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STATE REGISTER

STATE OF MINNESOTA



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Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 7			
26	Monday Dec 13	Monday Dec 20	Monday Dec 27
27	Monday Dec 20	Monday Dec 27	Monday Jan 3
28	Monday Dec 27	Monday Jan 3	Monday Jan 10
29	Monday Jan 3	Monday Jan 10	Monday Jan 17

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

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

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

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

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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:

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Issues 14-25, inclusive	Issues 40-51, inclusive
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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 Public Welfare Support Services Bureau

Proposed Repeal of Rules Governing the Pilot Program of Nonresidential Services for Mentally Ill Persons (12 MCAR § 2.021); Community-Based Residential Services for Mentally Ill Persons (12 MCAR § 2.022); Development of Chemical Dependency Prevention, Identification and Referral Programs for Affected Employees and Underserved Populations (12 MCAR § 2.024); Reimbursement for Cost of Care of Mentally Retarded or Epileptic or Emotionally Handicapped Children (12 MCAR § 2.030); Administration of Work Equity Project (12 MCAR § 2.063); and Services to Unmarried Parents (12 MCAR § 2.170)

Notice of Intent to Repeal Rules without a Public Hearing

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

Persons interested in these rules shall have 30 days to submit comment on the repeal of these rules. The repeal of these rules may not take place if the continued effectiveness of these rules is supported by the data and views submitted to the agency.

Unless seven or more persons submit written requests for a public hearing on the repeal of these rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4.-4.f.

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

Robert Hamper
DPW—4th Floor
Centennial Office Building
St. Paul, MN 55155
612/296-2794

Any request for a public hearing should specifically indicate which rule a hearing is desired on.

Authority for the repeal of these rules is contained in Minn. Stat. § 15.0412, subd. 1, and Minn. Stat. § 256.01, subd. 2. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of the repeal of these rules has been prepared and is available from Robert Hamper, DPW 4th Floor, Centennial Office Building, St. Paul, Minnesota 55155, 612/296-2794 upon request.

Before the final repeal of these rules without a public hearing, the rules proposed for repeal, this notice, the statement of need and reasonableness, all written comments received, and the final rules as repealed will be delivered to the Attorney General for

review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for repeal, should submit a written statement of such request to Robert Hamper.

The repeal of these rules will not result in any additional spending for local public bodies.

The need to repeal the above-entitled rules is as follows:

1. 12 MCAR § 2.021—The need for this rule has been eliminated because of amendments to the Community Social Services Act, Laws of 1981, Chapter 256E.06, subd. 2. These amendments require the Commissioner of Public Welfare to terminate the making of separate categorical grants for community mental health pilot programs, effective December 31, 1982. Beginning January 1, 1983, funds appropriated for Rule 21 will be included in the individual county block grants for the provision of all community social services.

Rule 21 will be repealed on March 1, 1983, or five (5) working days after publication of the final notice in the *State Register*, whichever comes later.

2. 12 MCAR § 2.022—The need for this rule has been eliminated because of amendments to the Community Social Services Act, Laws of 1981, Chapter 256E.06, subd. 2. These amendments require the Commissioner of Public Welfare to terminate the making of separate categorical grants for community-based residential programs for mentally ill persons, effective December 31, 1982. Beginning January 1, 1983, funds appropriated for Rule 22 will be included in the individual county block grants for the provision of all community social services.

Rule 22 will be repealed on March 1, 1983, or five (5) working days after publication of the final notice in the *State Register*, whichever comes later.

3. 12 MCAR § 2.024—The need to repeal this rule arises because the Laws of Minnesota 1979, Chapter 324, Section 46, repealed the funding provisions of the Laws of Minnesota, 1976, Chapter 125 effective January 1, 1980. Rule 24 (12 MCAR § 2.024) was initially established to implement those funding provisions.

4. 12 MCAR § 2.030—The need for this rule has been eliminated because of Minnesota Statute 256E.06, subd. 2 that requires cost of care appropriation to be folded into CSSA monies effective January, 1983. The purpose of 12 MCAR § 2.030 is to govern the use of state monies in reimbursing counties for expenditures in residential and foster care for the mentally retarded or epileptic or emotionally handicapped children. Because of the fold in, all reimbursements will end by January, 1983, and consequently, the rule will have no value.

5. 12 MCAR § 2.063—The need for this rule has been eliminated due to the termination of the Work Equity Project. This rule was initially established to enable implementation of a federally authorized demonstration project of limited duration. The federal authority and funding for this project has since expired and the project has been terminated.

6. 12 MCAR § 2.170—The need for this rule has been eliminated by the promulgation of Rule 12 MCAR § 2.222, Services to Pregnant Women and Mothers. DPW Rule 222 defines the criteria for pregnant women and mothers who have special needs, and the responsibility of local agencies to provide services to them. The criteria that are defined in DPW Rule 222 include unmarried parents and ensure that the same services will be provided as were required by DPW Rule 170.

Copies of this notice and the rules to be repealed are available and may be obtained by contacting Robert Hamper.

November 24, 1982

Arthur E. Noot
Commissioner of Public Welfare

Rules as Proposed (all new material)

Repealer. The following rules are repealed: 12 MCAR §§ 2.021, 2.022, and 2.024; DPW 30; 12 MCAR §§ 2.063, and 2.170.

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

**Department of Public Welfare
Social Services Division**

**Proposed Rules of the State Department of Public Welfare Governing the
Administration and Provision of Protective Services to Children through Local
Social Service Agencies**

Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the state Department of Public Welfare proposes to adopt the above-entitled rule without a public hearing. The commissioner has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 15.0412, subdivision 4h (1980).

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

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f.

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

Paul Spears
Social Services Division, Department of Public Welfare
Fourth Floor, Centennial Office Building
St. Paul, Minnesota 55155
(612) 296-6740

Authority for the adoption of this rule is contained in Minnesota Statutes §§ 626.556 and 260.171. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Paul Spears upon request.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written statement of such request to Paul Spears.

The proposed rule amendments relate to the following matters:

C.1.b.(7) This amendment clarifies local agency responsibility under Minnesota Law 1982, ch. 469, § 3, subd. 2, which requires the filing of a juvenile court petition for an extension when it is necessary to hold a child in shelter care longer than 72 hours for his or her protection.

C.1.b.(8) This amendment clarifies local agency responsibility under Minnesota Law 1982, ch. 469, § 3, subd. 2, and § 6, subd. 5.a., which requires the local agency to determine whether or not the location of a child's placement should be disclosed to the child's parent, guardian or custodian and to notify the facility operator and the court of such determination.

C.1.c.(2) This amendment implements Minn. Stat. § 626.556 and the legislative intent to Minn. Stat. § 260.001 by offering the local agency in-home services as an alternative to out-of-home placement in instances where the local agency may determine such an alternative to be feasible.

C.1.e.(1)(2)(3) This amendment clarifies Minnesota Laws 1982, ch. 636 § 1 which requires local agencies to give feedback to reporters in instances where such feedback does not violate the child's best interests. The amendment limits the amount and type of information which may be given in order to remain in compliance with federal confidentiality regulations.

C.1.h.(2)(d) This amendment extends the time given the local agency for reporting incidents of institutional abuse/neglect to the state licensing authority from 24 hours to 48 hours excluding weekends and holidays.

C.1.j. This amendment reduces local agency responsibility for notifying child protection clients in cases where abuse/neglect are substantiated, of the classification of the report by allowing the worker's verbal notification and the social service application to serve as sufficient notification—thereby making additional written notification unnecessary.

C.1.k.(1)(2)(3)(4) This amendment implements Minnesota Law 1982, ch. 636, § 3, requiring the local agency not to disclose

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the names of individuals making child abuse/neglect reports, as well as requirements for classifying reports as substantiated, unsubstantiated or unable to substantiate.

Copies of this notice and the proposed rule are available and may be obtained by contacting Paul Spears.

There will be no fiscal impact for local public agencies in implementing the proposed amendments in this rule.

James E. Noot
Commissioner of Public Welfare

Rule as Proposed

12 MCAR § 2.207 Protective services to children—adopted.

A.-B. [Unchanged.]

C. Administration and organization of protective service program.

1. Local social service agency responsibility in the delivery of child protective services.

a. Any child in Minnesota who is in need of protection is to receive such service in the county in which the child lives or is found, irrespective of family income and legal or poor relief settlement of the child or family.

b. The local social service agency must accept all complaints alleging that a child has been physically or sexually abused or neglected. Neglect includes conditions or actions which threaten either the child's physical health or the child's mental health. Upon receiving such complaints, the local social service agency shall immediately notify the local police or sheriff's department.

(1)-(6) [Unchanged.]

(7) The local social service agency shall file a petition in juvenile court for an extension of time to hold a child in a shelter care facility longer than 72 hours excluding weekends or holidays when the agency determines that it is necessary to detain a child for his or her own protection.

(8) When placing a child in a shelter care facility, the local social service agency shall determine whether disclosure of the location of the facility to the child's parent, guardian, or custodian may place the child in danger. The decision of whether or not to disclose the location shall then be contained in the written report to the court, and to the facility supervisor.

c. Where the need for protective intervention has been established, the local social service agency shall, whenever possible, provide services that preserve the child within the family unit while at the same time assuring the child a safe environment. Such services may include, but are not limited to:

(1) family counseling,

(2) homemaking services or in-home services,

(3) referral to parent support organizations to courses in parenting or child care such as may be available in the community.

d. If services necessary to provide the child a safe environment are rejected, the child protection worker shall petition the court for authorization to intervene.

e. Following the assessment of a child abuse or neglect report, the local social service agency shall, when requested, provide the reporting party a summary of the agency's findings. The summary shall be limited to:

(1) the agency's determination that the report was either substantiated, unsubstantiated or presently inconclusive;

(2) the agency's intention to provide, or not provide, or refer to, remedial services; and

(3) the local social service agency may deny the request of the reporting party if it determines that disclosure of the information is detrimental to the child's best interests.

e.-f. [See relettering instruction.]

~~g.~~ h. When child maltreatment is reported in a state supervised or licensed facility, including a foster home, the local social service agency shall:

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- (1) immediately contact the facility to determine the validity of the report;
- (2) where such reports are valid, the local social service agency shall:
 - (a) assess present risk to the child and assure steps are taken to protect the child;
 - (b) as soon as possible, inform the child's parents or guardians of the incident;
 - (c) when an incident involves a child placed out of his/her home county, inform the agency responsible for the child's placement;
 - (d) ~~make an oral report to~~ notify the state agency responsible for licensing within 24 48 hours excluding holidays and weekends. ~~Such reports~~ The notification shall include:

(i) the identity of facility in which the incident occurred, the name, age and sex of the victim and the name and status of the alleged perpetrator if known;

(ii) the nature and extent of the child's injuries, measures taken to assure necessary treatment and protection, and the name of the protective services worker responsible for investigating the incident.

h. [See relettering instruction.]

~~+~~ j. The local social service agency shall assess and classify and record all reports as either substantiated, unsubstantiated, or unable to substantiate within 90 days of receiving the initial report. At the conclusion of the assessment the subjects of the report shall be notified in writing of the agency's determination of the classification of the report. The subjects of the report shall also be informed of their right to review the report, subject to applicable Minnesota law. If a report is substantiated and a child protection case is opened, the subject's copy of the social service application shall constitute sufficient written notification of the classification.

~~(+)~~ k. Records relating to ~~substantiated~~ reports made pursuant to Minnesota Statutes, section 626.556.

(1) The name of the person making a child abuse or neglect report shall not be disclosed to the subject of the report while the report is under assessment. Upon completion of the assessment, the name of the reporting party shall be confidential and shall be disclosed only upon court order.

~~(a)~~ (2) Records relating to reports made pursuant to Minnesota Statutes, section 626.556 which are supported by evidence and information obtained during the assessment, and are determined by the agency to be substantiated, shall be destroyed seven years following the date of the final entry in the case record.

~~(b) The name of the individual submitting a report which is determined to be substantiated shall be disclosed only upon court order, or with the knowledge and consent of the person making the report.~~

~~(2) Records relating to unsubstantiated or false reports made pursuant to Minnesota statutes, section 626.556 shall be destroyed immediately, upon determination that they are unsubstantiated and the name of the individual submitting the report shall be disclosed upon request of the subject of the report.~~

(3) If upon initial assessment, a report is determined to be unsubstantiated, the subject of the report shall be notified in writing of the report's classification, the agency's intent to destroy the records relating to the report, and the subject's right to review the records, except that the name of the reporting party shall remain confidential and shall be disclosed only upon court order. If no request for access to the records is made by the subject within 30 days of the mailing of the notification, the records shall be destroyed.

(4) Records relating to reports which upon initial assessment cannot be substantiated to the satisfaction of If upon assessment a report is classified as unable to substantiate by the local social service agency, the records relating to the report may be kept for one year. Since there is substance to the reports, and they are, therefore, not unsubstantiated, the name of the individual making the report shall not be disclosed unless the report is later found to be unsubstantiated, or one year passes, or with the knowledge and consent of the person making the report. If, after one year, neither the local social service agency nor the law enforcement agency is able to substantiate the report, the subject shall be notified in writing of the report's classification, the agency's intent to destroy the records, and the subject's right to review the records, except that the name of the reporting party shall be disclosed only upon court order. If no request for access to the records is made by the subject within 30 days of the mailing of the notification, the records shall be destroyed.

2. [Unchanged.]

Relettering. Reletter 12 MCAR § 2.207 C.1.e. as C.1.f.; C.1.f. as C.1.g.; and C.1.h. as C.1.i.

Board of Teaching

Proposed Adoption, Amendment, or Repeal of Rules Governing Procedures for Voluntary Surrender of Teaching Licenses, the Licensure of Teachers of Driver and Traffic Safety Education, the Licensure of Teachers of Science for Grades 5-9 and Grades 7-12, the Licensure of Teachers of English as a Second Language, and the Licensure of Teachers of Bilingual/Bicultural Education

Notice of Hearing

A public hearing concerning the above-cited proposed rules will be held at National Guard Armory, Room 224, 600 Cedar Street, St. Paul, Minnesota 55101, on January 22, 1983, commencing at 9:00 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to:

Jon Lunde, Hearing Examiner
Office of Administrative Hearings
400 Summit Bank Building
310 South Fourth Avenue
Minneapolis, Minnesota 55415
(612) 341-7645

either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

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

The statutory authority of the board to promulgate the proposed rules is provided by Minn. Stat. § 125.05, subd. 1 (1980) and Minn. Stat. § 125.185, subd. 4 (1980).

As required by Minn. Stat. § 15.0412, subd. 7 (1981 Supp.), the board estimates that the cost to local public bodies in the state to implement the rules for two years immediately following their adoption shall not exceed \$100,000.

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Additional copies will be available at the door on the date of the hearing. If you have any questions concerning the content of the proposed rules, contact Kenneth L. Peatross.

Notice: Any person may request notification of the date on which the report of the hearing examiner will be available, after which date the board may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the board. If

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you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the report of the hearing examiner, or to the board, in the case of the submission or resubmission by the board to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980), as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any one month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, telephone (612) 296-5616.

November 22, 1982

Kenneth L. Peatross, Executive Secretary
Board of Teaching

Rules as Proposed (all new material)

5 MCAR § 3.007 Procedures for voluntary surrender of teaching licenses.

A. Materials required to surrender license. A person holding a teaching license granted by the Board of Teaching may voluntarily surrender the license by submitting to the executive secretary of the Board of Teaching the following:

1. a written request to surrender which specifies the teaching license or licenses to be surrendered;
2. the applicant copy of the teaching license;
3. the school district copy of the license, together with a written statement that the employing school superintendent has been notified that the school district copy of the license has been removed from the school district files; and
4. the required processing fee set forth in 5 MCAR § 3.003.

B. Surrender date. When the executive secretary receives the materials listed in A. by January 1, the date of surrender is July 1 of that year. When the materials are received after January 1, the date of surrender is July 1 of the following calendar year.

C. When surrender is prohibited. A person may not voluntarily surrender a license if any of the following exists:

1. the school board has commenced proceedings to terminate the continuing contract, pursuant to Minnesota Statutes, section 125.12, subdivision 6 or 8, or 125.17, subdivision 4;
2. the Board of Teaching has commenced proceedings to suspend or revoke the license pursuant to Minnesota Statutes, sections 125.09 and 214.10 or 5 MCAR § 3.130; or
3. any educational agency or board has commenced proceedings which could result in alteration of the status of the teaching license due to the person's conduct.

D. Entrance license after surrender. A person whose Minnesota teaching license has been voluntarily surrendered may apply for entrance licensure in the subject or field for which licensure was previously surrendered. An entrance license shall be granted to the applicant if the following criteria are met:

1. a licensure rule exists in the subject or field for which licensure was previously surrendered;
2. the applicant meets the entrance licensure standards which are in effect in the subject or field at the time of application and meets procedures set forth in Board of Teaching rules applicable to an entrance license; and
3. the required processing fee set forth in 5 MCAR § 3.003 accompanies the application for entrance licensure.

E. Construction of rule. Nothing in A.-D. shall prohibit a person from holding or applying for a license in any subject or field upon surrender of a license in another subject or field.

5 MCAR § 3.0831 Driver and traffic safety education.

A. Applicability. All persons whose application is received on or after July 1, 1986 for licensure as a teacher of driver and traffic safety education must comply with 5 MCAR § 3.0831.

B. Licensure requirements. A candidate recommended for licensure to teach driver and traffic safety education shall:

1. hold a baccalaureate degree, and

2. hold a valid Minnesota teaching license, and

3. satisfactorily complete a driver and traffic safety education teacher preparation program approved by the Board of Teaching, consisting of at least 20 quarter hours or the equivalent.

C. Program requirements. Each program leading to the licensure of teachers of driver and traffic safety education must provide candidates recommended for licensure with the knowledge, skills, and understandings set forth in 1. and 2.

1. The program must provide a minimum of 14 quarter hours, or the equivalent, in all of the following:

a. methods and materials for classroom instruction, which must include scope, sequence, and content; traffic laws; psychological and physiological aspects of the driver; alcohol, drugs, and driving; speed and energy conservation; traffic mix with other highway users; the decision making process; and supplementary materials;

b. methods and materials for laboratory instruction, which must include scope, sequence, and content for in-car, multi-vehicle, and simulator instruction; and, instructional strategies and techniques of evaluation;

c. organization and administration of driver and traffic safety education programs, which must include scope, sequence, and content of two, three, and four phase programs; vehicle and facilities administration; curriculum improvement; state rules; staffing; budgeting; evaluation and reporting; school-community relations; and record keeping; and

d. practicum experience in an approved driver education program, which must include classroom and laboratory teaching activities.

2. The program must provide a minimum of six quarter hours, or the equivalent, selected from any two of the following:

a. principles of kindergarten to grade 12 traffic safety education;

b. special areas of instruction, which must include special populations; simulation, multiple vehicle, or multi-media; individualized driver education; advanced driver education; adult driver education; and motorcycle rider education;

c. human factors, which must include behavioral influence on accident prevention, drugs and traffic safety, and first aid;

d. environmental factors, which must include traffic engineering, traffic law and enforcement, and traffic communication; and

e. vehicular factors, which must include basic automotive systems, motor vehicle safety standards, and driver consumerism.

D. Program approval for institutions. An institution applying to the Board of Teaching for approval of its driver and traffic safety education preparation program must meet the provisions of 5 MCAR § 3.141.

E. Continuing licensure. The continuing license shall be issued and renewed according to rules of the Board of Teaching governing continuing education and relicensure.

Rules as Proposed

5 MCAR § 3.065 Science for grades 5 to 9 and grades 7 to 12.

A. Sciences defined. For the purposes of this rule the sciences shall comprise the following areas: earth science, including geology, astronomy, and meteorology; physical science, including chemistry and physics; life sciences, including botany, zoology, and other appropriate realms of biology; ~~broad area~~ science for grades 5 to 9, including basic elements of life, earth, and physical sciences.

B. Basic licensure requirements. All candidates for licenses to teach science, which includes earth science, physical science, ~~and life science~~, and ~~broad area science~~, for grades 5 to 9 shall hold a baccalaureate degree and have satisfactorily completed a program which has been approved by the ~~state department of education~~ Board of Teaching for science teachers in grades 5 to 9 or in grades 7 to 12.

C. Licensure requirements; life and earth sciences. All candidates recommended for licensure as life science or earth science teachers shall have satisfactorily completed programs which provide experiences that enable them to develop broad basic knowledge and skills in earth science, in life science, and in physical science. The broad base shall include no less than 20 percent of the total baccalaureate program distributed equitably across the areas listed in A. ~~above~~, and in addition, either:

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1. experiences which enable the candidate to acquire additional broad knowledge and skills in earth science, in life science, and in physical science to teach science in grades 5 to 9. These additional experiences shall be equivalent to no less than 20 percent of the total baccalaureate program and shall be distributed across the area in approximately equal proportions; or:

2. experiences which enable the candidate to develop a high level of competency in ~~at least one of the three major disciplines necessary to teach that special area of science in~~ life science or in earth science, grades 7 to 12. These additional experiences shall be equivalent to no less than 20 percent of the total baccalaureate program.

~~D.~~ D. Licensure requirements; physical science. All candidates recommended for licensure as physical science teachers shall have satisfactorily completed a program in physical science which shall consist of no less than 40 percent of the total baccalaureate program in both chemistry and physics. No one area of physical science shall comprise less than 15 percent of the total baccalaureate program.

~~D.~~ E. Licensure based on minor preparation; life or earth science. All candidates who request licensure based on minor preparation in either life science or earth science shall have the experiences necessary to develop the broad basic competencies required of ~~all~~ life science and earth science teachers, as set out in § 3-065 C., plus at least the additional preparation in the specific science area in which they desire to teach equivalent to ~~that specified in § 3-065 C.1. for that area~~ at least ten percent of the total baccalaureate program.

~~E.~~ F. Licensure based on minor preparation; physical science. All candidates who request licensure based on minor preparation in physical science may, upon compliance with the following, be licensed in either chemistry or physics. ~~All candidates who request such licensure shall have the experiences necessary to develop the broad basic competencies required of all science teachers, as set out in § 3-065 C. In addition,~~ Such candidates shall have preparation in the subject area of ~~(chemistry or physics)~~ for which they seek licensure equal to at least ~~ten~~ 15 percent of their total baccalaureate program.

~~F.~~ G. Program development; evidence of participation. Evidence shall be provided to show that programs submitted for approval have been developed with participation from the college departments involved with the proposed teacher education programs, ~~from~~ elementary school teachers, secondary school teachers, ~~and~~ school administrators ~~as well as from~~, students, and interested citizens.

~~G.~~ H. Program requirements. Programs submitted for approval shall include all of the following:

1. a rationale which sets forth the view of the institution with respect to the role of teachers of science;
2. evidence that the program is based on a study conducted to determine the academic work which is necessary to prepare candidates to teach in the areas of science normally offered at the levels for which licensure is being requested;
3. an enumeration of specific teacher competencies to be developed in the proposed program. Included among others shall be competencies in the following areas:
 - a. personal human qualities that will facilitate interpersonal relationships and enhance student learning;
 - b. knowledge of the intellectual and philosophical nature of science;
 - c. knowledge and experience necessary to illustrate the cultural and historical significance of science to social conditions;
 - d. application of analytical methods of science in multidisciplinary approaches to studying and solving problems of science and of society;
 - e. knowledge and skill necessary to seek out and study new concepts, together with the ability to synthesize these concepts, meaningfully and to communicate them to persons for whom the ideas are also new; and
 - f. the selection, adaptation, evaluation, and use of strategies and materials for the teaching of science so that teaching-learning situations for which the teacher is responsible will be consistent with general knowledge about teaching and learning and will be appropriate both to the special needs of the learners and the special characteristics of the science disciplines;
4. a description of program components which include statements which relate individual program components to the competencies, knowledge, and skills to be developed by candidates; and
5. a plan for assessing the level of performance of each candidate recommended for licensure which ascertains the individual candidate's development of the required competencies.

~~H.~~ I. General program requirement. Programs shall be approved which vary in curricular design provided that program components meet the requirements in A., B., C., D., E., F. ~~and~~ G., ~~above~~, and H. and that these components provide education personnel who are recommended for licensure with the knowledge, skills, and understandings specified in rules for

each licensure area. When the term competency is used, it is understood that other appropriate terms which refer to learning outcomes may be substituted. Examples of such terms are: knowledge, skills, and understandings.

~~I. J. Continuing licensure.~~ The continuing license may be renewed according to general rules of the Board of Teaching pertaining to continuing education.

~~J. This provision is effective July 1, 1979, for all applicants for entrance licenses.~~

Rules as proposed (all new material)

5 MCAR § 3.088 Teachers of English as a second language.

A. Definition. For purposes of this rule, English as a second language is defined as the discipline which instructs students of limited English proficiency, whose first language is not English, in the four skills areas in English; listening, speaking, reading, and writing.

B. Licensure requirements. All candidates recommended for licensure to teach English as a second language in grades kindergarten to 12 shall:

1. hold a baccalaureate degree;
2. satisfactorily complete a minimum of two years of college-level, or four years of high school-level foreign language, or equivalent experience in learning another language and interacting with another culture as verified by the recommending institution;
3. satisfactorily complete a professional education preparation program for teachers of English as a second language, approved by the Board of Teaching, consisting of a minimum of 27 quarter hours, or the equivalent. The student teaching component must consist of full school day experiences for one academic quarter, or its equivalent, which includes both elementary and secondary education levels with students of limited English proficiency; and
4. satisfactorily complete an English as a second language teacher preparation program, approved by the Board of Teaching, consisting of a minimum of 36 quarter hours, or the equivalent.

C. Program requirements. Each program leading to the licensure of teachers of English as a second language in grades kindergarten to 12 shall provide candidates recommended for licensure with knowledge, skills, and understandings in all of the following:

1. Linguistics:
 - a. the nature of language,
 - b. organizational principles of language (phonology, morphology, syntax, semantics),
 - c. major models of linguistic analysis,
 - d. writing systems, and
 - e. principles of language change and development of language families.
2. English language:
 - a. varieties of English (dialectal, historical, written, spoken, register),
 - b. structure and usage of standard English (phonology, morphology, syntax, semantics), and
 - c. a contrastive analysis of English with another language including reference to a non-Indo-European language.
3. Psycholinguistics:
 - a. learning theories,
 - b. first and second language acquisition processes at various age levels, and
 - c. attitudinal and motivational factors as they relate to individual learning styles.
4. Sociolinguistics:
 - a. basic sociocultural variables in language use and language learning,

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- b. types of bilingual and multilingual educational situations, and
 - c. social determiners of dialect and style.
5. Language and culture:
- a. the relationship between language and culture,
 - b. the skills and tools of cultural analysis,
 - c. American historical development and contemporary American cultural patterns and values,
 - d. crosscultural patterns and values of the second language learner, and
 - e. problems of intercultural communication as they relate to language teaching.
6. Teaching of reading for students of limited English proficiency:
- a. prereading skills,
 - b. reading theories,
 - c. the relationship between oral and written language,
 - d. correction of reading difficulties,
 - e. reading skills for special purposes,
 - f. techniques and approaches for elementary and secondary students, and
 - g. selection, development, and adaptation of appropriate materials.

D. Applications for program approval. An institution applying to the Board of Teaching for approval of an English as a second language teacher preparation program shall meet the provisions of 5 MCAR § 3.141. All approved programs leading to the licensure of teachers of English as a second language shall include a description of the way in which practicing teachers may have their teaching experience and teacher preparation in those areas enumerated in B. and C., evaluated and credited by an institution maintaining an approved program leading to the licensure of teachers of English as a second language. The evaluation shall include previous teaching experience and previous teacher preparation.

E. Continuing licensure. The continuing license shall be issued and renewed according to rules of the Board of Teaching governing continuing education/relicensure.

F. Provisional licensure.

1. A provisional license, valid for two years, shall be issued to applicants upon submission of evidence of:

- a. completion of a baccalaureate or higher degree from a college or university which is regionally accredited by the Association for the Accreditation of Colleges and Secondary Schools, and
- b. completion of one year of teaching experience as a teacher of English as a second language as verified by the employing school official.

2. Provisional licensure granted in accordance with the criteria established in F.1. shall be renewed for one two-year period upon submission of evidence of completion of nine quarter hours of college credit in addition to the requirements of F.1.a. in the area enumerated in B.3. or C.1.-6.

3. A provisional license, valid for two years, shall be issued to applicants upon submission of evidence of:

- a. completion of a baccalaureate or higher degree from a college or university which is regionally accredited by the Association for the Accreditation of Colleges and Secondary Schools, and
- b. completion of nine quarter hours of college credit in a program approved by the Board of Teaching leading to the licensure of teachers of English as a second language. Previous teaching experience and previous teacher preparation evaluated and credited by an institution maintaining an approved program leading to the licensure of teachers of English as a second language in accordance with provision D. shall be applied toward this credit hour requirement.

Successive two-year renewals of provisional licensure granted in accordance with the criteria established in F.3. shall be issued to applicants who provide evidence of completion of an additional nine quarter hours of college credit in a program approved by the Board of Teaching leading to the licensure of teachers of English as a second language.

G. Effective dates. Provisions A.-E. are effective July 1, 1987, for all applicants for entrance licensure to teach English as a second language.

Provisions F.1. and F.2. shall remain in effect until June 30, 1987, at which time these provisions are repealed without further action by the Board of Teaching.

5 MCAR § 3.089 Teachers of bilingual/bicultural education.

A. Definition. Bilingual/bicultural education is a program of instruction in English and another language in which the two languages are used as media of instruction for any or all of the regular school curriculum. The study of the languages as subject matter when necessary and appropriate to the program and the study of the history and culture associated with both language groups are integral parts of bilingual/bicultural education.

B. Licensure requirements. All candidates recommended for licensure to teach bilingual/bicultural education in grades kindergarten to 12 shall:

1. hold a baccalaureate degree;
2. hold a valid Minnesota license as an elementary or secondary classroom teacher;
3. meet the following requirements in language proficiency in both English and another language:

a. ability to speak both languages with sufficient structural accuracy and vocabulary to participate effectively in most formal and informal conversations on practical, social, and professional topics, including discussing particular interests and special fields of competence with reasonable ease, comprehending for a normal rate of speech utilizing a reasonably broad vocabulary, demonstrating appropriate use of grammar and speaking so the errors never interfere with understanding and rarely disturb the native speaker, and

b. ability to read and understand standard newspaper items addressed to the general reader, routine correspondence and reports and technical material, demonstrating only occasional difficulty with unusually complex structures and low-frequency idioms; and

4. satisfactorily complete a bilingual/bicultural education teacher preparation program, approved by the Board of Teaching, consisting of a minimum of 24 quarter hours, or the equivalent.

C. Program requirements. Each program leading to the licensure of teachers of bilingual/bicultural education in grades kindergarten to 12 shall provide candidates recommended for licensure with knowledge, skills, and understandings in all of the following:

1. theoretical foundations of bilingual/bicultural education, including rationale, historical precedents, and current issues.
2. basic linguistic competencies, including principles of language as they relate to bilingualism, theories of first and second language learning, relationship of language and culture, and effects of two or more languages in contact.
3. teaching of reading for students of limited English proficiency.
4. culture, artistic expression, and history with respect to specific languages and cultures.
5. bilingual/bicultural education curriculum, and instructional methods and techniques, including the effects of culture on teaching and learning.
6. selection and administration of appropriate assessment instruments, and recognition of possible linguistic and cultural biases of instruments and procedures.
7. parental and community involvement in the bilingual/bicultural instructional program.
8. teaching experiences in a bilingual/bicultural education setting which includes experiences at both elementary and secondary levels.

D. Applications for program approval. An institution applying to the Board of Teaching for approval of a bilingual/bicultural teacher preparation program shall meet the requirements of 5 MCAR § 3.141. All approved programs leading to the licensure of teachers of bilingual/bicultural education shall include a description of the way in which practicing teachers may have their teaching experience and teacher preparation in those areas enumerated in B. and C. evaluated and credited by an institution maintaining an approved program leading to the licensure of teachers of bilingual/bicultural education. The evaluation shall include previous teaching experience and previous teacher preparation.

E. Continuing licensure. The continuing license shall be issued and renewed according to rules of the Board of Teaching governing continuing education/relicensure.

F. Provisional licensure.

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

PROPOSED RULES

1. A provisional license, valid for two years, shall be issued to applicants upon submission of evidence of:
 - a. completion of a baccalaureate degree from a college or university which is regionally accredited by the Association for the Accreditation of Colleges and Secondary Schools, and
 - b. completion of one year of teaching experience in a bilingual/bicultural setting, as verified by the employing school official.
2. Provisional licensure granted in accordance with the criteria established in F.1. shall be renewed for one two-year period upon submission of evidence of completion of nine quarter hours of college credit in the areas enumerated in B.2. or C.1.-8. Applicants holding a valid Minnesota classroom teaching license shall complete the required nine quarter hours of college credit in C. 1.-8. only.
3. A provisional license, valid for two years, shall be issued to applicants upon submission of evidence of:
 - a. completion of a baccalaureate degree from a college or university which is regionally accredited by the Association for the Accreditation of Colleges and Secondary Schools, and
 - b. completion of nine quarter hours of college credit in a bilingual/bicultural education program which has been approved by the Board of Teaching.

Previous teaching experience and previous teacher preparation evaluated and credited by an institution maintaining an approved program leading to the licensure of teachers of bilingual/bicultural education in accordance with provision D. shall be applied toward this credit hour requirement.

Those applicants who do not hold a valid Minnesota elementary or secondary classroom teaching license in accordance with B.2. may elect to complete a part or all of the required nine quarter hours of college credit in a program approved by the Board of Teaching leading to the licensure of elementary or secondary classroom teachers.

4. Successive two-year renewals of provisional licensure granted in accordance with the criteria established in F.3. shall be issued to applicants who provide evidence of completion of an additional nine quarter hours of college credit in a program approved by the Board of Teaching leading to the licensure of teachers of bilingual/bicultural education.

G. Effective dates. Provisions A.-E. are effective July 1, 1987, for all applicants for entrance licensure to teach bilingual/bicultural education.

Provisions F.1. and F.2. shall remain in effect until June 30, 1987, at which time these provisions shall be repealed without further action by the Board of Teaching.

Repealer. Rule 5 MCAR § 3.083 is repealed effective July 1, 1986.

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 Agriculture Family Farm Security Program

Adopted Rules Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR §§ 1.0543-1.0547)

The rules proposed and published at *State Register*, Volume 7, Number 3, pages 78-86, July 19, 1982 (7 S.R. 78) are adopted with the following modifications:

Rules as Adopted**3 MCAR § 1.0550 Eligibility.**

~~E. Use and feasibility. The applicant must detail the intended agricultural uses of the land and substantiate the economic feasibility of the proposed farming operation~~ The farm land must be purchased for agricultural uses.

3 MCAR § 1.0551 Preliminary approval; notification and reconsideration.

A. Application. An applicant must apply for a guarantee on forms provided by the commissioner. The application must include, ~~but is not limited to,~~ the following:

5. copies of any partnership agreements; ~~and~~

6. a farm business management course registration form; ~~and~~

7. other information reasonably necessary to determine the likelihood of success of the applicant's proposed farming operation.

B. Farm land appraisal. An appraisal of the market value of the farm land to be guaranteed must be performed by a qualified appraiser and recorded on the form provided by the commissioner. The appraiser must sign the form. A letter stating the appraiser's qualifications and experience must be on file with the commissioner. The commissioner may require the applicant to obtain an additional ~~independent appraisal when it is necessary to determine the current market value~~ from another appraiser when comparable sales do not reasonably reflect the value of the farm land stated in the original appraisal.

E. Financial information. The application must include the following financial information:

2. ~~at least two years'~~ statements of the applicant's past earnings for the two years immediately prior to the year of application, if available;

3. ~~at least two years'~~ statements of projected income and expenses for the first two years of the proposed farm operation;

~~F. Privacy of information. Personal financial documents submitted in support of an application shall be treated as security information under Minnesota Statutes, section 15.1673 and benefit data under Minnesota Statutes, section 15.783 and is considered to be private data pursuant to those sections.~~

~~G. F.~~ Review of applications. The commissioner shall consider and act upon an application for a guarantee, taking into account the recommendations of the council. In the event of a request for reconsideration of the commissioner's decision pursuant to ~~J. I.~~, the matter shall be reviewed at a regularly scheduled meeting of the council.

~~H. G.~~ Criteria for preliminary approval. The following criteria shall be considered by the commissioner in granting the preliminary approval for a guarantee:

2. submission of a complete application ~~and any additional information requested by the commissioner;~~

~~I. H.~~ Notification. After each review of an application for a guarantee, the commissioner shall provide written notification of the determination. If the application is approved, the commissioner shall notify the applicant and the lender. If the application is not approved, the commissioner shall notify the applicant and specify the reasons for disapproval.

~~J. I.~~ Reconsideration of decision. An applicant who wishes the commissioner to reconsider the decision may request, within 90 days of the notification of nonapproval, that the application be reconsidered. The applicant may present to the council, in writing or in person, any additional facts relevant to the reasons given for nonapproval of the application.

3 MCAR § 1.0552 Final approval.

A. Closing.

1. Upon receiving notice of preliminary approval for a guarantee, the applicant shall proceed in accordance with instructions provided by the commissioner for obtaining final approval for the guarantee.

2. All actions required of the applicant and lender to prepare for the state's execution of guarantee documents, including submission of a preliminary title opinion and execution of all relevant statements or declarations required for loan transactions

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ADOPTED RULES

by federal or state law, regulation, or rule, ~~should normally~~ must be completed within 120 days of receipt of the notice- unless an extension is granted. An extension for a reasonable period of time shall be granted under the following conditions related to either the farm land being guaranteed under the program or assets of the applicant essential to completing the farm land purchase:

a. where title defects cannot reasonably be cured within a time frame which permits compliance with the 120 day deadline:

b. where title encumbrances cannot be released or satisfied within a time frame which permits compliance with the 120 day deadline; or

c. where other matters beyond the control of the applicant reasonably unforeseen prevent compliance with the 120 day deadline.

3. The commissioner may request and examine copies of other security agreements or loan documents or other records which relate to the applicant's farm land purchase in order to determine all liens and encumbrances on the property.

3 MCAR § 1.0553 Payment adjustment.

B. Loan terms and payments. The loan must either have a term of 20 years or less and require payments so that the loan is amortized with equal annual payments, including consideration of variable interest rates used by some lenders, or the loan must have a reasonable reduction of the principal balance with a balloon payment in ten years or less.

3. A disaster clause may be included in provisions of a loan ~~to be eligible for a payment adjustment~~, provided that it does not cause repayment to extend beyond 20 years or cause a balloon payment for loans on a fully amortized schedule.

4. An extension ~~may~~ must be granted to the length of a loan that would require a balloon payment in ten years or less and the stated interest rate may be adjusted by consent of all parties to the loan including the state, the participant, and the lender, if the following conditions are met:

b. the repayment provisions of the loan are based on a fully amortized schedule of 20 years or less; ~~and~~

c. the extension is for the total remaining portion of the amortization schedule-; and

d. the participant has complied with all terms of the loan guarantee and has submitted to the commissioner a net worth statement and a farm business management course registration form annually within the times set in 3 MCAR § 1.0553.

E. Extension of deadline. The commissioner ~~may~~ will grant an extension of up to 30 days on the deadlines stated in C. and D. if the participant is not able to submit the net worth statement or the farm business management course registration form on time due to other circumstances beyond the participant's immediate control of the participant which were reasonably unforeseen and which prevent meeting the deadlines stated in C. and D.

3 MCAR § 1.0557 Waiver of default.

A. Granting waiver. The commissioner may waive the default resulting from a participant's failure to personally continue agricultural production pursuant to 3 MCAR § 1.0556 A.3- ~~The waiver shall be granted~~ for the reasons and following the procedures in B.-D. If the waiver is granted, the participant shall continue to be eligible to receive the payment adjustment.

D. Waiver for physical disability or extenuating circumstances. The participant may be granted a waiver and remain eligible for the payment adjustment if the participant demonstrates to the commissioner that the farm land was not personally farmed by the participant because of the participant's physical disability or other extenuating circumstances beyond the immediate control of the participant which were reasonably unforeseen and which prevent the participant from personally maintaining the farm land in agricultural production, provided that:

3 MCAR § 1.0559 Loan servicing.

B. Reamortization. Reamortization of a loan will ~~normally be considered~~ permitted only in cases where the participant has made a sizeable, special principal payment and where reamortization is jointly requested in writing by the participant and the lender. The reamortization shall not extend the maturity date of the loan, except for those loans originally calling for a balloon payment which have been approved for an extension according to 3 MCAR § 1.0553 B.4.

Minnesota Housing Finance Agency

Extension of Temporary Rules Governing Income Limits for Limited Unit Development Mortgages

Notice is hereby given that 12 MCAR § 3.002 [Temporary] which governs income limits for limited unit development mortgages, effective May 27, 1982, and published in the *State Register* as adopted at Volume 6, Number 50, page 2246 is being continued in effect for an additional 180 days. This continuation is in accordance with Chapter 562, 1982 Laws of Minnesota. The new expiration date for 12 MCAR § 3.002 [Temporary] will be May 12, 1983, or the date 12 MCAR § 3.002 [Temporary] is replaced by permanent rules; whichever date is earlier.

Pollution Control Agency

Adoption of Amendments to Agency Procedural Rules

On September 13, 1982, the Minnesota Pollution Control Agency published notice of its intent to adopt amendments to its procedural rules Minn. Rules MPCA 1-4 and 6-13 without a public hearing. During the public comment period the agency received more than seven requests for hearing on the amendments proposed as 6 MCAR §§ 4.3003, 4.3005 M., and 4.3013.

On October 26, 1982, the agency adopted a resolution to hold a rulemaking hearing on the three rules listed above and on 6 MCAR § 4.3010 E. The agency's resolution also adopted the remainder of the rules.

The rules as published below may appear to indicate that the agency adopted changes to the amendments proposed as 6 MCAR §§ 4.3003, 4.3005 M., 4.3010 E., and 4.3013. However, the agency took no action with respect to these rules, and the manner of publishing them simply shows that none of the proposed amendments to those rules have been adopted at this time. In other words, the language of 6 MCAR §§ 3.3003, 4.3005 M., and 4.3013 continues to exist as it was prior to the September 13, 1982, *State Register* notice of the proposed amendments, and 6 MCAR § 4.3010 E. has not yet been adopted.

With the above qualification, the rule amendments proposed and published at *State Register*, Volume 7, Number 11, pages 312-323 September 13, 1982 (7 S.R. 312) and as corrected in the Errata published at *State Register*, Volume 7, Number 14, page 506, October 4, 1982 (7 S.R. 506), are adopted with the following modifications.

Rules as Adopted

6 MCAR § 4.3003 Duty of candor. In all formal or informal negotiations, communications, proceedings, and other dealings between any person and any member, employee, or agent of the agency, it shall be the duty of each person and each member, employee, or agent of the agency to act in good faith and with complete truthfulness, accuracy, disclosure, and candor. Any violation of the aforesaid duty shall be cause for imposition of sanctions as provided in MPCA 11.

6 MCAR § 4.3005 Agency meetings.

M. [See Relettering Instruction.] ~~Decisions at open meetings. All regular and special meetings of the agency must be open to the public, and all decisions of the agency must be made at these meetings. However, if the chairperson, or in the chairperson's absence the vice chairperson, determines that the exigencies of time and circumstances warrant, then an agency decision may be made by telephone poll or other appropriate means. The unavailability of any agency member shall not postpone the making of the any decision. In the event that an agency decision is made by telephone poll or other appropriate means, the decision must be subject to confirmation at the next agency meeting.~~

N. Reconsideration of decision. On the same day as originally made, upon the motion of any agency member who voted on the prevailing side and upon the affirmative vote of a majority of the entire agency, Any decision of the agency may be reconsidered if an agency member who voted on the prevailing side makes a motion for reconsideration and if the motion for reconsideration is made during the course of the same meeting at which the original decision was made.

6 MCAR § 4.3007 Variances.

H. Agency decision. The agency shall make all final decisions on variance applications. The agency shall approve or deny each application. The agency may grant a variance upon such conditions as the agency may prescribe.

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ADOPTED RULES

If a contested case hearing has been held, the agency shall act on each variance application as expeditiously as possible after receipt of the hearing examiner's recommendation, or after submission of the application if no hearing is held. Any person may submit to the agency an oral or written statement or recommendation regarding a variance application in accordance with 6 MCAR § 4.3014 4.3015.

6 MCAR § 4.3010 Contested case hearings.

~~C.~~ D. Parties. Any person whose legal rights, duties, or privileges may be determined in the matter for which the contested case hearing is to be held is a party. When a contested case hearing is held pursuant to a request for a hearing, the person or persons requesting the hearing are parties to the matter. In any hearing on an application for a permit or variance, the applicant is a party. The agency director is a party in any hearing to issue, reissue, modify, deny, revoke and reissue, revoke without reissuance, or suspend a permit or variance. Any person who has properly intervened in the contested case is a party.

(f) [See Repealer.]

~~D.~~ Right to counsel. Any party may be represented by legal counsel throughout the contested case hearing.

~~E.~~ Ex parte communication. No person shall communicate with any agency member concerning a matter for which a contested case hearing has been ordered by the agency except in writing, or orally after providing reasonable notice to all parties of the meeting at which the matter will be discussed. Copies of any written communication must be sent to all parties to the matter and to all agency members.

F.-G. [Reletter as E.-F.]

~~H.~~ Default. Whenever any party with adequate notice fails to appear at the contested case hearing, the hearing examiner may decide all issues in the matter adversely to the defaulting party, may terminate the hearing, may proceed with the hearing, or may take other appropriate action, without further notice to the party. The hearing examiner shall consider the rights of other parties to the matter when a party defaults.

I. [Reletter as G.]

~~J.~~ Reopened hearing, procedure. The hearing of a contested case that has been reopened and remanded to the hearing examiner must be conducted in the same manner prescribed for a contested case hearing.

~~K.~~ H. Decision after reopening and remand. The decision after reopening of the hearing and remand to the hearing examiner must be made in the same manner prescribed for the decision after a contested case hearing.

6 MCAR § 4.3013 Confidential information.

~~A.~~ (1) Certification. In order to certify records, information, or objects for the confidential use of the agency, an owner, or operator, or other person qualified by law, shall submit to the director a written statement setting forth those statutory grounds that require the agency to keep the records, information, or objects confidential. Any certification of records or information that applies to water pollution sources must be approved by the director. These records and information shall not be released unless the director denies the certification request. Whenever the director denies a certification request, the director shall notify the certifier of the denial at least ~~seven~~ three days prior to making the records or information available to the public. The certifier may withdraw the records or information if such an option is available to him.

~~B.~~ (2) Filing. All certified records, information, or objects must be appropriately identified and segregated at the offices of the agency.

~~C.~~ (3) Agency use. Certified records, information, and objects, when approved by the director if required, are only for the confidential use of the agency. However, confidential information may be used by the agency in compiling or publishing analyses or summaries relating to the general condition of the state's water, air, and land resources so long as these analyses or summaries do not identify any owner or operator who has so certified.

~~D.~~ (4) Release authorization. Confidential information may be released when the agency is specifically authorized to do so by statute ~~the person who certified the records, information, or objects.~~

~~E.~~ (5) Denial of request. Certified records or information that apply to water pollution sources may be released if the director denies the certification request. The provisions of ~~A.~~ (1) apply to this release.

~~F.~~ (6) Federal law. Regardless of whether records or information are certified confidential, the agency may disclose any information which it is obligated to disclose ~~under~~ in order to comply with federal law or and regulation, to the extent and for the purposes of such federally required disclosure. Whenever the agency is required to release certified information pursuant to federal law, ~~the director~~ he shall notify the certifier of this requirement at least ~~seven~~ three days prior to making the records or information available to the public. The certifier may withdraw this information if such an option is available.

~~G.~~ (7) Use in contested case hearings. Confidential information that is relevant to a matter for which a ~~contested case~~

public hearing is being held, ~~and that has been made a part of the record,~~ may be considered by the agency in reaching a decision on the matter, but must not be released to the public unless the agency is required by statute to release it. When the agency is required by statute to release the information at the public hearing, the person who certified the information may withdraw the information, but the information shall not be considered by the agency or the hearing ~~examiner~~ officer in reaching a decision or recommendation on the matter. Whenever confidential information is considered by the agency or a hearing ~~examiner~~ officer in reaching a decision or recommendation on a matter, that fact must be so stated on the record.

6 MCAR § 4.3015 Public participation in agency meetings.

A. Agenda items for which no hearing was held. Upon request made prior to or at an agency meeting, any person who desires to present a statement on a matter that is on the agenda for the meeting, and for which no contested case or rulemaking hearing was held, must be afforded an opportunity to present an oral statement to the agency at the meeting. The chairperson may, depending on the circumstances, limit the time and manner of this statement.

Persons who desire to present a written statement on the matter may do so if, at least ~~ten~~ five days before the meeting, they have served a copy of the written statement upon the director. The director shall then promptly provide a copy of the statement to each agency member.

The agency may allow any person adversely affected by these oral or written statements additional time to respond.

Repealer. Rules ~~MPCA 3(b)~~ MPCA 3(b)(1), 3(b)(2), 3(b)(3), 3(b)(4), 3(b)(5)(i), 3(b)(5)(ii), 3(b)(5)(iii), 3(b)(5)(iv), 3(b)(5)(v), 3(b)(5)(vii), 3(b)(5)(viii), MPCA 6(c), 6(d), MPCA 9(c), 9(d), 9(f), 9(j), 9(k), 9(l), 9(m), 9(o), 9(p), 9(q), 9(s), MPCA 11, and MPCA 13 of the Minnesota Pollution Control Agency are repealed.

Relettering. Reletter MPCA 3(b)(5)(vi) as 6 MCAR § 4.3005 M.

SUPREME COURT

Decisions Filed Friday, December 10, 1982

Compiled by John McCarthy, Clerk

81-814 State of Minnesota v. Ralph Gayles, Appellant. Hennepin County.

Evidence was sufficient to support defendant's convictions of attempted murder, burglary, and assault in the second degree.

Defendant's right to a speedy trial was not violated.

Trial court properly admitted bullet connecting defendant to the crimes.

Trial court's instructions on intent were adequate.

Trial court, in refusing to vacate the conviction of assault in the second degree pursuant to Minn. Stat. § 609.04 (1980), properly concluded that that offense is not a lesser included offense of attempted murder in the second degree.

Affirmed. Peterson, J.

82-188 State of Minnesota v. Richard J. Kennedy, petitioner, Appellant. Hennepin County.

Trial court properly determined that criminal defendant agreed, as part of his plea agreement, that his probation would be conditioned on his making reasonable restitution based on the losses of all victims of his fraudulent scheme, not just those mentioned in the three counts to which he pleaded guilty.

Affirmed. Peterson, J.

81-884 State of Minnesota v. Martin Krzywicki, Appellant. Cass County.

Trial court did not commit prejudicial error in any of its evidentiary rulings in defendant's trial on sex charges arising out of sexual abuse of children, or in refusing to question jurors about dramatic shows on television which dealt with subject of sexual abuse of children.

Affirmed. Yetka, J. Took no part, Simonett, J.

81-902 State of Minnesota v. Henry Blue, Appellant. Hennepin County.

Sufficient evidence was presented at trial to sustain a verdict that the defendant was guilty of first-degree murder.

SUPREME COURT

Admission into evidence of out-of-court statements by non-testifying co-defendants that substantially corroborated the statements of the defendant and in part formed the basis of his defense was harmless beyond a reasonable doubt.

Under the circumstances of this case, aggravated assault was not a lesser included offense in the murder of the victim and the trial court properly refused defendant's request to instruct the jury on aggravated assault.

Defendant's sentences for kidnapping and aggravated robbery were excessively long under the terms of the Minnesota Sentencing Guidelines.

Affirmed in part and modified in part. Yetka, J.

82-27 State of Minnesota v. Walter Nelson, Appellant. Ramsey County.

Evidence was sufficient to establish criminal sexual conduct in the third degree.

Trial court did not err in admitting *Spreigl* evidence establishing that defendant committed a similar offense nearly 3 years earlier.

Trial court did not err in denying defendant's request to depart from the presumptive sentence established by the Minnesota Sentencing Guidelines.

Affirmed. Yetka, J.

82-195 In the Matter of the Welfare of K.T., also known as D.L.C. Hennepin County.

The juvenile court may terminate parental rights with the written consent of the only known parent when said parent desires such termination and evinces good cause for such an adjudication.

A final termination can only be set aside upon a showing of fraud, duress, or undue influence. We find no such showing.

Affirmed. Scott, J.

82-197 State of Minnesota v. Paul Douglas, Appellant. Hennepin County.

Evidence was sufficient to identify defendant as the man who kidnapped and raped the victim, and the trial court did not err in denying the defense motion to suppress the eyewitness identification evidence on due process grounds.

Affirmed. Simonett, J.

81-1005 Martin Melina v. Sergeant William Chaplin, et al., Appellants. Hennepin County.

Affirmed. Kelley, J.

81-1193 Sandra C. Schlobohm, et al. v. Spa Petite, Inc., Appellant. Steele County.

Exculpatory clauses are strictly construed against the party they benefit because they are not favored by the court and a clause that is ambiguous in scope or purports to release a person for intentional, willful or wanton acts is not enforceable.

Other jurisdictions have adopted a two-prong test for determining whether exculpatory clauses are invalid as contrary to public policy: (1) whether there was a disparity of bargaining power between the parties; and (2) the types of services being offered or provided.

The agreement between the parties in the present case was not a contract of adhesion and there was no disparity of bargaining power between the parties inasmuch as there was a lack of evidence that the services provided were necessary and could not be obtained elsewhere.

The services involved in the present case were not essential or public so as to be considered suitable for public regulation or of such great importance so as to be a practical necessity for some members of the public.

Reversed and remanded for entry of judgment. Kelley, J. Dissenting, Simonett, J., Yetka, J., Wahl, J., and Todd, J.

82-41 Florence A. Kahn, Relator v. State of Minnesota, University of Minnesota, and Travelers Insurance Company, Blue Cross and Blue Shield of Minnesota-Minnesota Indemnity, Inc. Workers' Compensation Court of Appeals.

The order of the Assistant Commissioner of the Department of Labor and Industry determining the fee to be allowed to attorneys representing an employee pursuant to Minn. Stat. § 176.081 (1980) was arbitrary and unwarranted.

Minn. Stat. § 176.081, subd. 7, effective August 1, 1975, is not retroactive so as to require the employer to pay the formula portion of employee's attorney fees.

Affirmed in part, reversed in part and remanded. Kelley, 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.

Governor's Planning Council on Developmental Disabilities Developmental Disabilities Program

Notice of Request for Proposals for Improving Day Program Services to Developmentally Disabled Persons

The Developmental Disabilities Program announces that it will hold meetings on February 1 and 3, 1983, at the following locations:

<u>PLACE</u>	<u>TIME/DATE</u>
Holiday Inn, Brainerd	1:00 p.m.; February 1, 1983
Ramada Inn, St. Paul (I-94 and White Bear Lake Avenue)	9:00 a.m.; February 3, 1983

The purpose of these meetings will be to explain the details of a grant program for improving day program services to developmentally disabled persons. Approximately \$425,000 will be available for grants to eligible applicants. Eligible applicants include: combinations of counties, Regional Development Commissions, and existing regional developmental disabilities programs. All eligible applicants are encouraged to attend one of these meetings. The material to be covered at each meeting includes: content of the application, how to prepare an application, application deadlines, and how the applications will be evaluated. No written material will be available until after the meetings. While attendance at one of these meetings is not a prerequisite to receiving a grant, it will provide the potential applicant with valuable advice and assistance. Applications will be due April 29, 1983.

For additional information, please call or write:

Ronald E. Kaliszewski
Developmental Disabilities Program
201 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone: (612) 297-3207.

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 Agriculture Agronomy Services Division

Notice of Special Local Need (SLN) Registration for Princep 4G

Pursuant to Minnesota Statutes, section 18A.23, and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture (MDA), on December 3, 1982, issued a Special Local Need (SLN) Registration for Princep 4G, manufactured by Ciba-Geigy Corporation, Greensboro, N.C.

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

In addition to the uses prescribed on the product label, this Special Local Need (SLN) Registration permits the use of this product on "tree plantations for timber" and would add Black Walnut to the list of tree species where this product could be used.

The application and other data required under Minnesota Statutes, sections 18A.22, subdivision 2(a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B, relative to this registration (identified as SLN No. MN82-0014) is on file for inspection at:

Minnesota Department of Agriculture
Agronomy Services Division
Pesticide Control Section
90 West Plato Boulevard
Saint Paul, Minnesota 55107
Telephone: (612) 296-8547

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

December 3, 1982.

Mark W. Seetin, Commissioner

Soil and Water Conservation Board Department of Agriculture

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing the Allocation of Funds to Soil and Water Conservation Districts for the Installation of Erosion, Sedimentation, or Water Quality Improvement Practices

Notice is hereby given that the Soil and Water Conservation Board is seeking information or opinions from sources outside the agency in preparing to amend rules governing the allocation of funds to Soil and Water Conservation Districts for the installation of erosion, sedimentation, or water quality improvement practices. The promulgation of these rules is authorized by Laws 1982, ch. 512, section 13, which requires the agency to adopt rules including the scope and content of Soil and Water Conservation District comprehensive and annual plans; standards and methods for identifying high priority erosion, sedimentation and water quality problems; the share of the cost of conservation practices to be paid from state money; and procedures for implementing a pilot program of contacting land occupiers with high priority erosion problems.

The board requests information and comments concerning the subject matter of these proposed amendments to the rules.

Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements of information and comment may be addressed to:

Greg Larson
Soil and Water Conservation Board
Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-3767, and in person at the above address.

All statements of information and comment must be received by January 15, 1983. Any written material received by the Board shall become part of the record.

December 9, 1982

Vernon F. Reinert
Executive Director

Department of Energy, Planning and Development Energy Division

Notice of Intent to Solicit Outside Opinion on Rules Relating to Heat Loss, Lighting and Climate Control in the State Building Code

Notice is hereby given that the Department of Energy, Planning and Development, Energy Division is seeking information and opinions from sources outside the division in preparing revisions to the State Building Code, 2 MCAR §§ 1.16001-16006. The authority for these rules is contained in Minn. Stat. § 116H.12, subd. 4 (1980), (Laws of Minnesota 1982, Chapter 563 Section 9).

Pursuant to this statute, the DEPD, Energy Division, is considering revisions to the State Building Code, including:

1. Replacement of adoption of ASHRAE Standard 90-75 by reference with adoption of ASHRAE Standards 90A-1980 and 90B-1980, by reference with the exceptions as noted below.
2. Replacement of insulation requirements for one- and two-family dwellings in the Minnesota Building Code with the requirements of the current Department of Housing and Urban Development (HUD) Minimum Property Standards for One-Two Family Dwellings.
3. Replacement of insulation requirements for all multi-family residential structures in the Minnesota Building Code with the requirements of the current HUD Minimum Property Standards for Multi-Family Housing.
4. Modification of ventilation requirements specified by the Minnesota Building Code to conform with the requirements of ASHRAE Standard 62-1981.
5. Including the minimum requirements for water heater efficiencies of ASHRAE Standard 90A-1980, Section 7.

Any person with information, comments or questions on the subject of the proposed rules should submit them either orally or in writing before January 31, 1983. Address correspondence to:

Department of Energy, Planning and Development
Energy Division
980 American Center Building
150 E. Kellogg Blvd.
St. Paul, MN 55101
Attn: Bruce Nelson
(612) 296-8279

The division expects to publish proposed rules in February, 1983. Written materials received will be made part of the record in the event that rules are proposed.

**Department of Labor and Industry
Labor Standards Division**

Notice of Prevailing Wage Rates for Commercial Construction

On December 20, 1982, the commissioner certified prevailing wage rates for commercial construction for each of the 87 counties in Minnesota.

A copy of the determined wage rates for Minnesota Counties may be obtained by writing to the State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155. The charges for the cost of copying and mailing are \$.50 for the first county and \$.30 for any subsequent copies of the same or other counties. For all 87 counties, the charge is \$25.00. A \$1.00 handling charge must be included for each order. As of January 1, 1983, Minnesota sales tax of 6% must be added to all orders.

A check or money order payable to the State of Minnesota must accompany each request.

Russell B. Swanson, Commissioner
Department of Labor and Industry

**Minnesota Pollution Control Agency
Solid and Hazardous Waste Division**

**Notice of Intent to Solicit Outside Opinions and Information Concerning Proposed Rules
Regulating Disposal, Treatment, and Storage of Hazardous Wastes in Land Units in
Minnesota**

Notice is hereby given that the Minnesota Pollution Control Agency (agency) is seeking opinions and information from sources outside the agency for the purpose of developing rules regarding land disposal, treatment, and storage of hazardous wastes in land units in the State of Minnesota.

These rules will regulate disposal, treatment, and storage of hazardous wastes in land units. Sections of the rules will pertain to landfills, land treatment units, surface impoundments, and waste piles. A general section of the rules addressing ground water protection will apply to all these types of facilities. The rules may be patterned after the United States Environmental Protection Agency (EPA) hazardous waste land disposal rules contained in the July 26, 1982 *Federal Register* (Subparts F, K, L, M, and N of 40 CFR Part 264 of the federal hazardous waste rules).

The Agency invites all interested persons or groups to submit information or comments on these subjects to:

Mr. Steve Reed
Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
1935 West County Road B2
Roseville, Minnesota 55113

Oral statements will be accepted during regular business hours over the telephone at (612) 297-2729.

Any written or oral information and comments will be reviewed by agency staff and considered in development of these rules. Any written material received by the agency will become part of the record of any hearings held on these rules.

December 3, 1982

Louis J. Breimhurst
Executive Director

STATE OF MINNESOTA

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

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

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

Legislative Reference Library
Room 111 Capitol

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