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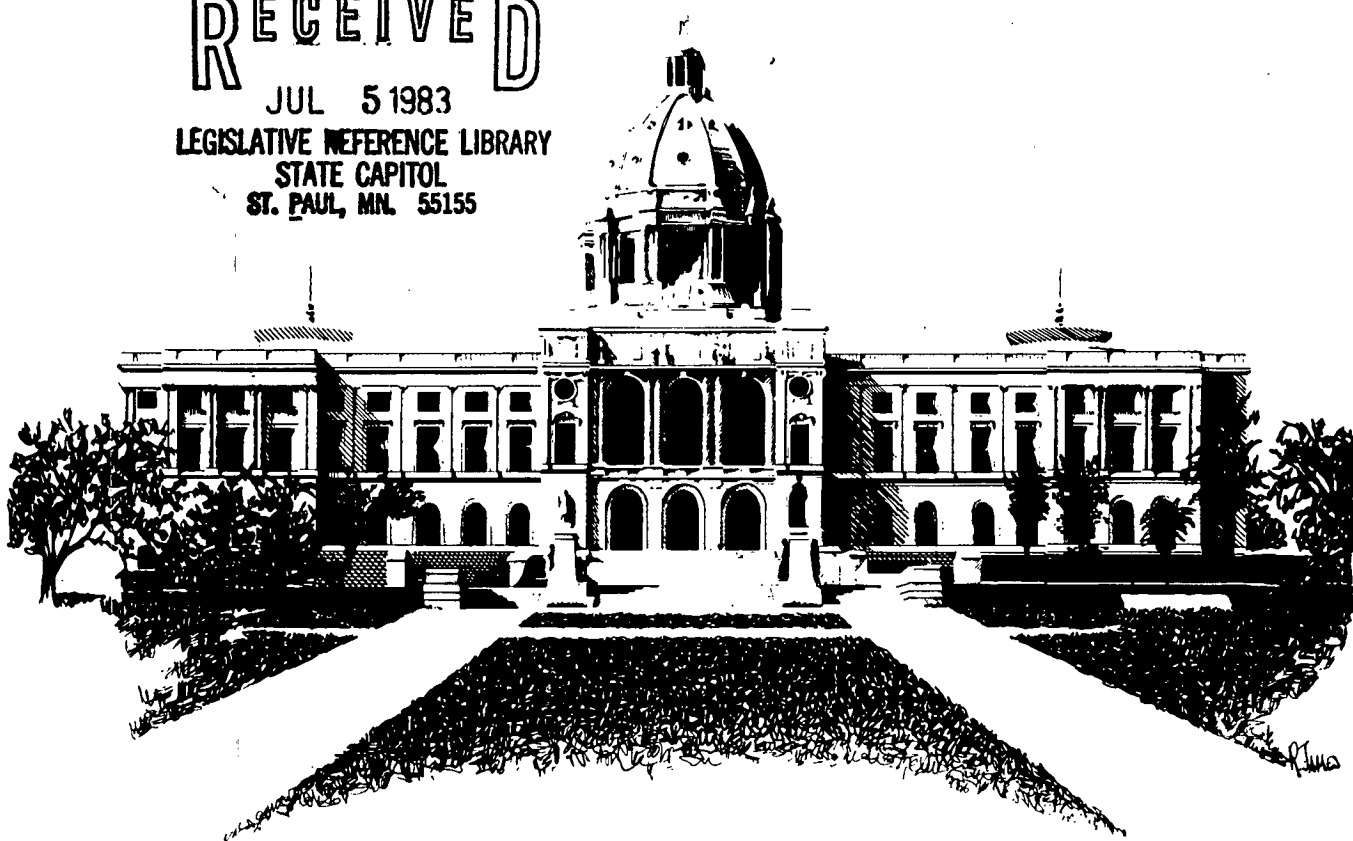
STATE REGISTER

STATE OF MINNESOTA

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VOLUME 8, NUMBER 1

July 4, 1983

Pages 1-52



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 8			
2	Monday June 27	Friday July 1	Monday July 11
3	Friday July 1	Monday July 11	Monday July 18
4	Monday July 11	Monday July 18	Monday July 25
5	Monday July 18	Monday July 25	Monday Aug 1

*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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NOTICE

How to Follow State Agency Rulemaking Action in the State Register

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* 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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The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

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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.

Minnesota Housing Finance Agency

Proposed Temporary Rules Governing Local Participation Home Improvement Loans

Request for Public Comment

Notice is hereby given that the Minnesota Housing Finance Agency has proposed the following temporary rules for the purpose of establishing procedures for application for participation in and setting income limits for Local Participation Home Improvement Loans, pursuant to subdivision 10 of Chapter 462A.03 and subdivision 11 of Chapter 462A.06 of Minnesota Statutes.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the *State Register* by writing to Mary Tingerthal, Director of Home Improvement Loan Programs, Minnesota Housing Finance Agency, Suite 200, 333 Sibley Street, St. Paul, Minnesota 55101. The temporary rules may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rule. As required by the Administrative Procedures Act, this temporary rule will be effective for not more than 180 days and may be continued in effect for up to an additional 180 days.

July 1, 1983

James J. Solem
Executive Director

Rules as Proposed [Temporary]

12 MCAR § 3.002 [Temporary] Definitions.

A.-N. [Unchanged.]

O. "Persons and families of low and moderate income" means:

1.-5. [Unchanged.]

6. with respect to local participation home improvement loans under chapter six B of these rules, those persons and families whose adjusted income does not exceed 125 percent of the median income for the county in which these projects are located, as determined and adjusted from time to time by the United States Department of Housing and Urban Development, or the income limit for home improvement loans under chapter six of these rules, whichever is greater; provided, however, that the maximum adjusted income may not exceed 100 percent of the median income for the county in Minnesota that has the highest median income, as determined and adjusted from time to time by the United States Department of Housing and Urban Development.

P.-V. [Unchanged.]

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

Chapter Six B

Local Participation Home Improvement Loans

12 MCAR § 3.055 [Temporary] Funds.

A. Request for funds. A local government that wishes to receive an allocation of funds to make local participation home improvement loans shall submit a request for funds that includes the following items, which may be further described by the agency:

1. a description of the proposed program;
2. a description of program requirements to be imposed by the local government that are not set forth in this chapter;
3. an analysis of the need for the proposed program in the community;
4. a demonstration of financial feasibility of the proposed program;
5. evidence that an adequate delivery mechanism is available for the proposed program; and
6. the specific funding amount requested and the time period, that is within the maximum time period set by the agency, during which the funds will be expended.

B. Deadline for requests for funds. The agency shall give notice that it will accept requests for funds to make local participation home improvement loans from local governments for the period specified by the agency. This period may not be less than 30 days.

12 MCAR § 3.056 [Temporary] Eligible applications.

An application for a local participation home improvement loan must meet all of the requirements of 12 MCAR § 3.051.

12 MCAR § 3.057 [Temporary] Eligible improvements.

An improvement financed with the proceeds of a local participation home improvement loan must meet all of the requirements of 12 MCAR § 3.052.

Department of Public Welfare Bureau of Support Services

Proposed Temporary Rules Governing the Determination of Welfare Per Diem Rates for Nursing Homes under the Title XIX Program (12 MCAR §§ 2.05001-2.05016)

Notice of Intent to Adopt Temporary Rules

The State Department of Public Welfare proposes to adopt the above-entitled temporary rules to implement Laws of Minnesota 1983, chapter 199.

Persons interested in these rules have until July 25, 1983 to submit written comments. The proposed temporary rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Written comments should be sent to:

Eleanor Weber
Support Services Bureau
Department of Public Welfare
4th Floor, Centennial Building
St. Paul, MN 55155
(612) 297-4301

Upon adoption of the temporary rules, this notice, all written comments received, and the adopted temporary rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality. The adopted temporary rules will not become effective without the Attorney General's approval and the Revisor of Statute's certification of the rule's form.

As provided by Laws of Minnesota 1983, chapter 199, these temporary rules are to be promulgated by August 15, 1983, and will be retroactive to and effective as of July 1, 1983. These temporary rules shall be effective for up to 360 days after July 1, 1983, and may be continued in effect for two additional periods of 180 days each if the commissioner gives notice of continuation of each additional period by publishing notice in the *State Register* and mailing the same notice to all persons registered with the commissioner to receive notice of rulemaking proceedings. The temporary rules shall not be ~~effective~~ 720 days after their effective date without following the procedures in Minnesota Statutes, section 14.13 to 14.20 ~~to~~.

12 MCAR §§ 2.05001-2.05016 establish procedures for determining the per diem welfare rates for all nursing homes participating in the Medical Assistance program and for licensed boarding care facilities participating in the Minnesota Supplemental Aid program.

These temporary rules will not result in any additional state or county spending beyond the amount of funds appropriated under Laws of Minnesota 1983, chapter 199.

Copies of this notice and the proposed temporary rules may be obtained by contacting Claudia Eliason (612/296-2738).

Leonard W. Levine
Commissioner of Public Welfare

Temporary Rules as Proposed (all new material)

12 MCAR § 2.05001 [Temporary] Authority and applicability.

A. Authority.

1. Minnesota Statutes, section 256B.04, subdivision 2 authorizes the commissioner to promulgate uniform rules for carrying out and enforcing the provisions of Minnesota Statutes, chapter 256B.
2. Minnesota Statutes, section 256B.27, authorizes the commissioner to require any reports, information, and audits of medical vendors necessary for the approval of rates and charges.
3. Minnesota Statutes, section 256B.41, authorizes the commissioner to establish procedures for determining nursing home rates and for implementing the provisions of Minnesota Statutes, chapter 256B.
4. Minnesota Statutes, section 256B.502, authorizes the commissioner to adopt temporary and permanent rules to implement the provisions of Laws 1983, chapter 199, concerning the establishment of nursing home rates.

B. Applicability. Rules 12 MCAR §§ 2.05001-2.05016 [Temporary] establish procedures for determining the per diem welfare rates for all nursing homes participating in the medical assistance program and for licensed boarding care facilities participating in the Minnesota supplemental aid program.

12 MCAR § 2.05002 [Temporary] Definitions.

- A. Applicability. As used in 12 MCAR §§ 2.05001-2.05016 [Temporary], the following terms have the meanings given them.
- B. Actual allowable historical operating cost per diem. "Actual allowable historical operating cost per diem" means the per diem payment for actual operating costs allowed by the commissioner for the most recent reporting year.
- C. Actual resident days. "Actual resident days" means a nursing home's resident days adjusted for lesser care resident days according to 12 MCAR § 2.05010 A. [Temporary].
- D. Addition. "Addition" means an extension, enlargement, or expansion of the nursing home facility for the purpose of increasing the number of licensed beds or improving resident care.
- E. Applicable credit. "Applicable credit" means a receipt or expense reduction as a result of a purchase discount, rebate, refund, allowance, interest income, income from incidental services, sale of equipment or salvage, adjustment for erroneous charges, insurance claims settlement, or any other adjustment reducing cost.
- F. Attached fixtures. "Attached fixtures" means building service equipment or other equipment affixed to the building and not easily subject to transfer such as wiring, electrical fixtures, plumbing, elevators, heating systems, air conditioning systems, and built-in refrigerators or freezers.
- G. Care levels. "Care levels" means the classifications of nursing service provided by a nursing home. They are:
 1. Skilled nursing facility (SNF), a skilled nursing facility as defined by applicable federal regulations and licensed as a nursing home by the Department of Health;

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PROPOSED RULES

2. Intermediate care facility I (ICF I), an intermediate care facility as defined by applicable federal regulations and licensed as a nursing home by the Department of Health:

3. Intermediate care facility II (ICF II), an intermediate care facility as defined by federal regulations and as licensed as a boarding care facility by the Department of Health:

4. Licensed boarding care facilities participating in the Minnesota supplemental aid program.

H. Commissioner. "Commissioner" means commissioner of public welfare.

I. Cost category. "Cost category" means any one of the cost groupings set forth in 12 MCAR § 2.05006 [Temporary].

J. Cost groups. "Cost groups" means the groupings of cost categories used for rate setting purposes. The groups are: operating costs, property-related costs, and costs for real estate taxes and special assessments.

K. Cost report. "Cost report" means the document specified by the commissioner on which the nursing home provides the statistical and financial information required by the commissioner for rate determination.

L. Desk audit. "Desk audit" means the determination of the payment rate based on the commissioner's review and analysis of required reports, supporting documentation, and work sheets submitted by the nursing home.

M. Department. "Department" means the Department of Public Welfare.

N. Depreciable equipment. "Depreciable equipment" means equipment which must be capitalized under 12 MCAR § 2.05003, F.1. [Temporary].

O. Direct cost. "Direct cost" means a cost that can be identified with a specific cost category.

P. Extraordinary repair. "Extraordinary repair" means a major repair which is costly in relation to the value of the asset, should increase the use value of the asset, or prolong its useful life.

Q. Facility. "Facility" means the building in which a nursing home is located and all attached fixtures. Facility does not include the land, land improvements, or any supplies or equipment which are not attached fixtures.

R. Field audit. "Field audit" means the on-site examination, verification, and review of the financial records, statistical records, and related supporting documentation of the nursing home and any related organization.

S. Final rate. "Final rate" means the rate established after any adjustment by the commissioner including, but not limited to, adjustments resulting from the cost report reviews, field audits, and resolution of appeals.

T. Fringe benefits. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, and uniform allowances.

U. General and administrative costs. "General and administrative costs" means costs for administering the nursing home as specified in 12 MCAR § 2.05006 G. [Temporary].

V. Historical operating costs. "Historical operating costs" means the allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective, after the application of appropriate limitations such as those on general and administrative costs.

W. Hospital attached facility. "Hospital attached facility" means a facility which is under common ownership and operation with a licensed hospital and shares with the hospital services such as nursing, dietary, housekeeping, laundry, plant operations, or administrative services.

X. Indirect cost. "Indirect cost" means a cost that is incurred for a common purpose or joint purpose of benefiting more than one cost category and not readily assignable to the cost category benefited.

Y. Interagency board for quality assurance. "Interagency board for quality assurance" means the board established by Minnesota Statutes, section 144A.31.

Z. Land improvement. "Land improvement" means an improvement to the land on which the nursing home is located such as paving, tunnels, underpasses, on-site sewers and water lines, parking lots, shrubbery, fences, walls, curbs, and sidewalks, if replacement is the responsibility of the nursing home.

AA. Leasehold improvement. "Leasehold improvement" means an improvement on leased property that reverts to the owner of the property under termination of the lease.

BB. Lesser care resident day. "Lesser care resident day" means a day on which services are provided to a resident who requires a lower level of care than the care level for which the nursing home is certified.

CC. Major betterment. "Major betterment" means the renovation or replacement of part of an existing asset to increase the asset's efficiency, value, or useful life.

PROPOSED RULES

DD. Metropolitan group. "Metropolitan group" means all nursing homes located in Koochiching, Itasca, Aitkin, Carlton, Lake, Cook, Scott, Hennepin, Ramsey, St. Louis, Anoka, Washington, Dakota, and Carver counties.

EE. Minor equipment. "Minor equipment" means equipment that is not depreciable equipment. Examples of minor equipment are bed pans, kitchen utensils, cleaning utensils, and wastebaskets.

FF. Necessary service. "Necessary service" means a function pertinent to the nursing home's operation that, if not performed by the individual, would have required the nursing home to employ another person to perform it.

GG. Net cost. "Net cost" means the actual cost minus proceeds from insurance, salvage, or disposal.

HH. Nonmetropolitan group. "Nonmetropolitan group" means nursing homes located in counties which are not in the metropolitan group.

II. Nursing home. "Nursing home" means a facility licensed under Minnesota Statutes, chapter 144A or a boarding care facility licensed under Minnesota Statutes, sections 144.50 to 144.58.

JJ. Operating costs. "Operating costs" means the day-to-day costs of operating the nursing home in compliance with licensure and certification standards. Operating cost categories are: nursing, including nurses and nursing assistants training; dietary; laundry and linen; housekeeping; plant operation and maintenance; other care-related services; general and administrative; payroll taxes; fringe benefits, including clerical training; and real estate taxes and actual special assessments paid.

KK. Payment rate. "Payment rate" means the rate which is determined by adding together the operating cost payment rate, the property-related cost payment rate, and the real estate tax and special assessments payment rate, and which becomes effective on July 1 of each year for payment to the nursing home for services rendered through June 30 of the following year.

LL. Payroll taxes. "Payroll taxes" means the employer's share of social security withholding taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.

MM. Private paying resident. "Private paying resident" means a nursing home resident who is not a medical assistance recipient for the date of service and whose payment rate is not established by another third party, including the veterans administration or medicare.

NN. Property-related costs. "Property-related costs" means all directly identifiable costs, other than personnel costs, associated with the financing and ownership of the nursing home's real estate and depreciable equipment, including depreciation, interest, rental or lease payments, and earning or investment allowance.

OO. Rate year. "Rate year" means the fiscal year for which a payment rate is effective, from July 1 through the following June 30.

PP. Real estate. "Real estate" means land, land improvements, facilities, and attached fixtures used directly for resident care.

QQ. Real estate taxes and special assessments. "Real estate taxes and special assessments" means all actual special assessments paid and real estate tax liability shown on the annual property tax statement of the nursing home for the calendar year during which the reporting year ends. The term does not include personnel costs, interest, or fees for late payment.

RR. Related organization. "Related organization" means an organization which furnishes services, facilities, or supplies to a nursing home and which:

1. is associated with or affiliated with the nursing home; or

2. has control of or is controlled by the nursing home. "Control" means the situation in which an individual or an organization has the power, directly or indirectly, to influence or direct significantly the actions or policies of an organization or institution; or

3. is under common ownership with the nursing home. "Common ownership" means the situation in which an individual or an organization owns equity in the nursing home and in the organization serving the nursing home.

SS. Reporting year. "Reporting year" means the period from October 1 to September 30, immediately preceding the rate year, for which the nursing home submits its cost report, and which is the basis for the determination of the payment rate for the following rate year.

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PROPOSED RULES

TT. Resident day. "Resident day" means a day for which nursing services are rendered and billed, or a day on which a bed is held and billed.

UU. Top management personnel. "Top management personnel" means owners, board members, corporate officers, regional and district directors or managers, administrators, including the nursing home administrator required by Minnesota Statutes, section 144A.04, subdivision 5, or any other person performing functions as an executive. Persons performing functions only as nursing home department heads are not included in this definition.

VV. Useful life. "Useful life" means the length of time an asset is expected to provide economic service before needing replacement.

WW. Welfare day. "Welfare day" means a resident day for which reimbursement is billed to the medical assistance program or Minnesota supplemental aid program.

12 MCAR § 2.05003 [Temporary] Cost principles.

Nursing homes must use the cost principles in A.-F. to report costs. The commissioner shall use these cost principles to determine allowable costs.

A. General and administrative costs. General and administrative costs must not be allocated as a direct or indirect cost to any other cost categories.

B. Applicable credits. Applicable credits must be used to offset or reduce the expenses of the nursing home.

C. Adequate documentation.

1. General principles. Adequate documentation must:

- a. be maintained in orderly, well-organized files;
- b. not include documentation of two or more related nursing homes in one set of files;
- c. include a paid invoice or copy of a paid invoice with date of purchase, vendor name and address, purchaser name and delivery destination address, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or nursing homes; and
- d. include contracts, agreements, amortization schedules, mortgages, and other debt instruments, and all other relevant documents.

2. Documentation of compensation. Compensation for personal services, regardless of whether treated as direct or indirect costs, must be documented on payroll records. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees which are chargeable to more than one cost category must be supported by time distribution records. The method used must produce a proportional distribution of actual time spent performing assigned duties. If the services are rendered on less than a full-time basis, the reasonable compensation must reflect an amount proportionate to a full-time basis.

3. Documentation of mileage; motor vehicle log. The nursing home must maintain a motor vehicle log that shows personal, nursing home, and resident usage. Mileage paid for the use of a private vehicle must be documented.

4. Documentation of cost allocation. Complete and orderly cost allocation records must be maintained for cost allocations made to cost categories and to levels of care.

D. Other cost principles. For rate setting purposes, a cost must satisfy the following criteria:

1. The cost is recognized as ordinary, necessary, and related to resident care.
2. The cost is what a prudent and cost conscious business person would pay for the specific goods or services in the open market in an arm's length transaction.
3. The cost is for goods or services actually provided to the nursing home.
4. The cost effects of transactions that are conceived for the purpose of circumventing these rules are not allowable under the principle that the substance of the transaction shall prevail over form.
5. Costs that relate to management inefficiency, unnecessary care or facilities, noncompetitive agreements, and activities not commonly accepted in the nursing home care field are not allowable.

E. Compensation for personal services. Compensation for personal services includes all the remuneration paid currently, accrued or deferred, for services rendered by the nursing home's owners or employees. Only compensation costs for the current reporting period are allowable.

1. Compensation includes:

- a. salaries, wages, and fringe benefits paid for managerial, administrative, professional, and other services;
 - b. amounts paid by the nursing home for the personal benefit of the owners or employees;
 - c. the costs of assets and services which the owner or employee receives from the home;
 - d. deferred compensation and individual retirement accounts (IRA's);
 - e. supplies, equipment, and services for personal use and any other in-kind benefit received by the owners or employees; and
 - f. payment to nonpaid workers, and to organizations of nonpaid workers, that have arrangements with the nursing home for the performance of services by the nonpaid workers.
2. The nursing home must have a written policy for payment of compensation for personal services. The policy must:
 - a. relate the individual's compensation to the performance of specified duties and to the number of hours worked by the individual;
 - b. result in consistent treatment of employees working in similar situations within the nursing home; and
 - c. relate the compensation paid within the nursing home to that paid by comparable nursing home for comparable services.
 3. Only services which are necessary services shall be compensated.
 4. Compensation must be actually paid, whether by cash or negotiable instrument, within 75 days after the close of the reporting period. If payment is not made within the allowable period, the unpaid compensation shall be disallowed in that reporting year and shall not be an allowable cost in future reporting years.
 5. A payment that represents a return on equity capital is not allowable as compensation.

F. Capitalization.

1. Expenditures for land improvements, facilities, equipment, extraordinary repairs, additions, major betterments, and leasehold improvements must be capitalized and depreciated if the item normally has a useful life of more than one year and a unit value of \$150 or more.

The purchase or purchases of the same equipment during a reporting year which have a unit cost of less than \$150 but have an aggregate cost in excess of \$1,000 must be capitalized and depreciated.

2. Leases and rentals must be capitalized according to generally accepted accounting principles. If the lease payments are paid to a related organization, the lease or rental agreement must be capitalized and allowable costs shall be computed as though the lease did not exist.
3. Items such as land, land improvements whose maintenance or construction are not the responsibility of the nursing home, and good will shall not be depreciable assets.

12 MCAR § 2.05004 [Temporary] Related organization costs.

A. Charges from related organizations. Costs applicable to services, facilities, and supplies furnished to the nursing home by any related organization are includable in the allowable cost of the nursing home at the cost to the related organization if these costs do not exceed the price of comparable services, facilities, or supplies that could be purchased elsewhere.

B. Limitation on related organization costs. If the related organization in the normal course of business sells services, facilities, or supplies to outsiders, the cost to the nursing home shall be the outsider's price provided that sales to outsiders constitute at least 75 percent of total sales.

C. Disposal of assets of related organizations. Subject to the provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary], the cost of ownership of an asset which is used by the nursing home may be included in the allowable cost of the nursing home even though it is owned by a related organization. When the asset is sold or otherwise disposed of by the related organization and the depreciation is included in the general and administrative category, any gain realized by the organization must be offset against the nursing home's general and administrative cost category. Where a nursing home claims depreciation on an asset owned by a related organization, and the nursing home terminates participation in the medical assistance or Minnesota supplemental aid

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program, or the asset is sold or otherwise disposed of by the related organization, the allowable depreciation is subject to the recapture provisions of 12 MCAR § 2.05011 G. [Temporary].

D. Sales or reorganization of related organization. No adjustment to property-related costs may be made as a result of sales or reorganization of the related organization. Sales or reorganizations of the related organizations are subject to the provisions of C.

12 MCAR § 2.05005 [Temporary] Allowable operating costs.

A. Licensure and certification costs. Subject to the provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary] all costs of meeting the licensure and certification standards listed in 1.-3. are allowable operating costs for the purpose of setting nursing home rates. The standards are:

1. standards of SNF services or ICF services as set out by federal regulations;
2. requirements established by the Department of Health for meeting health standards as set out by state rules and federal regulations; and
3. other requirements for licensing under state law or rules that must be met to provide nursing and boarding care services.

B. Routine service costs. Subject to the provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary] all costs of routine services including nursing, dietary, and support services as defined in 12 MCAR § 2.05006 [Temporary] are allowable operating costs for the purpose of setting nursing home rates.

12 MCAR § 2.05006 [Temporary] Reporting of costs by cost category.

All costs for routine services must be reported in cost categories A.-J.

A. Dietary services. The costs listed in 1.-3. are included in the dietary services cost category:

1. direct costs of normal and special diet food including raw food, dietary supplies, food preparation and serving, and special dietary supplements used for tube feeding or oral feeding, such as elemental high nitrogen diet, even if written as a prescription item by a physician;
2. the salary of the supervisor, dieticians, chefs, cooks, dishwashers, and other employees assigned to the kitchen and dining room including the salaries or fees of dietary consultants;
3. the costs of training to meet the requirements of laws, rules, or regulations for keeping an employee's salary, status, or position or to maintain skills needed in performing the employee's present duties.

B. Laundry and linen services. The costs listed in 1. and 2. are included in the laundry and linen services cost category:

1. direct cost of linen and bedding, the laundering of resident clothing, other laundering, and laundry supplies; and
2. the salaries of the supervisor, seamstresses, ironers, and other laundry employees.

C. Housekeeping services. The costs listed in 1. and 2. are included in the housekeeping services cost category:

1. direct costs of housekeeping, including cleaning and lavatory supplies; and
2. the salaries of the supervisor, housekeepers, and other cleaning personnel.

D. Plant operation and maintenance services. The costs listed in 1. and 2. are included in the plant operations and maintenance cost category:

1. direct costs for maintenance and operation of the building and grounds, including fuel, electricity, water, supplies and parts to repair and maintain equipment and facilities, minor equipment, and tools; and
2. the salaries of the supervisor, engineers, heating-plant employees, independent contractors, and other maintenance personnel.

E. Nursing services. Direct costs associated with nursing services including 1.-24. are included in the nursing services cost category:

1. nursing assessment of the health status of the resident and the planning of appropriate interventions to overcome identified problems and maximize resident strengths;
2. bedside care and services;
3. care and services according to the order of the attending physicians;
4. monitoring procedures such as vital signs, urine testing, weight, intake and output, and observation of the body system;

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5. administration of oral, sublingual, rectal, and local medications topically applied, and appropriate recording of resident's responses;
 6. drawing blood and collecting specimens for submission to laboratories;
 7. prevention of skin irritation and decubitus ulcers;
 8. routine changing of dressings;
 9. training, assistance, and encouragement for self-care as required for feeding, grooming, ambulation, toilet, and other activities of daily living including transportation within the nursing home facility;
 10. supportive assistance and training in resident transfer techniques including transfer from bed to wheelchair or wheelchair to commode;
 11. restorative nursing measures to help the resident reach or maintain the resident's best level of functioning including passive range of motion, ambulation, transfer, and activities of daily living, including teaching and follow-up;
 12. care of residents with casts, braces, splints, and other appliances requiring nursing care or supervision;
 13. administration of oxygen;
 14. use of nebulizers;
 15. maintenance care of resident's colostomy, ileostomy, and urostomy;
 16. arrangements for obtaining medical, dental, and hospital care;
 17. administration of parenteral medications, including intravenous solutions;
 18. administration of tube feedings;
 19. nasopharyngeal aspiration required for maintenance of a clean airway;
 20. care of suprapubic catheters and urethral catheters;
 21. care of tracheostomy, gastrostomy, and other tubes in a body;
 22. all costs of equipment and supplies that are used to complement the services in the nursing services cost category, including:
 - a. items stocked at nursing stations or on the floor and distributed or used individually, including: alcohol, applicators, cotton balls, incontinence pads, disposable ice bags, dressings, bandages, water pitchers, tongue depressors, disposable gloves, enemas, enema equipment, soap and water, medication cups, diapers, plastic waste bags, sanitary products, thermometers, hypodermic needles and syringes, and clinical reagents or similar diagnostic agents; and
 - b. drugs which according to federal law do not require a prescription and insulin which is required by a resident's plan of care.
 23. training of nursing service personnel except for nurses aid training, educational costs are limited to either meeting the requirements of laws or regulations for keeping an employee's salary, status, or position or for maintaining skills needed in performing the employee's present duties; and
 24. personnel costs of persons performing nursing services including salaries of the director, and assistant director of nursing, supervising nurses, medical records personnel, registered professional nurses, licensed practical nurses, nurses aides, orderlies, attendants, and the salaries or fees of physicians or other professionals performing consulting services on medical care which are not reimbursed separately on a fee for service basis.
- F. Other care-related services. The costs listed in 1.-3. are included in the other care-related services cost category:
1. direct costs of other direct services, such as recreational or religious activities, arts and crafts, and social services which are not reimbursed separately on a fee for service basis;
 2. the salaries of recreational therapists and aides, chaplains, arts and crafts instructors and aides, social workers and aides, and other care-related personnel including salaries or fees of professionals performing consultation services in these areas which are not reimbursed separately on a fee for service basis; and

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3. the costs of training to meet the requirements of laws or regulations for keeping an employee's salary, status or position, or to maintain skills needed in performing the employee's present duties.

G. General and administrative services. Direct costs for administering the overall activities of the nursing home are included in the general and administrative cost category. These direct costs include:

1. business office functions;
2. travel expenses;
3. motor vehicle operating expenses for vehicles such as vans or utility vehicles;
4. telephone and telegraph charges;
5. office supplies;
6. licensing and permit fees;
7. insurance, except as included as a fringe benefit;
8. personnel costs including help wanted ads, and the salaries or fees of administrators, assistant administrators, medical directors, accounting and clerical personnel, data processing personnel, and receptionists;
9. professional fees for services such as legal, accounting, and data processing services;
10. management fees, and the cost of management and administrative consultants;
11. central, affiliated, or corporate office costs at cost;
12. business meetings and seminars;
13. postage;
14. training for top management personnel and other than direct resident care related personnel that either meets the requirements of laws, rules, or regulations to keep an employee's salary, status, or position or to maintain skills needed to perform the employee's present duties;
15. membership fees for associations and professional organizations which are directly related to resident care;
16. subscriptions to periodicals which are directly related to resident care;
17. telephone, television, and radio services provided in areas designed for use by the general resident population, such as lounges and recreation rooms;
18. security services or security personnel;
19. advertising; and
20. board of director's fees.

H. Payroll taxes and fringe benefits. Only the costs for 1.-8. are included in the payroll taxes and fringe benefits cost category:

1. the employer's share of the social security withholding tax;
2. state and federal unemployment compensation taxes;
3. group life insurance;
4. group health and dental insurance;
5. workers' compensation insurance;
6. either a United States Internal Revenue Service-approved approved pension plan or a United States Internal Revenue Service approved profit-sharing plan, but not both;
7. governmentally required retirement contributions; and
8. uniform allowance.

I. Real estate taxes and special assessments. Real estate tax liability for each proprietary nursing home and actual special assessments paid for each nursing home are included in the real estate taxes and special assessments cost category.

J. Property-related costs. Depreciation, interest, investment allowance, lease, or rental payments are included in the property-related cost category.

12 MCAR § 2.05007 [Temporary] Cost allocation procedures.

A. Cost category allocation principles. Cost category allocation principles shall be as provided in 1.-4.

1. Cost classification to cost categories is the process of charging costs to the appropriate cost categories and compiling a total cost for each cost category to be recorded on the cost report. Nursing homes must classify costs in accordance with the cost categories defined in 12 MCAR § 2.05006 [Temporary]. Any costs that cannot be specifically classified to a cost category shall be classified to the general and administrative cost category.

2. Classification of costs, except salary costs of individuals with multiple duties, to the cost categories in 12 MCAR § 2.05006 [Temporary] shall use direct identification of costs, without allocation, by routine classification of transactions when costs are recorded in the books and records of the nursing home.

3. In instances in which a person other than top management personnel has multiple duties, the person's salary cost shall be allocated to the cost categories in 12 MCAR § 2.05006 [Temporary] on the basis of time distribution records that show actual time spent on various activities.

In a nursing home of 60 or fewer beds, part of the salary or salaries of top management personnel may be allocated to other cost categories to the extent justified in records kept by the nursing home. Central, affiliated, or corporate office costs representing services of required consultants in areas including, but not limited to, dietary, pharmacy, social services, or other resident care related activities may be allocated to the appropriate department, but only if those costs are directly identified by the nursing home.

4. Except as provided in 3., no general and administrative costs may be allocated to other cost categories.

B. Specific care level cost allocation procedures for multi-care level nursing homes. Specific cost allocation procedures are necessary to determine costs assignable among care levels within a multi-care level nursing home. Costs will be allocated between the levels of skilled care, intermediate care I, intermediate care II, and other care levels as appropriate. Nursing homes must choose one of the allocation methods given in each cost category in 1.-10. The method chosen must result in a reasonable identification of costs by care level. Once an allocation method is chosen, it cannot be changed unless the nursing home demonstrates to the commissioner, based on changed circumstances, that it is impossible or impractical for the nursing home to continue to use the method originally chosen or that the method originally chosen no longer results in a reasonable identification of costs by care level.

1. Dietary services cost allocation must be based on:

- a. regularly validated time or cost studies;
- b. the number of meals served; or
- c. the actual resident days.

2. Laundry and linen services cost allocation must be based on:

- a. the dry weight of laundry processed for each level of care; or
- b. actual resident days.

3. Housekeeping services cost allocation must be based on:

- a. the ratio of square feet of floor space devoted directly to each care level; or
- b. actual resident days.

4. Plant operation and maintenance cost allocation must be based on:

- a. the ratio of square feet of floor space devoted directly to each care level; or
- b. actual resident days.

5. Nursing service cost allocation must be based on direct identification in the routine classification of transactions when costs are recorded in the books and records of the nursing home, such as invoice and time record account classification. If direct identification cannot be used, costs must be allocated on the basis of actual resident days in each care level weighted by the maximum allowable nursing care and attendant hours for each level of care.

6. Cost allocation for other care-related services must be based on:

- a. direct identification of services provided to residents of each level of care; or

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b. actual resident days.

7. General and administrative costs must be allocated in the same proportion as the combined cost of nursing, other care-related, dietary, laundry, housekeeping, and plant operations costs are allocated to different care levels.

8. Fringe benefits and payroll tax costs must be allocated on the same basis as general and administrative costs.

9. Real estate taxes and special assessments allocation must be based on the same ratio used for property-related costs.

10. Property-related costs.

a. A nursing home shall allocate property-related costs on the basis of the method of allocation used by the nursing home in the most recent cost report received by December 31, 1982 and audited by March 1, 1983.

b. A newly constructed nursing home whose interim rate is first effective on or after July 1, 1983, shall allocate property-related costs based on direct identification, or the ratio of square feet of floor space devoted directly to each care level or actual resident days. The nursing home shall use the same method of allocating property-related costs in all subsequent years.

c. A nursing home which changes beds from one care level to another care level may allocate property-related costs based on direct identification, or the ratio of square feet of floor space devoted directly to each care level, or actual resident days in the next rate year. The nursing home shall use the same method of allocating property-related costs in all subsequent years.

d. Notwithstanding the provisions in a.-c., if the actual resident days in any care level exceed the certified capacity at that care level, the nursing home shall allocate property-related costs based on actual resident days.

12 MCAR § 2.05008 [Temporary] Limitations on costs.

A. Cost principles. All allowable costs are limited by the cost principles defined in 12 MCAR § 2.05003 [Temporary].

B. General and administrative limitation. Within each care level, the commissioner shall disallow any portion of the general and administrative cost category that exceeds the stated percentages of the expenditures in all operating cost categories other than fringe benefits, payroll taxes, and general and administrative as given in 1.-4.

1. Ten percent for nursing homes with more than 100 certified beds in total.

2. Twelve percent for nursing homes with less than 101 but more than 40 certified beds in total.

3. Fourteen percent for nursing homes with 40 or fewer certified beds in total.

4. Fifteen percent for convalescent and nursing care units attached to hospitals for the rate year beginning July 1, 1983. In subsequent years, the general and administrative limit for convalescent and nursing care units attached to hospitals shall be as given in 1.-3.

C. Nursing care and attendant limitations.

1. The maximum number of nursing hours per actual resident day for which costs shall be allowed are as follows:

a. SNF, 2.9 hours;

b. ICF I, 2.3 hours; and

c. ICF II, 1 hour.

For the purposes of 12 MCAR §§ 2.05001-2.05016 [Temporary], the computation of nursing hours must not include hours for vacation, holidays, sick leave, classroom training, and coffee breaks. If the actual average nursing hours per actual resident day exceed the limits in a.-c., the limitation to nursing costs must be calculated by multiplying the ratio of the limit to the average actual nursing hours per actual resident day for the year times the actual cost per actual resident day. This limitation must not be applied to nursing homes that qualify for exception under 12 MCAR § 2.05010 C.6., a. or b. [Temporary], or nursing homes mandated by a correction order from the Department of Health to provide additional nursing care.

2. The maximum number of attendant hours per actual resident day for which costs of a boarding care nursing home shall be allowed is one hour per actual resident day. If the actual average attendant hours per actual resident day exceeds this limit, the limitation on attendant costs must be calculated by multiplying the ratio of the stated limit to the average actual attendant hours per actual resident day for the year times the actual cost per actual resident day.

D. Top management personnel compensation limitations.

1. Compensation of top management personnel shall be limited to the cumulative compensation per bed limitation as determined annually. The calculation of this limitation is based on the nursing home's daily average number of licensed beds without regard to care level during the reporting year. The schedule is:

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Number of Licensed Beds	Cumulative Annual Compensation Per Bed Limitation (1983)
First 50 beds	\$593
Each bed over 50	\$297

The above limits shall apply to the reporting year ending in the year specified.

2. For determining top management personnel compensation limitations, compensation must not include fringe benefits if the same benefits are made available to all or substantially all of the nursing home's employees.

3. The cumulative compensation per bed limitation in 1. shall be increased by six percent for the reporting year ending September 30, 1984.

4. The maximum annual top management personnel compensation per nursing home shall be \$35,000.

5. Compensation of top management personnel in a nursing home with 61 or more licensed beds must not be allocated to other than top management functions.

12 MCAR § 2.05009 [Temporary] Nonallowable costs.

The costs listed in A.-EE. are not allowable for purposes of setting payment rates but must be identified on the nursing home's cost report. These costs are:

- A. all contributions, including charitable contributions, and contributions to political action committees or campaigns;
- B. salaries and expenses of a lobbyist;
- C. assessments made by or the portion of dues charged by associations or professional organizations for litigation, lobbying costs, or contributions to political action committees or campaigns. Where the breakdown of dues charged to a nursing home is not provided, the entire cost shall be disallowed;
- D. advertising designed to encourage potential residents to select a particular nursing home, except for Yellow Pages advertisements of reasonable size and cost;
- E. assessments levied by the commissioner of health for uncorrected violations;
- F. all activities not related to resident care such as flowers, gifts, bonuses, employee parties, and business meals;
- G. all costs related to purchase of and care for pets;
- H. all penalties and interest charges from governmental agencies, and bank overdraft or late payment charges;
- I. all costs of sponsoring employee, youth, or adult activities such as athletic teams and beauty contests;
- J. premiums on owner's or board member's life insurance policies;
- K. personal expenses of owners and employees, such as vacations, boats, airplanes, personal travel or vehicles, and entertainment;
- L. membership or other fees for social, fraternal, sports, health, or similar organizations;
- M. training programs for anyone except employees or volunteers in the nursing home;
- N. training programs to meet the minimum educational requirements of a position except for nurses aides, education that leads to a degree, or education that qualifies the employee for a new trade or profession;
- O. all bad debts and related bad debt collection fees;
- P. all costs of fund raising activities;
- Q. all costs of functions normally reimbursed by charges to residents, employees, or visitors, such as the operating cost, direct and indirect, of a pharmacy, beauty shop, gift shop, coffee shop, apartment, day care center, and functions not related to resident care;
- R. operating costs for activities to the extent that such activities are financed by gifts or grants from public or private funds;
- S. telephone, television, and radio service provided in a resident's room;

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T. costs of noncompetitive agreements;

U. all identifiable costs of services provided by a licensed medical therapeutic or rehabilitation practitioner or any other vendor of medical care which are billed separately on a fee for service basis, including:

1. purchase of service fees paid to the vendor or his agent who is not an employee of the nursing home or the compensation of the practitioner who is an employee of the nursing home;
2. allocated compensation and related costs of any nursing home personnel assisting in providing these services; and
3. allocated cost of any operating or property-related cost for providing these services such as: housekeeping, laundry, maintenance, medical records, payroll taxes, space, utilities, equipment, supplies, bookkeeping, secretarial, insurance, and supervisory and administrative staff costs.

If any of the expenses in 1.-3. are incurred by the nursing home, these expenses must be reported under nonreimbursable expenses together with any of the income received or anticipated by the nursing home, including any charges by the nursing home to the vendor;

V. all costs for which adequate documentation is not maintained or provided as required by 12 MCAR §§ 2.05001-2.05016 [Temporary];

W. costs incurred by owners or employees while conducting the business of or performing services for professional organizations or associations;

X. legal and related expenses for unsuccessful challenges to decisions by governmental agencies;

Y. interest for financing working capital needs, beginning with the rate year starting July 1, 1984;

Z. any fringe benefits or payroll taxes associated with disallowed salary costs;

AA. costs associated with sales or reorganizations of nursing homes;

BB. interest charged by the department on depreciation recapture settlements or rate adjustments;

CC. any portion of the total general and administrative cost category which exceeds the limitations in 12 MCAR § 2.05008 B.1.-4. [Temporary];

DD. cost incurred for activities directly related to influencing employees with respect to unionization; and

EE. all costs determined to be nonallowable in accordance with 12 MCAR §§ 2.05001-2.05016 [Temporary].

12 MCAR § 2.05010 [Temporary] Rate determination for operating costs.

A. Determination of actual resident days. The total number of actual resident days shall be calculated by multiplying the lesser care resident days times the appropriate factor from the following table and subtracting that product from the number of resident days.

Level of Care Provided	Certification	
	SNF Beds	ICF I Beds
SNF	not applicable	not applicable
ICF I	.15	not applicable
ICF II	.50	.40

For the rate year beginning July 1, 1983, the total number of lesser care resident days which may be adjusted as set forth above must not exceed 15 percent of the total number of resident days. For the rate year beginning July 1, 1984, the total number of lesser care resident days which may be adjusted as set forth above must not exceed ten percent of the total number of resident days. This limitation may be waived by the commissioner for up to one year to accommodate a transition period during which the nursing home obtains the proper care level certification.

B. Establishment of actual allowable historical operating costs per diem.

1. For the rate year beginning July 1, 1983 and ending on June 30, 1984, the actual allowable historical operating costs shall be determined from the most recent cost report received by December 31, 1982 and audited by March 1, 1983, and shall be updated to June 30, 1983, by using a nine percent annual rate of increase after applying the general and administrative cost limitation in 12 MCAR § 2.05008 C. [Temporary].

2. For rate years beginning July 1, 1984, the commissioner shall annually review and adjust the historical operating costs incurred by the nursing home during the reporting year preceding the rate year. The review and adjustment must comply with the provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary].

3. After review and adjustment the total allowable historical operating costs shall be divided by actual resident days in order to compute the nursing home's actual allowable historical operating cost per diem.

C. Establishment of 60th percentile of actual allowable historical operating costs per diem.

1. For purposes of establishing the 60th percentile, the total real estate tax and the special assessments must be excluded from the actual allowable historical operating cost per diem of a nursing home.

2. Each year the actual allowable historical operating cost per diems must be grouped according to the level of care, geographic location of the nursing home, and attachment to hospitals. The following groups are established:

Metropolitan SNF,	Nonmetropolitan SNF,
Metropolitan ICF I,	Nonmetropolitan ICF I,
Metropolitan ICF II,	Nonmetropolitan ICF II,
Statewide Boarding Care,	
Statewide hospital attached nursing homes:	SNF,
Statewide hospital attached nursing homes:	ICF I, and
Statewide hospital attached nursing homes:	ICF II.

3. Within each group the actual allowable historical operating cost per diems shall be ranked from lowest to highest.

4. The number of actual allowable historical operating cost per diems in the group shall be multiplied by 0.6 to establish the 60th percentile rank.

5. The actual allowable historical operating cost per diem that has a rank corresponding to the 60th percentile becomes the 60th percentile actual allowable historical operating cost per diem for that group. If the 60th percentile falls between two per diems in the group, the 60th percentile actual allowable historical operating cost per diem is the prorated value between the two per diems.

6. In establishing the groups set forth at C.2., the commissioner shall exclude:

a. a skilled level of care in a nursing home whose skilled care residents' average length of stay is less than 180 days. The average length of stay for skilled care is determined by dividing the actual resident skilled days for the historical reporting year of the nursing home by the total skilled discharges for the historical reporting year of the nursing home;

b. a nursing home, or that part of a nursing home which is licensed and rendering services under the provisions of 12 MCAR § 2.080 on or before June 1, 1983;

c. a newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more, during its interim rate period; and

d. a new care level in nursing homes that on June 1, 1983, have obtained approval for changes in certification level but have no historical costs in that level during the reporting period.

D. Establishment of the operating cost payment rate.

1. For the rate year beginning on July 1, 1983, and ending on June 30, 1984, within each group, each nursing home whose actual allowable historical operating cost per diem is:

a. at or below the 60th percentile, shall receive as an operating cost payment rate, the actual allowable historical operating cost per diem increased by six percent; or

b. above the 60th percentile, shall receive as an operating cost payment rate the 60th percentile, increased by six percent plus 80 percent of the difference between its actual allowable historical operating cost per diem and the 60th percentile.

2. For the rate year beginning on July 1, 1984, and ending on June 30, 1985, within each group, each nursing home whose actual allowable historical operating cost per diem is:

a. at or below the 60th percentile, shall receive as an operating cost payment rate, the actual allowable historical operating cost per diem, increased at an annual rate of six percent; or

b. above the 60th percentile, shall receive as an operating cost payment rate the 60th percentile, increased at an annual rate of six percent, plus 75 percent of the difference between its actual allowable historical operating cost per diem and the 60th percentile.

3. A nursing home or part of a nursing home falling within the exclusions of C.6.a. or b. shall receive as its operating cost payment rate:

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a. for the rate year beginning July 1, 1983 and ending June 30, 1984, its actual allowable historical operating cost per diem increased by six percent; and

b. for the rate year beginning July 1, 1984 and ending June 30, 1985, its actual allowable historical operating cost per diem, increased at an annual rate of six percent.

E. Efficiency incentive.

1. If the actual historical operating cost per diem incurred by a nursing home is less than the nursing home's operating cost payment rate established for the rate year, the nursing home may keep the difference as an efficiency incentive except as provided in 12 MCAR § 2.05013 C. [Temporary].

2. If a nursing home's actual historical operating cost per diem is greater than the operating cost payment rate established for that rate year, there shall be no retroactive cost settlement.

3. If a desk or field audit indicates that a reduction in expenditures for direct resident care might cause a detrimental effect on quality of care, the nursing home must be referred for investigation to the commissioner of health, the interagency board for quality assurance, and the Surveillance and Utilization Review section of the department.

12 MCAR § 2.05011 [Temporary] Rate determination for property-related costs.

A. Capacity days. The number of capacity days shall be determined by multiplying the number of the nursing home's licensed beds by the number of days in the nursing home's reporting period. Capacity days may be adjusted under one or more of the conditions given in 1.-4.

1. Nursing homes qualifying for the lesser care rate under the provisions of 12 MCAR § 2.05014 B. [Temporary] must adjust the capacity days by the formula and limitations provided for in 12 MCAR § 2.05010 A. [Temporary].

2. For nursing homes applying for a certificate of need after August 15, 1972 and choosing to assign a greater proportion of costs to single bed rooms, the number of capacity days shall be increased by multiplying the number of licensed single bed rooms by 1.5.

3. Usable or operable bed capacity shall be used for purposes of the calculations required by 1. and 2. if the nursing home justifies in writing, to the satisfaction of the commissioner, that licensed beds is an inappropriate measure of capacity. The usable or operable bed capacity adjustment must not be in effect for more than one reporting year and must not be recognized after July 1, 1985.

4. Notwithstanding the provisions of 1.-3., the total of capacity days must not be reduced below:

a. ninety-three percent for nursing homes with more than 60 beds;

b. ninety-one percent for nursing homes with 60 or fewer beds; and

c. ninety percent for newly constructed nursing homes or nursing homes with a nursing home capacity increase of 50 percent or more.

B. Nursing homes constructed prior to July 1, 1983. The property-related cost base for a nursing home constructed prior to July 1, 1983 shall be determined by 1.-4.

1. For the rate years beginning on July 1, 1983 and July 1, 1984, the property-related costs include the allowable depreciation, interest, investment allowance, and lease or rental payment expenses at the dollar level recognized in the most recent cost report received by the commissioner by December 31, 1982 and audited by March 1, 1983. These costs must be subsequently adjusted to reflect the costs recognized in the final rate for that cost report, adjusted for rate limitations in effect May 1, 1983.

2. Property-related costs as determined in 1. shall be reduced to the extent that costs included in property-related costs in the most recent cost report received by the commissioner by December 31, 1982 and audited by March 1, 1983 are included in a different cost category under 12 MCAR §§ 2.05001-2.05016 [Temporary]. Along with the cost report filed with the commissioner, the nursing home shall clearly identify those costs which have been reclassified.

3. Adjustments to property-related costs for the cost of repairs, replacements, renewals, betterments, or improvements to existing buildings and attached fixtures are subject to the provisions of E. and shall be allowed if:

a. the cost incurred is reasonable, necessary, and ordinary;

b. the net cost is greater than \$5,000;

c. the nursing home's property-related costs per diem are equal to or less than the average property-related costs per diem within its group; and

d. the adjustment is shown in the depreciation and interest schedules submitted to and approved by the commissioner.

These adjustments shall be calculated pursuant to the rules and statutes in effect on May 1, 1983. Interest allowed must be limited to the indebtedness incurred in the acquisition for which depreciation is adjusted.

4. No adjustments shall be made as a result of sales or reorganizations of nursing homes.

C. Newly constructed nursing homes; nursing homes with a capacity increase of 50 percent or more. The property-related cost base for a newly constructed nursing home or a nursing home that increases its capacity 50 percent or more and that meets the conditions of Minnesota Statutes, section 144A.071 shall be determined by estimating the depreciation, interest, and investment allowance on the newly constructed nursing home or portion of a nursing home pursuant to the statutes and rules in effect on May 1, 1983. The property-related cost base shall be fixed at the level recognized at the time of settle-up. For the following rate years, the payment rate shall be calculated according to provisions of A. and B.

D. Nursing homes with a capacity increase of less than 50 percent. The property-related cost base for a nursing home that increases its capacity by less than 50 percent shall be increased to recognize costs incurred during the reporting year, provided that the nursing home meets the requirements of Minnesota Statutes, section 144A.071. The increased base shall be included in the calculation of a payment rate for the rate year following the reporting year in which the cost was incurred. The increase in the property-related cost base is subject to the provisions of E. and must include depreciation, interest, and investment allowance calculated pursuant to the statutes and rules in effect on May 1, 1983.

E. Basis of depreciable assets. The total basis of depreciable nursing home assets, whether constructed or purchased, must not exceed the following maximum limits per bed for licensed beds in rooms with two or more beds per room, and per bed for licensed single bed rooms; except that for licensed single bed rooms built prior to August 15, 1972, the basis must not exceed \$16,500 per bed for a maximum of five percent of licensed beds:

<u>Year beginning</u>	<u>Two or more bed rooms</u>	<u>Single bed rooms</u>
Prior to January 1, 1974	\$11,000	\$16,500
January 1, 1974	13,000	19,500
January 1, 1975	14,820	22,230
January 1, 1976	15,413	23,119
January 1, 1977	16,406	24,608
January 1, 1978	18,109	27,162
January 1, 1979	20,010	30,014
January 1, 1980	22,971	34,457
January 1, 1981	25,544	38,316
January 1, 1982	26,591	39,887
January 1, 1983	27,309	40,964

On January 1, 1984 and January 1, 1985, the limit shall be adjusted as determined by the commissioner according to the construction index published by the Bureau of Economic Analysis of the United States Department of Commerce. This limit does not apply to changes required by a governmental agency.

F. Computation of property-related cost payment rates. The property-related cost payment rate shall be computed by dividing total property-related costs by 96 percent of capacity days for nursing homes with more than 60 beds or 94 percent of capacity days for nursing homes with 60 or fewer beds. For the nursing home whose residents' average length of stay is 180 days or less, the nursing home may choose to divide the nursing home's property-related costs by the actual resident days to compute the nursing home's annual property-related cost payment rate. For a newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more the interim property-related costs shall be determined pursuant to statutes and rules in effect on May 1, 1983.

G. Recapture of depreciation.

1. If 20 percent or more of the nursing home facility or any portion of the nursing home's depreciable equipment or land improvements is sold at a price in excess of its cost as reduced by the total of the depreciation used in the determination of property-related costs under 12 MCAR § 2.05011 [Temporary] and 12 MCAR § 2.049, depreciation recapture to be paid to the commissioner shall be determined as follows:

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a. The gross amount to be recaptured shall be the lesser of the total actual gain on the sale or the allowable depreciation after November 1, 1972.

b. The gross recapture amount as determined in a. must be allocated to fiscal periods from November 1, 1972, through the date of sale. The gross recapture amount must be allocated to each fiscal period in the same ratio as depreciation amounts allowed under 12 MCAR § 2.05011 [Temporary] and 12 MCAR § 2.049. The amount allocated to each period must be divided by the total actual resident days in that period to determine a per diem cost for the period. The net recapture must then be determined by multiplying the welfare days by the per diem cost for each fiscal period.

c. The portion of the net recapture amount determined above and allocated to fiscal periods prior to July 1, 1983 shall be reduced by one percent for each month of ownership for the period beginning with the date of acquisition of the nursing home facility through June 30, 1983.

d. The portion of the net recapture allocated to rate years on or after July 1, 1983 shall be subject to full recapture.

e. The total net recapture shall be the total of c. and d.

2. The new owner shall pay to the commissioner the total net recapture amount in e. within 120 days of receiving formal notification of the amount due. Interest charges shall be assessed on balances outstanding after the 120-day deadline. The annual interest rate charged shall be the rate charged by the commissioner of revenue for late payment of taxes in effect on the 121st after the formal notification.

3. A nursing home which terminates participation in the medical assistance or Minnesota supplemental aid program and which is subject to the recapture provisions shall submit an appraisal of the assets of the nursing home. If the commissioner determines that the appraisal submitted by the nursing home may not accurately show the value of the nursing home assets, the commissioner may obtain an appraisal of the assets and may determine the amount to be recaptured according to the appraisal.

12 MCAR § 2.05012 [Temporary] Rate determination for real estate taxes and special assessments.

The total real estate taxes and actual special assessments must be divided by actual resident days to compute the payment rate for real estate taxes and special assessments.

12 MCAR § 2.05013 [Temporary] Total payment rate determination.

A. Total payment rate. The total payment rate must be the sum of the operating cost payment rate, the property-related cost payment rate, and the real estate tax and special assessments payment rate.

B. Private payment rate. The total payment rate must not exceed the rate paid by private paying residents for similar services for the same period.

C. Adjustment of payment rate; individual nursing homes. If the commissioner finds unallowable expenditures, errors, or omissions in the nursing home's historical operating costs, the nursing home's actual allowable historical operating cost per diem and subsequently affected payment rates must be adjusted. If the adjustment results in an underpayment to the nursing home, the commissioner shall pay to the nursing home the underpayment amount within 120 days of formal notification to the nursing home. If the adjustment results in an overpayment to the nursing home, the nursing home shall pay to the commissioner the entire overpayment within 120 days of receiving the formal notification from the commissioner. Interest charges shall be assessed on underpayment or overpayment balances outstanding after the deadlines. The annual interest rate charged shall be the rate charged by the commissioner of revenue for late payment of taxes, which is in effect on the 121st day after the formal notification.

D. Adjustment of payment rate; group. When resolution of appeals or on-site field audits of the records of nursing homes within a group result in adjustments to the 60th percentile of the payment rates within the group in any reporting year, the 60th percentile established for that group must be increased or decreased by the adjustment amount for the rate year following the reporting year during which the adjustment was made or the appeal was resolved. No redetermination of the existing 60th percentile may be made as a result of adjustments to cost reports.

12 MCAR § 2.05014 [Temporary] Special rate setting procedures.

A. Newly constructed nursing homes. Interim payment rates and settle-up payment rates for a newly constructed nursing home or one with a capacity increase of 50 percent or more shall be established in accordance with 1.-9.

1. A newly constructed nursing home or one with a capacity increase of 50 percent or more may, upon written application to the commissioner, receive an interim payment rate. The nursing home shall submit cost reports and other supporting information as required in 12 MCAR §§ 2.05001-2.05016 [Temporary] to the extent applicable for the reporting year in which the nursing home plans to begin operation. The nursing home must state the reason for noncompliance with any provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary]. The effective date of the interim payment rate shall be the first day a medical assistance recipient resides in the newly constructed beds.

2. An interim payment rate for a newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more shall be established as in a.-d.

a. The interim operating cost payment rate shall be computed by dividing the projected operating costs by the anticipated actual resident days. The interim operating cost payment rate must not exceed 110 percent of the 60th percentile in effect for the nursing home's group, except that for a nursing home meeting the provisions of 12 MCAR § 2.05010 C.6.a. [Temporary] the interim operating cost payment rate must not exceed 110 percent of the highest operating cost payment rate for that type of nursing home in effect during that rate year.

b. The interim property-related cost payment rate shall be computed by dividing the projected property-related cost for any newly constructed nursing home or portion of a nursing home by 93 percent of capacity days for the nursing home. A nursing home included in 1. may elect to use anticipated actual resident days in place of 93 percent of capacity days.

c. The interim real estate tax and special assessments payment rate shall be computed by dividing the projected real estate tax and special assessments by the anticipated actual resident days.

d. The total interim payment rate shall be the sum of the interim payment rates computed in a.-c.

3. A newly constructed nursing home's interim payment rate must not be in effect more than 17 months. A nursing home that has a starting date between May 1 and September 30 must file a cost report for the reporting year ending on September 30 of the following year. A nursing home that has a starting date between October 1 and April 30 must file a cost report for the reporting year ending on the first September following the starting date.

The interim payment rate period for a nursing home with a capacity increase of 50 percent or more shall coincide with the reporting year and may not be in effect for more than 12 months.

4. A newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more whose interim payment rates were in effect for periods before and after July 1, 1983, shall submit the two cost reports given in a. and b.

a. The first cost report must include all costs and statistical information for the entire interim rate period in accordance with 12 MCAR § 2.049.

b. The second cost report must include all costs and statistical information of the entire interim rate period in accordance with 12 MCAR §§ 2.05001-2.05016 [Temporary], except that a nursing home included in 1. may elect to use actual resident days to compute the property-related cost payment rate.

c. Each cost report shall be used to determine a settle-up payment rate. The settle-up payment rate determined in a. shall be applied to the period ending June 30, 1983. The settle-up payment rate determined in b. shall be applied to the period beginning July 1, 1983, for the duration of the interim period.

5. A newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more whose interim payment rate was in effect on or after July 1, 1983, must file a cost report in accordance with 12 MCAR §§ 2.05001-2.05016 [Temporary], except that a nursing home included in 1. may elect to use actual resident days to compute the settle-up property-related cost payment rate.

6. For periods which begin after June 30, 1983, the settle-up operating cost payment rate must not exceed 110 percent of the 60th percentile in effect for the nursing home's group, or for a nursing home meeting the requirements of 12 MCAR § 2.05010 C.6.a. [Temporary], 110 percent of the highest operating cost payment rate for that type of nursing home during the same period or periods.

7. The provisions of 12 MCAR § 2.05010 B.1. and D.2. [Temporary] relating to the updating of operating costs and per diems must not be applied for the settle-up operating cost payment rate.

8. A newly constructed nursing home or a nursing home with a capacity increase of 50 percent or more shall continue to receive the interim payment rate after submission of the cost report for the period October 1 through June 30 until the payment rate for the following year is determined in accordance with 12 MCAR §§ 2.05001-2.05016 [Temporary], except that the property-related cost payment rate shall be computed by dividing property-related costs by the percentage of capacity days specified in 12 MCAR § 2.05011 F. [Temporary].

9. The interim payment rate is subject to retroactive adjustment against the settle-up payment rates and the payment rate

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PROPOSED RULES

developed for the remaining nine months of the current rate year. Interest charges must be assessed as provided in 12 MCAR § 2.05013 C. [Temporary].

B. Lesser care levels in nursing homes without certification classification. Nursing homes providing care to welfare recipients requiring less care than the care level for which the nursing home is certified shall receive a payment rate calculated as follows:

1. The ICF I payment rates in a SNF nursing home shall be determined as follows:

a. The nursing home's operating cost payment rate shall be the lesser of 85 percent of the established SNF operating cost payment rate or the 60th percentile of the prior reporting year increased by six percent in effect for the appropriate ICF I group.

b. The nursing home's property-related cost payment rate shall be 85 percent of the established SNF property-related cost payment rate.

c. The nursing home's real estate tax and special assessments cost payment rate shall be 85 percent of the established SNF real estate cost payment rate and special assessments cost payment rate.

d. The maximum lesser care total payment rate may not exceed 85 percent of the SNF total payment rate.

2. The ICF II payment rates in the SNF nursing home shall be determined as follows:

a. The nursing home's operating cost payment rate must be the lesser of 50 percent of the established SNF operating cost payment rate or the 60th percentile of the prior reporting year increased by six percent in effect for the appropriate ICF II group.

b. The nursing home's property-related cost payment rate must be 50 percent of the established SNF property-related cost payment rate.

c. The nursing home's real estate tax and special assessments cost payment rate must be 50 percent of the established SNF real estate tax and special assessments cost payment rate.

d. The maximum lesser care total payment rate must not exceed 50 percent of the SNF total payment rate.

3. The ICF II payment rates in an ICF I nursing home shall be determined as follows:

a. The nursing home's operating cost payment rate must be the lesser of 60 percent of the established ICF I operating cost payment rate or the 60th percentile of the prior reporting year increased by six percent in effect for the appropriate ICF II group.

b. The nursing home's property-related cost payment rate must be 60 percent of the established ICF I property-related cost payment rate.

c. The nursing home's real estate tax and special assessments cost payment rate must be 60 percent of the established ICF I real estate tax and special assessments cost payment rate.

d. The maximum lesser care total payment rate must not exceed 60 percent of the established ICF I total payment rate.

C. Care classification additions. Nursing homes adding certified levels of care classifications shall receive the lesser care rates defined in B. until the regularly scheduled cost report is submitted. For nursing homes adding higher certified levels of care, the same percentage shall be used to determine the higher care payment rates, subject to the limitations of the 60th percentile increased by six percent in the appropriate higher care level group.

D. Private room rate. A private room rate of 115 percent of the established payment rate for the applicable care level in an individual nursing home shall be allowed for a medical assistance recipient when the private room is deemed a medical necessity for the individual resident or others who are affected by the resident's condition. Conditions requiring a private room must be determined by the attending physician and approved by the county welfare or human services board. These provisions apply only to a nursing home applying for a certificate of need for construction of new nursing home beds after August 15, 1972.

12 MCAR § 2.05015 [Temporary] General reporting requirements and submittal procedures.

A. Required reports. No later than December 31 of each year, the nursing home must submit an annual cost report for the reporting year ending September 30 which conforms to the uniform accounting system defined in forms supplied by the commissioner, in order to receive medical assistance payments or other reimbursements from the department. In addition, the nursing home shall obtain an annual audit of its financial records from an independent certified public accountant or licensed public accountant. The examination shall be conducted in accordance with generally accepted auditing standards as promulgated and adopted by the American Institute of Certified Public Accountants. A governmentally owned nursing home

may comply with these auditing requirements by submitting the audit report prepared by the state auditor. Reports, supporting documentation, and worksheets shall include:

1. general nursing home information and statistical data;
2. reports of historical costs with supporting calculations and worksheets;
3. a complete statement of fees and charges, including the rate or rates charged to private paying residents, as audited by a certified public accountant licensed in Minnesota or by a public accountant as defined by Minnesota Statutes, section 412.222;
4. a copy of its audited financial statements that correspond to the nursing home's fiscal year ending during the cost reporting year. The audited financial statements must include a balance sheet, income statement, statement of retained earnings, statement of changes in financial position (cash and working capital methods), appropriate notes to the financial statements, any applicable supplemental information, and the certified public accountant's or licensed public accountant's opinion. If the financial statements are not sufficiently detailed or the nursing home's fiscal year is different from the cost reporting year, the audited financial statement's supplemental information must provide and explain all adjustment amounts necessary to compare costs on the financial statements with costs on the cost report;
5. certified public accountant's and licensed public accountant's audit workpapers which support the audited financial statements and cost reports, upon request of the commissioner;
6. a statement of ownership for the nursing home, including the name, address, and proportion of ownership of all owners of privately-held or closely-held corporations and partnerships which have an interest of five percent or more in the nursing home and publicly-held corporations which have an interest of 15 percent or more;
7. separate audited financial statements that correspond to the fiscal year ending during the cost reporting year for any other nursing home owned in whole or part by the same owners;
8. separate audited financial statements which correspond to the fiscal year ending during the cost reporting year for any related organization doing business with the nursing home;
9. copies of leases, purchase agreements, and other documents related to the lease or purchase of the nursing home;
10. copies of leases, purchase agreements, or other documents related to the purchase or acquisition of equipment, goods, and services which are claimed as allowable costs, if requested by the commissioner;
11. a listing of nursing home debt outstanding during the reporting year, and the name of the lender, the term of debt, interest rate of debt, interest and principal payments for the current year and all remaining years, and the original amount of debt;
12. complete depreciation schedules calculated in accordance with 12 MCAR § 2.049;
13. an explanation in the cost report, of all adjustments to the cost report and the applicable rule citations; and
14. other relevant information required by the commissioner to support a payment rate request.

B. Additional information required from hospital attached nursing homes. In addition to the reports required in A., hospital attached nursing homes shall provide:

1. Copies of medicare cost report Worksheets as required by the commissioner. In addition to the stepdowns required by medicare, the nursing home shall provide individual stepdowns for the areas listed below, which are equal to or reconcilable with the medicare cost report:
 - a. general and administrative cost categories;
 - b. depreciation, interest, and property-related costs;
 - c. real estate taxes and special assessments, if applicable;
 - d. fringe benefits and payroll taxes; and
 - e. all other cost categories, including nursing services, other care-related services, dietary, housekeeping, laundry and linen, and plant operation and maintenance.
2. Reconciliation with the medicare stepdown for all stepdowns listed in 1.a.-e.

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PROPOSED RULES

C. Method of accounting. The accrual method of accounting in accordance with generally accepted accounting principles is the only method acceptable for purposes of satisfying reporting requirements. If a government-owned nursing home demonstrates that the use of the accrual method of accounting is not applicable to the nursing home and that a cash or modified accrual method of accounting more accurately reports the nursing home's financial operations, the commissioner shall permit the nursing home to use a cash or modified accrual method of accounting.

D. Records. The nursing home shall maintain statistical and accounting records to support information contained in the nursing home's required reports and audited statement in sufficient detail for at least four years following submission of a cost report. Upon request of the commissioner, the nursing home shall provide federal and state income tax returns for the nursing home, any related organization, and any individual having an ownership interest in the nursing home.

E. Exceptions. If differences arise between these rules and generally accepted accounting principles, 12 MCAR §§ 2.05001-2.05016 [Temporary] shall prevail.

F. Report certification. Reports required in this section must be accompanied by a certification of the person having over 50 percent effective ownership or the chief financial officer if there is no majority owner, and the administrator or chief operating executive. If reports have been prepared by a person other than these individuals, a separate statement signed by the preparer shall also be included stating the terms of the preparer's employment and charges for preparation of the report.

G. Reporting deadlines and extensions.

1. Required annual reports must be submitted to the commissioner by December 31. The reports must cover the reporting year ending on September 30 of that year.

2. The commissioner may reject any report filed by a nursing home that is incomplete or inaccurate or may require other relevant information to support the payment rate request. The corrected report or the additional information requested must be returned to the commissioner within 15 days or the report must be rejected.

If the report is rejected, the commissioner shall reduce the payment rate to the nursing home to 80 percent of its most recently established payment rate. The reduced payment rate shall be in effect until the first day of the month following the month in which the information is completely and accurately filed. Reinstatement of the full payment rate may not be retroactive.

3. In unusual circumstances, the commissioner may grant one 15-day extension of the reporting deadline. To receive such an extension, a nursing home must submit a written request by December 1. The commissioner must notify the nursing home of his decision to grant or deny an extension by December 15.

H. Effective date and noncompliance.

1. The commissioner shall provide to all nursing homes notice of the payment rate by May 1 of each year. The payment rate is effective from July 1 of that year to June 30 of the following year. For the rate year beginning on July 1, 1983, the commissioner shall issue the payment rate notice no later than June 15, 1983.

2. Failure to provide required reports, documentation, and worksheets required in A.1.-14. shall result in the reduction of the payment rate to 80 percent of the payment rate in effect on the first day of the fourth calendar month after the close of the nursing home's reporting year. The reduced payment rate shall be in effect until the first day of the month following the month in which the information is completely and accurately filed. Reinstatement of the full payment rate may not be retroactive.

I. Audits, amended reports, false reports, exceptions.

1. The department shall subject all reports and supporting documentation to desk audit and field examinations to determine compliance with 12 MCAR §§2.05001-2.05016 [Temporary].

a. If these audits reveal inadequacies in nursing home recordkeeping and accounting practices, the commissioner shall require that the nursing home engage competent professional assistance to properly prepare required reports. Failure to remedy these inadequacies within 90 days shall result in the application of the penalties in H.2. Retroactive adjustments may be made as a result of desk and field audit findings.

b. If any field examination shows lack of adequate documentation, the commissioner shall require the nursing home to produce the additional documentation within 15 days. If the documentation is not provided, the costs shall be disallowed.

2. Nursing homes may file amendments to previously filed reports when mathematical errors or omissions in the report are discovered, if the amendment would result in at least a five cent per resident day or \$2,000 adjustment, whichever is less for each reporting year. The commissioner shall make retroactive adjustments to the payment rate of an individual nursing home if the amendment is filed within one year of the filing of the original cost report to be amended. No redetermination of the 60th percentile shall be made as a result of amendments to cost reports.

3. If a nursing home knowingly supplies inaccurate or false information in a required report that results in an overpayment, the commissioner shall:

- a. immediately adjust the nursing home's payment rate to recover the entire overpayment within the rate year; or
- b. terminate the commissioner's agreement with the nursing home; or
- c. prosecute under applicable state or federal law; or
- d. use any combination of a., b., and c.

12 MCAR § 2.05016 [Temporary] Appeal procedures.

A. Scope of appeals. A decision by the commissioner may be appealed by the nursing home or a county welfare or human services board where all of the following conditions are met:

1. the appeal, if successful, would result in a change in the nursing home's payment rate;
2. the appeal arises from application of the provisions of 12 MCAR §§ 2.05001-2.05016 [Temporary]; and
3. the dispute over the decision cannot be resolved informally between the commissioner and the appealing party.

B. Filing of appeals. To be effective, an appeal must meet the following criteria:

1. The appeal must be filed, in writing, within 60 days after the commissioner issued the payment rate notification which is being appealed.

2. The appeal shall specify:

- a. each disputed item and the reason for the dispute;
- b. the computation and the amount that the appealing party believes to be correct;
- c. an estimate of the dollar amount involved in each disputed item;
- d. the authority in statute or rule upon which the appealing party is relying in each dispute; and
- e. the name and address of the person or firm with whom contacts may be made regarding the appeal.

C. Resolution of appeal. The appeal shall be heard in accordance with the contested case provisions set forth in Minnesota Statutes, chapter 14 and rules of the Office of Administrative Hearings. Upon agreement of both parties, the dispute may be resolved informally through settlement or through modified appeal procedures established by agreement between the commissioner and the chief hearing examiner.

D. Payment rate during appeal period. Notwithstanding any appeal filed pursuant to 12 MCAR §§ 2.05001-2.05016 [Temporary], the payment rate established by the commissioner shall be the rate paid to the nursing home while the appeal is pending.

E. Payments after resolution of appeal. Upon resolution of the appeal, any overpayments or underpayments shall be paid in accordance with 12 MCAR § 2.05013 C. [Temporary].

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ADOPTED RULES

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.

Minnesota Department of Agriculture Agronomy Services Division

Adopted Rule Governing the Storage and Handling of Liquid Commercial Fertilizer

Rule 3 MCAR § 1.0325, proposed and published at *State Register*, Volume 7, Number 20, pages 733-742, November 15, 1982 (7 S.R. 733) is adopted with the following modifications:

Rule as Adopted

3 MCAR § 1.0325 Liquid commercial fertilizers.

C. Approval of facility and equipment.

1. A person beginning construction of a new facility or substantially altering an existing facility shall first obtain the approval of the commissioner.

2. The application for approval must be made on forms provided by the commissioner and must contain the following information:

a. the name, address, and phone number of the firm making application;

b. the name, address, and phone number of the firm that will operate the facility;

c. the name, address, and phone number of the firm that will construct, install, or modify the site;

d. a statement as to whether the facility is new or existing and whether the alterations will be substantial;

e. the location of the site, including its legal description;

f. copies of any permits required for the construction, installation, or modification of the facility;

g. the size of the lot owned or leased;

h. a statement of the approximate distance to nearby lakes, streams, or drainage ditches, or a storm drain into which liquid could flow;

i. a statement of the general soil type found at the site and the type, depth, and proximity of wells on or near the site;

j. the nature of the terrain at the site;

k. the number and capacity of storage containers;

l. a description of the type of storage containers;

m. a description of the type of safeguards, including drawings or pictures, if available;

n. at least three scale drawings of the facility, including other storage containers and buildings;

o. a plumbing diagram showing the location and type of pumps and valves used to control all transfers of liquid commercial fertilizer;

p. a description of the contingency plan filed with local fire and law enforcement personnel for emergency situations;
and

q. any other information required by the commissioner reasonably related to the construction, installation, or modification of a liquid commercial fertilizer facility in order to prevent hazards to people's lives, adjoining property, and the environment.

3. The commissioner shall approve the application when inspection of the facility and review of the application demonstrate that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property, and the environment.

4. The commissioner shall review approved facilities if the commissioner has reason to believe that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property, or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property, or the environment do exist, the commissioner shall proceed in accordance with Minnesota Statutes, section 17.728.

Minnesota Department of Agriculture Agronomy Services Division

Adopted Rule Governing the Storage and Handling of Dry Commercial Fertilizer

Rule 3 MCAR § 1.0326, proposed and published at *State Register*, Volume 7, Number 20, pages 733-742, November 15, 1983 (7 S.R. 733) is adopted with the following modifications:

Rule as Adopted

3 MCAR § 1.0326 Dry commercial fertilizers.

C. Approval of facility and equipment.

1. A person beginning construction of a new facility or substantially altering an existing facility shall first obtain the approval of the commissioner.

2. The application for approval must be made on forms provided by the commissioner and must contain the following information:

- a. the name, address, and phone number of the firm making the application;
- b. the name, address, and phone number of the firm that will operate the facility;
- c. the name, address, and phone number of the firm that will construct, install, or modify the site;
- d. a statement as to whether the facility is new or existing and whether the alterations will be substantial;
- e. the location of the site, including its legal description;
- f. copies of any permits required for the construction, installation, or modification of the facility;
- g. the size of the lot owned or leased;
- h. the number and capacity of storage containers;
- i. a description of the type of storage containers;
- j. a description of the type of safeguards, if any;
- k. at least three scale drawings of the facility, including other storage containers and buildings;

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ADOPTED RULES

l. a description of the contingency plan filed with local fire and law enforcement personnel for emergency situations;
and

m. any other information required by the commissioner reasonably related to the construction, installation, or modification of a dry commercial fertilizer facility in order to prevent hazards to people's lives, adjoining property, and the environment.

3. The commissioner shall approve the application when inspection of the facility and review of the application demonstrate that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property, and the environment.

4. The commissioner shall review approved facilities if the commissioner has reason to believe that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property, or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property, or the environment do exist, the commissioner shall proceed in accordance with Minnesota Statutes, section 17.728.

Minnesota Department of Agriculture Agronomy Services Division

Adopted Amendments to Rule Governing Fertilizer Labels and Labeling Requirements

Rule 3 MCAR § 1.0327, proposed and published at *State Register*, Volume 7, Number 20, pages 733-742, November 15, 1982 (7 S.R. 733) is adopted with the following modifications:

Rule as Adopted

3 MCAR § 1.0327 Fertilizer labels and labeling requirements.

C. Label information requirements. ~~Any fertilizer~~ Fertilizers offered for sale, sold or distributed in this state, in bags or other containers, must have placed on or affixed to the container the following information in the following format and order except as provided in D.:

4. sources of plant nutrients, when shown on the label, listing the common or usual English name of all ingredients used in manufacturing or blending the commercial fertilizer;

D. Exception to label information requirements.

1. If the percentage of any plant nutrient in specialty fertilizer is zero, the plant nutrient must be omitted from the statement.

3. Chemical forms of nitrogen may be listed, when the fertilizer is not a fish emulsion, or when the nitrogen is not organic or not slowly released.

F. Bulk fertilizers. For bulk fertilizers, the information required in C., in written or printed form, must accompany delivery and be supplied to the purchaser at the time of delivery. The format and order in C. is not required for bulk fertilizers.

Department of Agriculture Agronomy Services Division

Adopted Rule Governing Soil and Plant Amendment Labels and Labeling Requirements

Rule 3 MCAR § 1.0328, proposed and published at *State Register*, Volume 7, Number 20, pages 733-742, November 15, 1982 (7 S.R. 741) is adopted as proposed.

Department of Transportation

Adopted Rules Governing Operating Standards for Special Transportation Services

The rules proposed and published at *State Register*, Volume 7, Number 41, pages 1470 through 1474 (7 S.R. 1470) on April 11, 1983 are adopted with the following modifications:

Rules as Adopted**14 MCAR § 1.7001 Scope.**

A. Service criteria. Except as provided in B. and C., the standards set forth in 14 MCAR §§ 1.7001-1.7013 apply to special transportation service as defined in 14 MCAR § 1.7003 and provided by a person receiving grants or other financial assistance from the state or federal government, or both, to provide or assist in providing the service.

B. Care facilities. The standards set forth in 14 MCAR §§ 1.7001-1.7013 apply to nursing homes licensed under Minnesota Statutes, section 144A.02, boarding care facilities licensed under Minnesota Statutes, section 144.50, and day care and group home facilities licensed under Minnesota Statutes, sections 245.781 to 245.812, when:

1. the facility or program provides special transportation as described in A.;
2. the facility or program transports nonresidents on a regular basis; and

3. the facility receives reimbursement other than per diem payments for that service under rules promulgated by the commissioner of public welfare.

C. Exemptions. The standards set forth in 14 MCAR §§ 1.7001-1.7013 do not apply to transportation provided by:

1.-3. [Unchanged.]

4. A school bus as defined in Minnesota Statutes, section 169.01, subdivision 6; or

5. An ambulance providing life support transportation service regulated under Minnesota Statutes, chapter 144. However, these standards apply to ambulances when they are providing special transportation services.

14 MCAR § 1.7003 Definitions.

A. Ambulance. "Ambulance" has the meaning given to it in Minnesota Statutes, section 144.081, subdivision 2.

B. Attendant. "Attendant" means a person who assists in the transportation of passengers in special transportation service vehicles, but who does not drive the vehicle.

C. Commissioner. "Commissioner" means the commissioner of transportation.

D. Common carrier. "Common carrier" means a "regular route common carrier" as defined in Minnesota Statutes, section 221.011, subdivision 9.

D. Disabled. "Disabled" means handicapped.

E. Elderly. "Elderly" means age 55 or older.

F. Handicapped. "Handicapped" means having a physical or mental impairment that limits one or more major life activities.

G. Major life activities. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

H. Motor vehicle. "Motor vehicle" has the meaning given to it in Minnesota Statutes, section 169.01, subdivision 3.

I. Municipality. "Municipality" has the meaning given to it in Minnesota Statutes, section 466.01, subdivision 1.

J. Person. "Person" means every natural person, firm, partnership, corporation, association, and body politic.

K. Physical or mental impairment. "Physical or mental impairment" means any physiological disorder or condition or anatomical loss; any mental or psychological disorder and specific learning disabilities and includes but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, mental retardation, emotional illness, drug addiction, and alcoholism.

L. Provider. "Provider" means a public or private entity or person who operates special transportation service vehicles.

M. Regular basis. "Regular basis" means providing more than an average of 12 round trips per month in any calendar year in a single vehicle or transporting more than 30 passengers per month, whichever is less.

N. School bus. "School bus" has the meaning given to it in Minnesota Statutes, section 169.01, subdivision 6.

O. Semiambulatory. "Semiambulatory" means having the ability to walk with difficulty or with the aid of an artificial limb or personal assistance device such as a brace, a cane, or crutch, or a walker.

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ADOPTED RULES

P. Special transportation service. "Special transportation service" means motor vehicle transportation provided on a regular basis by a public or private person that is designed exclusively or primarily to serve individuals who are elderly, handicapped, or disabled and who are unable to use regular means of transportation.

Q. State. "State" has the meaning given to it in Minnesota Statutes, section 3.732, subdivision 1, clause (1).

R. Variance. "Variance" means permission to comply in a manner other than that specified.

S. Vehicle. "Vehicle" means a motor vehicle used to provide special transportation service.

14 MCAR § 1.7005 Certification.

A. Forms. Application for a certificate of compliance must be made on forms provided by the commissioner. Application forms for certificates of compliance may be obtained from any Department of Transportation district office. All applications must be delivered or mailed to the Minnesota Department of Transportation, Division of Program Management, Transportation Building, St. Paul, Minnesota 55155.

B. Required information. Applicants shall submit the following information to the commissioner:

1. A provider application form containing the following information:

a. [Unchanged.]

b. the name, address, telephone number, and area served by the provider;

c. the type of service provided, such as fixed route, route deviation, dial a ride, variable schedule, fixed schedule, or other;

d. whether the passengers served are elderly, handicapped, or disabled;

e. for each vehicle used:

(1)-(3) [Unchanged.]

f. if the vehicle will carry an occupied wheelchair:

(1) [Unchanged.]

(2) the date that the wheelchair securement device was approved by the commissioner of public safety, and the number on the certificate issued by the commissioner of public safety;

g. [Unchanged.]

h. the name and address of each driver, stating whether each complies with the standards set forth in 14 MCAR §§ 1.7001-1.7013.

This information must be provided annually when the application for a certificate of compliance is filed.

2. [Unchanged.]

C. When granted. A certificate of compliance must be granted when the applicant complies with the standards set forth in 14 MCAR §§ 1.7001-1.7013.

D. Processed in 30 days. All applications are to be processed and a certificate of compliance issued or denied in writing within 30 days of the receipt of the complete application by the commissioner and receipt of the certificate of insurance.

E. Information on certificate. When a certificate is granted, the provider shall be issued a numbered certificate of compliance which lists each certified vehicle and shows the month and year in which the certification expires.

F. Record. The commissioner shall maintain a record of all certificates of compliance showing the date issued, renewed, or revoked.

14 MCAR § 1.7007 Inspection.

A. Complaint received. Upon receipt of a complaint that any certified provider does not comply with the standards set forth in 14 MCAR §§ 1.7001-1.7013, the commissioner shall conduct an inspection of the provider's records and vehicles. The inspection must be conducted within four weeks of receipt of the complaint.

B. Record. All complaints must be documented and a record maintained of the name and address of the person making the complaint, the date and reason for the complaint, and the result of the inspection.

C. On-site inspection. The commissioner shall conduct the inspection at the provider's office or garage.

D. Items examined. Inspections conducted under these standards must comprise:

I. [Unchanged.]

2. Examination of the vehicles to determine whether the provider complies with the requirements of 14 MCAR § 1.7009 B. and may include inspection of any part of the vehicle subject to regulation under Minnesota Statutes, chapter 169, when a complaint has been made about the condition of any component of the vehicle.

E. Failure to permit inspection. Failure to permit an inspection as provided in this rule is grounds for immediate suspension of the provider's certificate of compliance until the provider permits the inspection.

14 MCAR § 1.7008 Enforcement.

A. Notice. Any provider found in violation of any provision of 14 MCAR §§ 1.7001-1.7013 shall be given a 30-day written notice to correct the violation. When the violation threatens the life or safety of passengers, the commissioner shall require the provider to remove the driver or vehicle from operation immediately.

B. Violation determination. At the expiration of 30 days, the commissioner may conduct an inspection to determine whether the violation has been corrected. The provider may mail evidence of compliance to the department.

C. Suspension. If the violation has not been corrected, the commissioner shall suspend the certificate of compliance until the provider complies with the provisions of 14 MCAR §§ 1.7001-1.7013. No suspension shall occur unless the commissioner has held a hearing, after 30 days notice to the provider, at which the provider has had the opportunity to show cause why the certificate of compliance should not be suspended. Repeated violations may result in revocation of the certificate.

D. Enforcement hearing. An enforcement hearing conducted under the standards set forth in 14 MCAR §§ 1.7001-1.7013 must be conducted in accordance with Minnesota Statutes, chapter 14.

14 MCAR § 1.7009 Standards for operation of vehicles.

A. Personnel.

1.-6. [Unchanged.]

7. By January 1, 1982, each driver and attendant who transport elderly and physically handicapped passengers who do not use wheelchairs or who transport passengers who do not transfer from a wheelchair to seat in the vehicle shall complete a minimum of four hours training in the techniques of transporting and assisting elderly and physically handicapped passengers, which must include instruction in the elements listed in 14 MCAR § 1.7009 A.6.a., b., c., and f.

8. [Unchanged.]

9. A driver or attendant who has not completed the required training prior to providing special transportation service, shall do so within 90 days after beginning to provide the service. Copies of certificates indicating successful completion of courses must be maintained in the provider's files.

10. [Unchanged.]

B. Equipment.

1. Each vehicle when in use must carry the following safety equipment:

a. [Unchanged.]

b. an emergency first aid kit in a dustproof container, labeled "FIRST AID," and stored in a location visible to the driver. The kit must contain at least the following items:

(1) [Unchanged.]

(2) two soft roll bandages 3" to 6" × 5 yards;

(3)-(4) [Unchanged.]

c.-h. [Unchanged.]

2.-3. [Unchanged.]

4. A vehicle which is equipped with a wheelchair lift and which carries semiambulatory persons who use the wheelchair lift must be equipped with either a wheelchair lift with an adjustable or removable railing which is 28 inches to 36 inches high on one side of the lift or with a folding wheelchair stored on the vehicle when it is in use.

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ADOPTED RULES

5. Vehicles which carry occupied stretchers or litters must comply with securement device requirements of the Minnesota Department of Health contained in 7 MCAR § 1.608 C.

C. Operation.

1. All vehicles must be operated in compliance with Minnesota Statutes, chapter 169, and rules adopted under that chapter.

2.-6. [Unchanged.]

D. [Unchanged.]

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

Donald D. Mason and
Alice A. Mason,

Appellants,

v.

The Commissioner of Revenue,

Appellee.

Tax Court

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

Order dated June 23, 1983

Docket No. 3612

This is an appeal from two Orders of the Commissioner of Revenue, both dated May 14, 1982, increasing the Appellants' income tax liability for calendar year 1979 in the amount of \$2,756 plus interest and for calendar year 1980 in the amount of \$1,194 plus interest.

The Appellants contend that they were not domiciled in Minnesota during the last ten months of 1979 and all of calendar year 1980. The Commissioner contends that the Appellants were domiciled in Minnesota throughout calendar years 1979 and 1980.

The matter came on for trial before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, in the Courtroom on the Fifth Floor of the Space Center Building at 444 Lafayette Road, St. Paul, Minnesota, on April 7, 1983, at 10:00 a.m.

Appellants appeared pro se, and Thomas K. Overton, Special Assistant Attorney General, appeared for the Appellee.

Syllabus

Once a domicile is established, it continues until another domicile has been established elsewhere. The question of intent to establish a new domicile is a question of fact to be determined from a person's acts and declarations, but a person's course of conduct is accorded greater weight than his self-serving declarations.

From the files and records herein and from the evidence adduced at the trial, the Court now makes the following:

Findings of Fact

1. Appellant, Donald D. Mason, was born, raised and educated in Minnesota, and it is undisputed that prior to April of 1978 he was domiciled in Minnesota.

2. Appellant commenced employment in Minnesota in 1946. In 1957 Appellant commenced working for Sperry Univac in St. Paul, Minnesota. He continues to work for Sperry Univac at the present time.

3. The Appellants lived and worked in California during the time here in issue, but Appellants admit that the assignment by Sperry was for an indefinite time.

4. In April 1978, Appellant began working at various temporary Sperry projects. These projects consist of placing Sperry computer software in operation for Sperry customers. The projects are temporary and last only until the computer operation is running. Appellant is assigned to projects on very short notice. The projects are subject to termination on very short notice.

5. The location and duration of Appellant's temporary assignments are as follows:

<u>Location</u>	<u>Customer</u>	<u>Dates</u>
Bettendorf, Ia.	(Alcoa)	April through June 1978
Lafayette, La.	(General Hospital)	September 1978 through March 1979
Bettendorf, Ia.	(Alcoa)	April through July 1979
Sacramento, Calif.	(Calif. Dept. of Justice)	October 1979 through September 1981
Glen Rock, N.J.	(Manhattan Industries)	November 1981 through April 1982
Blue Bell, Pa.	(Sperry)	May 1982 through September 1982
Huntsville, Ala.	()	October 1982 to present

Mrs. Mason attended a nursing refresher course in California in 1980 to reactivate her Minnesota nursing license. She worked at a California hospital from January 1981 through September 1981 when they were transferred to New Jersey.

6. In 1957 Appellant bought a home at 10342 Blaisdell Avenue South, Bloomington, Minnesota. He continues to own it. While Appellants are away on assignment, the home has not been rented but has been occupied by Appellants' children who attend the University of Minnesota. All utilities remained in Appellants' name.

7. For each year Appellants filed a homestead application stating under oath that the property was owned and occupied by them as their homestead. The applications relating to January 2, 1980, January 2, 1981 and January 2, 1982, specifically asked whether any owner of the property lives elsewhere. The Masons answered "no" for 1980 and 1981. They failed to answer for 1982.

8. At the temporary work locations, Appellants did not purchase a home but occupied short-term rental housing. Appellants rented furniture or purchased second-hand furniture. The type of rental housing, lease and type of furniture at each location are described below:

<u>Location</u>	<u>Type</u>	<u>Lease</u>	<u>Furniture</u>
Bettendorf, Ia.	Apt.	6 month	Purchased from Good Will
Lafayette, La.	Trailer	Month to month	Rented
Bettendorf, Ia.	Apt.	6 month	Used furniture
Sacramento, Calif.	Apt.	Month to month	Rented used furniture
Midland Park, N.J.	Apt.	6 month	Purchased (used?)
Philadelphia, Pa.	Apt.	6 month	?
Huntsville, Ala.	Apt.	6 month	?

9. Appellants returned to their home in Bloomington, Minnesota, from time to time in 1978, 1979 and 1981 (1982 unknown) for short periods of time.

Appellants were in Brainerd, Minnesota, during July and August 1978, July and August 1979, and October 1981.

10. Appellants owned lake property in Brainerd, Minnesota, before, during and after the period in question. In 1981, Appellants substantially improved the property by constructing a lake cabin. Appellants occupied the property in July and August of 1978, July and August of 1979 and October of 1981.

11. Appellants owned the following vehicles and boats:

<u>Item</u>	<u>Location</u>	<u>Registration</u>
Boat trailer	MN 1978-Present	MN 1978-Present
Boat trailer	MN 1978-Present	MN 1978-Present
Boat trailer	Calif. 1979-80 (16 mo.)	Calif. 1979-80 (16 mo.)
Motorcycle	MN 1978-80	MN 1978-80
Pick-up Truck	MN all times	MN all times
1972 Ford	MN-Calif.	MN 1976-1980
1973 Ford	MN-Calif.	Calif. 1979-80 MN 1981, now Ala.
Two canoes	MN all times	MN all times
Fishing boat	MN all times	MN all times
Runabout	MN all times	MN all times
Three sailboats	MN all times	MN all times
One sailboat	Calif. 1979-80 (16 mo.)	Calif. 1979-80 (16 mo.)

12. Appellants have at all times maintained and used a checking account at Community State Bank of Bloomington from 1957 to the present. Appellants maintained their savings accounts in the Twin Cities until mid-1980 when they were closed.

TAX COURT

Appellants opened a checking account at each temporary location, but closed it when they left, with the exception of a Sacramento checking account which remains open. Appellants have never opened a savings or similar account outside Minnesota.

13. Appellants obtained a loan from Community State Bank in Bloomington, Minnesota, in 1979.

14. Appellants have maintained their credit cards showing their Minnesota address as their home. The cards include VISA, Master Charge, Sears Roebuck and Montgomery Ward.

15. Appellants have maintained all insurance, life, auto and property, showing their Bloomington, Minnesota address as their home. Except for military insurance, all is through Liberty Mutual Insurance Co. at 5402 Cedar Lake Road, Minneapolis, Minnesota 55416. Sperry Univac tax statements to Appellants show their address as Bloomington, Minnesota.

16. Appellant Donald Mason had a Minnesota drivers license until June of 1980. (That license was due to expire on July 15, 1980.) At that time Appellant obtained a California drivers license. He now holds an Alabama drivers license. Appellant Mrs. Mason has at all times maintained a Minnesota drivers license. She renewed her Minnesota drivers license in June of 1980.

17. Appellants were registered to vote in Minnesota prior to April 1980. At that time they registered to vote in California. They voted in California in November, 1980. In 1982, (while assigned to Pennsylvania) Appellant Donald Mason attempted to register in Minnesota. Minnesota election officials refused to register him. On his registration form Appellant indicated facts that made him ineligible under Minn. Stat. § 200.031(d). He indicated that his last voter registration was in California and that his address was in Pennsylvania.

18. Appellants terminated their Minnesota church membership in November, 1979. They did not establish a new church affiliation elsewhere.

19. Appellants filed state income tax returns in each jurisdiction in which either Appellant worked. They were required to do so (regardless of their state of domicile) because Appellants received compensation for personal services performed in each jurisdiction. On their 1980 California income tax returns Appellants claimed a credit for 1980 income taxes due to Minnesota. This credit was available to Appellants only if they were not residents of California. Appellant also sent a letter stating that they would withdraw their claim for the credit and pay the additional tax due to California if he did not have to pay the Minnesota tax.

20. Appellants used their Minnesota address for most of their business activity and maintained their Minnesota telephone.

Conclusions of Law

1. Appellants have not established a new domicile in California. The residence in California was temporary. All evidence pointed to the temporary nature of that residence.

2. The Orders of the Commissioner of Revenue are hereby affirmed.

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

June 23, 1983

By the Court,
John Knapp, Chief Judge
Minnesota Tax Court

Memorandum

Minn. Stat. § 290.17(1) provides that all income of Minnesota residents shall be assigned to Minnesota for income tax purposes. A resident is "any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such year, have been domiciled outside the state." Minn. Stat. § 290.01, subd. 7. Income tax regulations § 1.6001 defines domicile:

13 MCAR § 1.6001 Resident defined.

A. General statements.

1. The term "resident" means any individual person maintaining a home in Minnesota during any part of a tax year who is, during that part of such year, domiciled in Minnesota. The term "domicile" means the bodily presence of an individual person in a place coupled with an intent to make such a place one's home.

2. The domicile of any person shall be that place in which that person's habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.

A person who leaves home to go into another jurisdiction for temporary purposes only is not considered to have lost that person's domicile. But if a person moves to another jurisdiction with the intention of remaining there permanently or for an

indefinite time as a home, that person shall have lost that person's domicile in this state. The presumption is that a person who leaves this state to accept a job assignment in a foreign nation has not lost that person's domicile in this state.

The presumption is that the place where a person's family is domiciled is that person's domicile. The domicile of a spouse shall be the same as the other spouse, unless there is affirmative evidence to the contrary or unless the husband and wife are legally separated or the marriage has been dissolved. When a person has made a home at any place with the intention of remaining there and the person's family neither lives there nor intends to do so, then that person shall have established a domicile separate from that person's family.

The domicile of a single person is that person's usual home. In case of a minor child who is not emancipated, the domicile of the child's parents is the domicile of the child. The domicile of the parent who has legal custody of the child is the domicile of the child. A person who is a permanent resident alien in the United States may have a domicile in this state. The domicile of a member of the armed forces will be governed by the facts just prior to becoming a member of the armed forces unless the person takes the necessary steps to establish a new domicile.

3. The mere intention to acquire a new domicile, without the fact of physical removal, does not change the status of the taxpayer, nor does the fact of physical removal, without the intention to remain, change the person's status. The presumption is that one's domicile is the place where one lives. An individual can have only one domicile at any particular time. A domicile once shown to exist is presumed to continue until the contrary is shown. An absence of intention to abandon a domicile is equivalent to an intention to retain the existing one. No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and of the two forms of evidence, acts shall be given more weight than declarations. A person who is temporarily employed within this state does not acquire a domicile in this state, if during such period the person is domiciled without this state.

B. The following items listed will be considered in determining whether or not a person is domiciled in this state:

1. Location of domicile for prior years.
2. Where the person votes or is registered to vote. Casting an illegal vote does not establish domicile for income tax purposes.
3. Status as a student.
4. Classification of employment as temporary or permanent.
5. Location of employment.
6. Location of newly acquired living quarters whether owned or rented.
7. The present status of the former living quarters, i.e., was it sold, offered for sale, rented or available for rent to another.
8. Homestead status has been requested and/or obtained for property tax purposes on newly purchased living quarters and the homestead status of the former living quarters has not been renewed.
9. Ownership of other real property.
10. Jurisdiction in which a valid driver's license was issued.
11. Jurisdiction from which any professional licenses were issued.
12. Location of the person's union membership.
13. Jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles.
14. Purchased resident or nonresident fishing or hunting licenses.
15. Whether an income tax return has been filed as a resident or nonresident.
16. Whether the person has fulfilled the tax obligations required of a resident.
17. Location of any bank accounts, especially the location of the most active checking account.
18. Location of other transactions with financial institutions.
19. Location of the place of worship at which the person is a member.
20. Location of business relationships and the place where business is transacted.
21. Location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member.
22. Address where mail is received.

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23. Percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota.

24. Location of jurisdiction from which unemployment compensation benefits are received.

25. Location of schools at which the person, the person's spouse or children attend, and whether resident or nonresident tuition was charged.

26. Statements made to an insurance company, concerning the person's residence, and on which the insurance is based.

Any one of the items listed above will not, by itself, determine domicile.

The regulation and the case law make it clear that once a domicile is established it continues until another domicile has been established elsewhere. *Sarek v. Commissioner*, Mn. T.Ct. #2524 (April 19, 1979), *American Law Institute, Restatement, Conflict of Laws*, ch. 2, § 23. The taxpayer has the burden of proving that he established a new domicile outside of Minnesota. *McCutchan v. Commissioner*, Mn. T.Ct. #563 (January 20, 1956).

To establish a new "domicile" requires physical presence in a given jurisdiction coupled with an intention to make such place one's home. *Miller's Estate v. Commissioner of Taxation*, 240 Minn. 18, 59 N.W. 2d 925 (1953). The question of intent, as gathered from a person's acts and declarations, is a question of fact. *In re Estate of Smith*, 242 Minn. 85, 89, 64 N.W.2d 129, 131 (1954). A person's course of conduct is accorded greater weight than his self-serving declaration of domicile. See, *Texas v. Florida*, 306 U.S. 398, 425 (1939); *Seccomb v. Bovey*, 135 Minn. 353, 356, 160 N.W. 1018, 1019 (1917). "A mere place of residence and a few other contacts are not enough to establish a new domicile." *Sarek v. Commissioner, supra*. Domicile is not something easily abandoned or accidentally changed. *Lindberg v. Commissioner*, Mn. T.Ct. #339 (March 30, 1950), *McCutchan, supra*.

Continued existence of Minnesota domicile does not require continued physical presence in Minnesota or continued maintenance of an abode in Minnesota. In *Lindberg v. Commissioner*, Mn. T.Ct. #339 (March 30, 1950), the Tax Court said:

Taxpayer's position apparently is, that since he didn't actually live in Minnesota . . . , he was not a resident and therefore no tax can be imposed on him by reason of residence in Minnesota. This understanding of the use of the word resident is understandable but is not the correct interpretation of the word as used in the income tax statutes defining resident . . . It is not correct to assume, as taxpayer does, that if one's place of abode is not Minnesota, he cannot be a resident of this State. Actual physical presence in one's place of abode, and one's domicile would, in most cases, and with individuals, be identical, but *one's domicile and one's place of abode need not necessarily be the same.* (Emphasis added)

In the present case, we are confronted with just such a situation. Appellant was undisputably domiciled in Minnesota until he began to travel to various temporary job sites for his employer.

Appellant's job assignments outside Minnesota at most lasted only until a computer system was operating. Appellant was subject to assignment to a new assignment on short notice and cancellation of assignments could come at any time. Appellant has had seven different assignments in five years. The average assignment is eight months in length. These assignments must be considered temporary.

While at his temporary assignments, Appellant rented housing on short term leases and either rented furniture or purchased used furniture. Appellant retained ownership of his Minnesota home and annually filed a homestead claim. He maintained his Minnesota phone listing and his Minnesota address.

Appellant retained and substantially improved his Minnesota lake property. Appellants registered and kept numerous vehicles and boats in Minnesota.

Appellant retained significant financial ties to Minnesota. Appellant kept Minnesota bank accounts and obtained a loan in Minnesota. His credit cards showed his Minnesota address. His insurance was through a Minnesota agency and showed his Minnesota address.

Mrs. Mason retained and renewed her Minnesota drivers license.

In the case of *Blaine R. McCutchan v. Commissioner of Taxation*, Dkt. #563 (January 20, 1956), the Tax Court said:

Even assuming that taxpayer was sincere in his intention never to again return to Minnesota, this would not in and of itself be sufficient for him to lose his Minnesota domicile. There would also have to be a simultaneous intent to establish a new domicile elsewhere. *The rule on the continuing quality of a domicile is quite clear.* American Law Institute, Restatement, Conflict of Laws, Chapter 2, Section 23, reads as follows:

"A domicile once established continues until it is superseded by a new domicile.

Comment b . . . If a domicile of choice is abandoned without acquiring a new domicile of choice, the domicile of origin is not thereby revived, but *the last domicile of choice continues to be the domicile.*" (Emphasis added)

In the instant case the Appellant has failed to show that he intended to make California his new domicile. He retained many significant relationships with Minnesota, including the claiming of a homestead exemption on his residence at 10342 Blaisdell Avenue, Bloomington, Minnesota, for calendar years 1979, 1980 and 1981.

We conclude that for Minnesota Income Tax purposes Appellants continued to be domiciled in Minnesota during tax years 1979 and 1980.

J.K.

SUPREME COURT**Decisions Filed Friday, June 24, 1983****Compiled by Wayne Tschimperle, Clerk**

C3-81-486 Ray Crouse, Appellant, v. State of Minnesota. McLeod County.

District court properly denied petition for postconviction relief based on claim that petitioner's attorney had a conflict of interest and that his attorney refused to let him testify in his own behalf.

Affirmed. Amdahl, C. J.

C0-82-1041 William W. Essling and Richard L. Lehr, Appellants, v. Michael Markman, Commissioner of Insurance; Minnesota Department of Commerce, Insurance Division and the State of Minnesota, v. Nursing Home Residents' Advisory Council, Intervenor-Respondent. Ramsey County.

Minnesota Statute §§ 62A.31-42 (1982), the Medicare Supplemental Insurance Act, is rationally related to achievement of a legitimate governmental purpose.

Since travel accident and health insurance does not purport to supplement medicare, it was not intended by the legislature to come under the purview of Minn. Stat. §§ 62A.31-42 (1982).

Affirmed. Todd, J.

C3-82-1180 In re the Marriage of: Gertrude Mary DuBois, petitioner, Appellant, v. John Victor DuBois. Ramsey County.

Delay of appellant's receipt of her share of respondent's pension benefits until respondent reaches the age of 65 or retires exceeded the bounds of the trial court's discretion.

The trial court's award of spousal maintenance and child support was not an abuse of discretion.

It was not an abuse of discretion for the trial court to word its decree of dissolution so as not to allow respondent to deduct the amount of spousal maintenance payments on his federal and state income tax returns.

Affirmed as modified. Scott, J.

C5-82-337 State of Minnesota v. Roy E. Burns, Appellant. Hennepin County.

Record supports defendant's convictions of kidnapping and criminal sexual conduct in the second and third degree; record fails to support defendant's contention that he was denied a fair trial by the prosecutor's cross-examination of him and his co-defendant.

Affirmed. Wahl, J.

C4-82-720 Rio Vista Non-Profit Housing Corporation v. County of Ramsey, Appellant. Ramsey County.

The classifications of subsidized low-income housing developments under Minn. Stat. § 272.02, subd. 1 (6) (1982) as institutions of public charity subject to property taxes does not violate the equal protection clause of the federal constitution or the uniformity clause of the Minnesota constitution.

Respondent failed to sustain its burden of proof beyond a reasonable doubt that imposition of property taxes on federally subsidized housing under Minn. Stat. § 272.02, subd. 1 (6) violates the supremacy clause of the federal constitution where state-subsidized housing is subject to the same tax.

Reversed. Wahl, J.

SUPREME COURT

C8-83-276 State of Minnesota, Appellant, v. Roland Abraham, *et al.*, Scott Thomas. Sibley County.

Double jeopardy clause bars prosecutor from appealing from judgment of acquittal by trial court acting as trier of fact on issue of entrapment.

Appeal dismissed. Wahl, J.

C1-82-741 John D. Yeager and Thomas J. Yeager v. Auto-Owners Insurance Company, Appellant. Dakota County.

The trial court's finding that the insurer's agent had not made an adequate offer to the insured of optional coverages under Minn. Stat. § 65B.49, subd. 6 (1978), is affirmed as not clearly erroneous.

A premium for no-fault coverage in a garage liability policy does not reflect separate coverages for the risks involved where the premium is based on the named insured's payroll, not on the number of vehicles covered, and, consequently, there are no multiple no-fault coverages to stack.

Underinsured motorist coverage in a garage liability policy, for which a per-vehicle premium is charged, may be stacked for all vehicles covered regardless of whether the vehicles are used for family or business purposes.

Affirmed in part and reversed in part. Simonett, J.

CX-82-995 Wesley Randall v. State Farm Mutual Automobile Insurance Company, *et al.*, Appellants. Hennepin County.

In an action by an insured motorcyclist against his insurer to have personal injury protection coverage implied in law as existing in his policy, it was error for the trial court to instruct the jury that as part of the offer mandated by Minn. Stat. § 65B.49, subd. 6 (d) (1978) (repealed 1980) the insurer must inform the insured of "the cost."

Where the insured for a number of years purchased seasonal motorcycle insurance, and where it was the contention of the insurer that it had given to the insured the statutorily-mandated offer of personal injury protection benefits in a year prior to the year when the accident out of which the claim for personal injury protection benefits arose, it was error for the trial court to submit a single interrogatory to the jury asking it to determine whether the mandated offer had been made at the time of renewal or reinstatement in the accident year.

Reversed and remanded. Kelley, J.

CX-83-313 Joseph Pesklo, Relator, v. Commissioner of Economic Security. Department of Economic Security.

Writ discharged. 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.

Department of Energy and Economic Development Energy Division

Notice of Request for Proposals for Graphic Design Services

The Energy Division of the Minnesota Department of Energy and Economic Development is requesting proposals from contractors to provide the following graphic design services:

- cover and layout design, type specs, and camera-ready mechanicals for brochures, reports, factsheets, ads, etc.
- slides and overhead transparencies

- artwork for displays
- technical illustrations, graphs, charts, maps
- logos

The \$35,000 contract may be divided among several contractors. Services must be available upon request from August 1, 1983 through June 30, 1984.

Proposals should be submitted by July 15, 1983 stating services offered, hourly rate for those services and any minimum requirements. Samples of work also must be included.

Contractors must apply for a Certificate of Compliance from the Minnesota Department of Human Rights. Applications can be obtained by written request from the Minnesota Department of Human Rights, Fifth Floor, Bremer Building, St. Paul, MN 55101. All contract bids must include a statement indicating that the bidder has applied for the certificate.

All questions related to this notice and all proposals should be directed to:

Elsa Larson
Energy Division
Department of Energy and
Economic Development
980 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 296-1880

Governor's Council on Rural Development

Notice of Request for Proposals for 1984 and 1985 Minnesota Rural Youth Institute

The Governor's Council on Rural Development is presently requesting proposals from Minnesota institutions and organizations interested in conducting the annual Minnesota Rural Youth Institutes to be held in the summers of 1984 and 1985.

The purpose of the Rural Youth Institute is to provide one week of intensive rural development leadership training to a minimum of 100 high school juniors and seniors. The Rural Development Council is looking for innovative ideas which insure the active participation of youth in leadership development opportunities. Ideas to consider are hands-on experience, projects, demonstrations. Active participation of youth will be an important element in determining the award of the Rural Youth Institute Project. The Governor's Council on Rural Development annually budgets \$30,000 for the purpose of co-sponsoring such an institute as part of its overall objective of demonstrating innovative ways of addressing the needs of rural Minnesota. A minimum of a twenty-five (25) percent cash or in-kind match is required.

Deadline for notification of intent to submit a proposal is July 30, 1983. Final proposal deadline is September 1, 1983. Additional information and guidelines are available from:

Governor's Council on Rural Development
Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101
Phone: 296-3089

OFFICIAL NOTICES

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

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

Department of Administration

Notice of State Surplus Property Sale

In compliance with Minn. Stat. § 94.09, *et seq.*, the Commissioner of Administration offers for sale by sealed bids two parcels of real estate comprising the former fisheries headquarters in Grand Rapids, Minnesota. Tract "A" consists of a 2.75 acre site with 400 feet of frontage on Old Golf Course Road and is improved with a two story office building (44 × 80), a two story house converted to office use, and miscellaneous garages and shed. Appraised value and minimum bid is \$183,775. Tract "B" consists of approximately 19 acres of unimproved land with approximately 1030 feet of frontage along 3rd Avenue S.W. Appraised value and minimum bid is \$69,984.

The property will be made available for inspection by appointment only. Arrangements for showing may be made by contacting:

John Chell, Regional Admin.
1201 East Highway 2
Grand Rapids, MN 55744
Tele. (218) 327-1702

The bids will be opened and read aloud publicly at Room G-22 Administration Bldg., 50 Sherburne Avenue, St. Paul, MN on July 26, 1983 at 2:30 p.m.

Bidders shall be required to submit a cashier's check with their bids in an amount not less than 10% of the bid. The checks of unsuccessful bidders will be returned.

The successful bidder will have the choice of making payment of the balance remaining after the down payment by one of the following two methods:

1. Payment in full of the balance no later than October 24, 1983, or
2. Payment of the remaining balance in lot less than equal annual installments for not to exceed 5 years, with principal and interest payable annually in advance at the rate of 8% per annum on the unpaid balance, by certified check or cashier's check payable to the State Treasurer on or before June 1 of each year.

For details and bid forms contact:

Real Estate Management Division
Department of Administration, G-22
50 Sherburne Avenue
St. Paul, Minnesota 55155
Tele: (612) 296-6674

Department of Agriculture Agronomy Services Division

Notice of Special Local Need (SLN) Registration for "DITHANE Z-78 AGRICULTURAL FUNGICIDE"

Pursuant to Minnesota Statutes, Section 18A.23, and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture (MDA), on June 23, 1983 issued a Special Local Need (SLN) Registration for "DITHANE Z-78", EPA Registration Number 707-2-AA, manufactured by Rohm and Haas Company, Philadelphia, Pennsylvania 19105.

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 radishes for the control of downy mildew (*Peronospora parasitica*).

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 Number MN83-0011) is on file for inspection at:

Minnesota Department of Agriculture
Agronomy Services Division
Pesticide Control Section
90 West Plato Boulevard
St. 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 (SLN) 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 14, for the purpose of revoking, amending, or upholding this registration.

June 23, 1983

Jim Nichols, Commissioner

Department of Agriculture Agronomy Services Division

Notice of Special Local Need (SLN) Registration for "Evercide® Permethrin 80% Concentrate," EPA Registration Number 1021-1411

Pursuant to Minnesota Statutes, section 18A.23, and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture (MDA), on June 16, 1983, issued a Special Local Need (SLN) Registration for Evercide® Permethrin 80% Concentrate, manufactured by McLaughlin Gormley King Company, Minneapolis, Minnesota.

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 as a mosquito adulticide to achieve localized control of potential disease bearing mosquitoes. Its use will be restricted to Metropolitan Mosquito Control District personnel only for ground application in the seven metropolitan counties.

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. MN83-0010) is on file for inspection at:

Minnesota Department of Agriculture
Agronomy Services Division
Pesticide Control Section
90 West Plato Boulevard
St. 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.

June 16, 1983

Jim Nichols, Commissioner

OFFICIAL NOTICES

Department of Commerce Securities and Real Estate Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Registered Combined Charitable Organizations

Notice is hereby given that the Securities and Real Estate Division of the Department of Commerce is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing Registered Combined Charitable Organizations. The promulgation of these rules is authorized by Minnesota Statute which requires the agency to implement the provisions of Minn. Stat. § 309.501.

The Securities and Real Estate Division of the Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Richard G. Gomsrud
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-5689 and in person at the above address.

All statements of information and comment shall be accepted until the close of the business day on July 29, 1983. Any written material received by the Securities and Real Estate Division of the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Department of Economic Security

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Certain Aspects of Unemployment Insurance Tax Law

Notice is hereby given that the Department of Economic Security is seeking information or opinions from sources outside the agency in preparing to promulgate amended rules governing the provisions of unemployment insurance tax law Minn. Stat. §§ 268.03-268.24. Of special interest are the new rules regarding employer succession. The department is authorized to promulgate rules under Minn. Stat. § 268.12, subd. 3.

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

Ed Canavan
UI Tax Branch
390 No. Robert
St. Paul, MN 55101

Statements of information and comment will be accepted until July 22, 1983. Any written material received by the Department of Economic Security shall become part of the record in the event that the rules are promulgated.

Department of Finance

Notice of Maximum Interest Rate for Municipal Obligations for Month of July

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 July will be eleven (11) percent per annum. Obligations which are 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.

For further information, contact Peter Sausen, Director, Debt Management, Department of Finance, (612) 296-8372.

Governor's Task Force on High Level Radioactive Waste

Notice of Intent to Solicit Nominations of Individuals to Serve on the Citizen Advisory Committee of the Governor's Task Force on High Level Radioactive Waste

The Governor's Task Force on High Level Radioactive Waste provides guidance to the Governor, the Legislature, and the Minnesota Environmental Quality Board regarding federal selection of a high-level radioactive waste repository site. The Task Force has established a ten member Citizen Advisory Committee to provide advice on public involvement, to review reports and proposals and communicate public concerns, and to assist in informing the public of the repository siting process.

The Task Force has indicated a desire to include representatives of environmental organizations, business, American Indians, local government, agriculture, tourism/resort industry, education, and the League of Women Voters.

Individuals wishing to nominate themselves or others, as well as organizations wishing to nominate representatives, should write the Minnesota Environmental Quality Board at the following address:

Gregg Larson
Minnesota Environmental Quality Board
Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
(612) 296-9037

Nominations must be received by August 1, 1983.

Michael Sullivan
Executive Director

Department of Health

Emergency Medical Services Licensure Application

As of July 4, 1983, a complete application for an advanced life support transportation service was submitted by William K. McNichols, Meds-1 Ambulance Service, Inc., Grand Rapids, MN., who now operates a basic life support transportation service in the same primary service area. This notice is given pursuant to Minnesota Statutes 1979, section 144.802, which requires in part that the Commissioner of Health shall publish the notice in the *State Register* at the applicant's expense; and in a newspaper in the municipality in which the service will be provided.

Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Health Systems Agency of Western Lake Superior, 202 Ordean Bldg., 424 West Superior St., Duluth, MN. 55802, before the close of business on August 3, 1983.

After a public hearing has been held, the Health Systems Agency of Western Lake Superior shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Health Systems Agency of Western Lake Superior shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the recommendation to the Commissioner of Health, the commissioner shall grant or deny the license to this applicant.

Metropolitan Council

Proposed Transit Improvements on Southwest/University Avenue Corridors, Minneapolis and St. Paul

Notice of Public Meeting

The Steering Committee of the Southwest/University Avenue Corridors Transit Study will hold public meetings on July 18 and 19 to gather information from the public on proposed alternative transit improvements on the above corridors.

The meeting for the University Avenue corridor will be held July 18, 7 to 9 p.m., at the Thomas-Dale Community Center, 911 Lafond Av., (Victoria and Lafond), St. Paul.

OFFICIAL NOTICES

The meeting for the Southwest corridor will be held July 19, 7 to 9 p.m., in the Heritage Hall, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis.

The proposed transit alternatives to be studied in each corridor include: 1) a "no-build" option, under which existing bus service would continue; 2) a low-capital approach that would improve existing bus service; 3) a busway alternative of bus-only lanes, separate from traffic on University Avenue itself for the University Avenue corridor, and on the Chicago & North Western Railroad right-of-way for the Southwest corridor; and 4) a light rail transit (LRT) line separated from traffic on both of the above rights-of-way.

The meetings will give the public a chance to discuss the scope of a detailed Alternatives Analysis and Draft Environmental Impact Statement (AA/DEIS) as described in a Scoping Report. The AA/DEIS is to be prepared over the next 12 months. The study is being sponsored by the Urban Mass Transportation Administration and 11 participating local, regional and state agencies.

People who wish to speak at the meeting or submit written testimony should call the Metropolitan Council offices at 291-6421. Copies of the Scoping Report may be obtained free by calling the Council's Public Information Office at 291-6464.

Department of Natural Resources

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

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minn. Stat. § 105.391, subd. 1 (1980) will be held in the City Hall, Aitkin, MN, on July 21, 1983, commencing at 1:00 p.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Melvin Johnson, Tamarack, MN 55787, Department of Natural Resources representative John Chell, 1201 East Highway 2, Grand Rapids, MN 55744, and County Soil and Water Conservation District representative Russell Ruud, Route 1, Box 232, Palisade, MN 56469.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minn. Stat. § 105.391 (1980) and the criteria contained in Minn. Stat. § 105.37, subs. 14 and 15 (1980). Please take notice that waters listed in para. A.2. may sometimes also be considered for designation, in the alternative, as wetlands.

A. PUBLIC WATERS.

1. Watercourses.

Name	Section	From Township	Range	To Section	To Township	Range
Mississippi Diversion	5	47 (Spencer)	26	13	136 (Aitkin)	25
Unnamed to Mississippi River	14	52	24	14	52	24
Unnamed tributary	19	52 (Ball Bluff)	23	20	52 (Ball Bluff)	23
Unnamed tributary	2	47 (Salo)	22	22(Basin 345)	48 (Clark)	22
Unnamed tributary	5 (Basin 5)	47 (Salo)	22	19	48 (Clark)	22
Willow River	33	52	27	12	51 (Macville)	26
	31	52	25	33	52	25
	19	51 (Verdon)	24	2	48 (Morrison)	26
Unnamed tributary	24	49 (Logan)	25	23	49 (Logan)	25
Little Willow River	18 (Basin 147)	49 (Waukenabo)	26	18	48 (Morrison)	26
	9	47 (Aitkin)	27	9	47 (Aitkin)	27

2. Preliminarily designated under section 105.37, subs. 14(a). 14.(h).

Number and Name	Section	Township	Range
1-29 : Mud Lake	9, 10, 15	48 (McGregor)	23
1-30 : Rice Lake	28, 29, 32	48 (McGregor)	23
1-106: Clear Lake	3, 4, 9, 10	49 (Logan)	25
1-348: Unnamed	15	51	27

OFFICIAL NOTICES

1-410: Kimberley WMA Impound.	3-5, 8, 9, 17	47	24
1-411: Kimberley WMA Impound.	8, 17, 18	47	24
1-415: Salo WMA Impoundment	1, 2; 35, 36	47; 48 (Salo; Clark)	22
*1-435: Unnamed	SE 30, N 1/2 31	50 (Turner)	23
*1-436: Unnamed	SW 30, NW 31	50 (Turner)	23

B. WETLANDS

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
*1-434: Unnamed	SE 30, NE 31	50 (Turner)	23
*1-437: Unnamed	NW 31	50 (Turner)	23
*1-438: Unnamed	NW 31	50 (Turner)	23
*1-439: Unnamed	N 1/2 31	50 (Turner)	23

*petitioned to be added.

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69 (1982).

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minn. Stat. § 105.42, subd. 1 (1980). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minn. Stat. § 105.391, subs. 10 and 12 (1980).

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

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

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

Sandra M. Fecht
 DNR—Division of Waters
 Third Floor, Space Center Building
 444 Lafayette Road
 St. Paul, MN 55101
 Telephone: 612/297-2401

June 23, 1983

Joseph N. Alexander, Commissioner
 Department of Natural Resources

STATE OF MINNESOTA

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

ORDER FORM

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

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FOR LEGISLATIVE NEWS

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

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

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

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

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

Legislative Reference Library
Room 111 Capitol

Interoffice