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STATE REGISTER

STATE OF MINNESOTA

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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 8		
21	Monday Nov 7	Monday Nov 14	Monday Nov 21
22	Monday Nov 14	Monday Nov 21	Monday Nov 28
23	Monday Nov 21	Monday Nov 28	Monday Dec 5
24	Monday Nov 28	Monday Dec 5	Monday Dec 12

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

The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

MCAR AMENDMENTS AND ADDITIONS

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.

Department of Economic Security

Adopted Temporary Rules Governing the Procedures to Implement the Work Requirements of Laws 1983, Chapter 312, Article 8, Sections 10, 11, 12, and 13

The rule proposed and published at *State Register*, Volume 8, Number 9, pages 322-324, August 29, 1983 (8 S.R. 322) is adopted with the following modifications:

Temporary Rules as Adopted

8 MCAR § 4.0101 [Temporary] General assistance; grants and allowances.

C. Available for work. ~~As used in~~ For the purpose of implementing Minnesota Statutes, section 256D.111, subdivision 1, an individual is not available for work ~~for the purposes of Minnesota Statutes, section 256D.111, subdivision 1,~~ with respect to any ~~week which occurs in a~~ period when the individual is a full-time student in attendance at, or on vacation from, an established post-secondary school, college, or university unless in a vocational-technical training program for economically disadvantaged persons under the Federal Job Training Partnership Act or the Work Incentive Program. Available for work means available for full-time work unless the individual's health would limit availability to less than full-time work.

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.

D. Reasonable reporting. ~~As used in~~ For the purpose of implementing Minnesota Statutes, section 256D.111, subdivision 1, "reasonable reporting" means the recipient ~~will~~ shall report at least monthly to the Department of Economic Security office with which the recipient is registered ~~or as provided in the recipient's~~ unless the employability development plan requires more frequent reporting. The method of reporting, whether in person, by telephone, or by mail, shall be as prescribed by the Department of Economic Security. The reporting shall be in accordance with the format provided by the Department of Economic Security.

E. Job search requirements. ~~As used in~~ For the purpose of implementing Minnesota Statutes, section 256D.111, subdivision 1, "job search requirements" means the conditions of an employability development plan prepared by the Department of Economic Security in consultation with the recipient tailored to local labor market conditions and the recipient's skills, knowledge, and abilities, and designed to result in the recipient obtaining employment.

F. Suitable employment. ~~As used in~~ For the purpose of implementing Minnesota Statutes, section 256D.111, subdivision 1, "suitable employment" means any job provided through the Minnesota Emergency Employment Development Act, Minnesota Statutes, sections 268.671 to 268.686 or any employment which pays at least the applicable minimum wage, meets all required health and safety standards, and which the individual is physically and mentally able to perform.

G. Unemployable. ~~As used in~~ For the purpose of implementing Minnesota Statutes, section 256D.111, subdivision 2(k), "unemployable" describes a recipient who:

2. has undergone further evaluation and assessment which confirm limitations which cannot be sufficiently corrected through available job training or other employability development programs.

H. Noncompliance. ~~As used in~~ For the purpose of implementing Minnesota Statutes, section 256D.111, subdivision 4, "noncompliance" means that a recipient has failed to comply with the requirements of Minnesota Statutes, section 256D.111, subdivision 1. In the absence of good cause, a determination of noncompliance ~~may~~ shall be established with respect to one of the following:

Hearings on the determination of noncompliance must be conducted in accordance with the procedures in the Department of Economic Security, Hearing Rules of Practice, Governing Administrative Hearings and Appeals Procedures and Requirements under the Work Incentive Program (revised April 1983), which are hereby incorporated by reference.

Following a final determination of noncompliance, the commissioner of the Department of Economic Security shall certify in writing to the local agency that a recipient has failed to comply with the requirements of Minnesota Statutes, section 256D.111, subdivision 1. A copy of the written certification shall be given to the recipient.

Once a final determination of noncompliance has been made, the commissioner of the Department of Economic Security shall terminate the recipient's cash allowance. A recipient who has been determined noncompliant may requalify for the cash allowance following a period of disqualification pursuant to 12 MCAR § 2.05504 J. and referral by the local agency to the Department of Economic Security pursuant to 12 MCAR § 2.05504 B. An individual who has been sanctioned from another grant program will not be eligible for the cash allowance until conditions of that sanction have been satisfied pursuant to 12 MCAR § 2.05505.

I. Not able to successfully perform job. ~~As used in~~ For the purpose of implementing Minnesota Statutes, section 256D.112, clause 1, an individual will be considered "not able to successfully perform a job" available through the jobs program if:

J. Unlikely to secure job. ~~As used in~~ For the purpose of implementing Minnesota Statutes, section 268.80, an individual will be considered "unlikely to secure a job" through the jobs program because of ~~conditions including, but not limited to,~~ the following conditions:

1. The individual has inadequate preparation or job experience for any of the jobs available through the Minnesota Emergency Employment Development program; or

2. Minnesota Emergency Employment Development jobs are unavailable in locations which, for a one-way trip under normal commuting circumstances, are accessible to the individual within one hour, and the individual elects to withdraw from the program for this reason.

K. Application process. ~~As used in~~ For the purpose of implementing Minnesota Statutes, section 268.80, "application process" means the procedure through which an individual makes a formal request to the commissioner of the Department of Economic Security for services under the Minnesota Emergency Employment Development jobs program.

Appeals resulting from a redetermination of eligibility will be handled in accordance with procedures under Minnesota Statutes, section ~~256D.10~~ 256.045.

L. Allowance. ~~As used in~~ For the purpose of implementing Minnesota Statutes, section 268.81, "allowance" means the cash amount paid by the commissioner of the Department of Economic Security to individuals satisfying the eligibility standards in

Minnesota Statutes, section 256D.01 to 256D.21, who are accepted for participation in the Minnesota Emergency Employment Development jobs program.

The commissioner of the Department of Economic Security shall pay allowances to persons referred by the local agency in accordance with the assistance standards established by the commissioner of public welfare ~~for the general assistance program~~ pursuant to 12 MCAR § 2.05503 A. The initial allowance from the commissioner of the Department of Economic Security ~~will~~ shall be paid upon the expiration of the period covered by the one month grant from the local agency. The payments ~~must~~ shall be made within ten working days following the ~~recipient's acceptance into the Minnesota Emergency Employment Development program~~ date of receipt of the application for the cash allowance by the Department of Economic Security provided that in accordance with the foregoing sentence, in no case will the payment be made before the expiration date of the one month grant from the local agency. Subsequent payments will be made at one month intervals.

The Department of Economic Security ~~must~~ shall make eligibility determinations pursuant to the standards of Minnesota Statutes, sections 256D.01 to 256D.21, for individuals applying to the Department of Economic Security for services under the Minnesota Emergency Employment Development program who were not referred by the local agency. Eligibility for the allowance shall be made within three working days following receipt of the application. Persons satisfying the eligibility standards set forth in Minnesota Statutes, sections 256D.01 to 256D.21 and accepted for participation in the Minnesota Emergency Employment Development program ~~must~~ shall be paid a cash allowance by the commissioner of the Department of Economic Security. The initial payment shall be made within ten working days following receipt of the application or, if the applicant is not eligible on that date, within ten working days following the date that the applicant first becomes eligible. The allowance ~~will~~ shall be paid in accordance with the assistance standards established by the commissioner of public welfare ~~for the general assistance program~~ pursuant to 12 MCAR § 2.05503 A. and shall not exceed those amounts.

Minnesota Public Utilities Commission

Adopted Temporary Rules Governing Cogeneration and Small Power Production

The temporary rules proposed and published at *State Register*, Volume 8, Number 4, pages 103–109, July 25, 1983 (8 S.R. 103) were adopted by the Commission with modifications shown below on October 18, 1983. They became effective with the approval of the Attorney General on October 27, 1983, and will remain in effect for 180 days from that date.

Minnesota Public Utilities Commission

Adopted Temporary Rules Governing Cogeneration and Small Power Production

Temporary Rules as Adopted

4 MCAR § 3.0450 Scope and purpose.

The purpose of 4 MCAR §§ 3.0450-3.0463 is to implement certain provisions of Minnesota Statutes, section 216B.164; the Public Utility Regulatory Policies Act of 1978, United States Code, title 16, section 824a-3 (Supplement III, 1979); and the Federal Energy Regulatory Commission regulations, Code of Federal Regulations, title 18, sections 292.101-292.602 (1981). Nothing in 4 MCAR §§ 3.0450-3.0463 excuses any utility from carrying out its responsibilities under these provisions of state and federal law. Rules 4 MCAR §§ 3.0450-3.0463 shall at all times be applied in accordance with their intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.

4 MCAR § 3.0451 Definitions.

A. Applicability. For purposes of 4 MCAR §§ 3.0450-3.0463, the following terms have the meanings given them.

B. [Unchanged.]

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C. Average retail utility energy rate. "Average retail utility energy rate" means, for any class of utility customer, the quotient of the total annual class revenue from sales of electricity minus the annual revenue resulting from fixed charges, divided by the annual class kilowatt-hour sales. Data from the most recent 12-month period available prior to each filing required by 4 MCAR § 3.0452 shall be used in the computation.

C.-N. [Reletter as D.-O.]

P. Marginal capital carrying charge rate in the first year of investment. "Marginal capital carrying charge rate in the first year of investment" means the percentage factor by which the amount of a new capital investment in a generating unit would have to be multiplied to obtain an amount equal to the total additional first year amounts for the cost of equity and debt capital, income taxes, property and other taxes, tax credits (amortized over the useful life of the generating unit), depreciation, and insurance which would be associated with the new capital investment and would account for the likely inflationary or deflationary changes in the investment cost due to a one-year delay in building the unit.

P.-R. [Reletter as Q.-S.]

T. Qualifying facility. "Qualifying facility" means a cogeneration or small power production facility which satisfies the conditions established in Code of Federal Regulations, title 18, section 292.101 (b) (1) (1981), as applied when interpreted in accordance with the amendments to Code of Federal Regulations, title 18, sections 292.201-292.207 adopted through 46 Federal Register 33025-33027 (1981). The initial operation date or initial installation date of a cogeneration or small power production facility shall not prevent the facility from being considered a qualifying facility for the purposes of 4 MCAR §§ 3.0450-3.0463 if it otherwise would satisfy all stated conditions.

T.-W. [Reletter as U.-X.]

Y. Utility. "Utility" means:

1. for the purposes of 4 MCAR §§ 3.0453 and 3.0461, any public utility, including municipally owned electric utilities or cooperative electric associations, which sells electricity at retail in Minnesota; or

2. for the purposes of 4 MCAR § 3.0450-3.0452, 3.0454-3.0460, and 3.0462-3.0463, any public utility, including municipally owned electric utilities and cooperative electric associations, which sells electricity at retail in Minnesota, except those municipally owned electric utilities which have adopted and have in effect rules consistent with 4 MCAR §§ 3.0450-3.0463.

4 MCAR § 3.0452 Filing requirements.

A. Filing dates. Within 60 days after the effective date of 4 MCAR §§ 3.0450-3.0463, on January 1, 1985, and every 12 months thereafter, each utility shall file with the commission, for its review and approval, a cogeneration and small power production tariff. The tariff for generating utilities shall contain Schedules A through G, except that generating utilities with less than 500 million kilowatt-hour sales in the calendar year preceding the filing may substitute their retail rate schedules for Schedules A and B. The tariff for nongenerating utilities shall contain Schedules C, D, E, F, and H, and may, at the option of the utility, contain Schedules A and B, using data from the utility's wholesale supplier.

B.-C. [Unchanged.]

D. Schedule B. Schedule B shall contain the information listed in 1.-5.

1.-4. [Unchanged.]

5. If the utility has no planned generating facility additions for the ensuing ten years, but has planned additional capacity purchases, other than from qualifying facilities, during the ensuing ten years, Schedule B shall contain its net annual avoided capacity cost stated in dollars per kilowatt-hour averaged over the on-peak hours and the utility's net annual avoided capacity costs stated in dollars per kilowatt-hour averaged over all hours. These shall be calculated as follows:

a. [Unchanged.]

b. The net annual avoided capacity cost shall be computed by applying the figure determined in a. to the steps enumerated in 4.d.-i., excluding 4.f.

6. [Unchanged.]

E. Schedule C. Schedule C shall contain the calculation of the average retail utility energy rates.

F. Schedule D. Schedule D shall contain all standard contracts to be used with qualifying facilities, containing applicable terms and conditions.

G. Schedule E. Schedule E shall contain the utility's safety standards, required operating procedures for interconnected operations, and the functions to be performed by any control and protective apparatus. These standards and procedures shall

not be more restrictive than the interconnection guidelines listed in 4 MCAR § 3.0462. The utility may include in Schedule E suggested types of equipment to perform the specified functions. No standard or procedure shall be established to discourage cogeneration or small power production.

H. Schedule F. Schedule F shall contain procedures for notifying affected qualifying facilities of any periods of time when the utility will not purchase electric energy or capacity because of extraordinary operational circumstances which would make the costs of purchases during those periods greater than the costs of internal generation.

I. Schedule G. Schedule G shall contain and describe all computations made by the utility in determining Schedules A and B.

J. Schedule H; special rule for nongenerating utilities. Schedule H shall list the rates at which a nongenerating utility purchases energy and capacity. If the nongenerating utility has more than one wholesale supplier, Schedule H shall list the rates of that supplier from which purchases may first be avoided. If the nongenerating utility with more than one wholesale supplier also chooses to file Schedules A and B, the data on Schedules A and B shall be obtained from that supplier from which purchases may first be avoided.

K. Availability of filings. All filings required by A.-J. shall be made with the commission and shall be maintained at the utility's general office and any other offices of the utility where rate case filings are kept. These filings shall be available for public inspection at the commission and at the utility offices during normal business hours.

4 MCAR § 3.0453 Reporting requirements.

A.-E. [Unchanged.]

F. Effectiveness. The utility may provide a statement of the effectiveness of Minnesota Statutes, section 216B.164 and 4 MCAR §§ 3.0450-3.0463 in encouraging cogeneration and small power production, as observed by the utility.

4 MCAR § 3.0454 Conditions of service.

A. Requirement to purchase. The utility shall purchase energy and capacity from any qualifying facility which offers to sell energy to the utility and agrees to the conditions set forth in 4 MCAR §§ 3.0450-3.0463.

B.-C. [Unchanged.]

D. Responsibility for apparatus. The qualifying facility, without cost to the utility, shall furnish, install, operate, and maintain in good order and repair any apparatus the qualifying facility needs in order to operate in accordance with Schedule E.

E. [Unchanged.]

F. Legal status not affected. Nothing in 4 MCAR §§ 3.0450-3.0463 affects the responsibility, liability, or legal rights of any party under applicable law or statutes. No party shall require the execution of an indemnity clause or hold harmless clause in the written contract as a condition of service.

G.-K. [Unchanged.]

4 MCAR § 3.0456 Standard rates for purchases.

A. [Unchanged.]

B. Net energy billing rate.

1. The net energy billing rate is available only to qualifying facilities with capacity of less than 40 kilowatts which choose not to offer electric power for sale on either a time-of-day basis or a simultaneous purchase and sale basis.

2. The utility shall bill the qualifying facility for the excess of energy supplied by the utility above energy supplied by the qualifying facility during each billing period according to the utility's applicable retail rate schedule.

3. When the energy generated by the qualifying facility exceeds that supplied by the utility, the utility shall compensate the qualifying facility for the excess energy at the average retail utility energy rate. ~~The compensation shall reflect changes to the energy rate due to the operation of the utility's fuel adjustment clause.~~

C. Simultaneous purchase and sale billing rate.

1. The simultaneous purchase and sale rate is available only to qualifying facilities with capacity of less than 40 kilowatts which choose not to offer electric power for sale on a time-of-day basis.

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2. The qualifying facility shall be billed for all energy and capacity it consumes during a billing period according to the utility's applicable retail rate schedule.

3. The utility shall purchase all energy and capacity which is made available to it by the qualifying facility. At the option of the qualifying facility, its entire generation shall be deemed to be made available to the utility. Compensation to the qualifying facility shall be the sum of a. and b.

a. The energy component shall be the appropriate system average incremental energy costs shown on Schedule A; or if the generating utility has not filed Schedule A, the energy component shall be the energy rate of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B; or if the nongenerating utility has not filed Schedule A, the energy component shall be the energy rate shown on Schedule H;

b. If the qualifying facility provides firm power to the utility, the capacity component shall be the utility's net annual avoided capacity cost per kilowatt-hour averaged over all hours shown on Schedule B; or if the generating utility has not filed Schedule B, the capacity component shall be the demand charge per kilowatt (if any) of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B, divided by the number of hours in the billing period; or if the nongenerating utility has not filed Schedule B, the capacity component shall be the capacity cost per kilowatt shown on Schedule H, divided by the number of hours in the billing period. If the qualifying facility does not provide firm power to the utility, no capacity component shall be included in the compensation paid to the qualifying facility.

D. Time-of-day purchase rates.

1. Time-of-day rates are required for qualifying facilities with capacity of 40 kilowatts or greater and less than or equal to 100 kilowatts, and they are optional for qualifying facilities with capacity less than 40 kilowatts. Time-of-day rates are also optional for qualifying facilities with capacity greater than 100 kilowatts if these qualifying facilities provide firm power.

2. The qualifying facility shall be billed for all energy and capacity it consumes during each billing period according to the utility's applicable retail rate schedule. Any utility rate-regulated by the commission may propose time-of-day retail rate tariffs which require qualifying facilities that choose to sell power on a time-of-day basis to also purchase power on a time-of-day basis.

3. The utility shall purchase all energy and capacity which is made available to it by the qualifying facility. Compensation to the qualifying facility shall be the sum of a. and b.

a. The energy component shall be the appropriate on-peak and off-peak system incremental costs shown on Schedule A; or if the generating utility has not filed Schedule A, the energy component shall be the energy rate of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B; or if the nongenerating utility has not filed Schedule A, the energy component shall be the energy rate shown on Schedule H.

b. If the qualifying facility provides firm power to the utility, the capacity component shall be the utility's net annual avoided capacity cost per kilowatt-hour averaged over the on-peak hours as shown on Schedule B; or if the generating utility has not filed Schedule B, the capacity component shall be the demand charge per kilowatt (if any) of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B, divided by the number of on-peak hours in the billing period; or if the nongenerating utility has not filed Schedule B, the capacity component shall be the capacity cost per kilowatt shown on Schedule H, divided by the number of on-peak hours in the billing period. The capacity component shall apply only to deliveries during on-peak hours. If the qualifying facility does not provide firm power to the utility, no capacity component shall be included in the compensation paid to the qualifying facility.

4 MCAR § 3.0460 Disputes.

In case of a dispute between a utility and a qualifying facility or an impasse in the negotiations between them, either party may request the commission to determine the issue. When the commission makes the determination, the burden of proof shall be on the utility. In the order resolving the dispute, the commission ~~will apportion~~ shall require the prevailing party's reasonable costs, disbursements, and attorney's fees to be paid by the party against whom the issue or issues were adversely decided, except that a qualifying facility will be required to pay the costs, disbursements, and attorney's fees of the utility only if the commission finds that the claims of the qualifying facility have been made in bad faith or are a sham or frivolous.

4 MCAR § 3.0461 Notification to customers.

A. Contents of written notice. Within 60 days following each filing required by 4 MCAR § 3.0452, every utility shall furnish written notice to each of its customers:

1. That the utility is obligated to interconnect with and purchase electricity from cogenerators and small power producers;

2. That the utility is obligated to provide information to all interested persons free of charge upon request; and

3. That any disputes over interconnection, sales, and purchases are subject to resolution by the commission upon complaint.

The notice shall be in language and form approved by the commission.

B. [Unchanged.]

4 MCAR § 3.0462 Interconnection guidelines.

A. Denial of interconnection application. Except as hereinafter provided, a utility shall interconnect with a qualifying facility that offers to make energy or capacity available to the utility. The utility may refuse to interconnect a qualifying facility with its power system until the qualifying facility has properly applied under 4 MCAR § 3.0454 K. and has received approval from the utility. The utility shall withhold approval only for failure to comply with applicable utility rules not prohibited by 4 MCAR §§ 3.0450-3.0463, or governmental rules or laws. The utility shall be permitted to include in its contract reasonable technical connection and operating specifications for the qualifying facility.

B.-F. [Unchanged.]

G. Permitting entry. If the particular configuration of the qualifying facility precludes disconnection or testing from the utility side of the interconnection, the qualifying facility shall make equipment available and permit electric and communication utility personnel to enter the property at reasonable times to test isolation and protective equipment, to evaluate the quality of power delivered to the utility's system, and to test to determine whether the qualifying facility's generating system is the source of any electric service or communication systems problems. The utility shall remain responsible for its personnel.

H.-K. [Unchanged.]

Temporary Rule as Proposed (all new material)

4 MCAR § 3.0463 [Temporary] Contracts.

A. Existing contracts. Any interconnection contracts executed between a utility and a qualifying facility with installed capacity of less than 40 kilowatts before the effective date of 4 MCAR §§ 3.0450-3.0463 may, at the option of either party, be canceled and replaced with the uniform statewide contract by either party giving the other written notice thereof. The notice shall be effective upon the shortest period permitted under the existing contract for termination, but not less than ten nor more than 30 days.

B. Language flexibility. Electric utilities organized as cooperatives may substitute "Cooperative" wherever "Utility" appears in the uniform statewide contract.

C. Uniform statewide contract. The form of the uniform statewide contract shall be as follows:

UNIFORM STATEWIDE CONTRACT FOR
COGENERATION AND SMALL POWER PRODUCTION FACILITIES

THIS CONTRACT IS ENTERED INTO _____,19__, by _____ (hereafter called "Utility") and _____(hereafter called "QF").

RECITALS

The QF has installed electric generating facilities, consisting of _____ _____ _____(Description of facilities), rated at less than 40 kilowatts of electricity, on property located at _____ _____.

The QF is prepared to generate electricity ~~for use and for sale to~~ in parallel with the Utility.

The QF's electric generating facilities meet the requirements of the Minnesota Public Utilities Commission (hereafter called "Commission") rules on Cogeneration and Small Power Production and any standards the Utility has established under those rules.

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The Utility is obligated under federal and Minnesota law to interconnect with the QF and to purchase electricty ~~from~~ offered for sale by the QF.

A contract between the QF and the Utility is required by the Commission's rules.

AGREEMENTS

The QF and the Utility agree:

1. The Utility will sell electricity to the QF under the rate schedule in force for the class of customer to which the QF belongs.

2. The Utility will buy electricity from the QF under the current rate schedule filed with the Comimssion. The QF has elected the following rate schedule category:

. . . . 1. Net energy billing rate under 4 MCAR § 3.0456 B.

. . . . 2. Simultaneous purchase and sale billing rate under 4 MCAR § 3.0456 C.

. . . . 3. Time-of-day purchase rates under 4 MCAR § 3.0456 D.

A copy of the presently filed rate schedule is attached to this contract.

3. The rates for sales and purchases of electricity may change over the time this contract is in force, due to actions of the Utility or of the Commission, and the QF and the Utility agree that sales and purchases will be made under the rates in effect each month during the time this contract is in force.

~~4. The Utility will make these computations at the end of each billing period:~~

~~a. the Utility will deduct the purchases made from the QF from the sales made to the QF during that billing period and determine the difference;~~

~~b. the Utility will multiply the difference by the rate then in force;~~

~~c. if sales made to the QF exceed the purchases from the QF, the Utility will bill the QF the amount calculated in b. plus any fixed charges;~~

~~d. if purchases from the QF exceed the sales made to the QF, the Utility will pay the QF the amount calculated in b. minus any fixed charges by _____. (Fill in either "by bill credit" or "by check within 15 days.")~~

4. The Utility will compute the charges and payments for purchases and sales for each billing period. Any net credit to the QF will be made under one of the following options as chosen by the QF:

. . . . 1. Credit to the QF's account with the Utility.

. . . . 2. Paid by check to the QF within 15 days of the billing date.

5. The QF will operate ~~his or her~~ its electric generating facilities within the rules, regulations, and policies of the Utility. A copy of those rules, regulations, and policies is attached to this contract. This agreement does not waive the QF's right to bring a dispute before the Commission.

6. The Utility's rules, regulations, and policies will follow the Commission's rules on Cogeneration and Small Power Production.

~~7. The Utility approves the QF's electric generating facilities as of the date of this contract.~~

~~8.~~ 7. The QF will operate ~~his or her~~ its electric generating facilities so that they conform to ~~all~~ the national, state, and local electric and safety codes, and will be responsible for ~~all~~ the costs of conformance.

~~9. The QF will pay the Utility for all costs of interconnecting with the Utility's system.~~ 8. The QF ~~and the Utility agree that the~~ is responsible for the actual, reasonable costs of interconnection which are estimated to be $_____~~, and that~~. The QF will pay the Utility in this way:

_____

_____.

~~10.~~ 9. The QF will give the Utility reasonable access to ~~his or her~~ its property and electric generating facilities if the configuration of those facilities does not permit disconnection or testing from the Utility's side of the interconnection. If the Utility enters the QF's property, the Utility will remain responsible for its personnel.

~~11.~~ 10. The Utility may stop providing electricity to the QF during a system emergency. The Utility will not discriminate ~~among customers~~ against QFs when it stops providing electricity or when it resumes providing electricity.

~~12.~~ 11. The Utility may stop purchasing electricity from the QF when necessary for the Utility to construct, install,

maintain, repair, replace, remove, investigate, or inspect any equipment or facilities within its electric system. The Utility will notify the QF before it stops purchasing electricity in this way:

_____

_____.

~~13. The Utility may stop purchasing electricity from the QF when extraordinary operating conditions make the cost of purchasing electricity from the QF more expensive than the costs of generating the electricity internally. The Utility will only exercise this right under the following circumstances:~~

_____

_____

_____. ~~The Utility will notify the QF before it stops purchasing electricity in this way:~~ _____

_____

_____.

~~14.~~ 12. The QF will keep in force liability insurance against personal or property damage due to the installation, interconnection, and operation of ~~his or her~~ its electric generating facilities. The amount of insurance coverage will be $_____ (amount not greater than $300,000).

~~15.~~ 13. This contract becomes effective as soon as it is signed by the QF and the Utility. This contract will remain in force until either the QF or the Utility gives written notice to the other that the contract is canceled. This contract will be canceled 30 days after notice is given.

~~16.~~ 14. This contract is temporary, and will be replaced by a permanent contract after the Commission puts permanent rules on cogeneration and small power production into place. The permanent contract may differ in its terms and conditions.

~~17.~~ 15. This contract contains all the agreements made between the QF and the Utility except that this contract shall at all times be subject to all rules and orders issued by the Public Utilities Commission or other government agency having jurisdiction over the subject matter of this contract. The QF and the Utility are not responsible for any agreements other than those stated in this contract.

THE QF AND THE UTILITY HAVE READ THIS CONTRACT AND AGREE TO BE BOUND BY ITS TERMS. AS EVIDENCE OF THEIR AGREEMENT, THEY HAVE EACH SIGNED THIS CONTRACT BELOW ON THE DATE WRITTEN AT THE BEGINNING OF THIS CONTRACT.

_____

QF
By: _____

_____

UTILITY
By: _____

_____

(Title)

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

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

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

and

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

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Temporary Rules Governing Self-Insurance Plan Administrators

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled temporary rules. These temporary rules are promulgated pursuant to Minnesota Statutes, section 60A.28, subd. 8, clause (5).

All interested persons may submit comments on the proposed temporary rules for 20 days immediately following publication of this material in the *State Register* by writing to Rose Ortiz, Department of Commerce, 500 Metro Square Building, St. Paul, MN 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 rules. Pursuant to Minnesota Statutes, section 14.35, (1982) these temporary rules shall be in effect for a period of 180 days following adoption and approval by the Attorney General.

A copy of the proposed temporary rules is attached to this Notice.

Michael A. Hatch, Commissioner
Department of Commerce

Temporary Rules as Proposed (all new material)

4 MCAR § 1.9260 [Temporary] Purpose and scope.

Rules 4 MCAR §§ 1.9260-1.9269 [Temporary] are designed to assure that the self-insurance plan administrators are capable of providing risk management services, financially solvent and able to process claims in a prompt and equitable manner; and to allow the commissioner to authorize qualified entities to engage in the business in a manner which is fair, equitable, and consistent with all applicable Minnesota Statutes.

4 MCAR § 1.9261 [Temporary] Authority.

Rules 4 MCAR §§ 1.9260-1.9269 [Temporary] are adopted under the authority of Minnesota Statutes, section 60A.28, subdivision 8, clause (5).

4 MCAR § 1.9262 [Temporary] Definitions.

A. Administrator or self-insurance plan administrator. "Administrator" or "self-insurance plan administrator" means vendors of risk management services and entities administering self-insurance plans as defined in Minnesota Statutes, section 60A.23, subdivision 8, clause (2) providing coverage on residents of and risks located in Minnesota.

B. Affiliated company. "Affiliated company" means any company that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the applicant company.

C. Certified audit or certified financial statement. "Certified audit" or "certified financial statement" means an audit or financial statement upon which an independent certified public accountant expresses his or her professional opinion that the accompanying statements present fairly the financial position of the administrator in conformity with generally accepted accounting principles and generally accepted auditing standards consistently applied.

D. Financial statements. "Financial statements" means both the income statement and a statement of financial position (balance sheet) prepared in conformity with generally accepted accounting principles.

E. Area or areas of risk management. "Area" or "areas of risk management" means life, accident and health, workers' compensation, other liability, and property or casualty.

F. Services or risk management services. "Services" or "risk management services" includes, but is not limited to, accounting and record retention, actuarial in conjunction with the other services, claims administration, general administration, insurance, legal, loss control and safety, rehabilitation, risk management and analysis, and other services related to the establishment and maintenance of a program of self-insurance.

4 MCAR § 1.9263 [Temporary] Requirements for licensing.

A. Application procedure. Any person or entity desiring to be licensed as a self-insurance plan administrator pursuant to Minnesota Statutes, section 60A.23, subdivision 8, shall apply to the commissioner in writing and on forms available from the commissioner. The licensee shall designate areas of risk management services which the self-insurance plan administrator may perform. Any license granted is effective for a period of two years unless surrendered by the licensee, or unless the license is revoked or suspended by order of the commissioner. The license is transferable only upon prior written approval by the commissioner as to new ownership or new management of the self-insurance plan administrator.

B. Application contents. Each application for a license as a self-insurance plan administrator must:

1. be signed and sworn to by the applicant, or its owners, and be accompanied by the license fee required by Minnesota Statutes, section 60A.23. If the applicant is a corporate applicant, it must be verified by the president and secretary of the corporation. All fees must be paid by check, draft, or other negotiable instrument. Cash will not be accepted;

2. contain a description of the specific areas of risk management services intended to be provided;

3. contain the identity of the owners of the company, including all partners of a partnership and all officers and shareholders of a corporation;

4. contain information concerning its organization and staff, with specific information concerning their expertise to provide service in the area stated. This information must include detailed resumes of all key employees and all officers of any subcontractor, stating the name, age, resident address, licensing history, and qualifications and experience of each person relating to the work and qualifications in which they are to perform service. The information must include:

a. The experience and history of accountants if the licensee intends to provide this administrative service to a self-insurer.

b. If the applicant or its subcontractor intends to provide claims adjusting, a resume detailing the experience of the supervisor, who shall possess at least three years' experience adjusting claims in the areas of services to be provided.

c. A copy of the license of the adjuster who is responsible for adjusting workers' compensation claims or any other claims where the plan provides liability coverage for any risk or hazard. The self-insurance plan administrator or its subcontractor shall have at least one adjuster who holds a license under Minnesota Statutes, chapter 72B, and that adjuster shall be a resident of Minnesota;

5. Contain full disclosure concerning violations or investigations by any governmental agency which are known to the applicant concerning any person who is or may be affiliated with the applicant as an owner, shareholder, officer, employee, subcontractor, or employee of a subcontractor with the applicant.

6. Submit proof of coverage under a fidelity bond for all persons involved in collecting money and making claims payments, and all officers of the company. The bond must cover losses from dishonesty, theft, forgery or alteration, and misplacement or mysterious and unexplainable disappearance.

7. State the name and address of a resident agent who is authorized to act on behalf of the administrator and to accept service of process.

8. Include financial statements for the previous three years, or for as many years as the administrator has been in business up to three years, and a certified financial statement for the most recent fiscal year. Certified financial statements for a period ending more than six months prior to the date of the application must be accompanied by an affidavit signed by a company officer under oath describing any material change in the net worth or the financial condition of the applicant since the date of the certified financial statement.

9. Contain a statement that the applicant and its officers and supervising managers shall be responsible for the supervision of the actions of any and all personnel and subcontractors acting on behalf of the applicant.

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4 MCAR § 1.9264 [Temporary] Amended licenses.

A licensee may apply to amend a license to include services or areas of risk management for which it was not previously licensed by submitting:

A. information detailing the expanded services it wishes to provide;

B. such other information relating to the expanded services as required by 4 MCAR § 1.9263 [Temporary] B.; and

C. proof of coverage under the fidelity bond for the new or changed personnel, if the services to be provided include handling of funds.

4 MCAR § 1.9265 [Temporary] License renewals.

A. Time of filing. Application for renewal of a license shall be filed with the commissioner at least 60 days prior to the expiration date of that license.

B. Required information. In support of the application for license renewal, a self-insurance plan administrator shall submit:

1. any changes in the description of the administrative services intended to be provided;

2. any changes in ownership of the company, including detailed information about the new owners;

3. any changes in key staff or an employee's responsibilities, including resumes of all new staff members or additional information to show qualifications of current staff to take on new responsibilities;

4. an explanation of any changes in contracts with subcontractors, including firms contracted with, services provided, or individuals providing services contracted for;

5. an affidavit signed by a company officer under oath stating that there has been no material change in the net worth or financial condition since the last affidavit was filed, and financial statements for the two previous years. If such a change has taken place, the officer shall submit with the renewal application a detailed explanation of what happened to cause such an adverse change;

6. proof of coverage under the fidelity bond for all persons involved in making claims payments, and all officers of the company; and

7. information relating to any changes in personnel acting as resident agents for the self-insurance plan administrator.

4 MCAR § 1.9266 [Temporary] License reporting requirements.

A. Time limit. Within 30 days of the contract, a licensee shall inform the department in writing of the name or names of any self-insured under contract and the lines for which the client is self-insured excepting qualified ERISA clients, if this information is classified as nonpublic by the commissioner of administration.

B. Examinations. The commissioner may make examinations within or outside of the state of each licensee's records at a reasonable time and in the scope necessary to enforce the provisions of Minnesota Statutes and the rules of the Department of Commerce.

C. Report compliance. Each licensee shall file and ensure that the self-insurers it services file all required reports relating to those services which the administrator provides within the times established by statute, by rule, or by order of the commissioner. The reports must include:

1. an annual activity report, filed within 60 days of the end of the calendar year, stating:

a. the name and address of self-insurance clients administered by the licensee in Minnesota for the previous calendar year, excepting qualified ERISA clients if this information is classified as nonpublic by the commissioner of administration;

b. the area and type of service provided by each plan;

c. the starting and termination date each client was serviced;

d. the total number and total amount of claims paid and lost payments disbursed on behalf of each client;

e. the reserves established for each client; and

f. the dates of losses and the date claim file closed;

2. loss information reports required by 4 MCAR § 1.9289;

3. any reports required by the Workers' Compensation Reinsurance Association;

4. any report required by the Minnesota Department of Labor and Industry; and

5. any other report required by the Department of Commerce.

D. Notification of contract termination. If the contract between a licensee and a self-insured is terminated, the licensee shall notify the commissioner in writing within 30 days of termination. The licensee shall maintain copies of all records relating to the self-insured for six years after the termination date of each contract, if the records are not returned to the client.

E. Notification of cessation of business activities. If a licensee ceases doing business as a self-insurance plan administrator, the license shall be surrendered and the commissioner shall be informed in writing as to the name and address of the custodian and the location of any files of self-insured clients administered by the licensee.

F. Notification of material changes. The administrator shall notify the commissioner in writing of any change in supervisory personnel, management, or any other material change within 30 days of the change and include a detailed explanation of the change.

4 MCAR § 1.9267 [Temporary] Premium collections.

A. Fiduciary relationship. All insurance charges or premiums collected by an administrator on behalf of or for a principal, and return premiums received from the principal, must be held by the administrator in a fiduciary capacity. These funds must be remitted immediately to the person entitled to them, or must be deposited promptly in a fiduciary bank account established and maintained by the administrator.

B. Commingling. If charges or premiums deposited in the fiduciary account have been collected on behalf of or for more than one principal, the administrator shall cause the bank in which the fiduciary account or claims-paying account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each principal. The administrator shall promptly obtain and keep copies of these records and shall furnish the principal with copies of these records monthly pertaining to deposits and withdrawals on behalf of or for the principal.

C. Interest. Any interest earned on deposits is the property of the principal on whose behalf the deposit was made.

D. Limitation on claims payment. The administrator may not pay any claim by withdrawals from the fiduciary account. Claims payments must be made from a claims-paying account established and maintained by the administrator on behalf of the principal. The administrator shall keep a record of all transactions and shall furnish the principal with copies of these records monthly pertaining to deposits, withdrawals, and claims payments on behalf of and for the principal.

E. Withdrawals. Withdrawals from the fiduciary account may be made, as provided in the written agreement under Minnesota Statutes, section 60A.23 for any of the following:

1. remittance to a principal entitled to the withdrawal;
2. deposit in an account maintained in the name of the principal;
3. transfer to and deposit in a claims-paying account;
4. payment to the administrator of its commission, fees, or charges;
5. remittance of return premiums to the person entitled to the remittance.

Withdrawals on behalf of a principal may not be greater than the sum of the deposits and interest made on behalf of that principal.

4 MCAR § 1.9268 [Temporary] Bond amounts.

A. Administrator not commingling funds. The amount of the fidelity bond required under 4 MCAR § 1.9263 [Temporary] B.6. for an administrator who does not commingle funds of either his or her fiduciary account or claims-paying account must be in the amount of the average daily balance of all trust accounts, or $500,000, whichever is greater, up to a maximum of $2,000,000.

B. Administrator commingling funds. The amount of the fidelity bond required under 4 MCAR § 1.9263 [Temporary] B.6. for an administrator who commingles funds of either his or her fiduciary account or claims-paying account must be in the amount of the average daily balance of all trust accounts, or $1,000,000, whichever is greater, up to a maximum of $5,000,000.

4 MCAR § 1.9269 [Temporary] Denial, suspension, revocation, or censure of licenses.

A. Commissioner's findings. The commissioner will investigate and may by order deny, suspend, or revoke any license, or may censure a licensee if the commissioner finds:

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1. that the order is in the public interest; and

2. that the applicant or licensee, or in the case of a corporation or partner, any officer, director, partner, employee, subcontractor, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the licensee, or controlled by the licensee:

a. has filed an application for a license which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact;

b. has engaged in a fraudulent or deceptive practice as defined by Minnesota Statutes, chapters 60A and 72A, and rules adopted thereunder;

c. is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of insurance administration;

d. failed to reasonably act as a supervisor so as to cause injury or harm to the public;

e. failed to act reasonably in the conduct of claims adjustment or claims administration;

f. does not possess the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered; or

g. violated or failed to comply with any provision for proper claims administration as set forth in Minnesota Statutes, chapters 60A to 79, and 176, and any rules adopted thereunder.

B. Informal conferences. The commissioner may request an informal conference to discuss and resolve any allegations of violations.

Department of Energy and Economic Development

In the Matter of the Amendment of Rules of the State Department of Energy and Economic Development Governing the Minnesota Energy Conservation Service Program, 6 MCAR § 2.2300-2.2313

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, 1982, section 14.14, subd. 1, in the above-entitled matter in the State Office Building, Room 22, 435 Park Street, St. Paul, Minnesota on December 20, 1983, commencing at 9:15 A.M. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above. The public hearing will continue on December 21, 1983, commencing at 10:00 A.M., only if not completed on December 20, 1983. Persons interested in presenting testimony should appear on December 20, 1983, as there is no assurance that the public hearing will continue on December 21, 1983.

Statements may be made orally and written material may be submitted and recorded in the hearing record by mailing the material to Hearing Examiner Allan Klein, Office of Administrative Hearings, 400 Summit Bank Building, 310 South 4th Avenue, Minneapolis, Minnesota 55415—telephone (612) 341-7609, either before the hearing or within five working days after the close of the hearing unless the hearing examiner orders a longer period of time not to exceed 20 calendar days. The proposed rules are subject to change as a result of the rules hearing process. The Division therefore strongly urges those who may be affected in any manner by the substance of the proposed rules applicable to this hearing to participate in the rules hearing process.

The Commissioner proposes to amend existing rules relating to the following matters:

A) A variety of changes intended to increase the overall participation in and impact of the audit such as increasing the role of the program announcement and audit; offering audit free to low income customers; offering audits on weekends and evenings; increasing the emphasis on auditor/customer interactions and reducing the number of measures evaluated for and required handout materials; modifying the training requirements for auditors; allowing for utilities to vary the audit implementation through pilot programs and requiring evaluations of the audit program to be done.

B) Including a requirement that utilities achieve minimum response rates from their customers. These response rates vary depending on the service area of the utility and whether the utility provides natural gas, electricity or both to their residential customers. Utilities failing to meet these goals would be required to develop and implement a marketing plan that is reasonably expected to achieve the response rate goals. This plan would have to be reviewed and approved by the Energy Division.

C) Modify the current inspection procedures to allow customers easy access to post-installation inspections which would help evaluate whether or not weatherization work was done properly. These inspections would be done by each utility with the use of an infra-red camera and blower door.

The Department's authority to amend the Minnesota Energy Conservation Service rules is contained in Minnesota Statutes, 1982, sections 116J.09, 116J.10 and 116J.31, as amended.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Energy and Economic Development, Attention: Mark Polich, 980 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101—(612) 297-3293. Copies will also be available at the door on the date of the hearing.

Minn. Stat. Ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 (1979 Supp.) as any individual:

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

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

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

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

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

The rule hearing procedure is governed by Minn. Stat., 1982, 14.05-14.20, as amended, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). Any questions about procedure may be directed to the Hearing Examiner.

Mark Dayton, commissioner
Department of Energy and Economic Development

Order for Hearing

It is ordered this 31st day of October, 1983, that a public hearing on the proposed rules captioned above be held in the State Office Building, Room 22, 435 Park Street, St. Paul, Minnesota, on December 20, 1983, commencing at 9:15 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard. The public hearing will continue on December 21, 1983, commencing at 10:00 A.M., only if not completed on December 20, 1983. Persons interested in presenting testimony should appear on December 20, 1983, as there is no assurance that the public hearing will continue on December 21, 1983.

It is further ordered, that notice of said hearing be given to all persons who have registered their names with the State Department of Energy and Economic Development for that purpose and be published in the *State Register*.

Mark Dayton, commissioner
Department of Energy and Economic Development

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Rules as Proposed

6 MCAR § 2.2300 Authority and purpose.

A. Authority. The ~~agency's~~ division's authority to promulgate these rules is contained in ~~Minnesota Laws of 1980, chapter 579, section 12 (to be codified as Minnesota Statutes, section 116H.17), as well as~~ Minnesota Statutes, sections ~~116H.08, clause (a) (1978), and 116H.07, clause (i) (1978)~~ 116J.09, 116J.10, and 116J.31.

B. Purpose. The purpose of ~~these rules~~ 6 MCAR §§ 2.2300-2.2314 is to establish a program requiring major regulated utilities to offer their residential utility customers services related to the promotion of energy conservation. The most important of these services include: conducting home energy audits to determine areas of major heat loss and other energy inefficiencies in the home; discussing these findings with the customer and helping him or her to establish a plan of action for energy conservation; distributing lists of approved contractors, suppliers, and lenders from whom home energy improvements and financing services may be obtained; arranging for the installation of home energy improvements; and arranging for the financing of supply and installation of home energy improvements and providing post-installation inspections for the installation of program measures. The rules establish requirements for the inclusion in the lists, and training and certification procedures, procedures for the billing of energy improvement loans on customer utility bills, and post-installation inspection and consumer grievance procedures. The program also includes provisions for voluntary participation of home heating suppliers and nonregulated utilities.

6 MCAR § 2.2301 Definitions.

A. Scope. For the purpose of ~~these rules~~ 6 MCAR §§ 2.2300-2.2314, the following definitions apply~~:~~

~~A. Agency. The Minnesota Energy Agency.~~

B. ~~Arranged installation. Any installation of MECS program measures, coordinated pursuant to 6 MCAR § 2.2304 by a participating utility or heating supplier, which is initiated using a standardized MECS bid form~~ Audit offer. "Audit offer means an offer made to an eligible customer by a utility for a MECS audit.

C. City of the first class. "City of the first class" means a city, ~~pursuant to~~ under Minnesota Statutes, section 410.01 ~~(1978)~~, which has a population of 100,000 inhabitants or more.

D. Covered utility. Covered utilities shall be determined on a yearly basis. The definition includes all public utilities which during the second preceding calendar year had either:

1. sales of natural gas for purposes other than resale which exceed ten billion cubic feet; or
2. sales of electric energy for purposes other than resale which exceed 750 million kilowatt-hours.

E. Customer. ~~For the purposes of this rule, a~~ "Customer" ~~is any~~ means a person who~~:~~

~~1.~~ owns or occupies a residential building~~;~~, and who

~~2.~~ receives a fuel bill from a participating utility or home heating supplier for fuel used in ~~such~~ the residential building.

F. Division. "Division" means the Energy Division of the Department of Energy and Economic Development.

G. DOE. "DOE" means the United States Department of Energy.

~~G.~~ H. Energy conservation measures. "Energy conservation measures" means any of the following measures in a residential building:

1. ~~Caulking. Pliable materials used to reduce the passage of air and moisture by filling small gaps located at fixed joints on a building, underneath baseboards inside a building, in exterior walls at electric outlets, around pipes and wires entering a building, and around dryer vents and exhaust fans in exterior walls. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."~~

~~2. Weatherstripping. Narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.~~

~~3.~~ Furnace efficiency modifications~~.~~:

a. replacement furnace or boiler~~.~~: a furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation, or reduced heat losses~~.~~;

b. furnace replacement burner (oil)~~.~~: a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and uses less oil than the device it replaces~~.~~;

c. flue opening modification~~.~~: an automatically operated damper installed in a gas-fired furnace or water heater (often called a vent damper) which~~:~~

~~(1)~~ is installed downstream from the drafthood~~;~~, and which

~~(2)~~ conserves energy by substantially reducing the flow of heated air through the chimney when the furnace or water heater is not in operation.

d. Electrical or mechanical ignition system. A device which, when installed in a gas-fired furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.

~~4. Replacement central air conditioner. A central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.~~

~~5.~~ 2. Ceiling insulation~~.~~: a material primarily designed to resist conductive and convective heat ~~flow~~ transfer which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roofs, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof.

~~6.~~ 3. Wall insulation~~.~~: a material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

~~7.~~ 4. Floor insulation~~.~~: a material primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the ground beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, the term "floor insulation" also means ~~such~~ the material installed around the perimeter of or on the slab. In the case of ~~mobile~~ manufactured homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

~~8. Duct insulation. A material primarily designed to resist heat flow which is installed on a heating or cooling duct in an unconditioned area of a building.~~

~~9. Pipe insulation. A material primarily designed to resist heat flow which is installed on a heating, cooling, or hot water pipe in an unconditioned area of a building.~~

~~10.~~ 5. Water heater insulation~~.~~: a material primarily designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

~~11. Storm or thermal window~~ 6. Window modifications:

a. storm window: a window or glazing material placed outside or inside an ordinary or prime window, creating an air space, to provide greater resistance to heat flow than the prime window alone; ~~or~~

b. thermal window: a window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces~~.~~ (it may also have an insulating frame and sash~~.~~); or

c. window insulation: material added to windows that significantly reduces heat loss in winter, such as insulated roll-up shades (external or internal) or moveable rigid insulation.

~~12.~~ 7. Storm or thermal door:

a. a second door, installed outside or inside a prime door, creating an insulating air space; ~~or~~

b. a door with enhanced resistance to heat flow through the glass area created by affixing two or more sheets or glazing materials; or

c. a primary exterior door with an R-value of at least two.

~~13. Heat reflective and heat absorbing window or door material. A window or door glazing material with exceptional heat absorbing or heat reflecting properties; or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat absorbing or heat reflecting properties.~~

~~14. Devices associated with electric load management techniques. Customer owned or leased devices that reduce the maximum kilowatt demand on an electric utility and which are any of the following:~~

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~~a. Part of a radio, ripple or other utility controlled load switching system located on the customer's premises;~~

~~b. Clock controlled load switching devices;~~

~~c. Interlocks, and other load actuated, load limiting devices;~~

~~d. Energy storage devices with control systems.~~

~~15.~~ 8. Clock thermostat~~.~~: a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and uses:

a. a temperature control device for interior spaces incorporating more than one temperature control level~~,~~; and

b. a clock or other automatic mechanism for switching from one control level to another.

~~H.~~ I. Energy conserving practices. "Energy conserving practices" means any of the following measures in a residential building:

1. furnace efficiency maintenance and adjustments, which means cleaning and combustion efficiency adjustment of gas or oil furnaces, periodic cleaning or replacement of air filters on forced-air heating or cooling systems, lowering the bonnet or plenum thermostats to ~~80~~ 90 degrees Fahrenheit on a gas or oil forced-air furnace, ~~and~~ turning off the pilot light on a gas furnace during the summer~~.~~, modifying boiler water temperature, and derating gas or oil furnaces;

2. nighttime temperature setback, which means manually lowering the thermostat control setting for the furnace during the heating season to a maximum of 55 degrees Fahrenheit during sleeping hours~~.~~;

3. reducing thermostat settings in winter, which means limiting the maximum thermostat control setting for the furnace to 68 degrees Fahrenheit during the heating season~~.~~;

4. raising thermostat setting in summer, which means setting the thermostat control for an air conditioner to 78 degrees Fahrenheit or higher during the cooling season~~.~~;

5. water flow reduction in showers and faucets, which means placing a device in a shower head or faucet to limit the maximum flow to three gallons per minute, or replacing existing shower heads or faucets with those having built-in provisions for limiting the maximum flow to three gallons per minute~~.~~;

6. reducing hot water temperature, which means manually setting back the water heater thermostat setting to 120 degrees Fahrenheit~~;~~, and reducing the use of heated water for clothes washing~~.~~;

7. reducing energy use when a home is unoccupied, which means reducing the thermostat setting to 55 degrees Fahrenheit when a home is empty for four hours or longer in the heating season, turning an air conditioner off in the cooling season when no one is home, and lowering the thermostat setting of the water heater when a home is vacant for two days or longer~~.~~;

8. ~~Plugging leaks in attics, basements, and fireplaces, which means installing scrap insulation or other pliable materials in gap around pipes, ducts, fans, or other items which enter the attic or basement from a heated space, installing fireproof material to plug any holes around any damper in a fireplace, and adding insulation to an attic or basement door.~~

~~9.~~ sealing leaks in pipes and ducts, which means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and ~~replacement of~~ replacing washers in leaking water valves~~.~~;

~~10.~~ 9. efficient use of shading, which means using shades or drapes to block sunlight from entering a building in the cooling season, to allow sunlight to enter during the heating season, and to cover windows tightly at night during the heating season~~.~~; or

10. cleaning refrigerator or freezer coils of dust or dirt that inhibit efficient operation.

J. Fan door. "Fan door" means a large fan which is placed in a door or window and is used to produce an air pressure differential that will accentuate air leakage within a house.

~~I.~~ K. Heating supplier. "Heating supplier" means a person who sells or supplies home heating fuel (including and not limited to, No. 2 heating oil, kerosene, butane, and propane) to a customer for consumption in a residential building and who has elected to participate in MECS, ~~pursuant to~~ under 6 MCAR § 2.2312.

L. Infrared remote sensing device. "Infrared remote sensing device" means a hand-held camera capable of showing a two-dimensional thermal image of the surveyed area and providing thermal resolutions down to 0.2 degrees Celsius (0.36 degrees Fahrenheit) and spatial resolutions to 100 square meters (1,080 square feet). The available resolutions permit a trained operator to distinguish between insulated and uninsulated wall areas and to locate attic and other bypasses and major heat leaks in a building.

~~J.~~ M. Installation standards. "Installation standards" means DOE installation standards ~~pursuant to 10~~ under Code of Federal Regulations, ~~section~~ title 10, part 456, subparts G and I (1979).

N. Low cost measures. "Low cost measures" means any of the following measures in a residential building:

1. Caulking: pliable materials used to reduce the passage of air and moisture from a conditioned space of a house. Small gaps such as those around electrical outlets, baseboards, window and door frames, ventilation fans, light fixtures, and cracks in sheetrock or foundation walls should be filled on the conditioned side of the walls, floors, and ceiling. Large gaps on the unconditioned side of exterior walls such as large cracks around windows, large cracks in foundation walls, and gaps around utility penetrations or dryer vents should be filled from the outside. Caulking includes but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

2. Weatherstripping: narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

3. Sealing bypasses: the use of scrap insulation or other pliable materials to fill gaps around attic or basement doors, pipes, ducts, fans, wall joints, electrical wiring, or other protrusions into the attic or basement from a conditioned space. Fireproof materials must be used to plug holes around a damper, fireplace chimney, or flue.

4. Installing a positive shut-off for all fireplaces and fireplace stoves.

5. Duct insulation: a material primarily designed to resist heat flow that is installed on a heating or cooling duct in an unconditioned area of a building.

6. Pipe insulation: a material primarily designed to resist heat flow that is installed on a heating, cooling, or hot water pipe in an unconditioned area of a building.

O. Low income customer. "Low income customer" means a covered utility customer whose household income is below 60 percent of the state median income.

~~K.~~ P. Material standards. "Material standards" means DOE material standards ~~pursuant to 10~~ under Code of Federal Regulations, ~~section~~ title 10, part 456, subparts G and H (1979).

~~L.~~ Q. Measures warranty. "Measures warranty" means a warranty in writing, by the manufacturer of the program measure, that the residential customer for whom the measure is installed, the contractor who installs the measure, and the supplier of the measure shall at a minimum be entitled to obtain, at no charge, appropriate replacement parts and materials for those measures found within one year from the date of installation or purchase to be defective due to materials, manufacture, or design. The warranty ~~shall~~ must also provide that the defect ~~shall~~ must be corrected, within two weeks after it is reported to the manufacturer.

~~M.~~ R. MECS. "MECS" means Minnesota Energy Conservation Service.

S. MECS installation. "MECS installation" means any installation of MECS program measures by a participating contractor or a homeowner who has received a MECS audit.

~~N.~~ T. New customer. "New customer" means a person who first becomes a customer after initial distribution of the program announcement but before January 1, 1985.

~~O.~~ U. Nonregulated utility. "Nonregulated utility" means a public utility whose rates are not within the jurisdiction of the Minnesota Public Utilities Commission's ratemaking authority.

~~P. OCS. Minnesota Office of Consumer Service.~~

~~Q.~~ V. Participating utility. "Participating utility" means a covered utility or a nonregulated utility which voluntarily participates in the Minnesota Energy Conservation Service.

~~R.~~ W. Program announcement. "Program announcement" means the MECS program information bulletin and utility offer of service to each customer.

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~~S.~~ X. Program measures. "Program measures" means all energy conservation measures and renewable resource measures to be included in an MECS audit.

~~T.~~ Y. Regulated utility. "Regulated utility" means a public utility whose rates are within the jursidiction of the Minnesota Public Utilities Commission's ratemaking authority.

~~U.~~ Z. Renewable resource measures. "Renewable resource measures" means the following measures installed in or connected to a residential building:

1. Solar domestic hot water systems (~~DHW~~ SDHW)~~.~~: equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermosiphon hot water heaters.

2. Passive solar space heating and cooling system~~.~~: systems that make efficient use of, or enhance the use of, natural forces, including solar ~~insulation~~ insolation, winds, nighttime coolness, and opportunity to lose heat by radiation to the night sky, to heat or cool living space by the use of conductive, convective, or radiant energy transfer. Passive solar systems include only:

a. Direct gain glazing systems~~.~~: the use of south-facing (+ or −45 degrees of true south) panels of insulated glass, fiberglass, or other similar transparent substances that admit the sun's rays into the living space where the heat is retained. Glazing is either double-paned, or single-paned equipped with movable insulation.

b. Indirect gain systems~~.~~: the use of panels of insulated glass, fiberglass, or other transparent substances that direct the sun's rays onto specially constructed thermal walls, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.

c. Solaria/sunspace systems~~.~~: a structure of glass, fiberglass, or similar transparent material which is attached to the south-facing (+ or −45 degrees of true south) wall of a structure which allows for air circulation to bring heat into the residence, and which is able to be closed off from the residential structure during periods of low solar insolation.

~~d. Window heat gain and/or loss. Those mechanisms which significantly reduce summer heat gain or wintertime heat loss through windows by the use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens, or movable rigid insulation.~~

3. ~~Wind energy devices. Equipment that uses wind energy to produce energy in any form for personal residential purposes.~~

~~4.~~ Replacement solar swimming pool heaters~~.~~: devices which are used solely for the purposes of using the sun energy to heat swimming pool water and which replace a swimming pool heater using electricity, gas, or another fossil fuel.

~~5.~~ 4. Active solar space heating~~.~~: equipment designed to absorb the sun's energy and to use this energy to heat living space by use of mechanically forced energy transfer such as fans or pumps.

~~V.~~ AA. Residential building. "Residential building" means any structure used for residential occupancy including any building ~~containing~~ that contains at least one, but not more than four~~,~~ dwelling units, and~~,~~ that has a system for either heating or cooling living spaces. "Residential building" also includes any building that contains more than four dwelling units, unless the building contains a central heating system, a central cooling system, or both. However, this definition does not include~~:~~ new buildings to which final standards apply under sections 304(a) and 305 of the Energy Conservation and Production Act ~~(42~~, United States Code, ~~section~~ title 42, sections 6801 et seq~~)~~ ~~apply~~.

B.B. Temporary program. "Temporary program" means a plan that exempts one or more utilities from one or more provisions of the Minnesota Energy Conservation Program, in whole or in part, for a specified period, determined by the division.

6 MCAR § 2.2302 Program promotion.

A. Program announcements.

1. Distribution.

a. Each covered utility shall send to all their customers a second program announcement by ~~June 15, 1981, and thereafter at least once every two years until~~ January 1, 1985.

b. Each covered utility shall send a program announcement to each of its new customers within ~~sixty (60)~~ days after the date that the new customer first receives service.

c. Program announcements shall be submitted to the ~~agency~~ division for review and approval one month prior to the date that the utility intends to print the announcement. The ~~agency~~ division shall approve the distribution of program announcements only if~~:~~

~~(1)~~ the criteria of ~~6 MCAR § 2.2302 A.~~2. have been met; and

~~(2)~~ the information contained in the program announcement is presented in simple language.

2. Content.

a. The program announcement shall contain the following elements, at a minimum:

~~(1) A list of all program measures with an estimate of the savings in energy costs, expressed in percentages, which are likely to be produced by each measure in one year.~~

~~(2) A list of all energy conserving practices with an estimate of the savings in energy costs, expressed in percentages, which are likely to be produced by each practice in one year, and a statement that the practices are of low or no cost;~~ Examples of program measures, low-cost measures, and energy conserving practices included in the MECS audit and the annual percentage of savings for each item listed.

~~(3)~~ (2) An offer by the covered utility to provide the following services with a description of each:

(a) a program audit, in accordance with 6 MCAR § 2.2303~~.~~;

(b) installation arrangement services, in accordance with 6 MCAR § 2.2304 B.;

(c) financing arrangement services, in accordance with 6 MCAR § 2.2304 A.;

(d) contractor, lender, and supplier lists in accordance with 6 MCAR § 2.2305; and

(e) post-installation inspection service in accordance with 6 MCAR § 2.2306.

The description of each service ~~shall~~ must include information on how a customer may obtain these services, and the direct cost to the customer of obtaining these services~~;~~.

~~(4)~~ (3) An offer to provide a MECS audit to each new customer upon request ~~a copy of any program audit performed previously on the customer's present residence;~~.

~~(5)~~ (4) The following disclosure: "Because energy savings depend on many factors~~.~~, your cost and savings may vary from the estimates ~~contained in the announcement are based on estimates for typical houses. Your costs and savings will be different if your house is a different size or if your energy using habits are different from those we assumed~~ provided. The energy audit which we offer will provide more specific estimates for your house."~~;~~

~~(6)~~ (5) An explanation of the benefits of applicable federal and state energy tax credits~~;~~.

~~(7)~~ (6) A description of the benefits and eligibility requirements of the Weatherization Assistance Program for Low Income Persons, ~~10~~ Code of Federal Regulations, ~~section~~ title 10, part 440 (1980) including the following statement: "Landlords may be eligible for these benefits under certain circumstances."~~;~~

~~(8)~~ (7) The following statement: "The results of this audit may be used by renters to see if their residence complies with existing state standards for rental property. Call the ~~Minnesota~~ Energy ~~Agency~~ Division at 296-5175 or toll-free 800-652-9747 for more information and what you can do to get your residence brought up to these standards."

(8) The following statement: "The audit is available free to any low-income customer."

(9) An offer by the covered utility to schedule the audit at a time convenient to the customer including during evening hours or on weekends.

(10) A statement that the customer may request that the audit be completed by a certified community group energy auditor if applicable. "Applicable" means that a contract exists between the utility and the community group for the community group to complete audits for the utility in the area in which the customer is located.

(11) A statement clearly indicating that the audit may be requested directly from the program announcement.

b. The program announcement ~~shall~~ may not contain:

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(1) advertising for sale, installation, or financing of any program measure or energy conserving practice by a particular person or company, listed or not; or

(2) information regarding any product which is not a program measure or an energy conserving practice.

c. If a covered utility or participating heating supplier finances the sale or installation of program measures and energy conserving practices, it may describe its financial services.

d. The covered utility or participating heating supplier shall use the calculation procedures in Appendix A for the estimates contained in the program announcement. All estimates ~~shall~~ must be based upon recent prices and appropriate climatological data for the customer's location. The price data will be taken from the survey conducted ~~pursuant to~~ under 6 MCAR § 2.2303 A.~~2.~~3. and 4.

B. Audit offer.

1. Distribution. A covered utility shall send to an eligible customer an audit offer no sooner than 15 days and no longer than 45 days for the date a program announcement is sent to that customer.

Audit offers must be submitted to the division for review and approval one month prior to the date that the utility intends to print the offer. The division shall approve the distribution of audit offers only if the criteria of 2. have been met, and the information contained in the audit offer is presented in simple language.

2. Content. The audit offer must contain the following elements, at a minimum:

(1) a shower flow restrictor and instructions on its use, and a discussion indicating that this is just a sample of the ways to save energy that can be learned from an energy audit;

(2) the following statement: "The audit is available free to any low-income customer.";

(3) an offer by the covered utility to schedule the audit at a time convenient to the customer including during evening hours or on weekends;

(4) a statement indicating to the customer that they can request that the audit be completed by a certified community group energy auditor, if applicable; and

(5) a statement indicating that a free inspection of work completed by a contractor or a homeowner as a result of the MECS audit as described in 6 MCAR § 2.2306 is available upon request.

C. Marketing plan. The following requirements apply to marketing plans:

1. Each utility is responsible for developing and implementing its own plan for marketing MECS. The division need not review or approve this plan unless the criteria in 2. have not been met.

2. The plan must be developed and implemented to achieve the following results for each utility:

a. that a minimum of seven percent of all eligible customers in the seven county metropolitan area who receive natural gas service from a covered utility request an audit each time an audit offer is made to them;

b. that a minimum of five percent of all eligible customers outside of the seven county metropolitan area who receive natural gas service from a covered utility request an audit each time an audit offer is made to them;

c. that a minimum of five percent of all eligible customers in the seven county metropolitan area who receive electricity but not natural gas from the same covered utility request an audit each time an audit offer is made to them;

d. that a minimum of three percent of all eligible customers outside the seven county metropolitan area who receive electricity but not natural gas from the same covered utility request an audit each time an audit offer is made to them.

3. In areas where two or more utilities serve the same customer, a customer who requests an audit from one of the utilities shall not be counted in the total audit offers reported for any other utility under the reporting requirements in 4.

4. Each utility shall send a report to the division by the 15th of each month indicating the total number of audits offered, the total number of audits requested, and total number of audits completed for the previous month.

5. If a utility is not in compliance with 2. for three complete months prior to January 15, April 15, July 15, and October 15 based on the reports filed in 4., the utility shall be required to submit a marketing plan to the division for review and approval. This plan must be submitted within 30 days of the date noncompliance is reported. The marketing plan must include the

following specific steps to achieve the requirements in 2. and an initial implementation date of no longer than 90 days from the date noncompliance is reported.

6. A utility is not required to spend more than $1 per eligible customer to implement the marketing plan required in 5.

7. If a utility fails to meet the goals in 2. after implementing the marketing plan in 5. for four consecutive quarters, the implementation of the marketing plan may be discontinued.

6 MCAR § 2.2303 Energy audits.

A. Validation of audit procedures.

1. Alternative audits. The ~~agency~~ division shall develop a model program audit based on the calculation procedures in Appendix A for use by participating utilities and heating suppliers in the MECS. A participating utility or heating supplier may use an alternative audit if the alternative has been approved by the ~~agency~~ division. The alternative audit will be approved if its results are within 20 percent of the results provided by the MECS audit. To determine this, the ~~agency~~ division shall conduct five field tests of the alternative audit on five representative residences of different sizes and ages. The results of these audits shall be reviewed by the ~~agency~~ division and compared to the results achieved by the MECS audit. If the alternative audit does not meet this test, any necessary changes may be made in the audits procedures and five additional audits may be conducted and reviewed.

2. Corrections and notices. If a subsequent review by the division of a utility's audit calculation procedures determines that they do not fall within a 20 percent range of the results from the MECS audit, the audit calculation procedures or prices must be corrected within 30 days. The division may require the utility to send correction notices to all affected customers.

3. Fuel price information. On a semi-annual basis each covered utility shall survey local fuel prices ~~and prices for materials and installation of program measures~~ for use in audit calculations on a form provided by the ~~agency~~ division. The results ~~shall~~ must be sent to the ~~agency~~ division for verification on the 15th day of January and July, starting on ~~July 15, 1981~~ January 15, 1984.

4. Material and labor costs. On an annual basis each covered utility shall survey prices for materials and installation of program measures for use in audit calculations on a form provided by the division. The results must be sent to the division for verification by July 15, beginning in 1984.

~~3.~~ 5. Subcontracting audits.

a. Participating utilities and heating suppliers may subcontract with any auditor, or any community organization that sponsors an auditor, who has passed the certification exam ~~pursuant to~~ under 6 MCAR § 2.2307, to perform the audits required by these rules. The subcontract may include an idemnification clause concerning liability incurred by the utility from the subcontractor's actions or the audit performed.

b. Whenever possible covered utilities shall, instead of performing the required audits with their own employees, subcontract with local auditors ~~who:~~ or community organizations sponsoring auditors to provide the audit services required by these rules.

~~(1)~~ Only persons who have passed the certification exam ~~pursuant to~~ under 6 MCAR § 2.2307~~;~~ ~~and~~ may perform these audits.

~~(2) have (or whose sponsoring organization has) a demonstrated~~ The community organization or a local auditor must demonstrate a prior community involvement~~,~~ or the capacity to generate customer participation~~,~~ in the area where the audits are to be performed. The criteria used to determine whether a community organization or an auditor ~~(or his or her sponsoring organization)~~ has a demonstrated community involvement shall be whether the person, organization~~,~~ or group has a history of energy or related community service in the area where the audits are to be performed.

Notwithstanding the above, no covered utility ~~shall~~ may be required to enter into a subcontract with a community organization or with an auditor if it reasonably believes that the quality of the community organization's or auditor's work would not be equivalent to what the covered utility could perform or if the charge for performance by the community

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organization or auditor is not competitive with other community organizations or auditors in the area, or comparable areas, with whom the utility has subcontracted, or with the cost of performance by the covered utility itself.

c. A community organization or an auditor proposing to subcontract ~~pursuant to 6 MCAR § 2.2303 A.3.~~ under b. may dispute a covered utility's refusal to subcontract by filing a complaint with the ~~agency~~ division. After reviewing the complaint and receiving comments from both parties, the ~~agency~~ division shall determine whether the refusal was proper under the criteria and requirements of ~~6 MCAR § 2.2303 A.3.~~b.

d. Any customer of a covered utility may request to have an audit performed by any community organization or auditor with whom the covered utility has subcontracted to perform audit services in the area in which the customer lives, ~~pursuant to 6 MCAR § 2.2303 A.3.~~ under b. The covered utility may refuse the request only if~~:~~

~~1.~~ the community organization or the auditor refuses to accept the work~~;~~, or

~~2.~~ the covered utility has reason to believe that the community organization or the auditor would be unable to complete the audit in accordance with the MECS rules or subcontract terms.

B. Scheduling of program audits.

1. Upon prior approval by the ~~agency~~ division, a program audit may be offered ~~in the program announcement~~ by a participating utility or heating supplier on a geographically limited but otherwise nondiscriminating basis. Approval will be granted if the audit offer schedule allows every customer within the respective utility or heating supplier's service area an equal opportunity to receive a program audit, and if the audit offer schedule is consistent with 6 MCAR § 2.2303. In no case ~~shall~~ may an expiration date be attached to a participating utility's audit offer. However, any covered utility which serves a city of the first class and offers audits on a geographic basis in that city must first offer the audits to customers in those neighborhoods that contain the largest number of people below the federal poverty guideline. If two or more covered utilities provide service to the same city of the first class, upon approval by the ~~agency~~ division those utilities may enter into an agreement which provides that only one utility will offer the audits on the above priority basis. This agreement will not relieve either utility from responsibilities of offering audits to all eligible customers.

2. Each covered utility shall ~~provide~~ schedule and complete a program audit ~~to~~ for a customer:

a. within ~~thirty~~ ~~(30)~~ days of the customer's request if the audit offer is made on a geographically limited basis; or

b. within ~~sixty~~ ~~(60)~~ days of the customer's request if the audit offer is not made on a geographically limited basis.

3. Each participating utility and heating supplier shall submit to the ~~agency, 45 days prior to the first offer of a program audit,~~ division for review and approval a schedule which states when program audits will be offered and completed throughout the state. This schedule must be submitted at least 45 days prior to audit offers made after April 9, 1983.

4. Participating utilities and heating suppliers are prohibited from preconditioning a program audit upon the purchase or performance of any other audit.

C. Conducting the audit.

1. Each participating utility and heating supplier shall upon request, provide to each customer a program audit which covers all energy conserving practices, low-cost measures, and all program measures. Prior to beginning the actual inspection phase of the audit, the auditor shall provide a verbal description and explanation of the audit. The auditor shall also request that the customer accompany the auditor during the inspection of the residence. In each program audit, a state certified auditor shall determine which of the energy conserving practices would save energy in the residence, point them out to the customer during the audit inspection when appropriate, and explain and emphasize the importance of ~~such~~ these practices ~~and recommend that they be performed before the installation of any program measure~~. For each low-cost measure the auditor shall inspect the residence to determine its applicability, point it out to the customer during the audit inspection, explain its importance, and provide a written record that shows specifically where an improvement is necessary, typical costs, savings and paybacks, and information describing how to complete the necessary improvements. The auditor shall recommend that the energy conserving practices and low-cost measures be performed before the installation of any program measure. The auditor shall then determine the applicability of each program measure ~~pursuant to~~ under 6 MCAR § 2.2303 D.2. in that residence.

2. The auditor shall estimate energy savings and installation costs of each program measure using the calculation procedures in Appendix A or procedures approved ~~pursuant to~~ under 6 MCAR § 2.2303. Furthermore, the auditor shall perform each of the following:

a. Take actual measurements or inspections of the building shell and of the space heating, space cooling, and water heating equipment~~;~~. This inspection shall serve to determine which measures and practices apply and to assess the existing condition of the house and heating systems.

b. Base economic calculations on the survey conducted ~~pursuant to 6 MCAR § 2.2303 A.2.~~ under A.3. for local fuel prices, and under A.4. for local prices for materials and installation of program measures, and also, include in the calculations typical local climate data for the customer's location~~;~~.

c. Base calculation procedures for active solar domestic hot water and space heating systems on those contained in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition~~; and~~.

d. Base ~~any~~ the cost and savings estimate for any applicable furnace efficiency modification to a gas or oil furnace or boiler on an evaluation of the seasonal efficiency of such furnace or boiler. This seasonal efficiency shall be calculated on an estimated peak (tuned-up) steady state efficiency corrected for cycling losses. This shall be done as follows:

(1) For oil furnaces or boilers, the steady state efficiency ~~shall~~ must be derived by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

The flue gas analysis must be completed during the audit if possible. If it is not possible to complete the flue gas analysis during the audit or if a customer declines the service, a waiver form must be signed by the customer indicating the reason the flue gas analysis was not completed. The division shall develop the waiver form.

(2) For gas furnaces or boilers, the steady state efficiency ~~shall~~ must be derived from manufacturer's design data. If the manufacturer's design data ~~does not exist~~ is not available to the auditor during the audit, then a flue gas analysis~~. as described in 6 MCAR § 2.2303 C.2.d. shall~~ must be done.

3. ~~The auditor shall calculate the energy index for the residence using the procedures in Appendix A.~~

~~4.~~ Each customer shall ~~be required to~~ sign a release form prior to an audit of a furnace which uses as its primary source of energy any fuel other than the fuel source sold by the participating utility or heating supplier which employs the auditor. The release ~~shall~~ must include the following statement:

"Since your home is heated by a source of fuel other than (identify the type of fuel supplier), you must sign this relase form to allow us to audit your furnace. It will allow us to give you estimates of energy savings that may be available from making your heating applicances more efficient."

D. Technical criteria for calculating energy savings.

1. The following R-values ~~shall~~ must be recommended during the program audit and be used during the calculation procedure when there is adequate space to allow for the installation of this insulation. When space is not adequate to permit the addition of the recommended insulation levels, an auditor may recommend the addition of a lower level of insulation. Recommended R-values are:

a. ceiling insulation R-44;

b. (1) wall insulation R-11;

(2) foundation insulation R-11;

c. (1) floor insulation R-19;

(2) rim joist insulation R-19.

2. The following criteria ~~shall~~ must be used to determine if an estimate of cost and savings must be given for the particular program measure: ~~Measure = Criteria~~

a. For the replacement of furnaces or boilers, if the furnace is five ~~(5)~~ years or older and has a seasonal efficiency of less than 80 percent.

b. For flue opening modifications, if the furnace combustion air is taken from a conditioned space.

c. ~~Replacement central air conditioner—The building has a central air conditioner that is five (5) years or older.~~

~~d.~~ For ceiling insulation, if the present level of ceiling insulation is R-30 or less.

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~~c.~~ d. For wall insulation, if there is no insulation in a substantial portion of the exterior walls and the building is not a ~~mobile~~ manufactured home.

~~f.~~ e. For floor insulation~~.~~

~~(1)~~ ~~Floor~~, if there is no insulation in the floor over an unconditioned space.

~~(2)~~ f. For rim joist insulation, if the rim joist area is accessible and not filled or partially filled with concrete.

g. For water heater insulation, if the remaining useful life of the heater appears to be three years or greater ~~and~~, space is available around the water heater to install insulation, the water heater does not have a vent damper on the flue, and the manufacturer of the water heater does not recommend against adding additional insulation.

h. ~~Electric load management devices—The electric utility offers a residential rate which reflects any differences in the utility cost of service between peak and off peak periods~~ For storm windows, if there is a window opening that does not face an enclosed unheated space and which only has a single pane of glass covering it.

i. For window insulation, if no insulation covers the window, window is not in an unconditioned space, and the windows have no more than two layers of glass.

j. For storm doors, if an uninsulated primary door opens directly to the outside or the primary door has an R-value of less than 2.

k. For a water heater vent damper, if the vent damper is recommended for a furnace and the two appliances share a common flue.

~~i.~~ l. For a clock thermostat, if the residence has a thermostat or the existing furnace or central air conditioner is compatible with a clock thermostat.

~~j.~~ m. For a solar domestic hot water system, if a site exists on or near the residence, which is free of major obstruction to solar radiation.

~~k.~~ n. For passive solar direct or indirect gain glazing systems, if the living space of the residence has either a south facing (+ or −45 degrees of true south) wall or an integral south facing (+ or −45 degrees of true south) roof, which is free of a major obstruction to solar radiation.

~~l. Heat reflecting and heat absorbing window or door material—The affected rooms of the residence are air conditioned and the cooling degree days for the region exceed 700.~~

~~m.~~ o. For passive solar solaria/sunspace systems, if the living space of the residence has a south-facing ground level wall~~,~~ which is free of major obstruction to solar radiation.

~~n. Passive solar window heat gain retardants—The living space of the residence has south facing (+ or −45 degrees of true south) window that is not shaded from summer sunshine.~~

~~o. Wind energy systems. The site has an estimated wind speed of greater than 10 mph and there is sufficient unrestricted access to the wind.~~

p. For active solar space heating, if a site exists on or near the residence which is free of major ~~construction~~ obstruction to solar radiation.

3. Every program audit addressing solar domestic hot water and active solar space heating systems ~~shall~~ must include the following information:

a. the square feet of the solar collector;

b. the solar collector characteristics, including glazing materials and other solar collector materials;

c. any storage system needed, including the capacity of storage;

d. any freeze protection needed;

e. the estimated percent of the water heating load to be met by solar energy;

f. any physical connections needed with existing heating system;

g. any site preparation needed; and

h. if the results are based on a simulation, the following disclosure or its equivalent:

"The energy cost savings estimates you receive are based on systems which may be different from the ones you purchase. Also, these estimates were not determined using actual conditions but by using simulated measurements. Therefore, the cost savings we have estimated may be different from the savings which actually occur."

4. Every program audit addressing passive solar space heating systems ~~shall~~ must include the following information:

a. a general description and an illustration of the system;

b. the estimated percent of the maximum heating requirements of the residence that could be met by the system;

c. the approximate dimensions of the system;

d. the method employed by the system to store heat, including the heat capacity for heat storage; and

e. the disclosure provided in ~~6 MCAR § 2.2303~~ D.3.h.

~~5. Every program audit addressing wind energy device shall include the following information:~~

~~a. Installation cost estimates, based on the installation costs of a commercially available device with kilowatt ratings appropriate to the level of electricity consumed in the customer's residence;~~

~~b. The auditor's estimate of the average windspeed at the residence based on data available at the nearest wind measurement station;~~

~~c. The specifications of the device under consideration; and~~

~~d. Estimates of energy cost savings, based on average yearly wind speeds and the specification of the selected wind device.~~

E. Presentation of audit results.

1. Upon completion of the program audit the auditor shall provide all the following information on-site, in person, verbally, and in writing to each customer:

a. An estimate of the total cost (materials and labor) of installation by a contractor as determined in the price survey under A.4. expressed as an average cost or in a range of dollars, with a ~~twenty~~ (maximum range of 20) percent ~~maximum range, of~~ from the average for each applicable program measure addressed in the program audit~~;~~. However, the auditor may provide fact sheets that describe and show typical costs for active solar space heating and passive solar systems.

b. An estimate of the total cost determined by the price survey in A.4. of installation by the customer expressed as an average cost or in a range of dollars, with a ~~twenty (20) percent~~ maximum range~~,~~ of 20 percent from the average for each applicable program measure, addressed in the program audit. However, the auditor shall not provide an estimate to a customer of the cost of installation by the customer of ~~replacement central air conditioners,~~ wall insulation~~,~~ or furnace efficiency modifications~~, devices associated with load management techniques, or wind energy devices;~~. The auditor may provide fact sheets that describe and show typical costs for active solar space heating and passive solar systems.

c. An estimate of the savings in energy costs expressed as an average cost or in a range of dollars, with a ~~twenty~~ (maximum range of 20) percent ~~maximum range,~~ from the average which occur during the first year from installation of each applicable program measures addressed by the program audit~~;~~.

d. An estimate of the payback period, measured in years, for the cost savings of each of the measures installed individually~~;~~.

~~f.~~ e. The following disclosure:

"The procedures used to make these estimates are consistent with the Minnesota Department of Energy ~~Agency~~ and Economic Development criteria for residential energy audits. However, the actual installation costs you incur and energy savings you realize from installing these measures may be different from the estimates contained in this audit report. Although the estimates are based on measurements of your house, they are also based on assumptions which may not be totally correct for your household."~~;~~

~~g. An estimate of the annual normal maintenance costs, if any, of each applicable program measure; and~~

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~~h.~~ f. Sample calculations of the effect of the federal and state energy tax incentives on the cost to the customer of installing one applicable energy conservation program measure and one applicable renewable resource program measure.

2. Upon completion of the requirements in 1., the auditor shall provide verbal consultation to the customer that includes but is not limited to the following:

a. a description and discussion of special problems and their location that are identified during the audit inspection and recommendations for correcting these problems;

b. a discussion of the summary of the information collected during the audit inspection and results of energy and cost calculations to assist the customer to develop a plan of action to complete the appropriate energy savings improvements;

c. a discussion of how to complete the recommended program measures, low-cost measures, or energy conservation practices if so requested by the customer; and

d. an offer to answer any energy conservation related questions from the customers.

3. The auditor shall also ~~present~~ provide the following information on site, in person, verbally, and in writing to the customer during, or upon completion of, the program audit:

a. An explanation of the arrangement services, post-installation inspection requirement and consumer grievance procedures as established in 6 MCAR §§ 2.2304, 2.2306, and 2.2308, with a brief description of how the customer can qualify for and use ~~such~~ these services;

b. An offer to provide a copy of the most recent master list of contractors, lenders, and suppliers for the region, as issued by the ~~agency~~ division;

c. An explanation of the benefits of and eligibility requirements for the Weatherization Assistance Program for Low Income Person, ~~10~~ Code of Federal Regulations, ~~section~~ title 10, part 440 (1980);

d. If the audit is of a rental property, a separate list of those improvements necessary to bring the residence in compliance with Minnesota Statutes, section ~~116H.129~~ 116J.27, subdivision 3 ~~(1978)~~ and a statement describing remedies available to tenants for violations of those standards. If the presentation is not made to the tenant, the auditor shall give or mail a copy of this information to the tenant.

e. A disclosure of the availability of a free inspection of any attic insulation, wall insulation, solar domestic water heater, or furnace modification that is completed as a result of the audit under 6 MCAR § 2.2306 B.

~~3.~~ 4. If the eligible customer is not at his or her residence at the time scheduled for presentation of the audit results or otherwise declines an in-person presentation, the auditor is relieved of any obligation to deliver the results in person. In this case, the results ~~shall~~ must be mailed to the customer.

F. Prohibitions.

1. An auditor shall not recommend or discuss any supplier, contractor, or lender to any customer. The auditor may state whether the participating utility or heating supplier by whom he or she is employed installs or finances the sale or installation of the program measures, but shall not recommend that service.

2. The auditor shall not exclude any applicable program measures in the presentation of the audit to the customer.

3. An auditor shall not estimate or discuss with the customer the costs of purchasing or installing or the resulting energy ~~cost~~ or dollar savings ~~of installing~~ for any product which is not defined as an energy conserving practice, low-cost measure, or a program measure except for wood stove installation and super-insulating an existing home.

4. The auditor shall not recommend fuel switching.

G. Required disclosure. The auditor shall provide the customer with a written statement of any substantial interest which the auditor or the auditor's employer has, directly or indirectly, in the sale or installation of any program measure.

6 MCAR § 2.2304 Arrangement services.

A. Financing arrangement service. Each participating utility and heating supplier shall provide an arrangement service for financing the supply or installation of any program measure, upon request of a customer. This financing arrangement service shall consist of all the following:

1. ~~Providing~~ offering to provide the customer ~~with~~ the most recent master list of lenders, and ~~an agency compiled~~ a list compiled by the division of other financial programs offered by federal, state, or local governments, and explaining these financing programs to the customer;

2. ~~Providing~~ offering to provide the customer ~~with~~ a standard credit application ~~and offering to assist the customer with a standard credit application~~; and

3. providing a service in order to further assist and answer any additional questions of the customer.

B. Installation arrangement service. Each covered utility shall provide an arrangement service as follows for the installation of any program measure, upon request of a customer~~.~~:

1. For audited homes this installation arrangement service ~~shall~~ must consist of:

a. ~~Providing a choice to~~ offering to provide the customer ~~of either~~ the most recent master list of contractors ~~willing to install measures within the price range that the auditor specifies. or providing the most recent master list of contractors; and~~

b. ~~All the following:~~

~~(1)~~ ~~Providing~~ offering to provide up to three ~~(3)~~ standard bid forms ~~per measure recommended by the auditor and providing the customer with a choice of having the form filled in by either the customer or the auditor.~~ and assisting the customer in filling out the forms if so requested;

~~(2)~~ c. supplying the customer with written information on recommended measures to be installed; and

~~(3)~~ d. providing a service in order to further assist and answer any additional questions of the customer regarding the arrangement process or the actual bids, when received.

2. For nonaudited homes, this installation arrangement service ~~shall~~ must consist of all the following:

a. ~~Providing~~ offering to provide the customer the master list of contractors;

b. ~~Providing~~ offering to provide up to three ~~(3)~~ standard bid forms to the customer;

c. ~~An offer~~ offering to supply the customer with written information on various measures; and

d. providing a service in order to further assist and answer any additional questions of the customer regarding the arrangement process or actual bids, when received.

C. Response time for services. The participating utilities and heating suppliers shall provide the services described in ~~6 MCAR § 2.2304~~ A. and B. at the time of the energy audit, for a customer requesting an energy audit. If an audit is not performed, the service ~~shall~~ must be provided within ~~twenty~~ ~~(20)~~ days of a customer's request.

D. Prohibitions.

1. Participating utilities, heating suppliers and audit subcontractors shall not recommend any particular contractor, lender, supplier, or program measure although participating utilities, heating suppliers, and audit subcontractors may inform customers of their own installation and supply services if they are on the most recent master list.

2. Participating utilities and heating suppliers shall not arrange for financing or installation with any contractor, lender, or supplier not on the most recent master list.

3. Participating utilities and heating suppliers shall not provide arrangement services for measures which are not approved program measures.

E. Standardized bid forms. The ~~agency~~ division shall develop a standardized bid form for use ~~pursuant to 6 MCAR § 2.2304. This form shall be the only one used by the participating utilities and heating suppliers for arranging installation under MECS~~ under this rule.

6 MCAR § 2.2305 Master list of contractors, lenders, and suppliers.

A. Issuance of lists.

1. The ~~agency~~ division shall prepare and maintain the master list of the MECS suppliers, contractors, and lenders. The ~~agency~~ division shall provide notice through trade organizations to suppliers, contractors, and lenders of the procedures for inclusion on the master list for the MECS program.

2. Application forms and listing criteria for businesses wishing to be on the master list shall be available from the ~~agency~~

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division, participating utilities, and heating suppliers. These forms and listing criteria shall be made available at the time of publication of notice of procedures for inclusion on the master list.

3. Within ~~sixty (60)~~ days following the receipt of an application for inclusion on the master list, the ~~agency~~ division shall evaluate the application ~~pursuant to 6 MCAR § 2.2305~~ under B. and either place the business on the master list or inform the business, in writing, of the reasons for its exclusion from the list.

4. Every ~~thirty (30)~~ 90 days after the publication of the first master list, the ~~agency~~ division shall issue revisions to the master list which include any additions, deletions, or information changes. These revisions shall be issued to all participating utilities and heating suppliers. Every ~~six (6) months~~ year, a new master list ~~shall~~ must be published.

B. Eligibility requirements.

1. To be eligible for listing, contractors, lenders, and suppliers ~~must~~ shall enter into a written agreement as follows with the ~~agency.~~ division:

a. Contractors shall agree in writing with the ~~agency~~ division to meet all of the following requirements for each arranged installation:

(1) To comply with the applicable DOE installation standards found in ~~10~~ Code of Federal Regulations, ~~section~~ title 10, part 456, subparts G~~,~~ and I and to install only measures that are labeled as meeting DOE material standards~~;~~.

(2) To install only measures that are covered by the measures warranty (except for caulking and weatherstripping)~~;~~.

(3) To enter into a written contract with each customer detailing the job to be performed, its costs, and a statement that the installation will be in compliance with all applicable DOE material and installation standards. This contract ~~shall~~ must be in simple language~~;~~.

(4) To warrant in the contract that any defect in design or manufacture of materials or installation found within one year from the date of installation shall be remedied without charge and within two ~~(2)~~ weeks, except that where the defect is in a manufactured item a remedy shall be within two ~~(2)~~ weeks after the manufactured item is available to the contractor or supplier~~;~~.

(5) To maintain comprehensive general liability insurance covering as follows:

(a) bodily injury: $100,000 per person, $300,000 per occurrence;

(b) Property damage: $50,000 each occurrence, $100, 000 aggregate~~; and~~.

(6) To comply with all applicable federal, state, and local laws~~;~~.

(7) To participate in good faith in the conciliation conference when a complaint is made by a customer~~;~~.

(8) To hold harmless from liability the participating utility or heating supplier in any contract between contractor and customer when the contractor is not a participating utility or a heating supplier. However, this hold harmless agreement shall apply only where any loss occurs due to the negligence of the contractor or supplier and/or materials supplied by the contractor or supplier and shall not apply to any loss resulting from the negligence of or the materials supplied by the participating utility or heating supplier~~; and~~.

~~(9) Agree to notify the MECS inspection agency at the completion of the installation pursuant to 6 MCAR § 2.2306.~~

b. Suppliers shall agree in writing with the ~~agency~~ division to meet the following requirements for each customer:

(1) to supply program measures which meet applicable DOE material standards;

(2) to provide, at a minimum, to any person who purchases a measure from the supplier, a warranty in writing that the person shall be entitled to obtain, within a two-week period after notice by the customer to the supplier and at no charge, appropriate replacement parts or materials for those measures found to be defective within one year from the date of purchase due to a defect in materials, manufacture, or deisgn~~.~~;

(3) to comply with all applicable federal, state, and local laws;

(4) to have a method for informing customers that the supplier carries products which are program measures, that these products have a measures warranty and are labeled as meeting the DOE material standards;

(5) to participate in good faith in the conciliation conference when a complaint is made by a customer.

c. Lenders shall agree in writing to meet all of the following requiremetns for each arranged financing~~.~~:

(1) Not to take a security interest in real property that is used as a residence unless the customer acknowledges in writing that he or she is aware of the consequence of default on the loan~~;~~.

(2) To permit a rebate on unearned finance charges and impose no penalties if a customer prepays a loan (either voluntarily or as a result of default). When prepayment is the result of default, the rebate shall be computed from the day of acceleration~~;~~.

(3) To comply with all applicable federal, state, and local laws~~;~~ ~~and~~.

(4) To participate in good faith in the conciliation conference when a complaint is made by a customer.

2. Disclosure of unresolved complaints. ~~All business must~~ A business shall inform the ~~agency~~ division in ~~their~~ its application for listing of the existence of any unresolved complaints against that business on file with the Consumer Division of the Minnesota Attorney General's Office ~~or the Office of Consumer Services~~. Failure to report this information will result in exclusion from the master list. The existence of three or more unresolved complaints against an applicant on file with the above agencies involving, but not limited to, the following subject matter ~~shall~~ will result in exclusion from the master list~~:~~:

a. misrepresentation of materials used in installation;

b. improper installation of materials, based on manufacturer's or other standard installation procedure; or

c. false or misleading claims concerning energy savings to be produced by the measure.

C. Removal from the master list.

~~1. Any~~ A supplier, lender, or contractor shall be removed from the master list for a violation of ~~either the eligibility requirements in 6 MCAR § 2.2305 B. or~~ the contract between the lender, contractor, or supplier and agency as required in ~~the same section~~ B.

~~a. Violations shall be reported to the agency by the post installation inspectors and the mediators of consumer complaints. The post installation inspectors and mediators shall also report to the agency whether the violation has been corrected or not, two weeks after the initial report of this violation.~~

~~b. Within one (1) week after the agency receives a report of violation, the agency shall send written notice to the contractor, lender, or supplier notifying the business of the reported violation. The contractor, lender, and supplier shall correct the violation within two weeks of mailing of the notice or within one week, send to the agency a written explanation as to why it is not a violation. The agency shall review the letter and the report to the inspector and will notify the contractor of its decision.~~

~~c. If the contractor, lender or supplier fails to correct the violation within two weeks after it has received notice of the agency's decision that a violation exists, it shall be temporarily delisted. This temporary delisting shall be in effect for thirty (30) days.~~ If the division is notified by the Consumer Service Division of the Attorney General's Office that the lender, contractor, or supplier has failed to meet the criteria in 6 MCAR § 2.2308 A.4., the division shall remove the business's name from the master list. The ~~agency~~ division shall then send a ~~second~~ notice to the contractor, lender, or supplier explaining the ~~temporary and permanent~~ delisting procedures ~~and invite a written reponse from the business prior to the end of the thirty (30) day period. A copy of this notice shall be sent to all participating utilities and heating suppliers. If the violation concerns a contractor, the contractor may see the records of the reported violation. If no resolution is made within thirty (30) days of mailing of the notice of the contractor, lender or supplier will be permanently delisted.~~

~~2. Any~~ A supplier, lender, or contractor ~~permanently~~ who is removed from the master list shall not be relisted for a least six ~~(6)~~ months after being ~~so~~ delisted. To be relisted, all violations under the program must be corrected and inspected and all other listing requirements must be met.

3. A supplier or contractor shall be removed from the master list for failing to complete and return to the division the annual price survey under 6 MCAR § 2.2303 A.4.

6 MCAR § 2.2306 Post-installation inspections.

A. Inspection procedures.

1. Each covered utility shall arrange to conduct the post-installation inspections of ~~its customers required~~ the measures

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specified in this ~~section~~ rule. By ~~June 15, 1981~~ February 1, 1984, each covered utility shall submit to the ~~agency~~ division, for approval, its plans for conducting the inspections and for coordinating these inspections with the ~~agency~~ division and the ~~Office of~~ Consumer Services Division of the Attorney General's Office.

2. No person shall conduct or perform an inspection unless he or she has been qualified by the ~~agency~~ division, ~~pursuant to~~ under 6 MCAR § 2.2307 C.

3. No inspector shall conduct an inspection if he or she has financial interest in the contractor whose work is to be inspected.

4. During the inspection, the inspector shall determine whether:

~~a.~~ the installation conforms with DOE installation standards;

~~b.~~ and, in the case of a consumer complaint, whether the complaint is justified.

5. An inspection ~~report~~ form shall be developed by the ~~agency~~ division. The inspector shall use this ~~report~~ form to certify that the installation meets all DOE installation standards. ~~Within five (5) days of the inspection~~

If the work was done by a contractor, the inspector shall report to the customer~~,~~ and the contractor ~~and the agency~~ within 14 days of the inspection whether or not any violations of the installation standards were found. If the ~~agency~~ post-installation inspector determines that a violation exists, the contractor shall correct any violation within two ~~(2)~~ weeks of receipt of the report ~~and shall arrange for a reinspection of the installation within one week after correction.~~ If a violation is not corrected within 14 days from the date the report is received by the contractor, it is the responsibility of the customer to pursue further action against the contractor through the Consumer Services Division of the Attorney General's Office.

If the work was done by a homeowner, the inspector shall report to the homeowner within 14 days of the inspection whether or not the installation meets DOE installation standards.

B. ~~Mandatory~~ Inspections.

1. All MECS installations of the following ~~arranged~~ measures shall be inspected within ~~one week of installation~~ two weeks of a customer's request:

~~1.~~ flue opening modifications~~;~~,

~~2.~~ electric or mechanical ignition systems;

~~3. Wind energy devices;~~,

~~4.~~ solar domestic hot water systems~~;~~, and

~~5.~~ active solar space heating systems.

MECS installations of wall, attic, and knee wall or slant wall insulation must be inspected with an infrared remote sensing device and a fan door. These inspections must occur within 60 days of the date the infrared remote sensing device and the fan door can accurately measure existing conditions.

~~C. Random inspections.~~

~~1. Four of the first ten arranged installations made by each contractor of each of the following program measures shall be inspected:~~

~~a. Ceiling insulation;~~

~~b. Floor insulation; and~~

~~c. Wall insulation.~~

~~2. Ten percent of all utility arranged installations of each program measure listed in 6 MCAR § 2.2306 C.1. shall be inspected each year. The inspections required in 6 MCAR § 2.2306 C.1. shall count toward the fulfillment of this requirement.~~

~~3. At least one inspection shall be conducted each year of the arranged installations of the following measures for each contractor on the master list:~~

~~a. Ceiling insulation;~~

~~b. Floor insulation;~~

~~c. Wall insulation;~~

~~d. Water heater insulation;~~

~~e. Storm or thermal windows;~~

~~f. Storm or thermal doors;~~

~~g. Replacement burner (oil); and~~

~~h. Replacement solar swimming pool heaters.~~

~~Before April 1, 1982, the utility, or its designated inspection agency, shall determine whether oil listed contractors have been inspected at least once by that date. Any contractor whose work has not been inspected by that time shall then be inspected. An additional inspection shall be required for any contractor whose installation has been found in violation of these rules. This review shall be done annually thereafter.~~

~~D. Inspections as a result of consumer complaints.~~

~~1. With two (2) weeks of the receipt by the Office of Consumer Services of any customer complaint concerning arranged installation of the measures listed in 6 MCAR § 2.2306 B. and C.3., an inspection shall be conducted to determine the existence of any violations of these rules. Within five (5) days after the inspection, a copy of the inspection report shall be sent to the Office of Consumer Services.~~

~~2. All inspections conducted as a result of a consumer complaint shall be counted toward the fulfillment of the inspection requirement in 6 MCAR § 2.2306 C.1., 2. and 3.~~

6 MCAR § 2.2307 Qualification procedures for auditors and inspectors.

A. Prohibition of discrimination. No person shall be denied the right to become an auditor or inspector on the basis of race, religion, nationality, creed, sex, age, or sexual preference.

B. Auditors.

1. Training.

a. No person shall be eligible for certification ~~pursuant to 6 MCAR § 2.2307~~ under B.2.~~,~~ unless he or she has first participated in a training course which has been approved by the ~~agency~~ division and which covers the subject matter tested in the auditors' certification examination.

b. Any present auditor with six ~~(6)~~ months experience who has completed ~~twenty-five~~ (25) audits, or any registered engineer or any architect shall be permitted to take ~~an agency approved~~ an orientation session approved by the division, in lieu of the requirements of ~~6 MCAR § 2.2307~~ B.1.a.

c. ~~Two months prior to the first public offer of the audit, the participating utility and heating supplier shall submit to the agency~~ By February 1, 1984, and every year thereafter throughout the life of the program, a utility shall submit for approval a plan to develop and administer a program of in-service training for the continuing education of certified auditors. The ~~agency~~ division shall approve a plan if it reviews and updates the material listed in ~~6 MCAR § 2.2307 B.~~ 2.b., provides the auditors with additional technical information and the program measures and audit techniques, and reviews the communications skills needed for the interaction with the customer.

2. Certification.

a. No person shall participate in the MECS program as an auditor, unless he or she has first passed a certification examination conducted by the ~~agency~~ division and has accompanied a certified MECS auditor on at least ten MECS audits.

b. The certification examination ~~shall~~ must test for the following qualifications:

(1) a general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;

(2) a general understanding of residential construction terminology and components;

(3) a general knowledge of the operation of the heating and cooling systems used in residential buildings, including the need and provision for combustion air;

(4) a general knowledge of the different types of each applicable program measure, of the advantages and disadvantages and applications of each, and of the DOE installation standards;

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(5) the capability to conduct the MECS energy audit including:

(a) a working knowledge of the energy conserving practices defined in this plan~~,~~;

(b) the ability to determine the applicability of each of the program measures~~,~~; and

(c) a proficiency in the auditing procedures for each applicable program measure established in 6 MCAR § 2.2303~~.~~;

(6) a working ability to calculate the steady state efficiency of furnaces or boilers;

(7) an understanding of the nature of solar energy and its residential applications including~~:~~

~~(a)~~ ~~Insulation~~ insolation,

~~(b)~~ shading,

~~(c)~~ heat capture and transport, and

~~(d)~~ heat transfer for hot water; and

(8) ~~An understanding of the nature of wind energy and its residential applications including:~~

~~(a) Wind availability,~~

~~(b) Effects of obstruction,~~

~~(c) Wind capture,~~

~~(d) Power generation, and~~

~~(e) Interfaces with residential and utility power line and~~

~~(9)~~ a working knowledge of building and fire codes related to the installation and safety of wood burning appliances.

c. These examinations ~~shall~~ must be conducted by the ~~agency~~ division and offered at the following times;

(1) within two ~~(2)~~ days after the completion of each state-sponsored training course or orientation session~~,~~; or

(2) once a month, until February 1982, with a minimum of two examinations per year afterward.

d. Certification ~~shall be~~ is valid for one year.

e. After one year, each auditor ~~must~~ shall be recertified. Recertification procedures ~~shall be~~ are as follows:

(1) One month prior to the date of certificate expiration, the auditor shall attend a recertification course, as required by the ~~agency~~ division. Attendance in this course ~~shall recertify~~ recertifies the auditor for the next year. The recertification training course shall be no more than three days in any one year.

(2) The recertification course requirement for auditors shall be eliminated for any particular year, if the ~~agency~~ division determines that no changes were made in the MECS program that year. Certification shall then be automatically renewed.

(3) This recertification shall occur annually, for the life of the program.

f. Any person who is certified to conduct residential conservation service audits in another state ~~shall~~ is not ~~be~~ required to take the training course established in ~~6 MCAR § 2.2307 B.~~1., but ~~shall be~~ is required to pass the Minnesota certification examination.

C. Inspectors.

1. ~~Qualifications to conduct random inspections.~~

~~a. No person shall participate in the MECS program as a general inspector unless he or she has been qualified. To become qualified each person must first take a training course which has been approved by the agency.~~

~~b. The training course shall cover the following subject matter~~

~~(1) The measures listed in 6 MCAR § 2.2306 C.3.;~~

~~(2) Methodology to evaluate whether the installation of a measure conforms to DOE installation standards;~~

~~(3) The MECS recommended standards for R values for each insulation measure, pursuant to 6 MCAR § 2.2303 D.1.~~

~~c. Each covered utility shall submit to the agency for approval a plan for the training of general inspectors, as required in 6 MCAR § 2.2307 C.1.a, by June 15, 1981. The agency shall approve a plan if it ensures coverage of the subject matter pursuant to 6 MCAR § 2.2307 C.1.b.~~

~~d. Each covered utility shall notify the agency of each person qualified as a general inspector within two weeks after that person has been qualified.~~

~~2. Qualifications to conduct mandatory inspections.~~

~~a.~~ No person ~~shall~~ may participate in the MECS program as a specialized inspector unless he or she has been qualified. To become qualified each person ~~must~~ shall first take training courses which have been approved by the ~~agency~~ division. Each person shall only be qualified to inspect those measures for which that person has been trained.

~~b.~~ 2. The training courses ~~shall~~ must cover:

~~(1)~~ the following subject matter concerning flue opening modifications and electrical or mechanical ignition systems and oil burner modifications:

~~(a)~~ a. applicable state and federal codes and regulations;

~~(b)~~ b. an understanding of gas and oil appliances used in residential buildings, including basic system requirements, components, and operation, and an understanding of potential malfunctions of gas and oil appliances;

~~(c)~~ c. an understanding of gas appliance controls and safety controls, including automatic gas valves, limit switches, and thermostats;

~~(d)~~ d. an understanding of basic furnace and boiler circuitry, including electrical components, and the use of appropriate meters for testing gas appliance circuitry;

~~(e)~~ e. an understanding of the purpose, general structure, and operational systems of vent dampers including the advantages and disadvantages of each type; and an ability to service and install electrical, mechanical, and thermal vent dampers;

~~(f)~~ f. an understanding of the purpose, basic system requirements and components, and operation of electrical or mechanical ignition systems; an ability to service and install the system, an understanding of schematic diagrams and potential malfunctions of the system;

~~(g)~~ g. an understanding of the types of vents, draft diverters, and heat transfer components; an understanding of venting theory including ventilation air, dilution air, vent sizing, and venting installation procedures; and an ability to perform leak and spillage checks, and to use instrumentation to measure carbon monoxide and carbon dioxide emissions from gas appliances;

~~(h)~~ h. an understanding of proper combustion and proper flame characteristics and gas and oil piping procedures; and

~~(i)~~ i. an understanding of the methodology to evaluate whether the installation of the measures conform with DOE installation standards.

~~(2) The following subject matter concerning wind energy devices:~~

~~(a) An understanding of the structural characteristics of wind and energy devices;~~

~~(b) An understanding of national and local codes governing the electrical interconnection between the wind energy device and the residential and/or utility electrical system; and~~

~~(c) Methodology to evaluate whether the installation of a wind energy device conforms with DOE installation standards.~~

3. The training courses must cover the following subject matter concerning the use of an infrared remote sensing device and a fan door:

a. an understanding of how to properly set up the fan door and prepare the house to be pressurized;

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b. an understanding of where to look for and how to identify bypasses in attics, ceilings, walls, and floors;

c. an understanding of the steps to correct these bypasses and the materials used;

d. an understanding of common insulating materials and their properties;

e. an understanding of building heat loss and the differences between heat loss through conduction and infiltration;

f. an understanding of how to interpret the images seen on an infrared remote sensing device;

g. an understanding of the conditions necessary to take accurate readings with an infrared remote sensing device; and

h. an understanding of the structural components in a house and how to identify these when using an infrared remote sensing device.

~~(3)~~ 4. The training courses must cover the following subject matter concerning solar domestic hot water and active solar space heating systems:

~~(a)~~ a. the residential construction methods employed in the region and the characteristics of structures that would preclude a safe and enduring solar installation;

~~(b)~~ b. the applicable provisions of the HUD (Intermediate Minimum Property Standards Supplement), Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition~~.~~;

~~(c)~~ c. the design, operation, installation, and degradation of residential hot water and heating systems with which the solar devices will interconnect; ~~and~~

~~(d)~~ d. the connection of the solar devices into the existing residential systems, including testing for satisfactory performance of the solar devices and the modified system, according to the requirements of the HUD (Intermediate Minimum Property Standards Supplement), Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition~~.~~; and

~~(e)~~ e. methodology to evaluate whether the installation of a solar domestic hot water or active solar space heating system conforms with DOE installation standards.

~~e.~~ 5. Each covered utility shall submit to the ~~agency~~ division for approval a plan for the training of specialized inspectors as required in ~~6 MCAR § 2.2307 C.2.a. by June 15, 1981~~ 1. by February 1, 1984. The ~~agency~~ division shall approve a plan if it ensures coverage of the subject matter ~~pursuant to 6 MCAR § 2.2307 C~~ under 2.

~~d.~~ 6. Each covered utility shall notify the ~~agency~~ division of each person qualified as a specialized inspector~~,~~ within two weeks after that person has been qualified.

6 MCAR § 2.2308 Consumer grievance procedures.

A. Conciliation conference.

1. ~~OCS shall be~~ The Consumer Services Division of the Attorney General's Office is responsible for the mediation of customer complaints against lenders, suppliers, contractors, and participating utilities and heating suppliers which are acting as lenders, suppliers, or contractors under the MECS program.

2. Before utilizing the ~~OCS~~ Consumer Services Division mediation service, customers shall be directed by the participating utilities and heating suppliers or ~~OCS~~ Consumer Services Division to first bring their complaint to the attention of the contractor, supplier, lender, or participating utility or heating supplier which is acting as a lender, supplier, or contractor.

3. Within ~~three~~ five working days of receipt of a written MECS customer complaint, ~~an OCS~~ a Consumer Services Division mediator will contact the customer and the party complained against to ascertain their positions in regard to the complaint. If necessary, the ~~OCS~~ mediator shall conduct a conciliation conference between the parties in person or by phone.

4. ~~OCS~~ The Consumer Services Division shall report to the ~~agency,~~ division the name of any lender, supplier, or contractor ~~which,~~ on the master list who after two weeks notice from ~~OCS~~ the Consumer Services Division has failed:

a. to respond to attempts to contact it; ~~or~~

b. to actively participate in good faith in the mediation process within 30 days of initial contact; or

c. to correct program violations or take remedial measures agreed to in mediation within two ~~(2)~~ weeks after agreement.

B. Annual report. The ~~Office of~~ Consumer Services Division shall submit to the ~~agency~~ division by May 15 each year, up to and including May 15, 1986, a report containing the following information for the ~~twelve (12)~~-month period ending the preceding April:

1. the number and nature of complaints against suppliers, contractors, and lenders which have been handled through the concilation conference; and

2. the number and function of employees within ~~OCS~~ the Consumer Services Division assigned to the MECS program.

6 MCAR § 2.2309 Customer payments.

A. Customer billing.

~~1.~~ Each covered utility and heating supplier, when billing the customer for any costs it incurred under the MECS, including arranged loans, shall identify and list the charges separately on the billing for the charges. The customer shall be allowed to include payment for those charges with payment for the utility bill.

~~2.~~ When receiving a payment from a customer that includes payment for utility service or fuel and payment for any MECS service, the covered utility and heating supplier shall credit the payment to utility service or fuel first, and to credit the remainder to MECS program charges, unless the customer specifies otherwise.

B. Loan payments.

~~1.~~ If the lender agrees, a loan arranged by a covered utility ~~pursuant to~~ under 6 MCAR § 2.2304 A. may be repaid by the customer as part of the periodic utility bill. The utility may recover from the lender the cost incurred by the utility in carrying out this repayment.

~~2.~~ If the lender agrees, any loan for the purchase or installation of program measures made or arranged by a heating supplier shall be subject to the following requirements:

~~a.~~ 1. The heating supplier shall allow the customer to repay the loan over a period of not less than three years, unless the customer chooses a shorter repayment schedule. The heating supplier may impose a minimum periodic payment of ~~five dollars ($5)~~.

~~b.~~ 2. A lump-sum payment of outstanding principal and interest may be required by the lender upon default in payment by the customer.

~~c.~~ 3. No penalty ~~shall~~ may be imposed by a heating supplier or a lender for payment of all or any portion of an outstanding loan prior to the date that such payment would be due.

C. Termination of service. No participating utility or heating supplier ~~shall~~ may terminate or restrict utility or fuel service upon customer default or nonpayment of any MECS program charges and loans.

6 MCAR § 2.2310 Utility supply, installation, and financing.

A. Survey of utilities.

~~1.~~ ~~Each~~ A covered utility ~~which~~ that supplies or installs ~~any~~ a program resource measure:

~~a.~~ 1. shall be listed as a supplier or contractor ~~pursuant to~~ under 6 MCAR § 2.2305, in the same manner and subject to the same requirements as any other supplier or contractor;

~~b.~~ 2. shall charge fair and reasonable prices for the supply or installation of program measures; and

~~c.~~ 3. shall not discriminate unfairly among eligible customers in undertaking the above described activities.

~~2.~~ Beginning in June 1981, the ~~agency~~ division shall conduct an annual survey of prices charged for the supply or installation of goods and services comparable to those the covered utilities supply or install. If the ~~agency~~ division determines that the prices charged by covered utilities for the supply and installation of program measures are significantly different from the typical local prices and interest rates disclosed in the ~~agency's~~ division's survey, or the ~~agency~~ division receives complaints from contractors or suppliers regarding the prices, the ~~agency~~ division shall notify the covered utility of disparity in prices and request a written justification with supporting documentation. This documentation with copies of the survey ~~shall~~ must then be sent to the Minnesota Attorney General's Office, Anti-Trust Division.

B. Financing. Whenever a covered utility undertakes to finance its own lending program for program measures through financial institutions, the utility shall seek such funds from institutions located in the area covered by the lending program.

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However, if the covered utility determines that this limitation is disadvantageous to its customers, or not feasible, the limitation shall not apply.

6 MCAR § 2.2311 Reporting and record keeping.

A. Annual report. Each covered utility and heating supplier shall submit to the ~~agency~~ division by May 15 of each year, up to and including May 15, 1986, a report containing the following information for the ~~twelve (12)~~ 12-month period ending the preceding April:

1. the approximate number of customers in its system and, if available, the percentage of that number for whom the covered utility or heating supplier provides the primary heating fuel;

2. a copy of the program announcement;

3. the number of requests for each of the following services as well as the number of requests fulfilled:

~~a.~~ program audit,

~~b.~~ installation arrangement,

~~c.~~ financing arrangement, and

~~d.~~ billing service for repayment of loans;

4. the number of installations of program measures installed by, supplied by, or financed by the covered utility or heating supplier;

5. the number and results of post-installation inspections, including description of violations;

6. the number and function of employees assigned to the program; and

7. the costs incurred, including that portion of the cost paid by individual customers for services received and that portion paid by all ratepayers, in providing each type of the following services:

~~a.~~ the program audit,

~~b.~~ installation arrangement,

~~c.~~ loan arrangement, and

~~d.~~ post-installation inspections.

B. Record keeping requirements.

~~1.~~ Each covered utility and heating supplier shall keep the following records which shall be kept for the periods indicated:

~~a.~~ 1. for five ~~(5)~~ years from the date of the program audit, the name and address of each customer who receives a program audit;

~~b.~~ 2. for five ~~(5)~~ years from the date of the program audit, a copy of the data collected and the estimated cost and savings information for each customer who receives a program audit;

~~c.~~ 3. for five ~~(5)~~ years from the date of the request, each request for a furnace audit;

~~d.~~ 4. for five ~~(5)~~ years from the date of the arrangement, the name and address of each customer for whom installation or financing of measures was arranged; and

~~e.~~ 5. for two ~~(2)~~ years from the date of the program audit, the total amount and cost of fuel purchased for the period of 12 months prior to and 12 months following each audit. This information is only required for those utilities and heating suppliers which supply the primary heating fuel to the customer.

~~2.~~ This information ~~shall~~ must be made available to the ~~agency~~ division upon request.

C. Evaluation requirements. Each covered utility and heating supplier shall conduct an evaluation to determine at a minimum the total number and type of conservation actions which can be attributed to MECS.

Each utility shall develop an evaluation plan. Plans may be developed individually or by more than one utility. The evaluation plans must be submitted to the division by February 1, 1984, for review and approval. The plan must contain at a minimum the overall research design, types of data to be collected, methods of data collection, and analytical procedures. The data must be collected in a manner to be specified by the division.

The evaluations must be completed and findings submitted along with supporting data to the division by October 1, 1984.

Individual utilities may apply for an exemption from any or all of these evaluation requirements if they have already begun

or completed an evaluation which meets these requirements. The division has the sole responsibility for granting a waiver of the evaluation requirements.

6 MCAR § 2.2312 Heating suppliers.

A. Any heating supplier may apply to the ~~agency~~ division to participate in the MECS program.

B. Any heating supplier or association of heating suppliers may apply to the ~~agency~~ division for a waiver of any requirement of this plan, except those listed in ~~6 MCAR § 2.2312~~ C. All waivers that do not substantially limit either the delivery of services described in this plan or the conservation potential of the program ~~shall~~ must be approved by the ~~agency~~ division.

C. The following requirements of these rules shall not be waived:

1. the calculation procedures in Appendix A and the ban on advertising in program announcements offered, as established in 6 MCAR § 2.2302 A.2.b.;

2. the reporting ~~and~~, record keeping, and evaluation requirements, ~~pursuant to~~ under 6 MCAR § 2.2311~~.~~;

3. the on-site energy audit, ~~pursuant to~~ under 6 MCAR § 2.2303~~.~~;

4. the arrangement service for the financing of program measures, ~~pursuant to~~ under 6 MCAR § 2.2304 A., C., and D.;

5. the distribution of master lists developed, ~~pursuant to~~ under 6 MCAR § 2.2305~~.~~;

6. the offer of the consumer complaint process, ~~pursuant to~~ under 6 MCAR § 2.2308~~.~~; and

7. the exclusive use of certified auditors, ~~pursuant to~~ under 6 MCAR § 2.2307.

D. Any participating heating supplier may voluntarily withdraw from this program after completing all outstanding services offered to its customers.

E. A participating heating supplier which does not provide MECS services or does not comply with the requirements listed in ~~6 MCAR § 2.2312~~ C.~~,~~ shall be excluded by the ~~agency~~ division from participating in the MECS program.

6 MCAR § 2.2313 Nonregulated utility program.

A. Any nonregulated utility may apply to the ~~agency~~ division for inclusion in the MECS program.

B. A nonregulated utility or an association of nonregulated utilities may apply for a waiver of any requirements in this rule, except as noted in ~~6 MCAR § 2.2313~~ C. All waivers that do not substantially limit either the delivery of services listed or the conservation potential of the program shall be approved.

C. The following requirements ~~of these rules~~ shall not be waived:

1. the on-site program audit, ~~pursuant to~~ under 6 MCAR § 2.2303~~.~~;

2. the arrangement services for the financing of program measures, ~~pursuant to~~ under 6 MCAR § 2.2304 A., C., and D.;

3. the distribution of master lists developed ~~pursuant to~~ under 6 MCAR § 2.2305~~.~~;

4. the offer of the consumer complaint process, excluding post-installation inspections, ~~pursuant to~~ under 6 MCAR § 2.2308~~.~~; and

5. the exclusive use of certified auditors, ~~pursuant to~~ under 6 MCAR § 2.2307.

D. The following requirements ~~of this rule shall~~ do not ~~be required for~~ apply to nonregulated utilities:

1. program promotion~~,~~ ~~pursuant to~~ under 6 MCAR § 2.2302~~.~~;

2. post-installation inspection services, ~~pursuant to~~ under 6 MCAR § 2.2306~~.~~;

3. customer payments, under 6 MCAR § 2.2309 A. and B.; and

4. reporting and record keeping, ~~pursuant to~~ under 6 MCAR § 2.2311.

E. Any participating nonregulated utility may voluntarily withdraw from this program after completing all outstanding services offered to its customers.

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F. A participating nonregulated utility ~~which~~ that does not comply with the requirements listed in ~~6 MCAR § 2.2313~~ C. shall be excluded by the ~~agency~~ division from participating in the MECS program.

6 MCAR § 2.2314 Temporary programs.

A. Allowable exemptions. The division may exempt a utility from one or more of the following provisions:

1. the requirement for conducting the audit under 6 MCAR § 2.2303 C.;

2. the requirement for presenting the audit results under 6 MCAR § 2.2303 E.; and

3. the requirement for conducting post-installation inspections under 6 MCAR § 2.2306.

B. Scope of temporary program. A temporary program may not initially include more than 25 percent of all eligible utility customers for the first 180 days of the temporary program except for the provision relating to post-installation inspections which may include up to 100 percent of all eligible customers for the same time period. A temporary program approved by the division may not initially last more than 180 days. If a utility wishes to continue a temporary program unchanged, expand it to a larger portion of their customer base, or continue the program with modifications beyond the 180 days, the temporary program must be reviewed and approved by the division. It is the responsibility of each utility that requests an extension of a temporary program to provide to the division the data to support the requested extension.

C. Eligible applicants. Proposed temporary programs may be submitted to the agency by a covered utility, nonregulated utility, or heating oil supplier.

D. Time for submission of program. A proposed temporary program may be submitted to the division any time during the life of the program.

E. Approval. The division shall approve or disapprove a proposed temporary program within 90 days of receiving the temporary program, or later, if the person who submitted the proposed temporary program is notified before the end of the original 90-day period. Failure by the agency to approve, disapprove, or notify an applicant within the 90 days constitutes disapproval.

F. Criteria for approval. The division shall approve a proposed temporary program only if the organization submitting the proposed temporary program demonstrates to the division's satisfaction that the temporary program:

1. contains adequate procedures to assure that each covered utility under the program will charge fair and reasonable prices and rates of interest to its eligible customers in connection with the purchase and installation of residential energy conservation and renewable resource measures;

2. contains adequate procedures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of such programs; and

3. is likely to result in as many conservation practices or the installation or program measures in at least as many residential buildings as would have been instituted or installed had such utility not been exempt from the requirements for which the exemption is sought.

Appendix A

Procedures for Calculating Energy Savings
for Program Measures and Practices

The following procedures shall be the basis for calculating energy savings for program measures and practices for the program announcements.

A. Energy conserving measures.

1.-4. [Unchanged.]

~~5. Replacement central air conditioner~~

~~Equation #8. $\Delta E = E_e \left(1 - \frac{PSE}{NSE}\right)$~~

~~where~~

~~E_e = annual energy used by existing central air conditioner, in units of fuel.~~
~~PSE = present seasonal efficiency.~~
~~NSE = new (proposed) seasonal efficiency.~~

6.-13. [Unchanged.]

14. ~~Heat reflective and heat absorbing window or door material.~~

~~Equation #15.~~ $\Delta E = \frac{A \times F_{ss} \times F_{es}}{N_{ae}}$

~~where~~

~~A = area of glazing~~
~~F_{ss} = summer shading factor~~
~~F_{es} = glazing orientation factor~~
~~N_{ae} = seasonal efficiency of the air conditioning system.~~

Window insulation.

Equation #15.

$$\Delta H = \left(\frac{1}{R_0} - \frac{1}{R_1}\right) \times A \times HRS$$

where

R_0 = total R value in present condition
R_1 = total R value in proposed condition
A = area for which additional insulation is proposed
HRS = number of hours window insulation is in place

~~15. Load management. Each utility offering such system will provide E according to the particular system that the utility offers.~~

16.-18. [Unchanged.]

~~19. Wind energy devices~~

~~a. Systems providing utility grade power that can be sold to the electric utility when the system provides excess power. A system will be chosen with an Annual Wind System Output (AWSO) equal to one-half the current annual electric use.~~

~~Equation #21a. Low estimate of E = .8 AWSO~~
~~High estimate of E = 1.2 AWSO~~

~~b. Systems providing variable voltage power for heating use only.~~

A system will be chosen with an Annual Wind Systems Output (AWSO) equal to one-half of the annual heat supplied by the space heating system.

~~Equation #21b. Low estimate of E = .8 AWSO~~
~~High estimate of E = 1.2 AWSO~~

~~where~~

~~AWSO = annual wind system output in kwh~~

20.-22. [Unchanged.]

B. Energy conserving practices

1. Furnace efficiency maintenance and adjustments

a. Periodic cleaning and combustion efficiency adjustments. Savings for gas conversion units will be estimated at up to 15%. Savings for gas-designed systems will be estimated at up to 5%. Savings for oil heating systems will be estimated at 5% to 15%.

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b. Periodic cleaning or replacing of filters in forced air systems. Savings will be estimated at 5% to 10%.

c. Fan setting on forced air furnaces reduced to ~~80°~~ 90° F if possible. Savings will be estimated at up to 5%.

d. Increase fan speed. Savings will be estimated at up to 5%.

e. Reduce aquastat setting to 140° F between December 1 and March 1 and 120° F between March 2 and November 30 or other reduction as appropriate to individual boiler. Savings will be estimated at 5% to 10%.

2.-10. [Unchanged.]

C. [Unchanged.]

Department of Public Welfare
Support Services Bureau

Proposed Temporary Rules Governing the Determination of Welfare Payment Rates for all Residential Facilities for the Mentally Retarded Participating in the Medical Assistance Program (12 MCAR §§ 2.05301-2.05315 Temporary)

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 312, article 9, section 7, subdivisions 2 and 3.

Persons interested in these rules have until December 5, 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:

Jane Delage
Support Services Bureau
Department of Public Welfare
Fourth Floor Centennial Building
St. Paul, MN 55155
612/297-4302

Upon adoption of these 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 Statutes' certification of the rules' form.

According to the Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 10, these temporary rules shall be effective for up to 720 days.

The temporary rules shall not be in effect on a date 721 days after their original effective date without following the procedures in Minnesota Statutes, sections 14.01 to 14.38.

12 MCAR §§ 2.05301-2.05315 (Temporary) establish procedures for determining welfare payment rates for the care of residents of intermediate care facilities for mentally retarded persons. The rules contain provisions on what facility costs are allowable and what costs are non-allowable; how costs must be reported; how welfare payment rates are set; how adjustments to payment rates will be made; how audits will be made of cost reports; and how facilities may appeal the welfare payment rates.

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 312.

Copies of this notice and the proposed temporary rule may be obtained by contacting Wendy Johnson (612/296-2854).

Leonard W. Levine, Commissioner
Department of Public Welfare

Temporary Rules as Proposed (all new material)

12 MCAR § 2.05301 [Temporary] Applicability.

Rules 12 MCAR §§ 2.05301-2.05315 [Temporary] establish procedures for determining the welfare payment rates for all residential facilities for the mentally retarded participating in the medical assistance program.

12 MCAR § 2.05302 [Temporary] Definitions.

A. Scope. For the purposes of 12 MCAR §§ 2.05301-2.05315 [Temporary], the following terms have the meanings given them.

B. Addition. "Addition" means an extension, enlargement, or expansion of the physical plant provided that the extension, enlargement, or expansion is for the purpose of increasing the number of licensed beds.

C. Applicable credit. "Applicable credit" means a reduction as a result of government grants, purchase discounts, rebates, refunds, income from incidental services, adjustments for overcharges, insurance claims settlements, or any other adjustment reducing the facility's operating cost.

D. Betterment. "Betterment" means the renovation, repair, or replacement of part of an existing capital asset to improve its function or extend its useful life.

E. Capital asset. "Capital asset" means land and any asset that is capitalized under 12 MCAR § 2.05311 [Temporary] D. and depreciated under 12 MCAR § 2.05304 [Temporary] A.

F. Capital loan. "Capital loan" means a loan for the purpose of purchasing a capital asset, but only to the extent that the proceeds of the loan were actually applied to purchase the capital asset.

G. Capital loan interest expense. "Capital loan interest expense" means interest payable under the terms of a capital loan, amortization of bond premium or discount, and amortization of any related financing cost.

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

I. Cost report. "Cost report" means the document specified by the commissioner on which the provider furnishes the statistical and financial information required by the commissioner for rate determination for the facility.

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

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

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

M. Employee benefits. "Employee benefits" means compensation actually paid to or for the benefit of the facility's employees other than salary. Employee benefits include group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, sick leave, vacations, and in-kind benefits. Employee benefits do not include payroll-related costs.

N. Equity. "Equity" means the historical capital cost paid by the current owner for the facility's capital assets within the limitations in 12 MCAR § 2.05309 [Temporary] B. and C., decreased by the outstanding capital loans and the historical capital cost of any capital assets retired from service, sold, or otherwise disposed of.

O. Facility. "Facility" means a program licensed to serve mentally retarded residents under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified as an intermediate care facility for the mentally retarded.

P. Field audit. "Field audit" means the on-site examination, verification, and review of the cost report, financial records, statistical records, and related supporting documentation of the provider or provider group relating to the operation of the facility.

Q. Final rate. "Final rate" means the rate established after any adjustment by the commissioner, including adjustments resulting from cost report reviews, field audits, and resolutions of appeals.

R. Funded depreciation. "Funded depreciation" means the sum deposited in a separate escrow account which shall be applied only to reduce or liquidate capital asset loans or replace capital assets as required by 12 MCAR § 2.05304 [Temporary] C.

S. Historical capital costs. "Historical capital costs" means:

1. for a capital asset first placed in use on or after October 1, 1983, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on the date it was first placed in use. The historical capital cost shall not be

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adjusted for either a full or partial change of ownership or for any costs associated with replacing existing capital assets as a result of a casualty loss except as provided in 12 MCAR § 2.05304 [Temporary] A.1.c.

2. for a capital asset first placed in use by a facility prior to October 1, 1983, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on or before September 30, 1983, except as provided in 12 MCAR § 2.05304 [Temporary] A.1.c.

T. Historical operating costs. "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective after the application of the limitations specified in 12 MCAR §§ 2.05301-2.05315 [Temporary].

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

V. Land. "Land" means the land owned or leased by the facility and which is used for resident care.

W. Land improvement. "Land improvement" means any improvement to the land on which the facility is located provided that the improvement is the legal responsibility of the provider. Land improvement includes paving, tunnels, underpasses, on-site sewers and water lines, parking lots, shrubbery, fences, walls, curbs, and sidewalks.

X. Leasehold improvement. "Leasehold improvement" means an improvement to property leased by the provider for the use of the facility, which reverts to the owner of the property upon termination of the lease.

Y. Management personnel. "Management personnel" means owners, corporate officers, board members, administrators, or any other person acting on behalf of the provider whether employed full time, part time, or as a consultant by the provider to direct the affairs of the facility including managing, planning, directing, or coordinating the operations of the facility, or supervising the program personnel.

Z. Necessary service. "Necessary service" means a function pertinent to the facility operation that if not performed by the individual would have required the provider to employ or assign another person to perform it.

AA. Operating cost category. "Operating cost category" means any one of the groupings of operating costs set forth in 2 MCAR § 2.05313 [Temporary] A.-C. The operating cost categories are program maintenance and administrative costs.

BB. Payment rate. "Payment rate" means the amount established by the commissioner to reimburse the provider for care provided to the residents. The payment rate is calculated by adding together the operating cost payment rate, the property-related cost payment rate, and incentives or allowances determined in accordance with the provisions in 12 MCAR §§ 2.05301-2.05315 [Temporary].

CC. Payroll-related costs. "Payroll-related costs" means the employer's share of social security withholding taxes, workers' compensation insurance, and state and federal unemployment compensation taxes or costs.

DD. Physical plant. "Physical plant" means the building in which a facility is located and all equipment affixed to the building and not easily subject to transfer. Physical plant does not include the land, land improvements, or any supplies or equipment not affixed to the building.

EE. Private paying resident. "Private paying resident" means a facility resident who is not a recipient of the medical assistance program, cost of care program, or the Title XX program for the date of service.

FF. Program. "Program" means those functions of the staff of the facility that contribute to the care, supervision, developmental growth, and skill acquisition of the residents under 12 MCAR § 2.034 and Code of Federal Regulations, title 42, section 190, subpart G (1978).

GG. Program director. "Program director" means the person who directs individual program planning and program activities related to carrying out the individual program plans.

HH. Property-related cost category. "Property-related cost category" means the grouping of property-related costs set forth in 12 MCAR § 2.05313 [Temporary].

II. Provider. "Provider" means the corporation, governmental unit, partnership, individual, or individuals licensed to operate the facility, that controls the facility's operation, incurs the costs reported, and claims reimbursement under 12 MCAR §§ 2.05301-2.05315 [Temporary] for the care provided in the facility.

JJ. Provider group. "Provider group" means a parent corporation, any subsidiary corporations, partnerships, management organizations, and groups of facilities operated under common ownership or control that incurs the costs shown on the cost report which are claimed for reimbursement under 12 MCAR §§ 2.05301-2.05315 [Temporary].

KK. Rate year. "Rate year" means the facility's fiscal year for which a payment rate is effective.

LL. Related organization. "Related organization" means a person that furnishes goods or services to a facility and that is an

affiliate of a facility, a close relative of an affiliate of a facility, or an affiliate of a close relative of an affiliate of a facility. For the purposes of 12 MCAR § 2.05301 [Temporary] LL. the following terms have the meanings given them.

1. An "affiliate" is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

2. A "person" is an individual, a corporation, a partnership, an association, a trust, an unincorporated organization, or a government or political subdivision.

3. A "close relative of an affiliate of a facility" is an individual whose relationship by blood, marriage, or adoption to an individual who is an affiliate of a facility is no more remote than first cousin.

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

MM. Reporting year. "Reporting year" means the facility's fiscal year for which the provider submits a cost report and which is the basis for the determination of the payment rate for the following rate year.

NN. Resident day. "Resident day" means a day for which resident services are rendered and billed or a day on which a bed is held and billed.

OO. Respite care. "Respite care" means activities which offer the primary caregiver needed relief from the daily demands of caring for a person with a physical or mental disability. Respite care includes planned or emergency relief for the caregiver through the utilization of a variety of in-home or residential resources.

PP. Title XX program. "Title XX program" means United States Code, title 42, sections 301 et seq. as amended through December 31, 1982.

QQ. Useful life. "Useful life" means the length of time an asset is expected to provide economic service according to 12 MCAR § 2.05304 [Temporary] A.7. and 8.

RR. Vendor. "Vendor" means an individual or organization that sells the provider goods or services for facility operation.

SS. Welfare day. "Welfare day" means a resident day for which reimbursement is billed to the medical assistance program, cost of care program, or Title XX program.

TT. Working capital loan. "Working capital loan" means a loan which is not used to acquire capital assets.

UU. Working capital interest expense. "Working capital interest expense" means the interest expense for working capital loans. The form of indebtedness includes notes, advances, and various types of receivable financing.

12 MCAR § 2.0503 [Temporary] Rate determination for operating costs.

A. Establishment of historical operating cost per diem. For rate years beginning on or after December 31, 1983, the commissioner shall annually review and adjust the operating costs incurred by the facility during the reporting year preceding the rate year to determine the facility's historical operating costs. The review and adjustment must comply with the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary].

1. For facilities with ten beds or fewer the commissioner shall divide the historical operating costs by resident days in the reporting year in order to compute the facility's historical operating cost per diem.

2. For a facility with more than ten beds the commissioner shall divide the historical operating costs by the greater of resident days or 85 percent of licensed capacity days.

B. Establishment of the operating cost payment rate. For rate years beginning during the 1984 calendar year, each facility shall receive as an operating cost payment rate the historical operating cost per diem increased by six percent. For rate years beginning during calendar year 1985, each facility shall receive as an operating cost payment rate, the historical operating cost per diem increased by one percent for each full percentage increase in the consumer price index in Minneapolis-St. Paul as published by the Bureau of Labor Statistics for the previous two Octobers, new series index (1967-100).

C. Operating cost adjustment allowance. In addition to the operating cost payment rate, each facility shall receive as an operating cost adjustment allowance 25 cents per resident day.

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D. Efficiency incentive. For rate years beginning on or after December 31, 1984, the facility shall receive an efficiency incentive if the facility's historical operating cost per diem is less than the facility's operating cost payment rate established for that rate year. The provider may keep the difference as an efficiency incentive unless the efficiency is due to a penalty or field audit adjustment as provided in 12 MCAR § 2.05314 [Temporary]). One-half of the efficiency incentive shall be added to the facility's operating cost payment rate. However, if the actual increase in the facility's 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.

12 MCAR § 2.05304 [Temporary] Determination of property-related cost payment rate.

A. Depreciation. Allowable depreciation expense shall be determined as in 1.-11.

1. Basis for calculating depreciation. The basis for calculating depreciation shall be the historical capital cost of the capital assets determined under a.-c.

a. For a capital asset first placed in use on or after October 1, 1983, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on the date it was first placed in use. The historical capital cost shall not be adjusted for either a full or partial change of ownership or for any costs associated with replacing existing capital assets as a result of a casualty loss except as provided in c.

b. For a capital asset first placed in use prior to October 1, 1983, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on or before September 30, 1983, except as provided in c.

c. The historical capital cost shall be adjusted for a change in ownership which occurs as a result of the death of the principal owner if a principal owner with 50 percent or more ownership interest in the facility, or a forced buyout pursuant to regulations in effect on December 30, 1983.

2. Depreciation method. The straight line method of depreciation shall be used.

3. Accumulated depreciation. The accumulated depreciation of facilities entering the medical assistance program shall be recalculated using the useful life schedule in 7. and 8. starting from the completion of construction or the time of purchase by the current owner.

4. Donated assets. Except for donations between a provider and a related organization, the value of the asset used to determine the depreciable basis shall be the lesser of the price that an able buyer would pay a willing seller in an arm's length transaction or the appraised value of the asset. A donated asset is one acquired for the facility without making any payment in the form of cash, property, or services. For donations between a provider and a related organization, the net book value to the donor shall be the basis for the donee.

5. Additions or betterments. The historical capital cost in 1. subject to the limitations in 12 MCAR § 2.05309 [Temporary] B. and C. shall be increased for the actual cost of additions or betterments to assets capitalized according to 12 MCAR § 2.05311 [Temporary] D.1. and shall be depreciated according to A. The increased historical depreciation expense shall be recognized in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred.

6. Gains and losses on disposal of equipment. Gains and losses on the disposal of equipment shall be included in computing allowable costs. A gain shall be an offset against the property-related cost category to the extent that the gain resulted from depreciation reimbursed under these regulations. Gains or losses on trade-ins shall be reflected in the asset basis of the acquired asset. Claims for losses shall be limited to a total of ten cents per resident day per reporting year. Any excess loss not claimed during the reporting year may be carried forward to future years.

7. Depreciation rates for new capital assets. Depreciation shall be calculated on the basis of A., and the following useful life schedule:

a. physical plant and other buildings, 35 years;

b. physical plant betterments (depreciated over the remaining life of the principal asset or useful life, but not less than 15 years);

c. land improvements, 20 years;

d. depreciable equipment except vehicles, five years;

e. vehicles, four years.

8. Other useful lives.

a. Used capital assets. The useful life of used capital assets shall be assigned by the facility, considering the individual circumstances; however, the useful life assigned shall not be shorter than one-half of the useful life shown in the useful life schedule in 7. for the relevant capital asset.

b. Leasehold improvement. The useful life of a leasehold improvement shall be the useful life shown in 7. or 8.a. for the relevant capital asset.

9. Publicly-financed facility. Depreciation shall not be allowed on a facility or portion of a facility financed by federal, state, or local appropriations or grants unless the appropriation or grant is intended to be repaid through the operating revenues of the facility.

10. No depreciation shall be recaptured following a sale of an asset or termination from the medical assistance program except for transfers of ownership allowed under A.1.c. Recapture for transfers of ownership allowed under A.1.c. shall be calculated according to 12 MCAR §§ 2.05301-2.05315 [Temporary] in effect on December 30, 1983.

11. The total depreciation allowance paid to the facility for capital assets, except land, shall not exceed the historical capital cost of the asset.

B. Interest. Allowable interest expense shall be determined as given in 1.-7.

1. Interest income. Interest income shall be deducted first from the unallowable capital loan interest expense. The remainder of interest income, if any, shall be deducted from the allowable capital loan interest expense. Interest income on gifts and donations from nongovernmental sources or funded depreciation shall not be deducted from capital loan interest expense or working capital interest expense.

2. Interest charges between nonprofit funds. When a nonprofit provider borrows from its own restricted fund, interest paid by the general fund to the restricted fund must not exceed the interest rate the restricted fund is currently earning. Interest expense on loans between operating and building funds shall not be an allowable cost.

3. Construction interest. Interest expense related to construction costs must be capitalized as a part of the cost of the facility. The period of construction extends to the earlier of either the first day a medical assistance recipient resides in the facility, or the date the facility is certified to receive medical assistance recipients.

4. Interest rate. The allowable interest rate for capital loans shall be calculated according to a. and b.

a. The interest rate for capital loans entered into on or after December 31, 1983, shall be the lesser of the actual interest rate on the capital loan or a rate one percentage point above the published posted yield for standard conventional fixed-rate mortgages of the Federal Home Loan Mortgage Corporation in effect on January 1 of the year in which the loan is incurred for capital loans contracted on or after January 1 and before July 1 of that year, and on July 1 of the year in which the debt is incurred for capital loans contracted on or after July 1 and before January 1 of the following year.

b. The interest rate for capital loans entered into prior to December 31, 1983, shall be as recognized under statutes and rules in effect on December 30, 1983.

5. Capital loan retirement. The portion of the debt reduction allowance in D. which must be applied to the reduction of capital loans shall be applied first to reduce the principal on any capital loans on which the provider is only required to pay interest expense. The remaining portion of the debt reduction allowance which must be applied to reduction of capital loans shall be applied to the capital loan which has the highest interest expense due during the reporting year.

6. Capital loan interest expense. The interest expense on capital loans shall be allowed according to a.-e.

a. All interest expense for capital loans entered into prior to December 31, 1983, shall be an allowable cost.

b. Facilities that have received determination of need approval under 12 MCAR § 2.0185 to implement Minnesota Statutes, section 252.28 and have an approved or effective interim rate under 12 MCAR § 2.052 on December 30, 1983, shall be allowed the interest expense on the capital loans allowed in the settle-up payment rate. If the capital loans allowed in the settle-up payment rate exceed the limitation in c. no additional capital loan interest expense shall be allowed.

c. Interest expense for capital loans entered into on or after December 31, 1983, shall be allowed for the portion of the capital loan which together with all other outstanding capital loans does not exceed 100 percent of the historical capital cost of the facility's capital assets subject to the limitations of B.4.a. and 12 MCAR § 2.05309 [Temporary] B. and C.

d. Interest expense for capital loans on capital assets acquired or leased on or after December 31, 1983, shall be allowable on the portion of the capital loan which does not exceed 80 percent of the historical capital cost of the capital asset subject to the limitations of B.4.a. and 12 MCAR § 2.05309 [Temporary] B. and C.

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e. Except for facilities covered in b., interest expense for capital loans on facilities constructed or established on or after December 31, 1983, shall be allowable on the portion of the capital loan which does not exceed 80 percent of the historical capital cost of the asset subject to the limitations of B.4.a. and 12 MCAR § 2.05309 [Temporary] B. and C.

7. Changes in interest expense.

a. Subject to the limits in 6., changes in interest expense, except increases in interest expense due to refinancing of existing capital loans, or changes in ownership shall be allowed in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred.

b. Increases in interest expense due to the refinancing of a capital loan shall not be allowable.

c. Fifty percent of the annual savings resulting from decreased interest expense due to refinancing or renegotiation of existing capital loans shall be a refinancing capital allowance added to the provider's property-related cost payment rate. The annual savings shall be calculated by comparing the refinanced or renegotiated capital loan with the original capital loan to determine the total savings in interest expense. The refinancing allowance shall consist of one-half of the total savings equally divided over the term of the refinances or renegotiated loan. The annual savings shall be divided by resident days to determine the refinancing allowance per diem payment.

d. In order to qualify for the allowance in c., the outstanding principal amount and the remaining period over which the capital loan is to be repaid must not be increased as a result of refinancing.

C. Funded depreciation. Providers shall fund depreciation according to the provisions in 1.-4.

1. The annual deposit to the funded depreciation account shall be determined according to the following formula: (allowable depreciation − required annual principal payment specified in the capital loans) × (1 − the percentage of equity determined in D.1.).

2. Funded depreciation must be invested in liquid marketable investments such as savings accounts, certificates of deposit, and United States Treasury bills

3. Funded depreciation must be used for capital loan reduction or replacement of capital assets.

4. No more than 50 percent of the annual amount of allowable depreciation expense may be withdrawn for replacement of capital assets.

5. Income earned on funds withdrawn for purposes other than 3. or in excess of the percent allowed in 4. shall be offset against the facility's property-related costs. The withdrawals shall be assumed to be on a first in, first out basis.

6. Facilities which do not deposit the required amount of depreciation in a funded depreciation account shall have their allowable capital loan interest expense reduced. The reduction shall be calculated by assuming the entire depreciation amount from the previous year was used to reduce capital loans.

D. Capital loan reduction allowance. Except for facilities qualifying for the exception in 12 MCAR § 2.05309 [Temporary] D.4., each facility shall receive a 50 cent allowance per resident day for capital loan reduction.

1. The amount of the capital loan reduction allowance which must be applied to reduction of the principal on capital loans shall be determined according to the following table:

Percentage of Equity	Percentage applied to Payment of Principal
From 0% to 10%	100%
From 10% to 20%	50%
20% or more	0%

The facility's total percentage of equity shall be determined by dividing its equity by its historical capital cost of capital assets.

2. For facilities which receive allowable property costs in place of lease or rental payments, the capital loan reduction allowance shall be applied to the lessor's assumed capital loan.

E. Property-related cost payment rate and incentives or allowances.

1. The commissioner shall compute the allowable property-related costs by reviewing and adjusting the facility's property-related costs incurred during the reporting year immediately preceding the rate year for which the payment rate is effective.

2. The commissioner shall compute the property-related cost payment rate for existing facilities by dividing the desk audited, property-related costs by 96 percent of licensed capacity days, except that facilities with ten or fewer beds shall use the greater of resident days or 85 percent of licensed capacity days. For newly constructed or newly established facilities the property-related payment rate shall be calculated according to 12 MCAR § 2.05306 [Temporary] A.

3. Any incentives or allowances as determined in B.7., D., and F. shall be added to the property-related cost payment rate. The facility shall not continue to receive these incentives if the department changes the reimbursement formula for property-related costs.

F. Incentives for provider cost savings.

1. Vehicle purchase savings. The commissioner shall establish an incentive payment for provider cost savings initiatives undertaken in a.-e.

a. On July 1 of each year, the commissioner shall establish target purchase guidelines for the purchase of utility vehicles and vans to be used by the facility.

b. The guidelines shall reflect the most recent price paid by the Department of Administration for similar vehicles used by the state.

c. On July 1 of each year, the commissioner shall establish target purchase guidelines for the purchase of specialized vehicle equipment such as ramps, lifts, or passenger restraint devices.

d. For rate years, beginning on or after January 1, 1985, if the cost of the vehicle purchase including specialized equipment is below that of the target purchase guideline for comparable equipment increased by four percent, then the provider shall receive one-half of the difference as a per diem allowance.

e. In establishing the payment rate for the savings identified under d., the savings shall first be divided over the useful life of the asset. The annual per diem rate shall be computed by dividing the annual savings figure by resident day.

2. Energy savings. The commissioner shall approve requests for exceptions to the provisions of 12 MCAR §§ 2.05304 [Temporary] B. and 2.05311 [Temporary] D. for initiatives designed to reduce the energy usage of the facility. The requests must be accompanied by an energy audit prepared by a professional engineer or architect registered in the state of Minnesota. Energy conservation measures identified in the energy audit that:

a. have a payback period equal to or less than 36 months and a total cost not exceeding $1 per resident day shall be exempt from the provisions of 12 MCAR §§ 2.05304 [Temporary] B. and 2.05311 [Temporary] D.; or

b. have a payback period greater than 36 months or having a total cost in excess of $1 per resident day shall be exempt from the provisions of 12 MCAR § 2.05304 [Temporary] B.

12 MCAR § 2.05305 [Temporary] Payment rates.

A. Temporary payment rate. Unless the cost report is rejected during the initial review conducted under 12 MCAR § 2.05314 [Temporary] H.3., a temporary payment rate shall be established within 20 days of receipt of the cost report and supporting documentation shall be filed according to 12 MCAR §§ 2.05301-2.05315 [Temporary]. The temporary payment rate shall be the prior year's payment rate then in effect increased by five percent. The temporary payment rate shall be effective the first day of the facility's new year if the cost report is received within the deadlines in 12 MCAR § 2.05314 [Temporary] H. If the cost report is not received within the deadlines the temporary payment rate shall be effective the first day of the month following the month in which the cost report is received. The commissioner shall notify the facility and the respective county or human service boards in writing of the temporary payment rate determination and the effective date of the temporary payment rate. The temporary payment rate shall remain in effect until the desk audit is completed.

B. Payment rate. The payment rate shall be established following desk audit and shall replace the temporary rate. The payment rate may be adjusted under 12 MCAR § 2.05314 [Temporary] I. and J.

C. Limitations to payment rate. The payment rate shall be limited under 1.-3.

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

2. The payment rate must not exceed the final rate allowed the facility for the previous rate year by more than five percent.

3. The limits in 1. and 2. shall not apply to payments made by the commissioner for approved services for very dependent persons with special needs under Laws of Minnesota 1983, chapter 312, section 7, subdivision 8.

D. Respite care rate.

1. Rates charged for respite care must be identified separately. The respite care rate may be different than the payment

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rate established by the commissioner if the services provided to the respite care resident are not similar to services provided to other facility residents for the same period.

2. The provider may choose either to report the costs associated with providing respite care as an allowable cost in the cost report and count respite care days as resident days or offset the revenue generated by providing respite care against the appropriate cost category.

E. Effective date. The payment rate determined by the commissioner shall be effective the first day of the month following the end of the facility's reporting year except in instances in which the penalty provisions of 12 MCAR § 2.05314 [Temporary] J. are applicable.

12 MCAR § 2.05306 [Temporary] Rate-setting procedures for newly constructed or newly established facilities.

A. Interim payment rate. Newly constructed or newly established facilities may request an interim payment rate. The provider must submit a projected cost report in compliance with 12 MCAR §§ 2.05301-2.05315 [Temporary] to the extent applicable for the rate year in which the facility plans to begin operation. The interim property-related cost payment rate shall be determined using projected resident days. The effective date of the interim payment rate shall be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification.

B. Interim payment rate settle-up. The interim payment rate shall be subject to retroactive upward or downward adjustment in accordance with the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary] except that no incentives or allowances shall apply. The adjustments shall be made according to 12 MCAR § 2.05314 [Temporary] I.2. based on actual resident days and actual costs in the facility's first reporting year. A provider may request a settle-up of its interim payment rate either at the end of the facility's first reporting year or after six months of historical cost experience. In no case shall the settle-up cost report cover less than six months. The interim payment rate shall not be in effect for more than 17 months. The settle-up payment rate must be based on the greater of resident days or 80 percent of licensed capacity days. Occupancy used for the rate year immediately following the reporting year must be based on an annualization of the resident days of the last three months of the interim reporting year but must not be less than 85 percent of licensed capacity days. The settle-up payment rate shall be the lesser of the payment rate calculated according to 12 MCAR §§ 2.05301-2.05315 [Temporary] or the interim payment rate increased by .4166 percent for each full month between the date the first medical assistance resident enters the facility and the end of the first fiscal period.

C. Changes in occupancy levels. For the first two reporting years following the period covered by the settle-up payment rate, newly constructed or newly established facilities shall compute occupancy levels based on the greater of annualized resident days for the last three months of the reporting year or resident days in the facility's reporting year. The payment rate in subsequent rate years shall be based on the occupancy from the most recently completed reporting year.

12 MCAR § 2.05307 [Temporary] Allowable operating costs.

A. Licensure and certification costs. The costs of meeting the applicable licensure and certification standards listed in 1.-6. are allowable operating costs for the purpose of setting facility payment rates unless otherwise provided in 12 MCAR §§ 2.05301-2.05315 [Temporary]. The standards are:

1. federal regulations for intermediate care facilities for mentally retarded services provided by the Code of Federal Regulations, title 43, section 190, subpart G (1978);

2. requirements established by the commissioner for meeting program standards under 12 MCAR § 2.034 and standards for aversive and deprivation procedures pursuant to Minnesota Statutes, section 245.825;

3. requirements established by the Department of Health for meeting health standards as set out by state rules and federal regulations;

4. requirements to comply with changes in federal or state laws and regulations;

5. written correction orders issued by the department, the Department of Health, or the fire marshal; and

6. other requirements for licensing under federal or state law, rules, or local standards that must be met to provide intermediate care facilities for mentally retarded services.

B. Routine service costs. The costs of routine services including program operating, maintenance operating, and administrative operating as defined in 12 MCAR § 2.05313 [Temporary] are allowable operating costs for the purpose of setting facility rates unless otherwise provided in 12 MCAR §§ 2.05301-2.05315 [Temporary].

12 MCAR § 2.05308 [Temporary] Nonallowable costs.

The costs of items A.-EE. as well as costs determined by the commissioner to be incurred due to management inefficiency, unnecessary capital assets, or unnecessary services are not allowable for purposes of setting payment rates. The costs of items A.-EE. must be identified on the facility's cost report.

A. 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 lobbying, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions by agencies of the state of Minnesota. When the breakdown of dues charged to a facility by an association or professional organization is requested by the commissioner and is not provided, the entire cost shall be disallowed;

D. advertising designed to encourage potential residents to select a particular facility;

E. assessments levied by the commissioner, or the commissioner of health for uncorrected violations;

F. activities not related to resident care such as flowers or gifts for employees or providers, employee parties, and business meals;

G. penalties and interest charges resulting from late payments or fines from government agencies, and bank overdraft or late payment charges;

H. costs related to the purchase of pets and veterinary services for pets;

I. costs of sponsoring nonresident activities such as athletic teams and beauty contests;

J. premiums on a life insurance policy for an owner, provider, board member, or employee of a related organization; except that the premiums shall be allowed if the coverage is included in the policy provided for all employees, the coverage and premium is comparable to that provided for all employees, and the insured person is an employee of the facility or related organization;

K. personal expenses of owners and employees, such as vacations, boats, airplanes, personal travel or vehicles, and entertainment;

L. employee's or owner's membership or other fees for social, fraternal, sports, health, or similar organizations;

M. training programs for anyone except facility employees, volunteers in the facility, or a resident's family or legal guardians;

N. training programs to meet the minimum educational requirements of a position, education that leads to a degree, or education that qualifies the employee for a new trade or profession;

O. bad debts and related bad debt collection fees;

P. costs of fund-raising activities;

Q. costs of personal need items normally paid for by residents;

R. costs incurred in providing other than intermediate care facilities for the mentally retarded services such as the costs of apartments and semi-independent living skills services (SILS) except respite care;

S. costs financed by gifts or grants from government funds;

T. telephones, televisions, and radios provided in a resident's room;

U. costs of agreements not to compete;

V. 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 facility or the compensation of the practitioner who is an employee of the facility;

2. allocated compensation and related costs of any facility 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 provider these expenses must be reported under nonreimbursable

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expenses together with any of the income received or anticipated for the facility, including any charges by the provider to the vendor.

W. uniform allowances unless required by governmental rules or regulations;

X. costs of therapeutic overnight trips, camping, or vacations for residents in excess of $300 per resident per reporting year;

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

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

AA. costs incurred in providing approved services for very dependent persons with special needs under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 8;

BB. payments made in lieu of real estate taxes made by nonprofit providers;

CC. facility or related organization costs for which adequate documentation is not maintained or provided as required by 12 MCAR §§ 2.05301-2.05315 [Temporary];

DD. other costs determined to be nonallowable in accordance with 12 MCAR §§ 2.05301-2.05315 [Temporary]; and

EE. related organization costs for which a breakdown in accordance with 12 MCAR § 2.05313 [Temporary] is not provided.

12 MCAR § 2.05309 [Temporary] Cost limitations.

A. Management compensation. Annual compensation for management personnel shall be paid according to the limits in 1.-10.

1. To receive management compensation, at least one or any combination of the management personnel must:

a. for a facility or group of facilities with a total bed complement of 48 or fewer beds, document at least five hours of management services per six licensed beds per week; or

b for a facility or group of facilities with a total bed complement of more than 48 beds, document at least 40 hours of management services per week.

2. At least one-half of the total hours required in 1. must be spent by the management personnel at the facility or facilities from which compensation is claimed. The required hours at the facility may be spent by an on-site manager or by management personnel who spend time at the facility.

3. The sum of compensation paid to all management personnel for performing management functions for an individual or organization that owns or operates:

a. a single facility, shall not exceed the lesser of $814 times the number of licensed beds or $39,072;

b. more than one facility with a total bed complement of 48 or fewer beds, shall not exceed the lesser of $814 times the total number of licensed beds or $39,072;

c. more than one facility with a total bed complement of 48 or more beds, shall not exceed $39,072 plus an additional $335 for each licensed bed over 48. The management compensation for a single facility within the group shall not exceed the lesser of $814 times the number of licensed beds or $39,072.

4. In no case shall management compensation paid to an individual exceed $39,072.

5. A person compensated for management functions in a facility or group of facilities shall not be compensated for providing consultant services to that facility or group of facilities.

6. Management compensation shall not include, within the limits of 4. and 5., the benefits of group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, or paid vacations, holidays, or sick leaves, if the same benefit and the same benefit level is provided to all or substantially all of the facility's employees.

7. An individual compensated for management services on a less than full-time basis for a facility or group of facilities may be compensated for other necessary services which the individual is qualified to perform. Compensation for another necessary service must be at the pay rate for that service. Documentation of the necessary service performed must be maintained according to 12 MCAR § 2.05311 [Temporary] E.3. and shall be subject to licensing review by the commissioner.

8. Compensation paid to the program director for performing program director functions or to management personnel for performing other than management functions shall not be included in the management compensation limitation.

9. For each full percentage difference between the consumer prices indexes for the months of October, 1983, and October, 1984, in Minneapolis-St. Paul as published by the Bureau of Labor Statistics, new series index (1967-100), the

management compensation per bed limitation and the dollar limitation shall be adjusted by one percent. The adjustment required by this formula shall be effective January 1, 1985. The calculation shall be made annually.

B. Limitation on land costs. For purposes of 12 MCAR §§ 2.05301-2.05315 [Temporary], the cost of land shall be limited to $1,000 per bed for land purchased prior to December 31, 1983, and to $3,000 per bed for land purchased on or after December 31, 1983.

C. Investment per bed limitation. For the purposes of 12 MCAR §§ 2.05301-2.05315 [Temporary], the facility's historical capital costs shall be limited by 1.-4.

1. The limitation on the facility's depreciable assets shall be established when the facility enters the medical assistance program.

a. For facilities entering the medical assistance program on or before December 31, 1982, the historical capital cost of the facility's depreciable assets shall be subject to the limits in effect at the time the facility entered the program.

b. For facilities entering the medical assistance program during 1983, the historical capital cost of the facility's assets shall not exceed an average of $29,952 per bed for Class A beds as defined in 7 MCAR § 1.392 C.1. and $35,015 per bed for Class B beds as defined in 7 MCAR § 1.392 C.2.

c. The limitation in b. shall be adjusted annually beginning January 1, 1984, by one percentage point for each full percentage point increase in the construction index published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business Statistics. Facilities entering the medical assistance program after 1983 shall be subject to the adjusted limitation in effect at the time the facility entered the program.

2. In no instance can accumulated depreciation exceed the basis defined in 12 MCAR § 2.05304 [Temporary] A.

3. One exception to the limitations stated in 1., is that depreciation on investments in capital assets shall be allowed if the investments were required to comply with the Life Safety Code, in United States Code, title 42, sections 442.507-442.509 as amended through December 31, 1982, or with fire safety orders of the local agency.

4. After the facility's first five reporting years and every five reporting years thereafter, the facility's investment per bed limitation established according to 1.-3. shall be increased by the average of the annual percentage increases in the investment per bed limitation for the current reporting year and the previous four reporting years. The adjustment to the facility's investment per bed limitation shall not apply to any original construction and investment costs. Depreciation on the original construction and investment costs shall continue to be limited by the per bed limitation in effect when the facility entered the medical assistance program.

D. Lease and rental costs. The facility's rental and lease costs shall be limited by 1.-4.

1. Lease and rental costs: short term. The costs of a rental or lease for a period of less than 60 days in a fiscal year shall be an allowable cost.

2. Lease and rental costs: long term. The cost of a rental or lease for a period of more than 60 days in a facility's fiscal year shall be the lesser of the lease or rental cost or property-related costs as calculated under 12 MCAR §§ 2.05301-2.05315 [Temporary].

3. Rentals of office items. Rental of office equipment other than furnishings shall be allowable costs.

4. Exception. Lease and rental costs for arm's length transactions signed or incurred before October 1, 1983, shall be allowed under 12 MCAR § 2.052. This exception does not apply to lease renewals, renegotiations, or extensions occurring on or after October 1, 1983, or to lease or rental costs which were disallowed under 12 MCAR § 2.052.

E. Working capital interest.

1. Working capital interest expense on loans incurred prior to December 31, 1983, shall be allowed under 12 MCAR § 2.052.

2. Working capital interest expense for existing facilities shall be limited under a. and b.

a. For the rate year beginning on or after December 31, 1983, the total amount of working capital interest expense incurred by a facility during a reporting year shall not exceed the amount included in the payment rate in effect on December 30, 1983.

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b. For the rate year beginning on or after December 31, 1984, the total amount of working capital interest expense incurred by a facility during a reporting year shall not exceed 80 percent of the allowable working capital as determined in a.

3. Working capital interest expense for newly constructed or newly established facilities shall be limited under a. and b.

a. For the interim and settle-up rates the total amount of working capital interest expense incurred shall not exceed 2.5 percent of the facility's allowable operating costs during the reporting year.

b. For the rate year following the settle-up the total amount of working capital interest expense incurred shall not exceed 80 percent of the allowable working capital as determined in a.

F. Retirement contributions.

1. Retirement contributions for each employee shall be limited to the cost of either a United States Internal Revenue Service approved pension or profit sharing plan but not both.

2. Retirement contributions made for a nonvested past employee shall be offset against the total cost of retirement contributions for the reporting year.

G. Therapeutic overnight trips, camping, and vacations for residents. The provider may use facility staff, supplies, equipment, and vehicles ordinarily provided as part of the facility program for therapeutic overnight trips, camping, and vacations for residents. In addition, up to $300 per year per resident may be reserved in the facility budget for fees, tickets, travel, lodging, and meals while residents are away from the facility. Other costs may be paid from other funding sources such as voluntary contributions from residents, relatives, and fund raisers.

12 MCAR § 2.05310 [Temporary] Related organization costs.

A. Charges from related organizations. Costs applicable to capital assets, services, or supplies directly or indirectly furnished to the provider by any related organization are includable in the allowable cost of the facility at the cost to the related organization if such costs do not exceed the prices of comparable services, capital assets, or supplies that could be purchased elsewhere.

B. Exception to limitation on related organization charges. Except for the rental or leasing of facilities, if the related organization in the normal course of business sells services, capital assets, or supplies to nonrelated organizations, the cost to the provider shall be no more than the price charged to the nonrelated organization provided that sales to nonrelated organizations constitute at least 50 percent of total annual sales.

C. Rental charges paid to or by a related organization. Lease or rental costs paid to or by a related organization shall be allowed according to 12 MCAR § 2.05309 [Temporary] D.

D. Assets of related organizations. The cost of ownership of a capital asset owned by a related organization and used by the facility may be included in the allowable cost of the facility. When the capital asset is sold or otherwise disposed of by the related organization and the depreciation was claimed as a facility cost, any gain realized by the related organization must be offset against the facility's property-related cost category.

E. Goods or services provided by a facility to related organizations. A provider which sells, leases, or provides goods or services to a related organization shall allocate the cost of the goods or services to the related organization and identify the allocations in the facility's cost report.

1. Costs of services shall be allocated based on the documentation of time spent performing the service by each individual providing services for the related organization. All direct costs shall be allocated based on the product of the hours spent by each individual providing services to the related organization times all direct costs including the individual's salary and fringe benefits, divided by the total hours spent by the individual working for the facility and the related organization.

2. Indirect costs associated with providing services to a related organization shall be allocated on the basis in 1.

3. The cost of goods sold to or used by a related organization shall be directly allocated to the related organization. The cost of goods sold to or used by more than one related organization shall be allocated proportionally to each related organization based on a reasonable estimate of actual use.

4. The cost of goods or services allocated to a related organization shall not be an allowable cost for the facility.

12 MCAR § 2.05311 [Temporary] Cost principles.

The provider must use the cost principles in A.-E. to report costs. The commissioner shall use these costs principles to determine allowable costs.

A. Cost criteria. For rate setting purposes, a cost must satisfy the following criteria:

1. The cost is ordinary, necessary, and related to resident care.

2. The cost is what a prudent and cost conscious business person would pay for the specific good or service in the open market in an arm's length transaction.

3. The cost is for goods or services actually provided to the facility and the cost is actually paid for by the facility within 75 days after the close of the reporting period.

4. The cost effects of transactions that have the effect of circumventing 12 MCAR §§ 2.05301-2.05315 [Temporary] are not allowable under the principle that the substance of the transaction shall prevail over form.

B. Compensation for personal services. Compensation for personal services includes all the remuneration paid currently, accrued or deferred, for services rendered by the provider or employees of the facility. Only compensation costs for the current reporting period are allowable.

1. Compensation includes:

a. salaries, wages, bonuses, and employee benefits, paid for managerial, administrative, professional, and other services;

b. amounts paid by the provider for the personal benefit of the provider or employees;

c. deferred compensation and individual retirement accounts (IRA's);

d. the costs of assets, supplies, equipment, vehicles, services, or any other in-kind benefits the provider or employees receive or use from the facility or related organization; and

e. payments to organizations of nonpaid workers.

2. The facility 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; and

b. result in consistent treatment of employees working in similar situations within the facility and other facilities owned by the same provider.

3. Only services which are necessary services shall be compensated.

4. Except for accrued vacation and sick leave, compensation must be actually paid, whether by cash or negotiable instrument against which current funds are available, 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. Compensation paid to an individual for any work, including management services, performed on less than a full-time basis shall be in proportion to a full-time basis.

C. Applicable credits. Applicable credits must be used to offset or reduce the expenses of the facility to the extent that the cost to which the credits apply was claimed as a facility cost. This cost principle does not apply to:

1. payments made by the commissioner to the provider for approved services for very dependent persons with special needs pursuant to Minnesota Statutes, section 256B.50, subdivision 8 and rules promulgated thereunder;

2. gifts and donations from nongovernmental sources;

3. rental income from the rental or lease of space within the facility to nonrelated individuals or organizations that render therapeutic or other services to residents on a fee-for-service basis.

D. Capitalization. Capital assets shall be treated according to 1.-8. subject to the limitations in 12 MCAR § 2.05304 [Temporary] A.:

1. Expenditures for capital assets except land, additions, and betterments directly related to resident care must be capitalized and depreciated if the item normally has a useful life of more than one year and a unit cost of $150 or more.

2. The purchase or purchases during a reporting year of capital assets except land which have a useful life of more than one year and a unit cost of less than $150 but more than $50 and which have an aggregate cost in excess of $500 must be capitalized and depreciated.

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3. The provider may expense the cost of any repair which costs more than $150. If the provider expenses the cost of a repair, the cost of the repair must be expensed in the reporting year in which the costs are incurred and must be reported on a separate schedule indicating the cost and nature of the repair. The payment rate for the rate year following the current rate year shall be adjusted for the cost of the expensed repairs according to a.-c.

a. The amount claimed for the expensed repairs shall be computed on a per diem basis.

b. The amount computed in a. shall be subtracted from the prior year's payment rate. If the prior year's payment rate is limited by 12 MCAR § 2.05305 [Temporary] C., the amount computed in a. shall be subtracted from the prior year's payment rate before application of the limitation.

c. The amount computed in b. shall be used as the base to which the limitation in 12 MCAR § 2.05305 [Temporary] C. shall be applied to determine the maximum payment rate for the following rate year.

4. Provisions 1. and 2. shall be applied to expenditures incurred on or after December 31, 1983. Expenditures incurred on or before December 30, 1983, shall be capitalized according to 12 MCAR § 2.052.

5. Items such as land, land improvements, and goodwill, whose maintenance or construction are not the responsibility of the provider shall not be depreciable assets.

6. One time pre-opening costs of new facilities which are incurred more than 30 days prior to admission of residents must be capitalized as deferred charges and amortized over a period of not less than 60 consecutive months beginning with the month in which the first resident is admitted for care. Examples of these costs are utilities, supplies, travel, and wages paid for services rendered.

7. Construction financing, feasibility studies, and other costs related to construction must be capitalized and depreciated over the life of the physical plant.

8. Financing costs must be amortized over the term of the loan or the life of the asset, whichever is greater.

E. Adequate documentation. Adequate documentation must:

1. be maintained in orderly, well-organized files;

2. be maintained in a separate file for each facility;

3. include sufficient documentation to support the validity of the transaction and its relationship to facility operations. The documentation typically includes a paid invoice or copy of a paid invoice for each transaction 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 facilities; and

4. include all contracts, agreements, amortization schedules, mortgages, other debt instruments, and all other relevant documents.

F. Documentation of consultant, professional, or purchase service contracts. The provider must maintain copies of all contracts and invoices relating to consultant, professional, or purchase services. These documents must include the name and address of the vendor or contractor, the name of the person actually providing the services, the dates of service, a description of the services provided, the unit cost, and the total cost of the service.

G. 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 time spent performing assigned duties. If the services are rendered on less than a full-time basis, the reasonable compensation must be proportional to that paid for services rendered on a full-time basis.

H. Documentation of mileage; motor vehicle log. The provider must maintain a motor vehicle log for each vehicle used by the facility that shows personal, facility, and resident usage. Mileage paid for the use of a private vehicle must be documented.

I. Documentation of cost allocation. Complete and orderly cost allocation records must be maintained for cost allocations made among cost categories.

12 MCAR § 2.05312 [Temporary] Cost allocation procedures.

A. Cost category allocation principles. Cost classification to cost categories is the process of charging costs to the appropriate cost category and compiling a total cost for each cost category to be recorded on the cost report. Cost category allocation principles shall be as provided in 1.-3.

1. The provider shall classify costs using direct identification of costs, without allocation, by routine classification of

transactions when costs are recorded in the books and records of the facility. The classification of costs shall be made according to the cost categories defined in 12 MCAR § 2.05313 [Temporary].

2. Costs that cannot be specifically classified to one or more cost category shall be classified to the general administrative cost category in accordance with 12 MCAR § 2.05313 [Temporary] C.

3. Compensation of individuals with duties in more than one cost category or facility shall be allocated to the cost categories in 12 MCAR § 2.05313 [Temporary] on the basis of time distribution records that show time spent in various cost categories and facilities or both.

B. Allocation of personal expenses for owners, providers, or employees whose primary residence is in the facility. Allocation procedures given in 1.-4. must be applied to personal expenses of owners, providers, or employees whose primary residence is in the facility to the extent that the costs were included in the facility's costs.

1. Dietary services cost allocation must be based on the number of meals served.

2. Housekeeping, and plant operations, and maintenance cost allocation must be based on the ratio of square feet of floor space devoted to personal use divided by the total floor space of the facility.

3. Depreciation, interest, real estate and personal property taxes, and property and liability insurance costs must be allocated based on the ratio of square feet of floor space devoted to personal use divided by the total floor space of the facility.

4. Laundry and linen costs, and general and administrative costs for items such as telephones and vehicles, must be allocated based on a reasonable estimate of actual use.

C. Cost allocations for other services. Costs associated with services other than intermediate care facilities for the mentally retarded services such as apartments, semi-independent living services, and any other revenue generating operations, except respite care, must be allocated using the principles in A. and the procedures in B.

12 MCAR § 2.05313 [Tempoary] Reporting of costs by cost category.

The costs for routine services must be reported in cost categories A.-D.

A. Program operating costs. The direct costs of program functions are included in the program operating cost category. These costs include:

1. salaries for program staff, including the program director and unit coordinators:

2. supplies;

3. consultant services;

4. staff training to meet the requirements of federal and state 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;

5. therapeutic overnight trips, camping, or vacations for residents within the limitations in 12 MCAR § 2.05309 [Temporary] G.; and

6. membership or other fees for resident participation in social, sports, health, or similar organizations.

B. Maintenance operating costs. The costs listed in 1.-4. are included in the maintenance operating cost category:

1. direct costs of dietary services including:

a. salaries of dietary staff;

b. food;

c. supplies;

d. consultant services; and

e. staff training to meet the requirements of federal and state 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.

2. direct costs of laundry and linen services including:

a. salaries of laundry staff;

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b. supplies;

c. linen and bedding; and

d. purchased services.

3. direct costs of housekeeping services including:

a. salaries of housekeeping staff; and

b. supplies.

4. plant operations and maintenance services including:

a. salaries of maintenance staff;

b. supplies;

c. utilities and fuel;

d. nondepreciable repairs and equipment not subject to capitalization under 12 MCAR § 2.05304 [Temporary]; and

e. purchased services.

C. Administrative operating costs. The costs listed in 1. and 2. are included in the administrative operating cost category.

1. The costs in a.-w. are incurred by the provider for administering the overall activities of the facility including:

a. business office functions;

b. travel expenses except as provided in 12 MCAR § 2.05309 [Temporary] G.;

c. motor vehicle operating expenses;

d. telephone and telegraph charges;

e. office supplies;

f. licensing and permit fees;

g. insurance;

h. personnel costs including help wanted ads and the salaries or fees of management personnel, accounting and clerical personnel, data processing personnel, and receptionists;

i. professional fees for services such as legal, accounting, and data processing services;

j. business meetings and seminars;

k. postage;

l. training for other than direct resident care related personnel to meet the requirements of federal and state laws or regulations for keeping an employee's salary, status, or position or to maintain skills needed to perform the employee's present duties;

m. membership fees for associations and professional organizations which are directly related to the operation of the facility;

n. subscriptions to periodicals which are directly related to the operation of the facility;

o. telephone, television, and radio services provided in areas designated for use by the general resident population, such as lounges and recreation rooms;

p. security services or security personnel;

q. employee benefits;

r. payroll related costs;

s. management fee of a nonrelated organization;

t. purchased services;

u. amortization of pre-opening costs;

v. working capital interest expense; and

w. indirect costs allocated as provided in 12 MCAR § 2.05312 [Temporary] A.2.

2. The operating costs incurred by the facility for management fees which are charged to the facility by related organizations, and the related organizations' operating costs which are allocated to the facility, shall be included in the

administrative operating cost category if the provider submits a breakdown of the cost according to 12 MCAR § 2.05314 [Temporary] A.15. Property-related costs of the related organization which are allocated to the facility shall be reported in the property-related cost category. All related organizations' costs charged to the facility shall be subject to the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary].

D. Property-related costs. The costs listed in 1.-7. are included in the property-related cost category:

1. allowance for depreciation of capital assets except land;
2. capital loan interest expenses;
3. special assessments paid and accrued real estate taxes;
4. rental and lease payments;
5. amortization; and
6. related organization's property-related costs.

12 MCAR § 2.05314 [Temporary] General reporting requirements and submittal procedures.

A. Required reports. The provider must submit an annual cost report covering the facility's reporting year on forms supplied by the commissioner, in order to receive medical assistance payments or other reimbursements from the department. If a certified audit has been prepared it must be submitted with the cost report. Other reports, supporting documentation, and worksheets which must be submitted with the cost report include:

1. general facility information and statistical data as requested on the cost report form;
2. reports of historical costs together with supporting calculations and worksheets;
3. the facility's balance sheet and income statement prepared in accordance with generally accepted accounting principles unless audited financial statements are submitted according to A.;
4. a list of the facility's capital and working capital loans outstanding during the reporting year, 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 loans;
5. a schedule of the facility's funded depreciation escrow account;
6. a statement of ownership of the facility 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 three percent or more in the facility, and of publicly held corporations which have an interest of 15 percent or more;
7. a list of all entities in the provider group which included costs in the cost report in excess of $1.000 annually;
8. copies of purchase agreements and other documents related to purchase of the physical plant and land, or a signed statement that no changes have been made in the documents which are on file with the department;
9. copies of leases and other documents related to the lease of the physical plant and land, or a signed statement indicating that no changes have been made in the documents on file with the department. Lease documents shall include information on the original cost of the physical plant and land and the interest rate paid by the lessor;
10. complete lapsing depreciation schedules calculated in accordance with 12 MCAR § 2.05304 [Temporary];
11. charts showing staff assignments classified according to the cost categories in 12 MCAR § 2.05313 [Temporary];
12. documentation of costs included in the payment for approved services for very dependent persons with special needs under Laws of Minnesota 1983, chapter 312, section 7, subdivision 8. These costs must be reported on an individual resident basis;
13. a schedule of repairs that cost more than $150 and that were expensed during the reporting year. This schedule shall indicate the cost and nature of the repair;
14. an explanation in the cost report, of all adjustments made by the provider to the cost report and the applicable rule citations; and

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15. a breakdown of all costs included in the related organization's management fees charged to the provider and the related organization's costs directly allocable to the facility. The breakdown shall include all costs of items as listed in 12 MCAR § 2.05313 [Temporary] C. The supporting schedules shall include the related organization's income statement, the cost allocated to each facility, related organization, and non-related organization, and explanation of the method of allocation used.

B. Supplemental reports. In order to substantiate the payment rate, the commissioner may require the provider to submit 1.-5.:

1. certified public accountant's or licensed public accountant's audit workpapers which support the audited financial statements and cost reports, if an audit has been prepared;

2. separate audited or unaudited financial statements from each entity in the provider group;

3. copies of purchase agreements, consultant contracts, and other documents related to the purchase or acquisition of depreciable assets, goods, and services;

4. copies of leases and other documents related to the lease of the equipment, furnishings, and goods. Lease documents shall include information on the historical capital cost of the equipment, furnishings, and goods, and the interest rate paid by the lessor; and

5. other relevant information required to support a payment rate request.

C. Short period costs reports. Only newly constructed or newly established facilities, or facilities that have an ownership change of more than 50 percent may file two short period costs reports. Not more than two short period cost reports may be filed. Each short period report must cover a period of at least six months.

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

E. Records. The provider shall maintain statistical and accounting records in sufficient detail to support information contained in the facility's required reports and financial statements for at least four years following submission of a cost report.

F. Priority. 12 MCAR §§ 2.05301-2.05315 [Temporary] will take priority over generally accepted accounting principles if a conflict arises.

G. Report certification. Required reports must be accompanied by a signed statement attesting to the accuracy of the information submitted on the required reports. The statement must be signed either by the provider or, for a partnership, one of the partners, or, for a corporation, the officer authorized to bind the firm. If reports have been prepared by a person other than the above individual, a separate statement signed by the preparer shall also be included.

H. Reporting deadlines and extensions.

1. Deadlines. Required reports must be submitted to the commissioner within three months after the close of the facility's normal reporting year. Supplemental reports and information must be submitted within 30 days of the request by the commissioner. Facilities that terminate participation in the medical assistance program must submit required reports to the commissioner within three months after termination.

2. Report deadline extension. The commissioner shall grant one 30-day extension to the reporting deadline if an extension is requested in writing by the provider prior to the deadline in 1. The commissioner shall grant an additional extension to the reporting deadlines if the provider makes a written showing of good cause. The number of extensions granted in the past reporting years shall be taken into consideration by the commissioner when granting additional extensions.

3. Rejection of reports. Within 20 days after receipt of the cost report, the commissioner shall conduct an initial review of the cost report. If the commissioner finds that the cost report is inaccurate or does not contain the items required in A., the commissioner may reject the cost report including documents and worksheets or may require additional information to support the payment rate request. The corrected report or the additional information requested must be submitted to the commissioner within 30 days of the request or the report shall be rejected. The commissioner shall extend this time if the provider makes a written showing of good cause and if the commissioner determines that the delay in receipt of the information will not prevent the commissioner from establishing rates in a timely manner as required by law.

I. Audits and adjustments.

1. Audits. The commissioner shall subject all reports and supporting documentation to audits to determine compliance

with 12 MCAR §§ 2.05301-2.05315 [Temporary]. The provider may request in writing a field audit. If a field audit is requested, the commissioner shall commence the field audit within 180 days of receipt of the written request.

2. Adjustments. An adjustment to a payment rate determined according to 12 MCAR §§ 2.05301-2.05315 [Temporary] shall be made according to a.-h. if a desk or field audit of the facility's accounting and statistical records, cost reports, or amended cost reports identifies errors or omissions.

a. Field audit adjustments shall only be made if the adjustment would result in at least a five cent per resident day or $2,000 cost change, whichever is less.

b. Retroactive adjustments to the facility's temporary payment rate or payment rate shall be made as a result of desk and field audit findings, limited by the restrictions in a. Adjustments to the payment rate shall be limited to the four complete reporting years preceding the date on which an audit commences.

c. Providers may file no more than two amendments to a previously filed cost report in which errors or omissions are uncovered by the provider, if each amendment would result in the lesser of a five cent per resident day or $2,000 adjustment for each reporting year. The commissioner shall make retroactive adjustments to the payment rate of a facility if the amendment is filed within one year of the filing of the original cost report to the amended.

d. Providers may file an amended cost report if providers have a program change approved by the commissioner according to 12 MCAR § 2.185 which results in an increase or decrease in costs within an individual facility of at least $2,000 for the remainder of the facility's reporting year. Amended cost reports must be filed not later than 30 days after the program change which leads to the increase or decrease. No more than one amended cost report may be submitted for program changes each quarter of the facility's reporting year.

e. Amended cost reports shall consist of the corrected cost report pages resulting in the amendment and supporting documentation. The corrections or changes shall be calculated according to 12 MCAR §§ 2.05301-2.05315 [Temporary].

f. If the adjustment results in a payment from the provider, payment shall be made by the provider within 120 days after the date of the written notice. If the payment rate adjustment results in a payment to the provider, the medical assistance program payment to the provider shall be made within 120 days after the date of the written notice.

g. Interest charges shall be assessed on over and under payment balances after the deadlines in f. The annual interest rate charged shall be the rate charged by the commissioner of revenue for late payment of taxes, which is in effect 121 days after formal notification.

h. Any changes, adjustments, or amendments which result in a reimbursement to the facility shall be subject to the limitations in 12 MCAR § 2.05305 [Temporary] C.

J. Penalties. The commissioner shall impose any one or a combination of the following penalties for noncompliance with the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary].

1. If the provider fails to submit the information required in A. by the deadlines given in H., the facility's temporary payment rate or payment rate may be reduced 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 shall not be retroactive.

2. If the information or documentation described in B. is requested on a field audit and is not provided within 30 days of the request, the facility's temporary payment rate or payment rate may be reduced to 80 percent of the most recently established rate in effect. The penalty shall be removed beginning the first day of the month following the month in which the required information or documentation is received. Reinstatement of the full payment rate shall not be retroactive.

3. If, after the initial review in H.3., either a desk or field audit shows lack of adequate documentation for specific costs, the commissioner may require the facility to provide the additional documentation within 15 days of the request. If the documentation is not provided, the costs which are not adequately documented shall be disallowed.

4. If a field audit reveals inadequacies in the facility's bookkeeping and accounting practices, the commissioner may require that the provider engage competent professional assistance to properly prepare the required reports. Failure to remedy the inadequacies in the facility's bookkeeping and accounting practices within 90 days of the day of written notice may result in the application of the penalty in 1.

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5. If a provider knowingly supplies inaccurate or false information in a required report that results in an overpayment, the commissioner shall do one or more of the following:

a. immediately adjust the facility's payment rate to recover the entire overpayment;

b. terminate the commissioner's agreement with the provider; or

c. prosecute under applicable state or federal law.

12 MCAR § 2.05315 [Temporary] Appeal procedures.

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

1. the appeal, if successful, would result in a change to the facility's payment rate;

2. the appeal arises from application of the provisions of 12 MCAR §§ 2.05301-2.05315 [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 provider must notify the commissioner of its intent to appeal within 30 days of receiving the payment rate determination or decision which is being appealed. The appeal must be filed with the commissioner, in writing, within 60 days after receiving the payment rate determination or decision 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 provider 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 provider 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 under 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 under 12 MCAR §§ 2.05301-2.05315 [Temporary], the payment rate established by the commissioner shall be the payment rate paid to the provider while the appeal is pending.

E. Payments after resolution of appeal. Upon resolution of the appeal any overpayments or underpayments shall be paid under 12 MCAR § 2.05314 [Temporary] I. and J.

F. Expenses incurred in the appeal or for individual items under appeal will be reimbursed to the provider the extent that:

1. the appeal or the individual item was resolved on behalf of the provider; and

2. this amount is not in excess of the maximum payment rate as determined under 12 MCAR § 2.05305 [Temporary].

Department of Public Welfare

Proposed Temporary Rules Governing Medical Assistance Funding for Day Training and Habilitation (12 MCAR §§ 2.0300-2.0304 Temporary)

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 312, article 9. Persons interested in these rules have until December 5, 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:

John Zakelj
Mental Health Bureau
Department of Public Welfare
Centennial Building
St. Paul, MN 55155
612/296-4426

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 Statutes certification of the rule's form.

As provided by Laws of Minnesota 1983, chapter 312, these temporary rules are to be promulgated by January 1, 1984, and will be effective as of January 1, 1984. These temporary rules shall be effective for 180 days and may be continued in effect for an additional period of 180 days if the Commissioner gives notice of continuation of the 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 361 days after their effective date without following the procedures in Minnesota Statutes, section 14.13 to 14.20.

Rules 12 MCAR §§ 2.0300-2.0304 (Temporary) govern use of Medical Assistance funding for developmental achievement services (DAC) and other day training and habilitation for residents of intermediate care facilities for mentally retarded (ICF-MR) persons. These rules set criteria for eligible services and providers. For developmental achievement centers with county contracts in effect during 1983, these rules provide the procedures to implement the statutory requirement that future Medical Assistance rates be based on 1983 county rates. In addition, these rules provide criteria and procedures for approval of new day training and habilitation programs. These rules also establish billing and recordkeeping requirements.

Fiscal Impact

A fiscal note was prepared in May, 1983 for the legislation which authorized these temporary rules. That fiscal note indicated that implementation of Medical Assistance funding for day training and habilitation would save Minnesota counties $7,525,000 for calendar 1984 and $9,032,000 for calendar 1985. The reduced costs to the counties will be paid through the federal share of Medical Assistance. The following fiscal note addresses only those areas in which the proposed temporary rules may change the projections calculated earlier for the legislation.

Although these rules impose new administrative duties on county boards, it is expected that the cost of these duties will be fully offset by the reduction in county board administrative duties resulting from the fact that county boards will no longer have to make Community Social Services Act payments for day training and habilitation for ICF-MR residents. Increased administrative costs at the state level will not exceed the amount appropriated for this purpose under Laws of Minnesota 1983, chapter 312, article 9.

The only requirement in 12 MCAR §§ 2.0300-2.0304 (Temporary) which will increase the costs to local public bodies is 12 MCAR § 2.0302.B.1, which requires that all programs which receive funds under these rules have available at least 185 days of service in calendar year 1984 and 195 days of service in calendar year 1985. Based on a survey of all counties in August, 1983, 18 DACs (out of a total of 99 DACs with adult programs) are providing less than 195 days of service in calendar year 1983, with 13 of these DACs providing less than 185 days. Laws of Minnesota 1983, chapter 312, article 9 provides, on a permissive basis, for Medical Assistance funding for 1984 and beyond for up to 210 days per year. Although a number of counties will probably voluntarily increase their number of days, this fiscal impact analysis includes the full cost to bring all existing day training and habilitation programs up to 185 days in calendar years 1984 and 195 days in 1985. The total cost is estimated at $97,774 for calendar 1984 and $229,241 for calendar 1985.

It is estimated that, for the 55 percent of clients who will be ICF-MR residents and eligible for Medical Assistance, the federal share will be 50.89 percent in 1984 and 52.67 percent in 1985, or $24,452 in 1984 and $61,958 in 1985. These federal funds were already included in budget projections when the legislation was passed.

The state share of the cost for eligible clients will be $21,237 in 1984 and $50,112 in 1985. As required by statute, these amounts will be deducted from the state Community Social Services Act (CSSA) grant for the counties of financial responsibility for the particular clients involved. Since the CSSA grant is a fixed annual allocation, this cost is a county cost in the sense that it reduces the amount available to counties for other social services.

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The counties will be charged directly for a share of the Medical Assistance billings for the additional costs required by the proposed temporary rules, namely $2,359 in 1984 and $5,564 in 1985. In addition, it is anticipated that a similar expansion of services will be made available for other clients who will not be eligible for Medical Assistance reimbursement. The costs to the counties for the ineligible clients will be $49,726 in 1984 and $111,607 in 1985. All of these costs to counties will reduce the savings projected earlier for the legislation.

Summary of fiscal note:

	Calendar 1984	Calendar 1985
County share for eligible clients	$ 2,359	$ 5,564
County share for ineligible clients	49,726	111,607
Subtotal	$52,085	$117,171
CSSA deduction for eligible clients	21,237	50,112
Subtotal	$73,322	$167,283
Federal share for eligible clients	24,452	61,958
Total cost to implement these rules	$97,774	$229,241
Savings projected for legislation	$7,525,000	$9,032,000
less costs above	97,774	229,241
Net savings to counties to implements Medical Assistance for DACs	$7,427,226	$8,802,759

Details by county of financial responsibility are available from John Zakelj at 612/296-4426.

Copies of this notice and the proposed temporary rules may be obtained by contacting John Zakelj.

Leonard W. Levine, commissioner
Department of Public Welfare

Temporary Rules as Proposed (all new material)

12 MCAR § 2.0300 [Temporary] Purpose and applicability.

A. Purpose. Rules 12 MCAR §§ 2.0300-2.0304 [Temporary] establish procedures to ensure adequate reimbursement to approved providers for the efficient and economical provision of licensed quality day training and habilitation for eligible persons who reside in intermediate care facilities for mentally retarded persons.

B. Applicability. Rules 12 MCAR §§ 2.0300-2.0304 [Temporary] apply to providers which claim medical assistance funding for day training and habilitation authorized under Laws of Minnesota 1983, chapter 312, article 9, and to county boards which are required by that law to participate in this program and to administer day training and habilitation. Rules 12 MCAR §§ 2.0300-2.0304 [Temporary] do not apply to state hospitals.

12 MCAR § 2.0301 [Temporary] Definitions.

A. Scope. As used in 12 MCAR §§ 2.0300-2.0304 [Temporary] the following terms have the meanings given them.

B. Client. "Client" means a person receiving day training and habilitation.

C. Commissioner. "Commissioner" means the commissioner of public welfare or a designated representative.

D. County board. "County board" means the board of county commissioners where the provider is located, or that board's designated representative.

E. County of financial responsibility. "County of financial responsibility" means the county specified in Laws of Minnesota 1983, chapter 151, section 2.

F. Day training and habilitation. "Day training and habilitation" means those health and social services which meet the criteria in 12 MCAR § 2.0302 [Temporary] A.

G. Developmental achievement center. "Developmental achievement center" means a provider of day training and habilitation which complies with the requirements in Minnesota Statutes, sections 252.21 to 252.261.

H. Eligible person. "Eligible person" means a person who is eligible to receive medical assistance, resides in an intermediate care facility for mentally retarded persons, and is authorized by the county of financial responsibility under 12 MCAR § 2.0302 [Temporary] C. to receive day training and habilitation.

I. Facility. "Facility" means the program and the building which are certified as an intermediate care facility for mentally retarded persons under the Code of Federal Regulations, title 42, section 442, as amended through December 31, 1982.

J. Individual service plan. "Individual service plan" means the individual service plan specified in 12 MCAR § 2.0185.

K. New provider. "New provider" means a provider that did not have a county board approved developmental achievement center per diem rate for the period July 1, 1983, to December 31, 1983.

L. Provider. "Provider" means the corporation, governmental unit, or other legal entity that claims medical assistance reimbursement for provision of day training and habilitation. For purposes of rate determination under 12 MCAR §§ 2.0300-2.0304 [Temporary], an entity which operates under more than one day training and habilitation license is considered as a separate provider for each license.

M. Work activity. "Work activity" means activity which is designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. For this purpose, "inconsequential" means that the wage paid to the client is within the range specified for work activity centers by Code of Federal Regulations, title 29, section 525.2 as amended through December 1982.

12 MCAR § 2.0302 [Temporary] Basic provisions.

A. Eligible services. Medical assistance funds may be used for day training and habilitation which complies with 12 MCAR §§ 2.0300-2.0304 [Temporary] and:

1. is directed at the development and maintenance of life skills;

2. enables the individual to function to the best of his or her capacity;

3. includes:

a. work activity as defined in 12 MCAR § 2.0301 [Temporary] M.;

b. transportation to and from service sites; and

c. supervision and assistance in grooming, training, eating, toileting, communicating, socializing, and other activities of daily living;

4. is authorized by the county of financial responsibility;

5. is provided under a current license for day training and habilitation pursuant to Minnesota Statutes, sections 245.781 to 245.812;

6. is not included in the approved rate for the facility in which the client resides;

7. does not replace sheltered work or work activity services which are funded by the Minnesota Division of Vocational Rehabilitation;

8. is provided during daytime hours, except as specified under 9.;

9. is provided during evening hours if required by the client's individual service plan and if the residential facility serves the client during the daytime hours; and

10. does not exceed the number of days per year specified in Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (e).

B. Eligible providers. To be eligible for medical assistance reimbursement, providers must comply with 12 MCAR §§ 2.0300-2.0304 [Temporary]. In addition:

1. The provider must provide at least 185 days of service in calendar year 1984 and 195 days of service in calendar year 1985; a new provider must provide at least 185 days of service in the first full calendar year of operation and 195 days per year after the first year;

2. The provider must comply with the standards in the Code of Federal Regulations, title 42, sections 442.445 and 442.463, as amended through December 1982; and

3. The provider and the facility where the provider's clients reside must not be under the control of the same or related legal entities. For this purpose, "control" means having power to direct or affect management, operations, policies, or implementation, whether through the ownership of voting securities, by contract or otherwise; "related legal entities" are entities which share a majority of governing board members or are owned by the same person or persons. If both the provider

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and the facility are wholly or partially owned by individuals, those individuals must not be related by marriage or adoption as spouses or as parents and children. Two exceptions to this requirement are:

a. the county board's and commissioner's control which is required by 12 MCAR §§ 2.0300-2.0304 [Temporary]; or

b. the provider is a developmental achievement center which applied for licensure before April 15, 1983.

C. Duties of county of financial responsibility. For eligible persons, the county of financial responsibility shall:

1. authorize in the individual service plan the amount, type, and duration of day training and habilitation determined to be needed in the annual client review required by Laws of Minnesota 1983, chapter 312, article 9, section 5, subdivision 1; and

2. choose providers that have demonstrated ability to provide the amount, type, and duration of day training and habilitation required in individual service plans and that meet the eligibility requirements in B. New providers must also meet the additional requirements in 12 MCAR § 2.0304 [Temporary].

D. Nondiscrimination. Within the requirements of individual service plans, the county of financial responsibility shall authorize and the provider shall provide, for eligible persons under 12 MCAR §§ 2.0300-2.0304 [Temporary], services which are equal in amount, duration, and scope to services provided to other persons who are served by the same provider.

E. Process for county rate recommendations. The county board shall recommend payment rates to the commissioner for each eligible provider which is identified by a county of financial responsibility to provide day training and habilitation to residents of intermediate care facilities for mentally retarded persons. The following requirements apply to the county board's recommendation:

1. The rates must be based on the criteria in F.

2. The county board shall recommend three rates for each provider: a full-day service rate, a partial-day service rate, and a transportation rate, as defined in F.4.-6. If a provider serves both preschool children and adults, the county board shall recommend separate rates for the preschool and adult services.

3. The county board's rate recommendation to the commissioner shall include comments from the provider indicating the provider's agreement or disagreement with the county board's rate recommendations.

4. The rates for medical assistance must not exceed the rates to be paid by the county board from nonmedical assistance sources for equivalent services from the same provider in the same contract period. If the county board's rate structure and billing methods differ from those required for the medical assistance program under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (b), and 12 MCAR §§ 2.0300-2.0304 [Temporary], the county board shall complete a translation worksheet provided by the commissioner. Except for the necessary change in dates, this worksheet is the same worksheet used for translation of 1983 rates under 12 MCAR § 2.0303 [Temporary].

5. The county board shall submit rate recommendations to the commissioner by December 1, 1983, for services to begin in January 1984. For services starting after January 1984 and for revised rates, the county board shall submit rate recommendations to the commissioner at least 60 days before the recommended rates are to be effective.

6. The county board may submit revised rate recommendations to the commissioner if the revised rates still comply with 1.-5.

F. Rate criteria. Payment rates established under 12 MCAR §§ 2.0300-2.0304 [Temporary] must comply with the following criteria:

1. The rates shall be adequate reimbursement for the cost of efficient and economical provision of quality services which meet the eligibility requirements in A. Except as provided in 2. and 3., "adequate" means that the sum of the full-day service rate and the transportation rate as defined in 4.-6. equals the sum of the same rates approved by the commissioner for the preceding year plus the projected percentage change in the consumer price index as defined in G.

2. The rates for individual clients may be higher than allowed in 1. if the county board recommends and the commissioner approves higher rates through the special needs procedures provided by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 8, and applicable rules.

3. The rates may be lower than allowed in 1. only if the county board documents to the commissioner's satisfaction that individual service plans can be satisfied at less cost.

4. The service rates are reimbursement for day training and habilitation, excluding transportation to and from the client's residence, received by an eligible client within a 24-hour period. The full-day service rate applies to clients whose individual service plan requires the number of service hours per day which is defined in the agreement under I. as a full day. The partial-day service rate applies to clients whose individual service plan requires less than a full day on a consistent basis.

5. The partial-day service rate must not exceed 75 percent of the full-day service rate.

6. The transportation rate is reimbursement for the provision of, or arrangement for, transportation received by an eligible client from the client's residence to the service site and back.

7. Rates for new providers must comply with the additional requirements in 12 MCAR § 2.0304 [Temporary].

G. Inflation. By July 1 of each year, the commissioner shall notify county boards and providers of the projected inflation rate for the following year, which shall be the most recent projected percentage change in the consumer price index (all urban), for the upcoming calendar year over the current year, as authorized by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (c), and published in Health Care Costs by Data Resources, Inc., 1750 K Street, Suite 300, Washington D.C. 20006.

H. Rate approval. If the rates recommended by the county board comply with E. and F., the commissioner shall approve the rates within 60 days of receipt of the recommendation from the county board; if the recommendation is received by December 1, 1983, the commissioner shall approve by January 1, 1984. The commissioner shall deny approval, or approve different rates, if necessary to ensure compliance with 12 MCAR §§ 2.0300-2.0304 [Temporary].

I. Agreement. Before medical assistance reimbursable service begins, the county board where the facility is located shall, for each provider and for each facility whose residents will receive day training and habilitation under 12 MCAR §§ 2.0300-2.0304 [Temporary], submit to the commissioner a day training and habilitation agreement signed by the county board, the provider, and by an authorized representative of the facility whose residents will receive services under the agreement. This agreement must be completed on forms provided by the commissioner, with the exception that the county board may attach an addendum which does not conflict with 12 MCAR §§ 2.0300-2.0304 [Temporary]. The agreement must include:

1. the number of hours of day training and habilitation per day, excluding transportation to and from the facility, which will be considered as a full day;

2. the number of days per year services will be available;

3. the respective duties and responsibilities of the county board, the provider, and the facility;

4. a statement that the provider must comply with 12 MCAR §§ 2.0300-2.0304 [Temporary] to be eligible for medical assistance reimbursement; and

5. the rates approved by the commissioner.

J. Agreement approval. If the commissioner does not respond in any way within 60 days of receipt of the signed agreement in I., the agreement is deemed to be approved. If the agreement does not comply with I., the commissioner shall, within 60 days of receipt of the signed agreement:

1. deny approval; or

2. grant provisional approval if the parties to the agreement, due to circumstances beyond their control, do not meet all of the requirements in I., but will meet those requirements within 30 days of the provisional approval.

K. Agreement revision or termination. The county board shall promptly notify the commissioner if the agreement in I. is suspended, terminated, or changed. Approval for revised agreements is subject to the provisions in J. Unless an agreement has received provisional approval under J., the commissioner shall not pay for services provided during any period in which there is no agreement in effect or during which the agreement in effect does not comply with I.

L. Provider billing. The provider shall comply with the requirements of 1.-3. when submitting bills to the commissioner for services rendered.

1. Bills must be submitted on appropriately completed forms supplied by the commissioner, identifying for each client:

a. the full-day or partial-day service rate as approved under H. multiplied by the number of days the client received day training and habilitation from the provider; and

b. the transportation rate as approved under H. multiplied by the number of days the client received transportation provided or arranged for by the provider.

2. The provider shall not bill for days in which the client does not receive day training and habilitation.

3. The provider shall not bill for more than one service rate and one transportation rate per person per day.

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M. Payment. For bills that comply with 12 MCAR §§ 2.0300-2.0304 [Temporary], the commissioner shall pay the provider under the payment procedures in Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (f) and Minnesota Statutes, section 256B.041. The state and county shares of payments shall be as provided in Laws of Minnesota 1983, chapter 312, article 9, section 9 and Minnesota Statutes, section 256B.041.

N. Errors and duplicate payments. If the provider becomes aware of an error in the billings or if the provider receives payment from another source for services which were also paid for by the medical assistance program, the provider shall promptly notify the commissioner. The commissioner shall require a repayment or adjust future payments to correct the error or eliminate the double payment.

O. Rate appeal. If a provider disagrees with the rate recommendation of the county board, the provider may appeal to the county board. If the county board disagrees with a rate decision of the commissioner, the county board may appeal to the commissioner under Minnesota Statutes, chapter 14. Until a rate appeal is resolved and if the provider continues services, payments shall continue at a rate which the commissioner determines to comply with 12 MCAR §§ 2.0300-2.0304 [Temporary]. If a higher rate is approved, the commissioner shall make a retroactive payment as determined in the rate appeal decision.

P. Penalties for noncompliance. If the provider does not comply with 12 MCAR §§ 2.0300-2.0304 [Temporary], with other applicable laws and rules, and with the terms of the agreement required by I., the commissioner shall suspend or withhold payments under the procedures in 12 MCAR § 2.064, surveillance and utilization review program. "Other applicable laws and rules" includes laws and rules in 12 MCAR §§ 2.0300-2.0304 [Temporary] and:

1. Minnesota Statutes, section 245.825 and applicable rules governing use of aversive and deprivation procedures;

2. Minnesota Statutes, sections 626.556 to 626.557 and applicable rules governing reporting of maltreatment of minors and vulnerable adults;

3. Minnesota Government Data Practices Act, Minnesota Statutes, sections 13.01 to 13.57;

4. Minnesota Human Rights Act of 1982, chapter 363.

Q. Reporting and recordkeeping requirements.

1. The provider shall have on file, for five years from the date of the bill, the following records to support the bills submitted:

a. authorization from the county of financial responsibility pursuant to C. for each client for whom service is billed and for the amount, type, and duration of service billed:

b. attendance sheets and other records documenting that the clients received the billed services from the provider; and

c. complete records of bills and, if applicable, refunds to and from other payers for services equivalent to those billed to the medical assistance program.

2. The provider shall maintain such records as may be necessary to submit the annual report by March 1 as required by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 9. By October 1 of each year, the commissioner shall determine the reporting requirements for the coming year and so notify each provider. These reporting requirements shall apply to all day training and habilitation offered by the provider, regardless of funding source. These reporting requirements do not affect the county board's authority under other laws and rules to require additional reports from the provider.

R. County advances. County boards may make loans or grants to providers for use as operating capital to serve clients.

S. Program change or reorganization. Rates established under 12 MCAR §§ 2.0300-2.0304 [Temporary] shall not be affected by changes in ownership or reorganization of the provider. However, if a provider changes more than 50 percent of its clientele within one year, the county board may recommend rates for that provider under the rules for new providers, 12 MCAR § 2.0304 [Temporary].

12 MCAR § 2.0303 [Temporary] Determination of 1983 rates for developmental achievement centers.

A. Duties of county board. The following requirements apply to the county board for developmental achievement centers with contracts in effect during July 1, 1983, to December 31, 1983.

1. The county board shall, by December 1, 1983, notify the commissioner of the contractual rates in effect on December 1, 1983, for each program.

2. If the county board's rate structure and billing methods differ from those required for the medical assistance program by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (b), and 12 MCAR § 2.0302 [Temporary], the county board shall, with the assistance of the provider, complete and submit to the commissioner by December 1, 1983, the translation worksheet in B.

B. Translation worksheet. The commissioner shall provide a translation worksheet which will accurately translate the county board payment rate as of December 1, 1983, into rates which the county board would be paying if the county board used the same rate structure and billing methods described in Laws of Minnesota 1983, chapter 312, section 7, subdivision 5, paragraph (b), and 12 MCAR § 2.0302 [Temporary]. This worksheet must include the provisions in B.1.-5. For purposes of 12 MCAR § 2.0303 [Temporary], "contract" means the contract in effect between the county board and the provider as of December 1, 1983, and "most recent representative period" must be determined by the county board and must be at least six consecutive months.

1. If the contract includes payment for days when service was not received, the worksheet must require records indicating the number of such days billed as a percentage of the total days billed during the most recent representative period and must adjust the rates upward by an equal percentage.

2. If the contract bases rates on average daily attendance which is less than 93 percent of the provider's average daily enrollment for the period from July 1, 1983, to December 31, 1983, the worksheet must adjust the rates downward based on 93 percent average daily attendance.

3. If the contract includes an annual limitation or a refund provision which effectively lowers the stated daily rates, the worksheet must adjust the rates downward accordingly.

4. If the contract does not provide for separation of the daily rate into a full-day service rate, a partial-day service rate, and a transportation rate as defined in 12 MCAR § 2.0302 [Temporary] F., the worksheet must provide a method to separate the daily rate.

5. If the contract provides for payments based on expenditures or if the county board provides the services directly without a contract, the worksheet must develop rates by dividing the county board's actual expenditures for the most recent representative period by 93 percent of the average enrollment for that period.

C. Commissioner's approval. If the information submitted by the county board complies with A. and B., the commissioner shall approve 1983 rates by January 1, 1984. The commissioner shall deny approval, or approve different rates to ensure compliance with A. and B.

D. Use of 1983 rates. For 1984 rates, the rates approved under C. are the rates approved by the commissioner for the preceding year in 12 MCAR § 2.0302 [Temporary] F. These rates are approved solely for future rate determination purposes and do not require adjustment of 1983 county board payments.

12 MCAR § 2.0304 [Temporary] Additional requirements for new providers.

A. Request for proposals. Before a new provider can be considered for medical assistance reimbursement for day training and habilitation, the county board shall establish and implement a system for request of proposals. The county board shall use the needs assessment required under Minnesota Statutes, section 256E.08, subdivision 1 and 12 MCAR § 2.0185 to identify particular types of day training and habilitation needed. The request for proposals shall be based on that needs assessment. The county board shall request proposals in a manner which gives potential providers in the county and employees of the regional state hospital reasonable opportunity to submit an appropriate proposal.

B. County recommendation. At least 60 days before service begins, the county board shall choose and recommend to the commissioner proposals for approval as to need, location, size, and program under Minnesota Statutes, section 252.28 and rates for each proposal. The county board's recommendation must include a description of the specific methods used to choose a provider and to develop rates. The county board's recommendation must be based on the following criteria:

1. the proposed provider rates must comply with 12 MCAR §§ 2.0300-2.0304 [Temporary];

2. the proposed provider must comply with the need determination and licensure requirements in Minnesota Statutes, sections 252.28 and 245.781 to 245.812 and funding eligibility requirements in 12 MCAR § 2.0302 [Temporary];

3. the proposed provider rates must not exceed the limits in Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivisions 6 and 7;

4. the proposed provider rates must incorporate the most efficient and effective use of existing resources to meet the needs identified by the county board within the constraints of client choice of vendor policies in 12 MCAR § 2.047; and

5. the proposed provider services must not duplicate services available through other funding sources.

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C. County and regional limits. To implement Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivisions 6 and 7, the commissioner shall determine the average medical assistance payment rates for day training and habilitation in each county and in each of the regional development commission districts designated in Minnesota Statutes, sections 462.381 to 462.396. To be eligible for the special limit applicable only to new developmental achievement centers under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 6, the developmental achievement center must not subcontract services, except for transportation, to a provider that is not a developmental achievement center.

D. Commissioner's approval. If the recommendation submitted by the county board complies with A.-C., the commissioner shall approve the rates for the new provider within 60 days of receipt of the county board recommendation. The commissioner shall deny approval, or approve different rates if necessary to ensure compliance with A.-C.

Minnesota Racing Commission

In the Matter of the Proposed Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Seven Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Hearing

A public hearing concerning the above-entitled matter will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota, on December 15 and 16, 1983, commencing each day at 9:00 a.m. PLEASE NOTE, HOWEVER, THAT THIS HEARING WILL BE CANCELLED IF FEWER THAN SEVEN PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A HEARING PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED THE SAME DATE AS THIS NOTICE.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or materials may be submitted to George A. Beck, Office of Administrative Hearings, Fourth Floor, Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 341-7601, either before the hearing or within five working days after the public hearing ends. The Hearing Examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 14.01-14.56, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the above-entitled matter, you are urged to participate in the rule hearing process.

Authority for the adoption of these rules is contained in Laws 1983, Ch. 214.

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

Although the Commission does not believe that the proposed rules will have a direct and substantial adverse impact on agricultural land as set forth in Minn. Stat. § 17.81, please note that it is possible that the Commission's granting of Class A licenses could result in the utilization of agricultural land for the sites of Class A racetracks.

A copy of the proposed rules is attached to this Notice. Additional copies of the proposed rules are now available and at least one free copy may be obtained by writing to James Weiler, Project Administrator, Suite 400, United Labor Centre, 312 Central Avenue, Minneapolis, Minnesota 55414, telephone (612) 341-7555. Additional copies will be available at the hearing. If you have any questions on the content of the rules, contact James Weiler.

NOTICE: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency.

If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

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

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

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

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

Ray Eliot, Chairman
Minnesota Racing Commission

Proposed Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules with a Public Hearing If Seven or More Persons Request a Hearing

Notice is hereby given that the Minnesota Racing Commission proposes to adopt the above-entitled rules without a public hearing unless seven or more persons submit written requests for a public hearing. The Commission has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28.

PLEASE NOTE, HOWEVER, THAT IF SEVEN OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD PURSUANT TO MINN. STAT. §§ 14.13-14.20 AND IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED ON THIS DATE.

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

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

James Weiler, Project Administrator
Suite 400, United Labor Centre
312 Central Avenue
Minneapolis, MN 55414
Telephone: (612) 341-7555

Authority for the adoption of these rules is contained in Laws 1983, Ch. 214. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from James Weiler upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and

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Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to James Weiler.

Although the Commission does not believe that the proposed rules will have a direct and substantial adverse impact on agricultural land as set forth in Minn. Stat. § 17.81, please note that it is possible that the Commission's granting of Class A licenses could result in the utilization of agricultural land for the sites of Class A racetracks.

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

Additional copies of this Notice and the proposed rules are available and may be obtained by contacting James Weiler.

Ray Eliot, Chairman
Minnesota Racing Commission

Rules as Proposed (all new material)

4 MCAR § 15.001 Identification of applicant for Class A license.

An application for a Class A license must include, on a form prepared by the commission, the name, address, and telephone number of the applicant and the name, position, address, telephone number, and authorized signature of an individual to whom the commission may make inquiry.

4 MCAR § 15.002 Applicant's affidavit.

An application for a Class A license must include, on a form prepared by the commission, an affidavit of the chief executive officer or a major financial participant as applicant setting forth:

A. that application is made for a Class A license to own and operate a horse racing facility at which pari-mutuel betting is conducted;

B. that affiant is the agent of the applicant, its owners, partners, members, directors, officers, and personnel and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached;

C. that the applicant seeks a grant of a privilege from the state of Minnesota, and the burden of proving the applicant's qualifications rests at all times with the applicant;

D. that the applicant consents to inquiries by the state of Minnesota, its employees, the commission members, staff and agents into the financial, character, and other qualifications of the applicant by contacting individuals and organizations;

E. that the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the state of Minnesota, its employees, the commission, staff or agents;

F. that affiant has read the applicant's identification and disclosures and knows the contents; the contents are true to affiant's own knowledge, except matters therein stated or information and belief; as to those matters, affiant believes them to be true;

G. that the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, or suspension of a license or imposition of a fine;

H. that the applicant will comply with Minnesota Statutes, chapter 240 and all rules of the commission;

I. the affiant's signature, name, organization, position, address, and telephone number;

J. the date.

4 MCAR § 15.003 Disclosure of ownership and control.

An applicant for a Class A license must disclose:

A. the type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other;

B. if the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, any aliases and business names currently used by the applicant, and copies of state and federal tax returns for the past five years;

C. if the applicant is a corporation:

1. the applicant's full corporate name and any trade names currently used by the applicant;

2. the jurisdiction and date of incorporation;

3. the date the applicant commenced doing business in Minnesota and, if the applicant is incorporated outside Minnesota, a copy of the applicant's certificate of authority to do business in Minnesota;

4. copies of the applicant's articles of incorporation, bylaws, and state and federal corporate tax returns for the past five years;

5. the general nature of the applicant's business;

6. whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

7. the classes of stock of the applicant. As to each class, the number of shares authorized, number issued, number outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;

8. if the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;

9. the names, in alphabetical order, and addresses of the directors and, in a separate listing, officers of the applicant. As to each director and officer, the number of shares held of record as of the application date or beneficially of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

10. the names, in alphabetical order, and addresses of each record holder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the number and class or type of shares or units must be disclosed;

11. whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of most recent registration statement and annual report filed with the Securities and Exchange Commission;

12. whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met, and a copy of most recent registration statement filed with the securities regulator in that jurisdiction;

13. whether the securities registration and filing requirements of the state of Minnesota have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with the Minnesota Department of Commerce during the past five years;

D. If the applicant is an organization other than a corporation:

1. the applicant's full name and any trade names currently used by the applicant;

2. the jurisdiction of organization of the applicant;

3. the date the applicant commenced doing business in Minnesota;

4. copies of any agreements creating or governing the applicant's organization and the applicant's state and federal tax returns for the past five years;

5. the general nature of the applicant's business;

6. the names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, or other voting interest, whether absolute or contingent, in the applicant;

7. the names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, including options, as of the date of the application or other voting interest, whether absolute or contingent, in the applicant. As to each, the applicant must disclose the nature and extent of the interest;

E. If a nonindividual record or beneficial holder of an ownership or other voting interest in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in applicant are identified;

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F. whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ownership or control of the sponsorship or management of horse racing, and copies of any written agreements;

H. any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation by the applicant, and copies of any written agreements;

I. whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant has held or holds a license or permit issued by a governmental authority to own and operate a horse racing facility or conduct any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

4 MCAR § 15.004 Disclosure of character information.

An applicant for a Class A license must make its best effort to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR §§ 15.003 or 15.010 B. or C. has:

A. been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, embezzlement, tax evasion, robbery, burglary, bribery, extortion, jury tampering, obstruction of justice, perjury, an antitrust violation or conspiracy to commit any of the foregoing. If so, the applicant must disclose the date charged, court, whether convicted, date convicted, crime convicted of, and sentence;

B. been a party in a civil proceeding and alleged to have engaged in an unfair or anticompetitive business practice, a securities violation, or false or misleading advertising. If so, the date of commencement, court, circumstances, date of decision, and result;

C. had a horse racing, gambling, or other business license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances, date of decision, and result;

D. been accused in an administrative or judicial proceeding of violation of a statute or rule relating to unfair labor practices, discrimination, horse racing, or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

E. commenced an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

F. been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

G. failed to satisfy any judgment, decree, or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances;

H. been delinquent in filing a tax report required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

4 MCAR § 15.005 Disclosure of improvements and equipment.

An application for a Class A license must disclose with respect to the pari-mutuel horse racing facility it will own and operate:

A. the address of the facility, its size and geographical location, including reference to county and municipal boundaries;

B. a site map which reflects current and proposed highways and streets adjacent to the facility;

C. the types of racing for which the facility is designed, whether thoroughbred, harness, quarterhorse, or other;

D. racetrack dimensions by circumference, width, banking, location of chutes, length of stretch, distance from judges' stand to first turn and type of surface. If the facility has more than one racetrack, the applicant must provide a description of each;

E. a description of horse stalls at the facility, giving the dimensions of stalls, separation, location, and total number of stalls;

F. a description of the grandstand, giving total seating capacity, total reserved seating capacity, indoor and outdoor seating capacity, configuration of grandstand seating and pari-mutuel and concession facilities within the grandstand; the number and location of men's and women's restrooms, drinking fountains, and medical facilities available to patrons; and a description of public pedestrian traffic patterns throughout the grandstand;

G. a description of the detention barn, giving distance from detention barn to track and paddock, number of sampling stalls,

placement of viewing ports on each stall, location of post-mortem floor, number of wash stalls with hot and cold water and drains and availability of video monitors; and a description of the walking ring;

H. a description of the paddock, number of stalls in the paddock, height from the floor to lowest point of the stall ceiling and entrance, and paddock public address and telephone services;

I. a description of the jockeys' and drivers' quarters, giving changing areas, a listing of equipment to be installed in each, and the location of the jockeys' quarters in relation to the paddock;

J. a description of the pari-mutuel tote, giving approximate location of bettors' windows and cash security areas, and a description of the equipment, including the provider if known;

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available for the public; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

L. a description of the height, type of construction, and materials of perimeter fence; whether the perimeter fence is topped by a barbed wire apron at least two feet wide and directed outward at a 45-degree angle; and whether there is a clear zone at least four feet wide around the outside of the entire perimeter fence;

M. a description of improvements and equipment at the racetrack for security purposes in addition to perimeter fence, includign the provider of equipment if known;

N. a description of starting, timing, photo finish, and photo-patrol or video equipment, including the provider if known;

O. a description of work areas for the commission members, officers, employees, and agents;

P. a description of access of the facility to public transportation, specifics of the type of transportation and schedules, road maps of area indicating pick-up and drop-off points.

4 MCAR § 15.006 Disclosure of development process.

An applicant for a Class A license must disclose with regard to development of its horse racing facility:

A. the total cost of construction of the facility, distinguishing between fixed costs and projections;

B. separate identification of the following costs, distinguishing between fixed costs and projections:

1. facility design;

2. land acquisition;

3. site preparation;

4. improvements and equipment, separately identifying the costs of 4 MCAR § 15.005 D.-O. and other categories of improvements and equipment;

5. interim financing;

6. permanent financing;

7. organization, administrative, accounting, and legal;

C. documentation of fixed costs;

D. the schedule for construction of the facility, including estimated completion date;

E. schematic drawings;

F. copies of any contracts with and performance bonds from the:

1. architect or other design professional;

2. project engineer;

3. construction engineer;

4. contractors and subcontractors;

5. equipment procurement personnel;

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6. whether the site has been acquired or leased by applicant. If so, the applicant must provide the documentation. If not, the applicant must disclose what actions the applicant must take in order to use the site.

4 MCAR § 15.007 Disclosure of financial resources.

An applicant for a Class A license must disclose the following with regard to financial resources:

A. an audited financial statement reflecting the applicant's current assets, including investments in affiliated entities, loans and advances receivable and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity;

B. equity and debt sources of funds to develop, own, and operate the horse racing facility:

1. with respect to each source of equity contribution, identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation, and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

2. with respect to each source of debt contribution, identification of the source, amount, terms of debt, collateral, identity of guarantors, nature and amount of commitments, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

C. identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other cause.

4 MCAR § 15.008 Disclosure of financial plan.

An applicant for a Class A license must disclose with regard to its financial plan:

A. the financial projections for the development period and each of the first five racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class A licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel pools. The disclosure must include:

1. the following assumptions and support for them:
   a. average daily attendance;
   b. average daily per capita handle and average bet;
   c. retainage;
   d. admissions to track, including ticket prices and free admissions;
   e. parking volume, fees, and revenues;
   f. concessions, gift shop, and program sales;
   g. cost of purses;
   h. pari-mutuel expense;
   i. state taxes;
   j. real estate taxes;
   k. breeder fund;
   l. payroll;
   m. operating supplies and services;
   n. utilities;
   o. repairs and maintenance;
   p. insurance;
   q. travel expense;
   r. membership expense;
   s. security expense;
   t. legal and audit expense;
   u. debt service;
2. the following profit and loss elements:
   a. total revenue, including projected revenues from:

(1) retainage and breakage;

(2) admissions;

(3) parking;

(4) concessions, gift, and program operations;

b. total operating expenses, including anticipated expenses for:

(1) purses;

(2) pari-mutuel;

(3) sales tax;

(4) breakage to state;

(5) real estate tax;

(6) admissions tax;

(7) breeder fund;

(8) special assessments;

(9) cost of concession goods, gifts, and programs;

(10) advertising and promotion;

(11) payroll;

(12) operating supplies and service;

(13) maintenance and repairs;

(14) insurance;

(15) security;

(16) legal and audit;

c. nonoperating expenses, including anticipated expenses for:

(1) debt service;

(2) facility depreciation and identification of method used;

(3) equipment depreciation and identification of method used;

3. projected cash flow, including assessment of:

a. income, including equity contributions, debt contributions, interest income, operating revenue;

b. disbursements, including land, improvements, equipment, debt service, operating expense, organizational expense;

4. projected balance sheets as of the end of the development period and each of the five racing years setting forth:

a. current, fixed, and other noncurrent assets;

b. current and long-term liabilities;

c. capital accounts;

B. an accountant's review report of the financial projections.

4 MCAR § 15.009 Disclosure of governmental actions.

An applicant for a Class A license must disclose with regard to actions of government agencies:

A. the street and highway improvements necessary to ensure adequate access to applicant's horse racing facility, and the cost of improvements, status, likelihood of completion, and estimated date;

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B. the sewer, water, and other public utility improvements necessary to serve applicant's facility, and the cost of improvements, status, likelihood of completion, and estimated date;

C. if applicant has obtained any required government approvals for its development, ownership, and operation of its horse racing facility:

1. a description of the approval, unit of government, date, and documentation;

2. whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held;

3. whether the unit of government attached any conditions to approval. If so, the applicant must disclose these conditions, including documentation;

D. whether any required governmental approvals remain to be obtained, as well as a description of the approval, unit of government, status, likelihood of approval, and estimated date;

E. whether an environmental assessment of the facility has been or will be prepared. If so, the applicant must disclose its status and the governmental unit with jurisdication, and provide a copy of any assessment;

F. whether an environmental impact statement is required for applicant's facility. If so, the applicant must disclose its status and the governmental unit with jurisdiction, and provide a copy of any statement;

G. whether the applicant is in compliance with all statutes, charter provisions, ordinances, and regulations pertaining to the development, ownership, and operation of its horse racing facility. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance.

4 MCAR § 15.010 Disclosure of management.

An applicant for a Class A license must disclose with regard to the development, ownership, and operation of its pari-mutuel horse racing facility:

A. a description of the applicant's management plan, with budget and identification of management personnel by function, job descriptions, and qualifications for each management position, and a copy of the organization chart;

B. management personnel to the extent known and with respect to each:

1. legal name, aliases, and previous names;

2. current residence and business addresses and telephone numbers;

3. qualifications and experience in the following areas:

a. general business;

b. real estate development;

c. construction;

d. marketing, promotion, and advertising;

e. finance and accounting;

f. horse racing;

g. pari-mutuel betting;

h. security;

i. human and animal health and safety;

4. description of the terms and conditions of employment and a copy of the agreement;

C. consultants and other contractors who have provided or will provide management-related services to applicant to extent known and with respect to each:

1. full name;

2. current address and telephone number;

3. nature of services;

4. qualifications and experience;

5. description of terms and conditions of any contractor's agreement, and a copy of the agreement.

D. memberships of the applicant, management personnel, and consultants in horse racing organizations;

E. description of the applicant's security plan, including:

1. number and deployment of security personnel used by applicant during a race meeting, security staff levels, and deployment at other times;

2. specific security plans for perimeter, stabling facilities, pari-mutuel betting facilities, purses and cash room;

3. specific plans to discover persons at the horse racing facility who have been convicted of felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction or are a threat to the integrity of racing in Minnesota;

4. description of video monitoring equipment and its use;

5. whether the applicant will be a member of the Thoroughbred Racing Protective Bureau or other security organization;

6. coordination of security with law enforcement agencies;

F. description of the applicant's plans for human and animal health and safety, including emergencies;

G. description of the applicant's marketing, promotion, and advertising plans;

H. a description of the applicant's plan for concessions, including whether the licensee will operate concessions and, if not, who will, to the extent known;

I. a description of training of the applicant's personnel;

J. a description of plans for compliance with all laws pertaining to discrimination, equal employment, and affirmative action; policies regarding recruitment, use, and advancement of minorities; policies with respect to minority contracting; a copy of Equal Employment Opportunity Statement and Policy of the applicant dated and signed by chief executive officer; and a copy of Affirmative Action Policy and Procedures dated and signed; and identification of the affirmative action officer, including name, title, address, and telephone number.

4 MCAR § 15.011 Disclosure of public service.

An applicant for a Class A license must disclose its plans for promotion of the orderly growth of horse racing in Minnesota and education of the public with respect to horse racing and pari-mutuel betting.

4 MCAR § 15.012 Disclosure of impact of facility.

An applicant for a Class A license must disclose the impact of its horse racing facility, including:

A. economic impact, including:

1. employment created and specifics as to number of jobs, whether permanent or temporary, type of work, compensation, employer, and how created;

2. purchases of goods and services and specifics as to money amounts and types of purchases;

3. public and private investment;

4. tax revenues generated;

B. ecological impact;

C. impact on energy conservation and development of alternative energy sources;

D. social impact.

4 MCAR § 15.013 Disclosure of public support and opposition.

An applicant for a Class A license must disclose public support and opposition, whether by a governmental official or agency or private individual or group and must supply documentation.

4 MCAR § 15.014 Effects on competition.

An applicant for a Class A license must disclose the effects of its ownership and operation of its horse racing facility on competitors within the horse racing industry.

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4 MCAR § 15.015 Disclosure of assistance in preparation of application.

An applicant for a Class A license must disclose the names, addresses, and telephone numbers of individuals who assisted applicant in preparation of its application.

4 MCAR § 15.016 Personal information and authorization for release.

An application for a Class A license must include the following with respect to each individual identified pursuant to 4 MCAR § 15.003 as an applicant, partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR § 15.010 B. or C.:

A. full name, business and residence addresses and telephone numbers, last five residence addresses, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

1. authorizes a review by and full disclosure to an agent of the Minnesota Public Safety Department, Bureau of Criminal Apprehension of all records concerning the individual, whether the records are public, nonpublic, private, or confidential;

2. recognizes the information reviewed or disclosed may be used by the state of Minnesota, its employers, the commission, members, staff and agents to determine the signer's qualifications for a Class A license;

3. releases authorized providers and users of the information from any liability.

4 MCAR § 15.017 Class A license criteria.

The commission may issue a Class A license if it determines on the basis of all the facts before it that the applicant is financially able to operate a racetrack; issuance of a license will not create a competitive situation that will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and the issuance of the license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including, but not limited to:

1. criminal record;

2. involvement in litigation over business practices;

3. involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;

4. involvement in proceedings in which unfair labor practices, discrimination, or government regulation of horse racing or gambling was an issue;

5. involvement in bankruptcy proceedings;

6. failure to satisfy judgments, orders, or decrees;

7. delinquency in filing of tax reports or remitting taxes;

B. the types and variety of pari-mutuel horse racing which applicant will offer;

C. the quality of physical improvements and equipment in applicant's facility, including, but not limited to:

1. racetrack or tracks;

2. stabling;

3. grandstand;

4. detention barn;

5. paddock;

6. jockeys' and drivers' quarters;

7. pari-mutuel tote;

8. parking;

9. access by road and public transportation;

10. perimeter fence;

11. other security improvements and equipment;

12. starting, timing, photo finish, and photo-patrol or video equipment;

13. commission work areas;

D. imminence of completion of facility;

E. financial ability to develop, own, and operate a pari-mutuel horse racing facility successfully, including, but not limited to:

1. ownership and control structure;

2. amounts and reliability of development costs;

3. certainty of site acquisition or lease;

4. current financial condition;

5. sources of equity and debt funds, amounts, terms and conditions and certainty of commitment;

6. provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other financial adversity;

7. feasibility of financial plan;

F. status of governmental actions required by the applicant's facility, including, but not limited to:

1. necessary road improvements;

2. necessary public utility improvements;

3. required governmental approvals for development, ownership, and operation of the facility;

4. acceptance of any required environmental assessment and preparation of any required environmental impact statement;

G. management ability of the applicant, including, but not limited to:

1. qualifications of managers, consultants, and other contractors to develop, own, and operate a pari-mutuel horse racing facility;

2. security plan;

3. plans for human and animal health and safety;

4. marketing, promotion, and advertising plans;

5. concessions plan;

6. plan for training personnel;

7. equal employment and affirmative action plans;

H. compliance with applicable statutes, charters, ordinances, or regulations;

I. efforts to promote orderly growth of horse racing in Minnesota and educate public with respect to horse racing and pari-mutuel betting;

J. impact of facility, including, but not limited to:

1. economic impact, including employment created, purchases of goods and services, public and private investment and taxes generated;

2. ecological impact;

3. impact on energy conservation and development of alternative energy sources;

4. social impact;

5. costs of public improvements;

K. extent of public support and opposition;

L. effects on competition, including, but not limited to:

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1. number, nature, and relative location of other Class A licenses;

2. minimum and optimum number of racing days sought by the applicant.

4 MCAR § 15.018 Identification of applicant for Class B license.

An application for a Class B license must include, on a form prepared by the commission, the name, address, and telephone number of the applicant, and the name, position, address, telephone number, and authorized signature of an individual to whom the commission may make inquiry.

4 MCAR § 15.019 Applicant's affidavit.

An application for a Class B license must include, on a form prepared by the commission, an affidavit of the chief executive officer or a major financial participant as applicant setting forth:

A. that application is made for a Class B license to sponsor and manage horse racing on which pari-mutuel betting is conducted;

B. that affiant is the agent of the applicant, its owners, partners, members, directors, officers, and personnel and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached;

C. that the applicant seeks a grant of a privilege from the state of Minnesota, and the burden of proving the applicant's qualifications rests at all times with the applicant;

D. that the applicant consents to inquiries by the state of Minnesota, its employees, the commission, members, staff and agents into the financial, character, and other qualifications of the applicant by contacting individuals and organizations;

E. that the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the state of Minnesota, its employees, the commission, staff or agents;

F. that affiant has read the applicant's identification and disclosures and knows the contents; the contents are true to affiant's own knowledge, except matters therein stated on information and belief; as to those matters, affiant believes them to be true;

G. that the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, or suspension of a license or imposition of a fine;

H. that the applicant will comply with Minnesota Statutes, chapter 240 and all rules of the commission;

I. affiant's signature, name, organization, position, address, and telephone number;

J. the date.

4 MCAR § 15.020 Disclosure of ownership and control.

An applicant for a Class B license must disclose:

A. the type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other entity;

B. if the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, and aliases and business names currently used by the applicant, and copies of state and federal tax returns for the past five years;

C. if the applicant is a corporation:

1. the applicant's full corporate name and any trade names currently used by the applicant;

2. jurisdiction and date of incorporation;

3. date the applicant commenced doing business in Minnesota and, if the applicant is incorporated outside Minnesota, a copy of the applicant's certificate of authority to do business in Minnesota;

4. copies of the applicant's articles of incorporation, bylaws, and state and federal corporate tax returns for the past five years;

5. the general nature of the applicant's business;

6. whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

7. classes of stock of the applicant. As to each class, the number of shares authorized, number issued, number

outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;

8. if the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;

9. the names, in alphabetical order, and addresses of the directors and, in a separate listing, officers of the applicant. As to each director and officer, the number of shares held of record as of the application date or beneficially of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

10. the names, in alphabetical order, and addresses of each record holder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the number and class or type of shares or units must be disclosed;

11. whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of most recent registration statement and annual report filed with Securities and Exchange Commission;

12. whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met, and a copy of most recent registration statement filed with the securities regulator in that jurisdiction;

13. whether the securities registration and filing requirements of the state of Minnesota have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with the Minnesota Department of Commerce during the past five years;

D. If the applicant is an organization other than a corporation:

1. the applicant's full name and any trade names currently used by the applicant;

2. jurisdiction of organization of the applicant;

3. date the applicant commenced doing business in Minnesota;

4. copies of any agreements creating or governing the applicant's organization and the applicant's state and federal tax returns for the past five years;

5. the general nature of the applicant's business;

6. names, in alphabetical order, and addresses of any partners and officers of applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, or other voting interest, whether absolute or contingent, in the applicant;

7. names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, including options, as of the date of application or other voting interest, whether absolute or contingent, in applicant. As to each, the applicant must disclose the nature and extent of the interest;

E. if a nonindividual record or beneficial holder of an ownership or other voting interest in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in the applicant are identified;

F. whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ownership or control of the sponsorship or management of horse racing, and copies of any written agreements;

H. any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation by the applicant, and copies of any written agreements;

I. whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or

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beneficial ownership interest or other voting interest or control of five percent or more in the applicant has held or holds a license or permit issued by a governmental authority to own and operate a horse racing facility or conduct any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

4 MCAR § 15.021 Disclosure of character information.

An applicant for a Class B license must make its best effort to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR § 15.020 or 15.027 B. or C. has:

A. been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, embezzlement, tax evasion, robbery, burglary, bribery, extortion, jury tampering, obstruction of justice, perjury, an antitrust violation, or conspiracy to commit any of the foregoing. If so, the applicant must disclose the date charged, court, whether convicted, date convicted, crime convicted of, and sentence;

B. been a party in a civil proceeding and alleged to have engaged in an unfair or anticompetitive business practice, a securities violation, or false or misleading advertising. If so, the applicant must disclose the date of commencement, court, circumstances, date of decision, and result;

C. had a horse racing, gambling, or other business license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances, date of decision, and result;

D. been accused in an administrative or judicial proceeding of violation of a statute or rule relating to unfair labor practices, discrimination, horse racing, or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

E. commenced an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

F. been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

G. failed to satisfy any judgment, decree, or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances;

H. been delinquent in filing a tax report required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

4 MCAR § 15.022 Disclosure of improvements and equipment.

An application for a Class B license must disclose with respect to the facility at which it will sponsor and manage pari-mutuel horse racing:

A. the address of the facility at which the applicant will sponsor and manage horse racing, size and geographical location, including reference to county and municipal boundaries;

B. a site map which reflects current and proposed highways and streets adjacent to the facility;

C. the types of racing for which the facility is designed, whether thoroughbred, harness, quarterhorse, or other;

D. racetrack dimensions by circumference, width, banking, location of chutes, length of stretch, distance from judges' stand to first turn, and type of surface. If the facility has more than one racetrack, the applicant must provide a description of each;

E. a description of horse stalls at the facility, giving the dimensions of stalls, separation, location, and total number of stalls;

F. a description of the grandstand, giving total seating capacity, total reserved seating capacity, indoor and outdoor seating capacity, configuration of grandstand seating and pari-mutuel and concession facilities within the grandstand; the number and location of men's and women's restrooms, drinking fountains, and medical facilities available to patrons; and a description of public pedestrian traffic patterns throughout the grandstand;

G. a description of the detention barn, giving distance from detention barn to track and paddock, number of sampling stalls, placement of viewing ports on each stall, location of post-mortem floor, number of wash stalls with hot and cold water and drains and availability of video monitors; and a description of the walking ring;

H. a description of the paddock, number of stalls in the paddock, height from the floor to lowest point of the stall ceiling and entrance, and paddock public address and telephone services;

I. a description of the jockeys' and drivers' quarters, giving changing areas, a listing of equipment to be installed in each, and the location of the jockeys' quarters in relation to the paddock.

J. a description of the pari-mutuel tote, giving approximate location of bettors' windows and cash security areas; and a description of equipment, including the provider if known;

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available for the public; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

L. a description of the height, type of construction, and materials of perimeter fence; whether the perimeter fence is topped by a barbed wire apron at least two feet wide and directed outward at a 45-degree angle; and whether there is a clear zone at least four feet wide around the outside of the entire perimeter fence;

M. a description of improvements and equipment at the racetrack for security purposes in addition to perimeter fence, including the provider of equipment if known;

N. a description of starting, timing, photo finish, and photo-patrol or video equipment, including the provider if known;

O. a description of work areas for the commission members, officers, employees, and agents;

P. a description of access of the facility to public transportation; specifics of types of transportation and schedules; and a road map of area indicating pick-up and drop-off points.

4 MCAR § 15.023 Disclosure of authorization to use horse racing facility.

An applicant for a Class B license must disclose the terms and conditions of the lease or other agreement authorizing the applicant to sponsor and manage pari-mutuel horse racing at a licensed facility and provide a copy of the agreement.

4 MCAR § 15.024 Disclosure of financial resources.

An applicant for a Class B license must disclose the following with regard to financial resources:

A. an audited financial statement reflecting the applicant's current assets, including investments in affiliated entities, loans and advances receivable and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity;

B. equity and debt sources of funds to sponsor and manage horse racing:

1. with respect to each source of equity contribution, identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

2. with respect to each source of debt contribution, identification of the source, amount, terms of debt, collateral, identity of guarantors, nature and amount of commitments, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

C. identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues, or other cause.

4 MCAR § 15.025 Disclosure of financial plan.

An applicant for a Class B license must disclose with regard to its financial plan:

A. financial projections for any development period in each of the first or next three racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class B licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel betting pools. The disclosure must include:

1. the following assumptions and support for them:
   a. average daily attendance;
   b. average daily per capita handle and average bet;
   c. retainage;
   d. admissions to track, including ticket prices and free admissions;
   e. parking volume, fees, and revenues;

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f. concessions, gift shop, and program sales;
g. cost of purses;
h. pari-mutuel expense;
i. state taxes;
j. real estate taxes;
k. breeder fund;
l. payroll;
m. operating supplies and services;
n. utilities;
o. repairs and maintenance
p. insurance;
q. travel expense;
r. membership expense;
s. security expense;
t. legal and audit expense;
u. debt service.

2. the following profit and loss elements:
a. total revenue, including projected revenues from:
(1) retainage and breakage;
(2) admissions;
(3) parking;
(4) concessions, gift and program operations;
b. total operating expenses, including anticipated expenses for:
(1) purses;
(2) pari-mutuel;
(3) sales tax;
(4) breakage to state;
(5) real estate tax;
(6) admissions tax;
(7) breeder fund;
(8) special assessments;
(9) cost of concession goods, gifts, and programs;
(10) advertising and promotion;
(11) payroll;
(12) operating supplies and service;
(13) maintenance and repairs;
(14) insurance;
(15) security;
(16) legal and audit;
c. nonoperating expenses, including anticipated expenses for:
(1) debt service;
(2) facility depreciation and identification of the method used;

(3) equipment depreciation and identification of the method used;

3. projected cash flow, including assessment of:

a. income, including equity contributions, debt contributions, interest income, operating revenue;

b. disbursements, including land, improvements, equipment, debt service, operating expense, organizational expense;

4. projected balance sheets as of the end of any development period and three racing years setting forth:

a. current, fixed, and other noncurrent assets;

b. current and long-term liabilities;

c. capital accounts;

B. an accountant's review report of the financial projections.

4 MCAR § 15.026 Disclosure of governmental actions.

An applicant for a Class B license must disclose with regard to actions of government agencies:

A. if the applicant has obtained any required government approvals for its management and sponsorship of horse racing:

1. a description of the approval, unit of government and date, and documentation;

2. whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held;

3. whether the unit of government attached any conditions to approval. If so, the applicant must disclose these conditions, including documentation;

B. whether any required governmental approvals remain to be obtained, as well as a description of the approval, unit of government, status, likelihood of approval, and estimated date;

C. whether the applicant is in compliance with all statutes, charter provisions, ordinances, and regulations pertaining to the sponsorship and management of horse racing. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance.

4 MCAR § 15.027 Disclosure of management.

An applicant for a Class B license must disclose with regard to its management of pari-mutuel horse racing:

A. a description of the applicant's management plan, with budget and identification of management personnel by function; job descriptions and qualifications for each management position; and a copy of the organization chart.

B. management personnel and to extent known with respect to each:

1. legal name, aliases, and previous names;

2. current residence and business addresses and telephone numbers;

3. qualifications and experience in the following areas:

a. general business;

b. marketing, promotion, and advertising;

c. finance and accounting;

d. horse racing;

e. pari-mutuel betting;

f. security;

g. human and animal health and safety;

4. a description of the terms and conditions of employment, and a copy of the agreement;

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C. consultants and other contractors to extent known who have provided or will provide management-related services to applicant and with respect to each:

1. full name;

2. current address and telephone number;

3. nature of services;

4. qualifications and experience;

5. description of terms and conditions of any contractor's agreement, and a copy of the agreement;

D. memberships of the applicant, management personnel, and consultants in horse racing organizations;

E. a description of the applicant's security plan, including:

1. number and deployment of security personnel used by applicant during a race meeting; security staff levels; and deployment at other times;

2. specific security plans for perimeter, stabling facilities, pari-mutuel betting facilities, purses, and cash room;

3. specific plans to discover persons at the horse racing facility who have been convicted of felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction, or are a threat to the integrity of racing in Minnesota;

4. a description of video monitoring equipment and its use;

5. whether the applicant will be a member of the Thoroughbred Racing Protective Bureau or other security organization;

6. coordination of security with law enforcement agencies;

F. a description of applicant's plans for human and animal health and safety, including emergencies;

G. a description of the applicant's marketing, promotion, and advertising plans;

H. a description of the applicant's plan for the conduct of horse racing, including types of racing, number of days, weeks, specific dates, number of races per day, time of day, and special events;

I. a description of the applicant's plan for purses, including total purses, formula, minimum, stakes races, and purse-handling procedures;

J. a description of the applicant's plan for pari-mutuel betting, including number of line divisions, windows, selling machines, and clerks; use or duties of each; and accounting procedures;

K. a description of the applicant's plan for concessions, including whether licensee will operate concessions and, if not, who will to the extent known;

L. a description of training of the applicant's personnel;

M. a description of plans for compliance with all laws pertaining to discrimination, equal employment, and affirmative action; policies regarding recruitment, use, and advancement of minorities; policies with respect to minority contracting; a copy of Equal Employment Opportunity Statement and Policy of the applicant dated and signed by chief executive officer; a copy of Affirmative Action Policy and Procedures dated and signed; and identification of the affirmative action officer, including name, title, address, and telephone number.

4 MCAR § 15.028 Disclosure of public service.

An applicant for a Class B license must disclose its plans for promotion of the orderly growth of horse racing in Minnesota and education of the public with respect to horse racing and pari-mutuel betting.

4 MCAR § 15.029 Disclosure of economic impact.

An applicant for a Class B license must disclose the economic impact of its sponsorship and management of horse racing, including:

A. employment created, including specifics as to number of jobs, permanent or temporary, type of work, compensation, employer, and how created;

B. purchases of goods and services, including specifics as to money amounts and types of purchases;

C. tax revenues generated.

4 MCAR § 15.030 Disclosure of public support and opposition.

An applicant for a Class B license must disclose public support and opposition, whether by a governmental official, agency, private individual, or group, and provide documentation.

4 MCAR § 15.031 Effects on competition.

An applicant for a Class B license must disclose the effects of its sponsorship and management of horse racing on competitors within the horse racing industry.

4 MCAR § 15.032 Disclosure of assistance in preparation of application.

An applicant for a Class B license must disclose the names, addresses, and telephone numbers of individuals who assisted the applicant in preparation of its application.

4 MCAR § 15.033 Personal information and authorization for release.

An application for a Class B license must include the following with respect to each individual identified pursuant to 4 MCAR § 15.020 as an applicant, partner, director, officer, other policymaker or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR § 15.027 B. or C.:

A. full name, business and residence addresses and telephone numbers, last five residence addresses, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

1. authorizes a review by and full disclosure to an agent of the Minnesota Public Safety Department Bureau of Criminal Apprehension of all records concerning the individual, whether the records are public, nonpublic, private, or confidential;

2. recognizes the information reviewed or disclosed may be used by the state of Minnesota, its employers, the commission, members, staff and agents to determine the signer's qualifications for a Class B license;

3. releases authorized providers and users of the information from any liability.

4 MCAR § 15.034 Class B license criteria.

The commission may issue a Class B license if it determines on the basis of all the facts before it that the applicant is fit to sponsor and manage horse racing; issuance of a license will not create a competitive situation which will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and issuance of a license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including, but not limited to:

1. criminal records;

2. involvement in litigation over business practices;

3. involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;

4. involvement in proceedings in which unfair labor practices, discrimination, or government regulation of horse racing or gambling was an issue;

5. involvement in bankruptcy proceedings;

6. failure to satisfy judgments, orders, or decrees;

7. delinquency in filing of tax reports or remitting taxes;

B. the types and variety of pari-mutuel horse racing which applicant will offer;

C. the quality of physical improvements and equipment applicant will use, including, but not limited to:

1. racetrack or tracks;

2. stabling;

3. grandstand;

4. detention barn;

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.

5. paddock:

6. jockeys' and drivers' quarters and equipment:

7. pari-mutuel tote:

8. parking:

9. access by road and public transportation:

10. perimeter fence:

11. other security improvements and equipment:

12. starting, timing, photo finish, and photo-patrol or video equipment:

13. commission work areas:

D. financial ability to sponsor and manage pari-mutuel horse racing successfully, including, but not limited to:

1. ownership and control structure:

2. terms and conditions of the applicant's authorization to use facility:

3. current financial condition:

4. sources of equity and debt funds, amounts, terms and conditions, and certainty of commitment:

5. provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues, or other financial adversity:

6. feasibility of the financial plan:

E. status of necessary government approvals and compliance with applicable statutes, charters, ordinances, and regulations:

F. management ability of the applicant, including, but not limited to:

1. qualifications of managers, consultants, and other contractors to manage pari-mutuel horse racing:

2. security plan:

3. plans for human and animal health and safety:

4. marketing, promotion, and advertising plans:

5. plan for conducting horse racing:

6. plan for purses:

7. plan for pari-mutuel betting:

8. concessions plan:

9. plan for personnel training:

10. equal employment and affirmative action plans:

G. efforts to promote orderly growth of horse racing in Minnesota and educate public with respect to horse racing and pari-mutuel betting:

H. economic impact, including employment, purchases, and taxes:

I. extent of public support and opposition:

J. effects on competition, including, but not limited to:

1. number, nature, and relative location of other Class B licenses:

2. minimum and optimum number of racing days sought by the applicant.

4 MCAR § 15.035 Class A and B license application disclosures.

An applicant for a Class A or B license in its disclosures must:

A. provide disclosures in printed or typewritten form on 8½ by 11 inch paper. Immediately preceding each response, an applicant must restate what disclosure is sought. Any attachments or exhibits must be lettered or numbered separately. An applicant must provide photographs of any three-dimensional exhibits:

B. make its best effort to provide all information required to be disclosed:

C. provide only information relevant to disclosures requested by the commission.

4 MCAR § 15.036 Class A and B license application submission.

An applicant for a Class A or B license must submit to an individual designated by the commission:

A. all documents which are part of its application as a single assemblage;

B. a letter of transmittal to the commission and, in sealed envelopes, an original and 20 copies of the application.

4 MCAR § 15.037 Investigation fee for Class A and B licenses.

An applicant for a Class A or B license must submit to the commission's designee at the time of application a certified check or bank draft to the order of the state of Minnesota in the amount of $10,000 to cover the costs of the investigation mandated by Minnesota Statutes, section 240.06, subdivision 3, or section 240.07, subdivision 2. Upon completion of the investigation, the commission must refund promptly to the applicant any amount by which the $10,000 exceeds the actual costs of investigation. If costs of the investigation exceed $10,000, the applicant must remit the amount of the difference by certified check or bank draft within ten days after receipt of a bill from the commission. An individual or other entity applying for Class A and B licenses simultaneously must submit only one $10,000 investigation fee.

4 MCAR § 15.038 Clarification of Class A and B license application requirements.

The commission must designate an individual who will clarify Class A and B license application requirements upon the oral or written request of a potential applicant. The designee must respond to clarification requests in writing within five days. No interpretation of application requirements by any other person will be binding upon the commission.

4 MCAR § 15.039 Changes in Class A and B license applications.

The commission must not consider a substantive amendment to a Class A or B license application after its submission.

4 MCAR § 15.040 Deadlines for submission of Class A and B license applications.

Deadlines for submission of a Class A or B license application are as follows:

A. applications for a Class A license to own and operate a racetrack in the seven-county metropolitan area must be received by the commission's designee before 5:00 p.m. on the 14th day, as computed pursuant to Minnesota Statutes, section 645.15, after these rules become effective or on January 15, 1984, whichever is later. The designee must deliver investigation fees to the commission promptly upon receipt. The designee must retain and safeguard until the deadline with seals intact all applications received. Promptly after the deadline, the designee must deliver the applications to the commission for opening;

B. applications for Class A licenses to own and operate racetracks outside the seven-county metropolitan area are not subject to the deadline imposed by A. If the commission determines that applications will be submitted for Class A licenses to own and operate racetracks outside the seven-county metropolitan area which will compete significantly with each other, the commission must establish a deadline for submission of applications;

C. applications for Class B licenses must be submitted at least 160 days before the date on which the applicant proposes to commence horse races.

4 MCAR § 15.041 Oral presentation by applicant for a Class A or B license.

The commission must provide an applicant for a Class A or B license an opportunity to make an oral presentation of its application to the commission before the commission decides whether to issue a license. This rule does not require that the commission afford an applicant more than one opportunity to make an oral presentation before the commission makes its decision.

4 MCAR § 15.042 Payment of Class A and B license fees.

A Class A or B license does not become effective until the commission receives a certified check or bank draft to the order of the state of Minnesota in the amount of the license fee as follows and is void if the license fee is not received within ten days, as computed pursuant to Minnesota Statutes, section 645.15, after issuance:

A. a nonrefundable fee of $10,000 for a Class A license;

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B. a fee for a Class B license equal to $100 times the optimum number of racing days sought in the license application. The commission must refund promptly to the licensee any amount by which the fee paid exceeds $100 times the number of actual days of racing sponsored and managed by the licensee.

4 MCAR § 15.043 Class A and B license application information.

False or misleading information in a Class A or B license application, omission of required information, or substantial deviation from representations in the application is cause for denial, revocation, or suspension of a license or imposition of a fine.

4 MCAR § 15.044 Delay in completion of racetrack facility.

Failure of a Class A licensee to complete substantially the construction of its racetrack facility and installation of equipment within 30 days, as computed pursuant to Minnesota Statutes, section 645.15, after the completion data stated in its license application is cause for revocation or suspension of the license, and the commission may impose a penalty of $1,000 on the licensee for each day of delay. The penalty does not apply if and to the extent the licensee proves that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors and subcontractors. Such causes may include, but are not restricted to, acts of God or enemies of the United States, acts of government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the delay must be beyond the control and without fault or negligence of the licensee, its contractors and subcontractors. If the cause of delay is the default of a contractor or subcontractor and if the licensee proves the default arose out of causes beyond the control of the licensee, its contractors and subcontractors, the above penalty may not be imposed for the delay unless the supplies or services to be furnished by contractor or subcontractor were obtainable from other sources in sufficient time to permit the licensee to meet the completion date.

4 MCAR § 15.045 Construction, expansion, extension, alteration, or remodeling of facilities.

No Class A or B licensee may construct, expand, extend, alter, or remodel a racetrack facility at a cost in excess of $10,000 without the approval of the commission. Failure to obtain approval is cause for revocation or suspension of a license or imposition of a fine.

4 MCAR § 15.046 Security.

Class A and B licensees must maintain security which is adequate to ensure the health, safety, and comfort of all humans and horses at the racetrack facility and protection of all property.

4 MCAR § 15.047 Security modifications.

The commission may order Class A and B licensees to make modifications to security facilities, equipment, systems, personnel, or their deployment which are necessary to the integrity of racing or public safety, health, or welfare. Failure to make modifications mandated by the commission promptly is cause for revocation or suspension of a license or imposition of a fine.

4 MCAR § 15.048 Medical services.

A racetrack facility must provide the following medical facilities, equipment, and personnel:

A. a fully equipped first aid room with at least two beds;

B. a licensed physician and registered nurse on duty in the first aid room on all days during which horse racing is conducted;

C. a registered nurse on duty on all days during which the racetrack facility is open for exercising horses;

D. an ambulance for humans with necessary equipment and staff whenever the facility is open for racing or exercising horses.

4 MCAR § 15.049 Care of horses.

A racetrack facility must provide the following facilities, equipment, and personnel for horses:

A. an individual box stall for each horse;

B. a fence surrounding the stabling facilities;

C. stabling and training facilities available at least three weeks before the start of the first race meeting for a species of horse in any year;

D. a licensed outrider mounted and on duty whenever a facility is open for exercising horses;

E. a horse ambulance available for the safe and expedient removal of crippled animals. The ambulance must be equipped with a screen for use when an animal must be destroyed in view of the public, a winch to lift dead or injured animals onto the ambulance, and a removable floor or any other devices which enable a dead or injured horse to be loaded.

4 MCAR § 15.050 Contract approval.

Contracts entered into by Class A, B, and C licensees and their contractors for goods and services are subject to prior approval by the commission. Contracts and subcontracts must include affirmative action plans establishing goals and timetables consistent with Minnesota Statutes, chapter 363. All Class A, B, and C licensees must submit copies of any written contracts and subcontracts to the commission. The commission shall approve or disapprove contracts and subcontracts within 30 days, as computed pursuant to Minnesota Statutes, section 645.15, after submission.

Department of Agriculture
Dairy Industry Division

Proposed Adoption of a Rule Governing Dairy Inspection Fees

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21-14.28 (1982).

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

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982). If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Section 32.394 and Laws of Minnesota 1983, chapter 300, section 20. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Commissioner is authorized by Laws of Minnesota 1983, chapter 300 section 20 and Minnesota Statutes section 32.394 to adjust and set fees for the inspection of Grade A dairy plants and farms, and for farm certification for other than Grade A farms. This proposed rule serves two functions. First of all, by adjusting Grade A dairy plant and farm inspection fees the department will be able to meet expenses for the inspection and certification of these facilities. Secondly, by setting a certification fee for farms other than grade A, the department will be able to implement an informational and inspection program consistent with the purpose of Laws of Minnesota 1983, chapter 232, section 2, and the rules adopted for that program.

Fees for Grade A dairy plants and farms have not been adjusted since 1978. The new fee schedule will permit the department to continue the above listed services at current levels; if the proposed rules are not adopted, the department would be forced to reduce levels of service.

Grade A dairy processors and producers benefit from the services enabled by the fees because the inspection and certification activities are required for Minnesota Grade A dairy products to move uninterrupted into interstate commerce.

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Farm certification for other than Grade A is a new inspection and informational program created by Minnesota's adoption of federal guidelines governing the production of milk other than Grade A. This certification program is necessary to prevent the embargo of Minnesota manufacturing grade milk and milk products by other states by ensuring that the products are produced according to federal quality standards.

These proposed fees for Grade A dairy plants, farms, and for farms other than Grade A will be assessed on large dairy processors as is customary in the dairy industry, and therefore will have no affect on Grade A and other than Grade A producers that are small businesses.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

One free copy of this Notice and the proposed rules are available and may be obtained by contacting Mr. Heil.

Jim Nichols, Commissioner
Department of Agriculture

Rule as Proposed (all new material)

3 MCAR § 1.1160 Dairy inspection fees.

A. Purpose; authority. The purpose of this rule is to set dairy inspection service fees for Grade A dairy plant inspection, Grade A dairy farm inspection, and farm certification inspection for other than Grade A pursuant to Minnesota Statutes, section 32.394, subdivisions 8 and 8b, as amended by Laws of Minnesota 1983, chapter 300, section 20.

B. Fees. The fees for annual inspection by the commissioner of agriculture for Grade A dairy plants, Grade A dairy farms, and farm certification for other than Grade A are as follows:

1. Grade A dairy plant inspection, $400;
2. Grade A dairy farm inspection, $50; and
3. Farm certification inspection for other than Grade A, $25.

These fees are payable to the commissioner within 30 days of receipt of an invoice requesting payment.

SUPREME COURT

Decisions Filed Friday, November 4, 1983

Compiled by Wayne O. Tschimperle, Clerk

C0-82-911 Lawrence F. Cooper, Relator, v. Robert J. Younkin, d/b/a Allied Disposal, Respondent, and Western National Mutual Insurance Company, Respondent.

Minn. Stat. § 176.061, subds. 5 and 6 (1982), do not entitle a workers' compensation carrier to subrogation against proceeds received by the employee in the settlement of his claim pursuant to uninsured motorist coverage maintained by the employer.

Since its jurisdiction is limited to the construction and application of the Workers' Compensation Act, the Workers' Compensation Court of Appeals may not apply a remedy not provided by the Act.

Reversed. Coyne, J.

C8-83-116 State of Minnesota, Appellant, v. Roosevelt Nash, a.k.a. Eddie Bell, Respondent.

Record on appeal fails to establish that downward durational and dispositional sentencing departures by district court were justified.

Remanded for resentencing. Amdahl, C.J.

C0-82-1637 State of Minnesota, Respondent, v. Wilson Sanders, Appellant.

Police had reasonable basis for suspecting that defendant was person for whom probable cause to arrest existed; therefore, stop of defendant to identify him was valid even though it turned out that police were mistaken in their suspicion.

Remanded for trial. Todd, J.

CX-82-1564 Bongards' Creameries, Plaintiff, v. Alfa-Laval, Inc., f.k.a. The DeLaval Separator Company, defendant and third-party plaintiff, Respondent, v. Gebrs H.J. Scheffers N.V., third-party defendant, Appellant.

Dismissal of a third-party action involving a question of arbitrability of the dispute is appropriate on *forum non conveniens* grounds where there are no Minnesota parties before the court, sources of proof and witnesses are not in Minnesota, arbitration is to proceed in another state according to the laws of a foreign country, the contract is governed by the laws of another state, and another state may obtain personal jurisdiction over the parties.

Reversed. Yetka, J.

C9-82-1071 Zimpro, Inc., Respondent, v. Commissioner of Revenue, State of Minnesota.

1. In order for a transaction to be taxable under chapter 297A of the Minnesota Statutes, it must satisfy two requirements: (1) the transaction must be a sale of personal property; and (2) the sale must occur at the retail level.

2. The controlling issue in determining whether a transaction is taxable under chapter 297A is the nature of the property, not the status of the parties.

Affirmed. Amdahl, C.J.

C2-82-1333 & C0-82-1542 City of Minneapolis, Plaintiff, Lake Harriet Residents, Intervenors, v. The Church Universal and Triumphant, Minneapolis/St. Paul Region, Inc., et al., Respondents.

1. Minneapolis Code of Ordinances sections 538.120(4) and 539.120(6) (k) permit both traditional and non-traditional churches and their accessory uses, such as convents and monasteries, to be located in an R1 single family residential district. But the code contains no definition of the term monastery. We hereby adopt the comtemporary characterization of a monastic lifestyle as that exhibited by a shared residency, a central religious faith, an attachment to an organized church and an ordered, disciplined way of life.

2. Since the code is worded in the disjunctive, the broad requirements of an "accessory" as opposed to a "principal" use are fulfilled by the doctrinal test of whether the monastic use serves the purpose, convenience and comfort of the church building.

3. The Church Universal and Triumphant is currently in compliance with the parking and loading requirements of Minn. Code of Ord. section 538.190 (7) (a) (i), (ii) as to the church use of the property. Any additional parking for the monastery use that the zoning administrator deems to be necessary for the safety of the neighborhood may be located on a separate zoning lot under section 522.40(4)

Affirmed. Amdahl, C.J.

C7-83-804 State of Minnesota, Appellant, v. Jerry Thomas Speak, Respondent.

District Court erred in suppressing breath test on Fourth Amendment grounds in prosecution of defendant for criminal negligence resulting in death where there was objective probable cause that defendant had committed that offense at the time police required defendant to submit to the test.

Reversed and remanded for trial. Scott, J.

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

Tax Court
DOCKET NO. 3770

Walter S. Lewis and
Phyllis G. Lewis,

Appellants,

vs.

The Commissioner of Revenue,

Appellee.

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

Order dated November 1, 1983

The above entitled matter came on for trial in the courtroom of the Tax Court in the Space Center Building in St. Paul, Minnesota, on May 23, 1983, at 10:00 a.m.

The Appellant, Walter S. Lewis, appeared pro se for the Appellants.

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

This is an appeal from an Order of the Commissioner of Revenue assessing additional income taxes on retirement benefits earned by the Appellant from New Jersey Bell Telephone Company prior to his becoming a resident of the State of Minnesota.

Syllabus

When a taxpayer has other income in excess of the amounts allowed by Minn. Stat. § 290.01, Subd. 20b (6), qualifying pension benefits based on employment outside of Minnesota cannot be subtracted from Federal Adjusted Gross income in arriving at Minnesota Adjusted Gross income.

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

Findings of Fact

1. This appeal was taken from an Order assessing additional income taxes for calendar year 1978 only, however, at the trial the Appellant moved to include calendar years 1979, 1980, 1981 and 1982. The Appellee stipulated that calendar years 1979, 1980 and 1981 could be included in the Court's Order and the Court then granted the Motion to allow the inclusion of calendar years 1978, 1979, 1980 and 1981, but not 1982.

2. In computing his Minnesota gross income for calendar year 1978, the Appellant subtracted the sum of $13,579 from the Federal Adjusted Gross income. The amount in question is the retirement benefits paid on behalf of New Jersey Bell Telephone Company in 1978 and received by the Appellant in 1978.

3. The Appellants admit that they had a total Federal Adjusted Gross income of $40,555 in calendar year 1978 and that $34,807 was attributable to the husband and $5,748 was attributable to the wife. The only matter at issue is the deduction of $13,579 of retirement benefits from New Jersey Bell.

4. By his Order dated October 15, 1982, the Commissioner disallowed the claimed subtraction.

5. The Appellant was employed by and rendered personal services to New Jersey Bell Telephone Company from 1946 to 1976. Said services were rendered to New Jersey Bell Telephone Company outside of Minnesota while the Appellant was not a resident of Minnesota.

6. After his retirement from New Jersey Bell Telephone Company in 1976, the Appellant became a resident of the State of Minnesota and has continued to be a resident of Minnesota to the present time.

7. The retirement benefit received by the Appellant is paid from a plan qualifying under the Internal Revenue Code, Section 401, 403, 404, 405, 408, 409 or 409A.

8. During the course of the trial, Mr. Overton conceded that it might not be fair to assess interest between September of 1982 and March 1 of 1983 because the Appellant had requested an explanation of the Order in September of 1982 and had not received a proper explanation until March 1, 1983. In view of that concession, no interest is to be charged to the Appellant for that period.

Conclusions of Law

1. The Order of the Commissioner of Revenue assessing additional income taxes for calendar year 1978 is hereby affirmed, however, no interest shall be charged until after March 1, 1983.

2. For calendar years 1979, 1980 and 1981, the Appellant is not entitled to subtract any of the pension income from New Jersey Bell Telephone.

3. No interest shall be charged on the additional income taxes due for any of the years in issue between September 1, 1982, and March 1, 1983.

4. No penalty shall be assessed herein.

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

Dated: November 1, 1983

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

Memorandum

The facts are not in dispute herein. The only issue is the construction of Minnesota Statutes § 290.01, Subd. 20b, entitled "Modifications Reducing Federal Adjusted Gross Income".

The Appellant contends that he is entitled to deduct the retirement benefits received by him in calendar years 1978, 1979, 1980 and 1981 because they were income earned for personal services rendered outside of Minnesota.

Appellant relies on Minn. Stat. § 290.01, Subd. 20b(12). It reads as follows:

Subd. 20b. MODIFICATIONS REDUCING FEDERAL ADJUSTED GROSS INCOME. There shall be subtracted from federal adjusted gross income:

(12) The amount of any income earned for personal services rendered outside of Minnesota prior to the date when the taxpayer became a resident of Minnesota. This modification does not apply to compensation defined in subdivision 20b, clause (6);

That statute was not in existence in 1978 so the Appellant cannot rely on it for that calendar year. The statute was enacted in a piece meal fashion. It was first enacted in Laws of 1979, Chapter 303, Article I, Section 1, which added a new clause to Minn. Stat. § 290.01, Subd. 20b, which read as follows:

(13) The amount of any income earned for personal services rendered prior to the date when the taxpayer became a resident of Minnesota.

That Chapter was made to be effective for taxable years beginning after December 31, 1978.

Laws of 1980, Chapter 607, Article I, Section 1, renumbered and amended the foregoing clause to read as follows:

(12) The amount of any income earned for personal services rendered *outside of Minnesota* prior to the date when the taxpayer became a resident of Minnesota. This modification does not apply *to compensation defined in clause (b) (6)*;

That amendment was approved and was made to be effective for taxable years beginning after December 31, 1978.

Clause (b) (6) referred to in the above statute reads as follows:

(6) To the extent included in federal adjusted gross income, or the amount reflected as the ordinary income portion of a lump sum distribution under section 402(e) of the Internal Revenue Code of 1954, notwithstanding any other law to the contrary, the amount received by any person (i) from the United States, its agencies or instrumentalities, the Federal Reserve Bank or from the state of Minnesota or any of its political or governmental subdivisions or from any other state or its political or governmental subdivisions, or a Minnesota volunteer firefighter's relief association, by way of payment as a pension, public employee retirement benefit, or any combination thereof, or (ii) as a retirement or survivor's benefit made from a plan qualifying under section 401, 403, 404, 405, 408, 409 or 409A of the Internal Revenue Code of 1954. The maximum amount of this subtraction shall be $11,000 less the amount by which the individual's federal adjusted gross income, plus the ordinary income portion of a lump sum distribution as defined in section 402(e) of the Internal Revenue Code of 1954, exceeds $17,000. In the case of a volunteer firefighter who receives an involuntary lump sum distribution of his pension or retirement benefits, the maximum amount of this subtraction shall be $11,000; this subtraction shall not be reduced by the amount of the individual's federal adjusted gross income in excess of $17,000;

From the above it appears to the Court that the Appellant is mistaken in his contention that income he received from New Jersey Bell for taxable years 1979 through 1981 should be subtracted from Federal Adjusted Gross income for the purpose of establishing Minnesota Gross income. There is no doubt that this is income for personal services rendered outside of Minnesota

prior to the date when the taxpayer became a resident of Minnesota. However, there is also no doubt that the income in question was received by Appellant as a retirement benefit from a qualifying plan and is compensation defined in subdivision 20b, clause (6). Therefore, the modification contained in Minn. Stat. § 290.01, Subd. 20b(12) is inapplicable and the Appellant cannot subtract any part of that income from his Federal Adjusted Gross income because his other income is in excess of $28,000.00.

The Appellant contends that the statute which does not allow him to subtract the pension income which was earned while he was not a resident of Minnesota is unconstitutional, but he did not elaborate on his position. The Court finds that the statute is constitutional.

The Appellant also contended that the Order issued October 15, 1982, was void because it was issued more than three and one-half years after the return was filed which is beyond the statutory period. However, the Court finds that the Order dated October 15, 1982, was issued on the last day and was therefore within the statute of limitations. The applicable provision is Minn. Stat. § 290.49, subd. 5, and § 290.50 which provides that a return filed before the last day prescribed by law for filing thereof shall be considered as filed on the last day.

J.K.

State of Minnesota

Soo Line Railroad Company

Appellant,

vs.

The Commissioner of Revenue,

Appellee.

Tax Court

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

Docket Nos. 3338 and 3465

Order dated November 3, 1983.

The above matter was heard in the Courtroom of the Minnesota Tax Court in St. Paul on November 29 through December 7, 1982, before Judge Carl A. Jensen. Briefs were subsequently filed by the parties.

Wayne C. Serkland, attorney, appeared on behalf of Appellant.

C. H. Luther, Deputy Attorney General, and James W. Neher, Special Assistant Attorney General, appeared on behalf of Appellee.

Syllabus

1. Regulations of the Commissioner of Revenue that do not conform to the statutes do not have the force and effect of law and will be disregarded.

2. Rails, ties and other track materials are a part of the real estate for assessment purposes. Signals and other similar equipment are personal property and should be excluded from real estate assessments.

Findings of Fact

1. At all material times herein, appellant, Soo Line Railroad Company, had full right, title and interest in certain railroad operating property, in the following counties in Minnesota:

Aitkin	Kandiyohi
Anoka	Kittson
Becker	Mahnomen
Beltrami	Marshall
Carlton	Meeker
Cass	Mille Lacs
Clearwater	Morrison
Crow Wing	Ottertail
Dakota	Pennington
Douglas	Pine
Grant	Polk
Hennepin	Pope
Hubbard	Ramsey

Red Lake	Washington
St. Louis	Wilkin
Stearns	Wright

2. By order dated April 23, 1981, the above railroad operating property was valued by the Commissioner of Revenue for ad valorem tax purposes for the assessment year 1980 at a fair market value of $32,960,040 and an assessed value of $14,172,817.

3. By order dated September 18, 1981, the above railroad operating property was valued by the Commissioner of Revenue for ad valorem tax purposes for the assessment year 1981 at a fair market value of $36,158,882 and an assessed value of $15,546,813.

4. On or before June 22, 1981, for the 1980 assessment year and November 17, 1981, for the 1981 assessment year, appellant served and filed with the Tax Court, pursuant to section 270.88 of Minnesota Statutes, notices of appeal with respect to all of its railroad operating property assessed by the Commissioner of Revenue in his April 23, 1981, and September 18, 1981, orders.

5. The total tax due on the Commissioner's April 23, 1981 assessment was $1,229,648, which amount was paid by appellant to the State of Minnesota pursuant to section 270.90 of Minnesota Statutes, prior to the date of the Commissioner's order.

6. For the assessment year 1981, the Commissioner apportioned the fair market value determined by his order of September 18, 1981 between the respective counties and taxing districts therein in which the Soo Line owned operating property, in accordance with the requirements of section 270.86, Minnesota Statutes. All of the taxes payable to said counties on the valuation so apportioned were paid in full when due, except that only 80% of the second half payment was made pursuant to order of the Tax Court dated April 15, 1982.

7. All statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties hereto.

8. The two appeals of appellant were consolidated for trial before the undersigned Judge of Tax Court.

9. The property in question is all of the operating property of the Soo Line Railroad Company located in the State of Minnesota, except such property which is of a character that would not otherwise be subject to tax under the provisions of Minnesota Statutes, Chapter 272. Essentially, the above property constitutes 1041 miles of right of way together with adjoining property used for railroad operating purposes, but does not include such adjoining property as is separately assessed by local assessors for ad valorem tax purposes.

10. The property is used by the appellant for the operation of an interstate railroad system for the transportation of freight by rail, which use represents the highest and best use of the property.

11. The statutory method for determining the fair market value of the railroad operating property is the unit valuation method.

12. The pertinent provision of Minn. Stat. § 270.84 reads as follows:

Subdivision 1. The commissioner shall annually between April 30 and July 31 make a determination of the fair market value of the operating property of every railroad company doing business in this state as of January 2 of the year in which the valuation is made. In determining the fair market value of the portion of operating property within this state, the commissioner shall value the operating property as a unit, taking into consideration the value of the operating property of the entire system, and shall allocate to this state that part thereof which is a fair and reasonable proportion of said entire system valuation. If the commissioner uses original cost as a factor in determining the unit value of operating property, no depreciation or obsolescence allowance shall be permitted. However, if the commissioner uses replacement cost as a factor in determining the unit value of operating property, then a reasonable depreciation and obsolescence allowance may be used.

13. The pertinent provisions of the Commissioner's rules for determining the unit value for railroad operating property read as follows:

13 MCAR § 1.0024 Valuation.

A. General: The Minnesota Legislature has specified that railroads must be valued using the unit basis of estimating value. The approaches to value which will be used in determining the estimated unit value of railroad operating property are cost, capitalized income, and stock and debt except as provided for in 13 MCAR § 1.0024 D. and F. It is the decision of the Commissioner of Revenue that for 1979 and subsequent years the value of railroad property will be determined using these three approaches to value, where applicable, in the manner provided for in this section.

B. Cost approach to valuation. The cost factor that will be considered in the railroad valuation method is the original cost of the railroad system, plus the original cost of construction work in progress on the assessment date. The railroad system shall be considered to be made up of the following I.C.C. accounts: all road and equipment accounts, all general expenditures and other elements of investment accounts, and railroad property owned but leased to others. As required by statute, no depreciation or obsolescence shall be allowed as a deduction from the original cost of the railroad's assets enumerated above.

The following is an example of how the cost indicator of value is to be computed:

XYZ RAILROAD

Account	Amount
Road	$13,000,000
Equipment	9,000,000
Construction Work in Progress	1,000,000
Leased Property	500,000
General Expenditures	1,500,000
Cost Indicator	$25,000,000

This cost indicator of value computed in accordance with this rule will bear a weighting of 25 percent of the total unit value estimate of the railroad's property, except in the case of bankrupt railroads, or railroads with no income to be capitalized as provided for in 13 MCAR § 1.0024, F.

C. Income approach to valuation. The income indicator of value will be calculated by averaging the Net Railway Operating Income (as determined by the I.C.C.) of the railroad for the most recent five years preceding the assessment. This average income shall be capitalized by applying to it a capitalization rate which will be computed by using the Band of Investment Method. This method will consider:

1. The capital structure of railroads.
2. The cost of debt or interest rate paying particular attention to imbedded debt of railroads.
3. The yield on preferred stock of railroads.
4. The yield on common stock of railroads.

For 1979 and subsequent years this capitalization rate will be 11%.

An example of a computation of the capitalized income approach to value is as follows:

XYZ RAILROAD

Net Railway Operating Income	
1974	$ 1,500,000
1975	2,000,000
1976	2,600,000
1977	3,001,000
1978	2,600,250
Total	$11,701,250
Average	2,340,250

Five year average Net Railway Operating Income Capitalized at 11% (2,340,250 ÷ 11%) equals $21,275,000.

The income indicator of value computed in accordance with this rule shall be weighted 50 percent of the total estimated unit value of the railroad's property except in the case of bankrupt railroads or railroads having no net operating income as provided for in 13 MCAR § 1.0024, F; and railroads not meeting the requirements for the use of the stock and debt indicator of value. Where no stock and debt indicator of value is used the income indicator will be weighted 75%.

D. Stock and Debt approach to valuation. The "Stock and Debt" approach to value is the third method which will be used to estimate the unit value of the railroad operating property. This approach to value is based on the accounting principle: Assets = Liabilities + Equity. Therefore, when the value of a company's liabilities (debt) is found and this added to the worth of its stock, a value can be established for its assets (property).

* * *

An illustration of a computation of the stock and debt approach to value is as follows:

XYZ RAILROAD COMPANY

Shares of Common Stock issued × Average price for preceeding year	1,000,000 × $12 = $12,000,000
Shares of Preferred Stock × Average price for preceeding year	100,000 × $15 = $ 1,500,000

Rate and face value of bonds × Average price for class of bonds for preceeding year	A rated 8% bonds $10,000 × 99% of par =	$ 9,900,000
Stock and Debt Indicator of Value		$23,400,000

After the gross stock and debt indicator of value has been computed an allowance will be made for the effect, if any, of revenue from other than railway operations included in this indicator of value. This allowance shall be based on the ratio of a five year average of Net Revenue from Railway Operations, as determined by the I.C.C., to a similar five year average of Income Available for Fixed Charges as determined by the I.C.C. The five year average will be the most recent five years preceding the assessment date.

An example of this computation is as follows:

XYZ RAILROAD COMPANY

	Net Revenue from Railway Operations	Income Available for Fixed Charges
1974	$ 3,000,000	$ 3,500,000
1975	4,000,000	4,300,000
1976	5,200,000	5,700,000
1977	6,000,000	6,800,000
1978	5,200,000	5,400,000
	$23,400,000	$25,700,000
Average	$ 4,680,000	$ 5,140,000
Ratio	$4,680,000 ÷ $5,140,000 = 91%	
Gross Stock and Debt Indicator of value		$23,400,000
Ratio of Operating to Non-Carrier Earnings		91%
Net Stock and Debt Indicator of Value		$21,300,000

The stock and debt indicator of value computed in accordance with this rule will bear a weighting of 25 percent of the total unit value of the railroad's property, except in the case of bankrupt railroads, railroads in bankruptcy proceedings or railroads with no income to be capitalized as provided for in 13 MCAR § 1.0024, F.

E. Unit Value Computation. The estimated unit value of the railroad property will be the total of the three weighted indicators of value.

The following is an example of the computation of the unit value:

XYZ RAILROAD

Valuation Approach	Value	Weighting	
Cost indicator of value	$25,000,000	25%	$ 6,250,000
Income indicator of value	21,275,000 ×	50%	10,637,500
Stock and debt indicator of value	21,300,000	25%	5,325,000
	Unit Value		$22,212,500

14. For the assessment year 1980, the Commissioner determined the unit value of the Soo Line's operating property in accordance with the rules, to be $254,387,120, as follows (Exhibit A):

Cost Indicator	
I.C.C. Road account	$217,399,000
I.C.C. Equipment account	226,857,000
Other Elements of investment	(25,628,000)
Cost indicator of value	$418,628,000

Income Indicator

Net Railway Operating Income per I.C.C.

A. 1975	$ 12,921,000	
B. 1976	18,262,000	
C. 1977	21,288,000	
D. 1978	25,835,000	
E. 1979	28,586,000	
	$106,892,000	
Average NROI		$ 21,378,400
Capitalization rate 11%		
Income indicator of value (Average NROI divided by 11%)		$194,349,091

Stock and Debt Indicator

Total value of common stock per Soo Line	$142,286,000
Total value of long term debt per Soo Line	104,338,000
Gross stock and debt indicator	$246,624,000

	Net Revenue from railway operations per I.C.C.	Income Available for fixed charges per I.C.C.
1975	$ 18,586,000	$ 22,285,000
1976	24,441,000	28,809,000
1977	30,341,000	35,406,000
1978	38,080,000	43,942,000
1979	44,243,000	52,213,000
	$155,691,000	$182,655,000
Average	$ 31,138,200	$ 36,531,000

Ratio: Revenue from Railway Operation / Income available for fixed charges = $31,138,200 / $36,531,000 = 85.24%

Gross stock and debt indicator	$246,624,000
Ratio of Operating to Total Earnings	85.24%
Net Stock and Debt indicator of value	$210,222,298

Unit Value:

	Weight	
1. Cost indicator	25%	$104,657,000
2. Income indicator	50%	97,174,546
3. Stock and Debt indicator	25%	52,555,574
Unit value		$254,387,120

15. For the assessment year 1981 the Commissioner determined the unit value of the Soo Line's railroad operating property in accordance with the rules to be $291,571,526. as follows (Exhibit B):

Cost Indicator

I.C.C. Road account	$221,096,000
I.C.C. Equipment account	261,616,000

Construction work in progress		43,000
Other Elements of investment		(25,363,000)
Cost indicator of value		$457,392,000

Income Indicator

Net Railway Operating Income per I.C.C.

A. 1976	$ 18,262,000	
B. 1977	21,288,000	
C. 1978	25,835,000	
D. 1979	28,586,000	
E. 1980	35,123,000	
	$129,094,000	
Average NROI		$ 25,818,800
Capitalization rate 11%		
Income Indicator of Value		234,716,364

(Average NROI Divided by 11%)

Stock and Debt Indicator

Total value of common stock per Soo Line	$176,366,000
Total value preferred stock per Soo Line	106,051,000
Gross stock and debt indicator	$282,417,000

	Net Revenue from railway operations per I.C.C.	Income Available for fixed charges per I.C.C.
1976	$ 24,441,000	$ 28,809,000
1977	30,341,000	35,406,000
1978	38,080,000	43,942,000
1979	44,243,000	52,213,000
1980	50,261,000	60,619,000
	$187,366,000	$220,989,000
Average	$ 37,473,200	$ 44,197,800

Ratio: Revenue from Railway Operatic
Income available for fixed charg

$37,473,200 / $44,197,800 = 84.79%

Gross stock and debt indicator	$282,417,000
Ratio of operating to total earnings	84.79%
Net stock and debt indicator of value	$239,461,374

Unit Value:

	Weight	
1. Cost indicator	25%	$114,348,000
2. Income indicator	50%	117,358,182
3. Stock and debt indicator	25%	59,865,344
Unit value		$291,571,526

16. Extensive evidence relevant to the unit valuation approach was presented by Mr. Martin D. Miller, expert witness for the Commissioner, and by Dr. John A. Gronouski and Dr. Arthur A. Schoenwald, expert witnesses for the Soo Line. The following tables show the unit valuations computed by each of those witnesses, as well as that computed by the Commissioner:

ASSESSMENT DATE JANUARY 2, 1980

	COMMISSIONER	MILLER	GRONOUSKI	SCHOENWALD
COST	418,628,000	309,000,000	—	172,613,000
STOCK & DEBT				
Gross	246,624,000	259,436,000	232,972,000	312,305,000
Less Non-op Prop.	36,401,702	39,590,000	81,713,000	139,231,000
Net	210,222,298	219,800,000	151,259,000	173,074,000
INCOME				
Cap Rate	11%	14.89%	12.4%	14.85%
Income Stream	21,378,400	33,049,000	18,933,000	21,135,000
Value	194,349,091	222,000,000	152,685,000	142,323,000
WEIGHTING				
Cost	25% — 104,657,000	15% — 46,350,000	—	—
S&D	25% — 52,555,574	35% — 76,930,000	50% — 75,629,500	50% — 86,537,000
Income	50% — 97,174,546	50% — 111,000,000	50% — 76,342,500	50% — 71,161,500
TOTAL SYSTEM VALUE	100% — 254,387,120	100% — 234,300,000	100% — 151,972,000	100% — 157,699,000

ASSESSMENT DATE JANUARY 2, 1981

	COMMISSIONER	MILLER	GRONOUSKI	SCHOENWALD
COST	457,392,000	342,400,000	—	203,463,000
STOCK & DEBT				
Gross	282,417,000	336,196,000	270,093,000	348,469,000
Less Non-op Prop.	42,955,636	57,456,000	86,519,000	141,290,000
Net	239,461,374	278,740,000	183,574,000	207,179,000
INCOME				
Cap Rate	11%	14.25%	14.67%	17.00%
Income Stream	25,818,800	38,125,000	23,198,000	25,429,000
Value	234,716,364	267,544,000	158,132,000	149,582,000
WEIGHTING				
Cost	25% — 114,348,000	15% — 51,360,000	—	—
S&D	25% — 59,865,344	35% — 113,680,000	50% — 91,887,000	50% — 103,585,500
Income	50% — 117,358,182	50% — 138,750,000	50% — 79,066,000	50% — 74,791,000
TOTAL SYSTEM VALUE	100% — 291,571,526	100% — 282,691,000	100% — 170,853,000	100% — 178,381,000

17. For the assessment year 1980, 17.8% of the system value of the Soo Line Railroad Company operating property was allocable to the State of Minnesota. For the assessment year 1981, 28.6% of the system value of Soo Line operating property was allocable to the State of Minnesota.

18. Ties, rails, and other track material are part of the real estate for assessment purposes.

19. Signals and other equipment are personal property and should not be included in the real estate assessment.

20. The method used by the Commissioner for determining the unit value of Appellant is basically correct except that the cost approach should not be considered and the stock and debt approach and the income approach should each be given a weight of 50 percent. Also, signals and other equipment are personal property which should not be included in the valuation of the operating property for real estate tax purposes. Also, we find that the capitalization rate that should be used for each of the years in question should be 14.5 percent. In accordance with these changes, we find the Minnesota taxable portion of unit value to be $22,666,085 for 1980 and $25,299,881 for 1981. The calculation for this determination is shown on the following 3 pages.

	1980 Assessment Year	1981 Assessment Year
Stock and Debt		
Gross	$246,624,000	$282,417,000
Less: Non-operating property	36,401,702	42,955,626
Net	$210,222,298	$239,461,374
Income		
Capitalization rate	14.5%	14.5%
Income	21,378,400	25,818,800
Value	$147,437,241	$178,060,689
Weighting		
Stock and Debt 50%	$105,111,149	$119,730,687
Income 50%	73,718,620	89,030,345
Unit value	$178,829,770	$208,761,032
Percent allocable to Minnesota	27.8%	28.6%
Unit value allocable to Minnesota	$ 49,714,676	$ 59,705,655
Deductions per 13 MCAR § 1.0026:		
Pollution control equipment	$ 91,704	$ 91,001
Nonoperating property	155,304	155,474
Exempt personal property	26,801,583	34,159,299
	$ 27,048,591	$ 34,405,774
Taxable portion of unit value	$ 22,666,085	$ 25,299,881

1980 Assessment Year		
1. Minnesota Portion of Unit Value		149,714,676
2. Approved Pollution Control	$ 91,704	
3. Non-operating Property	155,304	
4. Deduction for lines 2 and 3		247,008
5. Sub-total		$49,467,668
Personal Property Deduction		
6. Personal Property Account:		
A. Coal and Ore Wharves	- 0 -	
B. Communication Equipment	$ 211,000	
C. Roadway Machines	1,085,000	
D. Shop Machinery	1,140,000	
E. Power Plant Machinery	626,000	
F. Equipment	42,882,675	
G. Signals and Interlockers	817,050	
7. Minnesota Depreciated Personal Property Accounts		$46,761,725
8. System Cost Account:		
A. Road	$43,429,000	
B. Equipment	42,882,675	
9. Minnesota Depreciated Cost		$86,311,675
10. Ratio of Personal Property to Cost		54.18%

11. Non-taxable Personal Property Portion of Minnesota Unit Value		$26,801,583
12. Taxable Minnesota Portion of Unit Value		$22,666,085

1981 Assessment Year

1. Minnesota Portion of Unit Value		$59,705,655
2. Approved Pollution Control	$ 91,001	
3. Non-operating Property	155,474	
4. Deduction for lines 2 and 3		$ 246,475
5. Subtotal		$59,459,180
Personal Property Deduction:		
6. Personal Property Account		
A. Coal & Ore Wharves	- 0 -	
B. Communication Equipment	$ 215,737	
C. Roadway Machines	1,472,711	
D. Shop Machinery	1,236,831	
E. Power Plant Machinery	521,632	
F. Equipment	51,586,620	
G. Signals and Interlockers	915,856	
7. Minnesota Depreciated Personal Property Accounts		$55,949,387
8. System Cost Account		
A. Road	$45,793,160	
B. Equipment	51,586,620	
9. Minnesota Depreciated Cost		$97,379,780
10. Ratio of Personal Property Accounts to Cost		57.45%
11. Non-taxable Personal Property Portion of Minnesota Unit Value		$34,159,299
12. Taxable Minnesota Portion of Unit Value		$25,299,881

21. Dr. Frederick Ekeblad testified on behalf of Appellant that the assessment/sales ratio of locally assessed commercial and industrial property in the State of Minnesota after being adjusted for inflation was 74.3 percent in 1980 and 74.5 percent in 1981.

22. We find that Appellant is entitled to the application of an assessment/sales ratio which would place it on an equal basis with other owners of commercial and industrial property. We find this is required by federal law codified as Section 11503 of Title 49, U.S. Code Annotated (The 4-R Act) which reads in part as follows:

"(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a state, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess railroad transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this sub-section."

23. We find that an assessment/sales ratio of 85 percent should be applied to the Minnesota apportionment of unit value for 1980. The taxable value for 1980 is $22,666,085 × 85 percent which is $19,266,172. The basis for this determination is stated in the attached Memorandum.

24. We find that an assessment/sales ratio of 85 percent should be applied to the Minnesota apportionment of unit value for 1981. The taxable value for 1981 is $25,299,881 × 85 percent which is $21,504,899. The basis for this determination is stated on the attached Memorandum.

25. The Commissioner should recalculate the correct tax on the basis of a taxable value of $19,266,172 for the 1980 assessment year and refund any over payment to Appellant.

26. The Commissioner should reapportion the 1981 taxable value of $21,504,899 to the respective counties and taxing districts in accordance with the same principles as used in the original assessment.

27. Appellant is entitled to a refund of the difference between the tax calculated by the respective counties and taxing districts on the Commissioner's original apportionment of 1981 assessed values and the tax as calculated by the respective counties and taxing districts based on the Commissioner's reapportionment determined in accordance with this decision.

Conclusions of Law

1. The correct taxable value of the operating property of Appellant for assessment year 1980 is $19,266,172. The Commissioner is directed to recalculate the correct tax on the basis of this value and refund any difference to the Appellant.

2. The taxable value for the operating property of Appellant for 1981 is $21,504,899. The Commissioner is directed to apportion this value to the respective counties and taxing districts in accordance with the principles used in apportioning the original valuation. The respective counties and taxing districts shall refund to Appellant the difference in taxes based on the original apportionment and the new apportionment.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

Dated: November 3, 1983.

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

Memorandum

This is a matter of first impression in Minnesota since the statutes prior to the 1980 assessment year provided for a gross earnings tax on railroads. For the year 1980 and subsequent years, Minnesota Statutes 270.84, subd. 1 provides as follows:

The commissioner shall annually between April 30 and July 31 make a determination of the fair market value of the operating property of every railroad company doing business in this state as of January 2 of the year in which the valuation is made. In determining the fair market value of the portion of operating property within this state, the commissioner shall value the operating property as a unit, taking into consideration the value of the operating property of the entire system, and shall allocate to this state that part thereof which is a fair and reasonable proportion of said entire system valuation. If the commissioner uses original cost as a factor in determining the unit value of operating property, no depreciation or obsolescence allowance shall be permitted. However, if the commissioner uses replacement cost as a factor in determining the unit value of operating property, then a reasonable depreciation and obsolescence allowance may be used.

The evidence produced at the trial of this matter indicated that Rules 13 MCAR § 1.0024 adopted by the Commissioner of Revenue to determine valuation of railroad property do not properly reflect the valuation and to the extent that they conflict with this decision, the rules are overruled. They are specifically overruled in the provision requiring the use of a capitalization rate of 11% and in the provision requiring a weighting of 25% for the cost indicator of value.

We find for the purposes of this decision that a weighting of 50% for the income indicator of value and 50% for the stock and debt indicator of value best reflects the market value of the appellant's property.

Everyone agrees that the determination of the market value of a railroad is extremely difficult. Even the experts have substantial disagreement on fundamentals. For example, Mr. Miller determined a gross value under the stock and debt approach in the amount of $259,436,000. Dr. Gronouski determined the gross stock and debt value was $232,972,000 and Dr. Schoenwald determined it to be $312,305,000. These were the values determined as of January 2, 1980. For January 2, 1981, there was a similar disparity.

The capitalization rates as determined by Mr. Miller, Dr. Gronouski and Dr. Schoenwald for 1980 were respectively 14.89%, 12.4% and 14.85%. For 1981 they were 14.25%, 14.67% and 17%.

It would serve little purpose to go into too much detail relative to the figures presented by the expert witnesses. There were substantial differences in the approaches of each of the witnesses.

One of the most seriously contested differences was in the method of determining the deduction for non-operating property.

Dr. Schoenwald in his appraisal report, Exhibit 24, pages 33 thru 36, explains the two methods for deducting non-operating property values which are not subject to tax. He explains the Direct Method and the Income Influence Method. On page 33 he states the following:

"In the absence of reliable information, the Income Influence Method should be substituted."

It may be that the Direct Method is more accurate although there are so many treatments that can be applied in the Direct Method that I doubt that different appraisers would end up with very similar results.

The Commissioner is required to assess all railroad property in the State of Minnesota. One of his biggest concerns must be to assess railroads on an equal basis. After hearing all the testimony and considering all of the exhibits, appraisals and briefs, it appears to us that various railroads might very well have different accounting methods which would make it next to impossible for the Commissioner to use the Direct Method. It is our opinion that the Income Influence Method may be fully as reliable as the Direct Method considering all of the matters that would be taken into consideration in the Direct Method approach.

All of the experts concluded that any use of the cost approach to value would be of little value and would have little credibility. This was concurred in by the attorneys for the Commissioner. The rule that had been adopted by the Commissioner relative to a 25% weight for the cost approach was disregarded.

We have chosen to adopt the stock and debt value used by the Commissioner in his original calculation because it appears that this is taken from figures that were supplied by the railroad as contained in the page marked Exhibit A which is contained in the Exhibit A that was offered and received in this trial. As we have previously indicated, the proper method of calculating the gross stock and debt value is not agreed on by all parties. For example, the value we have adopted is $246,624,000. The value arrived at by Mr. Miller was $259,436,000, by Dr. Gronouski $232,972,000, and by Dr. Schoenwald $312,305,000.

As we have previously indicated, we have adopted the Commissioner's method of using the Income Influence Method to arrive at the proper deduction for the non-operating property. We realize that there are other methods of arriving at a deduction for non-operating property. There apparently is not much agreement among the experts. The Commissioner's value that we used was $36,401,702. The value arrived at by Mr. Miller was $39,590,000, by Dr. Gronouski $81,713,000 and by Dr. Schoenwald $139,231,000.

We have also adopted the Commissioner's regulation that requires the use of the average income for the most recent five years preceding the assessment when determining a value based on income. This seems to be basically concurred in by Dr. Gronouski and Dr. Schoenwald, the expert witnesses for the railroad. Mr. Miller arrived at a value determined by a trend line for the past few years. Certainly this may be a valid accounting principle in many industries, but we do not find it appropriate for the railroad industry.

We find the determination of the capitalization rate to be one of the most troubling matters. In determining valuation of apartment buildings and various types of commercial enterprises, it is often possible to determine a capitalization rate from the market by the use of sales of comparable properties. We do not find that that would be possible in the case of railroads since there are hardly any comparable sales that could be properly analyzed to yield meaningful comparisons.

The regulations adopted by the Commissioner provided for the use of 11% as the capitalization rate. We find this part of the regulation arbitrary and invalid. We note that the attorneys for the Commissioner do not attempt to justify the use of 11% either.

The capitalization rate determined by Mr. Miller, who was the expert witness for the Commissioner, was 14.89% for 1980 and 14.25% for 1981. Dr. Gronouski determined 12.4% for 1980 and 14.67% for 1981. Dr. Schoenwald determined 14.85% for 1980 and 17% for 1981. Obviously, there is no well-established method for determining cap rates. The Commissioner urged that we should use the low cap rates determined by Dr. Gronouski. The Appellant argued that the rates determined by Dr. Schoenwald were most appropriate but that at the very least we should use an average of the rates determined by the three experts.

We note that Mr. Miller attempted to use some market data involving net income and market value of the common stock together with long-term debt interest paid and the market value of the long-term debt. It appears to us that there is at least some validity to this method. If we assume that sales of common stock on the stock market truly represent what buyers think the value of the railroad is, then this would seem to give us a somewhat rational basis for determining a capitalization rate from the market. The market value of any real property can seldom be determined very accurately with a capitalization rate determined from a band of investment that has no particular application to the subject property. Market buyers are always taking many other factors into consideration.

We note that the total value of outstanding common stock for 1980 was $142,286,000 and for 1981 it was $176,366,000. Assuming everything else remains the same, it would appear that the capitalization rate that buyers were willing to accept would be lower in 1981 than in 1980. We appreciate the fact that there are many other things involved including the fact that only a small percentage of stock is actually sold. We have concluded from the evidence and expert opinions presented that a capitalization rate of 14.5% for each year would be appropriate.

One of the principal issues is the method of adjusting the gross stock and debt value by deducting the value of non-operating properties. Both of the expert witnesses for the Appellant stated that one method was to use the Income Influence Method if you could not get good data on the assets. For example, Dr. Gronouski testified as follows:

"One is to do it by an income method and one is to do it by an asset method. As long as I felt that you could not get good data on the assets, I felt then that the only alternative was the income method." Tr., Vol. II, p. 78, lines 16-20.

Dr. Schoenwald stated on page 33 of his appraisal, Exhibit 24, the following:

"In the absence of reliable information, the Income Influence Method should be substituted."

The Commissioner is faced with the necessity of valuing all railroads in a consistent manner. Although the Income Influence Method may have some deficiencies, at least it is capable of being applied to all of the railroads in a fairly uniform manner. As we have noted, there are substantial differences in the figures arrived at by the two expert witnesses for the Appellant even with the complete availability of all of the railroad records. It would probably be impossible for the Commissioner to value all railroads in this manner and if he did he would probably not be able to treat all railroads in a uniform manner. One factor in the Direct Method is the appraised values of certain properties in the various counties. Variations in appraisal practices of different counties would alone make uniformity almost insurmountable. We, therefore, do conclude that it was proper for the Commissioner to use the Income Influence Method.

An important issue is whether or not rails and ties constitute part of the real estate since only the real property is subject to taxation. Minnesota Statutes § 272.03, subd. 1 read as follows during the times involved in this appeal:

For the purposes of taxation, "real property" includes the land itself and all buildings, structures, and improvements or other fixtures on it. . . .

Our attention has been called to the fact that the Minnesota Legislature in the 1983 Session amended this section to read as follows:

For the purposes of taxation, "real property" includes the land itself, rails, ties, and other track materials next to the land and all buildings, structures, and improvements or other fixtures on it. . . . (New language is underlined.)

We find that the 1983 amendment has no application to the subject case. It is the province of the courts to determine the meaning of statutes as they existed at the time that is involved. An enactment by a subsequent legislature will not have any effect on the interpretation of the prior statute for a case that occurred prior to the subsequent enactment.

We find, however, that the rails and ties did constitute a part of the realty prior to the 1983 enactment.

A great deal has been written in text books, law books, and cases relative to fixtures and when a fixture is part of the real estate and when it is not. Sometimes what is real estate is determined by the party that owns it. For example, light fixtures placed in a building by a tenant generally continue to be considered personal property, whereas light fixtures owned by the owner are considered to be part of the real estate.

Our attention has not been called to any cases dealing very specifically with the question involved here. The matter involved in Minnesota is further complicated by Minn. Statutes § 272.03(1)(c)(i) which provides as follows:

The term real property shall not include tools, implements, machinery, and equipment attached to or installed in real property for use in the business or production activity conducted thereon regardless of size, weight or method of attachment.

Although reasonable minds might differ, we conclude that tracks and ties would be considered real estate in the ordinary understanding of that word.

We think it quite clear that rails and ties would not be considered "tools, implements and machinery" so if they were to be included in the above section of the statute, it would have to be as "equipment". We note in Webster's New World Dictionary, Second College Edition that one of the definitions for equipment is as follows:

3. Goods used in providing service, esp. in transportation, as the rolling stock of a railroad.

It would seem reasonable to conclude that the writer of that definition considered that rails and ties were not equipment.

The Appellee argues at some length that the issue must be treated as if it were an exemption issue which would require strict construction of the language to find the exemption. On the other hand, Appellant considers the statute as a definitional statute. We would be inclined to agree that it is a definitional statute, but it seems to indicate that anything that appears to be attached to the real property is real property unless it is excluded as tools, implements, machinery or equipment. Certainly most people would consider that rails and ties appear to be attached to the real estate.

Both parties claim support from Armco Steel Corp. v. Butler County Board of Revision, 325 N.E. 2d 893, 894 (Ohio 1975), in which the Court described the issue as follows:

The question presented is whether standard gauge railroad tracks, used in conjunction with special gauge tracks which, together, comprise an in-plant rail network for the transportation of material from one processing point to another in the course of manufacturing steel, are properly classified as real property for taxation purposes.

The tracks are neither improvements to the land nor fixtures because, from the record, this court finds that the tracks are devoted primarily to steel making on the premises and not to the use or benefit of the land. (Emphasis added).

It would certainly be possible to construe the above language to mean that the Court found that ordinarily tracks are improvements to the land but that in that case they were not because they were primarily used for making steel on the premises.

Appellant takes the position that the rails and tracks are not a benefit to the land, but in other parts of its brief it contends that the land cannot be valued on the basis of its possible use for purposes other than railroads because the land is, in effect, zoned only for railroad purposes because the railroad cannot abandon the route without permission from the ICC. Since the land must be used for a railroad route, it would appear that it is a benefit to have the rails there, otherwise they would have to be installed.

One of the most troubling matters is the proper method of treating Appellant's property in the same way that other commercial and industrial property is treated. Federal law, Section 11503 of Title 49, U.S. Code Annotated (The 4-R Act) reads in part as follows:

"(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a state, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess railroad transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this sub-section."

Our statute provides that the assessed value for commercial property and railroad property is 43 percent of the actual market value so in that respect railroad property and commercial property are treated alike.

The above Federal law appears to require equal treatment both de facto as well as de jure. The Commissioner is directed to determine assessment/sales ratios for real property in the taxing districts in the State of Minnesota. These assessment/sales ratios are less than 100 percent in almost all instances which means that the values placed on real property by the assessors are something less than 100 percent of actual market value.

The Appellant takes the position that under the statute the value determined by the Commissioner is the actual full market value of the railroad property and that an assessment/sales ratio must be applied to that value to reduce it to give treatment to the railroad that is equal to that given commercial property.

The Commissioner takes the position stated in its letter brief of Steptember 7, 1983 as follows:

"The railroad has petitioned that its values be equalized with that of other commercial and industrial properties. However, it is important to recognize that railroads are not valued as commercial and industrial property but as special use (railroad) property. If railroad property were to be valued at its highest and best use, such as commercial and industrial property, a much higher value would accrue to it. The state has chosen to value the railroad property differently from commercial and industrial property in order to employ the unit value process as required by statute. To apply the commercial and industrial sales ratio study to this special use valuation would not achieve equalization but would result in a distinct advantage to the railroads."

We find that the railroad property is effectively zoned only for railroad use and so we must find that the highest and best use of the property is for railroad use. It could also be stated that it is a special use property. The method we have used to value the property is quite similar to the valuation of special use property.

The Federal statute appears to be quite explicit in requiring railroad property to be given the same treatment as other commercial and industrial property. There have been several court decisions stating this quite clearly most notably The Atchinson, Topeka and Santa Fe Railway Co., v. Lennen, D.C. Kansas, Memorandum and opinion order dated April 15, 1982. This case states a good background on assessment/sales ratios and then adopts the finding of Dr. Frederick Ekeblad as to the correct assessment/sales ratio to be applied. It appears that the tax administrator in Kansas prepares assessment/sales ratios in a manner similar to the studies done by the Commissioner of Revenue in Minnesota.

There is some difference in Kansas in that they tax both personal property and real property. The study by Dr. Ekeblad included only real property assessment/sales ratios and the Court directed that that be used for both real and personal property. The Court did not indicate what adjustments, if any, were made to the assessment/sales ratios.

The determination of the correct assessment/sales ratio to be applied has been given a great deal of consideration in our courts. Up to the present time it appears that our Supreme Court has approved the use of assessment/sales ratios only in those cases where the assessor admitted that he was applying some ratio to the actual value in order to arrive at the real and true value which he put on his books. Our Supreme Court has indicated that it is proper to apply an assessment/sales ratio if the ratio can be shown to be reliable. The Supreme Court has not stated specific requirements to establish reliability.

Our statutes provide for the Commissioner of Revenue to prepare assessment/sales ratios and our statutes also allow the introduction of these assessment/sales ratios in tax appeal cases without further foundation. The statute does not indicate the weight to be given to such ratios, if any. The Supreme Court has stated on several occasions that assessment/sales ratios must be adjusted for time and terms and any other factor that might affect them. For example, if a piece of real property is sold several months after the assessment date and if this is a period of rapid inflation the assessment/sales ratio would not be correct unless it were adjusted to take into account the inflation between the time of assessment and the time of the sale.

Another factor that has to be considered is whether or not favorable terms have been provided in the sale. If the purchaser has been given a contract for deed or a mortgage at a rate of interest substantially below the going rate of interest it would appear to indicate that the real cash equivalent price for the property would be lower than the stated sale price. If adjustments are not made for this factor, the assessment/sales ratio will also be incorrect.

There may also be other factors such as a possibility that most properties that are sold may be those properties that are inflating most rapidly, although it would be very difficult to provide any evidence of such a factor.

It is obvious that arriving at the proper assessment/sales ratio to be used is a very difficult and subjective matter. In most cases we are dealing with a property in a single taxing district. The assessment/sales ratio in a single district will probably indicate whether or not the local assessor is regularly assessing properties very conservatively or otherwise. In this case, we have 32 counties in which Appellant's property is located. This means we have more than 32 different assessors since in some cases we have both a county and a city assessor. The assessment/sales ratios vary substantially in the counties in which the Appellant has property. For example in 1981 Mahnomen County had a median assessment/sales ratio of 40.7 percent and Pope County had a median assessment/sales ratio of 101.7 percent. If the share of property value that is to be attributed to Pope County is reduced by some ratio than Appellant will be receiving more favorable treatment in Pope County than the average of other commercial and industrial taxpayers in that county. There is some serious question as to whether or not some sort of equalization on a statewide basis will be treating the various districts equitably.

Another factor in this consideration is that although there are 32 counties to which Appellant's property is apportioned, some of the counties receive considerably larger portions of the apportionment. In the original apportionment for 1981 the Commissioner apportioned a total value of $36,158,880. Of this amount, $9,810,649 was apportioned to Hennepin County. This means that 27 percent of Appellant's property was located in Hennepin County. If Hennepin County has a higher assessment/sales ratio than the average of the other counties then there would be substantial injustice to Hennepin County taxing districts if a lower assessment/sales ratio is used.

Dr. Ekeblad did a study and arrived at certain conclusions. He used in his study the assessment/sales ratios for commercial and industrial property in the entire state. Since Appellant's property is to be apportioned only among 32 counties, it is really not proper to use an assessment/sales ratio determined on sales in 87 counties. Also, we do not find that Dr. Ekeblad had given any weighting to various percentages of Appellant's property in the various counties.

We did conclude that Appellant was entitled to the benefit of some assessment/sales ratio. We realize that in any event, it is only going to be approximately correct. We do not feel that Dr. Ekeblad's study gives an approximately correct ratio.

It is true that Dr. Ekeblad did make some adjustments for time and he therefore acknowledges that such adjustments should be made. He made adjustments in 1980 on the basis of an annual 16 percent inflation and in 1981 on the basis of an annual inflation rate of 1.1 percent.

Dr. Ekeblad acknowledged that contracts for deed might reflect a higher price than the actual market price because of favorable terms and so he excluded contract for deed sales and used only warranty deed sales. We do not feel that warranty deed prices are always a correct indication of the price either. It is very possible that a seller may give a warranty deed and take back a first or second mortgage at very favorable rates when he might very well have been willing to sell at a much lower price if cash had been available.

We have had occasion to hear a number of cases in Hennepin County that have involved the question of the proper assessment/sales ratio to use. We have also had occasion to determine a correct assessment/sales ratio in St. Louis County.

We determined and applied an assessment/sales ratio of 85 percent for commercial property in 1981 in Hennepin County in *Kraus-Anderson Inc., v. County of Hennepin*, TC-2007 dated September 9, 1983, and in *United National Corporation v. County of Hennepin*, TC-1482 and 1866, dated April 21, 1983. We also applied an assessment/sales ratio in St. Louis County for 1981 in the amount of 86.67 percent in *George R. Celusta v. County of St. Louis*, File No. 148406, dated March 29, 1983. The decisions and records in those cases will indicate how we arrived at those assessment/sales ratios. In those cass we attempted to give the proper consideration to adjustments for time and terms.

The application of an 85 percent assessment/sales ratio in this case will put the Appellant on an equal basis with the relief that we gave in the above cited cases to commercial property owners in Hennepin County. On the basis of all of the knowledge that has come to our attention, including Dr. Ekeblad's study, we conclude that an assessment ratio of 85 percent is approximately correct.

The Commissioner suggests that if an equalization ratio is to be applied, the apportionment should be made and the appropriate county ratio should be applied. This probably would be the fairest way to do this except that everyone agrees, including Dr. Ekeblad, that an unadjusted ratio would be incorrect. As we have indicated, we have only had occasion to determine an adjusted ratio in a few instances and we feel that it is more appropriate to use that ratio than any other method that has come to our attention. There is another factor in attempting to determine an adjusted ratio in many of the counties. This

factor is the number of sales involved. In Hennepin and St. Louis County we had a sufficiently large sample to arrive at an approximate value. Where there are only a few sales, the result would probably not be correct.

We realize that the valuation of real property is very subjective. We have attempted to consider all factors and arrive at a value that is fair to all parties. "Parties" as used here means the Appellant, the Commissioner, the local assessors, the State of Minnesota, and the taxpayers, some of whom will undoubtedly be paying more than their fair share and some who will be paying less than their fair share since no one has the wisdom to be absolutely correct.

C.A.J.

State of Minnesota
County of Murray

Tax Court
Fifth Judicial District

James P. Malone, Jr.,
Petitioner,
vs.
County of Murray,
Respondent.

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

File No. 10221

The above entitled matter having been regularly upon the calendar of the Court came on for trial before the undersigned, the Honorable John Knapp, Chief Judge of Tax Court, at the Murray County Courthouse, in the City of Slayton, County of Murray, State of Minnesota, on June 16, 1983. Briefs were subsequently submitted by both parties.

Paul M. Malone of Malone & Mailander appeared as the attorney for the Petitioner. Merlyn Anderson, County Attorney, appeared as the attorney for the Respondent.

After hearing all of the evidence adduced at said hearing, being fully advised in the premises and upon all the files and records herein, the Court makes the following as:

Findings of Fact

I

The Petitioner purchased the Southeast Quarter (SE¼) of Section Twenty-One (21), Township One Hundred Seven (107), Range Forty (40), on February 28, 1982, for the purchase price of $188,000.00. The terms of the sale were ten percent (10%) down on the date of the sale and the balance on or before April 4, 1982.

II.

The procedure followed in conducting the sale was to have an auctioneer cry for bids upon the property until the maximum bid had been reached. At such time as the maximum bid was reached, the representatives of the seller gathered together and conversed for a period of time to ascertain whether or not the terms and conditions of the sale were acceptable. The sellers agreed that the bid received was acceptable, and notified the parties present that the property was going to actually be sold and again solicited bids. No further bids were received and the property was sold.

III.

The real estate sale was an arms-length transaction consisting of a ready and willing seller and a willing and capable buyer. Neither party was under compulsion to perform and the sale was conducted in a normal business-like manner.

IV.

The sale of the land to James P. Malone, Jr. represented an arms-length transaction and the sale price was the fair market value on the date of the sale.

V.

There was no material variation in the market in Murray County and in Murray Township for farm real estate during the interval between January 1, 1982, and February 28, 1982.

VI.

The only expert testifying who stated his opinion regarding the fair market value of the subject property on January 1, 1982, was Duane Peterson and he testified that the fair market value of the subject property on January 1, 1982, was $188,000.00.

VII.

James Malone, Jr., the Petitioner, who has substantial experience relative to the real estate market in the area in question, testified that, in his opinion, the fair market value of the property on January 1, 1982, was $188,000.00.

VIII.

The fair market value of the property on January 1, 1982, was $188,000.00.

IX.

The assessor's estimated market value of the subject property as of January 1, 1982, was $208,000.00.

X.

The proper assessment/sales ratio to be applied to the subject property as of January 1, 1982, was 100%.

XI.

The attached Memorandum is made a part of these Findings.

Conclusions of Law

I.

The assessor's estimated market value of the subject property should be reduced on the books and records of the assessor to $188,000 as of January 2, 1982.

II.

Real estate taxes due and payable in 1982 should be recomputed accordingly and refunds paid to the Petitioner as required by such computations, together with interest from the original date of payment, and costs and disbursements herein.

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

Dated: November 7, 1983

By the Court,

John Knapp, Chief Judge
Minnesota Tax Court

Memorandum

On January 2, 1982, the Murray County Assessor determined the estimated market value of the subject property to be $208,000. Subsequently, in February of 1982, Petitioner purchased the property at an auction sale for $188,000. Petitioner claims that the auction sale price determines the market value of the property. Respondent claims that the auction sale price cannot be used to establish market value for assessment purposes.

Prior to 1983 the statutory definition of maket value read as follows:

"Market Value" means the usual selling price at the place where the property to which the term is applied shall be at the time of the assessment; being the price which could be obtained at private sale *and not at forced or auction sale.*

Minnesota Statutes § 273.08, subd. 8 (emphasis added).

The Respondent contends that the auction sale price may not be considered by the Court in determining market value, however, in the instant case we have sufficient other evidence to establish the market value, and the Court finds that the auction sale was an arms-length transaction and fully supports the other evidence relating to market value presented by the Petitioner.

Respondent submitted no expert testimony regarding the fair market value of the subject property. Mr. Floyd Propp, the Murray County Assessor, simply testified that he had assessed the subject property in the same way that he had assessed all other property but did not offer an opinion regarding the fair market value of the subject property on the assessment date. He testified that he had no knowledge of interest rates in the area and does not take interest rates into consideration in determining market value. He admitted that the estimated market value had been established by someone other than himself before he received the assessment books.

The assessor used three 1981 real estate sales in Murray Township as comparables in his testimony to justify the January 2, 1982 estimated market value of the subject property of $208,000. He also prepared Petitioner's Exhibit No. 1 in which he listed those sales and showed their assessment sales ratios as 95%, 87% and 76% respectively, but on questioning by the Court he admitted that those ratios were prepared on the current year data matching formula rather than the same year data matching formula which the Court finds to be more reliable. Upon further questioning by the Court, he admitted that by using the same

year data matching formula the respective assessment/sales ratios for those same properties were 44%, 75.7% and 66.1% respectively but that those ratios were not adjusted for time or terms.

Mr. Duane Peterson testified on behalf of the Petitioner. He testified that he has been in the real estate business for approximately 20 to 25 years located within 15 miles of the subject property, that he was guardian of the estate of the former owner and that he was executor of the estate which actually sold the property. He testified that he examined the property many times, that he had attempted to sell the property for more than six months, that he had advertised the property thoroughly and had contact with many prospective purchasers. He testified that in his opinion the fair market value of the subject property on the assessment date was $188,000.

The assessor testified that he was directed by the Commissioner of Revenue to strive for an assessment/sales ratio of 85% to 90% and that he was striving to accomplish that objective.

This Court has taken judicial notice of the assessment/sales ratios prepared by the Commissioner of Revenue for the Tax Court and finds those ratios to be as follows for Murray County based on 1981 sales:

	MEAN RATIO	MEDIAN RATIO	AGGREGATE RATIO	SAMPLE ITEMS
Residential Property	94.8	94.9	87.4	44
Seasonal/Recreational	76.1	66.3	69.7	6
Agricultural Property	76.1	71.8	73.7	28
Commercial Property	79.7	82.2	75.1	9

The above ratios are also not adjusted for time or terms.

This Court has also taken judicial notice of the assessment/sales ratios prepared by the Commissioner of Revenue for the Tax Court and finds those ratios to be as follows for Murray County based on 1982 sales:

	MEAN RATIO	MEDIAN RATIO	AGGREGATE RATIO	STUDY ITEMS
Residential Property	105.7	104.7	99.4	40
Seasonal/Recreational	92.3	92.3	82.7	2
Agricultural Property	99.6	95.3	94.4	18
Commercial Property	61.8	61.4	62.5	8

These ratios are also not adjusted for time or terms.

A comparison of the assessment/sales ratios derived from 1981 sales with those derived from 1982 sales reflects a substantial improvement in those sales ratios. That improvement can be attributed either to improved assessment practices or a decline in the market value, or both. Because it is important for the Court to know the facts, the Court asked the assessor to produce the total estimated market values of the various classes of property for Murray County in each of the years 1980, 1981 and 1982. Because the Petitioner has no objection to the Court's consideration of those figures, the Court will take judicial notice of them and has also made calculations of the percentage of increase of estimated market values after deducting new construction. Those figures are as follows:

ESTIMATED MARKET VALUES

	1980	% Increase Without New Construction	New Construction
Residential	$ 62,405,504		$1,952,364
Seasonal Recreational	7,987,465		364,440
Agricultural	443,800,853		3,138,346
Commercial	9,510,614		556,581
	$523,704,436		$6,011,731
	1981	% Increase Without New Construction	New Construction
Residential	$ 71,087,865	11.8%	$1,316,671
Seasonal Recreational	10,926,640	32.9%	308,995
Agricultural	533,786,200	19.9%	1,637,880
Commercial	10,173,410	5.5%	140,159
	$625,974,115	18.9%	$3,403,705

	1982		
Residential	$ 74,743,200	?	$ 610,814
Seasonal Recreational *	8,870,921	?	86,604
Agricultural	627,571,100	17.3%	1,565,922
Commercial	10,007,800	−2.5%	9,200
	$721,193,021	14.8%	$2,272,540

*The 1982 decrease in seasonal recreational values was due to the fact that some properties were changed to residential classification.

From the above, it can be noted that after making an allowance for new construction the estimated market values of agricultural property in Murray County increased from $533,786,200 in 1981 to $626,005,178 in 1982, an increase of 17.3%. Assuming that a fair sampling was taken each year, that would only bring the median ratio to 84.2% for 1982, whereas the Commissioner's study shows the median ratio to be 95.3%. It is reasonable to deduct that the additional increase in the ratio was due to a decline in the market values and consequently little or no adjustment should be made for a cash sale which took place in 1982.

Further support for the decline in market value can be found in a report by Dr. Philip M. Raup, Research Assistant and Professor in the Department of Agriculture and Applied Economics of the University of Minnesota. The report is contained in the Minnesota Agricultural Economist issue dated January 1983. It clearly indicates that in southwestern Minnesota farm values declined by 10% between 1981 and 1982.

The Petitioner has urged us to give a further reduction based on the assessment/sales ratio study. We have declined to do that because the assessment/sales ratio appears to be close to 100%.

In our Memorandum in *S.S.T. Enterprises vs. Todd County*, we indicated that it would be improper to apply an assessment/sales ratio based on sales that were not adjusted for time and terms to the market value based on cash equivalency. In the instant case, it would also be improper to apply an assessment/sales ratio based on sales that were not adjusted for time and terms to the market value based on a cash value.

The auction sale which occurred on February 25, 1982, was an arms-length sale. The sellers were not forced to sell and the buyer was not forced to buy. The property was on the market for a sufficient length of time and was sufficiently advertised. All of the requirements for an arms-length sale were present and the sales price paid for the property was the cash market value of the subject property. Other evidence in the case also supports the market value found by the Court.

J.K.

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.

County of Anoka

Computer Applications Consultants Sought

Anoka County is seeking assistance in development of a long-range, comprehensive, data processing resources usage plan.

This plan should provide Anoka County with direction to meet its data processing needs for the next (4) four to (6) six years.

The study should determine if the county's data processing efforts are addressing and meeting current objectives and goals, and that proper direction is taken to maintain current systems and address future needs.

The study will address hardware, software and personnel needs and communications networks interfacing County departments with each other as well as other agencies and units of government.

INFORMATION GUIDE AND RESPONSE FORMAT MATERIAL WILL BE AVAILABLE FROM THE ANOKA COUNTY PURCHASING OFFICE AFTER OCTOBER 14, 1983. CONTACT RICHARD PEARSON, CPPO, AT 421-4760, EXTENSION 1851.

Requests for information will be received by the Anoka County Administration Office until 2:00 p.m., November 21, 1983.

John "Jay" McLinden
County Administrator

Department of Economic Security

Notice of Request for Proposals for Technical Assistance

The Governor's Job Training Office (GJTO) of the Minnesota Department of Economic Security is requesting proposals to assist in developing a long term State plan for a Job Training Partnership Act (JTPA) Management Information System (MIS).

The project will involve surveying and assessing the information needs of a wide variety of JTPA users (i.e., Governor's Job Training Council and Committee members, GJTO staff, Private Industry Council members, Service Delivery Areas (SDA) administrative staff, service providers and community based organizations). The basic objective of the project is to propose alternative systems which would respond to information needs identified by users.

The project will commence on or about December 19, 1983 and be completed February 29, 1984. Estimated cost of services required is $30,000.

The complete Request for Proposal and applications are available upon request. Inquiries and requests for applications should be directed to:

Larry Simmons
Governor's Job Training Office
690 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-6066

Proposals are due by 5:00 P.M. on December 7, 1983. A bidders' conference will be held on November 17, 1983 at 1:00 P.M.

Departments of Economic Security and Education Vocational-Technical Education Division Governor's Job Training Office

Notice of Request for Proposals for JTPA-Education Coordination Services for Special Needs Groups

The Division of Vocational-Technical Education and the Governor's Job Training Office are seeking proposals to provide job training services to individuals having identified special needs. These individuals could include handicapped youth and/or adults, women, recovering chemically dependent, minority youth and/or adults, displaced homemakers, veterans and older workers (age 55 and over). All proposals should have been jointly developed by service delivery areas and local education agencies. The training services, which will be provided under contract, are outlined in the Request for Proposals (RFP). The formal RFP should be requested from:

Dr. Deena B. Allen
Division of Vocational-Technical Education
539 Capital Square Building
550 Cedar Street
St. Paul, MN 55101
611/296-3387

A total of $150,000 is available statewide for funding of these proposals. Proposals must be received by Deena Allen at the above address by 4:30 on Friday, January 6, 1984.

PLEASE NOTE: The deadline for receipt of proposals has been extended to allow for additional time for program development and approval by local private industry councils.

Department of Energy and Economic Development Office of the Commissioner

Notice of Request for Executive Search Services

The commissioner of Energy and Economic Development is requesting proposals from contractors to provide the following services:

- Conduct an extensive search for an outstanding professional to fill the vacancy of Deputy Commissioner of Economic Development for the department.

- Conduct an extensive search for an outstanding professional to fill the vacancy of Deputy Commissioner for Financial Management for the Department.

This $15,000 contract will require the contractor to search for, screen, and evaluate qualified individuals for the aforementioned positions. Final candidates presented to the Commissioner must be carefully selected for leadership abilities and professional qualifications as outlined in the respective job descriptions (available upn request). The contract is not complete until both positions are filled. Contractor must be able to give top priority to the assignment and be able to work at an accelerated pace to intend to complete it within 45 to 60 days. The contract must cover all costs associated with the search.

Proposals must be submitted by November 21, 1983. Contractor's background in executive search and no less than three references must accompany the proposal.

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

Ms. Connie J. Lewis
Deputy to the Commissioner
Minnesota Department of Energy
and Economic Development
980 American Center Building
150 East Kellogg Blvd.
St. Paul, Minnesota 55101
(612) 297-4567

Department of Energy and Economic Development Office of the Commissioner

Notice of Request for Proposals for Advertising Agencies

The Minnesota Department of Energy and Economic Development, Marketing Division, is seeking proposals on a $40,000 contract for advertising services through June 1984. The agency awarded the contract will create consulting and promotional materials designed to further economic development for the state. Materials will include advertising and marketing concepts, displays, and a major marketing brochure. Five (5) copies of an agency's proposal are due at the Minnesota Marketing Division no later than 4:30 p.m., on December 5, 1983. Questions on the content of the proposal should be directed to Melinda McLaughlin, (612) 297-3059, Minnesota Department of Energy and Economic Development, Marketing Division, 100 Hanover Building, 480 Cedar Street, St. Paul, Minnesota 55101.

Melinda McLaughlin
Marketing Director

Iron Range Resources and Rehabilitation Board

Request for Proposals for Reclamation Project

The Iron Range Resources & Rehabilitation Board is seeking proposals from firms that have expertise in Landscape and Outdoor Exhibit Design for a reclamation project to be administered by the Board.

Individuals or firms will do a conceptual analysis of the site, which is currently a part of a Tourism—Recreation Area. As a result of the analysis, a master plan will be developed for the project area.

Prospective responders who have any questions regarding this Request for Proposal may call or write:

Mr. Orlyn Olson
Mineland Reclamation Director
Iron Range Resources & Rehabilitation Board
P.O. Box 376
Calumet, Minnesota 55716
(218) 247-7215

Proposals must be submitted by 4:30 p.m., November 28, 1983.

State Designer Selection Board

Request for Proposal for Design of Firing Ranges at Camp Ripley

The State Designer Selection Board has been requested to select designer for Four Firing Ranges at Camp Ripley. Design firms who wish to be considered for this project should submit proposals on or before 4:00 P.M., December 14, 1983, to George Iwan, Executive Secretary, State Designer Selection Board, Room G-10, Administration Building, St. Paul, Minnesota 55155-1495.

The proposal must conform to the following:

1. Six copies of the proposal will be required.

2. All data must be on 8½" × 11" sheets, soft bound.

3. The cover sheet of the proposal must be clearly labeled with the project number, as listed in number 7 below, together with the designer's firm name, address, telephone number and the name of the contact person.

4. The proposal should consist of the following information in the order indicated below:

a) Number and name of project.

b) Identity of firm and an indication of its legal status, i.e. corporation, partnership, etc.

c) Names of the pesons who would be directly responsible for the major elements of the work, including consultants, together with brief descriptions of their qualifications. If the applicant chooses to list projects which are relevant in type, scale, or character to the project at hand, the person's role in the project must be identified.

d) A commitment to enter the work promptly and to assign the people listed in "C" above and to supply other necessary staff.

e) A list of design projects in process or completed in the three (3) years prior to the date of this request for agencies or institutions of the State of Minnesota, including the University of Minnesota, by the firm(s) listed in "b" together with the approximate fees associated with each project.

f) A section of not more than fourteen (14) faces containing graphic material (photos, plans, drawings, etc.) as evidence of the firm's qualification for the work. The graphic material must be identified. It must be work in which the personnel listed in "c" have had significant participation and their roles must be clearly described.

The proposal shall consist of no more than twenty (20) faces. Proposals not conforming to the parameters set forth in this request will be disqualified and discarded without further examination.

5. In accordance with the provisions of Minnesota Statutes, 1981 Supplement, Section 363.073; for all contracts estimated to be in excess of $50,000, all responders having more than 20 full-time employees at any time during the previous 12 months must have an affirmative action plan approved by the Commissioner of Human Rights before a proposal may be accepted. Your proposal will not be accepted unless it includes one of the following:

a) A copy of your firm's current certificate of compliance issued by the Commissioner of Human Rights; or

b) A statement certifying that your firm has a current certificate of compliance issued by the Commissioner of Human Rights; or

c) A statement certifying that your firm has not had more than 20 full-time employees in Minnesota at any time during the previous 12 months.

6. Design firms wishing to have their proposals returned after the Board's review must follow one of the following procedures:

a) Enclose a self-address stamped postal card with the proposals. Design firms will be notified when material is ready to be picked up. Design firms will have two (2) weeks to pick up their proposals, after which time the proposals will be discarded.

b) Enclose a self-addressed stamped mailing envelope with the proposals. When the Board has completed its review, proposals will be returned using this envelope.

In accordance with existing statute, the Board will retain one copy of each proposal submitted.

Any questions concerning the Board's procedures or their schedule for the project herein described may be referred to George Iwan at (612) 296-4656.

7) Project—16-83
Range Modernization Program
Camp Ripley
Little Falls, Minnesota 56345
Department of Military Affairs

Description of the Projects:
Fire and Life Safety Projects:

1) **General:** The proposed projects include four (4) separate ranges: Light Anti-Armor Weapons Range; Anti-Armor Tracking and Live Fire Range; M-16 Field Firing Range; and, M-16 Record Fire Range, to include firing points, remote or moving target systems and associated support facilities.

2) **Site Location:** Area is in Camp Ripley approximately seven miles north of Little Falls, Minnesota, on State Highway No. 371.

3) **Range Construction Will Include:**

a) Site preparation varying from minimal to extensive (sixty acres).

b) Access roads and parking for each range.

c) Earthwork to include construction of elevated firing lines and berms for target pit or moving target mechanisms.

d) Electrical work to include underground primary services into each range and underground power from control tower to targets or moving target mechanisms and wiring control of system.

e) Concrete work to include junction box protectors, berm support as needed, target bases, ammunition and carrier maneuver pads, retaining walls and stairways.

f) Buildings consisting of a control tower, utility shed and training building of permanent, insulated concrete block construction of 5,000 square feet with truss roof, latrine facilities and heating system for each range.

4) **Topographic Surveys:** A topographic survey is required for each range. Designer will provide.

5) **Soil Tests:** Designer will arrange for. Owner will pay costs of soil tests.

6) **Estimated Projects Construction Cost:**

a) Light Anti-Armor Weapons Range	— $117,000.00
b) Anti-Armor Tracking and Live Fire Range	— 406,000.00
c) M-16 Field Firing Range	— 168,000.00
d) M-16 Record Fire Range	— 213,000.00
Estimated Total Construction Cost (4 Ranges)	— $904,000.00

7) **Work To Be Performed By The Designer:** It is requested that one firm perform Designer work on all four ranges. The work basically includes the design of complete facilities, the preparation of required drawings, specifications and allied documents to include bidding documents for same; the bid opening; the handling of contract documents; the general supervision of the construction work for the Owner; preparation of change orders (Supplemental Agreements); review and approval of shop drawings and payment requests; assistance in final acceptance of the work.

8) **Designer's Fee For The Work:** Government established at the following percentages of construction cost for the work:

a) Light Anti-Armor Weapons Range:	— 6.0%
b) Anti-Armor Tracking and Live Fire Range:	— 5.5%

c) M-16 Field Firing Range: — 5.8%

d) M-16 Record Fire Range: — 5.7%

Separate contracts will be executed for each range project utilizing fees indicated above. These fees may appear lower than normal, but in fulfilling the contracts, the Designer will be carrying out basic plan designs furnished by the Owner. Preliminary work by the Designer will be minimal insofar as trial designs and presentations are concerned. The preliminary drawings for the work will be basically the final working drawings, partially completed. The work does not involve the Corps of Engineers in any way. The specification format will be Designer's normal for commercial work, tailored to the project. We have experienced no difficulty in the past in engaging Engineers for thus type of work under these fee schedules.

The Designer for ohe project will work directly with the Department of Military Affairs, Captain John F. Ebert, Acting Facilities Management Officer, Camp Ripley, Little Falls, Minnesota (Telephone (612) 632-6631, Extension 315). All questions relative to this project should be referred to him.

Roger D. Clemence, Chairman
State Designer Selection Board

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.

Board of Animal Health

Notice of Special Board Meeting

Friday, December 9, 1983 at 9:30 a.m.
American Inn
St. Cloud, Minnesota

The special meeting is being called to discuss proposed pseudorabies rule amendments. Information about this meeting may be obtained by calling the Board of Animal Health at (612) 296-5000.

Dr. J. G. Flint
Executive Secretary

Department of Energy and Economic Development Community Development Division

Notice of Meeting

The Juvenile Justice Advisory Committee will meet on Friday, November 18, 1983 at 9:00 A.M. in Room 116A, First Floor, Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota.

Department of Finance

Notice of Maximum Interest Rates for Municipal Obligations

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

Department of Health

Emergency Medical Services Licensure Application

As of November 14, 1983, a completed application for scheduled advanced life support transportation service was submitted by John Latcham, Hiawatha Aviation of Rochester, Inc., Rochester, Minnesota.

This notice is given pursuant to Minnesota Statutes 1979, Section 144.802, which requires in part that the Commissioner of Health shall publish 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 service agency or any other interested person wishing to comment on the Hiawatha Aviation application, may request a copy and submit comments to the State Health Planning Agency, 550 Cedar St., 100 Capitol Square Building, St. Paul, MN. 55101, Attention: John Dilley, 612/296-2407. Comments must be made before the close of business on December 14, 1983.

After a public hearing has been held, the State Health Planning Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The State Health Planning Agency 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.

Minnesota Housing Finance Agency

Notice of Public Hearing on Bond Issue

The Minnesota Housing Finance Agency will hold a public hearing pursuant to Section 103(k) of the Internal Revenue Code of 1954, as amended, on November 29, 1983, at 9:30 o'clock A.M., at the Moorhead City Hall, 500 Center Avenue, Moorhead, MN, 56560, in the City Council Chambers, 1st floor, on a proposed issue of housing development bonds in an aggregate principal amount not to exceed $2,000,000 for the purpose of financing the facility described below as a residential rental project. The general functional description of the type and use of the facility, the maximum aggregate face amount of bonds to be issued with respect to it, the Developer which will initially own the facility, and its prospective location are as follows:

Description	Maximum Bond Amount	Developer	Location
New Apartment Building (approx. 36 units)	$ 2,000,000	Partnership of Norman Triebwasser, Richard Kluzak, and Jerry Meide	3400-30th Avenue S. (Village Green Blvd.) west of the Village Green Golf Course Clubhouse, Moorhead, MN

The proceeds received by the Agency from the sale of the bonds net of costs of issuance and the establishment of reserves will be loaned to the Developer for the acquisition and construction or rehabilitation of the facility. The bonds will be payable from the loan repayments and other revenues of the Agency. The State of Minnesota will not be liable thereon and the bonds will not be a debt of the State.

All persons interested will be given an opportunity to express their views. Persons desiring to speak at the hearing must so request in writing at least 24 hours bexbre the hearing. Requests should be directed to the attention of James J. Solem, Executive Director, in care of the Minnesota Housing Finance Agency, 333 Sibley St., Suite 200, St. Paul, MN, 55101. Oral remarks by any person will be limited to 10 minutes.

James J. Solem, Executive Director
Minnesota Housing Finance Agency

Department of Labor and Industry
Boiler Inspection Division

Notice of Intention to Solicit Outside Opinion

Notice is hereby given that the State Department of Labor and Industry, Boiler Inspection Division, is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing the operation of boats carrying passengers for hire. The promulgation of these rules is authorized by Minnesota Statutes, Section 183.41, Subd. 2, which requires the agency to make such rules for inspection and certification of boats carrying passengers for hire on state waters and for the safety equipment required on board such boats.

The State Department of Labor and Industry, Boiler Inspection Division 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:

Steve Keefe, Commissioner,
Department of Labor & Industry
444 Lafayette Road
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-2342 and in person at the above address.

All statements of information and comment shall be accepted until December 31, 1983. Any written material received by the State Department of Labor and Industry, Division of Boiler Inspection, shall become part of the record in the event that the rules are promulgated.

Minnesota State Retirement System
Board of Directors

A special meeting of the Board of Directors, Minnesota State Retirement System will be held on Friday, November 18, 1983 at 8:30 A.M. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Department of Transportation

Petition of the City of Mendota Heights for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Mendota Heights has made a written request to the Commissioner of Transportation for a variance from minimum design standards for Street Width for the reconstruction of Mendota Heights Road from Trunk Highway 49 (Dodd Road) to CSAH 63 Delaware Avenue.

The request is for a variance from 14 MCAR § 1.5032, H.,1.,d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a Street Width of 44 feet instead of 46 feet.

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

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

Richard P. Braun, Commissioner
Department of Transportation

Department of Transportation

Petition of the City of Mounds View for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Mounds View made a written request to the Commissioner of Transportation for a variance from minimum design standards for Street Width for MSAS 233 (Ardan Avenue) from Spring Lake Road to Eastwood Road.

The request is for a variance from 14 MCAR § 1.5032, H.,1.,c., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a Street Width of 39 feet instead of the required 46 feet.

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

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

Richard P. Braun, Commissioner
Department of Transportation

Department of Transportation

Petition of Freeborn County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Freeborn County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for special resurfacing projects on CSAH 6 from TH 109 to CSAH 27, CSAH 8 from CSAH 25 to CSAH 29, and CSAH 17 from CSAH 4 to the West Limits of Conger.

The request is for a variance from 14 MCAR § 1.5032, H.,1.,d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit design speeds of 44, 44.2, 44.6, 32, 44.1 and 44.9 miles per hour instead of a required design speed of 45 miles per hour.

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

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

Richard P. Braun, Commissioner
Department of Transportation

Department of Transportation

Petition of Wright County for a Variance from State Aid Standards for Recovery Area

Notice is hereby given that the County Board of Wright County has made a written request to the Commissioner of Transportation for a variance from minimum design standards for recovery area for CSAH 36 from the North Junction T.H. 101 to the East County Line.

The request is for a variance from 14 MCAR § 1.5032, H.,1.,a., Rules for State Aid Operations under Minnesota Statutes, Chapters 161 and 162 (1978) as amended, so as to permit a recovery area of 21 feet instead of the required 30 feet.

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

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

Richard P. Braun, Commissioner
Department of Transportation

Department of Transportation
Technical Services Division

Appointment and Scheduled Meeting of a State Aid Standards Variance Committee

Notice is hereby given that the Commissioner of Transportation has appointed a State Aid Standards Variance Committee who will conduct a meeting on Tuesday, November 15, 1983, at 9:30 A.M. in Room 410-A, State Transportation Building, John Ireland Boulevard, St. Paul, Minnesota.

This notice is given pursuant to Minnesota Statute § 471.705.

The purpose of the open meeting is to investigate and determine recommendation(s) for variances from minimum State Aid

roadway standards as governed by MCAR § 1.5032 M.4.b., Rules for State Aid Operations under Minnesota Statutes, Chapters 161 and 162 (1978), as amended.

The two additional requests have been added to the agenda since the schedule which appeared in the *State Register* on October 24, 1983.

1. Petition of the City of Mounds View for a variance from State Aid Standards for Street Width for MSAS 233 (Ardan Avenue) from Spring Lake Road to Eastwood Road.

2. Petition of Wright County for a Variance from State Aid Standards for Recovery Area for CSAH 36 from the North Junction TH 101 to the East County Line.

The city and county listed above are requested to follow the following time schedule when appearing before the Variance Committee:

11:10—City of Mounds View

11:30—Wright County

Richard P. Braun, Commissioner
Department of Transportation

Department of Transportation
Technical Services Division

Appointment and Scheduled Meeting of a State Aid Standards Variance Committee

Notice is hereby given that the Commissioner of Transportation has appointed a State Aid Standards Variance Committee who will conduct a meeting on Tuesday, November 15, 1983, at 9:30 A.M. in Room 410-A, State Transportation Building, John Ireland Boulevard, St. Paul, Minnesota.

This notice is given pursuant to Minnesota Statute § 471.705.

The purpose of the open meeting is to investigate and determine recommendation(s) for variances from minimum State Aid roadway standards as governed by MCAR § 1.5032 M.4.b., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978), as amended.

This additional request has been added to the agenda since the schedule which appeared in the *State Register* on October 24, 1983.

1. Petition of Freeborn County for a Variance from State Aid Standards for design speed for special resurfacing projects on CSAH 6 from TH 109 to CSAH 27, CSAH 8 from CSAH 25 to CSAH 29, and CSAH 17 from CSAH 4 to the West Limits of Conger.

The County listed above is requested to follow the following time schedule when appearing before the Variance Committee:

11:50 A.M.—Freeborn County

Richard P. Braun, Commissioner
Department of Transportation

Department of Transportation

Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minn. Stat. § 169.825

Whereas, the Commissioner of Transportation has made his Order No. 67790 which order has been amended by Orders Nos. 68172 and 68273 designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under Minnesota Statutes § 169.825, and

Whereas, the Commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota § 169.825.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 67790 is amended this date by adding the following designated streets and highway routes, or segment of routes, as follows:

TRUNK HIGHWAYS

T.H. 1 — From Jct. T.H. 46 (Northome) to Jct. T.H. 6 (effective 12/1).

T.H. 6 — From Jct. T.H. 200 (Remer) to Jct. T.H. 1 (effective 12/1).

T.H. 13 — From Jct. T.H. 60 (Waterville) to Jct. T.H. 21 (effective 5/15).

T.H. 28 — From Swanville to Jct. T.H. 27 (effective 12/1).

T.H. 91 — From Chandler to Jct. T.H. 23 (Russell) (effective 12/1).

T.H. 171 — From North Dakota State Line to Jct T.H. 75 (effective 5/15).

T.H. 194 — From Jct. T.H. 53 to Jct. T.H. 2 (effective 5/15).

T.H. 210 — From Jct. I-35 to Jct. T.H. 45 (effective 5/15).

Change:

T.H. 59 — From Jct. T.H. 2 (Erskine) to Jct. T.H. 32 (Thief River Falls) change effective date from July 1 to 5/15.

Richard P. Braun, Commissioner
Department of Transportation

Errata

Minnesota Housing Finance Agency

At 8 S.R. 1033 (October 31, 1983, Volume 8, No. 18) Tom Triplett, State Planning Agency, is incorrectly listed as a member of the Board of the Minnesota Housing Finance Agency. Mark Dayton, commissioner of the Department of Energy and Economic Development, is a member of the Minnesota Housing Finance Agency Board.

STATE OF MINNESOTA

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

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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