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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 8		
28	Friday Dec 23	Friday Dec 30	Monday Jan 9
29	Friday Dec 30	Monday Jan 9	Monday Jan 16
30	Monday Jan 2	Monday Jan 16	Monday Jan 23
31	Monday Jan 16	Monday Jan 23	Monday Jan 30

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

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

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

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

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NOTICE

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

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

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

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

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

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

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PROPOSED RULES

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

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

and

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

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

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

Department of Agriculture
Food Inspection Division

Proposed Amendments to the Rules Governing Candling and Grading of Eggs (3 MCAR §§ 1.0389 and 1.0400)

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21-14.28 (1982).

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

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982). If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Sections 29.23 and 29.27. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Commissioner is authorized by Minnesota Statutes Sections 29.23 and 29.27 (1980) to adopt federal standards for quality, grades and weight for Minnesota eggs moving in interstate commerce, as well as to establish requirements for candling, grading, cleaning, purchasing, and selling eggs for the purpose of preserving and protecting the public health. The proposed amendments to these rules, the adoption of the federal definition of dirty, will finalize and put in place the federal standards adopted by the department's promulgation of 3 MCAR §§ 1.0388-1.0404.

The proposed amendments are intended to achieve total consistency with the federal standards as adopted by Minnesota.

The proposed amendments, if adopted, would effectuate these federal standards.

The proposed rules will impact and benefit small business as defined in Laws of Minnesota 1983, chapter 188, section 1, because the enforcement of the federal standard for "dirty" will result in a greater number of eggs being rejected, but at the same time will expand the available market for producers and processors by enabling interstate shipments.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

One free copy of this Notice and the proposed rules are available and may be obtained by contacting Mr. Heil.

December 16, 1983

Jim Nichols
Commissioner of Agriculture

Rules as Proposed

3 MCAR § 1.0389 Definitions.

A.-F. [Unchanged.]

G. ~~Dirties. "Dirties~~ Dirty. "Dirty" means ~~eggs~~ an egg that has an unbroken shell with adhering dirt or foreign material ~~or~~, prominent stains, or moderate stains covering more than ~~one-fourth~~ 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.

H.-M. [Unchanged.]

3 MCAR § 1.0400 Labeling.

Any dealer exposing or offering eggs for sale to a consumer must give notice of the grade of eggs in the manner set out in this rule.

If eggs are exposed or offered for sale in cartons, bags, or other containers, the cartons, bags, or containers must be plainly and conspicuously printed in letters not smaller than one-quarter inch in height, or plainly and conspicuously stamped or marked in letters not smaller than one-half inch in height with the exact grade and size. If eggs are offered or exposed for sale in bulk, there must be a placard among or adjacent to the eggs which states the grade and size of the eggs and is in letters not smaller than one-half inch in height. Grade designations may not be abbreviated. All containers must also include the name and address of the producer, processor, or distributor. In the case of the processor or distributor, the words "packed for" or "distributed by" or some equivalent phrasing ~~should~~ must be used.

Department of Commerce

Proposed Adoption of Rules Relating to Insurance Claims Settlement

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.

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

Authority for the adoption of these rules is contained in Minnesota Statutes, sections 72A.19, subd. 2; 72A.20, subd. 12; 60A.17, subd. 15; and 72B.12. 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 Bldg., St. Paul, MN 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 § 1.9801 Scope and authority.

4 MCAR §§ 1.9801-1.9810 are adopted under the authority of Minnesota Statutes, sections 72A.19, subdivision 2; 72A.20, subdivision 12; 60A.17, subdivision 15; and 72B.12. These rules do not apply to workers' compensation insurance. Nothing in these rules abrogates any policy provisions.

4 MCAR § 1.9802 Construction.

The policy of the Department of Commerce, in interpreting and enforcing 4 MCAR §§ 1.9801-1.9810 will be to take into consideration the effect and magnitude of the violation, and all circumstances which are known to the Department of Commerce.

4 MCAR § 1.9803 Definitions.

For the purposes of 4 MCAR §§ 1.9801-1.9810 only, the terms defined in this rule have the meanings given them.

A. Adjuster or adjusters. "Adjuster" or "adjusters" is as defined in Minnesota Statutes, section 72B.02.

B. Agent. "Agent" means insurance agents or insurance agencies licensed pursuant to Minnesota Statutes, section 60A.17, and representatives of these agents or agencies.

C. Claim. "Claim" means a request or demand made with an insurer for the payment of funds or the provision of services under the terms of any policy, certificate, contract of insurance, binder, or other contracts of temporary insurance.

D. Claim settlement. "Claim settlement" means all activities of an insurer related directly or indirectly to the determination of the extent of liabilities due or potentially due under coverages afforded by the policy, and which result in claim payment, claim acceptance, compromise, or other disposition.

E. Claimant. "Claimant" means any individual, corporation, association, partnership, or other legal entity asserting a claim against any individual, corporation, association, partnership, or other legal entity which is insured under an insurance policy or insurance contract of an insurer.

F. Complaint. "Complaint" means a communication primarily expressing a grievance.

G. Insurance policy. "Insurance policy" means any evidence of coverage issued by an insurer including all policies, contracts, certificates, riders, binders, and endorsements which provide or describe coverage. The term includes any contract issuing coverage under a self-insurance plan, group self-insurance plan, or joint self-insurance employee health plans.

H. Insured. "Insured" means an individual, corporation, association, partnership, or other legal entity asserting a right to

payment under their insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by the policy or contract. The term does not apply to a person who acquires rights under a mortgage.

I. Insurer. "Insurer" includes any individual, corporation, association, partnership, reciprocal exchange, Lloyds, fraternal benefits society, self-insurer, surplus line insurer, self-insurance administrator, and nonprofit service plans under the jurisdiction of the Department of Commerce.

J. Investigation. "Investigation" means a reasonable procedure adopted by an insurer to determine whether to accept or reject a claim.

K. Notification of claim. "Notification of claim" means any communication to an insurer by a claimant or an insured which reasonably apprises the insurer of a claim brought under an insurance contract or policy issued by the insurer. Notification of claim to an agent of the insurer is notice to the insurer.

L. Proof of loss. "Proof of loss" means the necessary documentation required from the insured to establish entitlement to payment under a policy.

M. Self-insurance administrator. "Self-insurance administrator" means any vendor of risk management services or entities administering self-insurance plans, licensed pursuant to Minnesota Statutes, section 60A.23, subdivision 8.

N. Self-insured or self-insurer. "Self-insured" or "self-insurer" means any entity authorized pursuant to Minnesota Statutes, section 65B.48, subdivision 3; Minnesota Statutes, chapter 62H; Minnesota Statutes, section 176.181, subdivision 2; Laws of Minnesota 1983, chapter 290, section 171; Minnesota Statutes, section 471.617; or Minnesota Statutes, section 471.981 and includes any entity which, for a fee, employs the services of vendors of risk management services in the administration of a self-insurance plan as defined by Minnesota Statutes, 60A.23, subdivision 8, clause (2), subclauses (a) and (d).

4 MCAR § 1.9804 Standards for claim filing and handling.

The following acts by an insurer, an adjuster, an agent, a self-insured, or a self-insurance administrator constitute unfair settlement practices:

A. failing to acknowledge receipt of the notification of the claim and failing to provide all claim forms and all instructions necessary to process the claim within ten business days, unless the claim is settled within ten business days, after receiving notification of claim from an insured or a claimant. The acknowledgement must be in writing and must include the telephone number of the company representative who can assist the insured or the claimant in providing information and assistance that is reasonable so that the insured or claimant can comply with the policy conditions and the insurer's reasonable requirements;

B. failing to reply, within ten business days of receipt, to all other communications about a claim from an insured or a claimant that reasonably indicate a response is requested or needed;

C. unless provided otherwise by law or in the policy, failing to complete its investigation and inform the insured or claimant of acceptance or denial of a claim within 30 days after receipt of notification of claim unless the investigation cannot be reasonably completed within that time. In the event that the investigation cannot reasonably be completed within that time, the insurer shall notify the insured or claimant within the time period of the reasons why the investigation is not complete and the expected date the investigation will be complete;

D. where evidence of suspected arson is present, the requirement to disclose their reasons for failure to complete the investigation within the time period set forth in C. need not be specific. The insurer must make this evidence available to the Department of Commerce if requested;

E. failing to notify an insured who has made a notification of claim of all available benefits or coverages which he or she may be eligible to receive under the terms of a policy and of the documentation which the insured must supply in order to ascertain eligibility;

F. denying a claim for failure to exhibit the property without proof of demand and unfounded refusal by an insured to do so;

G. unless otherwise provided by law or in the policy, requiring an insured to give written notice of loss or proof of loss within a specified time, and thereafter seeking to relieve the insurer of its obligations if the time limit is not complied with, unless the failure to comply with the time limit prejudices the insurer's rights and then only if the insurer gave prior notice to the insured of the potential prejudice;

H. advising an insured or a claimant not to obtain the services of an attorney or an adjuster, or representing that payment will be delayed if an attorney or an adjuster is retained by the insured or the claimant;

I. failing to advise in writing an insured or claimant who has filed a notification of claim known to be unresolved, and who has not retained an attorney, of the expiration of a statute of limitations at least 60 days prior to that expiration;

J. demanding information which would not affect the settlement of the claim;

K. unless expressly permitted by law or the policy, refusing to settle a claim of an insured on the basis that the responsibility should be assumed by others;

L. failing, within 30 business days after receipt of a properly executed proof of loss, to advise the insured of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to the provision, condition, or exclusion is included in the denial. The denial must be given to the insured in writing with a copy filed in the claim file;

M. denying or reducing a claim on the basis of an application which was altered or falsified without the knowledge of the insured;

N. failing to notify the insured of the existence of the additional living expense coverage when an insured under a homeowners policy sustains a loss by reason of a covered occurrence and the damage to the dwelling is such that it is not habitable;

O. failing to inform an insured or a claimant that the insurer will pay for an estimate of repair if the insurer requested the estimate and the insured or claimant had previously submitted two estimates of repair.

4 MCAR § 1.9805 Standards for fair settlement offers and agreements.

The following acts by an insurer, an adjuster, an agent, a self-insured, or a self-insurance administrator constitute unfair settlement practices:

A. making any partial or final payment, settlement, or offer of settlement, which does not include an explanation of what the payment, settlement, or offer of settlement is for;

B. making an offer to an insured of partial or total settlement of one part of a claim contingent upon agreement to settle another part of the claim;

C. refusing to pay one or more elements of a claim by an insured for which there is no good faith dispute;

D. threatening cancellation, rescission, or nonrenewal of a policy as an inducement to settlement of a claim;

E. failing to issue payment for any amount finally agreed upon in settlement of all or part of any claim within five business days from the receipt of the agreement by the insurer or from the date of the performance by the claimant of any conditions set by such agreement, whichever is later;

F. failing to inform the insured of the policy provision or provisions under which payment is made;

G. settling or attempting to settle a claim or part of a claim with an insured under actual cash value provisions for less than the value of the property immediately preceding the loss, including all applicable taxes and license fees. In no case may an insurer be required to pay an amount greater than the amount of insurance;

H. except where limited by policy provisions, settling or offering to settle a claim or part of a claim with an insured under replacement value provisions for less than the sum necessary to replace the damaged item with one of like kind and quality, including all applicable taxes, license, and transfer fees;

I. reducing or attempting to reduce for depreciation any settlement or any offer of settlement for items not adversely affected by age, use, or obsolescence;

J. reducing or attempting to reduce for betterment any settlement or any offer of settlement unless the resale value of the item has increased over the preloss value by the repair of the damage.

4 MCAR § 1.9806 Standards for automobile insurance claims handling, settlement offers, and agreements.

In addition to the acts specified in 4 MCAR §§ 1.9804, 1.9805, 1.9807, 1.9808, and 1.9809, the following acts by an insurer, adjuster, agent, or a self-insured, or self-insurance administrator constitute unfair settlement practices:

A. if an automobile insurance policy provides for the adjustment and settlement of an automobile total loss on the basis of actual cash value or replacement with like kind and quality and the insured is not an automobile dealer, failing to offer one of the following methods of settlement:

1. comparable and available replacement automobile, with all applicable taxes, license fees, at least pro rata for the

unexpired term of the replaced automobile's license, and other fees incident to the transfer or evidence of ownership of the automobile paid, at no cost to the insured other than the deductible amount as provided in the policy;

2. a cash settlement based upon the actual cost of purchase of a comparable automobile, including all applicable taxes, license fees, at least pro rata for the unexpired term of the replaced automobile's license, and other fees incident to transfer of evidence of ownership, less the deductible amount as provided in the policy. The costs must be determined by:

a. the cost of a comparable automobile, adjusted for mileage, condition, and options, in the local market area of the insured, if such an automobile is available in that area; or

b. one of two or more quotations obtained from two or more qualified sources located within the local market area when a comparable automobile is not available in the local market area. The insured shall be provided the information contained in all quotations prior to settlement; or

c. any settlement or offer of settlement which deviates from the procedure above must be documented and justified in detail. The basis for the settlement or offer of settlement must be explained to the insured;

B. if an automobile insurance policy provides for the adjustment and settlement of an automobile partial loss on the basis of repair or replacement with like kind and quality and the insured is not an automobile dealer, failing to offer one of the following methods of settlement:

1. to assume all costs, including reasonable towing costs, for the satisfactory repair of the motor vehicle. Satisfactory repair includes repair of both obvious and hidden damage as caused by the claim incident. This assumption of cost may be reduced by applicable policy provision; or

2. to offer a cash settlement sufficient to pay for satisfactory repair of the vehicle. Satisfactory repair includes repair of obvious and hidden damage caused by the claim incident, and includes reasonable towing costs;

C. regardless of whether the loss was total or partial, in the event that a damaged vehicle of an insured cannot be safely driven, failing to exercise the right to inspect automobile damage prior to repair within five business days following receipt of notification of claim. In other cases the inspection must be made in 15 days;

D. regardless of whether the loss was total or partial, requiring unreasonable travel of a claimant or insured to inspect a replacement automobile, to obtain a repair estimate, to allow an insurer to inspect a repair estimate, to allow an insurer to inspect repairs made pursuant to policy requirements, or to have the automobile repaired;

E. regardless of whether the loss was total or partial, if loss of use coverage exists under the insurance policy, failing to notify an insured at the time of the insurer's acknowledgement of claim, or sooner if inquiry is made, of the fact of the coverage, including the policy terms and conditions affecting the coverage and the manner in which the insured can apply for this coverage;

F. regardless of whether the loss was total or partial, failing to include the insured's deductible in the insurer's demands under its subrogation rights. Subrogation recovery must be shared at least on a proportionate basis with the insured, unless the deductible amount has been otherwise recovered by the insured. No deduction for expenses may be made from the deductible recovery unless an attorney is retained to collect the recovery, in which case deduction may be made only for a pro rata share of the cost of retaining the attorney;

G. requiring as a condition of payment of a claim that repairs to any damaged vehicle must be made by a particular contractor or repair shop;

H. where liability is reasonably clear, failing to inform the claimant in an automobile property damage liability claim that he or she may have a claim for loss of use of the vehicle;

I. failing to make a good faith assignment of comparative negligence percentages in ascertaining the issue of liability;

J. failing to pay any interest required by statute on overdue payment for an automobile personal injury protection claim;

K. if an automobile insurance policy contains either or both of the time limitation provisions as permitted by Minnesota Statutes, section 65B.55, subdivisions 1 and 2, failing to notify the insured in writing of those limitations at least 60 days prior to the expiration of that time limitation;

L. if an insurer chooses to have an insured examined as permitted by Minnesota Statutes, section 65B.56, subdivision 1, failing to notify the insured of all of his or her rights and obligations under that statute, including the right to request, in writing, and to receive a copy of the report of the examination.

4 MCAR § 1.9807 Standards for releases.

The following acts by an insurer, adjuster, agent, or self-insured, or self-insurance administrator constitute unfair settlement practices:

A. requesting or requiring an insured or a claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment;

B. issuing a check or draft in payment of a claim that contains any language or provision that implies or states that acceptance of the check or draft constitutes a final settlement or release of any or all future obligations arising out of the loss.

4 MCAR § 1.9808 Standards for claim denial.

The following acts by an insurer, adjuster, agent, or self-insured, or self-insurance administrator constitute unfair settlement practices:

A. denying a claim or any element of a claim on the grounds of a specific policy provision, condition, or exclusion, without informing the insured of the specific policy provision, condition, or exclusion on which the denial is based;

B. denying a claim without having made a reasonable investigation of the claim;

C. denying a liability claim because the insured has requested that the claim be denied;

D. denying a liability claim because the insured has failed or refused to report the claim, unless an independent evaluation of available information indicates there is no liability;

E. denying a claim without including the following information:

1. the basis for the denial;

2. the name, address, and telephone number of a representative of the insurance company to whom the insured or claimant may take any questions or complaints about the denial; and

3. the claim number and the policy number of the insured;

F. denying a claim because the insured or claimant failed to exhibit the damaged property unless:

1. the insurer, within a reasonable time period after proof of loss was submitted, made a written demand upon the insured or claimant to exhibit the property; and

2. the demand was reasonable under the circumstances in which it was made.

4 MCAR § 1.9809 Standards for communications with the department.

In addition to the acts specified in 4 MCAR §§ 1.9804-1.9808 the following acts by an insurer, adjuster, agent, or a self-insured or self-insurance administrator constitute unfair settlement practices:

A. failure to respond, within 15 working days after receipt of an inquiry from the commissioner, about a claim, to the commissioner;

B. failure, upon request by the commissioner, to make specific claim files available to the commissioner;

C. failure to include in the claim file all written communications and transactions emanating from, or received by, the insurer, as well as all notes and work papers relating to the claim. All written communications and notes referring to verbal communications must be dated by the insurer;

D. failure to submit to the commissioner, when requested, any summary of complaint data reasonably required;

E. failure to compile and maintain a file on all complaints. If the complaint deals with a loss, the file must contain adequate information so as to permit easy retrieval of the entire file. If the complaint alleges that the company, or agent of the company, or any agent producing business written by the company is engaged in any unfair, false, misleading, dishonest, fraudulent, untrustworthy, coercive, or financially irresponsible practice, or has violated any insurance law or rule, the file must indicate what investigation or action was taken by the company. The complaint file must be maintained for at least four years after the date of the complaint.

4 MCAR § 1.9810 Penalties.

Upon finding that a violation has occurred, penalties will be assessed as applicable and as permitted or required under Minnesota Statutes, chapters 60A, 72A, and 72B.

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Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to Insurance Marketing Standards

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 wihtout 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.

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

Authority for the adoption of these rules is contained in Minnesota Statutes, chapters 60A and 72A. 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 Bldg., St. Paul, MN 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 § 1.9420 Scope and authority.

4 MCAR §§ 1.9420-1.9442 are adopted pursuant to Minnesota Statutes, chapters 60A and 72A.

4 MCAR § 1.9421 Applicability.

4 MCAR §§ 1.9420-1.9442 apply to any insurance advertisement or representation, written or oral, as defined in these rules, which is intended for presentation, distribution, or dissemination in the state of Minnesota, directly or indirectly, by or on behalf of any insurer or agent.

Rules 4 MCAR §§ 1.9420-1.9442 are not all inclusive. The fact that a practice is not specifically prohibited in these rules does not imply acceptance of the practice. These rules are to be construed in a manner so as to carry out the stated and implied purpose of Minnesota Statutes, chapters 60A and 72A.

4 MCAR § 1.9422 Construction.

A. Advertising or representations. Whether an advertisement or representation, written or oral, has a capacity or tendency to mislead or deceive is determined by the commissioner of commerce from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, unique to the particular type of audience to which the advertisement is directed, and whether it may be reasonably comprehended by the segment of the public to which it is directed.

B. Department policy. The policy of the department of commerce, in interpreting the meaning of 4 MCAR §§ 1.9420-1.9442 when applied to a specific advertisement, will be to take into consideration the content, detail, character, purpose, and use of the advertisement, and specifically, whether the advertisement is the direct or principal sales inducement, or whether its function is to invite inquiry for details of the insurance advertised, either by follow-up literature or by personal interview.

C. Method of disclosure of required information. All information required to be disclosed by 4 MCAR §§ 1.9420-1.9442 must be set out clearly, conspicuously, and in close conjunction with the statements to which the information relates or under appropriate captions of such prominence that it is readily noticed and not minimized, rendered obscure, or presented in an

ambiguous fashion or intermingled with the contents of the advertisement or representation, whether written or oral, so as to be confusing or misleading.

D. Advertisements. Advertisements and representations must be sufficiently complete and clear, under the circumstances in which they are made, to avoid deception or the capacity or tendency to mislead or deceive. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, must not be used.

4 MCAR § 1.9423 Definitions.

For the purposes of 4 MCAR §§ 1.9420-1.9442 the terms in A.-I. have the meanings given them.

A. Advertisement. "Advertisement" includes:

1. printed and published material, audio visual material, and descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, other periodicals, radio scripts, television scripts, billboards and other similar displays, excluding advertisements prepared for the sole purpose of obtaining employees, agents, or agencies;

2. descriptive literature and sales ads of all kinds issued by an insurer or agent for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

3. prepared sales talks, presentations, and material for use by agents and representations made by agents in accordance with these talks, presentations, and materials;

4. statements, written or oral, by an agent.

B. Agent, agents, or agencies. "Agent," "agents," or "agencies" includes insurance agents and agencies licensed pursuant to Minnesota Statutes, section 60A.17, insurance agencies, and designated representatives of these agents or agencies.

C. Exception. "Exception" includes any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of risk not assumed under the policy.

D. Insurer. "Insurer" includes any individual, corporation, association, partnership, reciprocal exchange, Lloyd's, fraternal benefits society, self-insurer, surplus line insurer, pooled or joint self-insurance group, or self-insurance administrator, nonprofit service plan, and any other legal entity engaged in the advertisement of a policy. An insurer includes an affiliated of a group of insurers under common management and control.

E. Limitation. "Limitation" means any provision which restricts coverage under the policy other than an exception or a reduction.

F. Policy. "Policy" includes any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement, binder, or other evidence of coverage which provides insurance or self-insurance, whether on an indemnity, reimbursement, service, or prepaid basis. "Policy" includes any subscriber contract issuing coverage under a self-insurance plan, annuity, group self-insurance, or pooled or joint self-insurance employee plan.

G. Reduction. "Reduction" includes any provision which reduces the amount of a benefit; a risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than would be otherwise payable had the reduction not been used.

H. Self-insurer. "Self-insurer" includes any entity authorized pursuant to Minnesota Statutes, sections 65B.48 and 176.181, Minnesota Statutes, chapter 62H, Laws of Minnesota 1983, chapter 290, section 171, or Minnesota Statutes, section 471.981 and includes any entity which, for compensation employs the services of vendors of risk management services in the administration of a self-insurance plan as defined by Minnesota Statutes, section 60A.23, subdivision 8.

I. Similar policies. "Similar policies" include policies which provide similar benefits even though there may be differences in benefit amounts, elimination periods, renewal terms, or ancillary benefits.

4 MCAR § 1.9424 Suitability of policies.

In recommending the purchase of any life, endowment, annuity, life-endowment, or medical supplment 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

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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 § 1.9425 Deceptive words, phrases, or illustrations.

A. General prohibition. No advertisement or representation, written or oral, may omit information or use words, phrases, statements, references, or illustrations if the omission of the information or use of the words, phrases, statements, references, or illustrations has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale or an offer is made to refund the premium if the purchaser is not satisfied does not remedy misleading statements.

B. Coverage terms. No advertisement may contain or use words or phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will help pay your hospital and surgical bills," "this policy will help fill some of the gaps that medicare and your present insurance leave out," "this policy will help to replace your income," when used to express loss time benefits or similar words and phrases, in a deceptive or misleading manner so as to exaggerate any benefits beyond the terms of the policy.

C. Statements regarding tax benefits. An advertisement must not state a policy's benefits are tax free unless an explanation of the rules applicable to the taxation of these types of policy benefits are clearly shown with equal prominence and in close conjunction with the statement. An advertisement of a benefit for which payment is conditioned upon confinement in a hospital or similar facility must not state that the benefit is tax free.

D. Benefit terms. An advertisement may not use the expressions "extra cash," "cash income," "income," "cash," or similar words or phrases in such a way as to imply that the insured will receive benefits in excess of the expenses incurred while being sick, injured, or hospitalized.

E. Payment terms. The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," "without additional cost," or words of similar import, may not be used with respect to any benefit or service being made available with the policy unless true and accurate. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the premium, or use other similar language.

F. Dividends. Dividends are a return of premium and it is misleading and deceptive to refer to them as being tax free, or to use words of similar import, unless they are used within an instructive context and the nature of dividend as a return of premium is clearly indicated.

G. Dread disease policies. A policy covering only one disease or a list of specified diseases must not be advertised so as to imply coverage beyond the terms of the policy. A particular disease shall not be referred to in more than one term so as to imply broader coverage than is the fact.

H. Policy limitations. The benefits of a policy which pays varying amounts for the same loss occurring under different conditions or which pays benefits only when a loss occurs under certain conditions, must not be advertised without disclosing the limitations or reductions under which the benefits referred to are provided by the policy.

I. Maximum benefits. The maximum benefit available under a policy must not be emphasized in a manner which exaggerates its relationship to any internal limits or other conditions of the policy. Phrases such as "this policy pays $1,800 for hospital room and board expenses" are incomplete without indicating the maximum daily benefit and the maximum time limit for hospital room and board expenses.

J. Aggregate benefits. The aggregate amounts or the monthly or weekly benefits payable under coverage such as hospital or similar facility confinement indemnity or private duty nursing must not be emphasized unless the actual amounts payable per day are disclosed with substantially equal prominence and in close conjunction with the statement. Any limitation or reduction in the policy and the number of days of coverage provided must be disclosed.

K. False statements regarding coverage. An advertisement must not state or imply that each member under a family policy is covered as to the maximum benefits advertised when such is not the case.

L. Exaggeration of certain diseases. The importance of diseases rarely or never found in the class of persons to whom the policy is offered shall not be exaggerated in an advertisement.

M. Benefit examples. Examples of what benefits may be paid under a policy must be shown only for losses from common illnesses or injuries rather than exceptional or rare illnesses or injuries.

N. Benefit clarification. When a range of hospital room expense benefits is set forth in an advertisement, it must be made clear that the insured will receive only the benefit indicated in the policy purchased. It must not be implied that the insured may select his room expense benefit at the time of hospitalization.

O. Benefit increases at time of disability. An advertisement must not imply that the amount of benefits payable under a loss of time policy may be increased at time of disability according to the needs of the insured.

P. Misleading payment claims. An advertisement must not state that the insurer "pays hospital, surgical, medical bills," "pays dollars to offset the cost of medical care," "safeguards your standard of living," "pays full coverage," "pays complete coverage," "pays for financial needs," "provides for replacement of your lost paycheck," "guarantees your paycheck," "guarantees your income," "continues your income," "provides a guaranteed paycheck," "provides a guaranteed income," or "fills the gaps in medicare," or use similar words or phrases unless the statement is literally true.

Q. Premium levels. An advertisement shall not state that premiums will not be changed in the future unless such is the fact.

R. Deductibles. An advertisement which states dollar amounts of benefits payable and premiums must clearly indicate the provisions of any deductible under a policy.

S. Other insurance. If a policy contains any of the following or similar provisions, an advertisement referring to the policy must not state that benefits are payable in addition to other insurance unless the statement contains an appropriate reference to the coverage excepted:

1. an "other insurance" exception, reduction, limitation, or deductible;

2. a "coordination of benefits" or "nonduplication" provision;

3. an "other insurance in this company" provision;

4. an "insurance in another insurer's" provision;

5. a "relation of earnings to insurance" provision;

6. a workers' compensation, employer's liability, occupational disease law, or automobile no-fault exception, reduction, or limitation;

7. a reduction based on social security benefits or other disability benefits; or

8. a medicare exception, reduction, or limitation.

T. Immediate coverage or guaranteed issuance. An advertisement may refer to immediate coverage or guaranteed issuance of a policy only if suitable administrative procedures exist so that the policy is issued within a reasonable time after the application is received.

U. Premium increases or premium reductions. If an advertisement indicates an initial premium which differs from the renewal premium on the same mode, the renewal premium shall be disclosed with equal prominence and in close conjunction with any statement of the initial premium. Any increase in premium or reduction in coverage because of age shall be clearly disclosed.

V. Pre-existing conditions. An advertisement must not state that the policy contains no waiting period unless pre-existing conditions are covered immediately or unless the effect of pre-existing conditions is disclosed with equal prominence and in close conjunction with the statement.

W. Age limits. An advertisement must not state that no age limit applies to an insured or applicant unless application from applicants of any age are considered in good faith, and the statement clearly indicates the date or age to which the policy may be renewed or that the company may refuse renewal.

X. Health provisions. An advertisement shall not state that no medical, doctor's, or physical examination is required or that no health, medical, or doctor's statements, or questions are required or that the examination, statements, or questions are waived or otherwise state or imply that the applicant's physical condition or medical history will not affect the policy unless:

1. the statement indicates with equal prominence that it applies only to the issuance of the policy or to both the issuance of the policy and the payment of claims; and

2. pre-existing conditions are covered immediately under the policy or the period of time following the effective date of the policy during which pre-existing conditions are not covered is disclosed with equal prominence and in close conjunction with the statement.

Y. Limited accident and health policies. An advertisement of a limited accident and health policy must prominently indicate

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that the policy provides limited coverage with an appropriate statement such as "this is a cancer only policy" or "this is an automobile accident only policy," "this is an accident policy only — this policy does not allow coverage for sickness," "this policy provides dental insurance only."

Z. Exceptions, reductions, or limitations. An advertisement must not set out exceptions, reductions, or limitations from a policy worded in a positive manner to imply that they are beneficial features such as describing a waiting period as a benefit builder. Words and phrases used to disclose exceptions, reductions, or limitations shall fairly and accurately describe their negative features. The words "only," "minimum," "just," "merely," or similar words or phrases must not be used to refer to exceptions, reductions, or limitations.

AA. Misleading cost statements. An advertisement must not state or imply, or use similar words or phrases to the effect that because no insurance agent will call and no commissions will be paid to agents, the policy is a low cost plan, unless literally true.

BB. Awards. Devices such as a safe driver's award and other such awards must not be used in connection with an advertisement, except advertisements for property and casualty insurance.

CC. Applications. An advertisement must not use an application which is deceptively similar to paper currency, bonds, or stock certificates.

DD. Mandated benefits. An advertisement must not exaggerate the effect of statutorily mandated benefits or required policy provisions or imply that these provisions are unique to the advertised policy.

EE. Statements of coverage. An advertisement must state clearly the insurance coverage being offered.

FF. Medicare supplement policies. An advertisement which refers to a policy as being a "medicare supplement" policy must, in addition to the other disclosure requirements required by law, comply with the following requirements:

1. contain a prominent statement indicating which medicare benefits the policy is intended to supplement, for example, hospital benefits; and which medicare benefits the policy will not supplement, for example, nursing home benefits; and must clearly disclose any gaps in medicare coverage for which the policy does not provide benefits;

2. clearly indicate the extent and amount of the benefits if the policy benefits are on an expenses-incurred basis beyond what medicare covers;

3. clearly indicate the classification of the medicare supplement coverage being offered by the policy as defined by Minnesota Statutes, sections 62A.31, 62A.32, 62A.33, 62A.34, and 62A.35;

4. must not imply or state that the policy is in any manner related to the federal medicare program or any other governmental program.

GG. Federal program information. An advertisement which offers to provide information concerning the federal medicare program or any related government program or changes in the program must:

1. include no reference to the program on the envelope, the reply envelope, or on the address side of the reply postal card, if any;

2. include on any page containing a reference to the program an equally prominent statement to the effect that in providing supplemental coverage the insurer and agent involved in the solicitation are not in any manner connected with the program;

3. contain a statement that it is an advertisement for insurance or is intended to obtain insurance prospects;

4. prominently identify the insurer or insurers which will issue the coverage; and

5. prominently state that any material or information offered will be delivered in person by a representative of the insurer, if that is the case.

4 MCAR § 1.9426 Exceptions, reductions, and limitations.

A. Disclosure. When an advertisement for health or accident insurance refers to any dollar amount of benefits payable, period of time for which any benefit is payable, cost of a policy, specific policy benefit, or the loss for which the benefit is payable, it must also disclose those exceptions, reductions, and limitations, including waiting, elimination, probationary, or similar periods, and pre-existing condition exceptions, affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive.

B. Pre-existing conditions summary. If the policy advertised does not provide immediate coverage for pre-existing conditions, an application or enrollment form contained in or included with an advertisement to be completed by the applicant and returned to the insurer must contain a question or statement immediately preceding the applicant's signature line which summarizes the pre-existing condition provisions of the policy.

C. Pre-existing conditions disclosure. An advertisement must in negative terms disclose the extent to which any loss is not covered if the cause of the loss is a condition which exists prior to the effective date of the policy. The expression "pre-existing conditions" shall not be used unless appropriately defined.

D. Medical exam disclosure. If a medical examination is required for a policy, an advertisement for that policy must disclose this requirement.

4 MCAR § 1.9427 Renewability, cancelability, and termination.

An advertisement which refers to renewability, cancelability, or termination of a policy, or which refers to a policy benefit, or which states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, must disclose the provisions relating to renewability, cancelability, and termination and any modification of benefits, losses covered, or premiums because of age or for other reasons, in a manner which would not have the capacity or tendency to mislead, deceive, minimize, or render obscure the qualifying conditions. An advertisement of a group or blanket policy which would otherwise be subject to the disclosure requirements of this rule need not disclose the policy's provisions relating to renewability, cancelability, and termination. The advertisement must provide, however, as a minimum, that an insured's coverage is contingent upon his or her continued membership in the group and the continuation of the plan.

4 MCAR § 1.9428 Identity.

A. Disclosure. The identity of the insurer, agents, or agency must be made clear in all advertisements or representations, whether written or oral.

B. Names. An advertisement or representation, whether written or oral, must not use a trade name, an insurance group designation, the name of the parent company of the insurer, the name of a government agency or program, the name of a department or division of an insurer, the name of an agency, the name of any other organization, a service mark, a slogan, a symbol, or any other device which has the capacity or tendency to mislead or deceive as to the identity of the insurer, agents, or agency.

C. Connection with a government agency. An advertisement or representation, whether written or oral, must not use any combination of words, symbols, or materials which, by its content, phraseology, shape, color, nature, or other characteristics, is so similar to combinations of words, symbols, or materials used by federal, state, or local government agencies that it tends to confuse or mislead prospective buyers into believing that the solicitation is in some manner connected with the government agency.

4 MCAR § 1.9429 Testimonials, endorsements, or commendations by third parties.

A. Disclosure of interests. If a person, group, or association making a testimonial, endorsement, or a commendatory statement concerning the insurer has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, the facts must be disclosed in the advertisement or representation, whether written or oral. If the person, organization, or association is compensated for making a testimonial, endorsement, or commendatory statement, the facts must be disclosed in the advertisement or representation, whether written or oral, by language fully disclosing that compensation was paid. This rule does not require disclosure of union "scale" wages required by union rules if the payment is actually for the "scale" for television or radio performances. The payment of substantial amounts, directly or indirectly, for "travel and entertainment," for filming or recording of television or radio advertisements remove the filming and recording from the category of an unsolicited testimonial and require disclosure of the compensation.

B. Approvals or endorsements. An advertisement or representation, whether written or oral, must not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association, or other organizations, unless that is the fact, and only if any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or by a person or persons who are in control of the insurer, the facts must be disclosed in the advertisement.

C. Genuineness. A testimonial, endorsement, or commendatory statement used in an advertisement or representation, whether written or oral, must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced.

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D. General restrictions. An insurer, agent, or agency shall not use a testimonial, endorsement, or commendatory statement in any advertisement or representation, whether written or oral:

1. which is fictional;

2. where the insurer, agent, or agency has some information indicating a substantial change of view on the part of the author;

3. where more than two years have elapsed from the date of the testimonial or the last confirmation of the statement without obtaining a confirmation that the statement represents the author's current opinion;

4. which does not accurately reflect the present practice of the insurer, agent, or agency;

5. which refers to a policy other than the one for which such statement was given, unless the statement clearly has some reasonable application to the other policy;

6. in which a change or omission has been effected which alters or distorts its meaning or intent as originally written; or

7. if it contains a description of benefit payments which does not disclose the true nature of the insurance coverage under which the benefits were paid.

4 MCAR § 1.9430 Jurisdictional licensing.

A. Misrepresentation. An advertisement which may be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed must not imply licensing beyond those limits.

B. Disclosure. Advertisements by direct mail insurers must indicate that the insurer is licensed in a specified state or states, or is not licensed in a specified state or states, by use of some language such as "This company is licensed in state A" or "This company is not licensed in state B."

4 MCAR § 1.9431 Approval by government agency.

A. Misleading advertisements. An advertisement or representation, whether written or oral, must not state or imply, or otherwise create the impression directly or indirectly, that the insurer, its financial condition or status, the payment of its claims, its policy forms or the merits or desirability of its policy forms or kinds or plans of insurance are approved, endorsed, or accredited by any agency of this state or the federal government, unless that is the fact.

B. Licensing as endorsement disclaimed. In any advertisement or representation, whether written or oral, any reference to licensing must contain an appropriate disclaimer that the reference is not to be construed as an endorsement or implied endorsement of the insurer, agent, or agencies by the Department of Commerce or any other agency of this state.

C. Reproduction of report of examination prohibited. No advertisement or representation, whether written or oral, may reproduce any portion of a Department of Commerce report of examination.

4 MCAR § 1.9432 Introductory, initial, or special offers in limited enrollment periods.

A. Regulation. An advertisement or representation, whether written or oral, must not state or imply that a policy or combination of policies is an introductory, initial, or special offer and that the applicant will receive advantages not available at a later date by accepting the offer, that only a limited number of policies will be sold, that a time is fixed for the discontinuance of the sale of the policy advertised because of special advantages available in the policies, or that an applicant will receive special advantages by enrolling within an open enrollment period or by a deadline date, unless that is fact.

B. Disclosure of enrollment period. A written advertisement shall not state or imply that enrollment under a policy is limited to a specific period unless the period of time permitted to enroll is disclosed.

C. Disclosure of similar offers. If the insurer making a special offer has previously offered the same or similar policy on the same basis or intends to repeat the current offer for the same or similar policy, the advertisement or representation, whether written or oral, must so indicate.

D. Limits of timing of enrollment periods. An insurer must not establish for residents of this state a limited enrollment period within which an individual policy or certificate may be purchased less than six months after the close of an earlier limited enrollment period for the same or similar policy or certificate. This restriction also applies to all advertisements or representations, whether written or oral, soliciting enrollment under mass marketed or direct response solicitations for life or health insurance coverage.

4 MCAR § 1.9433 Group, quasi-group, or special class implications.

An advertisement or representation, whether written or oral, must not state or imply that prospective policyholders or members of a particular class of individuals become group or quasi-group members or are uniquely eligible for a special policy or coverage and as such will be subject to special rates or underwriting privileges or that a particular segment of people, or a particular age group or groups, unless that is the fact.

4 MCAR § 1.9434 Identification of plan or numbers of policies.

A. Benefits to depend on plan selected. When an advertisement or representation, whether written or oral, refers to a choice regarding benefit amounts, it must disclose that the benefit amounts provided will depend upon the plan selected and that the premium will vary with the amount of the benefits.

B. Benefits requiring combination of policies. When an advertisement refers to various benefits which may be contained in two or more policies, other than group policies, it must disclose that the benefits are provided only through a combination of the policies.

4 MCAR § 1.9435 Use of statistics.

A. Relevant facts. An advertisement or representation, whether written or oral, relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy must not be used unless it accurately reflects all of the relevant facts. Irrelevant statistical data shall not be used. The sources of all statistical information must be disclosed in the advertisement or representation.

B. Applicable statistics. An advertisement or representation, whether written or oral, must not imply that any statistics used are derived from the policy advertised unless those statistics are derived from the policy.

4 MCAR § 1.9436 Inspection of the policy.

A. Effect. An offer in an advertisement or representation, whether written or oral, of free inspection of a policy or offer of a premium refund is not a cure for misleading or deceptive statements contained in the advertisement or representation.

B. Return disclosure. An advertisement or representation, whether written or oral, which refers to the provision in the policy advertised or represented regarding the right to return the policy must disclose the time limitation applicable to this right.

4 MCAR § 1.9437 Disparaging comparisons and statements.

An advertisement must not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely or unfairly disparage, discredit, or criticize competitors, their policies, services, or business methods or competing marketing methods.

4 MCAR § 1.9438 Statement about an insurer.

An advertisement must not contain statements which are untrue in fact or by implication misleading with respect to the insurer's asssets, corporate structure, financial standing, age, experience, or relative position in the insurance business.

4 MCAR § 1.9439 Service facilities.

An advertisement or representation, whether written or oral, must not contain untrue statements with respect to the time within which claims are paid or statements which imply that claim settlements will be liberal or generous beyond the terms of the policy, or contain a description of a claim which involves unique or highly unusual circumstances.

4 MCAR § 1.9440 Insurer's advertising file.

A. Retention of copies. Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise, or group policies hereafter disseminated in this or any other state whether or not licensed in the other state. A notation must be attached to each advertisement in the file indicating the manner and extent of distribution and the form number of any policy, amendment, rider, or endorsement form advertised. The company must be able to identify and provide a copy of the policy advertised, together with any amendment, rider, or endorsement applicable thereto. All advertisements must be maintained for a period of not less than three years. The file is subject to regular and periodic inspection by the Department of Commerce.

B. Affidavit with annual statement. Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of 4 MCAR §§ 1.9420-1.9442 must file with the Department of Commerce together with its annual statement, a certificate executed by an authorized officer of the insurer wherein it is stated that to the best of their knowledge, information, and belief, that the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws of this state as implemented and interpreted by these rules.

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4 MCAR § 1.9441 Responsibility of insurer, agent, or agency.

A. System of control required. Every insurer, agent, or agency shall establish and at all times maintain a system of control over the content, form, and method of advertisements and representations, oral and written, concerning its policies. All advertisements and represntations, whether written or oral, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer whose policies are so advertised or represented.

B. Prior approval by insurer. An insurer shall require its agents or agencies and any other person or agency preparing advertisements naming the insurer or its products to submit proposed advertisements to it for approval prior to use.

4 MCAR § 1.9442 Penalty.

Violations of 4 MCAR §§ 1.9420-1.9441 subject the violator to the penalties described in Minnesota Statutes, chapters 60A and 62A.

Pollution Control Agency
Solid and Hazardous Waste Division

Proposed Amendments to Rules Governing the Management of Hazardous Waste (6 MCAR §§ 4.9001-4.9005 and 4.9008-4.9010 to be Renumbered as 6 MCAR §§ 4.9100-4.9560)

Notice of Hearing

The Minnesota Pollution Control Agency (Agency) issued two notices, both entitled "Notice of Intent to Amend Rules Without A Public Hearing", concerning the above-entitled rule amendments. State Register, Volume 8, Number 17, pages 732 and 811 (October 24, 1983). The proposed amendments were divided into two sets:

(1) proposed amendments to the rules governing generators of hazardous waste, the identification, transportation and management of hazardous waste, and county hazardous waste programs, 6 MCAR § 4.9001-4.9003, 4.9008-4.9010, renumbered as 6 MCAR § 4.9100-4.9259 and 4.9559-4.9560, published at 8 S.R. 732 (October 24, 1983) as corrected in the Errata published at 8 S.R. 1086 (November 7, 1983) and 8 S.R. 1238, (November 21, 1983); and,

(2) proposed amendments to the rules governing hazardous waste treatment, storage and disposal facilities, 6 MCAR § 4.9004, renumbered as 6 MCAR §§ 4.9280-4.9481, published at 8 S.R. 811 (October 24, 1983) as corrrected in the Errata published at 8 S.R. 1084 (November 7, 1983) and 8 S.R. 1238 (November 21, 1983).

The Notice provided that if, during the comment period, seven or more persons requested that the Agency conduct a public hearing, the Agency would conduct a hearing. During the comment period on the two sets of hazardous waste rules described above, the Agency received more than seven requests for public hearing. Therefore, the Agency has scheduled a combined public hearing on both sets of proposals as described below.

Please take notice, therefore, that a public hearing concerning the proposed amendments to the rules governing the management of hazardous waste will be held in the Board Room of the Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota, on Monday, February 6, 1984, commencing at 10:00 a.m. and continuing on subsequent days at the same location until all interested persons have had an opportunity to be heard. An evening session will be held on Wednesday, February 8, 1984, at 7:00 p.m. at the same location.

The hearing will be conducted by Mr. Allan W. Klein, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7609, a hearing examiner appointed by the Chief Hearing Examiner of the State of Minnesota.

Please also note, that during the comment period following publication of the Notice of Intent to Amend Rules Without a Public Hearing, the Agency received numerous comments on both sets of proposed amendments. On December 20, 1983, at its Board meeting, the Agency revised its proposed amendments to incorporate some of the changes suggested by the comments and to make other clarifying, grammatical or technical changes. The following rules, or portions thereof were amended as published below: 6 MCAR §§ 4.9100 SSS. and FFFF., 4.9102 H, 4.9104 B.1., 4.9128 B.6.c, and C.9. and 15., 4.9129 B.1. and 2., 4.9132 D.1. and F.4., 4.9134 E., 4.9215 A. and B., 4.9216 A.1. and 5., 4.9217 B., 4.9254, 4.9255 A., 4.9289 F., 4.9296 C., and C.7., 4.9297 A.1., K.7. and L.7., 4.9302, 4.9307 D., 4.9308 A.12., D.10., and E.6., 4.9310 A.2., B.9. and F.4., 4.9314 A.1., 4.9317 C.3. and E.4., 4.9318 A., 4.9321 D.1., 4.9389 F., 4.9396 C. and C.7., 4.9401 C., 4.9403, 4.9409 A.4., 4.9411 E.8. and 4.9560 B.2. and 3. Spelling errors and an erroneous cross-reference were corrected in Exhibits 6 MCAR §§ 4.9132 G.3. -1., 4.9134 C.2., D.5.-3. and D.6.-4., 4.9137-1, 4.9297 F.2.-1. and 4.9314 F.7. A copy of these revisions may be obtained by

contacting Steven A. Reed at the address and telephone listed below. The proposed amendments, with the revisions listed above, will be the subject of the hearing scheduled in this notice.

The proposed amendments which are the subject of this hearing address the following:

Rules 6 MCAR § 4.9100-4.9104, Chapter One, address the general provisions of the Rules. These provisions include the definitions applicable to the hazardous waste rules, procedural matters relating to variances and to petitions to delist a waste or to utilize an alternative testing method, and methods of obtaining material referenced in the rules.

Chapter Two, 6 MCAR § 4.9128-4.9137, establishes the criteria for determining whether a waste is hazardous and identifies specific wastes and waste streams which are hazardous. The existing criteria for classifying wastes due to characteristics have been modified to include provisions from the U.S. Environmental Protection Agency's (EPA) characteristics. The lists of hazardous waste in the existing hazardous waste rules have been replaced by the lists of hazardous waste found in the EPA regulations. These rules also sets forth standards for the management of mixtures of hazardous and nonhazardous wastes, for the management of wastes which are to be beneficially used, reused, recycled or reclaimed and for the management of residues of hazardous waste in empty containers and liners.

The standards applicable to generators of hazardous waste are contained in Chapter Three, 6 MCAR § 4.9200-4.9222. Pursuant to these provisions a generator is required to evaluate his wastes to determine if they are hazardous, file a disclosure and management plan with the Agency for each hazardous waste produced, and obtain an identification number. These rules also provide the requirements applicable to generators with regard to the use of manifests, accumulation of hazardous waste and record keeping. The special requirements applicable to small quantity generators are also set forth in this chapter.

Rules 6 MCAR § 4.9250-4.9259, Chapter Four, set forth the standards applicable to transporters of hazardous wate. The provisions of this chapter are substantially the same as the transporter provisions of the existing hazardous waste rules.

The standards governing the operation of hazardous waste facilities are set forth in Chapters Five, Six, and Seven. Rules 6 MCAR §§ 4.9280-4.9316, Chapter Five, establish permanent requirements applicable to owners and operators of facilities which treat, store, or dispose of hazardous waste. These rules set forth requirements relating to the location of hazardous waste facilities, emergency procedures including personnel training and contingency plans, record keeping, ground water monitoring programs, closure, post-closure and financial responsibility, and operational and design requirements for various types of facilities.

Rules 6 MCAR §§ 4.9380-4.9422, Chapter Six, establish interim status standards for hazardous waste facilities which cover the same general areas as the permanent requirements. The interim status standards apply to existing facilities until final disposition of the owner or operator's permit application is made. Chapter Seven, 6 MCAR §§ 4.9480 and 4.9481, provides operational standards for elementary neutralization units, pretreatment units, wastewater treatment units and combusion waste facilities.

Chapter Eight, 6 MCAR §§ 4.9559-4.9560, establishes procedures for the Agency's overview of county hazardous waste programs.

Authority for adoption of these rules is contained in Minn. Stat. § 116.07, subds. 4 and 4b (1982 as amended by Minn. Laws 1983, ch. 373). The proposed amendments may be modified as the result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the hearing process.

One free copy of the proposed rules may be obtained by contacting Steven A. Reed, Division of Solid and Hazardous Waste, Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113, telephone (612) 296-7786.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the Agency offices and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence and argument which the Agency anticipates presenting at the hearing justifying the need for and reasonableness of the proposed rule amendments. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge. The Agency intends to present only a short summary of the statement of need and reasonableness at the hearing but will answer questions raised by interested persons.

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

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at the address and telephone listed above either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days.

In the interests of efficiency, the Agency requests that written materials be submitted to Steven A. Reed, at the address and telephone listed above, prior to the hearing, preferably by January 20, 1984. Failure to submit material in advance of the hearing will not affect a person's right to appear at the hearing. All comments and hearing requests received by the Agency in response to the Notices of Intent to Adopt Rules Without a Public Hearing published in the State Register on October 24,1983, will be submitted to the hearing examiner for inclusion in the record.

The rule hearing procedure is governed by Minn. Stat. §§ 14.05-14.20 and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

You are hereby advised, pursuant to Minn. Laws 1983, ch. 188, Small Business Consideration in Rulemaking, that the proposed rule amendments may have an impact on some small businesses that generate hazardous waste. The nature of any impact on small business is dependent upon the amount of hazardous waste the business generates. The amendments being proposed which may affect small businesses include, but are not limited to, the following:

1. The reuse, recycling, or reclamation of certain types of hazardous wastes are not required to comply with all facility standards, thus reducing the financial impact on small businesses which reuse, recycle, or reclaim hazardous waste.

2. Less burdensome testing and evaluation requirements for a generator's hazardous waste are proposed. Thus, the financial impact on small businesses may be lessened.

3. Facility standards are more stringent which may increase the cost of waste storage and disposal and may therefore have a greater financial impact on small businesses.

More detailed information concerning the nature of the impact of these changes upon small businesses is set forth in the Agency's statement of need and reasonableness.

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

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01 (1982) as any individual:

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

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

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

Sandra S. Gardebring
Executive Director

Amendments to Rules as Proposed

Except for the following rules, or portions thereof, the rules as proposed are the rules published at State Register, Volume 8, Number 17, pages 734-811, and 813-958, (October 24, 1983) and corrected at State Register Volume 8, Number 19, pages 1084-1086, (November 7, 1983) and State Register, Volume 8, Number 21, page 1238, (November 21, 1983). The rules, or portions thereof, published below, are amendments to the rules as proposed published at 8 S.R. 734-958. Underlining indicates additions to the rules as originally proposed. ~~Strike outs~~ indicate deletions from the rules as originally proposed.

Chapter One: Definitions, References, Petitions and Other Standards

6 MCAR § 4.9100 Definitions.

SSS. Pretreatment unit. "Pretreatment Unit" means a device which:

3. meets the definition of "tank" as defined in KKKK ~~UUUU~~.

FFFF. Spill. "Spill" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, or dumping into or on any land or water of hazardous wastes or materials which, when spilled, become hazardous wastes ~~into or on any land or water~~.

6 MCAR § 4.9102 Availability of references.

The documents referred to in 6 MCAR §§ 4.9100-4.9560 may be obtained by contacting the appropriate offices as listed in A.-H.

E. Methods for Chemical Analysis of Water and Wastes, publication number 600/4-79-020, March 1979, issued by the Environmental Monitoring and Support Laboratory, 26 West St Clair, Cincinnati, Ohio 45268 ~~Office of Solid Waste, United States Environmental Protection Agency, 401 M Street S.W. Washington, D.C. 20460~~, available at the state of Minnesota Law Library;

6 MCAR § 4.9104 Petitions.

B. Petitions to exclude a waste produced at a particular facility.

1. Any person seeking to exclude a waste at a particular generating facility from regulation under 6 MCAR §§ 4.9100-4.9560 may petition under these provisions. The petitioner must demonstrate to the satisfaction of the agency that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste and, in the case of an acutely hazardous waste meeting the criteria in ~~listed under~~ 6 MCAR § 4.9131 A.2., that it also does not meet the criteria ~~criterion~~ of 6 MCAR § 4.9131 A.3. A waste which is so excluded may still, however, be a hazardous waste by operation of 6 MCAR § 4.9132.

Chapter Two: Identification and Listing of Hazardous Waste

6 MCAR § 4.9128 Classification of certain wastes.

B. Mixtures of hazardous and nonhazardous wastes.

6. Except as otherwise provided in 1., 2., or 4., the following sewered mixtures of nonhazardous wastes and hazardous wastes listed in 6 MCAR § 4.9134 are not hazardous wastes if the generator can demonstrate that the mixture consists of wastewater, the discharge of which is subject to regulation under the Federal Water Pollution Control Act Amendments of 1972, United States Code, title 33, section 1317(b) or 1342, as amended through June 30, 1983, including wastewater at facilities which have eliminated the discharge of wastewater; and

a.-b. [Unchanged.]

c. heat exchanger bundle cleaning sludge from the petroleum refining industry, hazardous waste No. K050 as listed in 6 MCAR § 4.9134 ~~4.9136~~;

d.-e. [Unchanged.]

C. Exempt wastes. The following wastes may be stored, labeled, transported, treated, processed, and disposed without complying with the requirements of 6 MCAR §§ 4.9100-4.9560:

9. ~~solid~~ waste from the extraction, beneficiation, and processing of ores and minerals, including coal, and including phosphate rock and overburden from the mining of uranium ore;

15. scrap metal which is not hazardous because of a hazardous characteristic other than toxicity, is not a waste listed in 6 MCAR § 4.9134 and is to be beneficially used, reused, recycled, or reclaimed. Scrap metal means manufactured metal objects and products; metal workings including but not limited to sandings, grindings, shavings, cuttings, turnings, and stampings; and solid metallic residues of metal production excluding sludges, air pollution control dusts, semi-solids, and liquid solutions.

6 MCAR § 4.9129 Management of waste by use, reuse, recycling, and reclamation.

B. Requirements. A hazardous waste that is to be beneficially used, reused, or legitimately recycled or reclaimed is exempt from 6 MCAR §§ 4.9200-4.9560, and the agency's permitting requirements, except as specified in 1.-5.

1. A hazardous waste that is not a sludge, and neither is nor contains a waste listed in 6 MCAR § 4.9134, and neither is nor contains a waste that is toxic pursuant to 6 MCAR § 4.9132 F. is subject to the following requirements:

a. 6 MCAR §§ 4.9205-4.9208;

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b. 6 MCAR §§ 4.9211-4.9213;

c. 6 MCAR § 4.9215;

d. 6 MCAR § 4.9216 A.5.-7.;

e. 6 MCAR §§ 4.9217-4.9221 ~~4.9218~~;

f. 6 MCAR § 4.9317 C.2., G.1.a., H., and I.;

g. 6 MCAR § 4.9318 C.3.-4., 6., G.1., H., and I.;

h. 6 MCAR § 4.9415 B., D., E., F., and G.; ~~and~~

i. 6 MCAR §§ 4.9559-4.9560; and

j. ~~i.~~ A hazardous waste that is EP toxic according to 6 MCAR § 4.9132 G. and is stored outdoors in tanks, surface impoundments, or waste piles prior to beneficial use, reuse, recycling, or reclamation is subject to the agency's permitting procedures and the following requirements: 6 MCAR §§ 4.9200-4.9318; 4.9380-4.9417; and 4.9559-4.9560.

2. Spent pickle liquor that is reused in wastewater treatment at a facility holding a National Pollutant Discharge Elimination System permit, or that is being accumulated, stored, or physically, chemically, or biologically treated before reuse, is subject to the requirements in 6 MCAR §§ 4.9205-4.9208; 4.9211-4.9213; 4.9215; 4.9216 A.5.-6.; ~~and~~ ~~4.9218~~ 4.9217-4.9221; and 4.9559-4.9560.

3.-5. [Unchanged.]

6 MCAR § 4.9132 Characteristics of hazardous waste.

D. Corrosivity

1. A waste exhibits the characteristic of corrosivity if a representative sample of the waste has any of the following properties:

a. It is aqueous and has a pH less than or equal to 2.0 or greater than or equal to 12.5, as determined by a pH meter using either the test method in the Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods issued by the United States Environmental Protection Agency, publication number SW 846 (1980) also described in Methods for Chemical Analysis of Water and Waste issued by the Environmental Monitoring and Support Laboratory ~~United States Environmental Protection Agency~~, publication number 600/7-79-020 (March 1979), or an equivalent test method approved by the director ~~agency~~ under the procedures set forth in 6 MCAR § 4.9104 A. ~~4.9131 A.~~; or

b. [Unchanged.]

F. Toxicity

4. A waste that exhibits the characteristics of toxicity, but is not listed as a hazardous waste in 6 MCAR § 4.9134, has the hazardous waste number MN01 ~~M001~~.

Exhibit 6 MCAR § 4.9132 G.3.-1.

Unchanged except DO15 is corrected as follows:

DO15 Toxaphene ($C_{10}H_{10}Cl_8$ ~~$C_{10}H_{10}Cl_3$~~, Technical chlorinated camphene, 67-69 percent chlorine)

6 MCAR § 4.9134 Lists of hazardous waste.

Exhibit 6 MCAR § 4.9134 C.-2

Unchanged except KO47 is corrected as follows:

KO47 Pink/red water from operations involving 2,4,6-trinitro-toluene (TNT)

Exhibit 6 MCAR § 4.9134 D.-5.-3

Unchanged except PO16 is corrected as follows:

PO16 Methane, oxybis (chloro)-

Exhibit 6 MCAR § 4.9134 D.6.-4

Unchanged except U093 and U166 are corrected as follows:

U093 Benzenamine, N,N'-dimethyl-4-~~(~~phenylazo~~)~~

U166 1,~~4,~~-Naphthoquinone

E. PCB wastes

3. Storage. A generator of PCB wastes who stores on site prior to disposal is exempt from the agency's hazardous waste storage facility permit requirements and 6 MCAR §§ 4.9216 and 4.9280-4.9422 for the storage of those wastes except for the following requirements:

a. the storage standards described in Code of Federal Regulations, title 40, section 761.65 ~~part 761.42~~ (1983); and

b. [Unchanged.]

5. Thermal treatment of PCB wastes at concentrations less than 500 parts per million. High efficiency boilers as defined in Code of Federal Regulations, title 40, section 761.60 ~~761.10~~ (1983), which are used for treatment of mineral oil dielectric fluid containing less than 500 ppm PCB, are exempt from the agency's hazardous waste facility permit requirements and 6 MCAR §§ 4.9216 and 4.9280-4.9422 for storage and treatment of those wastes, except for the following requirements:

a. 6 MCAR §§ 4.9315-4.9316;

b. 6 MCAR §§ 4.9382-4.9383;

c. 6 MCAR §§ 4.9385-4.9396; and

d. 6 MCAR §§ 4.9399-4.9400.

6. Hazardous waste number. PCB wastes have the hazardous waste number of MN03 ~~M003~~.

6 MCAR § 4.9135 Small amounts of unrelated chemicals.

A collection of small amounts of unrelated chemicals as described in 6 MCAR § 4.9211 D. has the hazardous waste number of MN02 ~~M002~~.

Exhibit 6 MCAR § 4.9137-1

Unchanged except for the following corrections:

6-Amino-1,1a,2,8,8a,8b-hexahydro-8(hydroxymethyl)-8a-methoxy-5-methylcarbamate azirino(2',3':3,4)pyrrolo (1,2-a)indole-4,7-dione~~,~~ (ester),(Mitomycin C)

~~Pryidine~~ Pyridine

Chapter Three: Standards Applicable to Generators of Hazardous Waste

6 MCAR § 4.9210 Special requirements for small quantity generators of hazardous waste.

A. Applicability; quantities. A generator is a small quantity generator subject to the requirements of B.-F.~~G.~~ if, in a calendar month, he generates less than:

1.-3. [Unchanged.]

E. Management requirements. A small quantity generator shall comply with the following requirements:

1. 6 MCAR §§ 4.9205-4.9208;

2. 6 MCAR §§ 4.9211 except 6 MCAR§ 4.9211 C.7.;

3. 6 MCAR §§ 4.9212-4.9213;

4. 6 MCAR § 4.9215;

5.~~4.~~ 6 MCAR § 4.9216 A.5.-7.;

6.~~5.~~ 6 MCAR §§ 4.9217-4.9221 ~~4.9218~~; and

~~6. Maintain a written log on site with the following information for any hazardous waste shipment from the small quantity generator's site to a site specified in 7.a.-e.:~~

~~a. the name and EPA identification number for each transporter involved in the shipment;~~

~~b. the name and EPA identification number for the site receiving the hazardous waste;~~

~~c. the type and quantity of each hazardous waste included in the shipment;~~

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~~d. the date the shipment left the small quantity generator's site; and~~

7. [Unchanged.]

8. Transport hazardous waste in accordance with all applicable requirements of Minnesota Statutes, section 221.203 and Code of Federal Regulations, title 49, parts 171 through 179 (1983).

6 MCAR § 4.9212 Manifest document; general requirements.

A. When required. A generator who transports or offers for transportation hazardous waste for off-site treatment, storage, or disposal must prepare a manifest before transporting the waste off-site ~~unless exempt from regulation pursuant to 6 MCAR § 4.9210 or 4.9129~~.

B. Designation of facility. A generator must designate on the manifest either one facility which is permitted to handle the waste described on the manifest or one facility which in accordance with 6 MCAR § 4.9129 beneficially uses or reuses, or legitimately recycles, or reclaims the waste or treats the waste prior to beneficial use or reuse, or legitimate recycling or reclamation. A small quantity generator may, in the alternative, designate another site belonging to the same owner for consolidation of shipments providing the receiving site complies with 6 MCAR §§ 4.9200-4.9560.

C. Alternate facility. A generator may also designate on the manifest one alternate facility which meets the requirements of B. ~~is permitted to handle the waste~~ in the event an emergency prevents delivery of the waste to the primary designated facility.

E. Permitted facilities. The facilities shall be permitted by:

2. the state agency with a hazardous waste program authorized by the Environmental Protection Agency pursuant to Code of Federal Regulations, title 40, part ~~123~~ 271 (1983); or

6 MCAR § 4.9214 Pretransport requirements.

E. Loading of hazardous waste. A generator who is responsible for loading hazardous waste on a transport vehicle in lieu of the transporter must comply with the provisions of 6 MCAR § 4.9254 ~~A~~.

6 MCAR § 4.9215 Proper hazardous waste management.

A. Relinquishing control. A generator shall not relinquish control of a hazardous waste if a transporter, or treatment, storage, or disposal facility not exempt under 6 MCAR §§ 4.9100-4.9560 has not:

1. received an identification number by a state with a hazardous waste program authorized by the Environmental Protection Agency pursuant to Code of Federal Regulations, title 40, part ~~123~~ 271 (1983); or

2. received an identification number by the Environmental Protection Agency.

B. Spills; duty to report. Any person in control of ~~who generates~~ a hazardous waste that spills, leaks, or otherwise escapes from a container, tank, or other containment system, including its associated piping, shall immediately notify the agency if the hazardous waste may cause pollution of the air, land resources, or waters of the state. The persons shall use, ~~when applicable,~~ the agency's 24-hour telephone number, 612/296-7373.

6 MCAR § 4.9216 Accumulation of hazardous waste.

A. When allowed without a permit. A generator may accumulate hazardous waste on-site or hazardous waste received from off-site pursuant to 6 MCAR § 4.9210 E.7.e. without a permit or without having interim status if:

1. all accumulated hazardous waste is, within 90 days of the accumulation start date, shipped off-site to a designated facility or placed in an on-site facility either of which has interim status under 6 MCAR §§ 4.9380-4.9422 or has a hazardous waste facility permit issued by the agency; or has a hazardous waste facility permit issued by a state with a hazardous waste program authorized by the Environmental Protection Agency pursuant to Code of Federal Regulations, title 40, part ~~123~~ 271 (1983); or

5. outdoor storage areas are protected from unauthorized access and inadvertent damage from vehicles or equipment ~~distinctly fenced to restrict access~~;

6 MCAR § 4.9217 Record keeping.

B. Reports. A generator must keep a copy of the disclosure, each annual report and each exception report for at least three years from the due date of the report.

Chapter Four: Standards Applicable
to Transporters of Hazardous Waste

6 MCAR § 4.9254 Transportation of hazardous waste.

Hazardous waste shall be transported in accordance with all applicable requirements of Minnesota Statutes, section 221.203 and Code of Federal Regulations, title 49, parts 171 through 179 (1983).

~~A. Loading of hazardous wastes. No person shall load or unload hazardous waste onto or from any motor vehicle, railroad car, barge, airplane, or other vehicle except in accordance with the following requirements:~~

~~1. all containers of hazardous waste shall be loaded so that they are reasonably secured against movement within the vehicle by which the hazardous waste is being transported;~~

~~2. tank vehicles shall be attended during the loading or unloading of a hazardous waste as described in Code of Federal Regulations, title 49, section 177.834(i)(1983);~~

~~3. no tools or equipment likely to damage the effectiveness of the closure of any container or adversely affect the ability of a container to contain a hazardous waste shall be used for loading or unloading hazardous waste;~~

~~4. a transporter may not transport a container of hazardous waste in the same transport vehicle with material that is marked as or known to be foodstuff, feed, or other edible material intended for consumption or use by humans or animals;~~

~~5. hazardous waste shall not be loaded in the same vehicle with incompatible wastes or other materials with which it is incompatible in accordance with Code of Federal Regulations, title 49, section 177.848 (1983);~~

~~6. broken or leaking containers of hazardous waste shall not be loaded or offered for transportation;~~

~~7. no container or tank containing hazardous waste shall be loaded on a vehicle unless the container or tank is properly labeled and marked as required by 6 MCAR § 4.9214;~~

~~8. no cargo tank or cargo tank compartment shall be loaded with hazardous waste unless it has been tested, inspected, and maintained in accordance with Code of Federal Regulations, title 49, section 177.824 (1983) to insure that there is no unintentional release or leakage of waste during transportation;~~

~~9. no hazardous waste shall be loaded beyond the rated capacity of the cargo tank; and~~

~~10. no cargo tank shall be loaded unless it is properly placarded as required by 6 MCAR § 4.9214.~~

~~B. General provisions.~~

~~1. The transporter shall comply with all applicable requirements of 6 MCAR §§ 4.9255-4.9259 relating to manifests.~~

~~2. The transporter shall replace any labels required by 6 MCAR § 4.9214 if they are destroyed, lost, or detached.~~

~~3. Any person who transports hazardous waste shall deliver the hazardous waste to its final destination without undue delay after loading of the hazardous waste.~~

6 MCAR § 4.9255 The manifest system; general requirements.

A. Acceptance of shipment. A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed by the generator according to 6 MCAR §§ 4.9200-4.9222 ~~unless the generator is exempt from the manifest requirements under 6 MCAR §§ 4.9210 or 4.9129~~.

Chapter Five: Facility Standards

6 MCAR § 4.9285 Location standards.

A. Floodplains. A facility located in a 100-year floodplain must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood unless the owner or operator can demonstrate to the director that the conditions in 1. or 2. are met:

1.-2. [Unchanged.]

As used in A., "100-year floodplain" means any land area which is subject to a one percent or greater chance of flooding in any given year from any source; "washout" means the flow of hazardous waste from the active portion of the facility, the buildings or equipment ~~or facility buildings or equipment from the active portion of the facility~~ as a result of flooding; and "100-year flood" means a flood that has a one percent chance of being equalled or exceeded in any given 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.

6 MCAR § 4.9289 Emergency procedures.

F. Duty to notify. The hazardous waste coordinator shall immediately notify the agency if the released hazardous waste may cause pollution of the air, land resources, or waters of the state. The emergency coordinator shall use the agency's 24-hour telephone number 612/296-7373.

G. ~~F.~~ Containment measures. During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

H. ~~G.~~ Facility monitoring. If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

6 MCAR § 4.9296 Required reports.

C. Unmanifested waste report. If a shipment of hazardous waste is delivered to a hazardous waste facility from an off-site source without an accompanying manifest or without an accompanying shipping paper ~~and if the waste is not excluded from the manifest requirements by 6 MCAR § 4.9210~~, the facility operator shall attempt to reconcile the discrepancy with the waste generator or transporter. If the discrepancy cannot be resolved, the owner or operator shall notify the director prior to acceptance of the waste. Within ten days, a follow-up report must be mailed to the director. The report must include all of the following:

1.-6. [Unchanged.]

7. A brief explanation of why the waste was unmanifested, if known. ~~When a facility receives unmanifested hazardous waste, the owner or operator shall obtain from each generator a certification that the waste qualifies for exclusion. otherwise, the owner or operator shall file an unmanifested waste report for the hazardous waste movement.~~

8. [Unchanged.]

6 MCAR § 4.9297 Ground water protection.

A. Scope. This rule applies as follows.

1. Except as provided in 2., the requirements of B.-M. apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills. The owner or operator shall satisfy the requirements of B.-M. for all wastes or waste constituents contained in a waste management unit at a facility that receives hazardous waste after the effective date of B.-M. This type of waste management unit is hereinafter referred to as a "regulated unit." Owners and operators of closed facilities that have treated, stored, or disposed of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills between January 26, 1983, and the effective date of B.-M. shall comply with Code of Federal Regulations, title 40, part 264, ~~as amended through June 30,~~ (1983). A waste or a waste constituent migrating beyond the waste management area under H. ~~H.2.~~ is assumed to originate from a regulated unit unless the director finds that the waste or waste constituent originated from another source.

Exhibit 6 MCAR § 4.9297 F.2-1

Unchanged except as follows:

Toxaphene (C_{10}-C_{10}-Cl_8, ~~C H Cl~~ Technical chlorinated camphene, 67-69 percent chlorine)

K. Detection monitoring program. An owner or operator required to establish a detection monitoring program under this rule shall perform the following:

7. The owner or operator shall determine whether there is a statistically significant increase over background values for a monitoring parameter or hazardous constituent specified in the permit pursuant to 1., or 5.b. where applicable, each time he or she determines ground water quality at the compliance point under 4. and 5.

In determining whether a statistically significant increase has occurred, the owner or operator shall compare the ground water quality at each monitoring well at the compliance point for each monitoring parameter or hazardous constituent to the background value for that monitoring parameter or hazardous constituent, according to the statistical procedure specified in the permit under J.8. and 9.

The owner or operator shall determine whether there has been a statistically significant increase at each monitoring well at the compliance point within the time period ~~two weeks after completion of sampling, unless a different analysis period is~~ established in the permit.

L. Compliance monitoring program. An owner or operator required to establish a compliance monitoring program under this rule shall perform the following:

7. The owner or operator shall determine whether there is a statistically significant increase over the concentration limits for any hazardous constituents specified in the permit under 1. each time he or she determines the concentration of hazardous constituents in the ground water at the compliance point.

In determining whether a statistically significant increase has occurred, the owner or operator shall compare the ground water quality at each monitoring well at the compliance point for each hazardous constituent to the concentration limit for that hazardous constituent according to the statistical procedures specified in the permit under J.8. and 9.

The owner or operator shall determine whether there has been a statistically significant increase at each monitoring well at the compliance point within the time period established in the permit ~~two weeks after completion of sampling unless the permit provides a different analysis period~~.

6 MCAR § 4.9302 Notice to local land authority.

Within 90 days after closure is completed, the owner or operator of a disposal facility shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveying bench marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or authority with jurisdiction over local land use must contain a prominently displayed note which states the owner's or operator's obligation to restrict disturbance of the site as specified. In addition, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a record of the type, location, and quantity of hazardous waste disposed of within each cell or area of the facility. For waste disposed of before January 12, 1981, the owner or operator shall comply with all requirements of Code of Federal Regulations, title 40, ~~part~~ section 264.119~~, as amended through June 30~~ (1983). The owner or operator shall identify the type, location, and quantity of the waste to the best of his or her knowledge and in accordance with any records he or she has kept. A change in the type, location, or quantity of hazardous waste disposed of within each cell or area of the facility that occurs after the survey plat and record of waste have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the director.

6 MCAR § 4.9307 Cost estimate for post-closure care.

D. Record retention. The owner or operator shall keep the following at the facility during the operating life of the facility: the latest post-closure cost estimate prepared in accordance with A. and C. and, when this estimate has been adjusted in accordance with B., the latest adjusted post-closure cost estimate.

6 MCAR § 4.9308 Financial assurance for post-closure care.

The owner or operator of a facility subject to post-closure monitoring or maintenance requirements shall establish financial assurance for post-closure care of the facility. He or she shall choose from the options specified in A.-F.

A. Post-closure trust fund. The following apply to post-closure trust funds:

12. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure activities are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director ~~agency~~ specifies in writing.

D. Post-closure letter of credit. The following apply to post-closure letters of credit:

10. If the owner or operator does not establish alternate financial assurance as specified in this rule and obtain written approval of alternate assurance from the director within 90 days after receipt by both the owner or operator and the director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the director shall draw on the letter of credit. The director ~~agency~~ may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of an extension the director shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this rule and to obtain written approval of assurance from the director.

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E. Post-closure insurance. The following apply to post-closure insurance:

6. The owner or operator shall maintain the policy in full force and effect until the director ~~agency~~ consents to termination of the policy by the owner or operator as specified in 11.

6 MCAR § 4.9310 Financial assurance for corrective action.

An owner or operator of a facility shall establish financial assurance for corrective action for the facility by choosing an option in A.-F.

A. Corrective action trust fund. The following apply to corrective action trust funds:

2. The wording of the trust agreement must be identical to the wording specified in Exhibit 6 MCAR § 4.9314 A.1.-1 and the trust agreement must be accompanied by a formal certification of acknowledgment as shown in Exhibit 6 MCAR § 4.9314 A.2.-2. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current corrective action cost estimate covered by the agreement.

B. Surety bond guaranteeing payment into corrective action trust fund. The following apply to surety bonds that guarantee payment into corrective action trust funds:

9. The owner or operator may cancel the bond if the director has given prior written consent based on the director's ~~its~~ receipt of evidence of alternate financial assurance as specified in this rule.

F. Financial test and corporate guarantees for corrective action. The financial test and corporate guarantee for corrective action is as follows:

4. The phrase "current corrective action~~, closure, and post-closure~~ cost estimate~~s~~" as used in 1.-3. refers to the cost estimate~~s~~ required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer as specified in Exhibit 6 MCAR § 4.9314 F.7.

6 MCAR § 4.9314 Wording of instruments.

A. Trust agreement for trust fund. The trust agreement and certificate of acknowledgement are as follows:

1. A trust agreement for a trust fund as specified in 6 MCAR § 4.9306 A., 4.9308 A., 4.9310 A., 4.9407 A., or ~~4.9410 A.~~ 4.9409 A. must be worded as specified in Exhibit 6 MCAR § 4.9314 A.-1.-1, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

Exhibit 6 MCAR § 4.9314 F.-7

Unchanged except for the following correction.

2. This firm guarantees, through the corporate guarantee specified in 6 MCAR §§ 4.9304-4.9314 and 4.9405-4.9413 ~~4.9313~~, the corrective action, closure, or post-closure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the corrective action, closure, or post-closure care so guaranteed are shown for each facility: _____ .

6 MCAR § 4.9317 Surface impoundments.

C. Design and operating requirements. Design and operating requirements are as follows:

3. A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. Massive failure of the dikes means any uncontrolled flow of hazardous waste from the surface impoundment. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

E. Monitoring and inspection. Monitoring and inspection requirements are as follows:

4. Prior to the issuance of a permit, after any dredging activities, and after any extended period of time, at least six months, during which the impoundment is not in service, the owner or operator shall obtain certification from a qualified engineer that the uppermost liner and the leak detection, collection, and removal system is intact and remains at design specifications. For a new surface impoundment, the owner or operator shall obtain the certification upon completion of construction in accordance with the plans and specifications, prior to the placement of waste into the impoundment. This certification must address both liners.

6 MCAR § 4.9318 Waste piles.

A. Scope. The requirements of B.-I. apply to owners and operators of facilities that store or treat hazardous waste in piles, except as 6 MCAR § 4.9280 provides or as otherwise provided in A.

The requirements of B.-I. do not apply to owners or operators of waste piles that are closed with wastes left in place. Such waste piles are subject to regulation under 6 MCAR § 4.9320.

The owner or operator of a waste pile that is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated is not subject to B.1. and 2., C., or 6 MCAR § 4.9297 if:

1.-4. [Unchanged.]

6 MCAR § 4.9321 Thermal treatment.

D. Performance standards. A thermal treatment facility thermally treating hazardous waste must be designed, constructed and maintained so that, when operated in accordance with operating requirements specified under F. it will comply with all federal and state air quality rules and regulations and will meet the performance standards of 1., 2., 3. and 4., whichever are applicable.

1. A thermal treatment facility thermally treating hazardous waste must achieve a destruction and removal efficiency of 99.99 percent for each principal organic hazardous constituent designated in its permit for each waste feed. The destruction and removal efficiency (DRE) is determined for each principal organic hazardous constituent from the following equation:

$$DRE = \frac{(Win - Wout)}{Win} \times 100\%$$

~~DRE = (Win = Wout) / Win × 100%~~

where:

Win = Mass feed rate of one principal organic hazardous constituent in the waste stream feeding the thermal treatment process, and

Wout = Mass emission rate of the same principal organic hazardous constituent present in exhaust emissions prior to release to the atmosphere.

Chapter Six: Interim Status Standards.

6 MCAR § 4.9389 Emergency procedures.

F. Duty to notify. The emergency coordinator shall immediately notify the agency if the released hazardous waste may cause pollution of the air, land resources, or waters of the state. The emergency coordinator shall use the agency's 24-hour telephone number 612/296-7373.

G.~~F.~~ Containment measures. During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

H.~~G.~~ Facility monitoring. If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes or other equipment, wherever this is appropriate.

6 MCAR § 4.9396 Required reports.

C. Unmanifested waste report. If a shipment of hazardous waste is delivered to a hazardous waste facility from an off-site source without an accompanying manifest or without an accompanying shipping paper ~~and if the waste is not excluded from the manifest requirement by 6 MCAR § 4.9210,~~ the facility operator shall attempt to reconcile the discrepancy with the waste generator or transporter. If the discrepancy cannot be resolved, the owner or operator shall notify the director prior to acceptance of the waste. Within ten days, a follow-up report shall be mailed to the director. The report must include:

1.-6. [Unchanged.]

7. A brief explanation of why the waste was unmanifested, if known~~.~~ ~~When a facility receives unmanifested hazardous waste, the owner or operator shall obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the owner or operator shall file an unmanifested waste report for the hazardous waste movement~~.

8. [Unchanged.]

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6 MCAR § 4.9401 Post-closure

C. Modification of post-closure period. The post-closure period may be modified during the post-closure care period as described in 1. and 2.:

1. The owner or operator or any member of the public may petition the director to extend or reduce the post-closure care period or alter the requirements based on cause.

a. The petition must include evidence demonstrating that the secure nature of the facility makes the post-closure care requirements unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan, or that the requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment. Areas which must be considered in demonstrating the secure nature of the facility include leachate or ground water monitoring results, characteristics of the waste, application of advanced technology; or alternative disposal, treatment, or reuse techniques that indicate the facility is secure.

b. These petitions will be considered by the director only when they present new and relevant information. Whenever the director is considering a petition, the director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments or request a public information meeting within 30 days of the date of the notice. In response to a request or at his or her own discretion, the director shall hold a public information meeting whenever a meeting might clarify one or more issues concerning the post-closure plan. After considering the comments, a final determination shall be issued. The criteria listed in a. shall serve as a basis for the final determination. If the director denies the petition, he or she shall send the petitioner a written response detailing the reason for denial.

2. The director may decide to modify the post-closure plan if necessary to prevent threats to human health and the environment. Extension or reduction of the post-closure care period or ~~alternation~~ alteration of the requirements of the post-closure care period may be proposed based on cause.

The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments or request a public information meeting within 30 days of the date of the notice. The director shall in response to a request or at his or her own discretion hold a public information meeting whenever a meeting might clarify one or more issues concerning the post-closure plan. After considering the comments, a final determination shall be issued.

The director shall base the final determination upon the criteria outlined in 1.a. A modification of the post-closure plan may include, when appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the director shall determine whether the requirements should be permanently discontinued or reinstated to prevent threats to human health and the environment.

6 MCAR § 4.9403 Notice to local land authority.

Within 90 days after closure is completed, the owner or operator of a disposal facility shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed bench marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or authority with jurisdiction over local land use must contain a prominently displayed note which states the owner's or operator's obligation to restrict disturbance of the site as specified. In addition, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a record of the type, location, and quantity of hazardous waste disposed of within each cell or area of the facility. For waste disposed of before January 12, 1981, the owner or operator shall identify the type, location, and quantity of the waste to the best of his knowledge and in accordance with any records he has kept. Any changes in the type, location, or quantity of hazardous waste disposed of within each cell or area of the facility that occur after the survey plat and record of waste have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the director.

6 MCAR § 4.9409 Financial assurance for post-closure.

An owner or operator of a disposal facility shall establish financial assurance for post-closure care of the facility by choosing from the options specified in A.-E.

A. Post-closure trust fund. Requirements of a post-closure trust fund are as follows:

4. Payments into the trust fund must be made annually by the owner or operator of a facility which was not required to establish financial assurance for post-closure under Code of Federal Regulations, title 40, part 265, subpart H (1983) but is required to establish financial assurance for post-closure under these rules over the 20 years beginning with the effective date of 6 MCAR §§ 4.9405-4.9413, or over the remaining operating life of the facility as estimated in the ~~post-~~closure plan, whichever period is shorter. The first payment must be made within 90 days of the effective date of 6 MCAR §§ 4.9405-4.9413. The first

payment must be at least equal to the current post-closure cost estimate, except as provided in F., divided by the number of years in the pay-in period. Subsequent payments must be made as specified in 3.b.

6 MCAR § 4.9411 Liability requirements.

E. Financial test for liability coverage.

8. If the owner or operator no longer meets the requirements of 1., he or she shall obtain insurance for the entire amount of required liability coverage ~~covered~~ as specified in this rule. Evidence of insurance must be submitted to the director within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

Chapter Eight: County Regulation of Hazardous Waste Management

6 MCAR § 4.9560 Agency overview of county hazardous waste programs.

B. County ordinances.

2. The director may suspend a previously approved county ordinance or relevant portion thereof if that ordinance has been modified and is determined by the director to be inconsistent with the state hazardous waste rules. Upon suspension by the director, the matter must be placed on the agenda of the next month's regularly scheduled meeting of the agency board. The agency shall notify the county of its decision to approve, suspend, modify or deny the ordinance.

3. A county having a hazardous waste ordinance approved in writing by the agency, shall revise the county ordinance within 120 days of any agency revision to 6 MCAR §§ 4.9100-4.9560 ~~or the agency's permitting procedures~~. The county revision must embody and be consistent with the agency's revisions to 6 MCAR §§ 4.9100-4.9560 ~~and the agency's permitting procedures~~, and must be submitted to the agency for its review and approval according to the procedure in 1.

Department of Public Welfare
Social Services Bureau

Proposed Amendment of the Department of Public Welfare's Rule Governing Adoption (12 MCAR § 2.200)

A public hearing concerning the above entitled matter will be held in Conference Room A, Fourth Floor Centennial Office Building, 658 Cedar, St. Paul, Minnesota on February 7, 1984 commencing at 9:00 a.m. and continuing until all interested persons have an opportunity to be heard. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentations at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to George Beck, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota, 55415, telephone 612/341-7601 either before the hearing or within five working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minnesota Statutes 14.01-14.56, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

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

Rule 12 MCAR § 2.200 governs the Minnesota Department of Public Welfare adoption program. The goal of the Minnesota adoption program is to ensure for each child, who is free to be legally adopted in the state, a suitable adoptive home and agency services supportive of his integration into the new family.

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.

The rule includes definition of terms; provisions for legally freeing a child for adoption; services for children freed for adoption; services to children in independent placements; services to families applying for adoption; provision on interstate and international adoptive placements, and post-adoption services.

Most of the amendments to 12 MCAR § 2.200 are based upon changes in Minnesota Statutes, chapter 259 and federal Public Law 96-272. The amendments are in the areas of the guidelines for the state adoption exchange, post-adoption services, subsidized adoptions, and the rate schedule for subsidized adoptions, and the clarification of standards for foster home adoptions and independent adoptions.

The agency's authority to adopt the proposed rule is contained in Minnesota Statutes, sections 257.05; 259.40, subdivisions 2 and 10; 259.45, subdivision 9; and 259.48.

The passage of the amendments to 12 MCAR § 2.200 will not result in additional spending by local public bodies.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ruth Weidell, Adoption Director, Department of Public Welfare, Fourth Floor Centennial Office Building, St. Paul, Minnesota 55155, telephone 612/296-3740. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule contact Ruth Weidell.

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

Minnesota Statutes, chapter 10A requires each lobbyist to register with the State Ethical Practices Baard within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes 10A.01, subdivision 11, 1979 supp., as any individual:

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

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

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

December 6, 1983

Leonard W. Levine
Commissioner of Public Welfare

Rule as Proposed

12 MCAR § 2.200 Adoption.

A. ~~Introduction~~ Purpose; definitions.

1. Goal of the Minnesota adoption program: to ensure for each child, who is free to be legally adopted in the state, a suitable adoptive home and agency services supportive of his integration into the new family.

2. ~~Definitions~~ The terms used in 12 MCAR § 2.200 have the meanings given them.

a. "Adoptive home~~:~~" means a home approved by an authorized child-placing agency for the purpose of placing a child for adoption.

b. "Authorized child-placing agency~~:~~" means the local social service agency or any agency licensed to place children by the commissioner or by a comparable authority in the state or country in which the agency exists.

c. "Child~~:~~" means an individual under 18 years of age.

d. "Commissioner" means the commissioner of the Department of Public Welfare.

e. "Foster family home~~:~~" means a family home licensed to provide 24-hour-a-day care to children who are unrelated to the family.

~~e.~~ f. "Genetic parent~~:~~" means an individual who is referred to as the child's natural parent, who is named in the child's original birth certificate as a parent, whose claim to genetic parenthood is unchallenged, or whose genetic parenthood is established by a court of competent jurisdiction.

~~f.~~ g. "Independent placement~~:~~" means a proposed or actual nonagency placement of a child by a natural parent or unlicensed third party with persons not related to the child within the third degree.

~~g.~~ h. "Infant~~:~~" means a child under the age of ~~fifteen~~ 15 months.

~~h.~~ i. "Licensed child-placing agency~~:~~" means an agency authorized by the commissioner to place children for foster care or adoption.

~~i.~~ j. "Local social service agency~~:~~" means the local agency under the authority of the county welfare board or human service board responsible for arranging and providing social services to individuals.

k. "Minority race or minority ethnic heritage" means a legacy of common traits and customs that society recognizes as belonging to a part of the population which differs from its predominant culture or characteristics.

~~j.~~ l. "Placing agency~~:~~" means the Minnesota licensed child-placing agency which has guardianship of a child from a Minnesota court or the local social service agency which has financial responsibility for a ward of the commissioner of public welfare. The placing agency retains adoptive planning responsibility for the child even though another agency is supervising.

~~k.~~ m. "Postplacement services~~:~~" means social services provided to the child and the adoptive parents from the time of placement until legal adoption.

~~l.~~ n. "Postadoption services~~:~~" means social services provided after legal adoption to the adoptive parents, genetic parents, or adopted individuals.

~~m.~~ o. "Relative~~:~~" means an individual who is related to a child within the third degree according to the civil table of consanguinity by blood, marriage, or adoption as a parent, stepparent, brother, sister, grandparent, great grandparent, aunt, uncle, niece, or nephew.

~~n.~~ p. "State adoption exchange~~:~~" means the central adoptive home and child registration service operated by the Minnesota Department of Public Welfare's adoption unit for use by authorized child-placing agencies.

~~o.~~ q. "State agency~~:~~" means the commissioner of public welfare or the Minnesota Department of Public Welfare.

~~p.~~ r. "Subsidized adoption~~:~~" means an adoption in which an agreement provides that financial payments shall be made to the adoptive ~~parents(s)~~ parents, subsequent guardian or conservator because of special needs of a child who is certified as eligible for subsidy.

~~q.~~ s. "Suitability study~~:~~" means the preadoptive counseling and subsequent evaluation made by the authorized child-placing agency to determine whether or not the proposed adoptive home can adequately parent and meet the social, educational, and health needs of a particular child.

B. Legally freeing ~~the~~ a child for adoption.

1. ~~The child shall be legally freed for adoption by either a termination of parental rights pursuant to the Juvenile Court Act, or by a voluntary surrender to the Commissioner or to a licensed child-placing agency pursuant to statute.~~

~~a.~~ Before a valid agency adoptive placement may occur, court termination of the parent's rights under Minnesota Statutes, sections 260.221 to 260.241 or ~~a voluntary relinquishment to a~~ an agreement under Minnesota Statutes, section 259.25 which confers authority to place a child for adoption with the commissioner or a licensed child-placing agency must be obtained from any individual recognized by state laws as having parental rights.

a. A local social service agency shall seek to free a child for adoption through court termination of parental rights unless the commissioner states in writing that he will accept the agreement conferring authority to place the child.

b. On all agency adoptive placement plans, the local social service or licensed child-placing agency shall inform the genetic parent, who is identified on the child's birth certificate by birth registration, affidavit, or court order, of the statutory

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conditions under which birth certificate information and certain agency record information may or may not be released. The agency shall assist the genetic parent with the procedures in (1)-(3).

(1) The genetic parent shall sign an affidavit to be filed in the agency record attesting that the genetic parent has been informed of statutory conditions that affect the agency release or nonrelease of identifying information, such as the genetic parent's name, last known address, birth date, and birthplace, to the adopted person after that person reaches adult age as defined in Minnesota Statutes, sections 259.47 to 259.49.

(2) The genetic parent may subsequently choose to file or not file in the agency adoption record an affidavit objecting to the agency release of any or all of the identifying information to the adopted person upon that person reaching adult age as specified in Minnesota Statutes, sections 259.47 to 259.49.

(3) The genetic parent may file an affidavit at any time with the State Registrar of Vital Statistics consenting to or refusing to consent to disclosure of the original birth certificate information to the adopted person after that person reaches adult age as specified in Minnesota Statutes, sections 259.47 to 259.49.

2. All written consents to adoption, executed in a manner prescribed by ~~law, shall~~ Minnesota Statutes, sections 259.24, subdivision 5 and 259.25, must be filed with the court prior to the hearing on the adoption petition.

3. All ~~surrenders~~ agreements with an agency to place a child and consents to adoption ~~(except those given by the commissioner, his agent or a licensed child-placing agency) shall~~ by the child's parent or legal guardian, must be executed before two competent witnesses and an agency representative~~, and shall be filed in court prior to the date of the hearing. However,~~ Consents to an adoption by the child's parent when that parent is either a copetitioner in the adoption proceedings or does not have custody of the child must be executed before two competent witnesses, but need not be executed before an agency representative~~, but only before two competent witnesses~~. All consents by a parent must contain a notice to the parent of the right to revoke the consent for any reason within ten working days of its execution. Consents obtained in another state may be executed according to either Minnesota law or applicable consent laws of the other state.

a. ~~Both~~ The consentor's and the agency representative's ~~signature~~ signatures must each be duly notarized.

b. The two witnesses ~~shall~~ must be 18 years of age or older and of sound mind, and neither ~~shall~~ may be the subscribing notary public.

c. The agency representative ~~shall~~ must be a person qualified to counsel the consenting party on adoption matters.

d. Revocation of a parent's consent must be in writing and must be received by the agency no later than the tenth working day after the consent was executed.

4. Affidavits submitted by individuals who allege or deny parenthood which contain a consent to adoption must be executed according to the requirements ~~set forth~~ in ~~section three, supra~~ 3.

C. Services for children freed for adoption.

1. State photographic adoption exchange. To ensure each child's placement in an adoptive home preferably away from his area of prior residence, the State Adoption Exchange shall be used by all ~~local social service~~ authorized child-placing agencies in accordance with ~~prevailing~~ procedures ~~established by~~ under Minnesota Statutes, section 259.45 and the commissioner. ~~This provision shall not apply to the licensed child-placing agencies, Hennepin, Ramsey, or St. Louis Counties, whose use of the Exchange is optional.~~

a. Each authorized child-placing agency shall register the child on the exchange using the registration form prescribed by the commissioner accompanied by a recent photograph of the child.

b. An authorized child-placing agency seeking to defer registration of the child shall make a written request to the exchange for written approval. The request for deferral must meet one of the conditions in (1)-(6).

(1) The child is placed in an agency adoptive home and legal adoption occurs within two years of placement. The agency's report of the adoptive placement to the state agency shall constitute the basis for deferral.

(2) The child's foster home is being considered and meets the criteria of C.3. A deferral granted for this reason may not exceed 90 days unless the placement status formally becomes an adoptive placement.

(3) The child's prospective adoptive home is being considered. A deferral granted for this reason may not exceed 90 days unless an adoptive placement occurs.

(4) The child is undergoing diagnostic evaluation to aid the agency in adoptive planning. A deferral granted for this reason may not exceed 90 days.

(5) The child is hospitalized and needs continuing daily care which will not permit placement in a family setting. A deferral granted for this reason may not exceed the length of hospitalization.

(6) The child is 14 years of age or older and, after discussion with the agency on permanent placement options, will not consent to an adoption plan. The agency shall then assist the child in executing an affidavit to file with the exchange in which the child states that decision and an awareness that the decision may be changed at any time.

~~a.~~ 2. Special needs. The local ~~social service~~ authorized child-placing agency shall, without undue delay, seek an adoptive home which will meet the child's special needs. Special needs include sibling ties, minority racial or minority ethnic heritage, religious ~~heritages~~ background, and health, social, and educational needs.

~~b. The local social service agency shall make reasonable efforts to provide and preserve the child's heritage by placing the child:~~

~~(1) in an adoptive home of similar background; or~~

~~(2) in an adoptive home which is knowledgeable and appreciative of the child's heritage.~~

a. The placing agency shall follow the order of placement preference and exception guidelines under Laws of Minnesota 1983, chapter 278, section 7, when placing a child of minority race or minority ethnic heritage.

b. The adoptive placement of an Indian child who comes under the Indian Child Welfare Act of 1978, United States Code, title 25, sections 19 et seq., as amended through December 31, 1982, must follow the order of preference as determined by the child's tribe.

c. The placing agency shall document in its record any recruitment efforts it made and any requests or decisions made by the child's parent, the tribe, court, or agency which affects the order of placement preference.

3. Recruitment. As required in Laws of Minnesota 1983, chapter 278, section 11, an agency shall make special efforts to recruit adoptive families from among the child's relatives, if feasible, and families of the same minority racial or minority ethnic heritage. The agency may work with various community and religious organizations, as well as the media, and may accept offers of service and monetary contributions to successfully recruit families for adoption.

~~2.~~ 4. The child's foster home. The local social service agency may consider the foster home in which the child is currently living as a potential adoptive resource for the child.

a. In such cases~~, at least one of~~ the ~~following~~ criteria ~~shall~~ in (1)-(3) apply~~:~~.

(1) The child has special needs ~~(physical and mental health, education or social)~~ as defined in C.2. which the foster family will be able to adequately meet~~.~~, or

~~(2)~~ the child is older than an infant, has lived at least ~~twelve~~ 12 consecutive months in the foster home, and is an integrated member of the foster family.

~~(3)~~ (2) The foster family will be able to accept the child and his background and help the child understand his adoption.

~~(4)~~ (3) The foster family is either the best adoptive resource for the child or is at least comparable to available resources.

b. Except in Hennepin, Ramsey, and St. Louis Counties, a joint decision between the state agency's adoption unit and the local social service agency as to whether the foster home would be a suitable adoptive home for the child ~~shall~~ must be made. The agencies shall base their decision ~~shall be based~~ upon:

(1) the local social service agency's written statement and recommendation to the state agency identifying applicable criteria; and

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(2) the state agency's written response either approving or disapproving the recommendation.

c. [Unchanged.]

~~3.~~ 5. Child placement. The ~~following~~ policies ~~shall~~ in a. and b. govern the local social service agency's ~~child-placing~~ preplacement and postplacement activities~~:~~.

a. Preplacement activities~~:~~ must include those in (1)-(5).

(1) The ~~social worker assigned to the adoptive home~~ adoptive family's agency shall, prior to the child being placed in ~~the~~ an adoptive home, meet with the child's agency in a preplacement conference, obtain written background and health history on the child, and visit the child in his foster home. ~~This~~ The preplacement ~~visit~~ conference may only be waived if the child is under six months of age and is without special needs.

(2) The child's ~~social worker~~ agency shall prepare the child for adoptive placement and provide the adoptive parents with a written ~~genetic~~ nonidentifying background and health history of the child in which all identifying information on the child's relatives has been omitted. The history is to be written in a manner which is understandable and meaningful to the adoptive family.

(3) [Unchanged.]

(4) The adoptive parents shall enter into a written adoptive placement agreement with the commissioner.

(5) During the time the child resides in the adoptive home, the local social service agency is not required to schedule a court dispositional hearing unless the child is either removed from the home or is not legally adopted within two years of the date of placement.

b. Postplacement activities must include (1) and (2).

(1) The agency placing the child shall arrange for and obtain written placement and postplacement reports from the agency supervising the child in the adoptive home.

(2) The supervising agency shall provide postplacement counseling with the adoptive parents in a manner that enables the child and adoptive family to become an integrated family.

~~4.~~ 6. Subsidized adoptions~~:~~ ~~This section provides~~. Subparts a.-h. provide standards for determining a child's eligibility for subsidy and the criteria for establishing the terms of the subsidy agreement subject to the commissioner's approval. Subsidized adoption is based upon the needs of the child who is certified as eligible for subsidy and is available through the commissioner ~~of public welfare~~ for a child under legal guardianship of the commissioner or a licensed child-placing agency. The commissioner may review and verify the facts upon which the child's eligibility is based.

a.-b. [Unchanged.]

c. The placing agency shall certify the child as eligible for subsidy ~~when the following criteria are met:~~. The certification must be in writing and signed by the director of the placing agency or the director's designee. The certification must include the conditions and circumstances upon which the child's eligibility is based, and must be sent to the commissioner. A child is eligible for a subsidy when the child's situation meets the criteria in (1)-(5). When a child is placed into a prospective adoptive home without a subsidy but the need for subsidy becomes evident prior to legal adoption, the child-placing agency shall apply only the criteria in (1), (3), and (5) to determine the child's eligibility.

(1) ~~The~~ To be eligible, a child ~~is~~ must be a Minnesota resident and a ward of the commissioner or a licensed child-placing agency.

(2) The agency shall make an early determination on the availability of a home without subsidy, preferably within two months of the time the child ~~becoming~~ becomes legally available for adoption.

(3) A child ~~shall be~~ is eligible for subsidized adoption by ~~his/her~~ the child's foster parents if the following criteria are met and documented:

(a) The child's foster parents desire to adopt the child; ~~and~~

(b) The agency determines ~~the~~ that adoption by the child's foster parents is in the best interest of the child, according to the criteria ~~established~~ in C. ~~2.,~~ ~~of this rule~~ 4.; and~~,~~

(c) The child's circumstances or characteristics make it difficult for the agency to provide the child ~~a~~ with an adoptive home without a subsidy~~, or~~.

(4) The placing agency has made reasonable efforts without success, including the efforts in (a)-(c), to place the child without subsidy. ~~Such efforts include the following:~~

(a) [Unchanged.]

(b) The agency shall contact Hennepin, Ramsey, and St. Louis Counties and Minnesota-based licensed child-placing agencies to seek potential adoptive homes.

(c) The agency may use photo listing services, adoption exchange services, newsletters, or other special efforts to secure a home.

(5) ~~When the child is placed into a prospective adoptive home without a subsidy but the need for subsidy becomes evident prior to legal adoption, the placing agency shall apply the criteria in C.4.c.(1) and (3) to determine the child's eligibility for subsidy.~~

~~(6) The placing agency shall certify to the commissioner, in writing under its director's or designee's signature, the child's eligibility for subsidy. The statement shall include the conditions or circumstances upon which the child's eligibility is based~~ The agency shall determine the child's eligibility for adoption assistance under Title IV-E of the Social Security Act, United States Code, title I, section 101, as amended through December 31, 1982.

d. When determining the amount of subsidy required to meet the child's needs, the placing agency shall consider the financial resources, social security and veterans benefits, health insurance coverage, medical assistance programs, and other resources, including the adoptive parent's resources which are available or which may be available to the child.

(1) ~~Maintenance: Maintenance payments shall be provided as necessary to ensure the adoption of a child. The placing agency shall refer to DPW Rule 44, 12 MCAR 2.044, to determine the amount of a child's monthly maintenance needs for food, clothing, allowances, supplies and transportation. The total monthly maintenance payments may be less than, equal to or more than the basic rate. Amounts greater than the basic rate shall be set according to the difficulty of care standards and the need for the greater amount shall be documented~~ The placing agency shall document the amount of the child's maintenance needs for food, clothing, and shelter which cannot be met by adoptive parent and other financial resources. The monthly maintenance subsidy payment may be less than or equal to the following maintenance standards:

Age	Monthly Maintenance Subsidy
0-5	$200
6-11	230
12-14	260
15-18	290

The state agency shall biannually review and adjust the maintenance rate schedule.

(2) ~~Medical:~~ The placing agency shall determine the medical, dental, surgical, psychiatric, and psychological expenses, and other related costs necessary for the child's care and well-being. In determining the costs, the placing agency shall identify the child's circumstances or conditions that require subsidy. The placing agency shall document:

(a) ~~document~~ The kind and amount of health insurance or other medical financial resources including eligibility for medical assistance available to meet the needs of the child.

(b) ~~Document~~ The actual or estimated expenses for medical, dental, surgical, psychiatric, psychological, or other related needs of the child ~~which~~ when these are not covered by health insurance ~~and/or~~, medical assistance, or other alternative financial or medical resources.

(3) ~~Special costs:~~ The placing agency shall determine whether the child has additional expenses or other costs not included in (1) and (2) ~~of this section~~ which are necessary for the child's care and well-being. The placing agency shall specify the child's special needs and document the actual or estimated expenses required to meet ~~that need~~ those needs.

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(4) The agency record and the subsidy agreement ~~shall~~ must include all relevant facts upon which subsidy payments are based~~,~~ and the amount and frequency of payments. If the amount and frequency of payments are unknown, estimates and the basis for ~~them~~ ~~shall~~ estimates must be included.

e. The placing agency shall prepare in writing the Subsidized Adoption Agreement clearly setting forth the responsibilities of all the parties and the terms and duration of the agreement.

(1) The agreement shall state the responsibilities of the parties as follows~~:~~.

(a) The adoptive ~~parent(s)~~ parents, or in the event of their death or inability to function as ~~parent(s)~~ parents, the subsequent guardian or conservator, shall agree to:

(i) Submit to the commissioner ~~a written statement each year~~ an annual affidavit within ~~thirty~~ ~~(30)~~ days of the anniversary date of the approved agreement ~~to certify~~ which certifies whether the child remains under their care and the need for subsidy continues to exist. The information in the affidavit may be verified by the commissioner.

(ii) Notify the commissioner in writing within ~~thirty~~ ~~(30)~~ days in the event of a change in the child's status caused by one of the events in (aa)-(dd) and its effect on the expenses covered by the subsidy~~:~~.

(aa) Marriage of the child or a parent.

(bb) The child's absence from the home by court action or for any reason for a period of more than ~~thirty~~ ~~(30)~~ days.

(cc) Death of the child or a parent.

(dd) Legal emancipation of the child.

(iii) Notify the commissioner in writing within ~~thirty~~ ~~(30)~~ days of any change which may affect the duration or amount of the subsidy needed.

(iv) Notify the commissioner in writing within ~~thirty~~ ~~(30)~~ days of a change in address to ensure proper mailing of payments.

(v) Participate in and use health insurance, medical assistance, and financial programs available for the child.

(vi) Notify the commissioner in writing at least~~thirty~~ ~~(30)~~ days before a planned medical or special expense covered in the agreement is incurred to ensure prompt payment after expense statements are submitted to the commissioner.

(vii) Notify the commissioner in writing soon after an emergency of the anticipated cost so that the commissioner may begin to budget for that expense.

(viii) Submit expense statements to the commissioner to receive subsidy payments for ~~incurred~~ costs ~~over and above~~ incurred according to the agreement other than the agreed-upon monthly payments~~,~~ ~~but within the parameters of the agreement~~.

(b) The placing agency shall agree to:

(i) specify in the agreement:

(aa) the terms and duration of the subsidy as defined in ~~C.4.~~d.; and

(bb) the effective date of the agreement, which ~~shall be~~ is the date of legal adoption. When the child's needs cannot be met by state and federal programs or other available resources prior to legal adoption, the commissioner shall establish an earlier effective date between the child's placement in the adoptive home and legal adoption~~.~~;

(ii) assist the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator in the review or modification of the agreement~~.~~; and

(iii) assist the commissioner in the review or modification of the agreement.

(c) The commissioner shall agree to make ~~financial~~ the payments in (i)-(iii) to the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator~~,~~ ~~as follows:~~. Payments may be terminated at the written request of the adoptive parents, subsequent guardian, or conservator:

(i) Payments for adoptive placement or legal decree of adoption, regardless of the domicile or residence of the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator at or after the time of application ~~for adoptive placement, legal decree of adoption, or thereafter.~~;

(ii) Monthly payments for the agreed upon maintenance costs and other regular costs ~~as specified in the agreement.~~;

(iii) Payments based upon the expense statements received from the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator for the child's medical or special expenses ~~which are within the parameters of~~ according to the agreement.

~~(iv) Payments may be terminated at the written request of the adoptive parents, subsequent guardian or conservator.~~

(2) When the terms and duration of the subsidy are agreed upon by the parties, the placing agency shall:

(a) prepare six written copies of the agreement~~.~~;

(b) ~~insure~~ ensure that all copies are signed by the adoptive ~~parent(s)~~ parents and the placing agency director or designee~~.~~; and

(c) submit all copies to the State Adoption Unit for the commissioner's approval.

(3) Upon the commissioner's approval, copies of the agreement shall be distributed to the adoptive ~~parent(s)~~ parents and the placing agency. The state agency shall establish an account to reimburse the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator upon the effective date of the agreement or, in instances when monthly payments are made, the month beginning closest to the effective date.

(4) The subsidy agreement shall continue in accordance with its terms as long as the need for subsidy continues and the child remains the legal dependent of the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator.

(5) [Unchanged.]

(6) The adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator may request modification or termination of the agreement at any time by a written contact with the placing agency or the commissioner.

(7) The adoptive parents, subsequent guardian, or conservator have the right to appeal to the commissioner pursuant to Minnesota Statutes, section 256.045, when the commissioner denies, discontinues, or modifies the agreement. The appeal ~~shall~~ must be initiated by a written request to the commissioner within ~~thirty~~ ~~(30)~~ days after receiving written notice of the action or decision from the commissioner or within ~~ninety~~ ~~(90)~~ days if the ~~parent(s)~~ parents show good cause why the request was not submitted within the ~~thirty~~ ~~(30)~~ day time limit.

f. Subsidy payments received according to the terms of the agreement~~,~~ ~~shall~~ do not affect eligibility for any other financial payments ~~(i.e.,~~. These other financial payments include social security, veterans, or other benefits~~)~~, to which a person may otherwise be entitled.

g. The placing agency shall receive a reimbursement from the commissioner ~~equal~~ to the extent appropriations are available up to 100% percent of the reasonable and appropriate cost of providing or purchasing adoption services for a child certified as eligible for a subsidy, including, when necessary, adoptive family recruitment, counseling, special training, and legal fees for finalization. The criteria for reimbursement are:

(1) The child meets the certification requirements of ~~C.4.c~~.

(2) [Unchanged.]

(3) The placing agency has determined that either the partial or full cost of providing or purchasing the adoption services is not reimbursable under other state and federal financial programs.

(4) The placing agency shall submit the proposed purchase of service agreements to the commissioner for approval and for review of anticipated expenses when a purchase of service is used.

(5) [Unchanged.]

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(6) The placing agency shall submit an itemized statement of expenses to the State Adoption Unit for reimbursement prior to June 30 of each fiscal year.

(a) [Unchanged.]

(b) The commissioner shall reimburse the placing agency ~~for~~ to the extent appropriations are available up to 100~~%~~ percent of the expenses that are not reimbursable under other state and federal programs.

h. The commissioner shall work with American Indian child adoption organizations able to be licensed as child-placing agencies. American Indian children, who are protected under the Federal Indian Child Welfare Act of 1978 ~~(25 U.S.C. Section 19 et seq.)~~, United States Code, title 25, sections 19 et seq., as amended through December 31, 1982, and who are certified as eligible for subsidy shall, whenever possible, be served by the tribal governing body, tribal courts, or a licensed Indian child-placing agency.

~~5. Postplacement services. The local social service agency which supervises the child in his adoptive placement is to provide postplacement services.~~

~~a. The local social service agency placing the child shall be responsible for arranging and obtaining written placement and postplacement notes from the agency supervising the adoptive placement.~~

~~6.~~ 7. Termination of adoptive placement.

a. The local social service or licensed child-placing agency supervising the child shall notify the state agency's adoption unit with five ~~(5)~~ working days ~~when~~ that the child's adoptive placement is terminated~~,~~ when one of the following circumstances arise:

(1) [Unchanged.]

(2) The child dies; ~~or~~

(3) The adoptive placement has continued for two ~~(2)~~ years without the formalization of the adoption; or

(4) [Unchanged.]

b. Termination of the adoptive placement by a local social service agency may be made only upon a specific finding of good cause by responsible agency personnel. Good cause exists when the placement is shown to be detrimental to the physical, mental or emotional well-being of the child or the adoptive parents. Prior to seeking the removal of the child from the home, the agency shall:

(1) inform the adoptive parents in writing of the reasons for removal~~.~~; and

(2) in an emergency situation involving danger to the child's health or well-being, request the assistance of the appropriate law enforcement authorities in the immediate removal of the child from the home.

D. Services to children in independent placements.

1. When the local social service agency learns that ~~a parent seeking to place the child desires to place the child with an identified family, the local social service agency shall provide services in evaluating this plan, unless:~~

~~a. The prospective parent is related to the child; or~~

~~b. The natural parent is receiving services with a licensed child placing agency~~ the child's parent or relative seeks to place the child for the purpose of adoption with a person who is an extended family member not defined in A.2.o. as a relative or is personally known to the child's parent, the agency shall:

a. evaluate with the child's parent whether the placement will be in the interest of the child;

b. arrange for a preadoption evaluation of the proposed home when it is needed to determine whether the placement plan is suitable for the child;

c. assist the child's parents in legally freeing the child for adoption; and

d. arrange the adoptive placement according to procedures in C., unless a court of competent jurisdiction has determined that the best interests of the child are served by waiving the requirement of agency placement.

2. When the local social service agency ~~learns~~ is informed by the commissioner that a court of competent jurisdiction has waived the agency placement requirement, whether or not the child is already in the home:

a. the local social service agency shall pursue licensing that home for foster care unless an adoption petition has been properly filed; and

b. the prospective parents shall notify the commissioner of the child's placement within ~~thirty~~ ~~(30)~~ days of that placement unless the commissioner was already involved in the proposed placement.

3. When the local social service agency learns that the ~~natural~~ child's parent ~~and/or~~ or the prospective parent ~~desire to place~~ desires the adoptive placement of the child through the assistance of an unlicensed intermediary, the local social service agency shall take necessary steps, including legal actions, if necessary, to prohibit ~~such a~~ the placement ~~from occurring~~.

4. When the local social service agency learns that the child's parent, legal guardian, prospective parents, or the unlicensed intermediary desire to transport the child into or out of Minnesota for adoptive placement, the local social service agency shall advise the party or parties that ~~such~~ the transportation requires the prior approval and consent of the commissioner.

a. The commissioner shall not give consent to or approval of importation or exportation of the child when a proposed placement was or is being arranged by an unlicensed intermediary even though a court of competent jurisdiction may waive the requirements of agency placement.

b. Applications for importation or exportation of a child must be made by the ~~natural~~ child's parent or legal guardian according to the statutory provisions of both the sending and the receiving states.

5. When the local social service agency learns that a child is residing in a nonrelative home for the purpose of adoption, it shall carry out the duties of the commissioner and provide all appropriate child protection services prescribed in the Public Welfare Licensing Act under Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2, child-placing under Minnesota Statutes, sections 257.03, 257.04, and 257.40, and the Juvenile Court Act under Minnesota Statutes, chapter 260.

a. Local social service agency actions ~~may~~ include~~,~~ ~~but are not limited to~~:

(1) ~~licensing current home or placing the child into a licensed foster home~~ ensuring that the child is returned to a responsible person or agency in the state of origin when the child was imported into Minnesota in violation of statutes;

(2) obtaining temporary legal custody;

(3) ~~providing services to natural parents in making appropriate permanent plans for the child~~ placing the child into a licensed foster home or licensing the current home;

(4) ~~returning the child to a responsible agency in the state of origin when child was imported into Minnesota in violation of statutes~~ providing services to the child's parents in making appropriate permanent plans for the child.

b. In addition, ~~the local social service agency shall,~~ within ~~thirty~~ ~~(30)~~ days~~,~~ of learning that a child resides in a nonrelative home for the purpose of adoption, the local social service agency shall submit to the state agency a full written report of its investigation of the proposed or actual placement. The report shall include:

(1) names and addresses of ~~natural~~ the child's parents, the child, and the intended home;

(2) the names, addresses, dates, and ~~activity on~~ the activities of all individuals involved in the independent placement plan;

(3) the circumstances surrounding the placement plan; and

(4) any ~~promise or actual payments of money, and amounts of such payments~~ compensation, promise of payment, solicitation, receipt of payment by any person to any person for placing or assisting in the placement of the child.

c.-d. [Unchanged.]

E. Services to families applying for adoption.

1. Each local social service agency shall establish ~~an~~ a written intake policy, including social service fees when applicable, which provides for:

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a. performance of a suitability study upon the receipt of a properly filed adoption petition;

b. screening of applications received from potential adoptive parents for children under state guardianship and other adoptable children who have special needs;

c. supervision of adoptive families moving into Minnesota when so requested by the prior state of residence through the state agency's adoption unit; and

d. performance of suitability studies on prospective families when requested by the state agency's adoption unit for out-of-state adoption agencies.

2. Local social service agencies~~, at the minimum,~~ shall consider at a minimum the ~~following~~ basic standards in a., b., and c. when determining the suitability of prospective adoptive ~~homes:~~ parents.

a. The applicant ~~must~~ shall be primarily motivated to meet the child's needs, emotionally mature with healthy interpersonal relationships, in good physical and mental health, and able to adequately support and parent a child in a healthy and emotionally secure environment.

b. The applicant ~~must~~ shall have the capacity to accept and incorporate into his family a child born to other parents and to assist the child in understanding his genetic background and adoption.

c. The applicant, who desires to adopt a child of minority race or minority ethnic heritage, shall demonstrate an understanding and appreciation of the minority heritage and an ability to assist the child with it.

3. The local social service agency is responsible for determining the suitability of adoptive parents whom it has accepted for service.

a. Prospective adoptive ~~homes~~ parents which the local social service agency certifies as suitable for placement of a child shall be registered on the State Adoption Exchange. ~~(~~This requirement is optional for Hennepin, Ramsey, and St. Louis Social Service Agencies.~~)~~

b. Prospective adoptive ~~homes~~ parents deemed unsuitable by the local agency shall be informed in writing of ~~any such~~ that decision. Notification ~~shall~~ must be sent after the agency has counseled with the family on the relevant facts upon which the decision was based.

(1) Prospective adoptive ~~homes~~ parents which the local agency determines are not suitable for an adoptive placement may be further reviewed by that agency, the county welfare or human service board, ~~and/or~~ or the state agency's adoption unit upon the written request of the applicant. ~~Such~~ This review ~~shall be~~ is limited to those factors on which the local agency based its decision.

(2) Grievances arising out of adverse suitability studies are not subject to further administrative review pursuant to Minnesota Statutes, chapter 15, or Minnesota Statutes, section 256.045.

F. Interstate and international adoptive placements.

1. No child ~~shall~~ may be brought into or sent out of ~~the State of~~ Minnesota for adoptive placement into a nonrelative's home unless one of the following conditions is met:

a. The commissioner, as state administrator of the Interstate Compact on the Placement of Children, issues written approval for the importation or exportation pursuant to the requirements of that Compact; or

b. The commissioner has, in non-Compact situations, issued a written consent to importation or exportation of the child, pursuant to applicable state law.

2. The commissioner shall not issue consent or approval for the movement of a child across state lines ~~where~~ if the proposed placement ~~plan~~ is planned or made by an unlicensed third party.

3. The commissioner, upon receipt of all required documentation, shall issue consent or approval for importation when:

a. the foreign country allows the child to be exported for the purpose of adoption in the United States; ~~or~~

b. an authorized child-placing agency in the sending state has ~~custody of~~ adoptive planning rights to the child and requests the importation into Minnesota; or

c. a family plans to move to Minnesota and has a child placed with them according to the laws of the other state or country.

4. The documents required for the commissioner's consent and approval are:

a. an authorized child-placing agency's written confirmation that the family is approved for adoptive placement;

b. a document which identifies the child, his birth date, birthplace, and his parentage; and

c. legal documents which demonstrate that the child has been properly released for adoption.

5. Local social service agencies ~~(~~, other than Hennepin, Ramsey, and St. Louis Counties~~)~~, shall route correspondence directed to out-of-state agencies through the state agency's adoption unit.

G. Legalization of the adoptive placement.

1. The commissioner or an authorized child-placing agency shall initiate the process of legalizing adoptive placements of agency-placed children by sending the petitioner, or his attorney, such nonidentifying information as is needed for completion of the adoption petition.

2. When an adoption petition~~,~~ which fails to meet the filing requirements of Minnesota Statutes, section 259.22, subdivisions 2 and 3~~,~~ is nevertheless filed in a court of competent jurisdiction, the commissioner shall recommend to the court dismissal of that petition.

3. The final report and recommendation on a properly filed petition ~~under~~ of an investigation by the commissioner or an authorized child-placing agency shall be made to the court within the ~~ninety (90)~~ day time period.

a. The report and recommendation to the court on the form prescribed by the commissioner shall verify the allegations in the petition, determine whether the child is a proper subject for adoption, and ascertain the suitability of the proposed family and child to each other. When the child's placement was arranged through the agency, the report shall also include a statement on how the agency applied the order of placement preference in C.2. in selecting the adoptive family. On intercounty adoptions, the order of placement preference is deemed to have occurred when the appropriate authority in the child's country of birth approved the placement of the child abroad.

b. The commissioner or an authorized child-placing agency shall request a continuance of the court when the investigation cannot be completed in the ~~ninety (90)~~ day time period.

~~b.~~ c. A copy of all requests for continuances ~~shall~~ must be filed with the state agency's adoption unit, the servicing agency, and the petitioner's attorney.

H. Postadoption services.

1. ~~Post-adoption services shall be provided to adoptive families, adopted adults, and genetic parents~~ Authorized child-placing agencies shall provide reasonable postadoption assistance and counseling services pursuant to Minnesota Statutes, sections 259.47 and 259.49 to adoptive parents, genetic parents, adult genetic siblings, and adopted persons who have reached the age of 19 at their request in a manner which strengthens the adoption contract and ~~which is within the parameters of applicable state law~~ complies with Minnesota Statutes, sections 259.27, subdivision 3, 259.31, and 259.47, subdivision 4 and applicable federal regulations on confidentiality and privacy of child welfare and adoption records. The agency shall:

~~2.~~ a. prepare general background and health information with the deletion of all identifying information such as names, specific dates, addresses, and locations, ~~shall be prepared~~ to aid the adoptive parents of a minor child or the adopted adult 19 years of age or older in understanding his genetic background and adoption;

b. contact any one of the parties, in a personal and confidential manner;

c. provide the services requested when there is a mutual desire to receive or share information or to have contact;

d. provide services to adult genetic siblings where the agency has determined that:

(1) there is no known violation of confidentiality of a genetic parent who is unknown to the genetic siblings or is deceased; or

(2) the genetic parent has given written consent in order to allow the agency to provide the services requested;

e. provide services to a genetic relative for information or contact upon the written consent of the genetic parent or verification that the genetic parent is deceased;

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f. share with the requesting person what options the agency may consider using to locate the other person; and

g. determine the extent and frequency to which the person contacted wishes to share information or have contact whether directly or through the agency.

2. Upon notice from the state agency adoption unit that the adopted adult of the age specified in the statute requests the original birth certificate, authorized child-placing agencies shall locate and notify each genetic parent named on that certificate. The agency shall:

a. make complete and reasonable efforts within six months to locate and notify the genetic parent in a personal and confidential contact of the right to file an affidavit with the state registrar and the effects of filing within the time allowed an affidavit of disclosure or nondisclosure, or of filing nothing, on the original birth certificate information; and

b. file through the state agency adoption unit the agency affidavit of notification for the state registrar that each named genetic parent was located and notified, was not located and notified, or was found to be deceased.

3. An authorized child-placing agency shall, as required by Minnesota Statutes, section 259.47, subdivision 1, make a diligent effort to locate and inform genetically related persons of the medical or genetic information the agency has received. If the genetically related person is an adopted minor, the agency shall relay the information to the adoptive parent, subsequent guardian, or conservator. The agency shall make a diligent effort to notify the genetic parents when the agency learns that the adopted person has died.

4. Adopted persons of adult age placed for adoption by an authorized agency on or after August 1, 1982, may, under Minnesota Statutes, section 259.47, subdivision 3, upon reaching adult age, request from the placing agency the name, last known address, birth date, and birthplace of the genetic parents who were identified on the adopted person's original birth certificate. The agency shall:

a. determine that the agency has on file the genetic parent's affidavit attesting to receipt of information in the provisions of Minnesota Statutes, section 259.47, subdivision 3;

b. determine that the genetic parent either has not filed a subsequent affidavit objecting to the release of identifying information or has withdrawn that affidavit;

c. disclose the identifying information to the adopted person when condition a. is met and when the agency has verified that condition b. exists or that the genetic parent is deceased; and

d. contact the genetic parent if requested by the court upon the adopted person's petition for release of identifying information. The agency shall advise the genetic parent of the opportunity for that genetic parent to present evidence in the court, either directly or through the agency, that nondisclosure of the information is a greater benefit to the genetic parent than disclosure to the adopted person.

~~3. Local social service~~ 5. Authorized child-placing agencies shall provide liaison and skilled counseling services through appropriately trained social workers to the adoptive parents, adopted ~~adult~~ adults who have reached the age of 19, genetic parents, ~~and/or~~ and adult genetic siblings ~~where there exists a mutual desire to arrange contact and there exist no known factors prohibiting such contact~~.

~~4. Local social service~~ 6. Authorized child-placing agencies shall ~~maintain a record of all such~~ document the postadoption services provided in ~~each individual's~~ the agency's adoption service record.

7. Authorized child-placing agencies may require a reasonable expense reimbursement for providing postadoption services.

I. Maintenance of adoption records.

1. ~~Content: Each child's~~ The adoption ~~record~~ records of authorized child-placing agencies shall contain copies of all relevant legal documents, responsibly collected genetic, medical, and social history, the child's placement record; documentation of the placement preference in C.2., copies of all pertinent agreements or contracts, copies of all reports and recommendations to the court, and copies of all pertinent correspondence and a summary of postadoption services. Nonidentifying information in the agency record may be disclosed to the parties it concerns according to the criteria in C.5.a.(2) and H.1.a. Identifying information may not be disclosed except under Minnesota Statutes, sections 259.31, 259.47, subdivision 3, and 259.49. The agency shall maintain a record of the postadoption services provided under H.1.-7. Disclosure of identifying information within the standards of H.4. does not constitute disclosure of the agency's adoption record.

2. ~~Use:~~ Each adoption record ~~shall constitute~~ constitutes the permanent record upon which all court action is based, agency services are administrated, and the adoptive family unit is identified and established.

3. All adoption records are confidential and permanent. Adoption records must be retained under a protected record system which ensures confidentiality and lasting preservation.

Department of Transportation

Proposed Adoption, Amendment and Repeal of Rules Governing State-Aid Operations Under Minnesota Statutes Chapters 161 and 162.

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Commissioner of Transportation intends to adopt—without a public hearing—newly proposed rules, as well as amendments to, or repeal of, existing rules of the Department of Transportation which create a county state-aid highway system (C.S.A.H.) and a municipal state-aid street system (M.S.A.S.), within cities having a population of 5,000 or more; which are to be established, located, constructed, reconstructed, improved, and maintained as public highways. In addition, the Commissioner proposes to adopt a formula to distribute town road funds from the account in the county state-aid highway fund which would be used if a county does not adopt its own.

The Department of Transportation has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 14.21 to 14.82 (1982).

The proposed rules are authorized by Minn. Stat. §§ 161.082, 161.083, 162.02, and 162.09; as well as Laws of Minnesota 1983, chapter 17. The proposed rules, if adopted, would:

1. Simplify the procedure whereby cities and counties designate M.S.A.S. and C.S.A.H. routes,
2. reduce the minimum urban state-aid street widths for certain routes to 44 feet, curb to curb,
3. answer publicly expressed interest on:
   a. standards for bridge replacement, generally.
   b. standards for town bridge replacements, specifically.
   c. construction standards, including—
      a. width changes for city streets,
      b. design changes for city street and rural county state-aid highway projects.
   d. a variety of related administrative and financial practices of the Minnesota Department of Transportation.

The Department of Transportation has prepared a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and identifies that data and information relied upon by Mn/DOT to support the rule. Copies of the statement of need and reasonableness and of the proposed rules are available and may be obtained by contacting:

Gordon M. Fay
State-Aid Engineer
Office of State-Aid
Technical Services Division - 420
Minnesota Department of Transportation
St. Paul, Minnesota 55155
(Telephone: 612-296-9872).

Interested persons have 30 days, until February 6, 1984, to submit comments on the proposed rules. The proposed rules may be modified if the data and views submitted to the Department warrant modification and the modification does not result in a substantial change in the proposed rule.

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Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event that a public hearing is required, Mn/DOT will proceed according to the provisions of Minn. Stat. § 14.11-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Mr. Fay, at the address and telephone number previously stated, no later than February 6, 1983. If a person desires to request a public hearing, Mn/DOT requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Upon adoption of the rules by the Commissioner, the rules as proposed, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be sent to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Fay, at the address previously stated.

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

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

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

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

December 19, 1983

Richard P. Braun
Commissioner

Rule as Proposed

14 MCAR § 1.5032 Rules for State-aid operations under Minnesota Statutes chs., chapters 161 and 162~~, (1978) as amended~~.

A. ~~Purpose. The purpose of 14 MCAR § 1.5032 is to carry out the mandate of the legislature and to effectuate that mandate as set forth in Minnesota Statutes ch. 162 (1978), as amended.~~

~~B. Scope. The scope of 14 MCAR § 1.5032 is confined within the framework of and consistent with Minnesota Statutes chs. 161 and 162 (1978), as amended.~~

~~C.~~ Definitions. For purposes of ~~14 MCAR § 1.5032~~ this rule the following terms ~~shall mean~~ have the meanings given them:

1. "Commissioner~~.~~" means the commissioner of transportation.

2. "State-aid engineer~~.~~" means a registered engineer employed as the state-aid engineer of the Minnesota Department of Transportation.

"District engineer~~.~~" means a district engineer of the Minnesota Department of Transportation or a registered engineer employed as his state-aid assistant.

4. "District state-aid engineer" means a registered engineer employed as the district state-aid engineer.

5. "County highway engineer~~.~~" means a registered engineer employed as the county highway engineer or the director of public works-county highway engineer of each county.

~~5.~~ 6. "City engineer~~.~~" means a registered engineer employed as the city engineer or the director of public works-city engineer of each urban municipality.

~~6.~~ 7. "Needs report~~.~~" means a report of the estimated construction cost required to improve a state-aid system to standards adequate for future traffic on a uniform basis.

~~7.~~ 8. "County-municipal account~~.~~" means a separate record of that portion of the county state-aid highway funds allocated for expenditure solely within cities~~,~~ having less than 5,000 population.

~~8.~~ 9. "Urban municipality~~.~~ ~~Any~~" means a city~~,~~ having 5,000 or more population, determined in accordance with the provisions of law.

~~9.~~ 10. "Local highway or street ~~departments.~~ department" means the highway or appropriate department of each county and each urban municipality.

~~10.~~ 11. "Township allotment~~.~~" means the county apportionment of county state-aid highway funds for use in the construction of township roads.

~~11.~~ 12. "Advance encumbrance~~.~~" means the authorized expenditure of local funds, in lieu of state-aid funds, by a county or municipality for use on an approved state-aid project. By agreement with the commissioner, the local funds will be repaid to the county or urban municipality from future county or municipal state-aid allotments or from future county or municipal turnback funds.

~~12.~~ 13. "Screening ~~committee.~~ board" means the county or municipal ~~committee,~~ board appointed in accordance with law~~,~~ and authorized to recommend to the commissioner the mileage and money needs for each of their state-aid systems.

~~13.~~ 14. "Disaster account~~.~~ ~~The accounts~~" means an account provided by law for use in aiding a county or urban municipality that has suffered a serious damage to its county state-aid highway system or municipal state-aid street system from fire- flood, tornado, or other uncontrollable forces of such proportion that the cost of repairs to ~~such~~ that county state-aid highway system or municipal state-aid street system is beyond the normal resources of the county or urban municipality.

~~14.~~ 15. "Trunk highway turnback~~.~~" means a former trunk highway or portion ~~thereof~~ of it that has reverted to a county or municipality in accordance with law.

~~15.~~ 16. "Turnback ~~accounts.~~ account" means the ~~respective accounts~~ account provided by law for payment to the county for the restoration of or to the urban municipality for the reconstruction and improvement of former trunk highways that have reverted to the county or municipality and have become part of the state-aid system.

~~16.~~ 17. "Disaster ~~committee.~~ board" means a ~~committee~~ board, appointed in accordance with ~~the~~ law, to investigate and report its findings and recommendations to the commissioner as to a county's or urban municipality's claim of a disaster or unforeseen event affecting its county state-aid highway or municipal state-aid street system and resulting in a financial hardship.

~~17.~~ 18. "Local road research board~~.~~" means a board appointed in accordance with ~~these rules~~ K. to recommend specific research projects to the commissioner.

~~18.~~ 19. "Town bridge ~~needs.~~ need" means the estimated construction ~~costs~~ cost required to improve or replace a town ~~bridges~~ bridge to conform to standards adequate for future traffic on a uniform basis.

~~19.~~ 20. "Town bridge account~~.~~" means the apportionment of county state-aid turnback funds for use in the construction or reconstruction of bridges on township roads.

~~20.~~ 21. "Town road account" means the apportionment of county state-aid turnback funds for use in the construction or reconstruction of township roads.

22. "Functional classification plan~~.~~" means a plan by which highways and streets are grouped into classes according to the character of service they are intended to provide.

~~21.~~ 23. "Variance committee~~.~~" means a committee appointed in accordance with ~~these rules~~ L.4. to investigate and make recommendations to the commissioner on requests for variances from ~~these rules~~ this rule.

24. "Agency agreement" means an agreement between a city, county, or other governmental unit and the commissioner by which the city, county, or other governmental unit may appoint the commissioner as the agent, with respect to federally funded projects, to accept and receive federal funds made available for projects and to let contracts in accordance with law for the construction or improvement of local streets or roads or other construction projects.

25. "Technical assistance agreement" means an agreement between a city, county, or other governmental unit and the commissiner by which the city, county, or other governmental unit requests the state to furnish technical and engineering assistance pursuant to law.

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26. "City of the first class" has the meaning given it in Minnesota Statutes, section 410.01.

27. "Construction and reconstruction of town roads" means the construction of a new town road or the reconstruction of a town road or any part of a town road upon which new or improved traffic service will be provided. At a minimum, reconstruction consists of the resurfacing of a gravel roadway with aggregate at the rate of 700 tons per mile or the application of an aggregate seal to a bituminous surfaced roadway.

28. "Town road mileage" means mileage on a road that is maintained by a town or any other local unit of government acting as a town and open to the traveling public a minimum of eight months of the year as certified by the county highway engineer.

~~D.~~ B. Organization and powers of local highway departments. Each county and each urban municipality shall establish and maintain a highway or street department. ~~Such~~ These departments ~~shall~~ must be adequately organized, staffed, and equipped to administer for the county or urban municipality ~~all~~ matters relating to the operations of the state-aid program and to exercise all functions~~,~~ incidental therto, in accordance with law. ~~All~~ Preparation of plans and specifications~~,~~ and ~~the~~ supervision of construction and maintenance ~~shall~~ must be under the control and direction of a professional engineer, registered in the state of Minnesota and employed or retained for that purpose.

~~E.~~ C. Selection and designation of state-aid systems. The state-aid highways and streets designated to form the basis for a long-range improvement program ~~shall, in general,~~ must be so selected as to form an integrated network of highways and streets in accordance with the following provisions:

1. ~~Systems.~~

~~a.~~ Final selection of routes to be included in the respective county state-aid and municipal state-aid systems ~~shall be~~ are subject to the approval of the commissioner. These routes may be established on new locations where no existing roadway exists or may be located upon or over an established roadway or specified portion of a roadway.

~~b.~~ The highway and street systems to be selected and designated in accordance with law are:

~~(1)~~ a. a county state-aid highway system not exceeding 30,000 miles in extent, excluding trunk highway turnback mileage~~.~~;

~~(2)~~ b. a municipal state-aid street system not exceeding 2,500 miles in extent within urban municipalities, excluding trunk highway turnback mileage.

~~(a) On 28-foot~~ For an undivided, one-way ~~street~~ street with a minimum width of 28 feet and with no parking ~~lanes~~ lane or with a maximum width of 36 feet with parking on one side, the chargeable mileage allowed for municipal state-aid street mileage purposes ~~shall be~~ is one-half of the length of the one-way street.

2. ~~Criteria.~~ A state-aid ~~routes shall~~ route must be selected on the basis of the following criteria:

a. a county state-aid ~~highways~~ highway which:

(1) is projected to carry a relatively heavier traffic ~~volumes~~ volume or ~~are~~ is functionally classified as collector or arterial as identified on the county's functional plans as approved by the county board;

(2) ~~And connect~~ connects towns, communities, shipping points, and markets within a county or in adjacent counties;

~~(a)~~ or ~~provide~~ provides access to rural churches, schools, community meeting halls, industrial areas, state institutions, and recreational areas;

~~(b)~~ or ~~serve~~ serves as a principal rural mail ~~routes~~ route and school bus ~~routes~~ route;

(3) ~~And occur~~ occurs at reasonable intervals consistent with the density of population; and

(4) ~~And provide~~ provides an integrated and coordinated highway system~~,~~ affording, within practical limits, a state-aid highway network consistent with projected traffic demands~~.~~; or

b. a municipal state-aid ~~streets~~ street which:

(1) is projected to carry a relatively heavier traffic ~~volumes~~ volume or ~~are~~ is functionally classified as collector or arterial as identified on the urban municipality's functional plan as approved by the urban municipality's governing body;

(2) ~~And connect~~ connects the points of major traffic interest within an urban municipality; and

(3) ~~And provide~~ provides an integrated street system affording, within practical limits, a state-aid street network consistent with projected traffic demands.

3. With regard to route designations~~.~~ ~~All~~, county state-aid highways and municipal state-aid streets ~~shall~~ must be selected by ~~resolution of~~ the respective boards of county commissioners, or the respective governing bodies of urban municipalities. The highway or street ~~designations, as contained in the resolution,~~ ~~shall~~ selections must be reviewed by the district state-aid engineer of that area and his recommendation ~~shall~~ must be filed with the commissioner. Upon preliminary approval of the commissioner, the respective boards will establish the route by designation. The commissioner after receipt of each ~~such~~ resolution ~~and recommendation~~ shall approve all or such part of ~~said~~ the highway or street designations contained in the resolution, as complies with the criteria set out in ~~these rules~~ this rule. The commissioner shall certify to the respective boards of county commissioners or governing bodies ~~or~~ of urban municipalities the approved portion of the highway or street designation. ~~All~~ Highways or streets so approved shall become a part of the county state-aid highway system or the municipal state-aid street system, subject to ~~such~~ additions or revisions as may be, from time to time, requested and approved.

a. With regard to turnback designations~~.~~, prior to release of a former trunk highway to the jurisdiction of a county or urban municipality, the commissioner shall notify the board of county commissioners or the governing body of the urban municipality through its county highway or city engineer, which portions of the turnback are eligible for designation as part of its state-aid system and which portions are eligible for restoration or reconstruction and improvement with turnback funds. Upon a request for the designation of ~~such~~ eligible portions of of the turnback from the board of county commissioners or the governing body of the urban municipality, the comissioner shall issue the official order for designation and notify the county or municipal screening ~~committee~~ board of this action.

~~F. State aid apportionments. All state aid apportionments shall be made from the county state aid highway fund and the municipal state-aid street fund as provided by law. Apportionments to the respective counties and urban municipalities shall released in accordance with G.~~

~~1.~~ D. Money needs and apportionment determination.

~~a. Construction costs estimates.~~ 1. To provide data to implement the formulas for state-aid apportionment, each county highway engineer and city engineer shall prepare cost estimates of construction required to improve ~~his~~ the county state-aid or municipal state-aid system to approved standards.

~~b. Incidental costs.~~ 2. In addition to the direct construction or maintenance costs permitted under law, the cost of the following incidental items will be considered as eligible for inclusion in the total estimate of needs:

~~(1)~~ a. county state-aid highways:

~~(a)~~ (1) right-of-way on new construction;

(2) automatic traffic control signals~~.~~;

~~(b)~~ (3) lighting of intersections and bridges within approved standards~~.~~; and

~~(c)~~ (4) proportionate share of ~~all~~ drainage costs within municipalities, to reflect the responsibility of the state-aid highway~~.~~;

~~(2)~~ b. municipal state-aid streets:

~~(a)~~ (1) right-of-way~~.~~;

~~(b)~~ (2) automatic traffic control signals~~.~~;

~~(d)~~ (3) lighting of intersections and bridges within approved standards~~.~~; and

~~(d)~~(4) proportionate share of all drainage costs, to reflect the responsibility of the state-aid street~~.~~;

~~c. Deductible items.~~ 3. The respective screening ~~committees~~ boards shall consider reports from the commissioner, consisting of~~,~~ ~~but not limited to,~~ the county state-aid allotments to townships, or the municipal state-aid payments for construction or right-of-way on state trunk highways or county state-aid highways, covering ~~all said~~ allotments or payments made during the preceding year; and shall recommend to the commissioner the amount of deductions to be made in the money needs for each ~~such~~ county or municipality, in order to equalize ~~their~~ its status with other counties or municipalities not making similar expenditures.

~~2. Screening committees.~~

~~a. Annual reports.~~ 4. A detailed report of the state-aid mileage and cost estimates ~~shall~~ must be tabulated and referred to the respective screening ~~committees~~ boards appointed pursuant to law. These ~~committees~~ boards shall investigate

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and review ~~all such~~ mileage, cost estimates, and the reports of those expenditures listed under deductible items, and shall, on or before ~~the first day of~~ November 1 of of each year, submit their findings and recommendations in writing to the commissioner as to the mileage and adjusted money needs for each of the governmental subdivisions represented by the respective ~~committees~~ boards.

~~b. Local road research account. Within the limitations provided by law, the respective screening committees shall annually determine, and recommend, the amount the commissioner shall set aside from the county state aid highway fund or the municipal state aid street fund, for the purpose of local road research. These funds, along with such federal funds as may be provided, shall be used for conducting research as provided by law. The use and proportionate share of such county and municipal funds shall be as specifically authorized in the project approval as provided for in L., 3., b.~~

~~3. Compilation of data by commissioner.~~ 5. The commissioner shall determine the apportionment percentage due each county and urban municipality in accordance with the formulas established by law.

~~4. Notice of annual apportionment~~ E. State-aid apportionments. State-aid apportionments must be made from the county state-aid highway fund and the municipal state-aid street fund as provided by law. Apportionments to the respective counties and urban municipalities must be released in accordance with F.

1. Not later than January 25 of each year, the commissioner shall certify the annual apportionment to each respective county or urban municipality.

~~G. State-aid payments. Annual apportionments to the respective counties and to urban municipalities shall be released in the following manner:~~

~~1.~~ a. For maintenance apportionments, and as soon as the annual county and urban municipal state-aid allotments have been determined, the commissioner shall apportion and set aside the following amounts:

~~a. county regular account. Forty~~ (1) 40 percent of the regular county state-aid allotment for the general maintenance of county state-aid highways~~.~~;

~~b. county municipal account. Forty~~ (2) 40 percent of the county-municipal account allotment for the maintenance of the county-state-aid highways within municipalities of less than 5,000 population~~.~~;

~~c.~~ (3) for revisions of county maintenance apportionments~~.~~, the commissioner may, upon recommendation of the screening ~~committee~~ board or upon receipt of a resolution from a county board and for good cause shown, increase or decrease the proportion to be used for maintenance under either ~~G.1.a. and/or b. above.~~ (1) or (2); and

~~d.~~ (4) for the urban account~~. Twenty-five~~, 25 percent of the total allocation, or $1,500 per mile of improved municipal state-aid streets, whichever is ~~the least~~ less, as the minimum allotment for the general maintenance of the approved state-aid system. The commissioner may modify the minimum payment to the extent necessary to accommodate the screening ~~committee~~ board resolutions pertaining to trunk highway turnback maintenance allowances. Those municipalities desiring to receive an amount greater than the established minimum shall file a request not later than December 15 preceding the annual allocation and shall agree to file a detailed annual maintenance expenditure report at the end of the year.

~~e. Transfer of unexpended balance. Any unobligated balance remaining in the state aid maintenance account to the credit of any county or urban municipality, after final settlemtn has been made for the annual maintenance expenditures, shall be automatically transferred to the construction account of said county or municipality.~~

~~f. Payment schedule.~~ b. The construction portion of the annual allocation to each county and urban municipality must be credited to the respective accounts and retained by the commissioner for payment on approved projects.

c. The town bridge account portion of the annual allocation of the county state-aid turnback account must be credited to each respective county and retained by the commissioner for payment on approved projects.

d. The town road account portion of the annual allocation of the county state-aid turnback account must be set aside and credited to each respective county.

F. State-aid payments. Annual apportionments to the respective counties and urban municipalities must be released in the following manner:

1. At the earliest practical date, after the allotments have been determined, the commissioner shall release the following amounts to the respective counties and urban municipalities:

a. One hundred percent of the town road account.

b. Maintenance funds:

(1) Fifty percent of the maintenance allotment from the regular account of each county.

(2) Fifty percent of the maintenance allotment from the municipal account of each county that has filed a request for advance payments prior to the annual apportionment in January of each year. ~~Such~~ The request ~~shall~~ must include the estimate of the maintenance expenditures anticipated within ~~said~~ the municipal account during the calendar year.

(3) Fifty percent of the maintenance allotment to each urban municipality.

~~g.~~ (4) On or about July 1 of each year, the commissioner shall release an additional advance from the respective maintenance accounts listed above, in an amount not to exceed ~~forty~~ 40 percent of the total maintenance allocations. ~~The commissioner shall retain the remaining amounts within said allocations pending determination of the final amount due, based upon a report of actual maintenance expenditures and receipt of the district engineer's certification of acceptable maintenance performance. Urban municipalities receiving the minimum maintenance allotment as outlined in 14 MCAR § 1.5032 G.1.d. above will be eligible to receive the balance remaining in their maintenance account upon the commissioner's receipt of the district engineer's certification of acceptable maintenance.~~

~~2. Construction apportionments. The construction portion of the annual allocation to each county and urban municipality shall be credited to their respective accounts and retained by the commissioner for payment on approved projects in accordance with the following procedure:~~

~~a.~~ (5) The remaining maintenance funds will be released to the counties and urban municipalities upon receipt of their report of actual maintenance expenditures except that those urban municipalities that receive the minimum maintenance allocation will receive their remaining maintenance money on or about December 15.

(6) An unobligated balance remaining in the state-aid maintenance account to the credit of a county or urban municipality, after final settlement has been made for the annual maintenance expenditures, must be automatically transferred to the construction account of that county or municipality.

c. Construction funds:

(1) State-aid contracts. The commissioner, upon receipt of an abstract of bids and a certification as to the execution of a contract and bond therein, shall promptly release from the funds available to ~~said~~ the county or urban municipality up to ~~ninety-five~~ 95 percent of the state-aid portion of ~~said~~ the contract. The commissioner, unless otherwise requested, shall retain the remaining percentage of the state-aid share of ~~said~~ the contract, provided funds are available therefor, until the final cost is determined and the project accepted by the district engineer.

~~b.~~ (2) Federal-aid contracts. The commissioner, under authority of an agency agreement with the governing body of a county ~~or~~, urban municipality, or other governmental unit and acting as its agent in federal-aid operations, will release from state-aid funds available therefor, ~~ninety-five~~ 95 percent of the county's or urban municipality's share of the entire contract obligation for immediate ~~redeposit in an~~ transfer to the agency account, to be used in paying the county's or urban municipality's share of the partial estimates and for advancing the federal share of ~~such~~ those estimate payments. The commissioner shall retain the remaining percentage of the contract cost of ~~said~~ the project until the final cost is determined and the project accepted by the district engineer. Where other than state-aid funds are to be used for depositing in the agency account, ~~one hundred~~ 100 percent of the local governmental share of ~~said~~ the contract amounts ~~shall~~ must be deposited in the agency account prior to award of the contract.

~~c.~~ (3) Force account agreements. Partial estimates will be accepted on all projects approved for construction by local forces using the agreed unit prices for determining the value of the completed work. The commissioner shall promptly release from funds available therefor ~~ninety-five~~ 95 percent of the cost of current accomplishments as reported by ~~said~~ the partial estimates. Upon request of the county or urban municipality, the commissioner will set aside and retain ~~their~~ its state-aid funds in an amount equal to the agreed total cost of the entire project to ensure final settlement of the completed construction when the final estimate is submitted and upon acceptance by the district engineer.

~~d.~~ (4) Payment limitations. Approval of state-aid projects by the commissioner does not imply that state-aid payments will be made in excess of the construction funds available from current state-aid allotments. ~~Any~~ A county or urban municipality having depleted ~~their~~ its currently available funds during the calendar year will not be eligible for reimbursement

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from future allotments unless a request for advance encumbrance has been approved or a project is completed in a subsequent year and funds are available.

~~e.~~ d. Engineering costs~~.~~:

(1) ~~Preliminary engineering.~~ Requests for reimbursement of preliminary engineering costs ~~shall~~ must be submitted with the report of state-aid contract or with the initial partial estimate on an approved force account project. The commissioner ~~shall~~, upon receipt of ~~such~~ this request supplemented by ~~such~~ documentation as may be requested by the commissioner, shall authorize the reimbursement for actual engineering costs, not to exceed ~~eight~~ ten percent of the total estimated contract or agreement amount.

(2) ~~Construction engineering.~~ Requests for payment of construction engineering costs ~~shall~~ must be submitted along with the final estimate report. The commissioner ~~shall~~, upon receipt of ~~such~~ this request, shall authorize a construction engineering payment which will either be limited to ~~five~~ eight percent of the eligible construction costs where there are no unusual traffic or construction problems, or which may at the commissioner's discretion be paid in the maximum amount of ~~ten~~ 12 percent of ~~said~~ the construction costs on complex projects involving difficult construction features or the continuous movement of dense traffic.

~~f. Right of way.~~ e. State-aid payments for right-of-way costs on approved projects ~~shall~~ must be limited to ~~ninety-five~~ 95 percent of the approved claim until the acquisition of ~~all~~ right-of-way required for the project is actually completed and the final costs established.

~~g. Advances~~ f. Advance encumbrances.

(1) With regard to an advance from county funds~~.~~, when the commissioner approves a request from the county board for the construction of an approved county state-aid project, which requires county state-aid highway funds in excess of the available allotment, and ~~which~~ these excess costs will be initially paid for from other local sources, then and in that event, the commissioner will, to the extent authorized by law, repay those locally financed expenditures out of subsequent construction or turnback apportionments to the county's state-aid accounts in accordance with the terms and conditions specified in the approved request.

~~h. Advance of county state-aid highway funds.~~ (2) With regard to an advance of county regular accounts funds to a county municipal account fund~~.~~ ~~Where~~, when the commissioner approves a request from the county board for the advance of county regular account funds for use on a municipal section of an approved county state-aid highway project, and ~~where~~ when repayments to the county regular account fund are to be made from subsequent accruals to the county municipal account fund, ~~such~~ the repayments will be made by the commissioner, to the extent authorized by law, in the form of transfers from the county municipal account fund to the county regular account fund, in the amounts and at the time specified in the authorization.

~~i. Advances~~ (3) With regard to an advance from urban municipal funds~~.~~, when the commissioner approves a request from the governing body of an eligible urban municipality for the construction of an approved municipal state-aid street project, which requires funds in excess of the available allotment and ~~which~~ these excess costs will be initially paid from other local sources, then and in that event, the commissioner will, to the extent authorized by law, repay these locally financed expenditures out of subsequent construction or turnback apportionments to the urban municipal account of that municipality in accordance with the terms and conditions specified in the approved request.

~~j.~~ (4) With regard to an advance from a town bridge account, when the commissioner approves a request from the governing body of a county for the replacement or reconstruction of a town bridge which will require funds in excess of the county's available town bridge account and these excess costs will be initially paid for from other sources, then and in that event, the commissioner will reimburse those locally financed expenditures out of subsequent apportionments to the town bridge account in accordance with the terms and conditions specified in the approved request. The total of these advances to be reimbursed from the town bridge account must not exceed 40 percent of the last town bridge apportionment. Advances must be repaid in accordance with the terms of the approved request from money accruing to the respective town bridge accounts.

g. With regard to a county or municipal bond account~~.~~ ~~Any~~, a county or urban municipality that resolves to issue bonds payable from the appropriate state-aid fund in accordance with law for the purpose of establishing, locating, relocating, ~~construction~~ constructing, reconstructing, or improving state-aid streets or highways under its jurisdiction shall certify to the commissioner within ~~thirty~~ 30 days following issuance of the bond, the amount of the total obligation and the amount of principal and interest that will be required annually to liquidate the bonded debt. The commissioner shall set up a bond account ~~therefor~~, itemizing the total amount of principal and interest involved and ~~he~~ shall annually certify to the commissioner of finance the amount needed from the appropriate state-aid construction fund to pay the principal due on the obligation, and the amount needed from the appropriate state-aid maintenance fund to pay the current interest. Proceeds from bond sales are to be expended only on approved state-aid projects and for items determined to be eligible for state-aid reimbursement. A county or urban municipality which intends to expend bond funds on a specific state-aid project shall notify the commissioner of this

intent ~~forthwith~~ without delay upon ~~the award of~~ awarding a contract or ~~the execution of~~ executing a force account agreement. Upon completion of each such project, a statement of final construction costs ~~shall~~ must be furnished to the commissioner by the county or the urban municipality.

~~k.~~ h. Municipal state-aid funds for county state-aid or trunk highway projects. The governing body of an urban municipality desiring to use a portion of its state-aid funds for improvements within its boundaries of ~~any~~ a state trunk highway or county state-aid highway, shall ~~request such authorization by resolution.~~ have the plans approved by the state-aid engineer before the award of contract and shall have a resolution requesting the off-system expenditure approved by the commissioner before ~~any such~~ funds are released for ~~said~~ these purposes~~, the resolution shall be approved by the commissioner. A copy of the approved resolution shall be filed with the state-aid engineer.~~ This subparagraph does not apply to payments made for interest on bonds sold under Laws of Minnesota 1959, chapter 538.

~~3. Semiannual statements.~~ 2. Within ~~thirty~~ 30 days after the close of each six-month period, the commissioner shall submit to each county or urban municipality semiannual statements as to the status of its respective state-aid accounts.

~~4. Other authorized payments.~~ 3. Certain specific allotments or transfers of state-aid funds have been authorized by law. These will be processed as ~~hereinafter provided~~ follows:

a. As to transfers for hardship conditions ~~or other local use.~~, the county board or governing body of ~~any~~ an urban municipality desiring to use a part of its state-aid funds for this purpose shall certify to the commissioner ~~either that all of its existing state-aid routes are improved to state-aid standards or~~ that it is experiencing a hardship condition in regard to financing its local roads or streets, while holding its current road and bridge levy equal to or greater than ~~said~~ the levy for previous years. ~~Where a hardship transfer is requested, the commissioner shall act to authorize or deny the transfer of state-aid funds for use outside of the approved state aid system. Upon approval of~~ If the requested transfer is approved, the commissioner, without requiring ~~any~~ progress reports~~, shall~~ and within ~~thirty~~ 30 days, shall authorize either immediate payment of not less than ~~fifty~~ 50 percent of the total amount authorized, with the balance to be paid within ~~ninety~~ 90 days~~;~~, or schedule immediate payment of the entire amount authorized if he determines ~~there are~~ sufficient funds are available.

b. As to transfers for other local use, the county board or governing body of an urban municipality desiring to use a part of its state-aid funds on local roads or streets not on an approved state-aid system, shall certify to the commissioner that its state-aid routes are improved to state-aid standards or are in an adequate condition which does not have needs other than additional surfacing or shouldering needs as identified in its respective state-aid needs report. While preliminary approval is desirable, a construction plan for a local road or street not on an approved state-aid system and not designed to state-aid standards may not be given final approval by the office of state aid unless the plan is accompanied by a resolution from the respective county board or urban municipality that indemnifies, saves, and holds harmless the state of Minnesota and its agents and employees from claims, demands, actions, or causes of action arising out of or by reason of a matter related to the constructoin of the local road or street as designed; that is approved by the respective county board or urban municipality; and that agrees to defend at the sole cost of the county or urban municipality any claim arising as a result of constructing the local road or street. Payment for the project will be made in accordance with F.1.c.

c. As to township allotments~~.~~, upon receipt of a certified copy of a county board resolution~~,~~ allocating a specific amount of ~~its~~ the county state-aid construction funds for aid to ~~its~~ the county's townships, ~~which resolution shall indicate~~ upon indicating compliance with the law governing ~~such~~ these allocations, and ~~be forwarded~~ upon forwarding the resolution to the commissioner on or before the second Tuesday ~~of~~ in January of each year, the commissioner shall authorize payment of the amount requested for distribution by the county for the construction of township roads.

~~e.~~ d. For the construction of selected park projects~~.~~ and as provided by law, a portion of the county state-aid highway funds ~~shall~~ must be set aside and used for the construction, reconstruction, and improvement of county state-aid highways ~~which provide~~ providing access to the headquarters of or the principal parking lot located within a state park. ~~Such~~ These funds~~, so~~ set aside~~, shall~~ must be expended for this purpose only on a request from the commissioner of natural resources. Projects ~~so~~ selected will be approved by the commissioner of transportation in accordance with the procedure established for other state-aid operations.

~~d. Disaster account. Any~~ e. A disaster appropriation approved by the commissioner for a county or urban municipality in accordance with law, ~~shall~~ must be promptly paid to the county or urban municipality for which ~~such~~ the

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appropriation was authorized. The funds so allotted and paid to the county or urban municipality ~~can~~ may only be spent for the purpose for which they were authorized, and within a reasonable time period specified by the commissioner. ~~Forthwith~~ Immediately upon completion of the work for which the disaster payment was made~~,~~ or the expiration of the time specified for doing ~~such~~ the work, whichever occurs first, the county or urban municipality shall file a report certifying the extent of the authorized work completed~~,~~ and showing the total expenditure made ~~therein~~. In the event the total disaster allotment was not required or used for the purpose specified, the remainder ~~shall~~ must be promptly returned to the commissioner for redeposit in the county state-aid highway fund or the municipal state-aid street fund, as the case may be, and apportioned by law. Damage estimates submitted by a county or urban municipality must exceed ten percent of the current annual state-aid allotment to the county or urban municipality before the commissioner shall authorize the disaster committee to inspect the disaster area.

~~e. Research account.~~ f. County and municipal state-aid funds that may be annually allocated to the research account ~~shall~~ must be used solely for those research projects recommended by the local road research board and approved by the commissioner. Unexpended balances in this account ~~shall~~ at the end of each year must be transferred back to the state-aid fund from which they were obtained.

~~f. Turnback accounts.~~ g. A percentage of the net highway user tax distribution fund has been set aside by law and apportioned to separate accounts in the county state-aid highway fund and the municipal state-aid street fund, and respectively identified as the county turnback account and the municipal turnback account. Further, a percentage of the county turnback account has been set aside and ~~shall~~ must be used for replacement or reconstruction of town bridges ~~10~~ ten feet or more in length, in those counties that have two or more towns, pursuant to the law. This latter account ~~shall be~~ is known as the county town bridge account. Further, a percentage of the county turnback account must be apportioned to the counties for the construction and reconstruction of town roads. This account is known as the town road account.

(1) ~~Town bridge monies allocation.~~ The ~~sums of monies~~ funds set aside for town bridges ~~shall~~ must be allocated to the eligible counties on the basis of the town bridge needs.

(2) ~~Surplus turnback funds~~ The amounts to be distributed to the counties from the town road account must be determined according to the formula prescribed by Laws of Minnesota 1983, chapter 17, section 3, subdivisions 2 and 4.

(a) The funds apportioned to a county from the town road account must be distributed to the treasurer of each eligible town within 30 days of the receipt of the funds by the county treasurer, according to a distribution formula adopted by the county board. The county board must consider each town's levy for road and bridge purposes, its population, town road mileage, and other factors considered advisable to the interest of achieving equity among the towns.

The county treasurer is the treasurer for eligible unorganized towns.

(b) If a county board does not adopt a distribution formula, the funds will be distributed to the town according to the following:

(i) The county auditor shall certify to the commissioner the name of each town that has levied two mills on the dollar of the assessed value of the town for road and bridge purposes in the year preceding the allocation year.

(ii) The county auditor shall certify to the commissioner the name of each unorganized town in which the county has levied two mills on the dollar of the assessed value of the unorganized town for town road and bridge purposes in the year preceding the allocation year.

(iii) Fifty percent of the funds apportioned to a county will be distributed to an eligible town based upon the percentage that its population bears to the total population of the eligible towns in the county.

(iv) Fifty percent of the funds apportioned to a county will be distributed to eligible towns based upon the percentage of the town road mileage of each town to the total town road mileage of eligible towns in the county.

(3) At any time the commissioner determines that either the county or municipal turnback accounts, notwithstanding the town bridge accounts or the town road accounts, has accumulated a surplus not needed for turnback purposes, he shall properly notify the commissioner of finance requesting the transfer of ~~such~~ the surplus to the respective county state-aid highway fund or municipal state-aid street fund for apportionment as provided by law.

~~(3) Advances from county or urban municipal funds. When the commissioner approves a request from the governing body of a county or urban municipality for the construction of an approved county state-aid or municipal state-aid turnback project which will require funds in excess of the available turnback fund balance and which excess costs will be initially paid for from other sources, then and in that event, the commissioner will reimburse those locally financed expenditures out of subsequent apportionments to the county's or urban municipality's turnback fund in accordance with the terms and conditions specified in the approved request. The total of such advances to be reimbursed from the respective~~

~~turnback funds shall not exceed forty percent of the last county or municipal turnback allotment. Any advances shall be repaid in accordance with the terms of the approved request from money accruing to the respective turnback funds.~~

~~(4) Advances from the town bridge account. When the commissioner approves a request from the governing body of a county for the replacement or reconstruction of a town bridge which will require funds in excess of the county's available town bridge account and which excess costs will be initially paid for from other sources, then and in that event, the commissioner will reimburse those locally financed expenditures out of subsequent apportionments to the town bridge account in accordance with the terms and conditions specified in the approved request. The total of such advances to be reimbursed from the town bridge account shall not exceed forty percent of the last town bridge apportionment. Any advances shall be repaid in accordance with terms of the approved request from monies accruing to the respective town bridge accounts.~~

~~(5) Release of turnback account funds.~~ (4) Upon receipt of an abstract of bids and a certification as to the execution of a contract and bond on an eligible project, the commissioner shall release to a county or urban municipality from turnback account funds up to ~~ninety-five~~ 95 percent of the turnback share of ~~said~~ the contract. The commissioner shall retain the remaining percentage of the turnback share of ~~said~~ the contract~~,~~ until the final cost is determined and the project accepted by the district engineer. On force account agreements partial estimates will be accepted on turnback projects approved for construction by local forces, using the agreed unit prices for determining the value of the completed work. The commissioner shall release from the respective turnback account ~~ninety-five~~ 95 percent of the value as reported by ~~said~~ partial estimates on an eligible turnback project. Requests for reimbursement of preliminary and construction engineering costs on an eligible turnback project ~~shall~~ must be submitted and payment will be authorized in accordance with ~~G.2.e.~~ 1.d.(1)~~,~~ and (2) engineering costs.

~~(6) Release of town bridge account funds.~~ (5) Upon receipt of an abstract of bids and a certification as to the execution of a contract and bond on an eligible project, the commissioner shall release to a county, from town bridge account funds, up to ~~ninety-five~~ 95 percent of the town bridge account share of ~~said~~ the contract. The commissioner shall retain the remaining five percent until the final cost is determined and the project is accepted by the district engineer.

~~g. Transfer of accumulated county municipal account funds to county regular account fund.~~ h. Upon receipt of a certified copy of a county board resolution requesting the transfer of a portion of or the total accumulated amount in the county municipal account fund, to the county regular account fund, the commissioner shall transfer ~~said~~ the funds provided:

(1) the county submits a written request to the commissioner and holds a public hearing within 30 days of the request to receive and consider ~~any~~ objections by the governing ~~bodies~~ body of ~~cities~~ a city within the county, having a population of less than 5,000, and no written objections is filed with the commissioner by ~~any such~~ the city within 14 days of that hearing~~.~~;

(2) if within 14 days of the public hearing held by the county a city having a population of less than 5,000 files a written objection with the commissioner identifying a specific county state-aid highway within the city which is requested for improvement and the commissioner investigates the nature of the requested improvement and finds the identified highway is not deficient in meeting minimum state-aid street standards or the county has shown evidence that the identified highway has been programmed for construction in the county's five-year capital improvement budget in a manner consistent with the county's transportation plan or there are conditions created by or within the city beyond the control of the county that prohibit programming or reconstruction of the identified highway.

~~H.~~ G. Minimum state-aid standards.

1. Geometric design standards~~.~~:

a. The following standards ~~shall~~ apply to ~~all~~ rural design undivided roadways:

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RURAL UNDIVIDED GEOMETRIC STANDARDS

Projected ADT	Lane Width	Shoulder Width	(1) Inslope	(2) Recovery Area	(3) Design Speed	Surfacing	Structural Design Strength	(4) New and Rehabilitated Bridges Width Curb-Curb	Bridges to Remain	
									Width Curb-Curb	Structural Capacity
0-49	11'	1'	3:1	7'	30-50	Traffic Bound	—	24'	22'	H-15
50-99	11'	3'	3:1	9'	30-60	Traffic Bound	—	28'	22'	H-15
100-399	12'	4' S	4:1	15'	40-60	Paved	7-Ton Ult. 9-Ton	32'	24'	H-15
400-749	12'	4' S	4:1	20'	40-60	Paved	7-Ton Ult. 9-Ton	32'	24'	H-15
750-999	12'	6' S	4:1	25'	40-60	Paved	7-Ton Ult. 9-Ton	36'	28'	H-15
1000 & Over	12'	8'	4:1	30'	40-60	Paved	9-Ton	40'	30'	H-15

(1) Applies to slope within recovery area only.

(2) Obstacle-free area (measured from edge of traffic lane. Culverts with less than 27" ~~Ver.~~ vertical height allowed without protection in recovery area.

(3) Subject to terrain.

(4) Minimum widths listed ~~shall~~ apply, except that lesser widths may be approved upon justification ~~where~~ when the bridge length exceeds 200'. HS-20 loading required.

* Initial roadbed width must be adequate to provide a finished roadbed width for nine-ton design.

b. The following standards ~~shall~~ apply to those roadways that meet indicated conditions:

SUBURBAN GEOMETRIC DESIGN STANDARDS*

Projected ADT	Lane Width	Shoulder Width	(1) Inslope	(2) Recovery Area	~~(3)~~ Design Speed	Structural Design Strength	~~(4)~~ (3) New and Rehabilitated Bridges width curb-curb	Bridges to Remain	
								Width curb-curb	Structural capacity
Less Than 1000	12'	6'	4:1	20'	40	9-Ton	36'	28'	H-15
1000 & over	12'	8'	4:1	20'	40	9-Ton	40'	30'	H-15

* This standard ~~shall apply~~ applies only when the project is located in an area where the following conditions exist:

1. a platted area or an area in a detailed development process~~,~~; or

2. physical restraints are present which prevent reasonable application of the rural design standards.

(1) Applies to slope within recovery area only.

(2) Obstacle-free area (measured from edge of traffic lane). Culverts with less than 27-inch vertical height allowed without protection in recovery area.

(3) ~~Desirable design speed 50 mph.~~

~~(4)~~ Minimum widths listed ~~shall~~ apply, except that lesser widths may be approved upon justification ~~where~~ when the bridge length exceeds 200'. HS-20 loading required.

c. The following standards apply to forest highways within national forests and state park access roads:

FOREST HIGHWAYS WITHIN NATIONAL FORESTS AND STATE PARK ACCESS ROADS

Projected ADT	Lane Width	(3) Shoulder Width	(1) Inslope	(2) Recovery Area	Design Speed	Surfacing	Structural Design Strength	(4) New and Rehabilitated Bridges Width Curb-Curb	Bridges to Remain	
									Width Curb-Curb	Structural Capacity
0-99	11'	2'	3:1	9'	30-50	Aggregate	- - -	28'	24'	H-15
100-749	12'	2'	3:1	15'	35-50	Paved	9-Ton	32'	24'	H-15
750-999	12'	4'	3:1	15'	35-50	Paved	9-Ton	32'	28'	H-15
1000 & Over	12'	6'	4:1	20'	40-50	Paved	9-Ton	36'	28'	H-15

(1) Applies to slope within recovery area only.

(2) Obstacle-free area (measured from edge of traffic lane). Culverts with less than 27-inch vertical height allowed without protection in the recovery area.

(3) When bicycle paths utilize shoulder, shoulders must be a minimum of 4 feet and must be paved.

(4) HS-20 loading required.

d. The following standards ~~shall~~ apply to ~~all~~ urban design roadways:

URBAN ~~GEOMETRIC STANDARDS~~ STATE AID STREETS
30 MPH DESIGN SPEED

No. of Through Lanes	Density	TOTAL WIDTH IN FEET FACE TO FACE OF OUTER CURBS					
		Undivided, No Parking Lanes	With Median, No Parking Lanes		Undivided, With Parallel Parking Lanes		With 4' Median and Two Parallel Parking Lanes
			4' Median	14' Median	One Side	Both Sides	
2	Low	28			34	40	
(Collector)	High	32			36	46 ~~44~~	
4	Low	46 ~~44~~	50	60	56	64	70
(Collector)	High	50	54	64	60	68	74
2 (Arterial)	Low	36			38	48	
4 (Arterial)	Low	50	54	64	60	68	74
4 (Arterial)	High	52	58	68	62	72	80
6 (Arterial)	High	76	82	92	86	96	104

NOTE:

All urban design roadways must be a minimum nine-ton structural design. New and rehabilitated bridges must have a curb to curb width equal to the required street width. HS-20 loading required.

Where design speed is 40 mph or less, provide two foot clearance from face of curb to fixed objects.

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URBAN ROADWAY CLASSIFICATION

CLASSIFICATION	FACILITY FUNCTION	DESIGN CHARACTER	TYPICAL TRIP LENGTH	PROJECTED ADT RANGE
Collector (Low Density)	Serves as feeder facility from neighborhood and local streets to the collector/arterial network. Also serves local access/parking function for local business and residential development.	Low to Moderate operating speeds of 20-25 mph.	Short--Generally less than 1/2 mile on this type facility.	200-3000 ADT
Collector (High Density)	Collects traffic from local and feeder streets and connects with arterials. Can serve local business districts.	Variable----should provide for equal service to Moderate operating speed provides access and traffic mobility.	Variable	1000-7000 ADT
Arterial (Low Density)	Should serve Serves intra-community travel. Augments high density arterial system.	Some access control with emphasis on traffic mobility.	Variable	5000-10,000 ADT
Arterial (High Density)	Forms backbone of urban network along with freeway system. Serves as through facility. Also can serve major traffic generators such as shopping centers, stadiums, etc.	High.--Must provide Provides for through nature of traffic and also accounts for frequent turning movements. Control of access and width for separation of turning movements.--Speeds generally 30-60 mph May provide divided roadway and access control.	Longer usually greater than 1-2 miles.	8000 ADT and up

~~d.~~ e. The following minimum requirements ~~shall~~ apply to ~~rural roadways on~~ resurfacing projects:

~~SPECIAL RESURFACING PROJECTS~~
~~(Overlays)~~

~~COUNTY~~ RURAL STATE-AID HIGHWAYS
~~(Minimum Requirements)~~

Present A.D.T.	Structural Design Strength ~~in~~ Tons Per Axle	Pavement ~~Surface~~ Type Width	Shldr-Shldr Width	Design Speed
Under 100	7-Ton	Paved 22'	26'	~~35~~ 30
100-749	7-Ton	Paved 22'	26'	~~45~~ 40
750-999	7-Ton	Paved 22'	30'	~~45~~ 40
1000-2000	7-Ton	Paved 24'	32'	~~45~~ 40
~~2001~~ and over	~~7-ULT-9~~	Paved-24	~~32~~	~~45~~

Widths of bridges to remain in place must equal roadway pavement width. H-15 loading required.

FOREST HIGHWAYS WITHIN NATIONAL FORESTS
AND STATE PARK ACCESS ROADS

Present ADT	Structural Design Strength	Pavement Width	Shldr-Shldr Width	Design Speed
0-1000	7-Ton	22'	26'	30
Over 1000	7-Ton	24'	28'	35

NOTE:

Bridges to remain in place must be at least equal in width to the pavement width. H-15 loading required.

URBAN STATE-AID STREETS

No. of Through Lanes	Density	TOTAL WIDTH IN FEET FACE TO FACE OF OUTER CURBS: Undivided, No Parking Lanes	With Median, No Parking Lanes: 4' Median	With Median, No Parking Lanes: 14' Median	Undivided, With Parallel Parking Lanes: One Side	Undivided, With Parallel Parking Lanes: Both Sides	With 4' Median and Two Parallel Parking Lanes	Existing Design Strength
2	Low	28			32	38		7-Ton
(Collector)	High	30			32	40		7-Ton
4	Low	40	44	54	50	58	64	7-Ton
(Collector)	High	44	48	58	54	62	68	7-Ton
2								
(Arterial)	Low	30			32	42		9-Ton
4	Low	44	48	58	54	62	68	9-Ton
(Arterial)	High	46	52	62	56	66	74	9-Ton
6								
(Arterial)	High	70	76	86	80	90	98	9-Ton

Recovery area standards not applicable.

For urban roadway classification see G.1.d.

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~~e.~~ f. The following vertical clearances for underpasses ~~shall~~ apply:

VERTICAL CLEARANCES FOR UNDERPASSES		
	Rural-Suburban Design Vertical Clearance	Urban Design Vertical Clearance
Highway under roadway bridge	16'4"	14'6"
Highway under railroad bridge	16'4"	14'6"
Highway under pedestrian bridge	17'4"	14'6"
Highway under sign structure	17'4"	14'6"
Railroad under roadway bridge	22'0"	22'0"

2. ~~Specifications.~~ Specifications for construction ~~shall~~ must be the latest approved Minnesota Department of Transportation specifications, except as modified by special provisions which set forth conditions or requirements for work or materials not covered by the approved specifications, or which set forth conditions or requirements to meet exigencies of construction peculiar to the approved project.

3. ~~Right-of-way.~~ The minimum widths of right-of-way for ~~all~~ state-aid routes ~~shall~~ must be not less than ~~sixty~~ 60 feet within municipalities and ~~sixty-six~~ 66 feet in rural areas~~, except for conditions where modifications can be justified to the satisfaction of the commissioner~~. Prior to construction the counties shall acquire control of such additional widths of right-of-way in rural areas, as may be necessary to properly maintain the ditch section.

4. Parking provisions~~.~~:

a. The following criteria must be used in establishing diagonal parking:

Minimum Design Standards for 45-Degree & and 60-Degree Diagonal Parking							
Parking Angle	Stall Width	Stall Depth	Traffic Aisle Width	Length Along Curb	1/2 Roadway Width (Minimum)	Present ADT	Legal Speed Limit
45°	9'	19.8'	13.2'	12.7'	33'	Less than 3000	30 MPH or less
60°	9'	21.0'	18.0'	10.4'	39'	Less than 3000	30 MPH or less
45°	9'	19.8'	25.2'	12.7'	45'	3000 and over	30 MPH or less
60°	9'	21.0'	30.0'	10.4'	51'	3000 and over	30 MPH or less

b. Diagonal parking provisions ~~shall~~ must be established by cooperative agreement between the local road authority and the commissioner.

~~(1)~~ The cooperative agreement ~~shall~~ must indicate the angle of parking, provide for ~~payment~~ pavement marking of the parking lanes, and ~~the provision~~ provide that the road authority may alter parking provisions if traffic volumes exceed the design criteria.

c. The minimum design standards for roadways with parallel parking are shown in ~~in these rules under H.1.c.~~ I.d.

d. Minnesota Statutes, section 169.34 must be adhered to in determining diagonal parking spacing.

~~I.~~ H. State-aid operations. State-aid funds allotted to counties and urban municipalities ~~shall~~ must be expended in accordance with the following provisions:

1. With regard to maintenance~~.~~

~~a.~~, the commissioner shall require a reasonable standard of maintenance on ~~all~~ state-aid routes within the county or urban municipality, consistent with available funds, the existing street or road condition, and the traffic being served. This maintenance ~~shall~~ must be considered to include~~, but shall not be limited to~~:

~~(1)~~ a. the maintenance of ~~all~~ road surfaces, shoulders, ditches, and slopes and the cutting of brush and weeds affecting the respective state-aid systems;

~~(2)~~ b. the maintenance and inspection of ~~all~~ bridges, culverts, and other drainage structures pursuant to Minnesota Statutes, section 165.03;

~~(3)~~ c. the maintenance of ~~all~~ regulatory and direction signs, markers, traffic control devices, and protective structures in conformance with the current manual on uniform traffic control devices affecting the respective state-aid systems;

~~(4)~~ d. the striping of ~~all~~ pavements of 22 feet or more in width, consistent with ~~the traffic service provided~~ the current manual on uniform traffic control devices, and for which there are no pending improvements;

~~(5)~~ e. the exclusion of advertising signs, billboards, buildings, and other privately owned installations other than utilities of public interest from the right-of-way of ~~any~~ an approved state-aid ~~projects~~ project;

~~(6)~~ f. the installation of route markers on rural state-aid highways.

~~(a)~~ (1) Route markers ~~shall~~ must be a minimum of ~~16" × 16"~~ 16 inches by 16 inches square with black letters or numerals on a white background.

~~(b)~~ (2) Wherever county road authorities elect to establish and identify a special system of important county roads, the route marker ~~shall~~ must be of a pentagonal shape and ~~shall~~ must consist of a reflectorized yellow legend (county name, route letter, and number) and border on a blue background of a size compatible with other route markers.

~~b. Unsatisfactory maintenance.~~ When, in the opinion of the commissioner, the maintenance of ~~any~~ a county or municipal state-aid route is determined to be unsatisfactory, he shall retain up to ten percent of the current annual maintenance apportionment to the responsible county or urban municipality. Funds so retained ~~shall~~ must be held to the credit of that county or urban municipality until the unsatisfactory condition has been corrected and a reasonable standard of maintenance is provided.

~~c. Biennial report.~~ The commissioner's biennial report to the legislature shall enumerate ~~all~~ such funds retained more than ~~ninety~~ 90 days, together with an explanation for this action.

2. With regard to construction~~.~~, survey, plans, and estimates for ~~all~~ state-aid projects ~~shall~~ must be made by or under the immediate direction of the county highway or city engineer in accordance with standards as to form and arrangement prescribed by the commissioner.

a. ~~Plans and estimates.~~ Plans and estimates for each state-aid construction project must be submitted for review. Each plan shall show ~~all~~ the subsequent stages required for the completion of the improvement, portions of which may be covered by later contracts or agreements. Only those projects for which plans are approved by the state-aid engineer prior to the award of contract or approval of a force account agreement ~~shall be~~ are eligible for state-aid construction funds.

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b. ~~Project numbers.~~ Approved projects will be assigned state-aid project numbers and ~~shall~~ must be so identified in records of the Minnesota Department of Transportation and the local governmental unit.

c. ~~Contract information.~~ Upon award of a state-aid contract by ~~any~~ a county or urban municipality, the engineer ~~thereof~~ shall furnish the commissioner with an abstract of bids and a certification as to the specific contract and bond executed for ~~said~~ the approved construction work.

d. ~~Force account.~~ ~~Any~~ A county or urban municipality desiring to use funds credited to it on a force account basis shall have its engineer file a request with the commissioner for each construction project to be built by the county or urban municipality at agreed unit prices~~,~~ which ~~shall~~ must be based upon estimated prices for contract work, less a reasonable percentage to compensate for move-in, move-out, taxes, and contractor's profit. ~~Such~~ These requests ~~shall~~ must contain a complete list of pay items and the unit prices at which it ~~is proposed~~ proposes to do the work. Prior to the approval by the commissioner, the district engineer shall file ~~his~~ recommendations with the commissioner as to the request and the cost estimate. Items of work other than those listed as a pay item or approved by supplemental agreements ~~shall~~ must be considered incidental work not eligible for state-aid payment.

e. ~~Project reports.~~ Prior to final acceptance of each construction project by the commissioner, the county highway engineer or the city engineer shall submit to the commissioner ~~such~~ final project records as the commissioner may deem necessary or desirable.

f. ~~Project payments.~~ On ~~all~~ state-aid construction projects payments will be made in accordance with ~~G., 2., a., b., c., d~~ F.1.c.(1)-(4).

3. ~~Turnback accounts.~~ The funds in the county and municipal turnback accounts ~~shall~~ must be expended only as payments to a county or urban municipality for the approved repair and restoration or reconstruction ~~or~~ and improvement of those former trunk highways that have reverted to county or municipal jurisdiction and which meet the eligibility requirement as set forth ~~herein~~ in a. Further, a percentage of the county turnback account has been set aside, as provided by law, and ~~shall~~ must be used for replacement or reconstruction of town road bridges that are ~~10~~ ten feet or more in length in those counties that have two or more townw.

a. Eligibility~~:~~:

(1) Any former trunk highway reverted to county or urban municipal jurisdiction subsequent to July 1, 1965, and which is part of the county state-aid highway or municipal state-aid street systems, ~~shall be~~ is eligible for payment from the respective turnback account for ~~all~~ costs covering the repair and restoration or the reconstruction and improvement of ~~said~~ those highways as detailed on approved plans. Approval of plans for the initial construction of ~~such~~ these projects ~~shall~~ must be limited to a period of five years from the date of ~~revision~~ reversion. After plan approval for the construction of the initial part of a turnback project, plans for other portions of the same route must be approved within ten years from the date of reversion to be eligible for turnback funds. Each ~~such~~ approved project ~~shall~~ must be advanced to construction status within one year after notification to the county or urban municipality that sufficient funds are available for the construction of ~~said projects~~ the project. Payment for ~~such~~ repair and restoration or reconstruction and improvement of ~~any~~ a section will terminate ~~all~~ eligibility for repair and restoration or reconstruction and improvement of that section with turnback funds.

(2) Any town bridge, ~~10~~ ten feet or more in length, is eligible for replacement or reconstruction ~~if~~ after all pertinent data supplied by local citizenry, local units of government, the regional development ~~of~~ commission, or the metropolitan council, is reviewed by the county board and a formal resolution by the county board is adopted identifying the town bridge or bridges to be replaced or reconstructed. Payment to the counties will be limited to ~~ninety-five~~ 90 percent of the cost of the bridge, and will be made in accordance with ~~G.4.f.(6)~~ F.3.g.(4).

b. ~~Plan approval and construction requirements.~~ Plans for ~~all~~ county or municipal state-aid turnback or town bridge projects must be submitted to the commissioner and be approved before ~~any~~ reconstruction or improvement work is undertaken. ~~All of the~~ State-aid rules ~~that are~~ consistent with the turnback regulations ~~shall~~ apply to ~~all~~ projects to be financed from the county or municipal turnback accounts or the town bridge account.

c. ~~Construction authorization.~~ As soon as the plans for a state-aid turnback or town bridge project are approved, the county or urban municipality ~~shall~~ must be furnished either an authorization to proceed with construction or a notice that sufficient funds are not available within the applicable turnback account or town bridge account and that a priority has been established for ~~said~~ the project for construction authorization as soon as funds are available. ~~Where~~ When local funds are advanced by the county or urban municipality to construct an approved project for which sufficient funds are not available in the turnback account or town bridge account, authorization to proceed with construction will be notification that the agreement for reimbursement of funds, in accordance with ~~G.4.f.(3)~~ F.1.f., has been approved by the commissioner.

~~J.~~ I. General rules. In addition to those provisions ~~heretofore~~ previously mentioned, expenditures of state-aid funds by ~~any~~ a county or urban municipality ~~shall~~ must conform to the following rules:

1. ~~Legal requirements.~~ State-aid construction projects ~~shall~~ must comply with ~~all~~ federal, state, and local laws, together with ~~all~~ ordinances, rules, and regulations applicable to the work. Responsibility for compliance ~~shall rest~~ rests entirely with the local unit of government.

2. ~~Bridge plans.~~ Plans for ~~all~~ bridge constructoin or bridge reconstruction projects ~~shall~~ must be approved by the bridge engineer of the Minnesota Department of Transportation prior to the approval by the state-aid engineer.

3. ~~Reports and records.~~ Annual reports, status maps, and ~~all~~ maintenance and construction reports and records ~~shall~~ must be filed at the time and in the form specifically requested by the commissioner or his authorized representatives.

4. ~~Noncompliance.~~ The commissioner, upon determination that a county or urban municipality has failed to comply with the established state-aid requirements~~,~~ other than for unsatisfactory maintenance, or has failed to fulfill an obligation entered into for the maintenance or improvement of ~~any~~ a portion of a state trunk highway or interstate route, shall determine the extent of the failure and the amount of ~~such~~ the county's or urban municipality's apportionment that ~~shall~~ must be retained until ~~such~~ a time ~~as~~ when suitable compliance is accomplished~~,~~ or the obligation fulfilled, as the case may be. The amount withheld ~~shall~~ must reasonably approximate the extent of the noncompliance or the value of the unfulfilled obligation.

5. ~~Defective work.~~ ~~Whenever~~ When unsatisfactory conditions are found to exist on an approved construction project, the district state-aid engineer ~~can~~ may, if necessary, order the suspension of all work affected ~~thereby~~ until ~~said~~ the unsatisfactory condition is satisfactorily corrected. Failure to conform with ~~such~~ the suspension order ~~shall~~ must be considered willful noncompliance. ~~All~~ Work or materials which fail to conform to the requirements of the contract or force account agreement ~~shall~~ must be considered as defective. Unless the work is satisfactorily remedied or repaired before final acceptance is requested, the commissioner shall either withhold funds in accordance with ~~paragraph~~ 4., or shall establish the reasonable value of the defective work as the basis for settlement with the county or urban municipality.

6. ~~Engineering and technical assistance.~~ The commissioner may, as authorized by law, execute agreements with ~~any~~ a county or urban municipality or other governmental unit for technical assistance from the Department of Transportation. These services, if furnished, ~~shall~~ must be paid for by the governmental subdivision at the rates established by the Department of Transportation.

~~K.~~ J. General state-aid limitations. The extent of state-aid participation on special items ~~shall be~~ are limited as follows:

1. ~~Lighting.~~ The lighting of hazardous or accident prone locations~~,~~ ~~when concurred in by the traffic engineer of the Minnesota Department of Transportation shall~~ must be considered ~~as~~ an eligible expense to the following extent:

a. For new construction~~.~~, the cost of complete lighting at approved locations only on multiple lanes.

b. The cost of lighting approved intersections on single-lane design.

c. Locations where the municipality would normally install lighting units are not considered as an eligible expense. The county or urban municipality shall furnish traffic information or other needed data to support its request.

d. For reconstruction~~.~~, all costs incidental to the necessary revision or relocation of existing lighting facilities, up to and including the cost of completing the new base.

2. Traffic control signals~~.~~:

a. For state-aid projects~~.~~:

(1) Plans for the construction or reconstruction of the electrical portion of traffic control signals ~~shall~~ must be designed by a master electrician licensed in the state of Minnesota or by an electrical engineer registered in the state of Minnesota.

(a) The district state-aid engineer shall review ~~said~~ these plans upon submittal by the local engineer and make recommendations to the state-aid engineer.

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(b) The state-aid engineer shall approve the electrical portion of ~~said plan~~ these plans based on the certification of the master electrician or electrical engineer and the remainder of the plan based on the certification of a registered professional civil or highway engineer.

(2) Plans for the construction or reconstruction of the electrical portion of traffic control signals not certified by a master electrician or electrical engineer ~~shall~~ must be approved by the traffic engineer of the Minnesota Department of Transportation prior to the approval of the state-aid engineer.

b. For federal aid projects~~.~~, plans for the construction or reconstruction of traffic control signals ~~shall~~ must be approved by the traffic engineer of the Minnesota Department of Transportation prior to the approval by the state-aid engineer.

c. The extent of state-aid participation in signal installations shall be determined by the state-aid engineer in relation to the proportion of state-aid routes involved at each installation.

3. ~~Right of way.~~ The cost of ~~any~~ lands and properties required for right-of-way to accommodate the design width of the street or highway as governed by the state-aid standards, including necessary width for sidewalks, ~~shall be~~ is considered ~~as~~ an eligible expense. This cost ~~shall include~~ includes relocation and moving costs as provided by law and ~~shall include~~ include damages to other lands if reasonably justified to the satisfaction of the commissioner.

~~4. Sidewalks.~~ On county state-aid projects, sidewalks ~~shall be~~ are considered as an eligible expense only where the proposed construction necessitates the alteration of existing walks. On municipal state-aid street projects, state-aid payment for ~~sidewalk shall~~ sidewalks must be made when requested by the urban municipality but only if the inplace street meets state-aid standards.

5. ~~Storm sewers.~~ Plans containing items for storm drainage ~~shall~~ must be reviewed by the hydraulics engineer for the Minnesota Department of Transportation and his recommendations obtained as to design features and the proportionate share chargeable to the state-aid system. These recommendations along with those of the district engineer ~~shall~~ must be considered in determining the maximum state-aid participation in ~~said~~ this work.

~~L.~~ K. Local road research board.

1. Within the law, the respective screening boards shall annually determine and recommend the amount that the commissioner shall set aside from the county state-aid highway fund or the municipal state-aid street fund, for the purpose of local road research. These funds, along with federal funds as may be provided, must be used for conducting research as provided by law.

2. The commissioner shall appoint a local research board consisting of the following members:

a. four county highway engineers, only one of whom may be from a county containing a city of the first class~~.~~;

b. two city engineers, only one of whom may be from a city of the first class~~.~~;

c. two Department of Transportation staff engineers~~.~~;

d. one University of Minnesota staff engineer~~.~~; and

e. one ex officio secretary, who ~~shall~~ must be the department's research coordination engineer.

~~2. Future appointments. All~~ 3. Appointments of county highway and city engineers, except for unexpired terms ~~shall be~~ are for three years. The other members shall serve at the will of the commissioner.

~~3.~~ 4. Operating procedure:

a. The board shall initially meet on call from the commissioner, at which time they shall elect a chairman~~,~~ and establish their own procedure for the selection of research projects to be recommended to the commissioner. Final determination on ~~all such~~ research projects ~~shall~~ must be made by the commissioner, and the cost ~~thereof shall~~ must be paid out of the state-aid research accounts provided for by law.

b. ~~In the event that~~ If the board recommends a project covering research in methods of and materials for the construction and maintenance of both the county state-aid highway system and the municipal state-aid street system, the board shall also recommend to the commissioner the proportionate share of the cost of ~~such~~ the project to be borne by the respective county state-aid highway research account~~,~~ and the municipal state-aid street research account, based on the benefits to be realized by each system from such research project.

~~M.~~ L. Variance~~.~~:

1. ~~Any~~ A formal request by a political subdivision for a variance from these rules ~~shall be submitted to the commissioner in writing.~~

~~2. Contents of request.~~ must:

a. be submitted to the commissioner in writing in the form of a resolution;

b. identify the project by location and termini;

c. cite the specific rule or standard for which the variance is requested.

~~b. The~~

2. Additional information needed:

a. index map;

b. typical section:

(1) inplace section;

(2) proposed section;

c. reasons for the request~~.~~;

~~c.~~ d. the economic, social, safety, and environmental impacts which may result from the requested variance~~.~~;

~~d.~~ e. effectiveness of the project in eliminating an existing and projected deficiency in the transportation system~~.~~;

~~e.~~ f. effect on adjacent lands~~.~~;

~~f.~~ g. number of persons affected~~.~~; and

~~g.~~ h. safety considerations as they apply to:

(1) pedestrians~~.~~;

(2) bicyclists~~.~~;

(3) motoring public~~.~~; and

(4) fire, police, and emergency units.

3. The commissioner shall publish notice of variance request in the *State Register* and shall request comments from ~~all~~ interested parties be directed to the commissioner within 20 calendar days from date of publication.

4. The commissioner may appoint a committee to serve as required to investigate and determine a recommendation for each variance. No elected or appointed official that represents a political subdivision requesting the variance may serve on the committee.

a. The committee shall consist of any five of the following persons:

(1) not more than two county highway engineers, only one of whom may be from a county containing a city of the first class~~.~~;

(2) not more than two city engineers, only one of whom may be from a city of the first class~~.~~;

(3) not more than two county officials, only one of whom may be from a county containing a city of the first class; and

(4) not more than two city officials, only one of whom may be from a city of the first class.

b. Operating procedure~~.~~:

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(1) The committee shall meet on call from the commissioner at which time they shall elect a chairperson and establish their own procedure to investigate the requested variance.

(2) The committee shall consider the:

(a) ~~the~~ economic, social, safety, and environmental impacts which may result from the requested variance ~~in addition to the following criteria:~~;

(b) effectiveness of the project in eliminating an existing and projected deficiency in the transportation system~~.~~;

(c) effect on adjacent lands~~.~~;

(d) number of persons affected~~.~~;

(e) effect on future maintenance~~.~~;

(f) safety considerations as they apply to:

(i) pedestrians~~.~~;

(ii) bicyclists~~.~~;

(iii) motoring public~~.~~; and

(iv) fire, police, and emergency units~~.~~; and

(g) effect that the rule and standards may have in imposing an undue burden on a political subdivision.

(3) The committee after considering all data pertinent to the requested variance shall recommend to the commissioner approval or disapproval of the request.

5. The commissioner shall base his decision on the criteria ~~as~~ specified in ~~M.4.b.(2)~~ 4.b.(2), (a)-(g) and shall notify the political subdivision in writing of his decision.

6. Any variance objected to in writing or denied by the commissioner is subject to a contested case hearing as required by law.

~~N.~~ M. Personal expenses authorized for board or committee members. The commissioner will authorize the payment of ~~all~~ necessary personal expenses in connection with meetings of board and committee members, appointed by him for state-aid purposes. These expenses ~~shall~~ must be reported on forms furnished by the commissioner and paid from the state-aid administrative fund.

~~O. Identification and numbering. The commissioner is authorized and empowered to change the numbering system of the approved rules.~~

~~P. Severability. The provisions of these regulations shall be severable, and the invalidity of any paragraph, subparagraph or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision or any other part.~~

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 Health
Environmental Health Division

Adopted Rules Governing Registration of Engineers and Construction of Monitoring Wells

Rules as Adopted

The rules proposed and published at *State Register*, Volume 7, Number 47, pages 1651-1653, May 16, 1983 (7 S.R. 1651) are adopted as proposed.

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.

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is January 24, 1984.

ADVISORY COUNCIL ON WORKERS' COMPENSATION has 1 vacancy open for an employer member. The council studies workers compensation law and its administration and recommends changes where appropriate. Members are appointed by the Commissioner of Labor and Industry. Monthly meetings; members receive $35 per diem plus expenses. For specific information contact the Advisory Council on Workers' Compensation, Steve Goff, Dept. of Labor and Industry, 444 Lafayette Road, St. Paul 55101; (612) 296-2342.

BOARD OF ACCOUNTANCY has 1 vacancy open for a public member. The board examines, licenses and regulates certified public accountants and public accountants. Members are appointed by the Governor. Members must file with EPB. Four meetings a year plus any emergency meetings necessary. Members receive $35 per diem. For specific information contact the Board of Accountancy, Dept. of Commerce, 590 Metro Square Bldg., St. Paul 55101; (612) 296-7937.

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

REHABILITATION REVIEW PANEL has 1 vacancy open for a labor member. The panel reviews rehabilitations plans and rules; advises the Commissioner of Labor and Industry. Members are appointed by the Commissioner of Labor and Industry. Compensation for members is governed by section 15.0575. For specific information contact the Rehabilitation Review Panel, Steve Goff, Space Center, 444 Lafayette Road, St. Paul 55101; (612) 297-2684.

SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL has 1 vacancy open for a member. The council advises the Commissioner of Administration on the small business procurement program, reviews complaints from vendors and reviews compliance reports. Members are appointed by the Governor. Members receive no compensation. For specific information contact the Small Business Procurement Advisory Council, Roberta Schneider, 130 Capitol, St. Paul 55155; (612) 296-0057.

TASK FORCE ON INSURANCE CONTINUING EDUCATION has 1 vacancy open for a member employed by an insurance

company, but not licensed. All members must be residents of Minnesota. Members are compensated for expenses. The task force provides suggestions for rules relating to mandatory continuing education for insurance licensees. Members are appointed by the Commissioner of Commerce. For specific information contact the Task Force on Insurance Continuing Education, Dept. of Commerce, Barbara M. Kivisto, 500 Metro Square Bldg., St. Paul 55101; (612) 296-6319.

EXPORT FINANCE AUTHORITY has 1 vacancy open for a member. Members must be knowledgeable in international finance, exporting international law. The commissioner of agriculture is chairman of the board. The authority is created to aid and facilitate the financing of exports from Minnesota. The finance authority powers shall be used exclusively to meet the pre-export credit needs of Minnesota exporters. Members receive $35 per diem plus expenses. Members are appointed by the Governor and confirmed by the Senate. For specific information contact the Export Finance Authority, 90 W. Plato Blvd., St. Paul 55107; (612) 296-9310.

Department of Finance

Notice of Maximum Interest Rate for Municipal Obligations, January, 1984

Pursuant to Laws of Minnesota 1982, Chapter 523, Commissioner of Finance, Gordon M. Donhowe, announced today that the maximum interest rate for municipal obligations in the month of January will be twelve (12) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to thirteen (13) percent per annum.

For further information contact:

Peter Sausen, Director
Debt Management
State of Minnesota
Department of Finance
(612) 296-8372.

State Board of Investment
Investment Advisory Council

Notice of Regular Meeting

The State Board of Investment will meet on Wednesday, January 11, 1984 at 9:00 A.M. in Room 118, State Capitol.

The Investment Advisory Council will meet at 7:30 A.M. on Tuesday, January 10, 1984 in the MEA Building Conference Room, 41 Sherburne, Saint Paul.

State Planning Agency

Notice of Public Hearings of the Governor's Task Force on Constitutional Officers

The "Governor's Task Force on Constitutional Officers" has been formed to develop findings and recommendations on the issues surrounding Minnesota's Constitutional Offices. The first action by the Task Force will be to hold two public hearings to collect input from interested parties which will assist the Task Force in developing its report to Governor Perpich.

The public hearings will be held on the first two Saturdays of January as follows:

January 7, 1984, 10 a.m.-3 p.m.
Room 15 of the State Capitol, St. Paul, MN

January 14, 1984, 10 a.m.-on
Room 15 of the State Capitol, St. Paul, MN

Persons wishing to testify are encouraged to do so at the first meeting on January 7, 1984. Those who cannot appear on the 7th will be scheduled for the 14th.

The duration of oral testimony should be confined to 15 minutes. Names of persons wishing to testify orally or in writing should be confirmed with Debra Locke of the Task Force staff at (612) 371-3211 ext. 148. Please also indicate the date of oral testimony. Written testimony will be accepted by the Task Force through January 18, 1984.

Written and oral testimony will receive equal consideration by the Task Force.

Forward all written comments to:

Governor's Task Force on Constitutional Officers
c/o Patricia Burke
State Planning Agency
Room 100, Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Department of Transportation

Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minnesota Statute § 169.825

The Commissioner of Transportation has made his Order No. 67790, which order has been amended by Orders Nos. 68172, 68273, and 68362 designating and permitting certain street and highway routes (or segments of those routes) to carry the gross weights allowed under Minnesota Statutes § 169.825, and that the additional following routes (or segment of routes) should be designated to carry the gross weights allowed under Minn. Stat. § 169.825.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 67790 is amended this date by adding the following designated streets and highway routes (or segment of routes) as follows:

County Roads

Dakota County—CSAH 42
from 600' east of Galaxie Avenue in Apple Valley
to I-35W in Burnsville (12 Month)

December 22, 1983

Richard P. Braun
Commissioner

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 Economic Security

Request for Proposal to Review and Modify Federal Cost Accounting System

The Department of Economic Security requests proposals to review its federal cost accounting system, selected subsystems, and the state's accounting system and to recommend and develop appropriate changes to the cost accounting system which will enable the department to

1. determine the feasibility of reformatting selected subsystems and producing reports in line with generally accepted accounting principles,

2. eliminate the duplication of entries now required to operate both systems,

3. provide for reconciliation of automated Unemployment Benefits Payment System, Unemployment Insurance (UI) Tax System, the UI Charge System and the UI Overpayment System,

4. design expansions to selected subsystems by adding data and install them as on-line operations.

The department estimates the project should take approximately four (4) months and cost under $40,000.

A request for a complete copy of the Request for Proposal and any questions should be addressed to:

Mr. John Burns, Director of Financial Services
Room 125, 390 North Robert St.
St. Paul, MN 55101
612/296-3965

Completed proposals are due in Mr. Burns' office by 4:30 p.m. on Friday, January 27, 1984.

Department of Energy and Economic Development Minnesota Office of Tourism

Request for Proposals for Film Production

The Minnesota Office of Tourism in the Department of Energy and Economic Development is seeking proposals for a 20 minute film promoting vacations in Minnesota. The film is to be shot in 16mm for a contracted amount of $60,000-$90,000. The project is to be completed by December 1984. Content will include vacation attractions statewide in all seasons of the year. Two copies of a film producer's proposal are due at the Minnesota Office of Tourism by 4:30 January 16, 1984. Answers to questions about the proposal and copies of the proposal application can be obtained from Ginger Sisco, Deputy Director of Tourism, 612/296-5027, Minnesota Office of Tourism, 240 Bremer Building, 419 N. Robert St., St. Paul, MN 55101.

Ginger Sisco
Deputy Director of Tourism

Minnesota Waste Management Board

Request for Qualifications for the Development of Hazardous Waste Disposal Facility Specifications

A request for qualifications (RFQ) for the development of generic hazardous waste disposal facility specifications has been prepared by the Waste Management Board (WMB).

The WMB is making a broad distribution of this RFQ directly to all consultants known or thought to be potentially qualified for such work. Only those firms with a proven record in hazardous waste facility specifications development can be given serious consideration for this contract.

The deadline for receiving qualifications is 4:30 p.m. Tuesday, January 10, 1984. To obtain a copy of this RFQ, interested parties should contact Jim Newland or Ted Troolin of the WMB Staff at (612) 536-0816. The WMB offices are located at 7323 58th Avenue North, Crystal, Minnesota, 55428.

SUPREME COURT

Decisions Filed Wednesday, December 21, 1983

Compiled by Wayne O. Tschimperle, Clerk

C1-83-1401 Dr. R.S. McBride, Relator, v. Jane LeVasseur, Respondent, and Commissioner of Economic Security, Respondent.

Affirmed. Parker, J.

C2-83-1620 State of Minnesota, Plaintiff, v. Marion Sherman Munnell, Defendant.

1. In certification proceedings before the Court of Appeals, the party whose requested ruling, position or motion was denied by the certifying trial court shall be the appellant. That party must file the first brief pursuant to Minn. R. Crim. P. 28.04, subd. 2(3).

2. Trial courts should make written orders with respect to their rulings on motions before certifying questions for consideration by the Court of Appeals. Where the certifying court rules from the bench without issuing a written order, a review of the record will determine which party shall be the appellant.

3. The state is not required to submit the first brief in all certification proceedings. Instead, the appellant will be determined on a case by case basis. The party whose requested ruling, position or motion was denied by the certifying trial court is the appellant and must file the first brief.

4. Where the trial court makes no specific ruling on the questions it certifies, the state will be the appellant and will be required to submit the first brief.

Foley, J.

CX-83-1249 Kim R. Salamon, Relator, v. Time Share Computer Systems, Inc., Respondent, and Commissioner of Economic Security, Respondent.

1. Unemployment compensation benefits can be denied to an employee who has terminated his employment voluntarily.

2. The employer has the burden of proving voluntary termination.

3. Termination of employment is not voluntary where an employer elicits a promise from an employee not to resign, but none-the-less later replaces him.

Reversed. Foley, J.

C8-83-1606 State of Minnesota, Respondent, v. Eleanore Ann Sherwood, Appellant.

The trial court did not err in refusing to depart dispositionally from the sentencing guidelines either because of defendant's alleged passive role or because of her status as a parent with minor children.

Defendant's status as a parent may be recognized as a mitigating factor; but here, defendant's status as a parent does not make her particularly amenable to probation in view of her past record.

This court will not ordinarily interfere with a sentence that falls within the presumptive sentence range even if there are grounds that would justify departure.

It will be the "rare" case with "compelling circumstances" which will require interference with imposition of the presumptive sentence.

Affirmed. Wozniak, J. Took no part, Foley, J.

C8-83-1508 State of Minnesota, Respondent, v. Reginald Craig Sutherlin, Appellant.

1. Defendant did not waive his right to demand execution of his stayed sentence notwithstanding the fact that he initially chose the alternative of probation with workhouse time, and had served part of the sentence.

2. Defendant is not entitled to credit for workhouse time spent pursuant to probation against a sentence to be executed until he makes demand to have the sentence modified or executed.

3. Defendant is entitled to credit for workhouse time spent from the date of the hearing on his motion to have sentence executed, and the date his executed sentence begins.

We remand. Sedgwick, J. Took no part, Foley, J.

C1-83-1396 Mary T. Callander, Relator, v. Starkman Drug, Inc., Respondent.

Affirmed. Lansing, J.

C5-83-1935 James Michael Lechter, Petitioner, v. State of Minnesota, Respondent.

Order filed. Popovich, C.J.

C4-83-1814 City of Ogema and the Ogema Municipal Liquor Store, Petitioners, v. Jeanine Ann Bevins, Respondent.

Order Filed. Popovich, C.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
County of St. Louis

Tax Court
Sixth Judicial District

David H. Blomberg,

Petitioner,

v.

County of St. Louis,

Respondent.

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

Filed No. 150669

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, on September 13, 1983, at the County Courthouse, Duluth, Minnesota.

James D. Robinson, Jr. of Murphy, Hansen & Robinson appeared on behalf of Petitioner.

Michael Dean, Assistant County Attorney, appeared on behalf of the Respondent.

A Stipulation of Facts was submitted signed by both of the above attorneys. A brief was submitted by James D. Robinson on behalf of Petitioner and a brief was submitted by Barbara A. Russ, Assistant County Attorney, on behalf of Respondent.

Syllabus

Real property is not entitled to homestead tax treatment unless it is owned by a legal resident of the State of Minnesota.

Findings of Fact

The following facts were stipulated to between the parties hereto:

1. Petitioner was a member of the Armed Forced of the United States at all time material herein including when he made his application for homestead credit for the assessment year 1982 on March 11, 1982.

2. The Petitioner was removed from his home in Duluth while on active duty with the Armed Forces of the United States.

3. The sole reason for absence of Petitioner from his home is by reason of service in the Armed Forces; specifically his duties as Lieutenant Commander aboard United States Coast Guard Cutter Mesquite, (WLB 305) which is currently stationed in Charlevoix, Michigan.

4. Petitioner has at all times claimed his intent to return to his home in Duluth as soon as discharged or relieved from his service with the Coast Guard.

5. Petitioner has at all times claimed his home as his homestead.

6. Prior to joining the military in June, 1965, Petitioner resided in the State of Illinois.

7. Petitioner maintains a valid driver's license from the State of Illinois.

8. Petitioner is registered to vote in Illinois.

9. Petitioner does not file a Minnesota income tax return because his income is exempt from state tax and a tax return is not required.

10. Petitioner has been assigned to duty in Duluth twice, the first time in 1973 and the second time in 1977. He purchased the subject property on November 28, 1977. In October, 1978, shortly after returning to Duluth for his second tour of duty, he commenced construction of his home.

11. In May, 1979, Petitioner moved into his partially completed house to live. He completed his home and received a half-year homestead credit for 1979, payable in 1980.

12. In January, 1980 Petitioner was made aware he would be transferred during the summer of 1980. Petitioner claimed at that time to intend to return to Duluth as soon as discharged or relieved from service duty. Petitioner went to the City Assessor's Office and was informed in the spring of 1980 that he could maintain the homestead classification of his home if Petitioner filed a copy of his Orders and stated he intended to return upon release from active duty. Petitioner complied with this request from the City Assessor and received homestead credit for 1980, payable 1981.

13. On March 13, 1981, Petitioner returned the annual homestead verification as requested by the City Assessor. On the face of this Affidavit Petitioner indicated he was the owner of the property but further noted that he was ". . . on active duty in the U.S. Coast Guard and was not occupying the referenced house on 2 January 1981 due to military orders. I intend to return to the house and a copy of my orders is on file in your office." Petitioner was given homestead credit for taxes due in 1981 and payable in 1982 based upon his March 13, 1981 Affidavit.

14. On March 11, 1982, Petitioner again returned the annual homestead verification and "Application for Homestead of Armed Forces Personnel" to the City Assessor, Scott A. Lindquist. This was the first time Petitioner was asked to fill out this application. It stated as follows:

"Servicemen may retain homestead classification during absence while on active duty, even property that is unused or rented, provided that:

Property is used as a homestead *prior to entry* into service. Servicemen intends on returning to it upon discharge. Serviceman claims it as his homestead.

Any serviceman who disclaims legal residence and his obligations as a resident is not entitled to the homestead classification." [Emphasis supplied]

Petitioner completed this application making the following representations:

"1. That he is stationed at CGC Mesquite (WLB 305) P.O. Box 57, Charlevoix, MI 49720.

"2. That he is the owner of real estate situated in the City of Duluth, County of St. Louis, State of Minnesota, legally described as Lower Duluth, Lot 375 Lake Avenue South and Lot 376 Minnesota Avenue.

"3. That the address of the above described property is 3730 Minnesota Avenue.

"4. That said property was acquired on 11/28/77.

"5. That date of entry into service was June, 1965.

"6. That he does claim the above-described property as his homestead.

"7. That he does intend to return to it upon discharge.

"8. That he will provide proof of filing an income tax returned (sic) with the State of n/a for the preceding year 19__.

"10. That he possesses a valid driver's license from the State of Illinois.

"11. That he is currently registered to vote in the County of Cook, State of Illinois."

15. On March 15, 1982, Scott Lindquist, Duluth City Assessor, stated that Petitioner was not a "legal resident of Minnesota" and concluded Petitioner no longer qualified for a homestead based upon the following facts:

"1. The property was purchased *after* your entry into the service.

2. Your driver's license is not from Minnesota.

3. You do not vote in Minnesota.

4. You did not send proof of filing Minnesota Income Tax."

16. Petitioner directed the March 24, 1982 letter to the City Assessor pointing out the past representations made by the City Assessor including representations that the only conditions for the continuation of the homestead status was an intention to return and the fact that a homestead in Minnesota was limited to only one piece of property. Petitioner restated his intention to return to Duluth.

17. By a letter dated April 22, 1982, the Petitioner was advised by James S. Kroll, Office Manager in the Duluth City Assessor's Office, that some properties classified under Minn. Stat. § 273.13, subd. 10, as homesteads for members of U.S. Armed Forces were improperly classified and that the City had ". . . no choice but to comply with the law". Consequently, Petitioner was notified that ". . . the subject property will be classified as residential non-homestead for the taxable year 1982, payable 1983". The statute upon which this opinion was based was Minn. Stat. § 273.13, subd. 10 as it appeared in Amended Laws 1945, Chapter 274, § 1; Laws 1945, Chapter 527, § 1. This opinion of James S. Kroll was subsequently modified by the July 9, 1982 letter of Thomas J. Schindler, Assistant City Attorney after the City Attorney had been advised that said statute had been amended by Laws 1961, Chapter 243, § 1, reading and convluding as follows:

"Mr. Blomberg's application for homestead exemption has been reconsidered and a determination made that he be entitled to the exemption. The records will be changed to reflect his entitlement in the near future."

18. Petitioner was then informed by the letter dated July 20, 1982, from Luci Mitchell of the staff of the Commissioner of the Department of Revenue that the Petitioner was not entitled to the homestead classification, stating in part "Merely owning a

home and being a member of the military is not sufficient basis upon which to grant a homestead. The statute specifically requires of the military person 'that he intends to return thereto as soon as discharged . . . and claims it as his homestead.' It is the assessor's responsibility to make that factual determination."

19. Based upon the correspondence of July 20, 1982, from Luci Mitchell, James S. Kroll wrote tothe Petitioner on July 23, 1982, again removing his entitlement for his homestead classification.

20. Petitioner next received a letter dated August 30, 1982, from said Luci Mitchell advising that her letter of July 20, 1982, was "an advisory opinion". She enclosed, in her words, a copy of ". . . the current wording of the law [which] is admittedly not so clear as the original language. . . ."

21. Petitioner was finally advised by letter dated February 8, 1983, from Mr. James S. Kroll that the County Attorney's Office had been asked for their opinion on the homestead classification issue. Said letter indicated that the County Attorney's Office had taken the position that the matter of a homestead classification was a question of residency and further concluded: "As viewed by this office, you do not meet the requirements of residency".

Based on the above stipulated findings of fact, this Court makes the following Findings of Fact:

A. Petitioner was not a legal resident of the State of Minnesota on January 2, 1982.

B. It appears from Exhibit C that Petitioner rented the property to others for the entire year 1982.

C. The subject property should not be classified as homestead property as of January 2, 1982.

Conclusions of Law

1. The classification of the subject property by the assessor as non-homestead property is hereby confirmed.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

December 15, 1983

By the Court,

Carl A. Jensen, Judge
Minnesota Tax Court

Memorandum

The Petitioner was a resident of the State of Illinois when he entered the Armed Services in 1965.

He was stationed in Minnesota when he purchased the subject property on November 28, 1977. He constructed a home on the property in 1978 and 1979 and moved into the partially completed house in May, 1979. He was given homestead treatment on the property for the last half year of 1979 payable in 1980 and for 1980 and 1981 payable in 1981 and 1982. The assessor changed the classification as of January 2, 1982 for taxes payable in 1983 to non-homestead classification.

It appears that Petitioner has rented the property to others since sometime in 1980.

We conclude from the facts that the Petitioner has always been a resident of and domiciled in the State of Illinois since he has always kept his drivers license and voting residence in Illinois and has never lived in Minnesota, except while being stationed in Minnesota during service in the Armed Forces.

Petitioner states in his brief that his military income is not subject to Minnesota income taxes while he resides outside the State of Minnesota. It is our understanding that the income of a member of the Armed Services who is a resident of the State of Minnesota is subject to Minnesota income taxes regardless of where he may be stationed.

The words residence, domicile and homestead are almost synonymous as used in Minnesota income tax laws, real estate tax laws and homestead exemption laws.

We hold that in order to be entitled to homestead tax treatment, a person must be a resident of Minnesota and domiciled in Minnesota. Members of the Armed Forces who are residents of Minnesota and domiciled in Minnesota at the time of their entry into the service continue to be residents of Minnesota and domiciled in Minnesota for tax purposes until such time as they may change their residence and domicile.

It is possible for members of the Armed Forces to acquire a new domicile. If a member of the Armed Forces who originally was domiciled in another state acquires a home in Minnesota during his service in Minnesota, he may become domiciled in Minnesota if his intentions and facts confirm the change of domicile.

If a member of the Armed Services does become domiciled in Minnesota during his service in Armed Services, he is required to file Minnesota income taxes. Failure on the part of Petitioner to file Minnesota income taxes is an indication that he did not intend to become domiciled in Minnesota.

If a serviceman does become domiciled in Minnesota, he is entitled to vote in Minnesota and can no longer vote in his previous domicile. He would also be required to have a drivers license in the State of Minnesota.

We hold that real property is not entitled to homestead classification unless it is owned by a resident of Minnesota who is domiciled in Minnesota.

Under some circumstances, a serviceman is able to retain homestead status for his property even though he may not be living in it which is the ordinary requirement for the retention of homestead classification. Minn. Stat. § 273.13, subd. 10 reads as follows:

Subd. 10. Homestead of member of U.S. Armed Forces in class 3b or 3c. Real estate actually occupied and used for the purpose of a homestead by a member of the armed forces of the United States, or by a member of his immediate family on or after July 1, 1940, shall, notwithstanding the removal therefrom of such person, while on active duty with the armed forces of the United States or his family under such conditions, be classified in class 3b or 3c, as the case may be, provided, that absence of the owner therefrom is solely by reason of service in the armed forces, and that he intends to return thereto as soon as discharged or relieved from such service, and claims it as his homestead. Every person who, for the purpose of obtaining or aiding another in obtaining any benefit under this subdivision, shall knowingly make or submit to any assessor any affidavit or other statement which is false in any material matter shall be guilty of a felony.

That statute requires that the property be occupied and used for the purpose of a homestead in the first instance. We have concluded that the Petitioner never occupied this as his homestead because he was never domiciled in the State of Minnesota. A homestead must be your place of domicile.

Since we have concluded that Petitioner never occupied the property in the legal sense of his homestead, we do not have to rule on whether or not the homestead classification should be *continued*. We find the statute could be subject to different interpretations as to when homestead classification should be continued after a serviceman leaves it and is stationed elsewhere. It is possible that the first sentence of the statute could be construed to mean that the property would have to continue to be occupied by a member of the serviceman's immediate family. We are not certain that that statute would allow the property to be rented out and continue to be classified as homestead property, but it is not necessary to decide this for this case.

We might also note that the homestead tax benefits are supplied principally by income tax collections and it is only equitable that only those people who are subject to Minnesota income taxes should be entitled to homestead tax benefit.

C.A.J.

State of Minnesota
County of Winona

Tax Court
Third Judicial District

Farmers Union Grain Terminal Association,

Petitioner,

v.

County of Winona,

Respondent.

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

In the Matter of the Petition of Farmers Union Grain Terminal Association for a Determination of Tax Exemption of Real Estate Taxes Payable in 1982 and Payable in 1983,

File Nos. 34885 and 35970

The above matters having been transferred from the district court to the Minnesota Tax Court were consolidated for trial and came on for trial at the Winona County Courthouse in Winona, Minnesota, on May 17, 1983, beginning at 10 A.M. before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court,

Thomas M. Sipkins of Peterson, Popovich, Knutson and Flynn, 345 Cedar Building, Suite 800, St. Paul, Minnesota 55101, appeared on behalf of Petitioner.

James A. Fabian, Assistant County Attorney, County of Winona, Courthouse, Winona, Minnesota 55987, and James W. Neher, Special Assistant Attorney General, State of Minnesota, appeared on behalf of Respondent.

Syllabus

If the primary function of an item is distinct and different from the functions ordinarily performed by buildings or other taxable structures such item shall not be included as real property for taxation purposes pursuant to M.S. Sec. 272.03, subd. 1(c)(i) even if it has the appearance of a building.

This Court, having heard all the testimony, reviewed all the exhibits, stipulations and all matters of record, and having viewed the facility of Petitioner, makes the following:

Findings of Fact

1. Petitioner, Farmers Union Grain Terminal Association, is a cooperative corporation formed under the laws of the State of Minnesota. It owns and operates, through its Froedtert Malt Division (hereinafter "Froedtert"), a plant located in Winona, Minnesota, for the production and marketing of barley malt.

The Malting Process

2. The production of barley malt involves a biochemical process by which malting barley is converted to malt. The predominant user of malt is the brewery industry.

3. Froedtert purchases most of its barley from Minnesota, North Dakota and South Dakota, but also purchases barley from Wyoming, Colorado, Idaho and Canada.

4. When barley is received by Froedtert, it is first segregated by type and protein content, and then placed in storage silos. The barley is cleaned and sized (not washed) prior to entering the malting process.

5. After the barley is cleaned and sized, it is moved into the malting facility and placed into "steep." Steeping is soaking and washing of barley. The barley is immersed in cool water for 28 to 48 hours in large steel vessels, known as steep tanks. The purpose of steeping is to increase the moisture level in the kernels of grain from approximately 10 to 13 percent up to 45 percent. As the grain absorbs the moisture during steeping the actual life cycle of the modification of barley into malt begins. The enzyme systems within a kernel are activated. The steep tanks and their supporting structures are exclusively for use in the Petitioner's business activity of transforming barley into malt.

6. The second step in the malting process is known as germination. Germination takes place in compartments that are fully enclosed vessels with perforated steel floors on which the steeped barley is placed. In the germination process, attemporators, which are like giant air conditioners, take ambient air, and condition it with respect to humidity and temperature. Large volumes of that cool, moist air are circulated through various "plenums", large air ducts, into and through the compartments containing the barley. The even distribution of air is controlled by the plenum (the subcompartment) beneath the compartments containing the grain. The purpose of germination is to permit the controlled growth of the barley under a tightly controlled system of temperature, air volume, and humidity. At the conclusion of the germination process, the barley is referred to as "green malt". The germination compartments, attemporators, attemporator air supply plenums, distribution plenums, and subcompartments are exclusively for use in and are specially designed for use in the Petitioner's business activity of transforming barley into malt.

7. Following completion of the germination process, the green malt undergoes what is known as "kilning." The purpose of the kilning process is to quickly stop the germination or growth of the malt and to determine the flavor and color of wort from the finished product. Kilning is accomplished by aerating the bed of green malt with hot (temperature controlled), dry air, as compared with the cool, moist air used in the germination process.

8. Traditionally, the green malt is transferred to a separate compartment known as a kiln in order to accomplish the kilning process. This is the procedure followed in the older facility at Froedtert known as Malthouse No. 1. (constructed during the years 1904-1906). In the two newer facilities at Froedtert, known as Malthouse Nos. 2 and 3 (constructed in 1976 and 1978, respectively), the same compartment is used for both germination and kilning. Thus, instead of moving the grain from the germination compartment to a separate kiln, the air flow in Malthouses Nos. 2 and 3 is redirected and modified to convert the germination compartment into a kiln. The kilning process takes 24 hours in Malthouse Nos. 2 and 3. In Malthouse No. 1 (which contains 2 levels of "double-deck" kilns) the kilning process takes 48 hours. At the completion of the kilning process, the moisture level of the malt has been reduced from 45 percent to about 3½ percent. The kiln compartments, subcompartments, kiln air supply and discharge plenums in the newer malthouse and the kiln in the traditional malthouse are designed exclusively for use in the process of transforming barley into malt. When the kilning process is completed, the process of transformation of barley into malt is not complete.

The Malt Elevators

9. During the kilning, a kernel of malt is subjected to high heat and air flow causing the moisture on the surface of the kernel to evaporate first. This forced drying process produces a kernel which does not have uniform moisture. The moisture content of the kernel is lower near the surface than at the center. Grinding and mashing operations in a brewery, however, require uniform moisture content. In order to achieve that uniformity, the malt is placed in malt elevators for a minimum of 30 days where the process of "aging" or "homogenizing" the moisture content of the kernel takes place. Most all specifications from brewery customers require 30-day aging.

10. In addition to the aging process, the malt elevators are used for blending varieties of malt together according to size and age as required by the desires and specifications of different brewery customers.

11. If the elevators at issue were not used for the aging and blending of malt into the final product for shipping to breweries, Petitioner's malt elevator capacity would be substantially less. Seventy-five percent would not be needed.

12. Although the malt elevators, aside frm their size and number, appear no different from simple storage elevators, they are specifically used in the business or production activity of transforming barley into malt, *i.e.*, for aging and blending. Other elevators which Petitioner has, however infrequently, used for storage of barley as well as for malt are not claimed to be tax exempt by Petitioner.

13. The parties agree that the tax saving to Petitioner for taxes payable on "1974 Con Annex (10 Con Bins)" would be $19,883.46 for 1982 and $19,287.72 for 1983, if the property is not taxable as real property. The parties further agree that the tax saving to Petitioner for taxes payable on "1904 Steel Annex (22 Steel Bins)" would be $7,217.85 for 1982 and $7,001.59 for 1983, if the property is not taxable as real property. Joint Exhibit 1. Total tax saving to Petitioner for its elevators would be $53,390.62.

Malthouse No. 1 (Including the Steeping and Germinating Areas and the Kiln Building)

14. The steeping area of Malthouse No. 1 consists of 12 steep tanks arranged in double-deck fashion (six tanks at each level).

15. Below the bottom deck of the steep tanks is the conveying equipment used for transferring steeped barley to the germination compartments.

16. Below the conveying equipment (at the lowest or basement level of the steeping area) is an unused area housing a water holding vessel. This area originally was used as an attemperator and later as a maintenance area. The primary function of the steeping area is no different from the function ordinarily performed by buildings.

17. When the steeping operation is completed in the lower level of steep tanks, the barley is transferred from a discharge point by the conveying equipment to the germination compartments. The conveying equipment is located just above the top level of germination compartments. The barley from the upper level tanks is then transferred to the lower level tanks, and fresh barley is added to the upper level tanks.

18. No air is circulated through the steeping area as part of the malting process. The steep tanks are enclosed by a roof and walls in order to protect the grain from the outside elements. The primary function of that roof and walls is no different from the functions ordinarily performed by buildings.

19. In addition to acting as a weather and contamination barrier, the walls of the steeping area below the steep tanks provide structural support for the tanks. It is necessary to enclose the steeping area from the discharge point up in order to have protection from the weather and for purposes of cleanliness. It is normal industry practice to provide steep tanks with protection from the elements. The primary function of that area is no different from the ordinary function performed by buildings, except that the extra structural strength of the walls is not necessary only for the support of the steep tanks and is not part of the normal building.

20. During the first eight-hour shift, one man normally spends something less than one-half his work time in the steeping area, transferring barley from the upper to the lower steep tanks, and transferring barley from the lower steep tanks to the termination compartments.

21. Malthouse No. 1 contains a germinating area consisting of two levels of germination compartments, with six compartments on each level. Cool, moist air is circulated through the germinating barley by means of large fans which force the air downward through vertical ducts located above the germination compartments. The air passes through the barley and the perforated steel flooring of each germination compartment into an area about three feet deep, known as subcompartment. From the subcompartment the air is transported through a butterfly damper into ductwork at one end of the subcompartment, known as the "exhaust air plenum." The air then travels through the plenum to two large fans which transport it through additional ductwork to a water spray room known as an attemperator.

22. In the attemperator the air is humidified and cooled and then transported downward through the still more ductwork to be recirculated through the germinating barley. The germination area of Malthouse No. 1 is entered with the need to pass through a double-door air lock.

23. A cross section of the germination area of Malthouse No. 1, from the bottom to top, would show the following: (1) concrete subcompartment at grade level; (2) first level germination compartment; (3) open space with ceiling; (4) second level subcompartment; (5) second level germination compartments; (6) open space with ceiling; (7) top floor containing part of the attemperator (the rest of the attemperator is on the roof), the upper part of the exhaust air plenum, other ductwork, barley distribution conveyors, fans, and several pumps, (8) roof (upon which is located the attemperator and some of the ductwork).

24. Some of the equipment inside Malthouse No. 1, including the perforated trays which hold the germinating barley, can be

removed without damaging the building. The exterior walls, *i.e.*, the perimeter, of Malthouse No. 1, specifically functions as an air containment duct or plenum which is specially built for use in the malting process.

25. A typical work day in the germination area of Malthouse No. 1 can be described as follows: During the first shift the foreman periodically checks the moisture level in the germinating barley. Two other employees perform the job of removing the green malt from the germination compartments and cleaning the compartments in preparation for the next batch of barley. The green malt is removed by a plow device operated by an employee using a winch and cable. The employee works from a walkway located between the germination compartments. It takes about one and one-half hours to empty a compartment. Two employees then wash the compartment with hoses. This procedure takes about 30 minutes.

26. Following cleaning of the germination compartments they are filled with barley from the steeping area. The barley is conveyed into the compartments through chutes.

27. The first eight-hours shift employs eight men; five in Malthouse No. 1 working in either the germination area, the steeping area, or occasionally the kiln area; and three in Malthouse Nos. 2 and 3.

28. The second and third (afternoon and evening) shifts are comprised of one employee who works in Malthouses Nos. 1, 2 and 3, and who has the responsibility for turning equipment on and off at the appropriate times, monitoring temperatures and controls, and making certain that the overall procedure is working properly. The operation is not labor intensive.

29. Following completion of the germination process in Malthouse No. 1, the green malt is transferred to the kiln building which is also considered part of the malthouse.

30. The bottom level of the kiln building (which can be entered through a non-air-lock doorway) houses six indirect air heaters, three of which provide heat for each of two "double-deck" kilns. The heaters stand something over ten feet in height.

31. The air for the kilning process travels vertically from the top of each heater through what is called a "shed." The shed is of an "A-frame" design which permits the heated air to flow upward through the double-deck kilns, but serves to divert the malt into hoppers running the length of the building on each side at the time the lower kiln deck is emptied following completion of the kilning process.

32. After the heated air passes through both the lower and upper kiln decks, it is sucked up through openings by large fans (two for each double-deck kiln). The fans then push the air through ductwork to a heat recovery unit located on the roof of the building. These fans pull fresh air through the heat recovery unit for pre-heating, thence down through ductwork to the heaters, where it is used in the kilning process. The fans are located at the top enclosed level of the kiln building, together with part of the duckwork and conveying equipment for transferring the green malt to the kilns.

33. The entire kilning process in Malthouse No. 1 takes approximately 48 hours. Green malt is first transferred to the upper kiln deck for 24 hours, and then moved to the lower kiln deck for about the same period of time.

34. Viewing the kiln building in cross-section, from bottom to top, one would see: (1) the lower level housing the heaters; (2) the middle area (about one-third) housing the two double-deck kilns; (3) the top room housing the two fans, the ductwork for the fans leading to the heat recovery unit, and the conveying machinery; (4) the heat recovery equipment located on the roof.

35. At the south end of the kiln building (adjacent to the kiln itself) is a work area known as the vestibule area. The vestibule area performs no function in connection with the circulation of the heated air used in the kilning process. The primary function of the vestibule area is not distinct and different from that of a building.

36. The kilning area of the kiln building is constructed of two walls with a two inch air space in between. The outer wall is brick and the inner wall concrete blocks. The purpose of this double-wall construction, with air space in between, is to insulate the kilning area from heat loss. The double-wall construction extends from the hopper area (into which the malt is deposited after kilning) up to the top of the upper kiln area, excluding the top floor which houses the fans and other equipment, as well as about the lower 15 feet of the building which houses the heaters. No air is circulated through the space between the concrete block wall of the kiln and the exterior brick wall of the building. The kiln is not inside of and separate from the actual building structure. The internal block walls are attached to the outside structure and have no structural capacity of their own. They act only as interior facing for an insulating air space.

37. Approximately 30% of Malthouse No. 1 is not used in the business activity of transforming barley into malt. That percentage includes the equipment room, the top of the germination area, the two levels below the steeping area (one of which was originally but no longer is an attemporator plenum), the fan room, the top elevation of the kiln area, the walls and roof around the steeping tanks, and all the vestibule areas in the kiln building. Only the kiln building and the germinating areas of Malthouse No. 1 perform functions distinct and different from the function ordinarily performed by buildings and other taxable structures. The primary function of the structure around the "1904 steeping tank" is essentially the same shelter function as buildings and other structures.

38. The parties agree that the tax saving to Petitioner for taxes payable on "1904 Malthouse No. 1" would be $8,194.82 for

1982 and $7,949.29 for 1983 if the entire item is not real property. Joint Exhibit No. 1. The Court finds, however, that only 70% of said item should be exempt.

39. The parties agree that the tax saving to Petitioner for taxes payable on "1904 Kiln Bldg" would be $7,433.30 for 1982 and $7,210.58 for 1983 if the entire item is not real property. Joint Exhibit 1. The Court finds, however, that only 70% of said item should be exempt.

Malthouses Nos. 2 and 3, Including
Steeping, Germinating, and Kilning Areas

40. Malthouses Nos. 2 and 3 are essentially identical in function and design, as well as being adjoining facilities connected by a common plenum wall. Malthouse No. 2 was constructed in 1976 and Malthouse No. 3 in 1978. A description of the operation of one applies equally to the other.

41. Looking at a cross section of Petitioner's Malthouse No. 2, the upper level is the steeping-in area showing the 16 inch drag conveyor which conveys the clean barley from the barley elevators into the steep tanks. The steep tanks are supported by large concrete beams arranged in a honey-comb fashion. Below that is the steep-out or steep-discharge area where the grain is removed from the bottom of the tanks and distributed to germination compartments.

42. Below the steep-out level is the kiln fan room. The kiln fans are designed to force approximately 350,000 cubic feet of air per minute for drying the green malt. The air is sucked in from the outside through the heating room below the fans, thence into the fans; from there it is discharged through a vertical fan discharge through the heating room (plenum) into the lower kiln air supply plenum for distribution into subcompartments below the grain in the kilning compartments.

43. The kiln fan room is supported by a concrete floor which is also a ceiling for the air plenum below and which is part of the ductwork for the air movement used in the kilning process.

44. The bottom level below the steeping tanks is the kiln air supply plenum. Heated air from the discharge or the kiln fans is pumped into that plenum from where it is distributed to the subcompartments which are in the drying or kilning phase.

45. Although the walls for the kiln air plenum and heating plenum are also external walls of Malthouses Nos. 2 and 3, their primary function is that of a kiln air plenum and a heating plenum for the process of converting barley into malt.

46. The steeping areas, kiln fan rooms and plenum areas beneath the steeping tanks are not labor intensive. During the day only a few hours of manpower are expended in the steeping area and basically no manpower is associated with the kiln fan rooms and the two areas below them.

47. The first level of the malthouses is the air supply plenum, which serves to distribute heated or attemporated air to compartments on the next level, depending upon whether they are being used for kilning or germinating.

48. The second level of the malthouses contains the grain compartments. Hot kiln air and cool attemperated air passes up through the grain compartments and into a plenum area on the third level, which either directs the cool moist air back to the north side of the building and through the attemperator for recirculation, or directs the hot kiln air to the south through the heaters for recirculation. The primary function of the walls, ceilings and floors of both compartments and subcompartments are to serve as containment plenums or portions of ductwork.

49. The compartment and subcompartment walls on the east side of Malthouse No. 2 are exterior walls, which are now covered in part by the maintenance building. Petitioner does not dispute the taxable status of the maintenance building. The compartment and subcompartment walls on the west side of Malthouse No. 2 were at one time exterior walls. They now comprise one of the walls between compartments in Malthouses Nos. 2 and 3. The outside walls for Malthouse No. 3 on the west side also function as compartment and subcompartment walls. The support beams for the heat recovery unit, on which have been placed garage doors, cover a portion of the compartment and subcompartment walls at the west end of Malthouse No. 3.

50. The upper level of the malthouses is known as the exhaust air plenum areas. As Petitioner's Exhibit 6 indicates, there are two gates leading from the grain compartments. The smaller hole in the gate on the right side is the germination air exhaust plenum where the exhaust from all compartments in germination phase goes, either to be exhausted into the atmosphere or for recirculation back to the attemporation area depending on weather conditions.

51. The area on the left side of Petitioner's Exhibit 6, where the larger opening is located, is known as the kiln exhaust plenum. Only one of the compartments in both Malthouse No. 2 and Malthouse No. 3 is in the kilning phase at a given time; the others are in germination. The air from the kilning compartments is exhausted through the opening in the plenum and either exhausted through the heat recovery unit or recycled.

52. These exhaust air plenums, like the other air distribution and supply plenums, could have been constructed of other

materials to look, for example, like equipment or steel ductwork, and which need not have been incorporated, as has been done here, into the functional design of these malthouses.

53. In Malthouses Nos. 2 and 3, rather than transferring the green malt from one compartment to another for kilning, the germination and kilning processes are conducted utilizing the same compartments. This is accomplished by means of large butterfly dampers at each end of the compartments, which are opened or closed depending upon which procedure, germination or kilning, is desired.

54. As with Malthouse No. 1, the cool, moist air for the germination process in Malthouses Nos. 2 and 3 is provided by what are known as attemperators. In Malthouse No. 1 the attemporator looks like a piece of equipment and is not taxed as real estate by the Respondent. In Malthouses Nos. 2 and 3, however, the attemporators are incorporated into the functional design of the facility and have been taxed as real estate.

55. The attemperators are essentially large spray vats where the air is passed through a temperature-controlled "blanket" of water spray. The attemperators are located on the first level of the malthouses, and function like large air conditioners and humidifiers.

56. The air is forced through the water spray by means of large fans which channel it through plenums (air ducts) and thence into chambers (subcompartments) located beneath the germination/kiln compartments. The moist air then flows upwards through the perforated floor of the compartments and is distributed equally throughout the grain bed.

57. Spray chambers can be purchased in packaged units from several manufacturers.

58. The fans for the attemperator system are located on the third level of the malthouses. The fans force air from the germination plenum located at the same level down to the first level where the air is humidified and cooled to the proper temperature by the attemperator. The north wall of the attemperator is not insulated because heat loss is not a concern in that area. That wall is an exterior wall of the malthouses. The attemperators do not require more than minimal labor.

59. The malthouses are not labor intensive. The only fundamental labor involved therein is the loading and unloading of compartments with grain. The unloading is approximately a two-hour cycle and the loading is from one to two hours. There is a little miscellaneous cleanup and sanitation or maintenance work.

60. The following exterior surfaces of Malthouses Nos. 2 and 3 are covered with four inches of fiberglass insulation, which in turn is covered with corrugated steel; the north wall of Malthouse No. 2, commencing with the area enclosing the attemperator unit; the entire east wall of Malthouse No. 2; the west wall of Malthouse No. 3; and the walls enclosing the plenums which are located above the compartments. The lower kiln plenums on the south side of Malthouses Nos. 2 and 3 are also insulated, but on the inside.

61. The purpose of the exterior insulation is to protect against the heat loss, and to preserve the concrete from deterioration because of moisture.

62. The roof of Malthouses Nos. 2 and 3 is constructed of asphalt roofing material laid over insulation, which in turn is laid over concrete to form the "ceiling" of the compartments.

63. The outside siding of corrugated steel has no structural stability or function; it serves only to protect the insulation. Similarly, the roofing materials serve only to protect the insulation.

64. In reaching its valuation of the property, the Respondents did not consider the external shell in relation to any functional purpose it may have served in the transformation of barley into malt. The Respondents did not consider in the assessment and valuation process whether any of the facilities' (*i.e.*, Malthouses Nos. 1, 2 and 3) exterior walls functioned as or as part of equipment used in the transformation of barley into malt.

65. The Commissioner of Revenue has issued a guideline dated August, 1973, entitled "Bulletin-Attached Machinery Excluded from Real Property." Petitioner's Exhibit 36.

66. That Bulletin provides, in pertinent part, as follows:

"The decisive test is whether the property under consideration, in any case, is devoted primarily to the business contained on the premises or whether it is devoted primarily to the use of the land upon which the business is conducted.

* * * * *

Generally, there is a fundamental distinction between annexations which would be integrated with and of permanent benefit to the land regardless of its future use, such as a heating furnace, water system, drainage and sewer system, all of which are accessories to the land and not to the business carried on, and annexation of special purpose manufacturing or processing machinery which would be used only in a particular business or industry and not for any normal use to which the land may be devoted and hence not part of the real property."

In the Memorandum the Commissioner gives various examples, the first of which is the following:

"Example 1. The combination of machinery, implements and equipment used by a refiner of crude oil for purposes of reproducing gasoline and other petroleum products is commonly referred to as a "cracking unit." However, this complex of steel girders and machinery is basically a piece of equipment used solely in the production activities of a refinery and hence is not part of the real property."

67. Some of the items at issue are devoted primarily to the business of producing malt rather than to the use of the land upon which the business is conducted.

68. Malthouses Nos. 2 and 3 were designed and constructed for the purpose of steeping, germinating and kilning; that is what they were specifically built for and what they are used for. Although the malthouses look like a warehouse or factory, in function the walls, ceilings, and floors are integral parts of the malting process. Absent them, there would be no malting process.

69. Nine percent (9%) of Malthouses Nos. 2 and 3 (which includes the steeping, germination and kilning areas) is not used directly in the process of transforming barley into malt. The areas included in that 9 percent which is real estate include corridors, stairwells, conveyor passages, equipment rooms, work areas, electrical control rooms, and the chiller room portion of the attemporation area. The remainder is used exclusively in the transformation of barley into malt.

70. The parties agree that the tax saving to Petitioner for taxes payable on "1976 2 Story Malthouse" would be $44,541.35 for 1982 and $43,206.78 for 1983, if the entire item is not real property. Joint Exhibit 1. The Court finds, however, that only 89% of said item should be exempt.

71. The parties agree that the tax saving to Petitioner for taxes payable on "1978 Malthouse" would be $34,997.00 for 1982 and $33,948.43 for 1983, if the entire item is not real property. Joint Exhibit 1. The Court finds, however, that only 89% of said item should be exempt.

Garage—Malthouse No. 3

72. A four-door garage (about 26' × 96') is located at the west end of Malthouse No. 3. This garage was constructed as an afterthought by the addition of four doors and a four-inch concrete slab to a concrete overhang with five pre-existing concrete supports or walls which were constructed as support for a heat recovery system located at the top of the overhang on the west end of Malthouse No. 3. The garage is used for the storage of various items used in the production of malt at Froedtert.

73. Respondent originally assessed this "structure" at $42,400.00. Petitioner originally contended that the garage was equipment which supported the heat recovery unit; it withdrew this claim at trial and indicated only that the assessed value of the garages is in contention. Respondent reassessed the value of the garages at trial to $26,500.00. The Court finds that the proper estimated market value of that garage is $26,500.00.

74. All of the structures are located in an industrial area of the city—near the railroad track and near the river—an area where there is no demand for office space so it would have no utility for office space in the foreseeable future.

75. All of the structures were specially designed as a part of the "overall building structure". In many instances the structure and equipment are indistinguishable, and the exterior walls are the equipment.

76. At issue herein is the assessment as of January 2, 1981 for taxes payable in 1982, and the assessment as of January 2, 1982 for taxes payable in 1983.

77. The Memorandum attached hereto is hereby made a part of these findings.

Conclusions of Law

1. This Court has jurisdiction over this matter pursuant to Minn. Stat. Sec. 278.01.

2. The primary function of the 1974 Con Annex, identified in paragraph 9 of Joint Exhibit No. 1 is not distinct and different from the functions ordinarily performed by buildings and other taxable structures and that item is, therefore, taxable.

3. The primary function of the 1904 Steel Annex identified in paragraph 10 of Joint Exhibit No. 1 is not distinct and different from the functions ordinarily performed by buildings and other taxable structures and that item is, therefore, taxable.

4. The primary function of 70% of 1904 Malthouse No. 1, identified in paragraph 12 of Joint Exhibit No. 1, is distinct and different from the functions ordinarily performed by buildings and other taxable structures, and 70% of that item is, therefore, exempt.

5. The primary function of 70% of the 1904 kiln building, identified in paragraph 13 of Joint Exhibit No. 1, is distinct and different from the functions ordinarily performed by buildings and other taxable structures, and 70% of that item is, therefore, exempt.

6. The primary function of the structure around the 1904 steeping tanks, identified in paragraph 14 of Joint Exhibit No. 1, is not distinct and different from the functions ordinarily performed by buildings and other structures and is, therefore, taxable.

7. The primary function of the heat recovery unit on top of Malthouse No. 3 garage, identified in paragraph 16 of Joint Exhibit No. 1, is distinct and different from the functions ordinarily performed by buildings and other taxable structures and that item is, therefore, exempt.

8. The primary function of 89% of Malthouse No. 2 constructed in 1976, identified in paragraph 18 of Joint Exhibit No. 1, is distinct and different from the functions ordinarily performed by buildings and other taxable structures and 89% of that item is, therefore, exempt.

9. The primary function of the 1976 steeping building, identified in paragraph 19 of Joint Exhibit No. 1, is not distinct and different from the functions ordinarily performed by buildings and other taxable structures and is, therefore, taxable.

10. The primary function of 89% of Malthouse No. 3 constructed in 1978, identified in paragraph 20 of Joint Exhibit No. 1 is distinct and different from the functions ordinarily performed by buildings and other taxable structures and 89% of that item is, therefore, exempt.

11. The primary function of the 1978 steeping buildings identified in paragraph 21 of Joint Exhibit No. 1 is not distinct and different from the functions ordinarily performed by buildings and other taxable structures and that item is, therefore, taxable.

12. The estimated market value of the 4-door garage located at the west end of Malthouse No. 3 as reassessed by the Respondent at trial in the amount of $26,500 is hereby affirmed.

13. The assessor's estimated market values of the items indicated above should be reduced on the books and records of the Respondent for taxes payable in 1982 and 1983.

14. Real estate taxes due and payable in calendar years 1982 and 1983 should be recomputed accordingly and refunds paid to the Petitioner as required by such computations, together with interest from the date of original payment, together with costs and disbursements herein.

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

December 15, 1983.

By the Court
John Knapp, Chief Judge
Minnesota Tax Court

Memorandum

The parties have stipulated that the issue in this case shall be limited to whether or not certain "structures" including malt elevators and malthouses are real property within the meaning of Minn. Stat. § 272.03 and are taxable as such. That statute provides in pertinent part that the ". . . term real property shall not include tools, implements, machinery, and equipment attached to or installed in real property for use in the business or production activity conducted thereon, regardless of size, weight or method of attachment." Minn. Stat. § 272.03, subd. 1(c)(i).

The Petitioner contends that in taxable years 1981 and 1982 the assessor unfairly and illegally classified as real property various equipment and machinery which is not real property, including, but not limited to a 1974 concrete malt elevator; a 1904 steel malt elevator; 1904 Malthouse No. 1, kiln and steep tank; 1976 Malthouse No. 2, including steeping area; and 1978 Malthouse No. 3, including steeping area. There is no issue of value.

The Petitioner contends that said equipment and machinery is used exclusively by the Petitioner in the transformation of barley into malt which is the business or production activity occurring at said locations; either in the process of steeping, germination, and kilning for which the malthouses and related equipment are specially designed; or, in the process of aging and blending, which takes place in the malt elevators.

Generally speaking, the kiln/germination areas of the malthouses, including the attemporators, are chiefly large air conditioning/humidifying and or roasting chambers. These chambers are pressurized and contain no work or storage space as ordinarily found in factories or warehouse. The work performed in these chambers is only incidental to the process occurring within them of transforming barley into malt. No work other than sanitation and repairs is performed in the air mixing and spray chambers of the malthouses which are also a functional part of the malting process.

This is a difficult issue to decide because the functions and use of the equipment and machinery are inextricably intertwined with the "building-like structures" themselves. We have items which perform a dual function. The walls are primarily part of the machinery, but incidentally also shelter persons and items from the forces of nature. Some of the items have the appearance of buildings but are specially designed to perform as equipment and machinery used in the process of transforming barley into mait. The walls of the malthouses act as a vessel in both the germination process and also in the kilning process.

The malthouses are so constructed that they could not be converted to another use without substantial damage to the structure itself, its walls, or its roofs. The equipment therein could not operate apart from the plant or any housing. These are special purpose structures and were constructed as single units for the specific purpose of a malthouse. The floors of the

germination compartments are constructed of perforated steel and would be of no practical use for any purpose other than that of a malthouse.

One of the rules that is well established is that taxation is the rule and exemption is an exception. Therefore, there is a presumption that all property is taxable. As a consequence, the burden of proof is on the one seeking the exemption to establish that he is entitled to the exemption. In *Re Junior Achievement*, 271 Minn. 385, 135 N.W. 2d 881. In the instant case we have a very close factual question as to whether or not the property in issue is personal property which is exempt from taxation or real property which is taxable.

The courts have applied various tests in determining whether property is real property or personal property. The Federal Courts seem to have adopted a combination of the appearance test and the function test and have said that you must consider both in determining the issue. Minnesota, however, has specifically adopted the functionality test. *Crown Co Co., Inc. v. Commissioner of Revenue*, 336 N.W. 2d 272. The Commissioner of Revenue also seems to have adopted the functionality test in interpreting the statute here in issue. The bulletin dated August, 1973, entitled "Bulletin-Attached Machinery Excluded from Real Property" reads in pertinent part as follows:

"The decisive test is whether the property under consideration, in any case, is devoted primarily to the business contained on the premises or whether it is devoted primarily to the use of the land upon which the business is conducted."

In the instant case, we find that some of the property in dispute was devoted primarily to the malting business.

The chief issue is whether the exterior shells of the Petitioner's Malthouses 1, 2 and 3, including the steeping, germinating and kilning areas thereof and the exterior shells of its malt bins are items of machinery or equipment and therefore exempt from ad valorem taxation, or are buildings or structures and therefore taxable under the provisions of Minn. Stat. § 272.03.

The Petitioner contends that the walls or exterior shells which the Respondent seeks to tax are themselves part of the machinery or equipment attached to or installed on real property "for use in the business or production activity" of transforming barley into malt.

Respondents contend that they have not taxed any equipment or machinery, but only the exterior shells of the items in dispute. They contend that there can be no viable contention in the instant case that the exterior shells of the malthouses and bins constitute "machinery" within the commonly accepted meaning of that word.

Respondents concede that the steeping, attemporating, germinating and kilning areas of the malthouses are equipment or machinery used in the process of transforming barley into malt, but contend that such equipment or machinery is all located within or inside of an exterior shell or overall building structure, which is taxable. The assessor testified that he assessed only the "shell" of the structures in dispute, and that he did not assess the equipment. We find, however, that in the malthouses and kilns the "shell" is part of the machinery. There would be no wind tunnel unless you had a shell to contain the wind. There would be no germination area or kilning area unless you had a shell to contain the barley and particularly the attemporated or conditioned air, which is essential to the biochemical process of converting barley into malt. The shell is indistinguishable from the equipment. The equipment or machinery was specially designed as a part of the "overall building structure" and, in fact, includes the exterior walls of the malthouse facilities.

The assessor has applied a formula normally used for the purpose of placing a value on a warehouse and Respondents contend that the malthouses and kilns would be converted to warehousing. We find, however, that the design of those structures have very little, if any, utility for modern warehousing. They are single purpose structures designed specifically for malthouses and kilns. They are long narrow chambers designed specifically for malt beds and wind tunnels. Modern warehouses are designed with wide open spaces for the use of lift trucks to eliminate physical labor as much as possible. The cost of converting these structures to accommodate modern warehousing would be prohibitive. The result of an attempted conversion would be an inefficient warehouse.

This is not a matter of first impression in the State of Minnesota, but there is some doubt in this Court's mind about the holding of the Minnesota Supreme Court in the case of *In Re KDAL, Inc. v. County of St. Louis*, 308 Minn. 101, 240 N.W. 2d 560, and *Crown Coco, Inc. v. Commissioner of Revenue*, 336 N.W. 2d 272. In the *Crown Coco* case the Court said:

"To be exempt as equipment, an item must perform functions distinct and different from the functions ordinarily performed by buildings or other taxable structures. See *KDAL*, 308 Minn. 101, 240 N.W. 2d 560. Although a canopy has no walls, it essentially serves the same shelter function as buildings and other structures to the extent that it protects persons and items from the forces of nature.

Based on the adoption of the 'functionality' test, we hold that a canopy over self-service station gasoline pumps is a taxable structure and subject to taxation pursuant to Minn. Stat. § 272.01, subd. 1. (1982)"

If the Court meant that the item must exclusively perform functions distinct and different from the functions ordinarily performed by buildings, then we must find for the Respondent. If, however, the Court meant that the primary function of the

item must be distinct and different from the functions ordinarily performed by buildings and other taxable structures, then we must find, in part, for the Petitioner. We conclude that the Supreme Court meant that the primary functions of the item is controlling and that, therefore, all of the items whose primary function is essentially different from the function of buildings and other structures, are exempt from taxation.

We arrive at that conclusion by studying the legislative history of the statute and the interpretation placed thereon by the Commissioner when it was first enacted. The specific language first appeared in Chapter 650, Article XXIV, Laws of 1973, which amended Minn. Stat. § 272.03, subd. 1(a), by excluding from the definition of real property, tools, implements, machinery and equipment which are attached to or installed in real property for use in the business or production activities without regard to size, weight, or manner in which such items are attached to the real property. The statute specifically reversed the decision of the Minnesota Supreme Court in *Abex Corporation v. Commissioner of Taxation*, 295 Minn. 445, 207 N.W. 2d 37, in which case the Court had held that "ponderous" machinery was real property and subject to taxation. Because the Commissioner's Memorandum was promulgated almost simultaneously with the enactment of the statute, we conclude that the Commissioner was expressing legislative intent when he gave the example of a cracking plant as being personal property. The Commissioner expressly stated that the decisive test is whether the property under consideration is devoted primarily to the business contained on the premises or whether it is devoted primarily to the use of the land. Hence, we conclude that the Supreme Court also intended to adopt the primary test rather than the exclusive test in determining how property is to be classified. In its decision in *Crown CoCo, Inc. v. Commissioner of Revenue*, 336 N.W. 2d 272, the Minnesota Supreme Court expressly adopted the functionality test and by that token apparently rejected the appearance test. The Court did not reject the interpretation found in the Commissioner's Bulletin which reads as follows:

"Generally, there is a fundamental distinction between annexations which would be integrated with and of permanent benefit to the land, regardless of its future use, such as a heating furnace, water systems, drainage and sewer systems, all of which are necessary to the land and not to the business carried on, and annexation of special purpose, manufacturing, or processing machinery which could be used only in a particular business or industry and not for any normal use to which the land may be devoted, and hence not part of the real property. The decisive test is whether the property under consideration in any case is *devoted primarily to the business contained on the premises*, or whether it is devoted primarily to the use of the land upon which the business is conducted." (Emphasis added)

It is now ten years since the Commissioner promulgated the foregoing Bulletin. It must be assumed that the Bulletin expressed legislative intent. Long standing administrative interpretation must be given great weight in determining legislative intent. *Gale vs. Commissioner of Taxation*, 228 Minn. 345, 37 N.W. 2d 711, *Abel vs. J.C. Penney Co., Inc.*, 488 F. Supp. 891, affirmed 660 F. 2d 720, *First National Bank of Milaca vs. Smith*, 445 F. Supp, 1117.

Where a regulation is a proper and correct interpretation of legislative intent, a taxpayer is entitled to rely on it for the purpose of interpreting a statute in question. In the instant case, the regulation issued by Deputy Commissioner Louis Plutzer was a proper and correct interpretation of legislative intent, and the taxpayer is entitled to rely on it.

In order to be classified as exempt equipment under Minn. Stat. § 272.03, subd. 1(a), it is not necessary that the item be mechanical. *Gulf Oil Corporation v. Philadelphia*, 357 P.A. 10, 53 A. 2d 250.

By their pre-trial stipulation the parties have enumerated the items in dispute. We have found that some of the items in dispute are exempt and others are not exempt.

The parties dispute the taxable status of the item identified as 1974 Con Annex (10 Con Bins). The Petitioner seeks tax exemption for said malt elevator. We have found that the primary function of said malt elevator is not so distinct and different from the functions ordinarily performed by buildings and other taxable structures as to make it exempt. Simply stated their function is to protect the malt from the elements during the aging and blending process.

The parties dispute the taxable status of the item identified as 1904 Steel Annex (22 Steel Bins). The Petitioner seeks a tax exemption for said malt elevator. We have found that the primary function of said malt elevator is not distinct and different from the functions ordinarily performed by buildings and other taxable structures and that item is, therefore, taxable.

The parties dispute the taxable status of the item identified as 1904 Malthouse No. 1. The Petitioner seeks tax exemption for said malthouse. The evidence indicated that 30% of said malthouse is not used in the business activity of transforming barley into malt but that 70% thereof is used for said purpose. We have, therefore, found that the primary function of 70% of 1904 Malthouse No. 1 identified in paragraph 12 of Joint Exhibit No. 1 is distinct and different from the functions ordinarily performed by buildings and other taxable structures and that 70% of said item is, therefore, exempt.

In Malthouse No. 1 the Petitioner concedes that the lower level functions as a building, and we find that the primary function of the upper level essentially serves the same shelter function as buildings and other structures to the extent that it protects persons and items from the forces of nature. The primary function of the levels in between the lower level and the top level, however, is essentially different from that of a building.

The parties dispute the taxable status of the item identified as 1904 kiln building, identified in paragraph 13 of Joint Exhibit No. 1. The building is constructed of two walls with airspace in between. The outer wall is brick and the inner wall concrete blocks. The purpose of this double-wall construction is to insulate the kilning area from heat loss. The vestibule area at the south end of the kiln building is no different from the functions ordinarily performed by buildings and should, therefore, be classified as real property. The evidence indicated that approximately 30% of the kiln building is not used in the business activity of transforming barley into malt. We have found that the primary function of 70% of said item is distinct and different from the functions ordinarily performed by buildings and other taxable structures and that 70% of said items is, therefore, exempt.

The parties dispute the taxable status of the item identified as 1904 steeping tank. The Petitioner seeks a tax exemption for said item. The evidence indicated that the assessment includes only the walls around the steeping tanks and that the tanks themselves were not included in the assessment. The walls act as weather and contamination barriers in addition to providing structural support for the tanks. There was no evidence to give the Court a basis for allocating part of the item to structural support and part of it to a shelter function so this Court has found that the primary function of the structure around the steeping tanks is not distinct and different from the functions ordinarily performed by buildings and other taxable structures and that item is, therefore, taxable.

The parties dispute the taxable status of the items identified as Malthouse No. 2 constructed in 1976, which is identified in paragraph 18 of Joint Exhibit No. 1, and the taxable status of Malthouse No. 3, constructed in 1978, identified in paragraph 20 of Joint Exhibit No. 1. The Petitioner seeks tax exemption for said malthouse. The attemporators are incorporated into the functional design of the facilities and have been taxed as real estate. On Malthouses 2 and 3 the lowest level is primarily a wind tunnel for the distribution of controlled and conditioned air (oxygen) during the germination process of converting barley into green malt by biochemical processes and also serves as a wind tunnel to deliver dry conditioned air to the green malt in order to abruptly stop the germination process to convert green malt into dry malt. The second level is primarily a vessel for the grain or malt during the germination and kilning processes. Its floor is perforated steel which allows the air to be evenly distributed at all times. Its walls are super-insulated double walls whose primary function is to control the temperature and humidity during the germination and kilning processes. Even the roof is insulated and serves primarily as part of the vessel to contain the controlled air. The evidence indicated that 9% of said malthouses is not used in the business activity of transforming barley into malt but that 89% thereof is used for said purpose. We have, therefore, found that the primary function of 89% of Malthouses Nos. 2 and 3 constructed in 1976 and 1978 is distinct and different from the functions ordinarily performed by buildings and other taxable structures and that 89% of said item is, therefore, exempt.

The parties dispute the taxable status of the items identified as 1976 steeping building, identified in paragraph 19 of Joint Exhibit No. 1, and the 1978 steeping building, identified in paragraph 21 of Joint Exhibit No. 1. The Court has found that the primary function of said items is not distinct and different from the primary functions ordinarily performed by buildings and that said items are, therefore, taxable.

The parties dispute the taxable status of the item identified as the heat recovery unit on top of Malthouse No. 3 garage. This Court has found that the primary function of said item is distinct and different from the functions ordinarily performed by buildings and other taxable structures and that item is, therefore, exempt.

The parties dispute the estimated market value of the 4-door garage, located at the west end of Malthouse No. 3. The Petitioner originally contended that the garage was equipment which supported the heat recovery unit, but at trial it withdrew this claim and indicated that only the assessed value of the garage was in contention. During trial the Respondent reduced the estimated market value to $26,500 and the Court has affirmed that value.

In the instant case, fairness dictates the application of the pro-rata doctrine which has been applied by the Court in cases where part of a building is exempt because it is used for exempt purposes and part of it is taxable because it is leased for more than one year for non-public purposes. *Christian Businessmen's Committee v. State*, 228 Minn. 549, 38 N.W. 2d 803; *Special School District No. 1 v. State of Minnesota and County of Hennepin*, District Court File No. 1047; *Commissioner of Revenue v. Safco Products Company*, 266 N.W. 2d 875. In the *Safco* case, the Court held that the taxpayer was entitled to a sales and use tax exemption for purchases of property ultimately destined for out-of-state use in the same proportion of component costs as the finished product itself. The taxpayer was not required to pay a sales tax on 97.7% of the cost of art work because that percentage of the final product was destined to be shipped out-of-state. Here the Respondent has already conceded that the inner parts of the structure are machinery, so we already have a pro-rata assessment. The only issue is how much is exempt because it is machinery.

J.K.

State of Minnesota
County of Hennepin

Tax Court
Fourth Judicial District

Sharpe & Kline, a Minnesota General Partnership,

Petitioners,

v.

County of Hennepin,

Respondent.

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

File No. TC-1940
TC-2978

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, on June 28 and 29, 1983, at the Government Center, Minneapolis, Minnesota.

Josiah E. Brill, Jr. of Grossman, Karlins, Siegel & Brill appeared on behalf of Petitioners.

Robert T. Rudy, Assistant County Attorney, appeared on behalf of Respondent.

Briefs were subsequently submitted by both parties.

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 matter involves appeals from the assessor's estimated market values for the subject property located at 1015 South Sixth Street, Minneapolis, Minnesota, as of January 2, 1981, and January 2, 1982, for taxes payable in 1982 and 1983.

2. The subject property is a full-city block except for one lot, and the building located on the property is an eight-story industrial building constructed in the 1920's. The entire building includes approximately 225,000 square feet which is leased out to a variety of tenants. As of January 2, 1981, the building was approximately 90% occupied but many tenants left during 1981 and 1982 so the occupancy rate was considerably less than that, especially in 1982.

3. The estimated market values for the years in question by the assessor, the Petitioners' appraiser, the Respondent's appraiser, and as determined by this Court are as follows:

	Assessor's Estimated Market Value	Petitioners' Appraiser's EMV	Respondent's Appraiser's EMV	EMV as Determined By this Court
1/2/81	$1,475,000	$1,000,000	$1,430,000	$1,300,000
1/2/82	$1,625,000	$1,000,000	$1,570,000	$1,400,000

4. We have concluded in other cases that the assessor's estimated market value is approximately 85% of the actual market value in the year 1981. We are, therefore, applying that percentage to the estimated market values determined by this Court indicated above, and we determine that the estimated market value for tax purposes for the subject property for 1981 should be $1,105,000 and for 1982 $1,190,000.

Conclusions of Law

1. The assessor's estimated market value for the subject property as of January 2, 1981, is set at $1,105,000 and as of January 2, 1982, at $1,190,000. Respondent is directed to change its books and records accordingly and issue a refund for the difference between the amount of taxes that have been paid and the taxes that should have been paid based on the above estimated market value.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

December 20, 1983

By the Court,

Carl A. Jensen, Judge
Minnesota Tax Court

Memorandum

The subject property is an eight-story industrial building located on a full-city block except for one lot.

The assessor's estimated market value for the subject property as of January 2, 1981, is almost 50% more than the Petitioners' appraiser's estimated market value and the assessor's estimated market value for January 2, 1982, is over 60% more than the Petitioners' appraiser's estimated market value. The Respondent's appraiser has determined estimated market values somewhat lower than the assessor's estimated market values. It can readily be seen that the valuation of real property is not an easy task.

We have reviewed our trial notes, all of the exhibits, the appraisals submitted by the parties, and the briefs submitted by the parties and have arrived at the conclusions stated in the Findings of Fact.

It would be of little value to review the evidence in detail. One major difference in the estimated market values as determined by the Petitioner and Respondent is the result of the use of a capitalization rate of 14% by the Petitioner and 11% by the Respondent. The Respondent's appraiser indicated that he had determined the capitalization rate on the basis of other market sales. The Petitioners' appraiser indicated that he had determined the capitalization rate on the basis of the going interest rate. We have stated in other decisions that we are inclined to believe that a capitalization rate based on the market is a more reliable indication than the going interest rate. The value of a bond or similar instrument can be fairly readily determined by the application of a capitalization rate based on current interest rates. This does not hold true for the determination of the value of real estate since there are many other factors involved in the purchase and sale of real estate, not least of which is the potential inflation in real estate values and the benefits obtained in income tax by taking depreciation.

We have determined in several other cases involving commercial property in Hennepin County that a ratio of the value placed on the property by the assessor compared to the actual market value is approximately 85%, and we have, therefore, applied this factor to the estimated market value that we have determined. *See Kraus-Anderson, Inc. v. County of Hennepin*, TC-2007, dated September 9, 1983; *Minneapolis Grain Exchange v. County of Hennepin*, File Nos. TC-1349 and 1635, Amended Findings dated August 25, 1983; *United National Corporation v. County of Hennepin*, TC-1482 and 1866, dated April 21, 1983.

C.A.J.

State of Minnesota
County of Dakota

Tax Court
Regular Division

Mark A. Solos and
Bonnie M. Solos,

Petitioners,

v.

County of Dakota,

Respondent.

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

File No. 95548

The above matter came on for hearing at the Dakota County Courthouse on November 21, 1983, before the Honorable Earl B. Gustafson, Judge of the Tax Court.

Mark A. Solos appeared pro se.

David M. Fortney, Assistant Dakota County Attorney, appeared for the Respondent.

Syllabus

1. On an appeal from the valuation of property for assessment purposes, a recent sale of the subject property adjusted for cash equivalency is the best evidence of market value.

2. A claim of unequal taxation must be supported by evidence that property in the same class and in the same taxing district has been systematically and substantially undervalued when compared with the subject property.

Findings of Fact

1. Petitioners have sufficient interest in the property to maintain their petition; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties hereto.

2. The subject property is the homestead of Petitioners in the City of South St. Paul at 147 Kassan Court described as follows:

Lots four (4) and five (5), Block two (2), Kassan Crest, according to the plat thereof on file and of record in the office of the County Recorder within and for Dakota County, Minnesota. Property Identification Nos. 36 41300 040 02 and 36 41300 052 02

3. The taxes at issue are the real estate taxes on the subject property payable in the year 1983, which Petitioners claim were assessed at a value greater than its actual or market value.

4. The assessment date in question is January 2, 1982.

5. The property was purchased in August, 1982 on contract for deed for a purchase price of $115,000.

6. The assessor's estimated market value as of January 2, 1982, is $111,300.

7. Petitioners offered evidence regarding the "cash equivalency" of the sale in August, 1982.

8. Petitioners also offered evidence of a pattern of systematic and substantial undervaluation of other property within the same taxing district when compared to the subject property.

9. The Court finds the subject property had a market value on January 2, 1982, of $103,500.

10. The Court finds that other residential property in Dakota County and South St. Paul were valued at approximately 82% of market value during the period in question.

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

Conclusions of Law

1. The market value of $103,500 as determined by the Court is equalized with other property by applying a 82% ratio.

2. The assessor's estimated market value (EMV) as of January 2, 1982, for taxes payable in 1983 is, therefore, reduced from $111,300 to $84,870.

3. Real estate taxes due and payable in 1983 should be recomputed accordingly and refunds, if any, paid to Petitioners as required by such computations, together with interest from the date of original payment.

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

December 20, 1983

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

Memorandum

Petitioners challenge the 1982 valuation of $111,300 placed on their home by the Dakota County Assessor. We find the proper value for taxes to be $84,870.

The property consists of two adjoining lots located in a desirable residential neighborhood in South St. Paul. One lot is improved with a new three-bedroom home.

Ordinarily, the best evidence of a property's market value is a recent arms-length sale for cash or its equivalent. In this case Petitioners purchased the property on contract for deed for $115,000 seven months after the assessment date. If this sale were adjusted for time, the sale price might be reduced slightly for inflation, but there was no evidence offered that indicates whether prices of residential property were increasing measurably during this period.

The purchase price should, however, be reduced to reflect "cash equivalency". The terms of purchase were favorable or below market. Petitioners paid $10,000 down and amortized the balance over 30 years with 9% interest with a balloon payment at the end of five years. They claim the cash equivalent price should be $91,706.19. Respondent, on the other hand, conducted a study (Exhibit No. 3) that indicates there was approximately a 2% difference between the price obtained in 1980 and 1981 for single family residences transferred by warranty deeds and by contract for deeds. Based on this study, Respondent concludes there is no significant basis for discounting contract for deed transfers.

We cannot give substantial weight to this study because we do not know what the financing terms of these individual sales might have been. Respondent apparently assumes that all contract for deed transfers have more favorable terms than warranty deed sales. This isn't necessarily true. A seller may transfer property to a buyer by warranty deed and take back a note and mortgage with below market financing terms. This study does, however, tend to confirm our suspicion that most home buyers and sellers who are not experienced investors do not as readily raise or discount purchase prices depending upon terms as buyers and sellers of apartment buildings and other commercial properties have done in recent years. In other words, the "cash equivalency" prices found in the sophisticated commercial market with its "creative financing" is not as prevalent in the single family residential market.

In this case Petitioners purchased under favorable initial terms of $10,000 down (less than 10%) with 9% interest over 30 years. This comes to an end, however, in 5 years when the entire balance must be paid in cash. We are discounting this sale 10% to $103,500 for cash equivalency. This, in our opinion, was approximately the cash market value of the property on January 2, 1982.

The evidence indicates that other residential property in South St. Paul and Dakota County during this period was valued at a ratio of approximately 77% of reported sale prices. There are two relevant studies prepared by the Department of Revenue for the Tax Court and they indicate the following ratios:

Dakota County Residential	1982 Sales Only	1981 & 1982 Sales
Mean	78.6%	76.5%
Median	78.1%	76.0%
Aggregate	77.9%	75.5%
South St. Paul Residential		
Mean	78.1%	78.8%
Median	74.8%	77.0%
Aggregate	77.6%	78.4%

The ratios have not been adjusted for terms or "cash equivalency" as discussed above. Some would presumably be warranty deed "cash" sales and some would be below market "contract" sales that would require adjustment. We feel an upward adjustment in these ratios of 5% would be appropriate. Therefore, we will apply a ratio of 82% for equalization purposes. This results in a final equalized estimated value for taxes of $84,870.

Respondent urges us to compare the value given to the subject property with single family homes in South St. Paul which sold for $100,000 or more during 1980, 1981 and 1982. This study (Respondent's Exhibit 4) indicates the median ratio to be 89%. There are eight sales in this study.

We favor the Department of Revenue's study because it has a larger and wider-ranging sample. See *In Re McCannell*, 301 N.W. 2d 910, 922 (Minn. 1980), where the Minnesota Supreme Court held a similar limited sample of ten sales of residences over $100,000 in a certain neighborhood in Minneapolis was not sufficiently reliable to sustain a reduction based upon a claim of unequal treatment.

E.B.G.

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