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# STATE REGISTER

STATE OF MINNESOTA



**VOLUME 7, NUMBER 49**

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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			
50	Friday May 27	Monday June 6	Monday June 13
51	Monday June 6	Monday June 13	Monday June 20
52	Monday June 13	Monday June 20	Monday June 27
SCHEDULE FOR VOLUME 8			
1	Monday June 20	Friday June 24	Monday July 4

\*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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### 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* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. **ADOPTED RULES** and **ADOPTED AMENDMENTS TO EXISTING RULES** filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the **MCAR AMENDMENT AND ADDITIONS** listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

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

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
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# PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 §§ 14.13-14.20 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. § 14.29, 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 Labor and Industry Occupational Safety and Health Division

### Proposed Revisions to the Occupational Safety and Health Standards

#### Request for Comments

Notice is hereby given that the Department of Labor and Industry proposes to adopt the following revisions to the Minnesota Occupational Safety and Health Codes, as authorized under Minn. Stat. § 182.655 (1982), establishing, modifying or revoking the Occupational Safety and Health Standards described below. This is an action to adopt standards that have already been proposed and adopted by the Federal Occupational Safety and Health Administration.

Complete copies of the specific standards, changes, additions, deletions and corrections are available by writing: Occupational Safety and Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101; or by calling: (612) 297-3254.

Interested persons are hereby afforded a period of 30 days to submit written data or comments on the standards proposed. Any interested person may file with the commissioner written objections to the proposed standards stating the grounds therefor and such person may request a public hearing on those objections.

Steve Keefe  
Commissioner of Labor and Industry

#### Rules as Proposed

8 MCAR § 1.7001 Adoption of Federal Occupational Safety and Health Standards by reference. The Minnesota Department of Labor and Industry Occupational Safety and Health Codes and rules are amended by incorporating and adopting by reference, and thereby making a part thereof, Title 29 of the Code of Federal Regulations as follows:

Part 1910—Occupational Safety and Health Standards as published in Volume 43, No. 206 of the *Federal Register* on October 24, 1978 and corrected in Volume 43, No. 216 on November 7, 1978 which incorporates changes, additions, deletions and corrections made up to November 7, 1978; and subsequent changes made prior to ~~December 31, 1982~~ April 1, 1983:

—Federal Register, Vol. 48, No. 15, dated 1/21/83—“Occupational Exposure to Coal Tar Pitch Volatiles; Modification of Final Interpretation: 1910.1002.”

—Federal Register, Vol. 48, No. 25, dated 2/4/83—“Occupational Exposure to Cotton Dust; Stay for Knitting and Hosiery Industry: 1910.1043.”

—Federal Register, Vol. 48, No. 46, dated 3/8/83—“Occupational Exposure to Lead: Corrections to Respirator Fit Testing Requirements: 1910.1025.”

—Federal Register, Vol. 48, No. 46, dated 3/8/83—“Occupational Noise Exposure, Hearing Conservation Amendment: 1910.95(c).”

Summary of Standards: The following summaries of the standards being proposed for adoption are very brief; complete copies of these standards are available as noted above.

A. "Occupational Exposure to Coal Tar Pitch Volatiles; Modification of Interpretation—1910.1002." The original standards governing exposure to airborne contaminants were adopted by Federal OSHA in 1971 and were based on standards first issued in 1968 by the American Conference of Governmental Industrial Hygienists. Among these standards was a permissible exposure limit (PEL) for occupational exposure to "coal tar pitch volatiles." Section 1910.1000, Table Z-1, listed "coal tar pitch volatiles (benzene soluble fraction) anthracene, benzo(a)pyrene, phenanthrene, acridine, chrysene, and pyrene," and designated the permissible exposure limit as an eight-hour time-weighted average (TWA) not to exceed 0.2 milligrams per cubic meter of air (0.2 mg/m<sup>3</sup>). The meaning of the term "coal tar pitch volatiles" was not clearly defined, making OSHA enforcement of this standard difficult.

In November 1972, Federal OSHA published an interpretation of "coal tar pitch volatiles" in 1910.1002 as follows: "As used in § 1910.1000 (Table Z-1) coal tar pitch volatiles include the fused polycyclic hydrocarbons which volatilize from the distillation residues of coal, petroleum, wood, and other organic matter." Under this interpretation of coal tar pitch volatiles, the standard now covered asphalt fumes since asphalt is a product of distillation of petroleum. Since that time, OSHA has received numerous requests for clarification of the term, specifically as applied to asphalt fumes; petitions were received from numerous agencies and associations including the American Petroleum Institute, the Asphalt Institute, and the National Institute for Occupational Safety and Health (NIOSH). The American Petroleum Institute recommended that the definition be amended to refer to only those distillations that are destructive such as occur from coal or wood distillations and not to petroleum distillations that are nondestructive. NIOSH submitted a criteria document for a recommended standard for occupational exposure to asphalt fumes; that document stated that the toxic effects produced by asphalt, tars, and pitches are quantitatively and qualitatively different. NIOSH recommended a ceiling concentration limit of 5 mg/m<sup>3</sup> based on total particulates for asphalt fumes. The Asphalt Institute submitted a formal petition requesting that the 0.2 mg/m<sup>3</sup> be declared unenforceable and inapplicable to asphalt fumes, that 1910.1002 be amended to exclude asphalt, and that rulemaking proceedings be instituted to amend 1910.1000 to establish an occupational health standard for exposure to asphalt fumes of 5 mg/m<sup>3</sup> as recommended by NIOSH.

OSHA reviewed all of the data submitted and determined that their interpretation of coal tar pitch volatiles was not consistent with what the American Conference of Governmental Industrial Hygienists originally intended to cover as a coal tar pitch volatile. Therefore, on May 28, 1982 Federal OSHA proposed to amend the definition of coal tar pitch volatiles. Based on data already in the record and comments received following the announced proposed amendment of the coal tar pitch volatile definition, OSHA has determined that asphalt should be differentiated from coal tar pitch volatiles because of differing health effects and differing chemical compositions. OSHA is, however, considering separate rulemaking for asphalt fumes. In the interim, the general duty clause will be used to provide employees regulatory protection from asphalt fumes.

Minnesota OSHA hereby proposes to adopt this new interpretation which makes it clear that the present coal tar pitch volatiles standard does not cover petroleum asphalt; this interpretation is identical to the Federal interpretation published in the Federal Register, Volume 48, No. 15 on January 21, 1983.

B. "Occupational Exposure to Cotton Dust; Stay for Knitting Operations—1910.1043." On June 23, 1978 Federal OSHA issued an occupational health standard regulating exposure to cotton dust which was intended to supersede the previous OSHA Standard. The standard was immediately challenged in the United States Court of Appeals for the District of Columbia by affected employees and various employer groups; the standard was upheld by the Court. Minnesota OSHA adopted the Occupational Exposure to Cotton Dust Standard on November 6, 1978.

On November 8, 1980 a group of trade associations representing the knitting industry petitioned Federal OSHA for a stay of this standard for the knitting industry. Federal OSHA granted a 60-day administrative stay on March 31, 1981 to allow petitioners time to prepare and submit a comprehensive analysis of data (including medical surveillance data) they had collected. The final report, received by Federal OSHA on July 14, 1982 addressed the question of whether or not there is an association between adverse respiratory health effects and employee exposure to cotton dust in knitting operations. Following the initial analysis of this data, OSHA proposed on August 13, 1982 to stay the new cotton dust standard for the knitting industry (including the hosiery industry) until the current review of the cotton dust standard and subsequent rulemaking proceedings have been completed. Based on the comments received in response to this proposed stay, Federal OSHA decided to stay the new cotton dust standard for the knitting and hosiery industries. This is not a permanent exemption; it is a continuation of the administrative stay of the new cotton dust standard for the knitting and hosiery industries and will remain in effect until rulemaking proceedings have been completed.

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

## PROPOSED RULES

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By this notice, Minnesota OSHA hereby proposes to adopt the extended administrative stay of the new cotton dust standard (1910.1043) for the knitting and hosiery industries until final rulemaking has been completed. The administrative stay proposed for adoption is identical to the Federal OSHA stay published in the Federal Register, Volume 48, No. 25 on February 4, 1983.

C. "Occupational Exposure to Lead; Corrections to Respirator Fit Testing—1910.1025." On April 11, 1983 Minnesota OSHA proposed to adopt the changes made by Federal OSHA to the respirator fit testing requirements of the Occupational Exposure to Lead standard—1910.1025(f) (3). This amendment allows employers to choose between quantitative fit testing or one of three qualitative fit test protocols. This notice proposed adoption of the standard as published in the Federal Register, Volume 47, No. 219 on November 12, 1982. On March 8, 1983 Federal OSHA published a correction to the November 1982 Federal Register notice which corrects certain inadvertent errors which appeared in the final rule on respirator fit testing in the Lead Standard.

The respirator fit testing amendment allowed negative pressure half mask respirators to be fitted by qualitative fit testing (QLFT) as an alternative to quantitative fit testing (QNFT) as long as such testing was done according to the protocols set forth in a new Appendix D to the standard. One of the three protocols set forth in Appendix D was based on the use of an irritant smoke; however, the protocol as published on November 12, 1982 erroneously required an isoamyl acetate pretest as part of the procedures and a combination filter cartridge. Both of these elements had been included in a previous version of the standard but were not intended to be part of the final version. Therefore, Appendix D to 1910.1025 is corrected to agree with supporting documentation by no longer requiring combination filter cartridges and by removing the requirement to pretest with isoamyl acetate.

Another of the protocols set forth in Appendix D was based on the use of a saccharin solution aerosol. This aerosol is produced by a nebulizer. The published protocol inadvertently omitted a phrase which would allow use of nebulizers which are equivalent to the DeVilbiss Model 40 in producing a saccharin solution aerosol. The use of equivalent nebulizers which would produce the same particle size distribution at the same concentration as the DeVilbiss Model 40 was part of the proposal and OSHA intended to allow their use in Appendix D. Therefore, Appendix D is corrected accordingly to include reference to nebulizers equivalent to the DeVilbiss Model 40.

Minnesota OSHA hereby proposes to adopt these corrections to the respirator fit testing requirements of the Occupational Exposure to Lead Standard as published in the Federal Register, Volume 48, No. 46 on March 8, 1983.

D. "Occupational Noise Exposure; Hearing Conservation Amendment—1910.95(c)." In January 1981, Federal OSHA promulgated a Hearing Conservation Amendment requiring hearing conservation programs for all employees whose noise exposure equals or exceeds an 8-hour time-weighted average (TWA) of 85 decibels (dB). The amendment was subsequently stayed for reconsideration and clarification. In August 1981, major portions of the amendment went into effect; the administrative stay was continued on other portions of the amendment and additional comments were solicited on these stayed portions.

On March 8, 1983 Federal OSHA published a final rule which revokes many of the stayed provisions of the Hearing Conservation Amendment, lifts the administrative stay as to other portions of the amendment, and makes certain changes and corrections of a technical nature. The amended standard establishes a comprehensive hearing conservation program, including exposure monitoring, audiometric testing, and training for employees with significant workplace noise exposures.

The required components of a hearing conservation program include:

1) Monitoring. The Hearing Conservation Amendment requires employers to monitor noise exposure levels in a manner that will accurately identify employees who are exposed at or above an 85-decibel (dB) 8-hour time-weighted average (TWA). The exposure measurement must include all noise within an 80 dB to 130 dB range. The requirement is performance oriented and allows employers to choose the monitoring that best suits each individual situation. Under this revised amendment, employees are entitled to observe monitoring procedures and must be notified of the results of exposure monitoring. The method used to notify employees is left to the discretion of employers. Employers must remonitor workers' exposure whenever changes in exposures are sufficient to require new hearing protectors or cause employees who were previously not included in the program because they were not exposed to an 8-hour TWA of 85 dB to be included in the program. Instruments used for monitoring employee exposures must be calibrated following manufacturer's instructions to ensure that measurements are accurate.

2) Audiometric Testing. The audiometric testing program includes baseline audiograms, annual audiograms, training and followup procedures and should indicate whether hearing loss is being prevented by the employer's hearing conservation program. Audiometric testing must be made available to all employees who have average exposure levels of 85 dB. A professional audiologist, otolaryngologist, or physician must be responsible for the program but does not have to be present when a qualified technician is actually conducting the testing.



Two types of audiograms are required in the hearing conservation program: baseline and annual. The baseline audiogram is the reference audiogram against which future audiograms are compared. Baseline audiograms must be provided within six months of an employee's first exposure at or above a TWA of 85 dB. The annual audiogram must be conducted within one year of the baseline. Annual audiograms must be routinely compared to baseline audiograms to determine whether the audiogram is accurate and to determine whether the employee has lost hearing ability; that is, if a standard threshold shift (STS) has occurred. STS is defined in the amendment as an average shift in either ear of 10 dB or more at 2000, 3000 and 4000 Hz. If an STS is identified, employees must be fitted or refitted with adequate hearing protectors, shown how to use them, and required to wear them. Employees must be notified within 21 days from the time the determination is made that their audiometric test results showed an STS. If subsequent audiometric tests show that the STS identified on a previous audiogram is not persistent, employees whose exposures are less than a TWA of 90 dB may discontinue the wearing of hearing protectors. A subsequent audiogram may be substituted for the original baseline audiogram if the professional supervising the program determines that the employee has experienced a persistent STS. The substituted audiogram becomes known as the revised baseline audiogram: where a baseline audiogram is revised, the employer must also retain the original audiogram.

3) Hearing Protectors. Hearing protectors must be available to all workers exposed at or above the action level. Where baseline audiograms are delayed because it is inconvenient for mobile test vans to visit the workplace more than once a year, protectors must be worn by employees for any period exceeding six months from the time they are first exposed to 8-hour average noise levels of 85 dB or above until they receive their baseline audiograms. Hearing protector use is also mandatory for employees who have incurred standard threshold shifts, since these workers have demonstrated that they are particularly susceptible to noise. Employees must be suitably fitted with hearing protectors and shown how to use and care for them; they must be supervised on the job to ensure that they continue to wear hearing protectors correctly. The employer must re-evaluate the suitability of the employee's present protector whenever there is a change in working conditions that may cause the hearing protector being used to be inadequate.

4) Training. Employees exposed to TWAs of 85 dB and above must be trained at least annually in the effects of noise; the purpose, advantages, disadvantages and attenuation of various types of hearing protectors; the selection, fitting and care of protectors; and the purpose and procedures of audiometric testing. Training does not have to be accomplished in one session; the program may be structured in any format, and different parts may be conducted by different individuals as long as the required topics are covered.

5) Recordkeeping. Noise exposure measurement records must be kept for two years; records of audiometric test results must be maintained for the duration of employment of the affected employee.

Minnesota OSHA adopted the unstayed portions of the first Hearing Conservation Amendment on March 22, 1982 (6 S.R. 1607); the standard became effective in Minnesota on April 1, 1982. Various provisions of that standard were to be phased-in over a two-year period. For example, in Minnesota the effective date for unstayed portions of the audiometric testing program, including baseline audiograms, was August 22, 1982. That date was never stayed, rescinded or extended in Minnesota; the requirements remained in effect. Audiograms for employees exposed above 90 dB have been required in Minnesota for several years; thus, this new requirement affected only those employees exposed between 85 dB and 90 dB.

Minnesota OSHA hereby proposes to adopt the revised Hearing Conservation Amendment as published in the Federal Register, Volume 48, No. 46 on March 8, 1983. Adoption of this revised amendment will replace the previously adopted unstayed provisions of the Hearing Conservation Amendment adopted by Minnesota OSHA on March 22, 1982. The effective date for baseline audiograms will remain August 22, 1982; all other provisions of the new Hearing Conservation Amendment will become effective upon adoption of the revised Hearing Conservation Amendment.

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

# ADOPTED RULES

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The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 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. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

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## Minnesota Housing Finance Agency

### Extension of Temporary Rules Governing Income Limits for the Rollover Housing Program

Notice is hereby given that 12 MCAR § 3.1395 (temporary) which governs income limits for the Rollover Housing Demonstration Program, effective January 20, 1983, and published in the *State Register* as adopted at Volume 7, Number 34, page 1212 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 § 3.1395 (temporary) will be January 14, 1984 or the date 12 MCAR § 3.1395 (temporary) is replaced by permanent rules; whichever date is earlier.

## Minnesota Housing Finance Agency

### Extension of Temporary Rules Governing Eligible Applications in the Home Improvement Loan Program

Notice is hereby given that 12 MCAR § 3.051 (temporary) which governs Eligible Applications in the Home Improvement Loan Program, effective January 20, 1983, and published in the *State Register* as adopted at Volume 7, Number 34, page 1212 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 § 3.051 (temporary) will be January 14, 1984, or the date 12 MCAR § 3.051 (temporary) is replaced by permanent rules; whichever date is earlier.

## 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 January 20, 1983, and published in the *State Register* as adopted at Volume 7, Number 34, page 1212 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 January 14, 1984 or the date 12 MCAR § 3.002 (temporary) is replaced by permanent rules; whichever date is earlier.

## Minnesota Housing Finance Agency

### Extension of Temporary Rules Governing Income Limits for the Medium Density Housing Program

Notice is hereby given that 12 MCAR § 3.139 (temporary) which governs income limits for the Medium Density Housing Demonstration Program, effective January 20, 1983, and published in the *State Register* as adopted at Volume 7, Number 34, page 1212 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 § 3.139 (temporary) will be January 14, 1984 or the date 12 MCAR § 3.139 (temporary) is replaced by permanent rules; whichever date is earlier.

## Department of Revenue Estate and Fiduciary Tax Division

### Adopted Amendments to and Repeal of the Rule Relating to Inheritance and Estate Tax

The rule proposed and published at *State Register*, Volume 7, Number 27, pages 1015-1016, January 3, 1983 (7 S.R. 1015) is adopted with the following modifications:

#### Rule as Adopted

##### ~~13 MCAR § 1.2220 Safe deposit boxes.~~

A. General rule. Except as provided in B. and C., the contents of a safe deposit box to which the decedent had access shall not be surrendered by the depository to any person until the contents have been inventoried by the county treasurer or a person authorized by the county treasurer to perform the inventory.

B. Exception for surviving spouse. If the person seeking access to a safe deposit box is a surviving spouse of the decedent and if the surviving spouse had a contractual right as a joint tenant to enter the safe deposit box prior to the decedent's death, the depository may grant access to the safe deposit box without requiring an inventory by the county treasurer or the county treasurer's designee.

If the person seeking access to a safe deposit box is a surviving spouse and the court appointed personal representative of the decedent's estate, the depository may grant access to the safe deposit box without requiring an inventory by the county treasurer or the county treasurer's designee.

If the depository intends to grant access to a surviving spouse, the depository must send a notice to the county treasurer giving the name and address of the surviving spouse and must also indicate if the surviving spouse is a joint tenant or the personal representative of the decedent's estate. The depository must also indicate the date when access is to be granted.

C. Safe deposit boxes rented to organizations. The commissioner of revenue may waive the requirement of the inventory if an application is filed with the commissioner stating that the safe deposit box is rented to an organization, association, partnership, or other entity which grants authority to certain of its officers, members, or agents to enter the safe deposit box in the course of the business or activities of the organization, association, partnership, or other entity.

The application shall contain the following information:

1. the name of the organization, association, partnership, or entity;
2. the type of activities in which applicant is engaged;
3. the character of the property or documents usually stored in the safe deposit boxes;
4. the names and titles of all to whom right of access to the box is given; and
5. a statement, under oath, that no personal property of any officers, members, or agents will be kept in the box.

If the application is approved, the commissioner will notify the applicant that the death of a person authorized to enter the safe deposit box rented by the applicant will not require an inventory by the county treasurer. Upon presentation of the approved application, the depository may grant access without requiring an inventory.

Repealer. Rules Inh Tax 11, 12, 13, 14, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 56, 57, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 86, 87, 88, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 111, 112, 113, 114, 115, 116, 126, 127, 128, 129, 130, 136, 137, 158, 159, 174, 175, 176, 177, 178, 179, 180, 181, 186, 187, and 188, and ~~219~~ are repealed.

\* The Notice of Adoption previously published at *State Register*, Volume 7, Number 44, page 1573, May 2, 1983, (7 S.R. 1573) is hereby rescinded.

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

# ADOPTED RULES

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## Department of Transportation

### Amended Uniform Traffic Control Device Order No. 67773.

WHEREAS, for reasons of safety it is necessary to warn and control traffic when vehicles haul materials across trunk highways at construction project sites, and

WHEREAS, there is a need for investigation into the development of electro-mechanical devices for such control of traffic, and

WHEREAS, there is a need to control traffic at the intersection of Trunk Highway 10 and Sherburne County State Aid Highway 23 in the City of Becker.

NOW, THEREFORE, pursuant to authority vested in me as provided in Minnesota Statutes Chapter 169.06, subdivision 2, I do hereby authorize the use of electro-mechanical flagging devices having the characteristics herein described which may differ from the Manual on Uniform Traffic Control Devices for Streets and Highways in the State of Minnesota.

#### Physical Features.

1. The electro-mechanical flagging device must be portable.
2. The device may simulate the appearance of a human flagman.
3. The device must have the following electro-mechanical features:
  - a.) Two (2) lamps with yellow or amber colored lenses mounted one to each side of a simulated flagman's head at least eight (8) feet above the roadway surface;
  - b.) Two (2) lamps with red colored lenses mounted adjacent to the yellow lamps;
  - c.) A pivoted gate arm having a lamp with a red colored lens mounted on the end;
  - d.) Background boards, painted dull black, shall be mounted behind the amber and red lamps positioned on each side of the simulated flagman's head;
  - e.) The gate arm shall be covered with orange and white reflectorized sheeting in accordance with Minnesota Standard Specification 3352, Standard No. 1. Stripes are to slope downward toward the side on which traffic is to pass;
  - f.) A standard thirty (30) inch Stop Sign Mounted at the center of the gate arm;
  - g.) The bottom of the Stop Sign shall not be less than four (4) feet above the roadway surface when the gate arm is in the horizontal position;
  - h.) When the gate arm is in the vertical position, the Stop sign shall be substantially obscured from view by approaching traffic.

#### Operating Features.

When being used the device will be operated in the following manner:

- a.) When in the operating position the device shall be completely visible to the traffic intended to be halted from both directions of travel.
- b.) When the gate arm is in the vertical position, the yellow lamps will flash simultaneously.
- c.) When the gate arm is lowered to the horizontal to halt the flow of traffic, the yellow lamps will be turned off and the red lamps will flash simultaneously until such time as the arm is returned to the upright position.
- d.) The travel time of the arm between the vertical and horizontal positions is to be approximately eight (8) seconds.
- e.) When the gate arm returns to the vertical position, the red lamps will be turned off and the yellow lamps will be turned on.

Commissioner's Order No. 58245 is hereby repealed.

Dated this 16th day of May, 1983.

Richard P. Braun  
Commissioner of Transportation

## **Minnesota Department of Health Disease Prevention and Control Division**

### **Notice of Adoption of Temporary Rules Relating to Distribution of Federal Maternal and Child Health Block Grant Funds**

The 1983 Session of the Minnesota Legislature has amended Minnesota Statutes Section 145.88 (1982) and has expressly authorized the Commissioner of Health to adopt temporary rules regarding distribution of Federal Maternal and Child Health Block Grant funds. Further, the 1983 amendments to Minnesota Statutes Section 145.88 (1982) expressly authorize the Commissioner of Health to adopt temporary rules without the necessity of complying with Minnesota Statutes, Chapter 14.

The Commissioner of Health has determined that portions of currently existing rules relating to the awarding of grants and subsidies for community health services have already been justified and are presently known to local agencies. Therefore, the Commissioner of Health incorporates by reference and adopts as temporary rules relating to the distribution of Federal Maternal and Child Health Block Grant funds 7 MCAR Sections 1.451-1.455, except as herein specifically deleted and with one additional requirement.

The provisions of 7 MCAR sections 1.451-1.455 which are not adopted for purposes of Maternal and Child Health grant awards are as follows:

1.451 C., D.1., D.2., D.6, D.7., D.9., D.10., D.12, D.14.

1.452 D.5.

1.453 B.2.a. in its entirety except for the first sentence reading "Eligibility. A determination that all legal conditions of eligibility are established."

1.455 A., B.2. in its entirety except for the first sentence reading "Annual reports of evaluations of activities shall be submitted no later than 90 days following the close of the fiscal year", C.

For purposes of these temporary rules, the reference to "subsidy and", "or subsidy", "and subsidy", "subsidy", "and state", and "both state and" is deleted throughout.

The additional requirement not otherwise included in 7 MCAR Sections 1.451-1.455 is as follows:

One additional requirement shall be added to the end of 1.453.A. stating: "In addition, one copy of the completed application form shall be submitted to the appropriate local Board(s) of Health for review and comment. Any comments of the local Board(s) of Health shall be submitted to the Commissioner within 20 days after receipt of the application."

The adoption of these temporary rules for purposes of distribution of Federal Maternal and Child Health Block Grant funds shall neither repeal nor amend 7 MCAR Sections 1.451-1.455, as these rules relate to the awarding of grants and subsidies for community health services.

**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.

# TAX COURT

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

State of Minnesota  
County of Ramsey

Tax Court  
Regular Division

Rand Thompson,  
Appellant,  
v.  
Commissioner of Revenue,  
Appellee.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
ORDER FOR JUDGMENT  
AND MEMORANDUM

Order Dated: May 23, 1983.  
Docket No. 3642

This is an appeal from an Order of the Commissioner of Revenue dated June 21, 1982, reducing the amount of refund claimed by the Appellant for calendar year 1981.

The matter came on for hearing on the merits before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, in the Courtroom of the Tax Court in the Space Center Building at St. Paul, Minnesota, on May 12, 1983. The facts were stipulated into the record and oral arguments were had, supplementing the arguments that are already part of the record.

The Appellant appeared pro se.

Thomas K. Overton, Special Assistant Attorney General, appeared for the Appellee.

From the Stipulation of Facts and from the files and records herein, the Court now makes the following:

#### Findings of Fact

1. On his Minnesota Income Tax Return for calendar year 1981, the Appellant sought to deduct \$1,442 of federal income taxes paid for calendar year 1980 in computing his 1981 Minnesota income tax. He did so by showing it as a negative figure on line 2 of Form M-1, which is the line provided for federal income tax refunds received in calendar year 1981.
2. It is undisputed that the Appellant paid the sum of \$1,442 during calendar year 1981 for federal income taxes due for the calendar year 1980.
3. It is also undisputed that the Appellant paid \$4,575 in federal income taxes during calendar year 1981 which was due on income earned during calendar year 1981 and that said amount has been properly deducted.
4. During the first special session of the Legislature in 1981, the legislature revised the deductibility of federal income taxes. Prior to January 1, 1981, federal income taxes could be deducted from the federal adjusted gross income during the calendar year in which they were paid. After December 31, 1980, only those federal income taxes due for the year in question can be deducted from the federal adjusted gross income in order to arrive at the adjusted gross income for Minnesota income tax purposes.
5. As a part of the revision of the Minnesota Income Tax enacted by the Minnesota Legislature as Chapter 3 of Laws of Minnesota 1981, First Special Session, Minn. Income Tax Law has a transition provision limiting the deductibility of federal income taxes paid for years beginning before January 1, 1981, that are paid after December 31, 1980. The deduction for such taxes must be divided and taken in equal amounts in the year paid and each subsequent year through 1986.

Minn. Statutes of 1981, Section 290.18, subd. 2(2), provides in pertinent part as follows:

(2) Those paid in a taxable year beginning after December 31, 1980 shall be divided and deducted in equal installments reflected by the yearly periods beginning with the first day of the taxable year in which the payment was made and ending December 31, 1986.

6. In accordance with that statute, the Commissioner allowed only 1/6th of the \$1,442 deduction claimed by the Appellant.
7. As a result of the foregoing deduction, the standard deduction was also adjusted from \$1,586 to \$1,706 because the adjustment for federal income tax deduction increased the Appellant's Minnesota adjusted gross income.
8. The foregoing adjustments reduced the amount of refund claimed by the Appellant from \$438 to \$176.20.

#### Conclusions of Law

1. The Commissioner of Revenue properly adjusted the deduction for federal income taxes paid pursuant to Minn. Statutes in effect for calendar year 1981.

2. The Commissioner's Order for calendar year 1981 is hereby affirmed.

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

Dated: May 23, 1983.

BY THE COURT  
John Knapp, Chief Judge  
Minnesota Tax Court

**Memorandum**

The only issue is whether or not the Commissioner properly adjusted the amount of refund claimed by the Appellant. Prior to calendar year 1981, a Minnesota taxpayer could claim as a deduction from federal adjusted gross income any federal income taxes paid during that calendar year. In 1981 the Minnesota Legislature amended the law to provide that only those federal income taxes payable for the year in issue could be deducted, but provided an interim amendment which allowed federal income taxes due for a prior year but paid during the calendar year to be deducted in equal installments beginning with the first day of the taxable year in which the payment was made and ending December 31, 1986. In effect, this means that the Appellant could deduct the \$1,442 in six annual installments beginning with calendar year 1981.

The Appellant contends that that statute is inequitable and, in substance, contends that the statute is unconstitutional. The Appellee contends that the Tax Court has no jurisdiction to decide constitutional questions. Without deciding whether or not the Tax Court has jurisdiction to decide constitutional questions, the Court finds that the statute is constitutional and that the Commissioner's interpretation of the statute is correct.

J.K.

**State of Minnesota  
County of Hennepin**

**Tax Court  
Regular Division**

Robert Kinkead,  
Appellant,

**ORDER ON THE MOTION FOR AMENDED  
FINDINGS**

v.

Commissioner of Revenue,  
Appellee

In the Matter of the Appeal from the Commissioner's  
Order dated June 1, 1982, relating to the income tax of  
Appellant for the years 1976, 1977, 1978, 1979 & 1980

Docket No. 3623

Appellee moved for Amended Findings and the Motion was heard by the Minnesota Tax Court, Judge Carl A. Jensen presiding, on May 12, 1983, in the Courtroom of the Minnesota Tax Court at 444 Lafayette Road, St. Paul, Minnesota.

Robert Kinkead, Appellant, appeared on his own behalf.

Paul R. Kempainen, Special Assistant Attorney General, appeared on behalf of Appellee.

The Findings of Fact are amended by adding as additional Findings of Fact the following:

**Additional Findings of Fact**

1. During the proceedings in this matter, a letter dated December 8, 1982, was directed to Appellant from Appellee. A copy of this letter was filed and the attachments to the letter included calculations of taxes based on agreed upon deductions. Said calculations disallowed all credits for rent credits except for the year 1980. In 1980 the rent credit was reduced by 25% for late filing in accordance with Minn. Stat. § 290A.06.

2. The taxes for the years 1976, 1977, 1978, and 1979 should be recalculated to allow a setoff for the rent credit in each of those years. If the setoff in any year exceeds the income tax, no refund shall be allowed and no setoff shall be carried over to a later year.

3. The calculation of the refund for 1980 in the amount of \$115.50 is affirmed and said refund shall be applied against any taxes due for prior years.

**Order**

The Findings of Fact are amended as above stated and Appellee is directed to recalculate the amount due in accordance with the original decision and these amended findings.

IT IS SO ORDERED.

Dated: May 18, 1983

By the Court,  
Carl A. Jensen, Judge  
Minnesota Tax Court

## TAX COURT

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### Memorandum

Appellee has made this Motion partially on the basis that this Court exercised equity jurisdiction and that this Court has no equity powers. The doctrine of whether a finding is in equity or in law is not subject to clear cut distinctions. When we stated in the original decision that the finding was equitable, we did not necessarily mean to imply that we were using so-called equity power. The statement that it was equitable was more in the way of confirming that the decision was correct. Hopefully the law should always allow equitable decision.

Although the calculations of the parties as indicated in the letter of Appellee dated December 8, 1982, did not include the calculation if rent credit is allowed, it appears from a cursory examination that there may be no tax due for 1976 and 1978. It would appear that had the Appellant filed in proper time, he would have received refunds in these years, but by this decision he has lost such refunds and they cannot be applied to taxes that may be due in other years.

It also appears that he has lost a substantial amount of refund for 1980 that he would have been entitled to if he had filed in proper time, and we are affirming this loss.

We find the statutes and forms slightly conflicting and certainly possibly confusing to an average taxpayer.

Minn. Statutes § 290A.06 provides for claims for refunds of rent credits separate and apart from any income tax that may be payable. This statute also provides that no refund claim shall be allowed if it is filed more than two years after the original due date for filing the claim.

Minn. Statutes § 290A.07 provides that renters can elect to take their refund as a credit against their income tax. Generally speaking, when an income tax return for a given year is reopened by the Department of Revenue, any credits can be claimed at that time, and we have allowed these credits but have specifically provided that in no event shall they revive a refund claim.

It appears that the Statute of Limitations provided in Minn. Stat. § 290A.06 may have been to allow the State to know what liabilities it might have and to provide that there would be no continuing liabilities after two years. This finding does not conflict with that since we have specifically found that there shall be no refunds for rent credit.

We would also note that this situation will not arise for future years since rent credit can no longer be included on income tax returns.

C.A.J.

## SUPREME COURT

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### Decisions Filed Friday, May 27, 1983

#### Compiled by Wayne Tschimperle, Clerk

C5-81-1123 Haroon Karim, *et al.*, Appellants v. Richard G. Werner, *et al.* Washington County.

The particular due-on-sale provision in a contract for deed under review was breached by vendees' sale of the commercial real estate to a subvendee pursuant to a second contract for deed.

Affirmed. Peterson, J.

C7-82-1330 Brian P. Short, as Trustee in Bankruptcy for Gerald D. Kearney v. Dairyland Insurance Company, Appellant. Hennepin County.

An insurer who refuses to settle a claim for the limits of its policy with its insured, even though it is aware that a court would find the insured liable for many times the policy limit, is acting in bad faith. Such an insurer will be liable to the insured for any damages in excess of the policy limit.

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

C7-82-999 State of Minnesota v. Wadell Smith, Appellant. Hennepin County.

Evidence that victim of sexual assault was in reasonable fear of imminent great bodily harm was sufficient.

Affirmed. Yetka, J.



C7-82-1456 In Re: Estate of Mildred Hemmingsen, a.k.a. Mildred C. Hemmingsen, Mildred A. Hemmingsen, and Mildred K. Graves, Deceased. Hennepin County.

The law in effect at decedent's remarriage worked an *eo instante* revocation of her will.

Affirmed. Wahl, J.

C6-83-289 Richard E. Freeman, Appellant v. The Duluth Clinic, Inc. St. Louis County.

Where lack of consideration for a contract is alleged, a trial court should first determine whether the parties have agreed to arbitrate that claim before compelling arbitration.

The issue of lack of consideration was not arbitrable under the arbitration agreement in this case.

Where parties to an ongoing employment relationship substitute for the original contract of employment a new contract which adds only a covenant not to compete, separate consideration is required to render that covenant valid and enforceable.

The covenant not to compete is unenforceable for lack of consideration.

Reversed. Wahl, J. Dissenting. Yetka and Kelley, JJ.

C1-82-688 In Re Petition for Disciplinary Action Against John Emory Lee, Jr., an Attorney at Law of the State of Minnesota.

Affirmed and order for suspension for 1 year under prescribed conditions. Per Curiam.

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## 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.

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## Department of Administration

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

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

Contractors shall be expected to maintain fully-staffed offices in each of the locations indicated to provide five-day-per-week service to clients.

Contractors also will be mandated to use \$500 of the contract amounts for local outreach activities, subject to approval by the program office.

The estimated amount of the contract in each of these areas will not exceed \$4,000. Responses must be received by June 20, 1983.

Direct inquiries to:

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

## STATE CONTRACTS

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### Department of Health Services for Children with Handicaps Division

#### Notice of Availability of Contracts for Certain Medical and Related Services

##### Services for Children with Handicaps [Contracts with Persons to Provide Services at Field Clinics]

Openings exist for:

1. Board certified or approved physicians to provide medical examinations;
2. Certified audiologists to provide audiological examinations;
3. Registered public health or pediatric nurses to provide nursing services;
4. Certified speech pathologists to provide speech assessments;
5. Registered dietitians to provide nutrition assessments.

Qualified, interested persons should contact Alpha Adkins, Assistant Director, Services for Children with Handicaps, 717 Delaware Street S.E., Minneapolis, Minnesota 55440 PH: (612) 623-5150 by June 30, 1983.

## OFFICIAL NOTICES

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

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

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### Department of Finance

#### Notice of Maximum Interest Rate on Municipal Obligations

Pursuant to Laws of Minnesota 1982, Chapter 523, Commissioner of Finance, Gordon M. Donhowe, announced today that the maximum interest rate for municipal obligations in the month of June will be eleven (11) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to twelve (12) percent per annum.

### Office of the Governor

#### Notice of Proposed Final Statement for Allocation of Small Cities Community Development Block Grant Funds under the Jobs Bill, Public Law 98-8, and Notice of Public Hearing

Notice is hereby given that the Governor proposes to submit the following Final Statement to the U.S. Department of Housing and Urban Development as required by Public Law 98-8.

A public hearing will be conducted by the Planning Division on June 16, 1983 at 1:00 p.m. in Room D of the Veterans Service Building, 20 West 12th Street, St. Paul, MN 55155, to receive comments on the Final Statement.

Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to Robert F. Benner, Assistant Commissioner, Planning Division, Capitol Square Building, St. Paul, MN 55101. Comments must be received on or before June 16, 1983.

Rudy Perpich, Governor

**Final Statement as Proposed**

I. Purpose. This statement is adopted as required by Public Law 98-8 and Title I of the Housing and Community Development Act of 1974, as amended, to describe the manner in which Community Development Block Grant funds made available to the state under P.L. 98-8 will be distributed.

II. Distribution of Funds. Projects will be selected for funding by the Governor in accordance with criteria described below. The selection process and criteria are designed to achieve the most rapid possible disbursement of funds as required in Public Law 98-8.

**A. Eligibility Requirements.**

1. Eligible projects will be funded for a maximum of \$600,000.
2. All funded activities must be eligible for funding under Section 105 of the Housing and Community Development Act of 1974, as amended.
3. All funded activities must meet at least one of the following objectives:
  - a. Principal benefit to low or moderate income persons.
  - b. Prevention or elimination of slums and blight.
  - c. Alleviation of urgent community development needs which involve a threat to public health or safety, and for which other financial resources are not available.
4. All applications must be sponsored by a general purpose unit of government.

**B. Selection Criteria.**

1. State Development Priorities. An amount not to exceed 25 percent of the total available funds shall be used to fund at least two projects which the Governor has determined satisfy the purposes of P.L. 98-8 and promote at least one of the following state development priorities:

- a) Promotion of tourism in areas of high unemployment, or
- b) Elimination or prevention of urgent community development needs which involve threats to public health and safety, and for which other financial resources are not available, or
- c) Creation of jobs for long-term unemployed persons.

2. Unfunded 1983 Minnesota Small Cities Development Grant Applications. At least 75 percent of the available funds shall be used to fund projects described in unfunded applications received for the 1983 Minnesota Small Cities Development Grant Program in accordance with 10 MCAR § 1.500-1.565. Eligible projects will be funded in the order of their ranking on the approved Funding List, subject to the following qualifications:

- a) Eligible projects are those with final 1983 scores equal to or higher than the median score in each of the four funding categories (housing, public facilities, economic development, comprehensive programs.)
- b) Eligible projects must be sponsored by a local government located in a county with an unemployment rate equal to or greater than the unemployment rate for the state for each of the first three months of 1983.

**III. Recipient Responsibilities.**

A. Recipients must certify that, to the maximum extent practicable, grant funds will be used to maximize immediate creation of new employment opportunities for individuals who were unemployed at least fifteen of the twenty-six weeks prior to March 24, 1983.

B. Recipients must comply with financial and progress reporting requirements established by the Planning Division for the Minnesota Small Cities Development Program.

C. Recipients must certify that they will comply with the laws and regulations applicable to the Housing and Community Development Act of 1974, as amended.

**IV. Administration.**

Administration of grants funded under P.L. 98-8 is assigned to the Division of Planning.

## **Minnesota Department of Health Disease Prevention and Control Division**

### **Notice of Availability of Federal Maternal and Child Health Block Grant Funds for Community Projects**

The Maternal and Child Health Section of the Minnesota Department of Health (MDH) is soliciting grant requests from non-profit or public organizations interested in administering a Maternal and Child Health (MCH) Special Project in calendar years 1984 and 1985. Eligible agencies should contact in writing the Minnesota Department of Health of their intent to apply for funding no later than 4:30 p.m. on Friday, July 8, 1983.

#### **Legal Authority and Applicable Rules**

This Notice of Availability is authorized under the 1983 Amendments to Minnesota Statutes Section 145.88 (1982). Temporary Rules Relating to Distribution of Federal Maternal and Child Health Block Grant Funds, as published in this edition of the *State Register* are applicable.

#### **Purpose and Eligibility**

It is a goal of the Federal Maternal and Child Health Block Grant Program (Title V, SSA) to assure that mothers and children, particularly those with low income or limited availability, have access to quality maternal and child health services. The program includes services for reduction of infant mortality, reduction of preventable diseases, meeting the health needs of children with handicapping conditions, and promoting the health of mothers and children—particularly those with greatest need. Maternal and Child Health Special Project grants will be made available to local government agencies and non-profit organizations to provide, plan and/or develop maternal and child health services for Minnesota residents.

#### **How to Apply for Funds**

A potential applicant should submit a Letter of Intent to apply for funds to the Commissioner of Health. The Letter of Intent should be received by the MDH no later than 4:30 p.m., Friday, July 8, 1983, and must include the name of the applicant agency, name and telephone number of an agency contact person, an estimate of the amount to be requested for each of the calendar years 1984 and 1985, and a statement of the purpose for which funds may be requested. Non-Community Health Services (CHS) agencies should also submit a copy of the Letter of Intent to the local Board(s) of Health in their geographical service area. Agencies wishing to review application materials prior to submission of a Letter of Intent may direct a written request to the contact person identified herein. Application materials will be available about mid-June.

An agency expressing an intent to apply will be provided with application materials, information on the review and award process, and the name and telephone number of a consultant available to provide technical assistance concerning preparation of the grant application.

The completed application must be submitted to the appropriate Regional Development Commission(s) (RDC), Health Systems Agency(s) (HSA), and local Board(s) of Health no later than the deadline for receipt of the application at the MDH. Five (5) copies of the completed application must be received by the MDH on or prior to 4:30 p.m., Thursday, September 15, 1983. Local Boards of Health are encouraged to submit their MCH Special Project applications at the time their Community Health Services Plans are transmitted to the MDH.

#### **Award of Funds**

Applications will be reviewed as submitted and grants awarded in accordance with the criteria established by the Commissioner of Health (assisted by the Maternal and Child Health Advisory Task Force). Applicant agencies will be notified in writing of the status of the application no later than December 31, 1983.

#### **Duration of Funding**

Funds for approved grants for these purposes will be awarded for a two-year period, generally starting January 1, 1984.

#### **Assistance from the Department of Health**

All agencies submitting Letters of Intent are invited to a meeting commencing 9:00 a.m., July 14 or 15, 1983, at a location to be announced at a later time. The purpose of the meeting will be to discuss the Maternal and Child Health Special Project application process, the amount of Maternal and Child Health Special Project funds available for calendar years 1984 and 1985, and any concerns local agencies may have relative to the application process. The presentation will also include an overview of Minnesota's major maternal and child health needs and some innovative approaches to handling these problems.

In the interim, further information regarding Maternal and Child Health Special Project grants may be obtained by contacting:

Ronald G. Campbell, M.D., M.P.H., Chief  
Section of Maternal and Child Health  
Minnesota Department of Health  
717 SE Delaware Street  
P. O. Box 9441  
Minneapolis, MN 55440  
Telephone: (612) 623-5539

## **Department of Public Welfare Mental Health Bureau**

### **Notice of Moratorium on the Construction of Intermediate Care Beds for Mentally Retarded Persons and on the Decertification of Intermediate Care Beds for Mentally Retarded Persons**

The Commissioner of Public Welfare in coordination with the Commissioner of Public Health in implementing the provisions of Chapter 252 of Minnesota Session Laws will deny any request for a determination of need and refuse to grant a license pursuant to section 245.782 for any new intermediate care facility for mentally retarded persons or for an increase in the licensed capacity of an existing facility except as provided below. In no event will the total of certified intermediate care beds for mentally retarded persons in community facilities and state hospitals exceed 7,500 beds as of July 1, 1983, and 7,000 beds as of July 1, 1986. "Certified beds" means an intermediate care bed for the mentally retarded certified by the commissioner of health for the purposes of the medical assistance program under United States Code, title 42, sections 1396 to 1396p, as amended through December 31, 1982.

The Commissioner of Public Welfare in coordination with the Commissioner of Health may approve a new intermediate care facility for mentally retarded persons only in the following circumstances:

- when the facility is developed in accordance with a request for proposal system and no other alternative community services will meet the needs of identifiable mentally retarded individuals;
- when the facility is necessary to serve the needs of identifiable mentally retarded persons who are seriously behaviorally disordered or who are physically or sensorily impaired; or
- to license beds in new facilities where need was determined by the commissioner of welfare prior to the enactment of this law.

The Commissioner of Public Welfare will:

- establish standard admission criteria for state hospitals and county utilization targets to limit and reduce the number of intermediate care beds in state hospitals and community facilities in accordance with approved waivers under United States Code, title 42, sections 1396 to 1396p, as amended through December 31, 1982, to assure that appropriate services are provided in the least restrictive setting;
- provide technical assistance so that county boards may establish a request for proposal system for meeting individual service plan objectives through home and community-based services; alternative community services; or, if no other alternative will meet the needs of identifiable individuals for whom the county is financially responsible, a new intermediate care facility or mentally retarded persons; and
- promulgate in rule criteria for decertification of beds in intermediate care facilities for the mentally retarded, and will encourage providers in voluntary decertification efforts. The Commissioner of Public Welfare will not recommend to the Commissioner of Health the involuntary decertification of an intermediate care facility for beds for the mentally retarded prior to the availability of appropriate services for those residents affected by the decertification. The Commissioner of Health will decertify those intermediate care beds determined to be not needed by the Commissioner of Public Welfare.

The above provisions are repealed effective June 30, 1984, if a home and community based waiver under United States Code, title 42, section 1396n(c), as amended through December 31, 1982, is not approved by June 30, 1984.

The Commissioner of Public Welfare in implementing the provisions of Chapter 256B of Minnesota Session Laws will not allow rates paid to intermediate care facilities for mentally retarded for rate years beginning during the fiscal biennium ending June 30, 1985 to exceed the final rate allowed the facility for the previous rate year by more than five percent.

## OFFICIAL NOTICES

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These policy changes reflect the intent of the legislature to develop a comprehensive long-term care system that includes an array of alternative services for mentally retarded persons. This will enable the state to meet the needs of its mentally retarded citizens by providing high quality services in the most appropriate and least restrictive service settings.

These policies also recognize that controlling intermediate care expenditures for mentally retarded persons is essential to the prudent management of the state's budget and the construction of more beds inhibits the ability of the state to control expenditures and develop alternative services for mentally retarded persons in accordance with an approved home and community-based waiver under United States Code, Title 42, Section 1396n(c), as amended through December 31, 1982.

It is estimated that these changes will reduce the long-term costs for mentally retarded persons by approximately \$9.7 million during the next two years.

Copies of the law in which these changes are found are available from the Minnesota Department of Public Welfare or your county welfare agency. Comments on these changes may be sent to:

Margaret Sandberg, Assistant Commissioner  
Mental Health Bureau  
Department of Public Welfare  
Fourth Floor Centennial Office Building  
658 Cedar Street  
St. Paul, MN 55155  
612/297-4284

## Department of Public Welfare Support Services Bureau

### Notice of Moratorium on the Certification of New Skilled Nursing Facility or Intermediate Care Facility Beds and on Changes in the Certification Status of Existing Beds

#### Policy Change

The Commissioner of Health in coordination with the Commissioner of Public Welfare pursuant to the provisions of Chapter 199 of Minnesota Laws 1983 shall deny each request by a nursing home or a boarding care home, except an intermediate care facility for the mentally retarded, for the addition of new beds to be certified under the Medical Assistance Program or for a change or changes in the certification status of existing beds except as provided below.

The Commissioner of Health in coordination with the Commissioner of Public Welfare may approve the addition of a new certified bed or a change in the certification status of an existing bed under one or more of the following conditions:

- To replace a decertified bed, or
- To address an extreme hardship situation in a particular county that, together with all contiguous Minnesota counties, has fewer nursing home beds per 1,000 elderly than the number that is ten percent higher than the national average of nursing home beds per 1,000 elderly individuals. The Commissioner of Health can find an extreme hardship situation only after the county documents the existence of unmet medical needs that cannot be addressed by any other alternatives, or
- For any facility which has commenced construction as defined in Chapter 199 of Minnesota Laws 1983, before May 23, 1983; or
- To meet the special dietary needs of residents if the proponent of a new nursing home proves to the Commissioner of Health that such needs exist.

#### Rationale and Impact

This change is being made pursuant to and because of the enactment of Minnesota Laws 1983, Chapter 199 (codified at Minn. Stat. 144A.071). This policy change reflects the intent of the Legislature to develop a comprehensive long-term care system that includes a continuum of care. A moratorium is necessary to enable the state to meet the needs of its elderly by providing high quality services to the elderly in the most appropriate manner along a continuum of care.

This policy also recognizes that the control of nursing home expenditures is essential to the prudent management of the state's budget, the construction of more beds and the increased conversion of beds to skilled nursing facility beds inhibits the ability of the state to control expenditures. It is estimated that this change will reduce long-term nursing home expenditures by approximately \$25 million during the next two years.

This notice is given to inform the public and affected persons of the change in law and to fulfill any legal requirements which may apply. Copies of the law in which these changes are found are available from the Minnesota Department of Public Welfare or your county welfare agency. Comments on these changes may be sent to:

Melvin Harris, Assistant Commissioner  
Support Services Bureau  
Department of Public Welfare  
Fourth Floor Centennial Office Building  
658 Cedar Street  
St. Paul, MN 55155  
612/296-4890

## **County of Roseau Ninth Judicial District**

### **Notice of Filing Fees for County Law Library**

Pursuant to Minnesota Statute 140.422 the Roseau County Law Library Board of Trustees announces the law library fees to be collected in the district, county, municipal, probate and conciliation courts of Roseau County.

Civil Suits	
Plaintiff/Petitioner .....	\$5.00
Defendants/Respondents/Intervenors .....	\$5.00
(jointly or separately)	
Probate Courts	
Petitioner .....	\$5.00
Misdemeanor Traffic and Criminal Convictions	
Defendant .....	\$5.00
Conciliation Court	
Petitioner .....	\$5.00
Respondent .....	\$5.00

These fees shall be in effect on July 1, 1983.

Dated: May 23, 1983.

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

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

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. **Application deadline is June 28, 1983.**

**POISON INFORMATION CENTER ADVISORY COUNCIL** has 1 vacancy open for a physician specializing in internal medicine. Applicants cannot reside in Clay, St. Louis, Scott, Hennepin, Olmsted or Nobles counties and cannot be affiliated with St. Paul Ramsey Medical Center. The council advises the Commissioner of Health on establishing a poison information center to provide educational services to the public and to health professionals. Members are appointed by the Commissioner of Health. Members receive no compensation. For specific information contact the Poison Information Center Advisory Council, 717 Delaware Street S.E., Mpls. 55414; (612) 623-5460.

**MINNESOTA-WISCONSIN BOUNDARY AREA COMMISSION** has 1 vacancy open for a public member. The commission makes recommendations on the use, development and protection of the corridor of the St. Croix and Mississippi rivers that forms the interstate border of Minnesota and Wisconsin; assists the 2 states in federal programs affecting the rivers. Members are appointed by the Governor and confirmed by the Senate. Bi-monthly meetings; members are reimbursed for expenses. For specific information contact the Minnesota-Wisconsin Boundary Area Commission, 619 2nd Street, Hudson, WI 54016; (612) 436-7131.

**ADVISORY SEED POTATO CERTIFICATION COMMITTEE** has 2 vacancies open immediately. Must be a certified seed potato grower (pursuant to Minn. Stat. § 21.112, subd. 2). The committee reviews quality control, research, and market

## OFFICIAL NOTICES

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development in the certified seed potato industry. Members are appointed by the Commissioner of Agriculture for 3 year terms; are growers of certified seed potatoes. Meetings twice annually; members are compensated for expenses. For specific information contact Robert Flaskerd, Department of Agriculture, 90 West Plato Blvd., St. Paul 55107; (612) 296-9310.

**HIGHWAY STUDY COMMISSION** has 8 vacancies open immediately for local officials. Prescribed qualifications: 2 must be county commissioners, 2 must be township supervisors, 2 must be mayors of cities over 5,000 population, 2 must be mayors of cities under 5,000 population and not more than one member may reside in any one congressional district. The commission will study and make recommendations to the Governor and Legislature on the appropriate classification, jurisdiction and financing for all roads in the state. The Governor is the appointing authority and appointments will be effective August 1, 1983 and expire January 15, 1985. Local officials may be eligible to receive \$35 per diem and expenses. The commission will also include 5 state representatives appointed by the Speaker of the House and 5 state senators appointed by the Committee on Committees. For specific information contact Helen Wilkie, Room 303 Capitol, St. Paul 55155; (612) 296-4186.

**INVESTMENT ADVISORY COUNCIL** has 1 vacancy open immediately for a member with experience in general investment matters. The council advises the Board of Investment on policy relating to investments of state funds. Members are appointed by the Board of Investment. Members must file with EBP, and receive no compensation. For specific information contact the Investment Advisory Council, MEA Bldg., Rm. 105, 55 Sherburne Ave., St. Paul 55155; (612) 296-3328.

**MINNESOTA RACING COMMISSION** has 9 vacancies open immediately for members. Prescribed qualifications include: Minnesota resident for 5 years before appointment, no more than five members of the same political party, appointees must file a bond of \$100,000. Members are appointed by the Governor and confirmed by the Senate. Terms are staggered; members receive \$35 per diem. The commission licenses persons to operate racetracks, conduct horse racing, conduct mutual betting on horse racing, prescribes taxes and license fees, and establishes a Minnesota breeders fund. For specific information contact Ray Eliot, 14 University Ave. N.E., Mpls. 55413; (612) 379-2345.

**COMMITTEE OF EXAMINERS IN MORTUARY SCIENCE** has 1 vacancy open for a public member. The committee licenses and regulates morticians and funeral directors; inspects and registers funeral facilities; advises the Commissioner of Health in the implementation of mortuary science law and rules of the Commissioner; and sits as a panel on disciplinary matters. Members are appointed by the Commissioner of Health. Bi-monthly meetings are held at Dept. of Health. Members receive \$35 per diem plus expenses. For specific information contact the Committee of Examiners in Mortuary Science, 717 Delaware St. S.E., Mpls. 55440; (612) 623-5491.

## Department of Transportation

### Petition of the City of Duluth for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Duluth has made a written request to the Commissioner of Transportation for variances from minimum design standards for street widths for MSAS 129 (First Street) from Third Avenue East to Fifth Avenue West.

The request is for a variance from 14 MCAR § 1.5032, H., 1., c., Rules for State Aid Operations under Minnesota Statutes, Chapters 161 and 162 (1978) as amended, so as to permit a minimum street width of 44 feet with parking on both sides instead of a street width of 46 feet with parking on both sides.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 23rd day of May, 1983

Richard P. Braun  
Commissioner of Transportation

## Department of Transportation

### Petition of the City of St. Paul for a Variance from State Aid Standards for Bridge Width

Notice is hereby given that the City Council of the City of St. Paul has made a written request to the Commissioner of Transportation for a variance from minimum street and bridge width standards for the reconstruction of a bridge on Payne Avenue over the Chicago Northwestern Railroad and its approaches between Whitall and Reaney Avenue.



The request is for a variance from 14 MCAR § 1.5032, H., 1., d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a width of 46 feet instead of the required 48 feet standard.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 23rd day of May, 1983

Richard P. Braun  
Commissioner of Transportation

## **Department of Transportation**

### **Petition of the City of Red Wing for a Variance from State Aid Standards for Design Speed**

Notice is hereby given that the City Council of the City of Red Wing has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a reconstruction project on Tile Drive crest vertical curve over C.M.St.P. & P.R.R.

The request is for a variance from 14 MCAR § 1.5032 H., 1., d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 24 miles per hour instead of a required design speed of 30 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 23rd day of May, 1983

Richard P. Braun  
Commissioner of Transportation

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

## ORDER FORM

**State Register.** Minnesota's official weekly publication for agency rules and notices, executive orders of the Governor, state contracts, Supreme Court and Tax Court decisions.

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**EACH ORDER MUST INCLUDE ADDITIONAL \$1.50 FOR POSTAGE AND HANDLING.**

Name \_\_\_\_\_

Attention of: \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_

### FOR LEGISLATIVE NEWS

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

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

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

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

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

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Legislative Reference Library  
Room 111 Capitol

Interoffice