposed project; and

3. At least 75 percent of the potential patients shall be enrolled in the pertinent HMO(s).

D. The following procedures shall be followed in applying for exemption of an HMO project from certificate of need review.

1. An application for exemption shall be submitted to the commissioner, HSA and ~~SPA~~ Department of Energy, Planning and Development. The application shall describe the project for which an exemption is sought and shall contain information demonstrating that the HMO meets the conditions for exemption specified in 7 MCAR § 1.665 C.

2. The HSA or the commissioner, in order to make a recommendation or to make the final determination, may request additional clarifying information about the project. Any information requested shall be pertinent to the provisions of 7 MCAR § 1.665 B. and C. Failure to supply the information in a timely manner shall constitute sufficient grounds for determining that the entity is not eligible for exemption.

3. Within 30 days after the receipt of the request, the HSA shall forward its recommendation and all evidence to the commissioner. Within 30 days of the receipt of the HSA recommendation, the commissioner shall notify the HMO and the HSA of the decision to grant or deny the exemption and the reason therefor. The commissioner shall approve an application for exemption if the applicable requirements of 7 MCAR § 1.665 B. and C. have been met or will be met on the date the proposed activity will be undertaken.

E. The project granted exempt status may not be sold or leased, a controlling interest in a project may not be acquired ~~and~~ or a health care facility described in 7 MCAR § 1.665 B.3. and 4. may not be used in a manner other than proposed in the project, unless:

~~a-~~ 1. The commissioner issues a certificate of need approving the sale, lease, acquisition, or use; or

~~b-~~ 2. Upon request, the commissioner grants exempt status to such entity.

F. 7 MCAR §§ 1.661 through 1.664 shall apply to the review of a certificate of need application submitted by an entity listed in 7 MCAR § 1.665 B. for a non-exempt project. Notwithstanding the general review criteria in 7 MCAR § 1.663 E., if an entity listed in 7 MCAR § 1.665 B. applies for a certificate of need, the commissioner shall approve the project if he finds that:

1. Approval of the project is required to meet the needs of the members of the HMO and of the reasonably anticipated new members of the HMO; and

2. The HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO and which makes these services available through physicians and other health professionals associated with it. In assessing the availability of these services from other providers, the HSA and commissioner shall consider only whether the services from these providers:

- a. Would be available under a contract of at least five years duration;
- b. Would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
- c. Would cost no more to the HMO than if the services were provided by the HMO; and
- d. Would be available in a manner which is administratively feasible to the HMO applicant.

G. Any party aggrieved by a decision of the commissioner pursuant to 7 MCAR § 1.665 D. may seek judicial review of the commissioner's decision by instituting action pursuant to Minn. Stat. § 15.0424.

[Repealer clause. State Planning Agency rules 10 MCAR §§ ~~1.202~~ 1.201 to 1.210 (formerly SPA 201 to 210) are hereby ~~repeal~~ repealed.]

* The reader is advised to refer to the definition of "construction or modification" pursuant to 7 MCAR § ~~1.661 B.7.~~

* Minn. Stat. § ~~145.835~~, subd. 4. ~~Waivers.~~

~~A proposed construction or modification may be granted a waiver from the requirements of section 145.834 by the commissioner of health if, based on the recommendation of the health systems agency, the commissioner determines that: (a) The proposed capital expenditure is less than three percent of the annual operating budget of the facility applying for a waiver, and the expenditure is required solely to meet mandatory federal or state requirements of the law; or (b) The construction or modification is not related to direct patient care services such as parking lots, sprinkler systems, heating or air conditioning equipment, fire doors, food services equipment, building maintenance, or other constructions or modifications of a like nature.~~

** Minn. Stat. § ~~145.833~~, subd. 5(a)(2).

Subd. 5 "Construction or modification" means:

(a) ~~Any erection, building, alteration, reconstruction, modernization, improvement, extension, lease or other acquisition, or other purchase, lease or other acquisition of diagnostic or therapeutic equipment, by or on behalf of a health care facility which:~~

(2) ~~Changes the bed capacity of a health care facility in a manner which increases the total number of beds, or distributes beds among various categories, or relocates beds from one physical facility or site to another, by more than ten beds or more than ten percent of the licensed bed capacity, whichever is less, over a two year period.~~

Note: The attachment which was printed at *State Register*, Volume 5, Number 44, pages 1753-1758 following the rules as proposed was published for informational purposes only. The attachment is not part of the rules as adopted, and it was not filed with the Secretary of State.

Department of Natural Resources

Commissioner's Order No. 2114

Establishing Permit Requirements for Water Aeration Systems; Superseding Commissioner's Order No. 2083

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following regulations for the establishment and operation of water aeration systems.

Section 1. DEFINITIONS.

- a. "Aeration systems" means a man-made system for introducing air into or inducing currents in a water body. The

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purposes of such systems include, but are not limited to, preventing fish winterkill; keeping areas free of ice to aid navigation, to keep mooring facilities open, or to protect structures in the water from ice damage; maintaining open water for waterfowl; and rehabilitating lake water quality by methods such as destratification and hypolimnetic aeration.

b. "Public waters" has the meaning given it by Minnesota Statutes, Section 105.37.

Sec. 2. PERMIT REQUIRED.

An aeration system shall not be installed in public waters without first obtaining written permission from the Commissioner of Natural Resources, unless the system is used for and is no larger than the minimum size adequate to keep dock piers or mooring areas free of ice.

Sec. 3. APPLYING FOR A PERMIT.

a. Applications for permits shall be submitted on forms provided by the Commissioner and shall include:

- (1) The reason the system is needed.
- (2) A description of the system (location, size, number, devices to be used, etc.).
- (3) The operating schedule.
- (4) The anticipated result of the system.
- (5) Such further facts as the Commissioner may require, such as detailed water quality data, or fishing characteristics.

b. The applicant shall be:

- (1) A governmental agency such as a county, city, town, watershed district, or lake improvement district; or
- (2) A private person, group or entity, if the application is accompanied by proof that the applicant is financially able to maintain and operate the system and to meet any liability that should arise from the presence or operation of the system. The Commissioner may also require that the applicant obtain from the governing body of the county, city, town, or watershed district a statement that it has no objection to the project. Alternatively, the applicant may supply proof that he petitioned the governing body for such a statement, and the body took no action within 40 days of the petition.

Sec. 4. CRITERIA FOR GRANTING A PERMIT.

The Commissioner shall grant a permit for an aeration system when he concludes that:

- a. The system will accomplish the purpose for which it is intended; and
- b. The system will not harm the fishery or other wild animals, unless the harm is more than offset by a gain in other beneficial public uses; and
- c. The goal of the system is compatible with Department of Natural Resources management objectives for the water body; and
- d. The system satisfies the standards of Minnesota Statutes, Section 116D.04, subd. 6.

Sec. 5. PERMIT CONDITIONS.

The Commissioner may include such conditions as he thinks are reasonable and necessary for the design, installation, and operation of the system, and provisions for monitoring the system and its effects by the permittee or the Commissioner.

Sec. 6. MARKING REQUIREMENTS.

The following are minimum requirements for the marking of lakes where aeration systems are used during periods of ice cover.

a. Where an aeration system is used in public waters during periods of ice cover, signs of the design specified in Minnesota Rule NR 204(e) (6) shall be posted by the permittee at a height of from four to six feet in a rectangular pattern at each corner of the open water, with at least two additional signs between the corner signs on any side exceeding 100 feet in length.

b. Additional signs stating that an aeration system is in use and that open water or weak ice exists shall be posted by the permittee on the shoreline of the lake being aerated at each public access point and other areas commonly used by the public for access to the lake.

Sec. 7. PUBLICATION OF NOTICE.

Advance public notice of the commencement of operation of any aeration system, during periods of ice cover on public waters, shall be given by the permittee. Minimum notice shall consist of publication of the location and date of commencement of operation of the system in a newspaper of general circulation in the area where the system is proposed to be operated at least two times between five and 20 days prior to commencement.

Sec. 8. DECISION REVIEW.

If the permit is denied or if it is issued subject to conditions imposed pursuant to Sec. 5 above which are not acceptable to the applicant, the applicant may demand a contested case hearing pursuant to the provisions of Minnesota Statutes, Chapter 15. The application shall be fully heard as if the Commissioner had made no previous decision.

Commissioner's Order No. 2083 is hereby superseded.

Dated at Saint Paul, Minnesota, this 11th day of December, 1981.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Board of Nursing**Adopted Amendments to 7 MCAR §§ 5.1030 et seq. and 7 MCAR §§ 5.2030 et seq.
Repealing References to Nonpracticing and Delinquent Licenses of Registered
Nurses and Licensed Practical Nurses and Providing for a Two-Year Registration
Renewal Period for Licensed Practical Nurses**

The rules proposed and published at *State Register*, Volume 6, Number 17, pages 712-716, October 26, 1981 (6 S.R. 712) are now adopted as proposed.

SUPREME COURT**Decisions Filed Thursday, December 17, 1981****Compiled by John McCarthy, Clerk**

51616/Sp. Minneapolis Star and Tribune Company v. Commissioner of Revenue, Appellant. Hennepin County.

Minn. Stat. § 297A.14 (1980), imposing a use tax on paper and ink consumption above \$100,000 on some publications, is not an unconstitutional burden upon freedom of the press under the principals of *Grosjean v. American Press Co.*, 297 U.S. 233 (1936); nor is there a denial of equal protection as a result of the fact that section 297A.14 affords differing tax treatment to newspaper publishers and other industrial users, or to large and small publishers. This use tax is an ordinary form of taxation for the support of government. The classifications within this tax are justified by the compelling government purpose of revenue raising.

Reversed. Sheran, C. J.

52006 In re Petition of Douglas P. Busch, *et al.*, to Waive the Bar Admission Requirement of Graduation from an ABA-Accredited Law School. Supreme Court.

Circumstances of this case do not justify waiver of the rule requiring graduation from a law school accredited by the American Bar Association as a condition to admission to the bar of this state.

Petition denied. Sheran, C. J. Dissenting, Yetka, J., Simonett, J., and Otis, J.

81-194 Gandy Company v. Mathias Freuer, *et al.*, Defendants, Hugh J. Springer, Appellant. Steele County.

Respondent's proof was insufficient to establish by clear and convincing evidence that it adversely possessed an easement.

Trial court did not err in admitting an affidavit into evidence.

Reversed and remanded. Sheran, C. J.

81-231 Jeffrey B. Landa, petitioner, v. Billie Ann (Landa) Norris, *et al.*, Appellants. Hennepin County.

Under the Uniform Child Custody Jurisdiction Act, Minn. Stat. §§ 518A.01-25 (1980), the Ohio court, having first exercised jurisdiction over the question of child custody, has primary jurisdiction to consider an application to modify the custody decree absent a formal decision to decline to exercise that jurisdiction. Minn. Stat. § 518A.14 (1980).

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

SUPREME COURT

81-306 State of Minnesota v. John Jenry Brown, Appellant. Ramsey County.

Remanded. Sheran, C. J.

81-130 State of Minnesota v. Helen Catherine Ulvinen, Appellant. Hennepin County.

The evidence did not show beyond a reasonable doubt that appellant was guilty of active conduct sufficient to convict her of first degree murder under Minn. Stat. § 609.05 (1980).

Reversed. Otis, J. Conc. spec. Yetka, J.

51737/Sp., 51738 State of Minnesota v. Darrell Wayne Smith and Clifford Harley Kittelson, Appellants. Aitkin County.

Trial court did not prejudicially err in granting pretrial motion for amendment of complaint or in refusing a defense request to suppress evidence for the unintentional violation of a discovery order, and evidence adduced at trial was sufficient to support defendants' gross misdemeanor convictions or illegal deer shining.

Affirmed. Todd, J.

81-737/Sp. Jeffrey B. Nelson, et al., Appellants, v. Harry Peterson, Commissioner-designate, Minnesota Department of Labor and Industry, et al. Ramsey County.

Statute prohibiting only state-employed attorneys who represent petitioners in Workers' Compensation proceedings from being eligible for appointment as compensation judges is irrational and therefore violates the equal protection guarantees of the United States and Minnesota constitutions.

Reversed. Todd, J. Dissenting, Sheran, C. J., Peterson, J., and Simonett, J.

48803/360 In the Matter of the Application for the Discipline of Robert John Appert and Gerald Gordon Pyle, Attorneys at Law of the State of Minnesota. Supreme Court.

A rule prohibiting attorneys from publishing or otherwise distributing written advertisements that do not contain false, fraudulent, deceptive, or misleading information is an unconstitutional restriction on an attorney's and the public's first amendment rights.

The facts of this case do not justify a finding that respondent attorneys violated former Disciplinary Rule 2-103 (1977).

Petition for discipline dismissed. Yetka, J.

81-1031 Minnesota Recipients Alliance, et al., Plaintiffs, v. Arthur E. Noot, et al., Defendants and Third Party Plaintiffs, v. Richard D. Schweiker, et al., Third Party Defendants. United States District Court.

Minn. Stat. § 256.73, subd. 6 (1980), is consistent with recent federal law limiting child care expenses to \$160 per month and all other work expenses to \$75 per month.

Minn. Stat. § 256.74, subd. 1 (1980), is inconsistent with recent federal law limiting child care expenses to \$160 per month and all other work expenses to \$75 per month.

Minn. Stat. § 256.74, subd. 1(3) (1980), requires the "\$30 plus one-third" work incentive disregard be deducted from gross rather than net income; and thus the recent federal change in its calculation is in conflict with the state law.

Simonett, J.

81-59 R.E.M. IV, Inc., v. Robert F. Ackermann & Associates, Inc., et al., Buhler Construction Company, v. Norcol, Inc., Appellant. Ramsey County.

Under Subdivision 7 of the Associated General Contractors Standard Subcontract Agreement, a subcontractor is not required to indemnify the general contractor for the latter's own negligence for property damage which occurred after the work of the subcontract was completed.

Reversed and remanded for trial. Scott, J.

51825 Rolf Walter v. Independent School District No. 457, Trimont, Minnesota, Appellant. Martin County.

A full-time teacher who has been placed on unrequested leave of absence pursuant to Minn. Stat. § 125.12, subd. 6b (1980) and who then accepts a part-time position remains on unrequested leave to the extent of the remainder of the full-time position.

A teacher on two-fifths time unrequested leave of absence is not entitled to be offered any available two-fifths position in the district for which he is licensed when the position available requires special qualifications which that teacher does not possess.

Reversed. Wahl, J. Dissenting, Amdahl, J., Todd, J., and Scott, J.

50711 In the Matter of the Application for the Discipline of Jerald Barton Wolfson, an Attorney at Law of the State of Minnesota. Supreme Court.

Disbarred. Per Curiam

Decisions Filed Wednesday, December 16, 1981

51839/Sp. In the Matter of the Welfare of G.D.E. Hennepin County.

Commitment of a juvenile to the County Home School under Minn. Stat. § 260.185, subd. 1(c) (1980), must be for a definite period as required by section 260.185, subd. 4.

Appeal dismissed. Otis, J.

81-962/Sp., 81-373 State of Minnesota v. Derrold Frank Flynn, Appellant. St. Louis County.

Sentencing court properly refused to stay prison sentences when record established that defendant was particularly unamenable to probation, and court properly imposed consecutive term of 1 year and 1 day for attempted escape conviction.

Affirmed. Amdahl, J.

STATE CONTRACTS

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

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

Department of Education Vocational-Technical Division

Notice of Extension of Request for Proposals for Developing and Implementing Decision-making Systems

The Division of Vocational-Technical Education, Department of Education, is extending the deadline for the submittal of proposals for the review and development of decision-making systems for the division and for the implementation of identified systems.

The current status of decision-making structures, systems and practices shall be assessed. Idealistic or optimum decision-making systems shall be identified. Recommendations for accomplishment and responsibility for obtaining change shall also be included. Assistance in implementation of systems relating to facilities, equipment, instructional support, student services, staffing, funding, program approval, personnel management, and external impact will be provided to pertinent populations. This project may be completed in stages with the first stage to be completed by November 30, 1982. The amount of the contract is estimated to be \$40,000 including expenses.

A Bidders' Conference will be held on January 8, 1982, at 9:30 a.m. in Conference Room 807, Capitol Square Building for those parties interested in submitting proposals. Persons planning to attend the Bidders' Conference should inform the Manager

A Bidders' Conference will be held on January 8, 1982, at 9:30 a.m. in Conference Room 807, Capitol Square Building for those parties interested in submitting proposals. Persons planning to attend the Bidders' Conference should inform the Manager of the Operational Services Section of their intent.

Proposals must be received by 4:00 p.m. Monday, January 25, 1982, in Room 548 Capitol Square Building. Persons and organizations who submitted proposals in response to the previously announced RFP may amend and resubmit them again if they so desire.

Inquiries should be directed to:

Melvin E. Johnson, Manager,
Operational Services Section
Division of Vocational-Technical Education
548 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone (612) 296-2421

STATE CONTRACTS

Department of Natural Resources Fish and Wildlife Division

Notice of Request for Proposals for Assessing the Status and Breeding Biology of Piping Plovers in Lake of the Woods County

Notice is hereby given that the Department of Natural Resources intends to engage the services of a consultant to conduct an in-depth assessment of the piping plover (*Charadrius melodus*) population in Lake of the Woods County during the summer of 1982. A more detailed outline of the project tasks is available in the Request for Proposals (RFP). The formal RFP may be requested and inquiries made should be directed to:

Lee Pfannmuller
Nongame Program
Department of Natural Resources
Box 7, Centennial Office Bldg.
St. Paul, Minnesota 55155
(612-296-2895)

Proposals should be submitted no later than January 29, 1982. The estimated amount of the contract is \$4000.

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 the Minnesota Cable Communications Board's Metropolitan Interconnect Entity and the Metropolitan Regional Channel Entity Concerning Interconnection of Metropolitan Cable Systems

Notice is hereby given that public comments in the above-entitled matters are being solicited by the Minnesota Cable Communications Board pursuant to Minnesota Statutes § 238.05, subdivision 12.

The board will conduct *public hearings* concerning the Metropolitan Interconnect Entity and the Metropolitan Regional Channel Entity during its regular meetings on January 8, and February 12, 1982. Board meetings are scheduled to convene at 9:00 a.m., 500 Rice Street (at University Ave.) in Saint Paul.

Information and policy discussion papers concerning the plans may be obtained from, and written comments may be submitted to, the Board at 500 Rice Street, Saint Paul, MN 55103; telephone (612) 296-2545.

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

Minnesota Board on Aging

Notice of Intent to Designate an Area Agency on Aging

In accordance with 45 CFR 1321.81 the Minnesota Board on Aging is required to designate an area agency on aging in each planning and service area in which the MBA decides to allocate funds. Due to dissolution of the Southeastern Minnesota Regional Development Commission effective November 20, 1981, the planning and service area comprised of Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmstead, Rice, Steele, Wabasha, and Winona counties is without a designated area agency on aging. This PSA is also known as Region 10. Approximately \$1,313,000 has been allocated to Region 10 for 1982.

Letters of intent must be received by the MBA on or before February 1, 1982. Applications for Designation must be received by the MBA by March 15, 1982. Final action shall be taken by the MBA on April 16, 1982 effective May 1, 1982. Both letters of intent and applications for designation should be submitted to:

Minnesota Board on Aging
204 Metro Square
Seventh and Robert Streets
St. Paul, Minnesota 55101
Attn: Ted Gredvig, Director
Program Operations
(612) 296-2137

AAA DESIGNATION GUIDELINES

Procedures for Designation

To apply for designation as an Area Agency on Aging for a particular planning and service area, an interested agency must file a letter of intent with the MBA. Upon MBA determination that the interested agency is an eligible applicant, appropriate application instructions and forms will be forwarded. Before designating an area agency, the state agency must:

1. Consider the views of the unit(s) of general purpose local government within the planning and service area; and
2. Conduct an on-site assessment to determine whether the agency which is being considered for designation has the capacity to perform all of the functions of an area agency as specified.

Functions of Area Agencies on Aging

An area agency must:

- a. Develop and administer the area plan for a comprehensive and coordinated system of services; and
- b. Serve as the advocate and focal point for older persons in the planning and service area.

Definition of Area Plan

An area plan is the document submitted by an area agency to the state agency in order to receive subgrants or contracts from the state agency. The area plan contains provisions required by the Older Americans Act and commitments that the area agency will administer all activities in accordance with all federal requirements. An area agency may use its subgrants or contracts only for activities under its approved plan.

Eligibility Criteria

The state agency may designate as an area agency any one of the following types of agencies that has the authority and the capacity to perform the functions of an area agency:

- a. An established office on aging which operates within the planning and service area;
- b. Any office or agency of a unit of general purpose local government that is proposed by the chief elected officials of the unit;
- c. Any office or agency proposed by the chief elected officials of a combination of units general purpose local government (such as Regional Development Commissions);
- d. Any other public or private nonprofit agency.

Organization of the Area Agency on Aging

An area agency may be either:

- a. An agency whose single purpose is to administer programs for older persons; or
- b. A multipurpose agency with the authority and capacity to administer human services in the area.

Selection Criteria

a. Agency Capacity

The degree to which an applicant can demonstrate capacity to:

1. Develop and administer an area plan;
2. Serve as the advocate and focal point for older persons;
3. Meet or exceed federal and state policy and procedural requirements; and
4. Provide for sound fiscal planning, management, and control.

OFFICIAL NOTICES

b. Organizational Compatibility

The degree to which an agency can demonstrate compatibility between organizational goals and the goals of the Older Americans Act through:

1. Documentation of agency mission and clarity of purpose;
2. Historical commitment to the well-being of older people; and
3. Explanation of planning and coordinating role in the community.

c. Community Support

The degree to which an agency can demonstrate:

1. Ability to provide adequate matching resources to meet the nonfederal share of AAA administrative costs;
2. Support of local governmental bodies in the planning and service area; and
3. Support of senior citizen programs, organizations, and clubs within the planning and service area.

d. Preference

In accordance with 45 CFR 1321.63 b, preference shall be given to:

1. An established office on aging; and
2. Any Indian tribal organization where appropriate.

Department of Commerce Banking Division

Bulletin No. 2505: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of January 1982

Notice is hereby given that pursuant to Minnesota Statutes § 47.20, subd. 4a (1980), the maximum lawful rate of interest for conventional home mortgages for the month of January, 1982, is seventeen and one-quarter (17.25) percentage points. Further, pursuant to Minnesota Statutes § 47.20 the maximum lawful rate of interest for contract for deed for the month of January, 1982, is seventeen and one-quarter (17.25) percentage points.

It is important to note that this maximum lawful interest rate does not apply to all real estate loans and contract for deed. Under Minnesota's interest rate moratorium, which is identical to the Federal Usury Preemption, in most instances any rate may be charged on real estate mortgages and contracts for deed that constitute first liens.

The maximum rate is based on the Federal National Mortgage Association December 22, 1981, auction results and an average yield for conventional mortgage commitments of 17.073%. Current rates regarding this monthly publication are available by telephoning the Banking Division 24-hour information number (612) 297-2751.

December 23, 1981

Michael J. Pint
Commissioner of Banks

Department of Energy, Planning & Development Energy Policy Development Council

Notice of Council Meeting

The next meeting of the council is scheduled for January 18, 1982, 12:00 to 4:00 p.m. in the Rice Suite of the Radisson Plaza, St. Paul. This meeting will review and discuss ideas for the work program of the council. Contact Allen Jaisle, 296-2641, for further information.

Department of Health Health Systems Division

Notice Concerning Application for Certificate of Need

Pursuant to 7 MCAR § 1.663A.1, applications for certificate of need shall be submitted to the area health systems agency (HSA) on the first day of each month.

Department of Health

Notice of Application for Licensure to Operate a Basic Life Support Transportation Service at Grand Marais, MN

As of December 28, 1981, a complete application submitted by Gunflint Trail Fire and Rescue Squad was on file with the Department of Health for a license to operate a basic life support transportation service, with base of operation located at Box H.J.18 Gunflint Trail, Grand Marais, Minnesota 55604, and proposed name of service to be the Gunflint Trail Fire and Rescue Squad.

This notice is given pursuant to Minnesota Statutes § 144.802 (1979), which requires that the Commissioner of Health shall publish the notice in the *State Register* at the applicant's expense, and in a newspaper in the municipality in which the service will be provided, or if no newspaper is published in the municipality, or if the service would be provided in more than one municipality, in a newspaper published at the county seat of the county or counties in which the service would be provided. Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Western Lake Superior Health Systems Agency, 202 Ordean Building, 424 West Superior St., Duluth, Minnesota 55802, before the close of business on January 28, 1982.

After a public hearing has been held in one of the municipalities in which the service is to be provided, the Western Lake Superior Health Systems Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Western Lake Superior Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the Western Lake Superior Health Systems Agency recommendation, the Commissioner of Health shall grant or deny the license to this applicant.

Department of Labor and Industry Workers' Compensation Division

Notice of Intent to Solicit Outside Opinions on Workers' Compensation Division Rules Relating to Establishment of Disability Schedules

Pursuant to the provisions of Minnesota Statute § 15.0412, subd. 6, notice is hereby given that the Department of Labor and Industry, Workers' Compensation Division, is seeking information and opinions in preparing to propose the adoption of permanent rules required by Minnesota Statute § 176.105 establishing a schedule of degrees of disability resulting from different kinds of injuries and establishing a schedule of internal organs compensable under the Minnesota Workers' Compensation Act. All interested persons shall be afforded an opportunity to submit data or views on the rules in writing or orally. Any written material received shall become a part of a subsequent hearing's record. Data and views are to be submitted to:

Arthur H. Anderson, Assistant Commissioner
Department of Labor and Industry
Workers' Compensation Division
444 Lafayette Road
St. Paul, Minnesota 55101
Telephone : (612) 296-6490

All data and views are to be submitted by no later than January 15, 1982, to be considered for the proposed rules. Data and views received subsequent to that date will be received and considered during the normal hearing process but will be too late for consideration for the proposed rules.

OFFICIAL NOTICES

Minnesota State Retirement System

Notice of Special Meeting of Board of Directors

A special meeting of the Board of Directors of the Minnesota State Retirement System will be held on Friday, January 15, 1982 at 9:00 a.m. in the office of the system, 529 Jackson Street, St. Paul, Minnesota.

The purpose of the meeting will be to discuss the actuarial report for the fiscal year ending June 30, 1981, and any other matters that may properly come before the board.

Minnesota Teachers Retirement Association

Meeting Notice

The Board of Trustees, Minnesota Teachers Retirement Association, will hold a meeting on Friday, January 29, 1982, at 9 a.m. in the office of the association, 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, to consider matters which may properly come before the board.

Department of Transportation

Petition of City of St. Paul for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of St. Paul has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width on bridges and roadway along Lexington Parkway (MSAS 159) between Pierce Butler Road (Bridge #7272) and the Burlington Northern Railway Company (Bridge #5583).

The request is for a variance from 14 MCAR § 1.5032 H.1.c., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design width of 44 feet instead of a required design width of 52 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 22nd day of December, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of St. Cloud for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of St. Cloud has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Ninth-Tenth Avenue between St. Germain Street and Ninth Street North.

The request is for a variance from 14 MCAR § 1.0532 H.1.c., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 60 feet with no parking permitted instead of a roadway width of 68 feet with no parking permitted.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 22nd day of December, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the County of Sibley for a Variance from State Aid Rural Undivided Geometric Standards

Notice is hereby given that the County Board of the County of Sibley has made a written request to the Commissioner of Transportation for a variance from minimum rural undivided geometric standards on County State-Aid Highway 27 from County State-Aid Highway 19 to County State-Aid Highway 5.

The request is for a variance from 14 MCAR § 1.5032 H.1.a., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit 3 to 1 inslopes and a future (9 Ton) 30' roadway width, a 45 mile per hour curve and a 42 mile per hour curve instead of 4 to 1 inslopes, a future (9 Ton) 32' roadway and 50 mile per hour design speed.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 22nd day of December, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Blue Earth County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Blue Earth County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a special resurfacing project along CSAH 6 between CSAH 11 and Trunk Highway No. 68 approximately 9 miles N.W. of Lake Crystal.

The request is for a variance from 14 MCAR § 1.5032 H.1.d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 42 miles per hour instead of a required design speed of 45 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 22nd day of December, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Cook County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Cook County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a special resurfacing project along CSAH 12 between 1,300' North of CSAH 8 and 2,170' North of County Road 61.

The request is for a variance from 14 MCAR § 1.5032 H.1.d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 35 miles per hour instead of a required design speed of 45 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 22nd day of December, 1981.

Richard P. Braun
Commissioner of Transportation

OFFICIAL NOTICES

Department of Transportation

Petition of Lac Qui Parle County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Lac Qui Parle County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a special resurfacing project along CSAH 7 between CSAH 40 and the North County Line.

The request is for a variance from 14 MCAR § 1.5032 H.1.d. Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 43 miles per hour instead of a required design speed of 45 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 22nd day of December, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Redwood County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Redwood County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a special resurfacing project along CSAH 4 between County Road 56 in Seaforth and Trunk Highway No. 19, 4.25 Miles North of Seaforth.

The request is for a variance from 14 MCAR § 1.5032 H.1.d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 43 miles per hour instead of a required design speed of 45 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 22nd day of December, 1981.

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA

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