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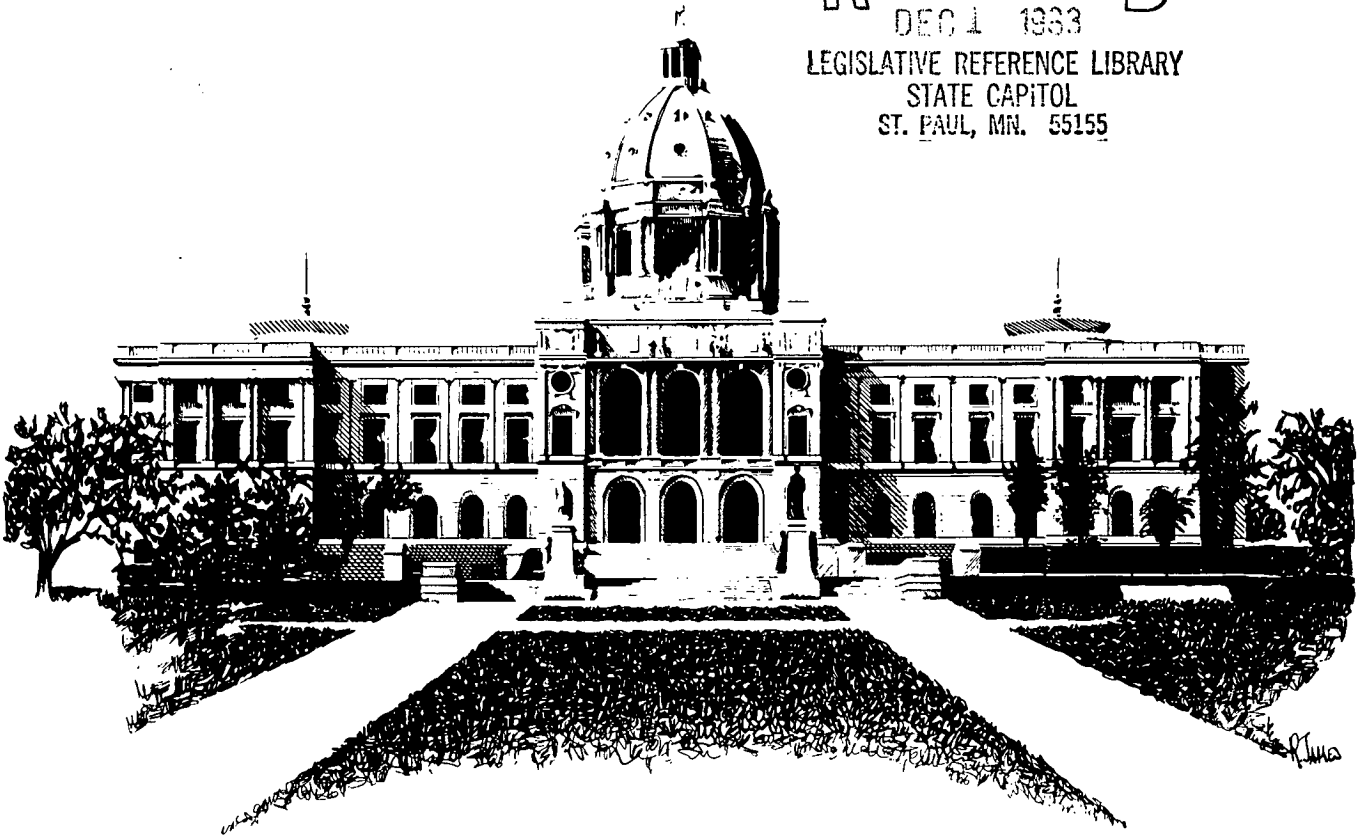
STATE REGISTER

STATE OF MINNESOTA

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VOLUME 8, NUMBER 22

November 28, 1983

Pages 1245-1284



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			
23	Friday Nov 18	Monday Nov 28	Monday Dec 5
24	Monday Nov 28	Monday Dec 5	Monday Dec 12
25	Monday Dec 5	Monday Dec 12	Monday Dec 19
26	Monday Dec 12	Friday Dec 16	Monday Dec 26

*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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Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

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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CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Inclusive listing for Issues 14-22. 1248

PROPOSED RULES

Agriculture Department

Dairy Industries Division

Proposed Temporary Rules Governing
Administration of the Manufacturing Grade
Milk Investment Reimbursement Program 1250

Commerce Department

Proposed Adoption of Rules Relating to
Insurance Agent Conduct. 1256

State Board of Education (State Board for Vocational Education)

Education Department

Vocational-Technical Education Division

Proposed Rules Governing Chapter Six:
Post-Secondary Vocational-Technical
Education (5 MCAR § 1.0100-1.01101) and
Chapter Six-A: Adult Vocational-Technical
Education (5 MCAR § 1.0111-1.01117) 1260

Labor and Industry Department Occupational Safety and Health Division

Emergency Temporary Standard Limiting
Employee Exposure to Asbestos 1260

ADOPTED RULES

Energy and Economic Development Department

Adopted Temporary Rules for the
Administration of the District Heating Grant
Program 1262

Energy and Economic Development Department

Community Development Division

Adopted Rules Governing the Community
Development Block Grant Program. 1263

OFFICIAL NOTICES

Administration Department

Energy Conservation Division

Request for Proposals to Firms Interested in
Third Party Financing for Converting
Existing Coal-Fired Boilers to Burn Wood,
Peat or Other Alternate Fuels 1268

Energy and Economic Development Department Community Development Division

Notice of Opening Date for Submission of
Applications for Economic Development
Projects Under the Community Development
Block Grant Program 1269

Labor and Industry Department Occupational Safety and Health Division

Outside Opinion Sought on New Rules

Governing Trade Secrets and Employees'
Conditional Right to Refuse Work 1269

Labor and Industry Department Occupational Safety and Health Division

Proposed Occupational Safety and Health
Standards Implementing Provisions of the
Employee Right-to-Know Act of 1983 1270

Labor and Industry Department Workers' Compensation Rehabilitation and Medical Services Division

Outside Opinion Sought on Rehabilitation
Assessment 1271

Labor and Industry Workers' Compensation Division

Outside Opinion Sought Regarding Proposed
Rules Establishing the Method for
Determination of the Special Compensation
Fund Assessment Base 1271

Public Welfare Department Income Maintenance Bureau

Notice of Hospital Cost Index 1272

STATE CONTRACTS

Revenue Department

Notice of Extension for Submitting Proposals
for Consultant Service for a Management
Development Project 1272

Transportation Department Technical Services Division

Notice of Availability of a Contract for
Preliminary Engineering—Detail Design 1272

Transportation Department Technical Services Division

Notice of Availability of a Contract for
Preliminary Engineering—Detail Design 1273

SUPREME COURT

Decisions Filed Friday, November 18, 1983

C7-82-260 State of Minnesota, Respondent, v.
Wayne E. Abraham, Appellant 1273

TAX COURT

Sigwel Wood and Evelyn I. Wood, Appellants, v.
The Commissioner of Revenue, Appellee 1274
Host International, Inc. and Minneapolis-St.
Paul Metropolitan Airports Commission,
Petitioners, v. County of Hennepin,
Respondent 1275
Roger Elo, Petitioner, v. County of St. Louis,
Respondent 1281

NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

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

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

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
Issue 27-38, inclusive	

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

MCAR AMENDMENTS AND ADDITIONS

TITLE 2 ADMINISTRATION

Part 1 Administration

2 MCAR § 1.16007-1.16008 (adopted).....	1229
2 MCAR § 1.16001-1.16006 (repealed)	1229

Part 2 Electricity Board

4 MCAR § 11.033-11.038 (adopted).....	1228
---------------------------------------	------

TITLE 3 AGRICULTURE

Part 1 Agriculture Department

3 MCAR §§ 1.0129-1.0130, 1.0132-1.0133, 1.0135 (proposed).....	670
3 MCAR § 1.0172 [Temp] (adopted)	1078
3 MCAR § 1.1160 (proposed)	1185
3 MCAR §§ 1.1340 [Temp]-1.1348 [Temp] (proposed)	1251
3 MCAR §§ 1.4060 [Temp]-1.4070 [Temp] (proposed)	665

TITLE 4 COMMERCE

Part 1 Commerce Department

S Div 2117-2118, 2021, 2034 (adopted).....	1009
4 MCAR §§ 1.0001 [Temp]-1.0022 [Temp], 1.00225 [Temp], 1.0023 [Temp], 1.0031 [Temp] (adopted)	1006
4 MCAR §§ 1.9011-1.9028 (proposed), 1.90281 (proposed) ...	1256
4 MCAR §§ 1.9081 [Temp]-1.9089 [Temp], 1.90891 [Temp]- 1.90892 [Temp] (adopted)	1006
4 MCAR §§ 1.9260-1.9269 [Temp] (proposed)	1102

Racing Commission

4 MCAR §§ 15.001-15.050 (proposed).....	1162
---	------

Part 2 Energy & Economic Development Department

4 MCAR §§ 2.501-2.508 (repealed)	1011
--	------

Part 3 Public Utilities Commission

4 MCAR §§ 3.0450-3.0463 [Temp] (adopted).....	1095
---	------

Part 4 Cable Communications Board

4 MCAR §§ 4.240-4.243 (proposed).....	1069
---------------------------------------	------

Part 11 Electricity Board

4 MCAR § 11.033-11.038 (adopted).....	1228
---------------------------------------	------

TITLE 5 EDUCATION

Part 1 Education Department

5 MCAR §§ 1.0100-1.01101 (proposed), 1.0111-1.0117 (proposed).....	1260
5 MCAR §§ 1.0120-1.0122, 1.01222-1.01224, 1.0125, 1.01226, 1.01228-1.01229, 1.01232-1.01234, 1.0124, 1.0126-1.0127 (adopted).....	596
5 MCAR § 1.0807 [Temp] (adopted)	692

TITLE 6 ENVIRONMENT

Part 1 Natural Resources Department

6 MCAR § 1.0057 (proposed)	677
6 MCAR §§ 1.5600-1.5603 (proposed).....	995

Part 2 Energy and Economic Development

2 MCAR § 1.16007-1.16008 (adopted).....	1229
---	------

MCAR AMENDMENTS AND ADDITIONS

2 MCAR § 1.16001-1.16006 (repealed)	1229
6 MCAR §§ 2.2300-2.2314 (proposed)	1106
6 MCAR §§ 2.4045 [Temp], 2.4047 [Temp]-2.4048 [Temp] ...	1262
6 MCAR §§ 2.2500-2.2509 (proposed)	673
6 MCAR §§ 2.2502, 2.2503 (withdrawn)	994
10 MCAR §§ 1.500, 1.505-1.506, 1.510, 1.520, 1.525, 1.546, 1.550 (adopted)	1263

Part 4 Pollution Control Agency

APC 2 (6 MCAR § 4.002) (proposed)	682
6 MCAR § 4.0041 (proposed)	678
6 MCAR § 4.8034 (adopted)	694
6 MCAR §§ 4.9100-4.9104, 4.9128-4.9137, 4.9200-4.9222, 4.9250-4.9259, 4.9280-4.9322, 4.9380-4.9422, 4.9480- 4.9481, 4.9559-4.9560 (proposed)	732
6 MCAR §§ 4.9701-4.9706 (proposed)	1071

Part 8 Waste Management Board

6 MCAR §§ 8.403-8.404, 8.408 (proposed)	1004
---	------

TITLE 8 LABOR

Part 1 Labor and Industry Department

8 MCAR §§ 1.7200-1.7209 (adopted)	622
8 MCAR §§ 1.8003-1.8004, 1.8006-1.8007 (proposed)	742
8 MCAR §§ 1.9001 [Temp]-1.9023 [Temp] (proposed)	562

Part 4 Economic Security Department

8 MCAR § 4.0101 [Temp] (adopted)	1093
8 MCAR § 4.0102 [Temp] (adopted)	1229

TITLE 10 PLANNING

Part 1 Energy and Economic Development

10 MCAR §§ 1.500, 1.505-1.506, 1.510, 1.520, 1.525, 1.546, 1.550 (adopted)	1263
---	------

TITLE 11 PUBLIC SAFETY

Part 1 Public Safety Department

11 MCAR §§ 1.8025, 1.8058, 1.8084 (proposed)	730
--	-----

Part 2 Corrections Department

11 MCAR §§ 2.001-2.012 (adopted)	601
11 MCAR §§ 2.601-2.622 (proposed)	981

TITLE 12 SOCIAL SERVICE

Part 2 Public Welfare Department

12 MCAR §§ 2.0300-2.0304 [Temp] (proposed)	1154
12 MCAR §§ 2.04422 [Temp], 2.05501 [Temp]-2.05509 [Temp] (adopted)	698
12 MCAR §§ 2.05301-2.05315 [Temp] (proposed)	1134
12 MCAR §§ 2.05401 [Temp]-2.05501 [Temp] (adopted)	959
12 MCAR § 2.207 (adopted)	1079
12 MCAR § 2.264 [Temp] (adopted)	602

Part 3 Housing Finance Agency

12 MCAR § 3.038 (proposed)	621
12 MCAR §§ 3.170-3.174 (adopted)	646

TITLE 13 TAXATION

Part 1 Revenue Department

13 MCAR §§ 1.0010-1.0014 (withdrawn)	596
13 MCAR § 1.6016 (repealed)	1079

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 Agriculture Dairy Industries Division

Proposed Temporary Rules Governing Administration of the Manufacturing Grade Milk Investment Reimbursement Program

Notice of Intent to Adopt Temporary Rules

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above entitled temporary rules. The Commissioner of Agriculture will follow the procedures set forth in Minnesota Statutes, sections 14.29-14.36 in adopting these rules.

Persons interested in these temporary rules shall have 20 days from the date the rules are published in the *State Register* 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 department.

Persons who wish to submit oral or written comments should submit the comments to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

Authority to adopt these rules is contained in Laws of Minnesota 1983, chapter 232, section 2. The Commissioner is authorized by this section to adopt temporary rules for the administration of the manufacturing grade milk investment reimbursement program. The investment reimbursement program is intended to help can producers meet federal and state certification requirements for manufacturing grade milk by providing financial assistance. Accordingly, the proposed temporary rules include eligibility criteria such as residency in Minnesota and financial need; and provisions for a three-stage application process which includes an information survey submitted by a plant representative and financial information submitted by the applicant, a certification inspection and report by the department, and the applicant's submission of a request for payment and investment expenditure receipts. The proposed temporary rules also provide for the Commissioner's verification and approval of the receipts submitted for reimbursement, the schedule for payment of reimbursements, and provisions for claims of hardship.

Upon adoption of the temporary rules, the proposed rules, this Notice, all written comments received, and the temporary Rules as Adopted, will be delivered to the Attorney General for review as to form and legality.

In accordance with Laws of Minnesota 1983, chapter 232, section 2, these temporary rules will be effective until July 1, 1985.

One free copy of this Notice and the proposed temporary rules may be obtained by contacting Mr. Heil. Persons who wish to receive a copy of the temporary rules as adopted should also request it from Mr. Heil.

November 14, 1983

Jim Nichols
Commissioner of Agriculture

Temporary Rules as Proposed (all new material)**3 MCAR § 1.1340 [Temporary] Purpose; authority.**

Rules 3 MCAR §§ 1.1340-1.1348 [Temporary] are prescribed by the commissioner pursuant to Laws of Minnesota 1983, chapter 232, section 2, in order to establish an application process and payment procedures for investment reimbursements to aid limited resource producers in meeting certification requirements so that they may continue as producers of manufacturing grade milk.

3 MCAR § 1.1341 [Temporary] Definitions.

A. Scope. As used in 3 MCAR §§ 1.1340-1.1348 [Temporary], the terms in this rule have the meanings given them.

B. Applicant. "Applicant" means a can producer who is a resident.

C. Application. "Application" means an information survey, financial information, an inspection report, a reimbursement request, and investment expenditure receipts submitted by a person to the commissioner for the purpose of obtaining an investment reimbursement.

D. Can producer. "Can producer" means a person who produces manufacturing grade milk for sale in cans.

E. Certification. "Certification" means the determination by the commissioner that a can producer's facility complies with standards.

F. Commissioner. "Commissioner" means the commissioner of agriculture or commissioner's designee.

G. Dairy sanitarian. "Dairy sanitarian" means an employee of the department responsible for departmental dairy inspection activities in an area of Minnesota.

H. Department. "Department" means the Department of Agriculture.

I. Eligible applicant. "Eligible applicant" means a can producer who meets the criteria in 3 MCAR § 1.1342 [Temporary] A. and B.

J. Facility. "Facility" means equipment, building, or a portion of a building which is necessary in the production of manufacturing grade milk and is owned or operated by the can producer.

K. Hardship. "Hardship" means unforeseen circumstances which preclude the applicant from meeting a deadline stated in 3 MCAR § 1.1344-1.1348 [Temporary].

L. Investment expenditure. "Investment expenditure" means the cost of capital improvements or equipment installed for the purpose of conforming to standards.

M. Investment reimbursement. "Investment reimbursement" means a partial refund of investment expenditures.

N. Labor. "Labor" means a person hired for the modification of a facility and for which a receipt or other evidence of an investment expenditure is available.

O. Limited resource producer. "Limited resource producer" means a can producer whose yearly net income is less than \$6,000 and whose net worth is not in excess of \$75,000.

P. Manufacturing grade milk. "Manufacturing grade milk" means milk produced for processing and manufacturing into products for human consumption but not subject to the grade A requirements of Minnesota Statutes, chapter 32 and 3 MCAR §§ 1.1149-1.1154.

Q. Modification. "Modification" means a change in the production facility required for certification of the facility.

R. Net income. "Net income" means federally adjusted gross income minus taxes.

S. Net worth. "Net worth" means the sum of all assets minus all liabilities of the applicant and the applicant's spouse, if applicable, determined using generally accepted accounting principles.

T. Noncertifiable. "Noncertifiable" means unable to meet standards for the production of manufacturing grade milk.

U. Person. "Person" means an individual, partnership, family farm, family farm corporation, or authorized farm corporation engaged in manufacturing grade milk production.

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

V. Plant representative. "Plant representative" means a field service employee or other employee of a receiving dairy plant who is responsible for quality control.

W. Qualified applicant. "Qualified applicant" means an eligible applicant who is determined a limited resource producer in accordance with 3 MCAR § 1.1344 [Temporary] F.

X. Resident. "Resident" means a person who was producing manufacturing grade milk in Minnesota in cans, for sale, on or before June 2, 1983.

Y. Standards. "Standards" means the recommended federal standards for manufacturing grade milk as adopted by Minnesota.

3 MCAR § 1.1342 [Temporary] Eligibility.

A. Residency. An applicant must be a resident currently engaged in the production of manufacturing grade milk for sale in cans.

B. Noncertifiable. An applicant's facilities must be noncertifiable.

C. Financial need. An applicant must be a limited resource producer.

3 MCAR § 1.1343 [Temporary] Notice of available funds.

The commissioner shall publish notice of the availability of investment reimbursement funds in the *State Register* and mail the notice to can producers of record on or before February 1, 1984. The notice must contain at least the following: the purpose of the investment reimbursement program; the method of applying for the investment reimbursement; the criteria for eligibility; a statement of expenditures not eligible for reimbursement as stated in 3 MCAR § 1.1346 [Temporary] C.; a statement of when investment reimbursements will be made and the deadlines for filing application documents; and a statement that the maximum allowable investment reimbursement is \$100 for the first \$500 or fraction thereof, and ten percent of the next \$2,000 of net investment expenditures.

3 MCAR § 1.1344 [Temporary] Application procedure.

A. Information survey. An information survey must be completed and submitted prior to the filing of the financial data form. The applicant must request that a plant representative conduct the information survey and submit results to the department on or before May 1, 1984. The information survey must be completed on forms provided by the department and must contain at least the following:

1. the producer's name and address, including county, township, and section;
2. the date and time of survey;
3. the size of the dairy herd and amount of daily production;
4. the frequency of milk pickups and the name and address of the receiving dairy plant;
5. production and marketing intentions after July 1, 1985;
6. the producer's intent to apply for an investment reimbursement;
7. the availability of a milkhouse or milkroom;
8. the size and location of a milkhouse or milkroom, if any;
9. the type of construction of the milkhouse or milkroom including lighting, walls, and ceiling construction, floor construction, doors, windows, and screen construction, and the adequacy of sewage disposal;
10. construction plans, if any, for a milkhouse or milkroom including location, size, construction materials, and potential builder;
11. the condition of milking utensils and equipment;
12. the type and size of a milk cooler and its operating conditions;
13. the number and condition of cans;
14. the total number of cans needed for proper storage of milk;
15. the type of barn including size and arrangement;
16. the adequacy of lighting, ventilation, floor, gutters, walls, ceilings, pens and alleyways, yard, and loafing area;
17. the water supply type, location, and quality; and
18. any other information determined by the commissioner to be reasonably related to the certification process for manufacturing grade milk.

PROPOSED RULES

B. Preliminary review. Based on the information survey, the commissioner shall determine eligible applicants using the criteria in 3 MCAR § 1.1342 [Temporary] A. and B.

C. Notification of eligible applicants. The commissioner shall notify all eligible applicants on or before June 1, 1984.

D. Financial information. On or before July 1, 1984, an eligible applicant must submit to the department the following financial information:

1. a copy of the eligible applicant's federal income tax return for 1983 or a written, signed, and notarized statement declaring that the eligible applicant did not file a return for 1983; and
2. a completed net worth statement, in the form set forth in Exhibit 3 MCAR § 1.1344 [Temporary] D.2.-1.

Exhibit 3 MCAR § 1.1344 [Temporary] D.2.-1 (side 1)



Minnesota Department of Agriculture
Dairy Industries Division - 90 W. Plato Blvd.
St. Paul, MN 55107 (612) 297-2131

CURRENT NET WORTH STATEMENT

NAME: _____ DATE: _____

ADDRESS: _____ PHONE: () _____

ASSETS		omit cents	LIABILITIES		omit cents
CURRENT ASSETS			CURRENT LIABILITIES		
Cash			Secured Notes To:		
Stocks, Bonds & Investments			Unsecured Notes To:		
Collectable Notes			Notes to Others		
Cash Value of Life Ins. (Face Value \$)			Conditional Sales Contracts - Installments overdue		
Harvested Crops held for sale (see schedule 4)			Accrued Real Estate Interest		
Harvested Crops for farm use (see schedule 3)			Real Estate Mortgage Payments - (see schedule 5) (Interest and Principal, if overdue)		
Seed, Fertilizer and Chemicals Inventory			Commodity Credit Corporation Loans		
Investment in Growing Crops			Real Estate Taxes (Past due)		
Livestock held for sale (see schedule 2)			Personal Property Taxes (Past due)		
Other Assets			Income Taxes (Past due)		
			Cash Rent (Past due)		
SUB-TOTAL: Current Assets			Accounts Due (repairs, feed, gasoline, vet., etc.)		
INTERMEDIATE AND FIXED ASSETS					
REAL ESTATE					
Farm of Acres, @ per Acre					
Farm of Acres, @ per Acre					
Major Improvements to farms purchased					
Item	Year				
Item	Year				
Item	Year				
Item	Year				
Item	Year				
Item	Year				
Other			Other Liens and Judgments		
PERSONAL PROPERTY Needed to Operate Farm			SUB-TOTAL: Current Liabilities		
Dairy & Breeding Livestock (see schedule 1)			INTERMEDIATE AND LONG-TERM LIABILITIES		
Vehicles, Machinery (see schedule 6)			Real Estate Mortgages (see schedule 5)		
			Conditional Sales Contracts (see schedule 5)		
SUB-TOTAL: Intermediate and Fixed Assets			Secured Installment Notes (see schedule 5)		
TOTAL ASSETS			Loans Secured by Life Insurance		
TOTAL ASSETS					
TOTAL LIABILITIES			SUB-TOTAL: Int. and Long-Term Liabilities		
			TOTAL LIABILITIES		
NET WORTH					

I hereby submit the above as being a true, complete and accurate statement of my financial condition and the financial condition of my spouse (if applicable) on the above date.

Signed (Applicant) _____

Signed (Spouse) _____

The only intended use of information you provide on this form is to determine your eligibility for the Manufacturing Grade Milk Investment Reimbursement Program.

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.

E. Incomplete financial information. In the event that incomplete financial information is received, the department shall notify the eligible applicant, specifying the deficiencies. The eligible applicant shall have until July 1, 1984, or 15 days from the postmarked date of the notice, whichever is later, to complete the financial information. If the financial information is not completed in the prescribed time, the eligible applicant will not be considered for an investment reimbursement unless the eligible applicant shows hardship in accordance with 3 MCAR § 1.1347 [Temporary].

F. Determination and notification of qualified applicants. The commissioner shall review the financial information submitted by the eligible applicant and determine whether the eligible applicant is a limited resource producer. If the eligible applicant is a limited resource producer, the eligible applicant is qualified and the commissioner shall notify the qualified applicant by mail on or before August 1, 1984.

3 MCAR § 1.1345 [Temporary] Certification.

A. Certification inspection. On completion of all facility modifications, the qualified applicant shall notify the plant representative. The plant representative shall review the modifications and determine if the modified facility is ready for a certification inspection. If it is ready, the plant representative shall notify the dairy sanitarian to arrange for a certification inspection of the facility.

B. Inspection report. An inspection report must evidence all modifications and is the basis for determining the can producer's compliance with standards. The dairy sanitarian shall give the original of the inspection report to the qualified applicant, retain one copy, and send one copy each to the plant representative and the commissioner.

3 MCAR § 1.1346 [Temporary] Request for payment.

A. Submission of request for payment. After the completion of a successful certification inspection, the qualified applicant must file with the department a request for payment accompanied by all receipts for investment expenditures, dated and signed, if applicable. These materials must be received by the commissioner on or before April 1, 1985.

B. Request for payment. The request for payment must be a typed or legibly printed letter containing the following:

1. the qualified applicant's name and address;
2. the date of the request;
3. the date of the certification inspection; and
4. a brief statement requesting payment for investment expenditures under the manufacturing grade milk investment reimbursement program.

C. Receipts for investment expenditures. The qualified applicant may submit receipts for all investment expenditures made for the facility modification with the exception of the following items:

1. bulk tank unit;
2. hose port and concrete pad;
3. milk lines;
4. milk pumps;
5. pressurized hot water systems;
6. a waste disposal system more elaborate than one necessary to handle waste associated with the cleaning of milk handling equipment; and
7. labor costs in excess of ten percent of the total investment reimbursement approved by the commissioner.

D. Incomplete requests or receipts. In the event that a request or a receipt is incomplete, the department shall return the request or receipt to the qualified applicant specifying the deficiencies. The applicant shall have until April 1, 1985, or 15 days from the postmarked date of the notice, whichever is later, to complete the request or receipt, unless the qualified applicant shows hardship in accordance with 3 MCAR § 1.1347 [Temporary].

3 MCAR § 1.1347 [Temporary] Hardship.

Late financial information, request for payment, or receipt for investment expenditures may not be considered by the

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PROPOSED RULES

commissioner unless the eligible or qualified applicant shows hardship causing the delay. Any claim of hardship must be submitted in writing to the department. The commissioner shall evaluate and determine the reasonableness of any claim of hardship.

3 MCAR § 1.1348 [Temporary] Approval; payment.

A. Verification; approval. All requests and receipts for investment reimbursements submitted in support of an application are subject to verification and approval by the commissioner.

B. Schedule for payments. After the commissioner's approval, investment reimbursements must be made for investment expenditures in accordance with Laws of Minnesota 1983, chapter 232, section 2. All investment reimbursements must be made by June 30, 1985.

Department of Commerce

Proposed Adoption of Rules Relating to Insurance Agent Conduct

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce 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, section 14.21 (1982).

Persons interested in these rules shall have 30 days to submit comments. 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.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Thomas L. O'Malley, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 60A.17. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

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 proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101.

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

Copies of this Notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

4 MCAR § 1.9011 Authority and scope.

Rules 4 MCAR §§ 1.9011-1.90281 are promulgated pursuant to the authority of Minnesota Statutes, section 60A.17, as amended by Laws of Minnesota 1983, chapter 263, and are intended to govern the interest of all licensed insurance agents in this state.

4 MCAR § 1.9012 Definitions.

A. Scope. As used in 4 MCAR §§ 1.9011-1.90281, the terms defined in this rule shall have the meanings given them.

B. Agent. "Agent" means an insurance agent licensed under Minnesota Statutes, section 60A.17.

C. Brokerage business. "Brokerage business" means business transacted as provided in Minnesota Statutes, section 60A.17, subdivision 3.

D. Commissioner. "Commissioner" means the commissioner of the Minnesota Department of Commerce.

E. Licensee. "Licensee" means an individual or an agency licensed under Minnesota Statutes, section 60A.17, subdivision 1.

F. Placing agent. "Placing agent" means a licensed and appointed agent of an insurer through whom an application for insurance is submitted to the insurer on behalf of a soliciting agent who was not appointed by that insurer at the time the application was solicited.

G. Soliciting agent. "Soliciting agent" means an agent who sells or attempts to sell insurance to a person.

H. Supervising agent. "Supervising agent" means an agent or general agent who contracts with, employs or engages one or more other agents to solicit applications for insurance, or to otherwise act as insurance agents on the supervising agent's behalf. In the case of an agency required to be licensed under Minnesota Statutes, section 60A.17, subdivision 1, the supervising agents, if not specifically designated, shall be the licensed officers of the corporate agency, or the partners of a partnership agency.

4 MCAR § 1.9013 Loans from clients.

A. Requirements. No agent shall solicit or accept a loan from an individual with whom the agent came into contact in the course of the agent's business, unless the loan agreement or note is in writing, the lender is provided with a fully executed copy of the agreement or note at the time the loan is made, and the terms of the loan are lawful.

B. Unfair, dishonest, and unconscionable loans. Notwithstanding A., no agent shall solicit or accept a loan under dishonest, unfair, or unconscionable circumstances from an individual with whom the agent came into contact in the course of the agent's business. In determining whether a particular loan was solicited or accepted under dishonest, unfair, or unconscionable circumstances, the commissioner must consider the following:

1. the prior relationship between the agent and the lender;
2. the lender's age, mental state, and capacity;
3. the terms of the loan, including the amount, duration, and rate of interest, and the agent's compliance with those terms;
4. provisions for collateral or security;
5. the lender's income and net worth;
6. the involvement or lack of involvement of a family member of the lender, or some other neutral third party, in the negotiation of the loan;
7. any prior history of unfair treatment of the lender which the agent knew or should have known about;
8. indications of high pressure solicitation, coercion, intimidation, or undue influence by the agent in securing the loan;
9. the agent's representations regarding the need for or intended use of the loan; and
10. any other factors which reflect on whether the loan was dishonest, unfair, or unconscionable.

C. Records required of agent. An agent who accepts or has an outstanding loan from an individual with whom the agent came into contact in the course of the agent's business, must immediately compile and maintain for at least six years after the loan has been fully repaid, a list of the individuals from whom the agent has borrowed money, together with all documentation relating to the loans and the circumstances under which each was made.

4 MCAR § 1.9014 Delivery of policies.

Policies, certificates, or other evidence of insurance which are received by an agent from an insurer for delivery to an insured must be delivered or mailed to the insured by the agent within 30 working days of the agent's receipt, unless the insured agrees in writing that the agent may retain them.

4 MCAR § 1.9015 Receipts for materials.

An agent who takes possession of an insured's or a potential insured's insurance policies, certificates, or other documents

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PROPOSED RULES

pertaining to existing or pending insurance, must leave a written receipt for those materials at the time the agent receives the materials. The receipt must contain an itemized list of the materials received, the agent's name, and the address and telephone number of the agency or other place where the agent can be contacted. The receipt must be dated and signed by the agent.

4 MCAR § 1.9016 Other licenses.

It is an untrustworthy practice within the meaning of Minnesota Statutes, section 60A.17, subdivision 6, for an insurance agent to engaged in any unfair, deceptive, dishonest, untrustworthy, or fraudulent conduct which leads to the revocation of a license which the agent holds under Minnesota Statutes, chapter 80A or 82.

4 MCAR § 1.9017 Criminal convictions; disciplinary actions in other states.

A. Report of conviction. An agent who is convicted of a felony, gross misdemeanor, or a misdemeanor involving moral turpitude must report the conviction to the commissioner within ten working days of the conviction.

B. Report of disciplinary action. An agent whose insurance, securities, or real estate license is suspended or revoked in another state, or who has been ordered to pay a civil penalty because of conduct in the insurance, securities, or real estate industries in another state, must report the disciplinary action to the commissioner within ten working days of the effective date of the action.

4 MCAR § 1.9018 Duties of supervising agents.

A. Agents' behavior and licensing. A supervising agent shall have the duty to ensure that contracted, employed, or engaged agents:

1. are properly licensed in the lines of insurance in which they do business;
2. promptly remit all premiums and return premiums, refunds, claim settlements, or other money or things of value in the agents' possession obtained as a result of an insurance transaction and due and payable to any person, firm, or insurer; and
3. comply with laws and rules of the Department of Commerce.

B. Establish written procedures. A supervising agent must establish, maintain, and enforce written procedures which will ensure proper supervision of the activities of each agent and compliance with insurance laws and rules.

C. Annual account examination. Every supervising agent must conduct an examination of those client accounts for each agent who is within the scope of the supervisor's responsibility. The examinations must be conducted as often as is necessary for the supervising agent to discharge his supervisory responsibilities.

4 MCAR § 1.9019 Suitability.

In recommending the purchase of any life, endowment, annuity, life-endowment, or medical supplement insurance to a customer, an agent must have reasonable grounds for believing that the recommendation is suitable for the customer, and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by reference to the totality of the particular customer's circumstances, including, but not limited to, the customer's income, the customer's need for insurance, and the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.

4 MCAR § 1.9020 High standards of commercial honor.

Every agent must observe high standards of commercial honor and just and equitable principles of trade in the conduct of the agent's insurance business.

4 MCAR § 1.9021 Registered office for resident agents.

Every agent who is licensed as a resident agent must maintain a registered office for service of process in this state. The address of the office must be specified on all license applications and renewal applications.

4 MCAR § 1.9022 License display and use.

A license must be displayed in the licensee's office in a place where it can readily be viewed and inspected.

Any written or oral advertisement or representation which refers to licensing, used by a licensee, must contain a disclaimer that the reference to licensing is not an endorsement, sponsorship, or implied endorsement or sponsorship of the licensee or its products, by the state of Minnesota, the Department of Commerce, or any other state agency.

4 MCAR § 1.9023 Receipt of client funds.

An agent who receives funds from a client in connection with an insurance transaction receives and holds those funds in a fiduciary capacity.

An agent holding funds of a client must, each month, provide to the client an itemized statement showing the amount of money held.

4 MCAR § 1.9024 Mandatory financial records of agents and agencies.

A. Type of records. Every agent and agency must keep a record of all funds received for or from clients, including cash, notes, savings certificates, uncashed or uncollected checks, or other similar instruments. Insurers represented by exclusive agents may compile and maintain the financial records required by this rule on their agents' behalf. The records must set forth the date funds were received, from whom received, the amount received, the date of deposit of the funds into the business account of the agent or agency, and the monthly balance of the account in which the funds are deposited. Each agent and agency must maintain a cash receipts journal and a cash disbursements journal, or similar records, in accordance with generally accepted accounting principles.

B. Separate records. Each agent and agency must keep a separate record for each client or transaction, accounting for all funds which have been deposited in the agent's business account. These records must set forth the information sufficient to identify the transaction and the parties thereto. At a minimum, each record must set forth:

1. the date funds are deposited;
2. the amount deposited;
3. the date of each related disbursement;
4. the check number of each related disbursement;
5. the amount of each related disbursement; and
6. a description of each disbursement.

C. Examination of records. All records must be maintained for at least six years, and funds must be available for examination by the commissioner or a designee in accordance with Minnesota Statutes, section 60A.031.

4 MCAR § 1.9025 Mandatory complaint records.

Every agent and agency must compile and maintain a separate complaint file for each agent against whom a complaint, grievance, or allegation is made. The file must contain all written notes, reports, correspondence, or other documents made or received by an agent or agency, relating to customer grievances or allegations that an agent, agency, or person associated with an agent or agency has engaged in any unfair, false, misleading, dishonest, fraudulent, untrustworthy, coercive, or financially irresponsible practice, or has violated any insurance law or rule. The agent or agency must maintain the records for at least six years after the date of the complaint.

4 MCAR § 1.9026 Termination of appointments or contracts.

An insurer or agency which terminates an agent's appointment, or its contract or association with an agent based entirely or in part on a complaint or alleged violation of law, or with knowledge of an alleged violation of law, including, but not limited to, the failure to remit premiums, must, within ten working days of the termination, forward to the commissioner a written statement of the reason for the termination. The statement must include the names, addresses, and if available, telephone numbers of all persons having knowledge of the matter; copies of any applications, checks, or other documents relating to the complaint or alleged violation which are in the insurer's or agency's possession or control; copies of all statements or affidavits taken from any person in connection with the complaint or allegations; and a current statement of the agent's account with the insurer or agency.

4 MCAR § 1.9027 Refunds

An agent who receives a request for cancellation of a policy must make the refund or initiate the refund procedures with the insurer, within ten days of the agent's receipt of the request. An agent who receives a refund from an insurer for the account of, or for delivery to, an insured or former insured, must deliver or mail the refund, or cause it to be delivered or mailed to the insured or former insured within five days of receipt.

4 MCAR § 1.9028 Insurance in connection with a loan.

No agent shall misrepresent the necessity for obtaining insurance in connection with a loan, nor the terms of such insurance.

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PROPOSED RULES

4 MCAR § 1.90281 Penalties.

Violations of 4 MCAR §§ 1.9011-1.90281 subject the violator to the penalties described in Minnesota Statutes, sections 60A.17, subdivision 6c, and 72A.22 to 72A.29.

Renumbering. Renumber INS 20 as 4 MCAR § 1.9010.

State Board of Education (State Board for Vocational Education) Department of Education Vocational-Technical Education Division

Proposed Rules Governing Chapter Six: Post-Secondary Vocational-Technical Education (5 MCAR § 1.0100-1.01101) and Chapter Six-A: Adult Vocational-Technical Education (5 MCAR § 1.0111-1.01117).

Notice of Intent to Adopt Policy without a Public Hearing

Notice is hereby given that the Post-Secondary and Adult Vocational-Technical Education Sections propose to change the above entitled Rules to Policies without a public hearing. It has been determined that the proposed adoption of these policies will be noncontroversial in nature and authorization is granted by MN1983, Chapter 258, Section 63.

Temporary policy will be adopted at the January, 1984 meeting of the State Board of Vocational-Technical Education with final policy adoption set for the March and April, 1984 meetings.

Persons who wish to submit comments should do so in writing or in person during regular business hours to:

Dr. Rosemary T. Fruehling
Division of Vocational-Technical Education
541 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Department of Labor and Industry Occupational Safety and Health Division

Emergency Temporary Standard Limiting Employee Exposure to Asbestos

Notice is hereby given that Steve Keefe, Commissioner of the Department of Labor and Industry, has determined that employees in Minnesota are exposed to grave danger from exposure to asbestos. In accordance with Minn. Stat. § 182.655, Subd. 11 (1982), the Commissioner has determined that an Emergency Temporary Standard (ETS) must be adopted to protect workers from this grave danger. This action by the Minnesota Department of Labor and Industry adopts an Emergency Temporary Standard identical to the ETS adopted by the U.S. Department of Labor Occupational Safety and Health Administration (federal OSHA) on November 4, 1983 (Federal Register, Vol. 48, No. 215 dated November 4, 1983).

This Emergency Temporary Standard reduces the permissible exposure limit (PEL) for asbestos from 2 fibers (longer than 5 micrometers) per cubic centimeter (2 f/cc) as an eight-hour time-weighted average (TWA) to 0.5 f/cc. The basis for this ETS is federal OSHA's determination that continued employee exposure to asbestos under current conditions that exceed 0.5 f/cc presents a grave danger of developing incurable asbestos-induced cancer and asbestosis to exposed employees and that an emergency standard is necessary to protect them. The determination that a grave danger currently exists is predicted upon federal OSHA's evaluation of relevant scientific data, policy considerations, exposure patterns of workers and quantitative risk estimates. The risk assessment predicts three excess cancer deaths per 1,000 workers who have been exposed to asbestos for a one-year period at the current allowable exposure level.

The Emergency Temporary Standard consists of revisions to the existing permanent standard governing Occupational Exposure to Asbestos (1910.1001). In general, most of the current requirements remain unaffected by the ETS. However, compliance with some requirements will be triggered by the new exposure limit of 0.5 f/cc instead of the former PEL of 2 f/cc. For example, requirements such as change rooms remain unaffected by the ETS and the trigger level for change rooms remains

the former PEL of 2 f/cc (1910.1001 (d) (4)). However, the Emergency Temporary Standard requires that where concentrations may exceed the new PEL, the employer must post signs indicating such locations.

The Emergency Temporary Standard requires that employees may not be exposed to concentrations of asbestos exceeding 0.5 f/cc on an 8-hour time-weighted average basis, and permits the employer to choose among practicable control methods, such as engineering controls, work practices and respiratory protection, to reduce exposures to the new PEL. However, the requirement in 1910.1001 (c) to utilize feasible engineering controls and work practices to reduce exposure levels to 2 f/cc remains in effect under this temporary standard. The ETS also requires employers to institute a training program within thirty days of the effective date of this Emergency Temporary Standard. The training program will include instruction on fitting and proper use of respirators; handling of asbestos; medical information; the relationship between smoking, lung cancer and asbestosis; and a review of all provisions of the asbestos standard.

The ETS applies to all industries covered by the Act: general industry (including manufacturing), construction and maritime industries.

This Emergency Temporary Standard will become effective upon publication in the *State Register* and will remain in effect for six months. Action to adopt a permanent standard governing occupational exposure to asbestos will be taken within six months as required under Minn. Stat. § 182.655, Subd. 11.

In accordance with Minn. Stat. § 182.655, Subd. 11, the Minnesota Occupational Safety and Health Standards are amended by adding the provisions of the Emergency Temporary Standard limiting employee exposure to asbestos to the Occupational Exposure to Asbestos Standard (1910.1001); those provisions are as follows:

§ 1910.1001 Asbestos.

(k) Emergency temporary standard effective November 28, 1983.

(1) Scope. This temporary standard is issued pursuant to section 6 (c) of the Act and applies to all workplaces where employees may be exposed to asbestos in all industries covered by the Act, including, general industry, construction and maritime. Except to the extent modified by this emergency temporary standard, all provisions of § 1910.1001 remain in effect.

(2) Permissible levels of exposure. The 8-hour time-weighted average airborne concentration of asbestos fibers to which any employee may be exposed shall not exceed one-half (0.5) fiber, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(3) Methods of compliance with the emergency temporary standard. Notwithstanding any other requirements of this section, compliance with the reduced exposure limit of 0.5 f/cc shall be achieved by any feasible combination of engineering controls, work practices, and personal protective equipment and devices.

(4) Employee information and training.

(i) As soon as possible, but not later than thirty (30) days from the effective date of this emergency temporary standard, the employer shall institute a training program for all employees exposed to airborne concentrations of asbestos in excess of 0.5 f/cc, without regard to the use of respirators and shall assure their participation in the program during the effective period of this emergency temporary standard.

(ii) The employer shall assure that each such employee is informed of the following:

(A) The health effects associated with asbestos exposure;

(B) The relationship between asbestos and smoking in producing lung cancer;

(C) The nature of operations which could result in exposure to asbestos and necessary protective steps to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping and protective clothing;

(D) The purpose, proper use, fitting instructions and limitations of respirators permitted by the standard; and

(E) A review of all the provisions contained in 1910.1001.

(5) Respiratory protection during the ETS. Notwithstanding any other requirement of this section, where respirators are used to achieve the permissible exposure limit of 0.5 f/cc they shall be selected according to Table I.

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PROPOSED RULES

(6) Warning signs during the ETS. In addition to the requirements of paragraph (g) (1) of this section, legible signs warning of the health hazards of asbestos shall be provided and displayed at each location where airborne concentrations of asbestos fibers may exceed 0.5 f/cc.

Table 1
Respiratory Protection
For Airborne Concentrations of Asbestos

<u>Airborne Concentration of Asbestos (TWA)</u>	<u>Required Respirator¹</u>
Not in excess of 5 f/cc (10 × PEL)	Reusable or single use air purifying respirator.
Not in excess of 50 f/cc (100 × PEL)	Full facepiece air purifying respirator, or a powered air purifying respirator.
Greater than 50 f/cc	A type "C" continuous flow or pressure-demand supplied air respirator.

¹ Respirators specified for high concentrations may be used at lower concentrations of asbestos.

A complete copy of the Occupational Exposure to Asbestos Standard, 1910.1001, may be obtained by writing: Occupational Safety and Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101.

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 Energy and Economic Development

Adopted Temporary Rules for the Administration of the District Heating Grant Program

The temporary rules proposed and published at *State Register*, Volume 8, Number 12, pages 494-498, September 19, 1983 (8 S.R. 494) are adopted with the following modifications:

Temporary Rules as Adopted

6 MCAR § 2.4045 [Temporary] Contents of secondary planning grant application.

C. Project plan. A detailed project work plan explaining how the applicant intends to prepare marketing, economic analysis, engineering, and other data defined in the following list. Applicant must include a breakdown of tasks, personnel assigned to and responsible for each task, estimate of time required to complete each task, and project schedule including beginning and end dates for each task. The expected results and product of each task must be identified.

1. Marketing. The applicant must prepare a work plan for obtaining the following information.

b. A market strategy is to be prepared using the information gained in a. This strategy ~~should~~ must include marketing to the community as a whole and also to the individual customers of the system. Marketing efforts may include any or all of the following: public meetings, newspaper articles, radio spots, slide shows, brochures, one-to-one meetings with individual customers, developing financial mechanisms for customer conversion costs, and working with community organizations and other branches of city government. Specific conversion cost information for a representative number of potential customers must be prepared as part of this project.

c. A form contract must be prepared ~~and will to~~ be used to market district heating to potential customers and obtain commitments from customers representing 50 percent of the heat load to purchase heat from the district heating system. If contracts will not be used, a statement must be included setting out the security to be pledged for the bonds.

2. Economic analysis. The application ~~should~~ must contain at a minimum plans for developing the following information.

E. Project organization chart and use of consultants. The role and responsibilities of all parties involved with this project must be discussed. Appropriate background material for each person ~~should~~ must be submitted.

F. Community commitment. Written expressions of interest and commitment from major potential loads, the owner of the heat source, the municipal governing body, and other organizations ~~should~~ must be included. Amount and source of nonstate funds committed to the planning project ~~should~~ must be indicated.

G. Community benefit. The impact of the district heating system on the community and its relationship to community development plans ~~should~~ must be discussed briefly. The results of the preliminary economic analysis and the manner in which these results will benefit the community ~~should~~ must also be discussed.

6 MCAR § 2.4047 [Temporary] Agreement.

B. Funding period. Planning grants will be approved for a period of ~~up to one year, unless other terms are agreed to by the commissioner~~ time which the commissioner will approve.

G. Contract deviations. No grant funds shall be used for work done prior to the time the grant is awarded. No grant funds shall be used to finance activities by consultants or local staff if the activities are not included in the grant contract, ~~unless agreed upon in writing by the department. Unless agreed upon by the department,~~ A municipality may not contract out all its energy-related activities to consultants.

6 MCAR § 2.4048 [Temporary] Evaluation.

B. Review. Upon completion of a satisfactory evaluation, the remaining ~~ten~~ 20 percent of the grant shall be disbursed to the grant recipient. If the results of the evaluation are unfavorable to the grantee and the grantee does not agree with the findings of the evaluation, the grantee may request a review by the commissioner.

Department of Energy and Economic Development Community Development Division

Adopted Rules Governing the Community Development Block Grant Program

Rules as Adopted

10 MCAR § 1.500 Small cities community block grant program; general provisions.

A. Purpose of these rules. Rules 10 MCAR §§ 1.500-1.565 give procedures for evaluating applications for grants and awarding them to eligible applicants by the Department of Energy and Economic Development under United States Code, title 42, sections 5301-5316 (1981), and regulations adopted in Code of Federal Regulations, title 24, part 570.

B. Objective of the program. The primary objective of this program is to develop viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for persons of low and moderate income. Activities funded under this program shall not benefit moderate-income persons to the exclusion of low-income persons. All funded activities must be designed to:

1. benefit low- and moderate-income persons;

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ADOPTED RULES

2. prevent or eliminate slums and blight; or

3. alleviate urgent community development needs caused by existing conditions which pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet those needs.

C. Definitions. As used in 10 MCAR §§ 1.500-1.565, the following terms have the meanings given them.

1. "Application year" means the federal fiscal year beginning October 1 and ending September 31.

2. "Community development need" means a demonstrated deficiency in housing stock, public facilities, economic opportunities, or other services which are necessary for developing or maintaining viable communities.

3. "Competitive grant" means a grant application that is evaluated and ranked in comparison to other applications in the same grant category and includes housing, public facilities, and comprehensive applications.

4. "Comprehensive program" means a combination of at least two interrelated projects which are designed to address community development needs which by their nature require a coordination of housing, public facilities, or economic development activities. A comprehensive program must be designed to benefit a defined geographic area, otherwise known as a program area.

5. "Economic development project" means one or more activities designed to create new employment, maintain existing employment, increase the local tax base, or otherwise increase economic activity in a community.

6. "Eligible activities" means those activities so designated in United States Code, title 42, section 5305 (1981) and as described in Code of Federal Regulations, title 24, sections 570.200-570.207 (1981).

7. "General purpose local government" means townships as described in Minnesota Statutes, chapter 365; cities as described in Minnesota Statutes, chapters 410 and 412; and counties.

8. "Grant" means an agreement between the state and an eligible recipient through which the state provides funds to carry out specified programs, services, or activities.

9. "Grant close-out" means the process by which the office determines that all applicable administrative actions and all required work have been completed by the grant recipient and the department.

10. "Grant year" means any period of time during which the United States Department of Housing and Urban Development makes funds from any federal fiscal year available to the state for distribution to local governments under United States Code, title 42, sections 5301-5316 (1981), and includes the period of time during which the office solicits applications and makes grant awards.

11. "Infrastructure" means the basic physical systems, structures, and facilities, such as roads, bridges, water, and sewer, which are necessary to support a community.

12. "Low and moderate income" means income which does not exceed 80 percent of the median income for the area, with adjustments for smaller and larger families.

13. "Metropolitan city" means a city over 50,000 population or a central city of a standard metropolitan statistical area that receives entitlement grants under United States Code, title 42, section 5306 (1981) directly from the United States Department of Housing and Urban Development.

14. "Nonentitlement area" means an area that is not a metropolitan city or part of an urban county.

15. "Office" means the office or division in the Department of Energy and Economic Development which the program is assigned.

16. "Per capita assessed valuation" means the adjusted assessed valuation divided by population.

17. "Population" means the number of persons who are residents in a county, city, or township as established by the last federal census, by a census taken pursuant to Minnesota Statutes, section 275.53, subdivision 2, by a population estimate made by the Metropolitan Council, or by the population estimate of the state demographer made under Minnesota Statutes, section 116J.42, subdivision 7, clause (10), whichever is most recent as to the stated date of count or estimate, up to and including the most recent July 1.

18. "Poverty persons" means individuals or families whose incomes are below the poverty level as determined by the most current data available from the United States Department of Commerce, taking into account variations in cost of living for the area affected.

19. "Program" means the community development block grant program for nonentitlement areas.

20. "Program area" means a defined geographic area within which an applicant has determined that, based on community plans or other studies, there exists a need for community development activities. A program area may be a neighborhood in a community or an entire community.

21. "Program income" means gross income earned by the grant recipient from grant-supported activities, excluding interest earned on advances.

22. "Project" means one or more activities designed to meet a specific community development need.

23. "Regional or community development plans" means written documents, resolutions, or statements which describe goals, policies, or strategies for the physical, social, or economic development of a neighborhood, community, or substate area. Regional or community development plans include comprehensive plans and elements of comprehensive plans, including land use plans, which have been approved by the governing boards of townships, counties, or cities, and also include regional development plans adopted under Minnesota Statutes, section 462.381, where applicable.

24. "Slums and blight" means areas or neighborhoods which are characterized by conditions used to describe deteriorated areas in Minnesota Statutes, section 462.421 or which are characterized by the conditions used to describe redevelopment districts in Minnesota Statutes, section 273.73, subdivision 10.

25. "Single purpose project" means one or more activities designed to meet a specific housing or public facilities community development need.

26. "Urban county" means a county which is located in a metropolitan area and is entitled to receive grants under United States Code, title 42, section 5306 (1981), directly from the United States Department of Housing and Urban Development.

10 MCAR § 1.505 Types of competitive grants available.

A. Single purpose grants. The office shall approve grants for single purpose projects for funding from a single grant year. The office shall place single purpose grant applications in one of the following categories for purposes of evaluation:

1. housing projects which include one or more activities designed to increase the supply or quality of dwellings suited to the occupancy of individuals and families; or

2. public facilities projects which include one or more activities designed to acquire, construct, reconstruct, or install buildings or infrastructure which serve a neighborhood area or community.

B. Comprehensive grants. The office shall approve comprehensive grants for two or more projects which constitute a comprehensive program. Comprehensive grants shall be approved for funding from one, two, or three grant years. In the case of grants approved for funding from more than one grant year, the office shall make funds available to the grant recipient in the second or third year only after the recipient submits an approved application. Approval shall be subject to a finding by the office that the grant recipient has made normal progress and is in compliance with 10 MCAR §§ 1.500-1.565.

C. Previous grant commitments. The provisions of B. apply to three-year comprehensive grant commitments made by the United States Department of Housing and Urban Development in 1981 under United States Code, title 42, section 5306 (1980).

10 MCAR § 1.506 Economic development grants; noncompetitive.

The office shall approve grants for economic development projects for funding throughout a single application year, or until the funds reserved have been exhausted.

10 MCAR § 1.510 Application process and requirements.

A. Grant application manual. The office shall prepare a manual for distribution to eligible applicants no later than 120 days before the application closing date for competitive applications. The manual must instruct applicants in the preparation of applications and describe the method by which the office will evaluate and rank applications. If 10 MCAR §§ 1.500-1.565 are not adopted before September 15, 1982, the 120-day period is waived for the 1983 grant year but the office shall make the manual available no later than 60 days before the application closing date.

B. Eligibility requirements. Any unit of general purpose local government, including cities, counties, and townships located in a nonentitlement area or electing exclusion from an urban county under United States Code, title 42, section 5302 (1981), may apply for a grant. An eligible applicant may apply on behalf of other eligible applicants. Applications submitted on behalf of other applicants must be approved by the governing body of all local governments party to the application. An eligible applicant may apply for only one competitive grant per grant year and no eligible applicant shall be included in more than one competitive application. An eligible applicant may apply for one economic development grant in addition to a competitive grant each application year.

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

ADOPTED RULES

C. Disqualification of applicants. Applications from otherwise eligible applicants shall be disqualified where for previously awarded grants under these rules or awarded by the Department of Housing and Urban Development under United States Code, title 42, section 5306 (1981), it is determined by the office that any of the following conditions exist:

1. there are outstanding audit findings on previous community development grants and the grantee has not objected on a reasonable basis to the findings or demonstrated a willingness to resolve the findings;
2. previously approved projects have passed scheduled dates for grant close-out and the grantee's ability to complete the project in an expeditious manner is in question; or
3. the applicant has not made scheduled progress on previously approved projects and the grantee's ability to complete the project in an expeditious manner is in question.

D. Contents of application. The contents of the application must be consistent with the informational requirements of 10 MCAR §§ 1.500-1.565 and must be on a form prescribed by the office. The application must be accompanied by:

1. an assurance, signed by the chief elected official, that the applicant will comply with all applicable state and federal requirements;
2. an assurance signed by the chief elected official certifying that at least one public hearing was held at least ten days but not more than 60 days before submitting the application; and
3. a copy of a resolution passed by the governing body approving the application and authorizing execution of the grant agreement if funds are made available.

The office may request additional information from the applicant if it is necessary to clarify and evaluate the application.

E. Time limit for submitting applications. Competitive applications must be received in the office or postmarked by the closing date. The office shall give notice of the period during which applications will be accepted. The notice must be published in the *State Register* at least 120 days before the closing date. Economic development project applications may be submitted at any time during the application grant year.

F. Regional review. The applicant must submit a complete copy of the application to the Regional Development Commission, where such a commission exists, or the Metropolitan Council, where it has jurisdiction, for review and comment in accordance with Minnesota Statutes, section 462.391, subdivision 3, or Minnesota Statutes, section 473.171, respectively.

10 MCAR § 1.515 Evaluation of applications; in general.

All applications shall be evaluated by the office. A fixed amount of points shall be established as the maximum score attainable by any application. Points shall be made available within each class of rating criteria in accordance with the percentages and fractions indicated in 10 MCAR §§ 1.520-1.545. Economic development project applications must meet threshold criteria in order to be evaluated.

10 MCAR § 1.520 Comparison of all competitive applications; general competition.

A. Points available. Thirty percent of the total available points shall be awarded by the office based on a general competition involving a comparison of all applications.

B. Evaluation of community need. Two-thirds of the points in the general competition shall be awarded based on evaluation of community need, which shall include:

1. the number of poverty persons in the area under the applicant's jurisdiction;
2. the percentage of persons resident in the area under the applicant's jurisdiction who are poverty persons; and
3. the per capita assessed valuation of the area under the jurisdiction of the applicant, such that points are awarded in inverse relationship to applicants' per capita assessed valuation.

C. Evaluation of other factors. One-third of the points in the general competition shall be awarded based on evaluation of:

1. the extent to which the proposed activities are compatible with regional or community development plans; and
2. adequacy of the applicant's management and financial plan.

10 MCAR § 1.525 Comparison of competitive applications within categories.

After completing the general competition described in 10 MCAR § 1.520, the office shall place each application in the appropriate grant category in accordance with 10 MCAR § 1.505. The categories are housing projects, public facilities projects, and comprehensive programs. Seventy percent of the total points available for each application shall be awarded based on a comparison of the applications within each of the categories as further described in 10 MCAR §§ 1.530-1.545.

10 MCAR § 1.546 Evaluation of economic development projects.

A. In general. Evaluation of economic development applications consists of eligibility threshold screening and project review. Applications must meet the eligibility thresholds in order to be referred for project review. Applications that fail to meet eligibility thresholds may be revised and resubmitted.

B. Federal and state eligibility thresholds. Applicants shall provide a description of the ways that activities address one of the federal objectives described in 10 MCAR § 1.500 B. Each activity proposed for funding must be eligible under current federal regulations.

Applicants shall describe how they will meet two of the three following thresholds based on state economic development objectives:

1. creation or retention of permanent private sector jobs;
2. stimulation or leverage of private investment; or
3. increase in local tax base.

C. Project review. Applications that meet eligibility thresholds will be awarded points by the office based on evaluation of the two rating categories: project design and financial feasibility. Applications must attain at least two-thirds of the total available points for economic development to be recommended for funding. Applications must score at least half of the points available in each of the two rating categories.

Two-thirds of the available points will be awarded based on an evaluation of project quality including an assessment of need, impact, and the capacity of the applicant to complete the project in a timely manner. Consideration of need for an economic development project must be based on deficiencies in employment opportunities and circumstances contributing to economic vulnerability and distress. Consideration of impact must be based on the extent to which the project reduces or eliminates the need. Consideration of capacity must be based on demonstration of administrative capability, realistic implementation schedules, and the ability to conform to state and federal requirements.

One-third of the available points will be awarded based on an evaluation of the effective use of program funds to induce economic development. Consideration of financial feasibility must include investment analysis, commitment of other funds, and other factors relating to the type of program assistance requested. ~~Consideration of need for an economic development project must be based on deficiencies in employment opportunities and circumstances contributing to economic vulnerability and distress. Consideration of impact must be based on the extent to which the project reduces or eliminates the need. Consideration of capacity must be based on demonstration of administrative capability, realistic implementation schedules, and the ability to conform to state and federal requirements.~~

D. Funding recommendations. Applications that attain at least two-thirds of the available points will be recommended to the commissioner for funding. Applications not recommended for funding may be revised and resubmitted.

10 MCAR § 1.550 Determination of grant awards.

A. Funds available for grants. The amount of funds available for grants shall be equal to the total allocation of federal funds made available to the State under United States Code, title 42, section 5306 (1981), after subtracting an amount for costs incurred by the office for administration of the program, as allowed by that law. The office is not liable for any grants under 10 MCAR §§ 1.500-1.565 until funds are received from the United States Department of Housing and Urban Development.

B. Division of funds.

1. Of the funds available for grants in each grant year, 30 percent shall be reserved by the office to fund single purpose grants, 15 percent shall be reserved for economic development grants, and 55 percent shall be reserved by the office to fund comprehensive grants, including the second and third years of comprehensive grants approved for funding under 10 MCAR § 1.505 and 10 MCAR § 1.545. However, the office may modify the proportions of funds available for single purpose and comprehensive grants if, after review of all applications, it determines that there is a shortage of fundable applications in either category.

2. At least 30 percent of the funds made available for single purpose grants shall be awarded for applications in each of the two categories: housing and public facilities. However, no application with a rating below the median score for its category shall be funded by the office solely for the purpose of meeting this requirement.

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

ADOPTED RULES

3. If there are unawarded economic development funds available at the end of the application year, two-thirds of the remaining funds will be available for competitive single purpose projects and one-third will be available for economic development projects during the next application year.

C. Funding list. Within each category, a list of applications shall be prepared in rank order of the scores received after evaluation pursuant to 10 MCAR §§ 1.515-1.545. Based on these lists, and subject to the availability of funds within each category, applications with the highest rank shall be recommended to the commissioner for funding. In the case of a tie between any two applications within any category, the application with the highest score in the general competition shall receive the higher ranking on the list.

D. Approval by commissioner. The list of applications recommended for funding, including recommended grant awards, shall be submitted by the office to the commissioner for approval. A decision by the commissioner not to approve any application recommended for funding must be made in writing to the applicant, giving reasons for disapproval.

E. Reduction in amount requested. The office may recommend an application for funding in an amount less than requested if, in the opinion of the office, the amount requested is more than is necessary to meet the applicant's need. If the amount of the grant is reduced, the reasons for the reduction shall be given to the applicant.

F. Grant ceilings. No competitive single purpose grant may be approved for an amount over \$600,000. No comprehensive grant may be approved for an amount over \$700,000 from any single grant year or for more than a total of \$1,400,000 over three grant years. No economic development grant may be approved for an amount over \$500,000.

Repealer. 10 MCAR § 1.540 is repealed.

OFFICIAL NOTICES

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

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

Department of Administration Energy Conservation Division

Request for Proposals to Firms Interested in Third Party Financing for Converting Existing Coal-Fired Boilers to Burn Wood, Peat or Other Alternate Fuels

The Department of Administration, Energy Conservation Division, has been requested to select firms to provide energy conservation measures in accordance with Laws 1983 chapter 301, section 69, to be codified as Minnesota Statutes, section 16.02, subdivision 29. Section 69 authorizes state agencies to obtain energy conserving equipment and services on a shared-savings and guaranteed-savings basis through contracts of greater than one year duration but not exceeding ten years.

Firms who wish to be considered for these projects should request a copy of the rules for "Request for Proposal" and submit a separate proposal for each facility based on the rules on or before 4:00 p.m., January 13, 1984, to Donald T. Johnson, Energy Conservation Division, Room G-26, Administration Bldg., St. Paul, MN 55155. (612) 296-8204.

The following facilities to be considered for energy modifications are:

1. Bemidji State University
Bemidji, MN
2. Ah-Gwah Ching Nursing Home
Ah-Gwah Ching, MN

Scope:

In a shared-savings program, an energy service firm purchases, installs and services boiler conversions at no cost to the state. In return, the state agrees to share with the firm a percentage of whatever energy cost savings result. In a guaranteed-savings

program, the firm, likewise, provides energy cost savings due to the energy conserving measures. As a pre-condition to concluding shared-savings and guaranteed-savings contracts with the State, a firm is required to collect certain data for the accurate determination of the State's anticipated energy cost savings. Collection of the data can be accomplished through a detailed engineering audit comparable to the Minnesota Maxi Audit. The Audit may be limited to specific building systems such as the boilers. By virtue of the Audit, the firm is apprised of the size and type of buildings involved, the nature of the energy consuming equipment, the patterns and type of fuel used, and other factors that may influence energy consumption. The basis for determining savings can be an energy audit or through use of metering instruments. The energy service firm is required to determine which alternative fuel system is needed to produce the energy savings (BTU savings and energy cost savings).

Department of Energy and Economic Development Community Development Division

Notice of Opening Date for Submission of Applications for Economic Development Projects Under the Community Development Block Grant Program

The State of Minnesota, Department of Energy and Economic Development, under the Housing and Community Development Act of 1974, as amended, is pleased to invite the submission of applications for grant funds as provided for in 10 MCAR §§ 1.500-1.565, as amended. Applications may be submitted at any time during the year beginning December 18, 1983. The Commissioner reserves the right to close the application period when all available funds have been awarded.

Applications should be submitted to the Department of Energy and Economic Development, Community Development Division, 940 American Center Building, 150 Kellogg Boulevard, St. Paul, Minnesota 55101.

Applications will be considered for funding from only the 1984 grant year. As provided for in 10 MCAR §§ 1.500, the Department is not liable for grants until funds are received from the United States Department of Housing and Urban Development.

Department of Labor and Industry Occupational Safety and Health Division

Outside Opinion Sought on New Rules Governing Trade Secrets and Employees' Conditional Right to Refuse Work

Notice is hereby given that the State Department of Labor and Industry, Occupational Safety and Health Division, is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing trade secrets and employees' conditional right to refuse to work. The promulgation of these rules is authorized by the "Employees' Right-to-Know Act of 1983" (Laws of Minnesota 1983, Chapter 316), which requires the agency to adopt rules to implement the provisions of this Act governing trade secrets and the conditional right of employees to refuse to work.

The State Department of Labor and Industry, Occupational Safety and Health 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 and 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 4:30-p.m., December 9, 1983. Any written material received by the State Department of Labor and Industry, Occupational Safety and Health Division shall become part of the record in the event that the rules are promulgated.

**Department of Labor and Industry
Occupational Safety and Health Division**

**Proposed Occupational Safety and Health Standards Implementing Provisions of the
Employee Right-to-Know Act of 1983**

Notice of Hearing

The above-entitled standards were proposed for adoption on October 10, 1983 (8 S.R. 622). Written objections have been filed and a hearing requested. Therefore, notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 182.655 (1982) in Room 15, Capitol Building, St. Paul, Minnesota, commencing at 8:30 a.m. on Thursday, December 15, 1983.

All interested or affected persons will have an opportunity to participate concerning the proposed standards captioned above. The conduct of the hearing, which is legislative in type, shall be governed by Chapter 24, "Standards Promulgation," of the Rules and Regulations of the Department of Labor and Industry, Occupational Safety and Health Codes (8 MCAR §§ 1.7320-1.7329). 8 MCAR § 1.7324 B.5. requires those persons who wish to appear at the hearing to file a notice of intention to appear together with a statement of the position to be taken with regard to the issues and of the evidence to be adduced in support of the position. Whether or not an appearance is made at the hearing, written statements or material may be submitted to the presiding officer, Mr. Peter Erickson, Office of Administrative Hearings, Fourth Floor Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, either before the hearing or within a period of time after the hearing as may be established by the presiding officer. Such statements will be entered into, and become part of, the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, please furnish at least three copies. In order to save time and avoid duplication, it is suggested that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests.

The proposed standards were published in the *State Register* on October 10, 1983 and are intended to implement provisions of the Employee Right-to-Know Act of 1983 (Laws of Minnesota 1983, Chapter 316). That Act provides the Commissioner of Labor and Industry with a statutory mandate to promulgate standards governing hazardous substances, harmful physical agents, infectious agents, employee training, availability of information, criteria for technically qualified individuals, and labeling of hazardous substances and harmful physical agents. All provisions of the proposed standard will be open for discussion at the public hearing.

The proposed standards may be modified as a result of the hearing process. The department therefore urges those who are potentially affected in any manner by the proposed standards to participate in the hearing process.

Copies of the proposed standard are now available and one free copy may be obtained by writing to the Department of Labor and Industry, Occupational Safety and Health Division, 444 Lafayette Road, St. Paul, Minnesota 55101. Copies will be available at the door on the date of the hearing.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after such person commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1982) as an 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.

Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, St. Paul, Minnesota 55155, or telephone (612) 296-5615.

Steve Keefe
Commissioner of Labor and Industry

Department of Labor and Industry Workers' Compensation Rehabilitation and Medical Services Division

Outside Opinion Sought on Rehabilitation Assessment

Notice is hereby given that the State Department of Labor and Industry, Workers' Compensation Rehabilitation and Medical Services, is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing rehabilitation assessment and other rules under M.S. 176.102 to implement the changes necessitated by 1983 law. The promulgation of these rules is authorized by Minnesota Statutes 176.83, which requires the agency to promulgate rules relating to rehabilitation assessment and permits the agency to promulgate rehabilitation rules under Chapter 176.

The State Department of Labor and Industry, Workers' Compensation Rehabilitation and Medical Services, 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 and 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 January 1, 1984. Any written material received by the State Department of Labor and Industry, Workers' Compensation Rehabilitation and Medical Services, shall become part of the record in the event that the rules are promulgated.

Steve Keefe
Commissioner of Labor and Industry

Department of Labor and Industry Workers' Compensation Division

Outside Opinion Sought Regarding Proposed Rules Establishing the Method for Determination of the Special Compensation Fund Assessment Base

Notice is hereby given that the State Department of Labor and Industry is seeking information or opinions from sources outside the agency in preparing to promulgate new rules establishing the method for determination of the special compensation fund assessment base. The promulgation of these rules is authorized by Laws of Minnesota 1983, Chapter 290, section 93, codified at Minn. Stat. § 176.129, subd. 5(a). This statute requires the department to establish by rule a method for determining the assessment base of the special compensation fund.

The State Department of Labor and Industry 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 and Industry
444 Lafayette Road, 5th Floor
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 30, 1983. Any written material received by the State Department of Labor and Industry shall become part of the record in the event that the rules are promulgated.

Steve Keefe
Commissioner
Department of Labor and Industry

OFFICIAL NOTICES

Department of Public Welfare Income Maintenance Bureau

Notice of Hospital Cost Index

Pursuant to the 12 MCAR § 2.05401, D.1. (Temporary) hospitals participating in the Medical Assistance and General Assistance Medical Care programs are subjected to a Health Cost Index (HCI) that is to be used in the calculation of prospective inpatient hospital rates. Each hospital whose fiscal year starts during a given calendar quarter shall be notified of the HCI to be used 30 days prior to the start of that quarter. It has been determined that the HCI is 6.7% according to an independent source, Data Resources, Inc. for Health Care Costs. However, pursuant to Senate File 1234, Article 5, Section 9 (1983), the HCI is subjected to the legislatively imposed limit of 5%. Consequently the HCI is 5% for hospitals whose fiscal years begin during the calendar quarter beginning January 1, 1984.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Revenue

Notice of Extension for Submitting Proposals for Consultant Service for a Management Development Project

Notice is hereby given that the Minnesota Department of Revenue is extending the date for submitting proposals for the above cited management development project (cited in S.R. 1082) from November 25, 1983 to December 2, 1983. Seven copies of this proposal must be delivered to the Department of Revenue no later than 4:30 p.m. on December 2, 1983, and directed to George W. Winter, Deputy Commissioner, Department of Revenue, 202 Centennial Office Building, St. Paul, Minnesota 55145. Phone: area code (612) 296-3403.

Department of Transportation Technical Services Division

Notice of Availability of a Contract for Preliminary Engineering—Detail Design

The Minnesota Department of Transportation (Mn/DOT) requires the services of a qualified consultant to perform the following work on a 0.9 mile segment of I-35E in St. Paul between Grand-Ramsey and I-94:

1. Soils investigations
2. Foundation investigations
3. Detail design of a 4-lane divided "parkway"—grading and surfacing
4. Design of 6 bridge structures
5. Signing design
6. Lighting design
7. Landscape design

8. Vertical and horizontal control surveys
9. Construction staking
10. Public Involvement

The work shall be performed under the direction of Mn/DOT District 9 staff who will issue "work orders" for each task to be accomplished.

Firms desiring consideration shall express their interest by letter along with their current Federal Forms 254 and 255 and/or their brochure by four o'clock (4:00 PM) December 9, 1983 to:

B. E. McCarthy
Consultant Services Engineer
612B Transportation Building
St. Paul, Minnesota 55155
Telephone: (612) 296-3051

This is not a request for proposal.

Department of Transportation Technical Services Division

Notice of Availability of a Contract for Preliminary Engineering—Detail Design

The Minnesota Department of Transportation (Mn/DOT) requires the services of a qualified consultant to perform the following work on a 1.4 mile segment of I-394 in Minnetonka, St. Louis Park and Golden Valley between 0.3 Mi. E., C.S.A.H. 73 and 0.2 Mi. E. of Boone Avenue:

1. Detail design of a 6-lane divided freeway—grading and surfacing
2. Design of 6 permanent bridge structures and 2 temporary bridge structures

Firms desiring consideration shall express their interest by letter along with their current Federal Forms 254 and 255 and/or their brochure by four o'clock (4:00 PM) December 9, 1983 to:

B. E. McCarthy
Consultant Services Engineer
612B Transportation Building
St. Paul, Minnesota 55155
Telephone: (612) 296-3051

This is not a request for proposal.

SUPREME COURT

Decisions Filed Friday, November 18, 1983

C7-82-260 State of Minnesota, Respondent, v. Wayne E. Abraham, Appellant.

Evidence of defendant's guilt was sufficient to sustain his convictions of the offense of fleeing a peace officer in a motor vehicle.

Affirmed. 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

Sigwel Wood and Evelyn I. Wood,
Appellants,

v.

The Commissioner of Revenue,
Appellee.

Tax Court

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

Order dated April 15, 1983, as modified July 1, 1983

Docket No. 3872

This is an appeal from an Order of the Commissioner of Revenue dated April 15, 1983, as modified July 1, 1983, regarding the individual Minnesota income tax liability of appellants for the calendar years 1979, 1980 and 1981. At issue is the amount of automobile depreciation allowed as a deduction for business use and whether the State of Minnesota has unconstitutionally diminished a traveling county court judge's compensation by not furnishing him an automobile.

The matter came on for hearing on September 23, 1983, at the Tax Court in St. Paul, Minnesota, before Judge Earl B. Gustafson.

The appellant Sigwel Wood appeared pro se.

The appellee appeared through Thomas K. Overton, Special Assistant Attorney General.

The Court, being fully advised finds for appellee on the issue of allowable depreciation and finds it is without jurisdiction to consider the issue of diminished compensation. Now therefore, the Order dated April 15, 1983, as modified July 1, 1983, not otherwise changed or settled by agreement between the parties, IS HEREBY AFFIRMED.

November 10, 1983

By the Court,
Earl B. Gustafson, Judge
Minnesota Tax Court

Memorandum

This case was heard in St. Paul before Judge Gustafson on September 23, 1983. A number of issues were settled the morning of the trial between Thomas Overton, Special Assistant Attorney General, and Judge Sigwel Wood, the appellant. However, two questions or "issues" were not settled.

These two "issues" are the following:

1. Did taxpayer's 1979 Pontiac Bonneville become "obsolete" in 1981 thus allowing 100% depreciation within two years for income tax purposes?
2. By not furnishing a traveling judge an automobile but only reimbursing him for business travel is the judge's compensation unconstitutionally diminished in violation of Article 6, Sec. 5, Minn. Constitution?

We find the automobile did not become "obsolete" within two years and therefore find for appellee on that issue.

The Minnesota Tax Court's jurisdiction is limited to tax laws and we have no general jurisdiction to issue declaratory judgments on constitutional issues and, therefore, decline to consider the second question.

Appellant purchased a 1979 Pontiac automobile in 1979 for \$7,061. He used it one-hundred percent for business in 1979, sixty percent for business in 1980, and zero percent for business in 1981. The total mileage driven in each year was 5,208 miles in 1979, 4,051 miles in 1980, and 7,402 miles in 1981. Appellant depreciated the automobile over a three-year period. In 1979 and 1980, he deducted that portion of the depreciation attributable to business use (100 percent and sixty percent respectively). He wants the remaining one-third deducted in 1981, not because he used it for business in 1981, but because the auto became "obsolete" in that year.

The Commissioner would (generously in our opinion) allow complete depreciation over a three year period but because there was no business use in the third year, would not allow any deduction in 1981.

Appellant's claim is that he is entitled to deduct the remaining basis of the auto in 1981 because the auto became totally "obsolete" for business in that year. However, he does not claim that the auto had no more useful life or no market value—merely that it became "obsolete" to him as a judge. This argument is difficult to follow so rather than run the risk of misstating appellant's position, we will quote from his letter brief dated September 30, 1983, as follows:

I purchased a 1979 Bonneville Automobile in January 1979 for business purposes. I used the car 100% for business in 1979; 78% in 1980 and none in 1981. The car is the so-called "big" car and has a wheel base of 116 inches; a V-8 engine and weighs 500 pounds more than the newer models.

The Pontiac Bonneville automobile that went on sale in 1981 was a compact car. It's wheel base is 108 inches; eight inches shorter than the 1979 model. The car is 500 pounds lighter than the 1979 model. The car only has a 6 cylinder engine or smaller. The Pontiac Motor Co. redesigned its automobiles and only built smaller cars.

The Court may take judicial notice that in 1981 the country was at the height of the gas shortage. The Federal Government had placed severe restrictions on the auto companies to design and deliver cars which were easy on gas and did not pollute the air. In order to meet these requirements the Pontiac Motor Co. redesigned and rebuilt its automobiles. THERE WAS A MAJOR CHANGE IN DESIGN.

I claim that these major changes made my 1979 Pontiac Bonneville obsolete. There was a change in design for technological reasons. The change in design was for scientific progress and changed economic conditions. There was a change in the arts and of industry development and a distinct change in the laws and regulations in the automobile industry.

As a judge in the community I hold a position of importance and prestige. I should be driving an automobile which is modern and which completely conforms to the public's (sic) view relative to gas conservation and public image. For business purposes, I should drive a car that I am not ashamed to drive. The 1979 Pontiac Bonneville is obsolete.

The extent of depreciation, regardless of the method used, depends primarily upon the estimated useful life of tangible personal property. Deductions for depreciation should not exceed the amounts necessary to recover the unrecovered cost or basis less salvage during the remaining useful life of the property. See Income Tax Reg. 2009 (7) (A) (a)-9 and (a)-10.

We find that this 1979 Pontiac with less than 17,000 accumulated mileage did not become "obsolete" in 1981 in the sense that it was an economically useless asset to appellant. Obsolescence cannot be based upon the taxpayer's unsupported opinion alone, particularly where there is evidence to the contrary.

Having no jurisdiction to consider the other claim of alleged "diminished compensation," this issue will not be considered or discussed.

E.B.G.

**State of Minnesota
County of Hennepin**

Host International, Inc. and
Minneapolis-St. Paul Metropolitan
Airports Commission,

Petitioners,

v.

County of Hennepin,

Respondent.

The above matter came on for hearing before the Tax Court commencing October 20, 1982, at Hennepin County Government Center, Judge Earl B. Gustafson presiding.

Ralph W. Peterson of Eastlund, Peterson & Solstad, Ltd., appeared on behalf of Petitioner Host International, Inc.

Theodore J. Meyer of Oppenheimer, Wolff, Foster, Shepard and Donnelly, appeared on behalf of Petitioner Metropolitan Airports Commission.

Robert R. Distad, Assistant Hennepin County Attorney, appeared on behalf of Respondent County of Hennepin.

The first issue is whether the property leased by Host International, Inc. from the Metropolitan Airports Commission has been assessed for real estate taxes at a value greater than its real or actual market value for the years in question.

The second issue is whether the subject property has been assessed unfairly or unequally in comparison with other property in the taxing jurisdiction.

**Tax Court
Fourth Judicial District**

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

File Nos. 1352, 1820, 1821 & 1822

TAX COURT

After post-trial briefs were filed, the case was submitted to the Court for decision on August 18, 1983.

The Court, having heard and considered the evidence adduced and being fully advised, now makes the following:

Findings of Fact

1. Petitioner Host International, Inc. ("Host"), a Delaware corporation, leases certain property located primarily in the main terminal at Minneapolis-St. Paul International Airport in Hennepin County from the Minneapolis-St. Paul Metropolitan Airports Commission (MAC"), a municipal corporation under the laws of the State of Minnesota.

2. The space being leased is valued and taxed under Minn. Stat. § 272.01, Subd. 2 as though the lessee were the fee owner of the property.

3. Among the premises leased by Host are certain restaurant and lounge facilities consisting of 35,127 square feet in the main terminal building and the Red and Blue Concourses plus space in the international charter terminal not involved in this proceeding. These premises are leased under a Lease Agreement dated January 16, 1978, hereinafter referred to as the "Food and Beverage Lease" and include the following described areas:

Basement Terminal Building (Storage)	2,800 Sq. Ft.
Ground Floor Terminal Building (Employee's Food Vending Area, Concessionaire's Kitchen and Lockers)	7,200 Sq. Ft.
Main Floor Terminal Building (Dining Room, Public Cafeteria, Snack Cafes, Service Kitchen, Cocktail Lounges)	19,737 Sq. Ft.
Mezzanine Terminal Building (Conference Room and Offices)	2,440 Sq. Ft.
Red Concourse (Fast Bar)	1,450 Sq. Ft.
Blue Concourse (Fast Bar)	1,500 Sq. Ft.
Total	<u>35,127 Sq. Ft.</u>

4. Certain areas used as a cocktail lounge and snack bar in the Green Concourse were added to the Food and Beverage Lease but are not part of the tax parcels whose values are being questioned.

5. This Food and Beverage Lease requires Host to pay for all leasehold improvements and for the metered electrical, water/sewer, steam and gas usage in the main terminal building, and 1/3 the cost of refuse disposal expense plus a pro rata share of the use of the public address system. MAC pays for all expenses to the Red and Blue Concourses.

6. MAC, in effect, pays any taxes assessed against the premises covered by the Food and Beverage Lease because any taxes paid by lessee are applied as a credit against rent.

7. Rent is based on a percentage of gross sales or a minimum rent schedule whichever is greater.

8. The annual percentage of gross sales receipts for calculating rent is as follows:

15% of all alcoholic beverage sales

10.5% of food, soft drinks, refreshments, etc., including vending machines.

Excluded from the above gross percentages are in-flight food or beverage services supplied by the leased premises. The in-flight percentages of gross sales for these items is 5%.

9. The actual rent paid by Host under the Food and Beverage Lease was \$814,618 for 1979 and \$766,617 for 1980.

10. Host also leases certain premises for newsstand and gift shop purposes pursuant to Lease Agreement dated February 19, 1974, hereinafter referred to as the "Newsstand Lease" which covers the following described areas:

Newsstand and Gift Shop Terminal Building	5,670 Sq. Ft.
Basement Storage Terminal Building	<u>225 Sq. Ft.</u>
Total	5,895 Sq. Ft.

11. This Newsstand Lease, like the Food and Beverage Lease, requires Host to pay for all leasehold improvements.

12. MAC, the lessor, pays all utilities, maintenance and common area expenses attributable to the premises.

13. Host, the lessee, pays all real estate taxes assessed against the premises.

14. The rent charged the lessee under the Newsstand Lease is 16% of gross annual receipts or a base rent of \$260,000, whichever is greater. During the years in question, the rent always exceeded this base figure.

15. The actual rent paid by Host under the Newsstand Lease was \$500,144 for 1979 and \$516,221 for 1980, plus an additional \$675 each year for 225 square feet of basement storage.

16. The assessor's 1980 estimated market value (EMV) for the combined property leased by Host and being challenged in this proceeding is \$7,500,000.

17. In 1981 the property was divided for tax valuation and the assessor's estimated market values (EMV's) for the property being challenged in this proceeding are as follows:

Food, beverage and restaurant facilities in main terminal plus bar in Red Concourse and Blue Concourse	\$3,580,000
Newsstand and gift shop in main terminal	<u>1,425,000</u>
Total	\$5,005,000
Cocktail lounge in Gold Concourse	\$ 242,000

18. The fair market value of the subject property as of January 2, 1980, is \$7,500,000.

19. The fair market value of the subject property as of January 2, 1981, is as follows:

Food, beverage and restaurant facilities in main terminal plus bar in Red Concourse and Blue Concourse	\$4,000,000
Newsstand and gift shop in main terminal	<u>3,000,000</u>
Total	\$7,000,000
Cocktail lounge in Gold Concourse	\$ 260,000

20. The property has received unequal treatment when compared to other commercial property in Hennepin County which was valued in 1980 and 1981 at approximately 85% of fair market value.

21. The correct EMV's for the subject property is determined by this Court to be as follows:

January 2, 1980	Food, beverage, restaurant and newsstand facilities in main terminal plus bars in Red Concourse and Blue Concourse. Newsstand and gift shop in main terminal.	\$6,375,000
January 2, 1981	Food, beverage, and restaurant facilities in main terminal plus bars in Red Concourse and Blue Concourse.	\$3,400,000
	Newsstand and gift shop in main terminal.	<u>2,550,000</u>
	Total	\$5,950,000
	Cocktail lounge in Gold Concourse	\$ 221,000

22. Because the correct 1981 EMV of \$2,550,000 determined by the Court for the newsstand and gift shop exceeds the assessor's EMV of \$1,425,000, the assessor's EMV must be affirmed.

23. The attached Memorandum is made a part of these Findings of Fact.

Conclusions of Law

1. The assessor's estimated market values (EMV's) of the subject properties should be reduced as follows:

- Restaurant, cocktail lounges and gift
and newsstand property.
Property Identification No. 30 028 23 41 0001
1980 value of \$7,500,000 reduced to \$6,375,000
- Restaurant and cocktail lounges.
Property Identification No. 30 028 23 41 0001
1981 value of \$3,580,000 reduced to \$3,400,000

TAX COURT

Cocktail lounge in Gold Concourse
Property Identification No. 30 028 23 41 0002
1981 value of \$242,000 reduced to \$221,000

2. The assessor's 1981 estimated market value (EMV) of \$1,425,000 for the gift and newsstand property, Property Identification No. 30 028 23 41 0027, is affirmed.

3. Real estate taxes due and payable in 1981 and 1982 should be recomputed accordingly and refunds paid to Petitioners as required by such computations, together with interests from the date of original payment.

Let judgment be entered accordingly. A stay of 15 days is hereby ordered.

November 16, 1983

By the Court,
Earl B. Gustafson, Judge
Minnesota Tax Court

Memorandum

These tax petitions challenge the valuations placed on property leased by Petitioner, Host International, from the Metropolitan Airports Commission for concessions at the Minneapolis-St. Paul International Airport for taxes payable in both 1981 and 1982. The assessment dates are January 2, 1980 and 1981.

The subject premises are taxable under Minn. Stat. 272.01, Subd. 2(a) because it is public property leased to a private party for business conducted for profit, namely: restaurants, cocktail lounges, newsstands and gift shops. The property interest being assessed is the fee simple interest.

The applicable statute reads in pertinent parts as follows:

Minn. Stat. § 272.01, Subd. 2:

(a) When any real or personal property which . . . is exempt from ad valorem taxes, . . . is leased . . . and used by a private individual, association or corporation in connection with a business conducted for profit, there shall be imposed a tax, for the privilege of so using or possessing such real or personal property, in the same amount and to the same extent as though the lessee or user was the owner of such property.

I Valuation Issue

Minnesota law requires valuation of property for real estate taxes at its market value. Minn. Stat. § 273.11.

The parcels and the assessor's estimated market values (EMV's) being contested as follows:

1980 EMV	Food, beverage, restaurant facilities in main terminal and newsstand and gift shop facilities in the main terminal. Bar in Red Concourse and bar in Blue Concourse.	\$7,500,000
1981 EMV	Food, beverage and restaurant facilities in main terminal. Bar in Red Concourse and bar in Blue Concourse.	\$3,580,000
	Newsstand and gift shop facilities in the main terminal.	\$1,425,000
	Total	\$5,005,000
	Cocktail lounge in Gold Concourse 1981 EMV (1980 EMV not contested)	\$ 242,000

The leased property in the main terminal was assessed as one parcel in 1980 and divided into two parcels in 1981. As shown above, the assessor's EMV for these combined leased facilities in the main terminal dropped dramatically from \$7,500,000 in 1980 to \$5,005,000 in 1981.

The Petitioner argues the Court should find the correct market value for 1980 to be \$3,717,000 and for 1981 to be \$3,251,000, plus \$156,500 for the cocktail lounge in the Gold Concourse.

The appraisal witness called by Respondent, Barbara J. Johnston, testified at trial that this same property (excluding the Gold

Concourse cocktail lounge) had a 1980 market value of \$7,409,000 and a 1981 market value of \$6,297,000. This later value, of course, exceeds the assessor's EMV and we have no authority to raise values over the EMV. In *re McCannel, Northwest Airlines, et al*, 301 N.W. 2d 910, 925 (Minn. 1980).

Based upon all of the evidence, the Court concludes that the actual 1980 market value is \$7,500,000 and the 1981 value is \$7,000,000 before any equalization with other property is considered.

Market value is estimated by assuming a hypothetical sale between an informed buyer and informed seller. In this case both parties agree that the best approach to estimating market value is the income approach which, simply put, is a capitalization of anticipated net annual income at a rate a hypothetical buyer would demand as a return on investment.

For example, an investor/buyer may insist upon a 12% return on the cash paid for certain income producing property. If any anticipated increase in the value of the property is ignored and the net annual operating income generated is \$100,000, the investor/buyer in this hypothetical sale would be willing to pay $\$100,000 \div 12\%$ or \$833,333.

As we have said, our basic assumption is that an arms-length market sale of the subject property (the leased space) would take place on the assessment dates in question. The hypothetical investor/buyer would acquire this property unencumbered and step into the shoes now occupied by MAC and could therefore lease it to a third party (like Host or some other concessionaire) with terms identical or similar to those in the existing leases.

All parties agree that the actual income received under the existing leases should be the basis for projecting anticipated income.

The biggest dispute in the instant case is what operating costs should be deducted from anticipated rental income to arrive at projected net annual income.

The expert appraisal witness for the Petitioner, Peter J. Patchin, approached the problem of expense allocation four different ways. He projected operating expenses "based upon per square foot cost of leased terminal area," "based upon percentage of income generated to terminal" and "based upon industry statistics for a regional shopping center." Petitioner's Exhibit 4, page 21. These methods produced widely divergent amounts of expenses and in arriving at his estimate of value, Mr. Patchin settled on the comparison with regional shopping centers. This gave him estimated expenses somewhere between the other two approaches.

Subsequent to preparing his original appraisal report, Petitioner's Exhibit 4, Mr. Patchin adopted a fourth theory for expense allocation which is set out in Petitioner's Exhibit 5. This compares the total operating expenses at Wold Chamberlain Field to the total gross operating income to arrive at a percentage representing the portion of gross income attributable to operating expenses. In essence, this approach indicated that \$.50 of expense is required to generate \$1.00 of income from all activities of Wold Chamberlain Field. Mr. Patchin then applied this percentage (50%) to the actual gross income from the premises leased by Host to arrive at projected net operating income. After capitalizing this income at 15%, he reached his final conclusion that the property should be valued at \$3,717,000 in 1980 and \$3,251,000 in 1981.

Respondent's appraisal witness, Ms. Barbara J. Johnston, on the other hand, used the same basic approach to expense allocation that Mr. Patchin did in his "Method #1) Operating Expenses". This approach assumed that all costs allocated to the terminal building by MAC can be assessed to each tenant on a per square foot of leased area basis. Petitioner's Exhibit 4, page 21.

The Court considers this the best approach to expense allocation. The exact amount of expenses allocated by each appraisal witness differed, of course, but their final estimates of net income were within 5% of each other. Mr. Patchin's pro forma expenses under his "Method #1)" were \$270,554 resulting in net income of \$1,066,121. Ms. Johnston's 1981 expenses were \$238,486 and her estimated net income was \$1,011,514.

We accept Mr. Patchin's expense allocation under his "Method #1" as generally appropriate and accurate although his allocation of \$37,000 for building maintenance seems high where the lessee has the obligation to make and maintain its own leasehold improvements. On the other hand, Ms. Johnston's allowance of a 5% management fee seems generous where there is only one tenant on a net lease. After merely noting for the record these minor differences, we would project annual net operating income at approximately \$1,060,000.

The next step in the income approach is to capitalize this net income. Assuming a capitalization rate of 12% and an effective tax rate of 2%, the indicated value is \$7,571,428. Petitioner argues that the higher rate of 15% should be used because a buyer would be making a somewhat "risky" investment and demand a better return. We disagree. The evidence shows that a large number of concessionaires were very willing to enter a lease similar to that awarded to Host. The lease includes the exclusive right to sell food, beverages, reading material and other merchandise to the large volume of potential customers passing through the terminal. Where there is no immediate competition, as here, any "risk" is certainly minimized and a capitalization rate of 12% for 1980 and 13% for 1981 seems appropriate. This results in an indicated value for 1980 of \$7,571,428 and for 1981 of \$7,066,666.

TAX COURT

The cocktail lounge in the Gold Concourse had gross income of \$55,547 in 1980 and \$43,218 in 1981. If we estimate stabilized income at \$50,000 and expenses (excluding real estate taxes) at 22% and use a 13% capitalization rate plus 2% effective tax rate, the indicated value is \$260,000.

A word should be said about the anomaly of the tax burden under the two leases. For reasons not entirely clear to the Court, the lease provisions are different with Host paying the taxes under the newsstand lease and passing these taxes through to MAC under the restaurant lease. In projecting a sale to a hypothetical informed buyer, we are assuming that both seller and buyer would know that this property is subject to taxation—something perhaps not known or overlooked by MAC when it entered into the restaurant lease.

Considering all the evidence adduced, the Court finds the fair market value of property to be as follows:

January 2, 1980	Food, beverage, restaurant and newsstand facilities in main terminal and bars in Red and Blue Concourse	\$7,500,000
January 2, 1981	Food, beverage and restaurant facilities in main terminal and bars in Red and Blue Concourse	\$4,000,000
	Newsstand and gift shop in main terminal	\$3,000,000
	Total	\$7,000,000
	Cocktail lounge in Gold Concourse	\$ 260,000

II. Discrimination Issue

Petitioners also raised a claim of "discrimination" by maintaining that other commercial properties in Hennepin County were undervalued for tax purposes and the subject property is entitled to equal treatment under the United States and Minnesota Constitutions.

To prove their contention that comparable properties in the taxing district were systematically or arbitrarily undervalued, Petitioner introduced the 1980 Assessment Sales Ratio Study Sales Analysis for Minnesota Tax Court showing the mean, median and aggregate ratios of commercial-industrial property that sold in Hennepin County in 1980 and the 1981 Assessment Sales Ratio Study Sales Analysis for Minnesota Tax Court showing the mean, median and aggregate ratios of commercial-industrial property that sold in Hennepin County in 1981. Minn. Stat. § 278.05, Subd. 4, which was enacted April 3, 1980, as Laws of Minn., Chapter 443, Section 3, permits the admission of the study without laying foundation.

We do not consider these studies conclusive or binding on the Court. They are, however, valuable in assisting the Court in determining whether property of the same class within the taxing district is being systematically and arbitrarily valued for taxes substantially under market value. The major weakness of these studies, prepared by the Minnesota Department of Revenue, is that they fail to adjust for terms or "cash equivalency" or for the time of sale. We have corrected this by raising the ratios somewhat. The appropriate use of these sales ratio studies has been discussed in our recent decisions in Minneapolis Grain Exchange v. County of Hennepin, TC-1349 and 1635, July 21, 1983 (Amended August 25, 1983); Kraus-Anderson, Inc. v. County of Hennepin, TC-2007, September 9, 1983; Sheldon C. Brooks v. County of Hennepin, TC-2123, September 16, 1983.

In Sheldon C. Brooks v. County of Hennepin, supra, Judge Carl Jensen wrote:

The Court took into consideration the studies of the Minnesota Department of Revenue relative to assessment/sales ratios and particularly the median assessment/sales ratios for 1981 for Hennepin County of 76.5% and for Minneapolis of 75.7%. These ratios are determined from unadjusted sale prices in 1981 as compared to the assessor's market value as of January 2, 1981. Because the prices are unadjusted, the ratios are likely to be low because many sales are by contract for deed and the cash equivalent value which is the real market value is often considerably lower than the stated sale price in the contract for deed. Also, in an inflationary market, the inflation of prices in sales after January 2, 1981, will result in a lower assessment/sales ratio.

The study submitted by Respondent for sales of commercial-industrial property in the City of Minneapolis from July 1980 through July 1981 as compared to the assessor's estimated market value as of January 2, 1981, showed an unadjusted median ratio of 84.7% and an adjusted median ratio of 89.7%. The comparison of a sales price in one year to the assessor's value in the following year does not necessarily give a very accurate indication of the true assessment/sales ratio because the assessor ordinarily will take into consideration a prior sale in determining the market value for the following year. This is more fully explained in our decision in the Minneapolis Grain Exchange v. County of Hennepin, TC-1349 and 1635, dated August 25, 1983.

In the case of Kraus-Anderson, Inc. v. Hennepin County, TC-2007 (Sept. 9, 1983), the Respondent (who was the same Respondent as in this case) submitted a study which indicated an adjusted median assessment/sales ratio of approximately 85%

for the sales from January 1981 to June 1981. We feel that the application of an assessment/sales ratio of 85% to the market value that we have determined will result in a treatment of the subject property in approximately the same manner as other commercial property.

In this case we also feel that applying an assessment/sales ratio of 85% to the fair market value will result in equal treatment of the subject property.

For the reasons stated, the assessor's estimated market values (EMV's) should be reduced as follows:

1980 Combined restaurant, cocktail lounges and
gift and newsstand property value of \$7,500,000
reduced to \$6,375,000

1981 Restaurant and cocktail lounges value of \$3,580,000 reduced to \$3,400,000

1981 Cocktail lounge in Gold Concourse value of \$242,000 reduced to \$221,000

E.B.G.

**State of Minnesota
County of St. Louis**

**Tax Court
Sixth Judicial District**

Roger Elo,

Petitioner,

v.

County of St. Louis,

Respondent.

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

File No. 149787

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, at the Courthouse in Duluth, Minnesota, on October 27, 1983.

Roger Elo appeared on his own behalf.

Mike Dean, Assistant County Attorney, appeared on behalf of Respondent.

Syllabus

On an appeal from the valuation of property for assessment purposes, the prima facie presumption that the assessor's values are correct is overcome by the introduction of substantial proof by the Petitioner, and the Court will then make a determination based on the preponderance of the evidence.

Findings of Fact

1. This is an appeal from the assessor's estimated market value for January 2, 1982, for taxes payable in 1983 for the property owned by Petitioner described as the west half of the northeast quarter of Section 30, Township 59, Range 20, in St. Louis County.

2. The assessor's estimated market value for the subject property as of January 2, 1982, was \$11,000.

3. The subject property consists of 80 acres some of which is forested with various types of trees and some of it is low-land or marshy. The evidence appeared to indicate that there would be at least two reasonably good building sites on the property. The property is located a short distance from Chisholm, Minnesota.

4. One of the adjoining land owners operates a small junk yard near the entrance to one end of Petitioner's property, which Petitioner feels depreciates the value of his property. Petitioner has not complained to said adjoining owner and did not check with county officials as to whether or not the adjoining property was zoned for that usage. Petitioner testified that at the other entrance to the property the adjoining owner kept fenced wild animals that also depreciated the property.

5. The property has been in Petitioner's family since about 1920 and he is not interested in selling the property. He estimated the value at approximately \$6,000.

6. The assessor appraised all of the vacant lands in Balkan Township as of January 2, 1982, on the basis of a valuation schedule which took into consideration the characteristics of the property with certain specified additions and deductions. It appeared that he treated all such properties in a similar manner. After making all the adjustments, the assessor arrived at a value of \$11,000, which is \$137.50 an acre.

7. The assessor's value of \$11,000 for the subject property is not greater than the market value.

Conclusions of Law

1. The assessor's value of \$11,000 for the subject property is not greater than the market value and the assessor's value is confirmed.

It is so ordered. Let judgment be entered accordingly.

November 16, 1983

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

Memorandum

The subject property is vacant land consisting of some wooded areas and some marshy areas with at least two reasonably good building sites. It is a short distance from the City of Chisholm. Petitioner uses the property only for recreational purposes. It has been in his family since about 1920.

The land was valued on January 2, 1981, in the amount of \$2,400 and on January 2, 1982, at \$11,000. It appears that this increase is the principal reason for the appeal.

It is true that this was a very considerable increase, but we have noted in other situations that properties are often kept on the books at the relatively low value until there is a reappraisal of an entire area, and this seems to be the case in this situation.

Respondent's assessor presented a careful appraisal taking into consideration a number of sales of comparable properties. It would serve no purpose in discussing these comparables at any length. It did appear to the Court that the subject property was treated on a conservative basis and that the value arrived at by the assessor is not greater than the actual value of the property on the assessment date. It also appears that the property was treated equally with other properties in the area.

Petitioner offered some evidence to indicate that his property was depreciated by the use of adjoining properties. The adjoining property on one end was being used for a junk yard and the adjoining property on the other end was being used to keep wild animals. It may very well be true that such usages would tend to depreciate the value of the property, however, there was no evidence to indicate that these uses were allowable uses of these properties and if Petitioner so chose, he might very well have such uses stopped. Even if the uses were valid uses, the only evidence to indicate the amount that they would depreciate the property was the statement of the Petitioner.

It is true that the owner can always testify as to value of his property, but his ability to estimate that value must be taken into consideration by the Court. Petitioner indicated no special expertise in the matter of valuing property. There was no indication that he had ever put the property up for sale or that he had ever consulted with a real estate agent or appraiser as to the value of the property.

Taking into consideration all of the evidence presented to the Court, we find that the property was not assessed at a value greater than its market value.

C.A.J.

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