

84, Jan 23

# STATE REGISTER

STATE OF MINNESOTA

RECEIVED

JAN 23 1984  
LEGISLATIVE REFERENCE LIBRARY  
STATE CAPITOL  
ST. PAUL, MN. 55155



**VOLUME 8, NUMBER 30**

**January 23, 1984**

**Pages 1701-1770**



---

---

### 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			
32	Monday Jan 23	Monday Jan 30	Monday Feb 6
33	Monday Jan 30	Monday Feb 6	Monday Feb 13
34	Monday Feb 6	Monday Feb 13	Monday Feb 20
35	Monday Feb 13	Monday Feb 20	Monday Feb 27

\*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.

---

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$3.25 per copy.

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

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

---

Rudy Perpich  
Governor

Marsha Storck  
Editor

Sandra J. Hale  
Commissioner  
Department of Administration

Robin PanLener  
Editorial Staff

Stephen A. Ordahl  
Director  
State Register and  
Public Documents Division

Margaret Connelly  
State Register Index Editor

Debbie Kobold  
Circulation Manager

# CONTENTS

## MCAR AMENDMENTS AND ADDITIONS

Inclusive listing for issues 27-38, inclusive ..... 1704

## PROPOSED RULES

### Animal Health Board

Proposed Adoption of Rules of the State Board of Animal Health, Governing the Control of Swine Pseudorabies, to be Codified as 3 MCAR § 2.026 ..... 1705

### Commerce Department

Proposed Adoption of Amendments to Rules Relating to Workers' Compensation Competitive Rating ..... 1711

### Education Board

#### (State Board for Vocational Education)

### Education Department

#### Vocational-Technical Division

Proposed Adoption of Rules Governing Post-Secondary Vocational Instructional Personnel Licensure—Robotics Technician 5 MCAR § 1.0790 C ..... 1715

### Energy and Economic Development Department

Proposed Amendments of Rules Governing the Home Energy Disclosure Program and the Minimum Energy Efficiency Standards for Residential Rental Units ..... 1717

### Nursing Board

Proposed New Rules Identified as 7 MCAR §§ 5.4000-5.4006 Establishing Criteria for and A Listing of Advanced Nursing Programs for Certified Registered Nurse Anesthetists and Certified Nurse Midwives ..... 1731

### Public Welfare Department

#### Bureau of Income Maintenance

Proposed Temporary Rules Governing the Certification of Admission Programs for Inpatient Hospitals Participating in the Medical Assistance Program (12 MCAR §§ 2.0481-2.0484, Temporary) ..... 1738

## ADOPTED RULES

### Labor and Industry Department

#### Occupational Safety and Health Division

Adoption by Reference of Occupational Safety and Health Standards ..... 1743

## OFFICIAL NOTICES

### Secretary of State Office

Notice of Vacancies in Multi-Member State Agencies ..... 1744

### Commerce Department

Meeting Notice, Minnesota Comprehensive Health Association ..... 1744

### Commerce Department

Outside Opinion Sought Concerning the Impact on Small Business of the Previously Published Proposed Rules Governing Insurance Marketing Standards ..... 1744

### Commerce Department

Outside Opinion Sought Concerning the Impact on Small Business of the Previously Published Proposed Rules Relating to Insurance Claims Settlement ..... 1745

### Commerce Department

Outside Opinion Sought Concerning the Impact on Small Business of the Previously Published Proposed Rules Relating to the Workers' Compensation Assigned Risk Plan ..... 1745

### Corrections Department

Notice of Modification of Statement of Need and Reasonableness for Proposed Rules Governing the Operation of the Office of Adult Release ..... 1745

### Metropolitan Council

#### Metropolitan Health Planning Board

Notice of Preliminary Review Schedule 1984 Annual Implementation Plan ..... 1746

### Minnesota Job Skills Partnership Board

Notice of Availability of Grant Funds for Customized Training Programs ..... 1746

### Natural Resources Department

Notice of and Order for Hearing in the Matter of Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Mahnomen County ..... 1747

### Natural Resources Department

#### Mahnomen County Hearings Unit

Notice of and Order Postponing Receipt of Testimony In the Matter of Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Mahnomen County ..... 1750

# CONTENTS

## Public Welfare Department

### Income Maintenance Bureau

Outside Opinion Sought on the AFDC Rule ..... 1751

## Transportation Department

Petition of the City of Rochester for a Variance from State Aid Standards for Street Width ..... 1752

## Transportation Department

Petition of Nicollet County for a Variance from State Aid Standards for Design Speed ..... 1752

## STATE CONTRACTS

### Economic Security Department

Request for Proposal to Identify Potentially Eligible Clientele for Energy Assistance Programs ..... 1752

### Energy and Economic Development Department Minnesota Energy and Economic Development Authority

Notice of Request for Investment Banking Services ..... 1753

## SUPREME COURT

### Decisions Filed Wednesday, January 11, 1984

C8-83-1248 City of Chisago City, Respondent, v. Vernon E. Poulter, et al., Appellants. District Court, Chisago County ..... 1753

C7-83-1399 & C2-83-1424 Chrysler Credit Corp., Appellant, v. Donald P. Peterson, Respondent, and Keith R. Heller and Cedar Riverside Associates, Inc., Third Parties Respondents. District Court, Hennepin County ..... 1754

C3-83-1173 In the Matter of the Welfare of J.R.D. District Court, Brown County ..... 1754

CX-83-1221 State of Minnesota by the Waste Management Board, Respondent, v. Mae M. Bruesehoff, et al., Appellants. District Court, Carver County ..... 1754

C3-83-1271 Wing-Piu Chan, Relator, v. Pagoda, Inc., Respondent, and Commissioner of Economic Security. Department of Economic Security ..... 1754

C0-83-1292 In the Matter of the Trust Created Under the Maurice J. Florance, Jr. Trust Agreement dated January 14, 1954. Patricia Florance and Frank Gaertner, Appellants, v. Mercantile National Bank at Dallas, Trustee, and Florence A. Florance, Respondent. District Court, Hennepin County ..... 1754

C4-83-1151 State of Minnesota, Respondent, v. Roosevelt Nash, Appellant. District Court, Hennepin County ..... 1755

C8-83-2044 Raymond Allen Souter and Robert Votava, Appellants, v. State of Minnesota, Respondent. District Court, Kandiyohi County ..... 1755

C5-84-21 State of Minnesota, Respondent, v. Marjorie C. Hagen, Petitioner. District Court, Hennepin County ..... 1755

### Decisions Filed Friday, January 13, 1984

C0-82-1217 State of Minnesota, Respondent, v. Richard Gene Stagg, Appellant. District Court, Cottonwood County ..... 1755

C2-83-239 In the Matter of the Trusteeship Under the Last Will and Testament of Elmer Gold, Deceased. Trust A and B. District Court, Morrison County ..... 1755

C4-82-1110 State of Minnesota, Respondent, v. Robert W. Edwards, Appellant. District Court, Hennepin County ..... 1755

C9-83-1033 State of Minnesota, Appellant, v. Thomas Daniel Lepley, Respondent. District Court, Chisago County ..... 1755

C8-82-1580 In the Matter of the Petition of Hilltop Development, a partnership for certain relief in connection with certificate of Title No. 199618, Hilltop Development, a partnership consisting of Robert N. Roningen and Will Selbak, Appellant, v. Miller Hill Manor Company, a partnership consisting of Norman Hewitt and John Jackson, Respondent. District Court, St. Louis County ..... 1755

CX-82-1063, C1-82-1064 State of Minnesota, Respondent, v. Charles B. Randa, Appellant (CX-82-1063), Bradley Anderson, Appellant, (C1-82-1064). District Court, Itasca County ..... 1756

C2-82-294 State of Minnesota, Respondent, v. David Gerald Andring, Appellant. District Court, Washington County ..... 1756

CX-82-1676 The Cretex Companies, Inc., Respondent, and Ess Brothers & Sons, Inc., Respondent, v. Construction Leaders, Inc., Defendant, Travelers Indemnity Company, Appellant. District Court, Washington County ..... 1756

C2-83-192 Gerald Mitlyng, et al., petitioners, Appellants, v. Darrell Wolff, Sheriff of Wright County, et al., Respondents. District Court, Wright County ..... 1756

C0-83-76 Charles E. Wensman, petitioner, Appellant, v. State of Minnesota, Respondent. District Court, Hennepin County ..... 1756

CX-82-1175 Joseph A. Merz, et al., Appellants, v. Andy Leitch, et al., Respondents, District Court, Otter Tail County ..... 1756

C2-83-807 Steven C. Johnson and Barbara J. Johnson, Appellants, v. Helary, Inc., d.b.a. Charlie's Club, Respondent, Universal Surety Company, Lincoln, Nebraska, Respondent. District Court, St. Louis County ..... 1757

**C4-82-1186** State of Minnesota, Respondent, v. Michael Kelly, Appellant. District Court, Morrison County ..... 1757

**C1-82-1159** John Horton by Edward T. Horton, his guardian ad litem, Plaintiffs, v. Orbeth, Inc., d.b.a. C&C Boat Works, et al., defendants and third-party plaintiffs, Appellants, v. Timothy Johnson, Third-party defendant, Respondent, David Melchert, third-party defendant, Respondent. District Court, Crow Wing County .... 1757

**C2-82-1039, C9-82-1250** Chanhassen Estates Residents Association, Michael E. Murphy, Thomas Katsonas, David Soenen, R. W. Lownsbury, R. W. Connell, Gary Arndt and Keith Boudrie, Respondents (C2-82-1039) Appellants (C9-82-1250), v. The City of Chanhassen, Respondent, and McDonald's Corporation, intervenor, Appellant (C2-82-1039) Respondent (C9-82-1250). District Court, Carver County ..... 1757

**TAX COURT**

**State of Minnesota, County of Hennepin, Tax Court, Regular Division.** G & T Investment Company, Petitioner, v. County of Hennepin, Respondent. Court Files TC-1181, 1658, and 2400. Order Dated January 12, 1984 ..... 1758

**State of Minnesota, County of Hennepin. Tax Court, Regular Division.** Paul Klodt, Petitioner, v. County of Hennepin, Respondent. Court Files TC-1211, 1775, 2371. Order dated January 12, 1984 ..... 1760

**State of Minnesota, Tax Court, West Side Bar.** Inc., Appellant, v. Commissioner of Revenue, Appellee. Docket No. 3905. Order dated January 11, 1984 ..... 1763

**State of Minnesota, County of Ramsey, Tax Court, Regular Division.** Empiregas, Inc. of Chester and Empiregas of Zumbro Falls, Appellants. v. The Commissioner of Revenue, Appellee. Docket Nos. 3864 and 3865. Order dated January 11, 1984 ..... 1765

## NOTICE

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

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

#### The PROPOSED RULES section contains:

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

#### The ADOPTED RULES section contains:

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

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

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

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

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

# MCAR AMENDMENTS AND ADDITIONS

## TITLE 3 AGRICULTURE

### Part 1 Agriculture Department

3 MCAR §§ 1.0129-1.0130, 1.0132-1.0133, 1.0135 [Amend] (Adopted) .....	1659
3 MCAR §§ 1.0389, 1.0400 [Amend] (proposed) .....	1561
3 MCAR § 2.001, L.SB 43, 3 MCAR § 2.044 (adopted) .....	1659
3 MCAR § 2.011 [Amend] (adopted) .....	1659

### Part 2 Animal Health Board

3 MCAR § 2.026 (proposed) .....	1704
---------------------------------	------

## TITLE 4 COMMERCE

### Part 1 Commerce Department

4 MCAR §§ 1.9140-1.9141, 1.9143-1.9147 (proposed) .....	1711
4 MCAR §§ 1.9420-1.9442 (proposed) .....	1568
4 MCAR §§ 1.9801-1.9810 (proposed) .....	1562

## TITLE 5 EDUCATION

### Part 1 Education Department

5 MCAR § 1.0790 (proposed) .....	1715
----------------------------------	------

## TITLE 6 ENVIRONMENT

### Part 1 Natural Resources Department

6 MCAR § 1.2200 [Amend] (proposed) .....	1674
--	------

### Part 2 Energy and Economic Development

6 MCAR § 2.2501-2.2510 [Amend] (proposed) .....	1717
---	------

### Part 4 Pollution Control Agency

6 MCAR § 4.00291 [Amend] (adopted) .....	1675
--	------

6 MCAR §§ 4.9100, 4.9102, 4.9104, 4.9128-4.9129, 4.9132, 4.9134-4.9135, 4.9210, 4.9214-4.9217, 4.9254-4.9255, 4.9285, 4.9289, 4.9296-4.9297, 4.9392, 4.9307-4.9308, 4.9310, 4.9314, 4.9317-4.9318, 4.9321, 4.9389, 4.9396, 4.9401, 4.9493, 4.9409, 4.9411, 4.9560 [Amend] (proposed) .....	1576
--	------

## TITLE 7 HEALTH

### Part 1 Health Department

7 MCAR §§ 1.210, 1.212, 1.216 (adopted) .....	1625
---	------

### Part 5 Nursing Board

7 MCAR §§ 5.4000-5.4006 (proposed) .....	1731
--	------

## TITLE 8 LABOR

### Part 1 Labor and Industry

8 MCAR § 1.7001 (adopted) .....	1738
8 MCAR §§ 1.8003-1.8004, 1.8006-1.8007 [Amend] (proposed) .....	1657

## TITLE 12 SOCIAL SCIENCE

### Part 2 Public Welfare Department

12 MCAR §§ 2.0481-2.0484 [Temp] (proposed) .....	1743
12 MCAR § 2.200 [Amend] (proposed) .....	1589

### Part 3 Housing Finance Agency

12 MCAR §§ 3.002 [Temp], 3.055 [Temp]-3.057 [Temp] (extended) .....	1659
--	------

## TITLE 14 TRANSPORTATION

### Part 1 Transportation Department

14 MCAR § 1.5032 (adopted) .....	1603
----------------------------------	------

# 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.

## Board of Animal Health

### Proposed Adoption of Rules of the State Board of Animal Health, Governing the Control of Swine Pseudorabies, to be Codified as 3 MCAR § 2.026

#### Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, 1982, section 14.14, subd. 1, in the above-entitled matter in the State Office Building, Room 83, 435 Park Street, St. Paul, Minnesota, on February 24, 1984, commencing at 9:00 a.m. and continuing until all representatives of associations or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules.

Statements may be made orally and written material may be submitted and recorded in the hearing record by mailing the material to Hearing Examiner Jon Lunde, Office of Administrative Hearings, 400 Summit Bank Building, 310 South 4th Avenue, Minneapolis, Minnesota, 55415, telephone (612) 341-7645, either before the hearing or within five working days after the close of the hearing unless the hearing examiner orders a longer period of time not to exceed 20 calendar days. The proposed rules are subject to change as a result of the rule hearing process. The Board of Animal Health therefore strongly urges those who may be affected in any manner by the substance of the proposed rules to participate in the rule hearing process.

Minnesota Laws 1983, Chapter 367, codified as Minn. Stat. § 35.255, directed the Board of Animal Health to adopt rules to implement a program to control pseudorabies in swine, including pseudorabies testing of breeding swine and the restricted movement of feeder pigs. The proposed rules are intended to implement this statutory mandate and provide for the reporting by veterinarians of incidents of pseudorabies; reporting requirements where pseudorabies has been diagnosed in a specific herd, testing procedures for pseudorabies infected herds, the disposal of pseudorabies infected herds; the release of quarantines on infected herds; the issuance of qualified herd certificates, the intrastate movement of breeding swine and feeder pigs, and the exhibition of swine at fairs, livestock exhibits or consignment sales. A copy of the proposed rules is attached to this notice and additional copies of the proposed rules are available and may be obtained by writing to the Minnesota Board of Animal Health, 90 West Plato Boulevard, Attention Doctor W. J. Mackey, St. Paul, Minnesota 55107, telephone (612) 296-3592. Copies will also be available at the door on the date of the hearing.

Ultimately, the adoption of these rules should benefit all owners of breeding swine, whether or not such owners are defined as a "small business" under the provisions of Minnesota Laws 1983, Chapter 188, through the control and eventual eradication of pseudorabies in Minnesota's breeding stocks. In the short run, however, these rules will have an impact upon small businesses in that they will require certain testing and reporting requirements which costs will be borne primarily by the owners of swine. The costs borne by the owners of swine where testing is necessary under the rules will include the responsibility for the cost of such tests to be performed by veterinarians. In addition, certain restrictions on the movement of pseudorabies infected swine

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

## PROPOSED RULES

---

will impact upon all owners whose herds contain infected swine. Small businesses are therefore encouraged to participate in the rulemaking process and to express their views regarding implementation of the proposed rules. In addition, the Board has taken into consideration the requirements of Minn. Stat. § 14.11 (1982), and has found and determined that the proposed rule will not require the expenditure of public moneys by local public bodies and will not have a direct or substantial impact on agricultural land.

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

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

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, telephone (612) 296-5148.

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

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

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

December 28th, 1983

J. G. Flint  
Executive Secretary  
Minnesota Board of Animal Health

### Rules as Proposed (all new material)

#### 3 MCAR § 2.026 Pseudorabies control.

A. Definitions. As used in this rule, the terms defined in this part have the meanings given them.

1. "Board" means the Board of Animal Health.
2. "Breeding herd" means all swine on one premises which are at least six months old, which are maintained for breeding purposes, which are kept separated from all swine from other sources, and for which care personnel and equipment are not interchanged with other herds.
3. "Infected herd" means a swine herd in which pseudorabies has been diagnosed in one or more animals by an official test, clinical diagnosis by a veterinarian, or laboratory diagnosis. The final determination of the herd status must be made by a state or federal district regulatory veterinarian.
4. "Isolation" means maintenance of swine in a manner which will ensure (1) that the swine have no physical contact with other domestic animals on the premises, (2) that all drainage of organic waste is handled to prevent it from having contact with any other swine on the premises, and (3) that the swine are separated from other animals by a lot or road or are held in a confinement building.
5. "Official pseudorabies test" means the serum neutralization test or other test approved by the board.
6. "Pseudorabies controlled vaccinated herd" means a breeding herd in which all animals over six months old have been tested negative for pseudorabies and then officially vaccinated within 15 days under the direction of the board and monitored pursuant to J.2.



7. "Qualified pseudorabies negative herd" means a herd of swine which has been free of pseudorabies for the previous 12 months, in which all swine over six months old have been initially tested negative for pseudorabies, and for which the procedures in I. have been followed.

8. "Quarantined herd" means an infected herd which is maintained on the quarantined premises so as not to have contact with animals belonging to other owners.

9. "Restricted movement swine" means breeding or feeding swine of unknown pseudorabies status which are sold in Minnesota through a swine concentration point.

10. "Slaughter-only market" means a state and federally approved slaughter market for swine in which all swine moving through the facility are consigned directly to a slaughter establishment or sold for direct reassignment to a recognized slaughter establishment.

11. "Swine concentration point" means a facility or location where swine are assembled for sale or resale for feeding, breeding, or slaughter purposes and where contact may occur between groups of swine from various sources. "Swine concentration point" includes, without limitation, a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, and livestock dealer's yard, truck, and facility.

B. Pseudorabies test procedures. Blood samples drawn in administering an official pseudorabies test must be drawn by an accredited veterinarian, and serological tests must be conducted by a state and federally approved laboratory or other laboratory approved by the board.

Animals tested must be individually identified by eartag, tattoo, registration number, or standard ear notch. The identification procedure must be recorded on the test form.

C. Disease reporting. When clinical or laboratory evidence indicates the presence of pseudorabies in an individual animal or herd, the veterinarian or laboratory shall report that diagnosis to the board within two business days.

D. Infected herd; procedures.

1. The board shall immediately quarantine an infected herd, as authorized by Minnesota Statutes, section 35.05.

2. Livestock other than swine which are infected with pseudorabies or exposed to animals infected with pseudorabies must be quarantined. The board shall lift the quarantine 21 days after the diagnosis or exposure if there are no signs of pseudorabies in the quarantined livestock.

3. When species of animals other than swine have been diagnosed as having pseudorabies, the state or federal district veterinarian shall conduct an epidemiological investigation of any swine on the premises. The investigation must include blood testing of ten percent of the older swine made up of a minimum of ten head selected randomly. The owner shall pay the laboratory fees associated with this testing. If pseudorabies reactors are disclosed, or if the owner refuses to cooperate in carrying out the test, the swine herd must be quarantined in accordance with the quarantine procedures of this rule.

4. Livestock from an infected herd may be disposed of pursuant to a. or b.

a. Market or breeding swine or other infected or exposed species may only be sold to slaughter via a federally approved slaughter market, public stockyard, packer buying station, or directly to a slaughter plant accompanied by a shipping permit or an owner's notice of shipment.

b. Feeder pigs may only be sold to a quarantined feedlot accompanied by a shipping permit or an owner's notice of shipment. The quarantined feedlot must be a feedlot where purchased quarantined swine can be fed out in isolation from other domestic animals and where:

(1) no breeding swine are on the premises;

(2) the feedlot owner agrees to sell all the swine from the feedlot directly for slaughter accompanied by a shipping permit or owner's notice of shipment; and

(3) prior to its approval as a quarantined feedlot, the lot is inspected for compliance by a state or federal regulatory veterinarian.

5. No person may sell swine which are known to be infected with or have been exposed to pseudorabies, except directly to slaughter or, in the case of feeder pigs, to a quarantined feedlot.

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

## PROPOSED RULES

---

---

### E. Release of quarantine.

1. Swine herd quarantine release may be accomplished by any of the methods in a.-c.

a. The entire herd may be sold to slaughter accompanied by a shipping permit. The premises must be cleaned and disinfected under the direction of the board. The quarantine may be released 30 days after completion of the cleaning and disinfection.

b. All swine positive to an official test may be removed from the premises. All remaining swine in the breeding herd must then pass a negative official test at least 30 days after the removal of the infected swine and a second negative official test of the breeding herd at least 30 days after the first negative official test before the quarantine is released.

c. Progeny may be weaned, isolated from a quarantined herd under direction and supervision of the board, and pass two negative official tests of 100 percent of these pigs at least 30 days apart.

2. When an epidemiological evaluation and herd history indicate that a tentative diagnosis of pseudorabies is the result of a vaccination reaction, the quarantine may be released. The epidemiological evaluation must be conducted by the district veterinarian and must include at least the items in a.-d.

a. The herd owner shall submit a signed statement that the animal diagnosed as having pseudorabies was either vaccinated for pseudorabies or was the progeny of a vaccinated animal and of an age when maternal antibodies would normally be present. The owner shall also state that, to the best of his knowledge, he has not seen any indication of pseudorabies in the herd.

b. The attending veterinarian shall submit a signed statement that he has not seen symptoms of pseudorabies in the herd.

c. Evidence must be submitted to document the use of pseudorabies vaccine in the herd. Acceptable evidence includes purchase records, owner vaccination request forms, and other relevant items.

d. A negative pseudorabies test must be conducted, at the owner's expense, on at least 20 unvaccinated swine over four months of age. If necessary, additional testing may be conducted at the discretion of the state or federal veterinarian.

3. A quarantine on livestock other than swine may be released 21 days after the diagnosis or exposure if there are no signs of pseudorabies in the herd.

4. Pseudorabies tests conducted on a quarantined premises are at the owner's expense.

5. A state or federal regulatory veterinarian must make the final determination on quarantine release.

### F. Pseudorabies traceback to source herd.

1. The owner of a herd in which pseudorabies has been diagnosed shall furnish the following information to the board:

a. a list of sources of purchases of feeding or breeding swine during the preceding year; and

b. a list of sales of feeding or breeding swine during the preceding year.

2. a. If pseudorabies is diagnosed in breeding or feeding swine which have been purchased from another swine producer within the preceding 12 months, the board may require a pseudorabies test of ten percent of the breeding herd of the seller or ten percent of the progeny over four months of age of a vaccinated herd.

b. If pseudorabies titres are disclosed on a test conducted pursuant to a. or the owner refuses to test, the herd must be considered to be an infected herd until the purchased swine are tested and found negative.

c. Testing pursuant to a. or b. must be done at the swine owner's expense.

### G. Intrastate movement of breeding swine.

1. No person may sell, lease, or loan breeding swine within the state of Minnesota unless the swine are accompanied by a health certificate or test chart provided by the seller which includes:

a. identification by an eartag, tattoo, brand, or ear notch recognized by a breed association; and

b. a negative pseudorabies test conducted within 30 days, except for swine from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd.

2. a. Breeding swine sold through a swine concentration point where they could come in contact with feeder pigs, market hogs, or other untested swine, are restricted movement breeding swine.

b. Restricted movement breeding swine must be identified at the swine concentration point by a one-half inch diameter hold punched in the right ear and an eartag.

c. Restricted movement breeding swine must be moved from the swine concentration point to the herd of destination

---

---

## PROPOSED RULES

accompanied by a document explaining the restricted movement breeding swine status. At the herd of destination they must be maintained in the herd until they have farrowed and then must be sold for slaughter. Restricted movement breeding swine may not be resold for breeding purposes except pursuant to f.

d. Restricted movement breeding swine purchased at a swine concentration point by a livestock dealer for resale purposes must be:

(1) maintained separately from other swine until resold;

(2) accompanied to the farm of destination by a document explaining the restricted movement breeding swine status; and

(3) maintained on the farm of destination, farrowed, and sold in the manner set forth in c.

e. Restricted movement breeding swine may be sold for slaughter as cull sows or boars through any livestock marketing channel. They may not, however, be sold through a marketing facility at which breeding stock is sold unless the facility maintains separate chutes, pens, and scales for breeding swine.

f. The restricted movement breeding swine classification may be removed from swine by a negative pseudorabies test conducted at least 30 days after movement of the swine through the swine concentration point.

g. All swine which are maintained in contact with restricted movement breeding swine in the herd of destination are also restricted movement swine and must be handled accordingly.

Swine classified as restricted movement swine because of exposure to restricted movement breeding swine may not be resold except to slaughter unless they are tested negative to pseudorabies.

### H. Intrastate movement of feeder pigs.

1. a. All feeder pigs sold in Minnesota through a swine concentration point are restricted movement feeder pigs.

b. Restricted movement feeder pigs must be identified at the swine concentration point by a one-half inch diameter hole punched in the right ear and an eartag. They are not eligible for resale through a second swine concentration point.

c. Restricted movement feeder pigs must be moved from the swine concentration point to the herd of destination accompanied by a document explaining the restricted movement feeder pig status. At the herd of destination they must be maintained in separation from breeding swine until they are sold for slaughter. They may not be used for breeding purposes or resold for breeding purposes except pursuant to f.

d. Restricted movement feeder pigs purchased at a swine concentration point by a livestock dealer for resale purposes must be:

(1) maintained separately from other swine until resold;

(2) accompanied to the farm of destination by a document explaining the restricted movement feeder pig status; and

(3) maintained on the farm of destination, fed out, and sold pursuant to e.

e. Restricted movement feeder pigs may be sold as market hogs through any livestock marketing channel. They may not, however, be sold through a marketing facility at which breeding stock is sold unless the facility maintains separate chutes, pens, and scales for breeding swine.

f. The restricted movement feeder pig classification may be removed from swine by a negative pseudorabies test conducted at least 30 days after movement of the swine through the swine concentration point.

### I. Qualified pseudorabies negative herd procedures.

1. To qualify a herd for qualified pseudorabies negative herd status:

(a) the herd must have been free of pseudorabies for the previous 12 months;

(b) all breeding stock six months of age or older must have passed an initial negative pseudorabies test; and

(c) the herd owner must sign a herd agreement of compliance.

2. Following the receipt by the board of a report of the initial negative herd test and the signed herd agreement, the board

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

## PROPOSED RULES

shall issue a numbered qualified herd certificate. The initial qualification is valid for 90 days or until the next scheduled requalification test.

3. The pseudorabies status of a qualified pseudorabies negative herd must be monitored and its status maintained by having a negative test of at least 25 percent of the breeding herd every 80 to 100 days. All breeding swine must be subject to at least one official test once a year. No swine may be tested twice in one year to comply with the 25 percent test requirement.

If there are ten or fewer swine at least six months of age in the herd at any quarterly requalification test, all swine at least six months of age must be tested.

If the breeding herd is maintained on more than one premises, 25 percent of the animals on each premises must be tested for each requalification.

4. The board shall cancel qualified pseudorabies negative herd status if any swine show a positive test or are diagnosed as having pseudorabies, if herd additions are made contrary to 5., or for failure to comply with 3.

Swine herd which have lost their qualified pseudorabies negative herd status may regain that status by being free of pseudorabies for a period of 12 months and by following the herd qualification procedure outlined in 1.

5. a. All purchased additions, except those purchased pursuant to b., must have a negative test for pseudorabies within 30 days prior to movement, and must be isolated and retested negative at least 30 and within 45 days from the date of their receipt upon the premises.

b. Additions may be purchased directly from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd without the negative 30-day test prior to movement. These animals, however, must be isolated and tested negative at least 30 and within 45 days after their receipt. Purchased additions are not considered to be part of the herd for monitoring pursuant to 3. until 30 days after the test.

c. Swine returned to qualified pseudorabies negative herds from exhibitions or which are otherwise commingled with swine from herds not qualified must be kept in isolation upon return for 30 days and have a negative official pseudorabies test before rejoining the herd.

6. Swine from a qualified pseudorabies negative herd may be sold in Minnesota for breeding or feeding purposes without further testing or restriction of movement unless they are sold through a swine concentration point.

### J. Pseudorabies controlled vaccinated herd procedures.

1. Progeny of a pseudorabies controlled vaccinated herd do not need to be vaccinated until they enter the breeding herd.

2. To maintain and monitor the status of a pseudorabies controlled vaccinated herd, at least 25 percent of the progeny between the ages of four and five months must have a negative pseudorabies test every 90 days.

3. All purchased additions to a pseudorabies controlled vaccinated herd must be tested negative for pseudorabies within 30 days prior to their arrival or must originate from a qualified pseudorabies negative board.

All purchased additions, however, must be isolated and retested negative in not less than 30 nor more than 45 days and then vaccinated for pseudorabies within 15 days of the test.

4. Progeny from a pseudorabies controlled vaccinated herd may be sold in Minnesota for breeding or feeding purposes without further testing.

Vaccinated animals from a pseudorabies controlled vaccinated herd may be sold for breeding purposes only with a negative test within 30 days.

5. If a pseudorabies controlled vaccinated herd is determined to be infected with pseudorabies, the herd must be quarantined and the owner must comply with D. to have the quarantine released.

6. If one of the herd monitoring tests discloses low titres (1:8 or less) in one or more animals which may be caused by vaccination maternal antibodies, an epidemiological evaluation may be conducted by the district veterinarian which may include, without limitation, a retest of the titred swine in 30 days and a test of 20 other unvaccinated animals over four months of age.

During the process of this epidemiological evaluation, swine from this herd are temporarily ineligible for sale except to slaughter.

Failure to allow this evaluation will result in herd quarantine and the loss of controlled vaccinated herd status.

The final determination of the status of the herd must be made by the district veterinarian involved.

K. Community notification of pseudorabies infection in a neighborhood. Within 14 days of declaration of a quarantine or approval of quarantined feedlot status, the district veterinarian shall notify livestock owners within a one-mile radius of the

infected herd or quarantined feedlot. The district veterinarian shall also notify the clerk of the township board of the affected township in writing.

**L. Exhibition of swine.**

1. Swine may be exhibited at fairs, livestock exhibitions, or consignment sales if they are in compliance with a. or b.

a. All swine exhibited or sold, except at exhibitions described in b., must be accompanied by a health certificate showing:

(1) a negative pseudorabies test within 30 days prior to the start of the exhibition or origination from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd; and

(2) a statement that the swine did not originate from a herd that has had pseudorabies during the previous 12 months.

b. Health certificates are not required for swine exhibited:

(1) at a terminal show or slaughter class where swine are exhibited under the following conditions:

(a) where exhibited swine are sent directly to slaughter after the exhibition:

(b) where no other species are housed in the same show barn at the same time; and

(c) where swine are unloaded at a separate chute from other species; or

(2) at an untested terminal swine show held at the end of the exhibition after other species have gone home.

2. No swine from a quarantined herd may be exhibited at any type of exhibition.

3. Swine returning to the exhibitor's home herd or to a purchaser's herd from exhibitions or consignment sales must be isolated and retested negative for pseudorabies not less than 30 nor more than 60 days after return from the exhibit.

4. Rule LSB 40 contains other swine exhibition requirements.

5. Out-of-state swine, when exhibited in Minnesota, must meet Minnesota's importation requirements and the exhibition requirements of this rule.

**M. Transportation of pseudorabies infected or exposed animals.**

1. All vehicles used as public carriers for livestock known to be infected with or exposed to pseudorabies must:

(a) contain a shipping permit or owners notice of shipment when quarantined livestock are being transported; and

(b) be cleaned and disinfected pursuant to 2. before being used for transportation of other livestock.

2. A vehicle must be cleaned by thorough removal of all litter, manure, and refuse, and disinfected by the use on all floors, interior walls, and the vehicle chassis of a disinfectant approved by the United States Department of Agriculture.

Provision must be made for the disposition of all manure, litter, and refuse removed from vehicles into an area where other livestock cannot come in contact with it.

Repealer: Rule 3 MCAR § 2.024 is repealed.

## **Department of Commerce**

### **Proposed Adoption of Amendments to Rules Relating to Workers' Compensation Competitive Rating**

#### **Notice of Intent to Adopt Amendments to Rules Without a Public Hearing**

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

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

## PROPOSED RULES

---

Persons interested in these amendments shall have 30 days to submit comments. The proposed amendments to 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 Judith Hale, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these amendments to rules is contained in Minnesota Statutes, sections 79.55 to 79.61. 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 amendments to rules has been prepared and is available upon request.

Upon adoption of the final amendments to 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.

The effect of open competition on small employers and on small insurance companies has been considered by the Commerce Department in the promulgation of the original rules. (See Statement of Need and Reasonableness and testimony of Nancy R. Myers in the Rules Hearing in the Matter of the Adoption of Rules Relating to Workers' Compensation Competitive Rating, January 1, 1986). These amendments to the rules do affect small insurance companies. They may not directly affect small employers in general. Various provisions in the rules, such as the requirement for a uniform data base, will help ensure that small insurance companies have the ability to compete effectively in the new regulatory environment. The nature of the impact of the rules upon small insurance companies is addressed in the Agency Statement of Need and Reasonableness.

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

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

Michael A. Hatch  
Commissioner of Commerce

### Rules as Proposed

#### 4 MCAR § 1.9140 Definitions.

A. Applicability. For the purposes of 4 MCAR §§ 1.9140-~~1.9143~~ 1.9147, the terms defined in this rule have the meanings given them.

B. [Unchanged.]

C. Commissioner. "Commissioner" means the commissioner of ~~insurance~~ commerce.

D.-K. [Unchanged.]

L. Rating plan. "Rating plan" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 15.

#### 4 MCAR § 1.9141 Licensing of data service organizations.

A. Application information. A data service organization shall apply to the commissioner for a license. The rating association shall submit an application to be licensed as a data service organization by July 1, 1983. An application to be a data service organization shall include all information required by Minnesota Statutes, section 79.62. In addition, the application shall include:

1. [Unchanged.]

2. a plan for data collection and analysis, and other activities of the data service organization, including:

a.-d. [Unchanged.]

e. a plan for the collection of any other data not prohibited in ~~e-~~ d. and a description of these data;

f.-j. [Unchanged.]

B. [Unchanged.]

C. Amendments to application.

1. A data service organization which has applied for a license must notify the commissioner of every change in the plan of operation on which its application was based. Any amendment to a document filed under this paragraph is effective 30 days after filing unless disapproved by the commissioner.

2. A data service organization must file with the commissioner every proposed change in the uniform classification system, the uniform statistical plan, or associated manual rules. Any change must be approved by the commissioner who shall also establish an effective date for the change. If a change is ordered by the commissioner, it must be used by every workers' compensation insurer in reporting data to the data service organization of which it is a member.

D. Granting of license.

1.-2. [Unchanged.]

4 MCAR § 1.9143 Ratemaking report.

A. [Unchanged.]

B. Contents of ratemaking report.

1. [Unchanged.]

2. The ratemaking report shall be disseminated to all members of the data service organization. In addition, the data service organization and the commissioner shall each make a copy of the ratemaking report available for public inspection during normal working hours.

C. Use of ratemaking report.

1. After the ratemaking report has been filed with the commissioner, insurers may develop and use rates based upon the pure premium base rates contained in the report. Effective January 1, 1984, insurers may also develop and use rates based upon any reasonable factors which are not inconsistent with Minnesota Statutes, sections 79.50 to 79.63.

2.-5. [Unchanged.]

D. Review by commissioner.

1. If the commissioner finds upon review that the ratemaking report is not as prescribed, then the commissioner shall issue an order specifying in which respects it fails to meet the requirements of Minnesota Statutes, section 79.61 and 4 MCAR § 1.9143, and stating a reasonable period within which the defects shall be corrected.

2. The data service organization shall be given a hearing to review the commissioner's order upon a written request made within 30 days after the order.

4 MCAR § 1.9144 Uniform data base.

A. Uniform classification and statistical plan.

1. The commissioner shall approve a uniform classification system, a uniform statistical plan, and manual rules related to the classification system and the statistical plan. Every workers' compensation insurer must report its data in accordance with the approved uniform plans and rules.

2. No insurer shall agree with any other insurer or with any data service organization to adhere to manual rules which are not reasonably related to the recording and reporting of data pursuant to the uniform classification system or the uniform statistical plan.

B. Amendments to the uniform classification or statistical plans. Any data service organization may file with the commissioner a petition to change the uniform classification system or the uniform statistical plan. Any change must be approved by the commissioner who shall also establish an effective date for the change. If a change is ordered by the commissioner, it must be used by every workers' compensation insurer in reporting data to the data service organization of which it is a member.

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

## PROPOSED RULES

---

C. Insurer variations. An insurer may develop variations of the uniform classification system upon which a rate may be made. A variation must be filed with the commissioner 30 days prior to its use. The commissioner shall disapprove variations if the insurer fails to demonstrate that the data produced by the variation can be reported consistent with the uniform statistical plan and classification system.

### 4 MCAR § 1.9145 Monitoring competition.

A. Information and analysis. In determining whether a competitive market exists, the commissioner shall monitor the degree of competition in this state. In doing so, the commissioner shall utilize existing relevant information, analytical systems, and other sources, or cause or participate in the development of new relevant information and analytical systems. The commissioner shall require insurers to provide additional data or reports as necessary to develop new information systems.

B. Criteria. In determining whether a reasonable amount of competition exists, the commissioner shall consider the criteria listed in 1.-6.

1. Premium and loss experience which includes, but is not limited to, consideration of movement in premium and losses over time, changes in premium relative to losses, and comparisons with other states.

2. Ease of entry which includes, but is not limited to, consideration of barriers to entry and the number of firms entering and exiting from the market.

3. Market share which includes, but is not limited to, consideration of the number, size, and dispersion of firms writing workers' compensation insurance.

4. Class rates which include, but are not limited to, consideration of comparison of changes in rates with changes in costs, variation in rates, and frequency of rate changes.

5. Residual market which includes, but is not limited to, change in size, percent of total market, and composition of the residual market.

6. Any other reasonable criteria if they are enumerated in the commissioner's eventual determination.

### 4 MCAR § 1.9146 Commissioner review of rate filings.

A. Rating criteria. In determining whether rates and rating plans comply with Minnesota Statutes, section 79.55 and 4 MCAR § 1.9143 C., the commissioner shall consider the criteria in 1.-3.

1. Loss experience and other rate factors. Past and prospective loss and expense experience within and outside of Minnesota, catastrophe hazards and contingencies, events or trends within and outside of the state, loadings for leveling premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and any other relevant factors if they are enumerated in the commissioner's eventual determination.

2. Expenses. The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expense experience.

3. Profits. The rates may contain provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration shall be given to all investment income attributable to premiums and the reserves associated with those premiums.

B. Experience rating plans. An insurer may use the experience rating plan developed by the data service organization of which it is a member. An insurer may also develop and use its own experience rating plan. Any experience rating plan is subject to the conditions in 1.-3.

1. If a claim is settled between a normal valuation date and the next rating effective date and if the settlement results in an aggravated inequity, then the experience modification factor must be revised if requested by either the insurer or the insured. An aggravated inequity includes, but is not limited to, the following situations:

a. the expected loss for the insured is less than \$50,000 and the primary value of the claim has changed by more than \$2,500; or

b. the expected loss for the insured is greater than \$50,000 and either the primary value of the loss has changed by more than five percent of the expected loss or the total value of the claim has changed by more than \$50,000.

2. Each insurer or the data service organization to which it belongs must annually provide the following loss information to each insured eligible for experience rating:

a. the insured's experience modification factor;

b. the payrolls and incurred losses used to calculate the experience modification factor; and

c. whom to contact if the insured desires more information.



3. The forms for providing this information may be developed by either the insurer or by the data service organization to which the insurer belongs. The forms must be filed as part of the experience rating plan.

C. Schedule rating plans. The maximum credit and maximum debit which can be developed by schedule rating shall be determined by the commissioner and shall be no more than 25 percent of manual premium, after application of any experience modification.

D. Failure to comply.

1. If the commissioner finds upon review of the insurer's rate filing that the rates or rating plans do not comply with the requirements of Minnesota Statutes, sections 79.55 to 79.61 and 4 MCAR §§ 1.9140-1.9147, or that the filing lacks the necessary information to determine whether the rates comply with the cited statutes and rules, then the commissioner shall notify the insurer in what respects the rates or rating plans fail to comply and specify a reasonable period within which the defects shall be corrected.

2. If the insurer fails to correct the specified defects within the time period specified, the insurer is in violation of Minnesota Statutes, section 79.56 and subject to a fine as provided in subdivision 3.

4 MCAR § 1.9147 Policy forms.

Workers' compensation insurance must be written using policy forms filed by the data service organization of which the insurer is a member except that if the insurer files a rating plan requiring a policy provision or endorsement for which the data service organization has made no usable filing, then the insurer may file its own policy forms needed to implement its rating plans.

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

### **Proposed Adoption of Rules Governing Post-Secondary Vocational Instructional Personnel Licensure—Robotics Technician 5 MCAR § 1.0790 C**

#### **Notice of Hearing**

A public hearing concerning the proposed rules will be held at the Capitol Square Building, Conference Room A and B, first floor, on February 23, 1984, commencing at 9:00 a.m. and continuing until all interested persons have had an opportunity to be heard. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the Board'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 Richard C. Luis, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, MN 55415, telephone (612) 341-7610, 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. The rule hearing procedure is governed by Minn. Stat. §§ 14.02 to 14.56, 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.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Board 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 Board anticipates presenting at the hearing justifying both the need for and the

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

## PROPOSED RULES

reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The Board 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. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing.

These rules provide educational and occupational experience requirements for post-secondary instructors wishing to apply for a Robotics Technician teaching license.

The Board's statutory authority to promulgate the proposed rules is provided by Minn. Stat. §§ 121.11, Subd. 12, and 125.185, Subd. 4.

The Board estimates that there will be no cost to local bodies in the State to implement the rules for the two years immediately following its adoption within the meaning of Minn. Stat. § 14.11.

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to Dr. Rosemary T. Fruehling, Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101, telephone (612) 296-3387. Additional copies will be available at the door on the date of the hearing. If you have any questions on the content of the proposed rules, contact Dr. Rosemary T. Fruehling.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Board 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 Board. 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 Board (in the case of the Board's submission or resubmission to the Attorney General).

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

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any one 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, MN 55155, telephone (612) 296-5615.

November 7, 1983

Ruth E. Randall, Secretary  
State Board of Education  
(State Board for Vocational Education)

### Rule as Proposed

5 MCAR § 1.0790 Post-secondary vocational instructional personnel.

A.-B. [Unchanged.]

C. Uncharted licensure criteria; robotics technician. To qualify for a license, an applicant in a licensure area not charted in 5 MCAR § 1.0798, must comply with 5 MCAR § 1.0781, 1.0782, 1.0784 C., and 1.0785, and specifically in the area of technical education/robotics technician, must present evidence of completion of the following education and occupational experience requirements.

1. Education requirement. An applicant must have completed at an accredited institution, either:

a. two years (2,160 clock hours) post-secondary vocational-technical training focusing on technician level training in the areas of fluid power, electronics, automated packaging, industrial engineering, electro-mechanical technology, or industrial technology; or

b. a degree program in mechanical, electrical, or aero-space engineering at the baccalaureate level or higher.

2. Occupational experience requirement. An applicant must have 2,000 hours of experience within the last five years in robotics or programmable automation, and 4,000 hours of experience focusing on the technical application of electronics

emphasizing computer technician or computer programmer skills; fluid power mechanics; manufacturing processes applications; or electro-mechanical technology.

## **Department of Energy and Economic Development**

### **Proposed Amendments of Rules Governing the Home Energy Disclosure Program and the Minimum Energy Efficiency Standards for Residential Rental Units**

#### **Order for Hearing**

It is ordered this 9th day of January, 1984, that a public hearing be held on the proposed amendments of the rules captioned above in Room 715 of the American Center Building on February 28, 1984, commencing at 9:15 a.m. and continuing until all representatives of associations and other interested groups have had an opportunity to be heard.

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

Mark B. Dayton  
Commissioner  
Department of Energy and Economic Development

#### **Notice of Hearing**

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, 1982, section 14.14, subd. 1. in the above-entitled matter in the American Center Building, Room 715, 150 E. Kellogg Blvd., St. Paul, MN on February 28, 1984 commencing at 9:15 a.m. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard concerning adoption of the rules captioned above. The public hearing will continue on February 29 commencing at 10:00 a.m. only if it is not completed on February 28. Persons interested in presenting testimony should appear on February 28 as there is no assurance that the public hearing will continue on February 29. The hearing will be conducted according to Minn. Stat. § 14.13 to 14.20 and the rules of the Office of Administrative Hearings, 9 MCAR § 2.100-2.113.

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

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

1. Deletions of references to the Home Energy Disclosure Program which was eliminated by the 1983 legislature;
2. Amendments to the Minimum Standards for Energy Efficiency for Residential Rental Units that include:
  - a) a requirement by July, 1985 to insulate attics to R-38, exterior walls to R-11 and foundations to R-11, including previously defined "inaccessible" attics, walls, foundations, and rim joists.
  - b) a performance option for buildings with 5 or more units as an alternative to the other prescriptive standards.
3. Expand the definition of "economic feasibility" (used to determine the applicability of each standard) to include costs to repair the building to comply with the standards;
4. Adding a minimum steady state efficiency for heating systems for smaller buildings;
5. Dropping storm doors as a standard for larger buildings.

These standards apply to all residential buildings which were built before 1976, and which are renter occupied between the

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

## PROPOSED RULES

months of November to April. These standards do not apply to buildings such as hospitals, schools, dormitories, nursing homes, schools, hotels, motels, or correctional institutions.

Because of the substantial nature of the changes, interested persons are urged to read the attached proposed rules. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Energy and Economic Development, Attention: Greg Hubinger, 980 American Center Building, 150 E. Kellogg Blvd., St. Paul, MN 55101—(612) 297-2117. Copies will also be available at the door on the date of the hearing.

In accordance with 1983 Session laws, Chapter 188, which amends Minn. Stat. 14.115, the Department provides notice that these rule amendments may have an impact on small businesses. Minn. Stat. 14.115 subd. 1 define a small business as one that is independently owned and operated, is not dominant in its field, employs fewer than 50 full-time employees or has gross annual sales of less than \$4 million. A portion of the public hearing announced today will concern the impact of these rules on small businesses.

The Department's authority to amend these rules is contained in Minnesota Statutes, 1982, sections 116J.09, 116J.10, and 116J.27.

The Department first adopted the above-captioned rules on December 13, 1982. The Department proposed amendments to rules on December 27, 1982 which were later withdrawn on October 31, 1983. Notice of Intent to Solicit Outside Opinions for this rulemaking was published on December 12, 1983.

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

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

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

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

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

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

Questions about the substance of these rules may be directed to Greg Hubinger, Manager of Residential Programs, Energy Division, 150 E. Kellogg Boulevard, St. Paul, MN 55101, (612) 297-2117. Questions about procedure may be directed to Hearing Examiner Allan Klein, Office of Administrative Hearings, 400 Summit Bank Building, 310 South 4th Avenue, Minneapolis, MN 55415, (612) 341-7609.

Mark B. Dayton  
Commissioner  
Department of Energy and Economic Development

### Rules as Proposed

#### 6 MCAR § 2.2501 Authority and purpose.

A. Authority. The ~~agency's~~ department's authority to adopt these rules is contained in Minnesota Statutes, ~~section 116H.129, as well as 116H.08, clause (a) and 116H.07, clause (i)~~ sections 116J.07, clause (i); 116J.08, clause (a); and 116J.27.

B. Purpose. The purpose of ~~these rules~~ 6 MCAR §§ 2.2501-2.2510 is to establish a program requiring ~~an energy audit to be performed upon the sale of residential structures.~~ The three major components of this program are the establishment of:

## PROPOSED RULES

minimum energy efficiency standards for the evaluation of existing residences, mandatory minimum energy efficiency standards for rental buildings and, procedures for the energy evaluation disclosure program evaluations, and the certification of evaluators.

### 6 MCAR § 2.2502 Definitions.

A. Scope. For the purposes of 6 MCAR §§ 2.2501-2.2510, the following terms have the meanings given them.

B. Accessible. "Accessible" means:

1- For purposes of inspection, any area of the residence which can be evaluated with only the removal of temporary components of the structure. Temporary components include, but are not limited to, electrical plate covers, attic hatch covers, and obstructions in closets which provide access to the area of the residence to be evaluated.

2- for purposes of compliance with 6 MCAR § 2.2503, any area that can be made more energy efficient with the installation of program measures that are not determined to be economically infeasible and which area is exposed, without the removal of permanent parts of the structure.

C. Agency. "Agency" means the Energy Division of the Department of Energy, Planning, and Development Department. "Department" means the Department of Energy and Economic Development.

D. Apartment building. "Apartment building" means any structure containing two or more residential dwelling units which are rented.

E. Community-based organization. "Community-based organization" means an organization which has a demonstrated community involvement such that the organization has a history of energy or related community service in a specific service area.

F. Conditioned space. "Conditioned space" means space within a building that is heated or cooled by an energy using system.

G. F. Cooling degree day. "Cooling degree day" means a unit, based upon temperature difference and time, used in estimating fuel consumption and specifying nominal cooling load in summer. For any one day when the mean temperature is more than 65 degrees Fahrenheit, there exist as many cooling degree days as there are Fahrenheit degrees difference in temperature between the mean temperature for the day and 65 degrees Fahrenheit.

H. G. Economic feasibility. For the purpose of these rules, the test of economic feasibility is met when the savings in energy procurement costs, based on residential energy costs as certified by the commissioner in the *State Register*, or on local fuel costs, exceed the cost of acquiring and installing each individual program measure standard, as amortized over the subsequent ten-year period. The costs of acquiring and installing each standard may include the costs of restoring the building to the condition that existed immediately before the standard was installed, costs to install a vapor barrier where determined necessary, and displacement costs of temporary tenant relocation where determined necessary.

I. H. Energy conservation measure. "Energy conservation measure" means any of the following measures in a residential building: energy-saving physical improvements to the building that are primarily designed to reduce energy consumption including, but not limited to, modifications to the building structure, the heating, ventilating, and air conditioning systems, and the lighting.

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

2- J. Weatherstripping. "Weatherstripping consisting" consists of narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture when the windows and doors are closed.

3- furnace efficiency modifications consisting of:

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

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

## PROPOSED RULES

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

c. an automatically operated damper installed in a gas fired furnace (often called a vent damper) which is installed downstream from the draft hood and conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

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

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

5. K. Ceiling or attic insulation. "Ceiling or attic insulation consisting" consists of a material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roof, the term "ceiling or attic insulation" also applies to such material used between the underside and upperside of the roof, or where technically feasible, on the upperside of the roof.

6. L. Wall and foundation insulation. "Wall and foundation insulation consisting" consists of a material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

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

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

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

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

11. N. Storm or thermal window. "Storm or thermal window consisting" consists of:

a. 1. a window or glazing material placed outside or inside an ordinary or prime window, creating an insulating air space, to provide greater resistance to heat flow than the prime window alone; or

b. 2. a window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

12. O. Storm or thermal door. "Storm or thermal door consisting" consists of:

a. 1. a second door, installed outside or inside a prime door, creating an insulating air space;

b. 2. a door with enhanced resistance to heat flow through the glass area created by affixing two or more sheets of glazing materials; or

c. 3. a primary exterior door with an R-value of at least two.

13. heat reflective and heat absorbing window or door material consisting of a window or door glazing material with exceptional heat absorbing or heat reflecting properties or of reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat absorbing or heat reflecting properties.

14. devices associated with electric load management techniques consisting of customer owned or leased devices that control the maximum kilowatt demand of the residence on an electric utility and which are any of the following:

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

b. clock controlled load switching devices;

c. interlocks and other load actuated, load limiting devices; or

d. energy storage devices with control systems.

15. clock thermostat consisting of a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed and which uses:

- a. a temperature control device for interior spaces incorporating more than one temperature control level; and
- b. a clock or other automatic mechanism for switching from one control level to another.

~~16.~~ P. Rim joist insulation. "Rim joist insulation consisting" consists of a material primarily designed to resist heat flow which is installed along either side of the rim joist.

~~J.~~ Energy conserving practice. "Energy conserving practice" means any of the following measures in a residential building:

~~1.~~ furnace efficiency maintenance and adjustments consisting of cleaning and combustion efficiency adjustment of gas or oil furnaces; periodic cleaning or replacement of air filters on forced air heating or cooling systems; lowering the bonnet or plenum thermostats to 80 degrees Fahrenheit on a gas or oil forced air furnace; and turning off the pilot light on a gas furnace during the summer.

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

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

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

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

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

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

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

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

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

~~K.~~ Q. Fireplace stove. "Fireplace stove" means a chimney-connected, solid fuel-burning stove having part of its fire chamber open to the room.

~~L.~~ R. Heating degree day. "Heating degree day" means a unit, based upon temperature difference and time, used in estimating fuel consumption and specifying nominal heating load of a building in winter. For any one day, when the mean temperature is less than 65 degrees Fahrenheit, there exist as many heating degree days as there are Fahrenheit degrees difference in temperature between the mean temperature for the day and 65 degrees Fahrenheit.

~~M.~~ HED. "HED" means home energy disclosure.

~~N.~~ S. Positive shut-off. "Positive shut-off" means a manual shut-off device which can be utilized to produce a seal to inhibit the flow of air when a fireplace or fireplace stove is not operating. Examples are damper in fireplace, damper at top of flue, damper in connector pipe, or doors (glass or other) on fireplace or fireplace stove.

~~O.~~ Program measures. "Program measures" means all energy conservation measures and renewable resource measures included in the minimum energy efficiency standards for existing residences.

~~P.~~ T. "R" value. "R" value means the measure of resistance to heat flow through a material or the reciprocal of the heat

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

## PROPOSED RULES

flow through a material expressed in British thermal units per hour per square foot per degree Fahrenheit at 75 degrees Fahrenheit mean temperature.

**Q. Renewable resource measures.** "Renewable resource measures" means the following measures installed in or connected to a residential building:

1. solar domestic hot water systems (DHW) designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermosiphon hot water heaters.
2. passive solar space heating and cooling systems that make efficient use of, or enhance the use of, natural forces including solar insolation, winds, nighttime coolness and opportunity to lose heat by radiation to the night sky—to heat or cool living space by the use of conductive, convective or radiant energy transfer. Passive solar systems include only:
  - a. direct gain glazing systems consisting of south facing panels of insulated glass, fiberglass, or other similar transparent substances that admit the sun's rays into the living space where the heat is retained. Glazing is either double paned, or single paned equipped with movable insulation.
  - b. indirect gain systems consisting of panels of insulated glass, fiberglass, or other transparent substances that direct the sun's rays into south facing specifically constructed thermal walls, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.
  - c. solarium/sunspace systems consisting of structures of glass, fiberglass or similar transparent material which is attached to the south facing wall of a structure which allows for air circulation to bring heat into the residence and which is able to be closed off from the residential structure during periods of low solar insolation.
  - d. window heat gain or loss retardants consisting of mechanisms which significantly reduce summer heat gain or wintertime heat loss through windows by the use of devices such as awnings; insulated rollup shades; external or internal; metal or plastic solar screens; or movable rigid insulation.
3. wind energy devices that use wind energy to produce energy in any form primarily for use in the residence.
4. replacement solar swimming pool heaters which are used solely for the purposes of using the sun's energy to heat swimming pool water and which replace a swimming pool heater using electricity, gas or another fossil fuel.
5. active solar space heating equipment designed to absorb the sun's energy and to use this energy to heat living space by use of mechanically forced energy transfer such as fans or pumps.

**R. U. Residence.** "Residence" means any dwelling used for habitation during all or a portion of the months of December through March, or permanently by one or more persons. For rental buildings, "Residence" means any dwelling let to another used for habitation during all or a portion of the months November through April. A residence may be owned or rented and may be part of a multi-unit building, multi-family dwelling, or multi-purpose building, but "residence" shall does not include buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools and other buildings used for educational purposes, or correctional institutions. Each dwelling unit in a rental building shall be considered as is a residence. A mobile manufactured home as defined in Minnesota Statutes, section 168.011, subdivision 8, shall be is a residence for purposes of these rules.

**S. V. Rim joist.** "Rim joist" means that part of the residential structure between the top of the foundation wall and the sub-floor immediately above the perimeter of the floor joists.

**T. Seasonal efficiency.** "Seasonal efficiency" means the calculated efficiency of a heating system based on the estimated peak (tuned up) steady state efficiency corrected for cycling losses.

**U. South facing.** "South facing" means plus or minus 45 degrees of true south.

6 MCAR § 2.2503 Minimum energy efficiency standards.

**A. Compliance.** The minimum energy efficiency standards listed in B. shall be applied to residences according to Exhibit 6 MCAR § 2.2503 A. 1. Pursuant to Minnesota Statutes, section 116H.129, subdivisions 5 and 7, the standards listed under "Disclosure at time of sale" shall only be used to evaluate the energy efficiency of existing residences built prior to January 1, 1976, at the time of sale. Time of sale means the time when a written purchase agreement is executed by the buyer, or, in the absence of a purchase agreement, the time of execution of any document providing for the conveyance of a residence. Pursuant to Under Minnesota Statutes, section 116H.129 116J.27, subdivisions 1, 2, and 3, all residences constructed prior to January 1, 1976, which are renter occupied during all or a portion of the months of November through April shall have been must be in compliance with standards adopted pursuant to Minnesota Statutes, section 116H.129, subdivision 1 pertaining to caulking and weatherstripping by January 1, 1980 each applicable standard by the date shown in Exhibit 6 MCAR § 2.2503 A.-1., unless those standards are determined to be economically infeasible. Effective July 1, 1983, all residences constructed prior to January 1, 1976, which are renter occupied during all or a portion of the months of November through April shall be in



## PROPOSED RULES

compliance with all standards listed under mandatory compliance and not determined to be economically infeasible. All building owners shall initially determine the economic feasibility of these standards using the calculation procedures adopted by the agency department. Those determinations are subject to review and final determination by the agency department.

Exhibit 6 MCAR § 2.2503 A.-1.  
Applicable Energy Efficiency Standards  
from 6 MCAR § 2.2503 B.

Type of residence	Purpose	
	Disclosure at time of sale	Mandatory compliance
<b>Owner-occupied</b>		
Single family	Standards 1-4, 9-27	None
Mobile home	Standards 1-4, 9-27	None
Condominium building, 2-4 dwelling units	Standards 1-4, 9-27	None
Condominium building, 5 or more dwelling units	Standards 1-8	None
<b>Renter-occupied</b>		
Single family	Standards 1-27	Standards 1-8
Mobile home	Standards 1-27	Standards 1-8
Apartment building, 2-4 dwelling units	Standards 1-27	Standards 1-8
Apartment building, 5 or more dwelling units	Standards 1-8	Standards 1-8

Type of building	Date of applicability		
	January 1, 1980 Standards	July 1, 1983 Standards	July 1, 1985 Standards
Single family	1-2	1-8	1, 2, or 13, and 3-12
Mobile home	1-2	1-8	1, 2 or 13, and 3-12
2-4 unit building	1-2	1-8	1, 2 or 13, and 3-12
5-11 unit building	1-2	1, 3, 5, 6, 7, 8, and 2 or 13; OR 1, 3, 15, and 2 or 13	1, 3, 5, 6, 7, 8, 10, 11, 12, and 2 or 13; OR 1, 3, 15, and 2 or 13
12 plus unit building	1-2	1, 3, 5, 6, 7, 8, and 2 or 13; OR 1, 3, 14, and 2 or 13	1, 3, 5, 6, 7, 8, 10, 11, 12, and 2 or 13; OR 1, 3, 14, and 2 or 13

B. Enumeration. The following ~~shall be~~ are the minimum energy efficiency standards for existing residences constructed prior to January 1, 1976, that are renter-occupied. ~~These~~ The following standards shall be used as indicated in Exhibit 6 MCAR § 2.2503 A.-1.:

1. Install weatherstripping between exterior operable window sash and frames and between exterior doors and frames. Weatherstripping is not required on storm doors or storm windows.
2. Caulk, gasket, or otherwise seal accessible exterior joints between foundation and rim joist; around window and door

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

## PROPOSED RULES

frames; between wall and roof; between wall panels; at penetrations for utility services through walls, floors, and roof; and at all other openings in the exterior envelope.

3. Install storm windows on all single glazed exterior window units enclosing conditioned space.
4. Install storm doors on all exterior door openings into conditioned spaces unless a single door, enclosed porch, vestibule, or other appurtenance provides a double door effect or provides an "R" value of 2 two or more.
5. Install positive shut-offs for all fireplaces or fireplace stoves, unless an existing damper provides a positive shut-off.
6. Install insulation in accessible attics or ceilings to achieve a minimum total "R" value of the insulation of R-19. If there is insufficient space for the installation of the recommended "R" value, then the recommendation by the evaluator shall standard must be based on installing insulation to fill the available space, while providing for appropriate ventilation.
7. Install insulation in all accessible rim joist areas to achieve a minimum total "R" value of the insulation of R-11. If there is insufficient space for the installation of the recommended "R" value, then the recommendation by the evaluator shall standard must be based on installing insulation to fill the available space.
8. Install insulation in or on accessible walls and floors enclosing conditioned spaces to achieve a minimum total "R" value of the insulation of R-11, when there is no insulation in a substantial portion of the exterior walls or floors over an unconditioned space. Accessible walls shall include above grade foundation walls of basements, cellars, or crawl spaces. If there is insufficient space for the installation of the recommended "R" value, then the recommendation by the evaluator shall standard must be based on installing insulation to fill the available space.
9. install insulation in accessible floors over unconditioned spaces and in rim joists to achieve a minimum total "R" value of the insulation of R-19. For slab on grade construction, insulation shall be installed to achieve a minimum total "R" value of the insulation of R-11. If there is insufficient space for the installation of the recommended "R" value, then the recommendation by the evaluator shall be based on installing insulation to fill the available space.
10. install ceiling insulation to achieve a minimum total "R" value of the insulation of R-44 when the existing "R" value of the ceiling insulation, excluding construction materials, is R-30 or less. If there is insufficient space for the installation of the recommended "R" value, then the recommendation by the evaluator shall be based on installing insulation to fill the available space, providing for appropriate ventilation.
11. install wall and foundation insulation to achieve a minimum total "R" value of the insulation of R-11, when there is no insulation in a substantial portion of the exterior walls or foundation walls. If there is insufficient space for the installation of the recommended "R" value, then the recommendation by the evaluator shall be based on installing insulation to fill the available space.
12. install insulation to achieve a minimum total "R" value of the insulation of R-5 on all water heaters when the remaining useful life of the heater appears to be three years or greater and space is available around the water heater to install insulation.
13. install insulation to achieve a minimum total "R" value of the insulation of R-11 on all accessible heating and cooling ducts in unconditioned spaces.
14. install insulation to achieve a minimum total "R" value of the insulation of R-5 on all accessible heating, cooling or hot water pipes in unconditioned spaces.
15. install a clock thermostat when the residence has a thermostat on the existing furnace or central air conditioner that is compatible with a clock thermostat.
16. install a replacement furnace or boiler with a unit of the same fuel type that has a minimum seasonal efficiency of 80 percent, when the existing unit is five years old or older and has a seasonal efficiency of less than 80 percent.
17. replace the oil burner of an existing furnace or boiler with an oil burner that uses less oil than the device it replaces.
18. install a vent damper on a gas fired boiler or furnace when the furnace combustion air is taken from a conditioned space.
19. install an electrical or mechanical ignition system on a gas-fired boiler or furnace, when the furnace or boiler is located in a conditioned space.
20. replace all or part of the existing central air conditioner that is five years old or older that has an energy efficiency rating of less than 8.2 with one of the same fuel type to obtain an energy efficiency rating of 8.2 or greater.
21. install load management devices when the electric utility serving the residence offers a residential rate which reflects any difference in the utility's cost of service between peak and off peak periods.

22. install heat reflective or heat absorbing window and door material when the affected rooms of the residence are air conditioned and the cooling degree days for the region exceed 700.

23. install a solar domestic hot water system when there is a south facing site that exists on or near the residence that has a prime solar fraction exceeding 0.6.

24. install a passive solar space heating and cooling system when there is a south facing site that exists on or near the residence that has a prime solar fraction exceeding 0.7.

25. install an active solar space heating system when there is a south facing site that exists on or near the residence that has a prime solar fraction exceeding 0.8.

26. install a wind energy system when the region's average annual wind speed is equal to or greater than ten miles per hour and there is sufficient unrestricted access to the wind.

27. install a solar swimming pool heater where a swimming pool is present and it is heated with electricity, gas or another fossil fuel, and the prime solar fraction exceeds 0.8. Modify the existing heating system so that it operates at a minimum steady-state efficiency of 75 percent as demonstrated through a flue gas analysis provided for in 6 MCAR § 2.2504 B.4.

10. Install insulation in all ceilings or attics between conditioned and unconditioned spaces to achieve a minimum total "R" value of the insulation R-38. If there is insufficient space for the installation of the recommended "R" value, the standard must be based on installing insulation to fill the available space while providing for appropriate ventilation.

11. Install insulation in all rim joist areas to achieve minimum total "R" value of the insulation of R-11. If there is insufficient space for the installation of the recommended "R" value, the standard must be based on installing insulation to fill the available space.

12. Install insulation in or on all walls and floors that enclose conditioned spaces to achieve a minimum total "R" value of the insulation of R-11. Walls must include foundation walls of basements, cellars, or crawl spaces. Insulation installed on the exterior of the foundation wall must extend down to two feet below grade level. Insulation installed on the interior or in the foundation wall must be installed from the bottom of the rim joist to the foundation slab or floor. If there is insufficient space for the installation of the recommended "R" value, the standard must be based on installing insulation to fill the available space.

13. Caulk, gasket, or otherwise seal interior joints between foundation and rim joist, around window and door frames, between wall and ceiling, at joints between wall and trim boards, at cracks on interior surfaces of walls, and at utility penetrations.

14. Install energy conservation measures that have had or are predicted to have a cumulative energy consumption savings of 25 percent. These energy conservation measures must be designated in an energy audit conducted by a registered professional engineer or architect or other person determined qualified by the department. The annual energy consumption savings of 25 percent must be based on verified energy consumption, normalized to the average number of heating degree days reported by the nearest National Oceanographic and Atmospheric Administration recording station, for any heating season from 1973-1974 to the present. The energy audit must indicate whether the building complies with standards 1, 2, or 13, and 3 of 6 MCAR § 2.2503 B. If the building is not in compliance with those standards, the predicted energy consumption savings resulting from the installation of those standards may be included in the 25 percent cumulative energy consumption savings.

15. Install energy conservation measures that have a cumulative energy consumption savings of 30 percent. These energy conservation measures must be designated in an energy audit conducted by a registered professional engineer or architect or other person determined qualified by the department. The annual energy consumption savings of 30 percent must be based on verified energy consumption, normalized to the average number of heating degree days reported by the nearest National Oceanographic and Atmospheric Administration recording station, for any heating season from 1973-1974 to the present. The energy audit must indicate whether the building complies with standards 1, 2, or 13, and 3 of 6 MCAR § 2.2503 B. If the building is not in compliance with those standards, the predicted energy consumption savings resulting from the installation of those standards may be included in the 30 percent cumulative energy consumption savings.

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

# PROPOSED RULES

## 6 MCAR § 2.2504 Conducting the evaluation.

A. Disclosure reports. All evaluators shall use a disclosure report approved by the agency department. ~~One copy of the entire completed report shall be given to the seller of the property. Evaluators shall submit reports as required by the agency.~~ Copies of completed disclosure reports shall must be retained by evaluators for at least five years. The reports shall must be available for review by the agency department. Copies of audits conducted by registered professional engineers, architects, or other persons qualified by the department under 6 MCAR § 2.2503 B.14. and 15. must be submitted to the department within 14 days for review or approval.

B. ~~Recommendations.~~ The evaluator shall determine which of the energy conserving practices should save energy in the residence, and in the written report the evaluator shall make a recommendation regarding each practice.

~~C.~~ General duties of evaluators, registered professional engineers, architects, and other approved qualified persons. Evaluators, registered professional engineers, architects, and other approved qualified persons shall estimate energy savings and installation costs of each applicable program measure standard using the calculation procedures in 6 MCAR § 2.2510. An applicable program measure standard is any program measure standard which can be installed in the residence to meet the minimum energy efficiency standards in 6 MCAR § 2.2503. Evaluators, registered professional engineers, architects, and other approved qualified persons shall:

1. Inspect and take actual measurements of the building shell, and inspect the space heating, space cooling, and water heating equipment; The inspection must include all common areas and at a minimum the following number of units for the building being evaluated. The random selection of units to be included in the sample of units inspected must be done by the evaluator, registered professional engineer, architect, and other approved qualified person.

<u>Size of building</u>	<u>Minimum number of units included in inspection sample</u>
<u>1-5 units</u>	<u>all units</u>
<u>5 plus units</u>	<u>5 units + 3 percent of total number of units in the building</u>

2. Base economic calculations on local fuel prices, or on those prices provided by the agency department, as published in the *State Register* ~~each August 1 and February 1.~~

3. Base economic calculations for materials and installation of measures on prices provided by the agency department. Prices shall must be made available to evaluators interested persons by:

a. publication in the *State Register* by the agency department of the most recent contractors and suppliers price survey; or

b. direct mailing by the agency department of the most recent price survey to certified evaluators; or

c. if the owner contends that the prices provided by the department are not representative of actual costs that would be incurred by installing the measure to comply with the standards, the owner shall obtain at least three bids from bona fide contractors indicating the costs of installing that measure. The lowest bid must then be used in determining whether the standard is economically infeasible.

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

~~5.~~ Base any cost and savings estimate for any applicable furnace efficiency modification to a gas or oil furnace or boiler on an evaluation of the seasonal efficiency or the agency published default table, whichever is higher, of the furnace or boiler. Seasonal efficiency shall be calculated on an estimated peak (tuned up) steady-state efficiency corrected for cycling losses as follows: steady-state efficiency of the heating system.

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

b. For gas furnaces or boilers, the steady state efficiency shall be derived from manufacturers' design data. If the manufacturer's design data ~~do not exist~~ are not available at the time of inspection, then a flue gas analysis, as described in a. shall must be performed.

6. The auditor shall calculate the energy index for the residence using the procedures in 6 MCAR § 2.2510.

~~D.~~ Solar water and space heating systems. Every evaluator assessing solar domestic hot water and active solar space heating systems shall include:

- 1. an evaluation containing:
  - a. the square foot area of the solar collector;
  - b. the solar collector characteristics, including glazing materials and other solar collector materials;
  - c. any storage system needed, including the capacity of storage;
  - d. any freeze protection needed;
  - e. the estimated percent of the water heating load to be met by solar energy;
  - f. any physical connections needed with existing heating systems;
  - g. the annual maintenance costs;
  - h. any site preparation needed; or
- 2. fact sheets developed by the agency that provide the information in 1. for a typical residence.

**E. Passive solar space heating systems.** Every evaluator assessing passive solar space heating systems shall include the following information:

- 1. an evaluation which includes:
  - a. a general description and an illustration of the system;
  - b. the estimated percent of the maximum heating requirements of the residence that could be met by the system;
  - c. the approximate dimensions of the system;
  - d. the method employed by the system to store heat, including the heat capacity for heat storage; or
- 2. fact sheets developed by the agency that provide the information in 1. for a typical residence.

**F. Wind energy devices.** Every evaluator assessing wind energy devices shall include the following information:

- 1. an evaluation which includes:
  - a. installation cost estimates, based on the installation costs of a commercially available device with kilowatt ratings appropriate to the level of electricity consumed in the customer's residence;
  - b. the evaluator's estimate of the average wind speed at the residence based on data available at the nearest wind measurement station;
  - c. the specifications of the device under consideration;
  - d. estimates of energy cost savings, based on average yearly wind speeds and the specification of the selected wind device; or
- 2. fact sheets developed by the agency that provide the information in 1. for a typical residence.

**G. Disclosure.** A disclosure using the following language or similar language shall be included in any report prepared pursuant to D., E., or F.:

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

**6 MCAR § 2.2505 Presentation of evaluation and audit results.**

Upon completion of the evaluation, the evaluator shall provide the following information in writing to the seller or the seller's agent. A copy of the disclosure report or audit must be provided to the owner or the owner's agent. The disclosure report or audit must, at a minimum, contain the following information

- A. An estimate of the total cost for materials and labor of installation by a contractor expressed in a range of dollars, within a range of plus or minus 20 percent, of each applicable program measure standard addressed in the evaluation.
- B. an estimate of the total cost of installation by the owner expressed in a range of dollars, within a range of plus or minus 20 percent, of each applicable program measure addressed in the evaluation; however, the evaluator shall not provide an

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

## PROPOSED RULES

~~estimate to an owner of the cost of installation by the owner of replacement central air conditioners, wall insulation, furnace efficiency modifications, devices associated with load management techniques, or wind energy devices.~~

~~C. An estimate of the savings in energy costs expressed in a range of dollars, within a range of plus or minus 20 percent, which would occur during the first year from the installation of each applicable program measure standard addressed by the evaluation.~~

~~D. C. An estimate of the payback period, measured in years, from the energy cost savings of each of the applicable program measures standards installed individually.~~

~~E. D. A disclosure using the following language or similar language: "The procedures used to make these estimates are consistent with the Department of Energy, Planning, and Development department's criteria for residential energy audits evaluations. However, the actual installation costs you incur and energy cost savings you realize from installing these measures standards may be somewhat different from the estimates contained in this audit report disclosure report or audit. Although the estimates are based on measurements of your house building they are also based on assumptions which may not be appropriate for your household building."~~

~~F. sample calculations of the effect of the federal and state energy tax incentives on the cost to the owner of installing one applicable energy conservation program measure and one applicable renewable resource program measure.~~

~~G. if the evaluation is of rental property, a separate list of those improvements necessary to bring the residence into compliance with Minnesota Statutes, section 116H.129, subdivision 3.~~

~~E. A listing of the units of the building that were actually inspected and the date of the inspection, as described in 6 MCAR § 2.2504 B.1.b.~~

~~F. The name, address, and telephone number of the person who conducts the inspection and who completed the disclosure report or audit.~~

### 6 MCAR § 2.2506 Prohibitions and exemption.

~~A. Recommendations and endorsements Prohibitions. The evaluator, registered professional engineer, architect, or other approved qualified person shall:~~

- ~~1. not recommend or discuss any supplier, or contractor or lender to any owner. The evaluator shall;~~
- ~~2. not endorse the use of specific brand names of materials or products, persons, firms, or contractors which may be used to meet any specific standard. The evaluator shall;~~
- ~~3. not make any statements relating to the standards which may be interpreted as an endorsement of any specific material or product.~~

~~B. Exclusion of measures. The evaluator shall;~~

- ~~4. not exclude any applicable program measures standards in the presentation of the audit to the owner.~~

~~C. Costs of certain products. The evaluator shall not include in the written evaluation costs or energy cost savings of installing any product which is not defined as a program measure.~~

~~D. Required disclosure. The evaluator shall;~~

~~5. provide the owner with a written statement of any interest which the evaluator he or she or the evaluator's his or her employer has, directly or indirectly, in the sale or installation of any program energy conservation measure, or in the sale of the residence to be evaluated; and~~

~~6. not conduct an evaluation of a building in which he or she has an ownership interest or is employed (other than to conduct the evaluation) by any person having an ownership interest in the building.~~

~~B. Exemption. If the building is a low rent housing project owned by a public housing agency as defined in Minnesota Statutes, section 462.421, subdivision 12, the energy audit or disclosure report provided for at 6 MCAR § 2.2504 may be provided by an officer, or employee of the agency, if the audit is conducted in accordance with Code of Federal Regulations, title 24, sections 865.301-865.310, if the procedures prescribed in 6 MCAR § 2.2504 are followed, and if the audit includes the standards provided in 6 MCAR § 2.2503. Persons conducting these audits are exempted from the certification requirements of 6 MCAR § 2.2507. However, unless the officer, or employee of the agency, meets the requirements of 6 MCAR § 2.2503 B.14. or 15., they shall not conduct an energy audit for compliance with 6 MCAR § 2.2503 B.14. or 15.~~

### 6 MCAR § 2.2507 Qualification procedures for evaluators.

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

**B. Training.**

1. Except as provided in 2. no person ~~shall be~~ is eligible for certification ~~pursuant to~~ under C. unless he or she has first participated in a training course which has been approved by the agency department and which covers the subject matter tested in the evaluator certification examination.

2. The following persons ~~shall be permitted to~~ may take an appropriate agency department approved orientation session, in lieu of the requirements of 1.:

- a. any HED evaluator certified before July 1, 1981;
- b. any person successfully completing an approved 30 hour training course for the HED program prior to July 1, 1981;
- c. registered architects and registered engineers with work experience in energy auditing or the design of institutional, commercial, residential or industrial buildings;
- d. any person who has six months' energy auditing experience and who has completed 25 energy audits for a nonprofit organization;
- e. members of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the Independent Fee Appraisers, or other associations determined by the agency department to have applicable training requirements for their members;
- f. certified evaluators for Truth in Housing Programs;
- g. building officials certified by the Building Codes Division of the Minnesota Department of Administration.

C. Certification. Only those persons who satisfy all of the following conditions shall be certified:

1. All persons ~~must~~ shall take and pass a certification examination conducted by the agency department. The certification examination ~~shall~~ must test for the following qualifications:

- a. a general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;
- b. a general understanding of residential construction terminology and components;
- c. a general knowledge of the operation of the heating and cooling systems used in residential buildings, including the need and provision for combustion air;
- d. a general knowledge of the different types of each applicable program measure, of the advantages and disadvantages and applications of each, and of the DOE installation standards;
- e. the capability to conduct the HED energy evaluation including: a working knowledge of energy conserving practices, the ability to determine the applicability of each of the program measures, and proficiency in the auditing procedures for each applicable program measure established in 6 MCAR § 2.2504;
- f. a working ability to calculate the steady state efficiency of furnaces or boilers; and
- g. ~~an understanding of the nature of solar energy and its residential applications including: insolation, shading, heat capture and transport, and heat transfer for hot water;~~
- h. ~~an understanding of the nature of wind energy and its residential applications including: wind availability, effects of obstruction, wind capture, power generation, and interfaces with residential and utility power lines; and~~
- i. a working knowledge of building and fire codes related to the installation and safety of wood burning appliances.

2. All persons shall submit a \$50 certification fee to the Energy Division, Department of Energy, Planning, and Development department. However, no certification fee ~~shall~~ may be charged for certified municipal building officials who are directly employed by a municipality as defined in Minnesota Statutes, section 16.84, subdivision 3; or for employees of public housing agencies as defined in Minnesota Statutes, section 462.421, subdivision 12; or for employees of private nonprofit community-based organizations, when the evaluations are performed as part of the employee's normal job responsibilities. No certification fee ~~shall~~ may be charged for those persons upgrading their certification who were certified prior to July 1, 1981.

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

## PROPOSED RULES

3. All persons shall provide evidence satisfactory to the agency department of liability and of errors and omissions insurance. The minimum value of protection in each category shall must be \$50,000, and the insurance shall must be of the "occurrence" variety where coverage is based on the date when the evaluation is made. A "claims made" policy with a reporting endorsement of at least five years is also acceptable. Coverage shall is not be required for evaluators who are employed by municipal governments or public housing agencies and who perform evaluations as part of their normal job responsibilities. Certified evaluators who have provided a bond to the state as required by the Building Code Division of the Department of Administration shall are not be required to obtain the protection required by this paragraph until that bond expires. ~~Bonds shall not be renewed for the purposes of the HED program.~~ In addition, each insurance policy shall must:

a. name the state of Minnesota as a coinsured party, and

b. be written by a corporate insurer licensed to do business in the state of Minnesota, or licensed in accordance with Minnesota Statutes, sections 60A.195 to 60A.209.

D. Certification examinations. Examinations shall must be conducted by the agency department and offered at the following times:

1. within two days after the completion of each state-sponsored training course or orientation session, or
2. once a month, until June 1982, with a minimum of two examinations per year afterward.

### 6 MCAR § 2.2508 Recertification of evaluators.

A. Term of certification. Certification shall be is valid for one year.

B. Recertification procedure. Each year, each evaluator shall be recertified. The following procedures shall must be completed in order for an evaluator to be recertified-:

1. Prior to the date of certificate expiration, the evaluator shall attend a recertification course, as required by the agency department. Successful completion of this course shall recertify the evaluator for the next year. Evaluators not completing the recertification course prior to the expiration date of their certification shall be recertified by completing the recertification course and successfully retaking the certification examination.

2. The recertification course requirements for evaluators shall must be eliminated for any particular year if the agency department determines that no changes were made in the HED program that year. Certification shall must then be automatically renewed.

3. Persons requesting recertification shall pay a \$25 fee to the energy division of the department of ~~Energy, Planning, and Development~~.

4. This recertification shall must occur annually, for the life of the program.

C. Personnel from other states. Any person who is certified to conduct residential conservation service audits in another state shall is not be required to take the training course established in 6 MCAR § 2.2507 B.1., but shall be is required to pass the evaluator certification examination.

### 6 MCAR § 2.2509 Decertification of evaluators.

A.-D. [Unchanged.]

E. Wrongful acts. Certification shall must be revoked when reasonable evidence indicates an undisclosed conflict of interest, a violation of these rules, unethical practices, or negligent performance of duties as an evaluator. In any of these instances, the agency department will, if requested, provide a review to determine whether the revocation was proper. ~~Such a~~ This review shall must consist of the following procedures:

1. The evaluator shall make a written request for a review to the agency department.

2. The ~~manager~~ director of the office of conservation division shall determine a time to review the request.

a. The evaluator may present testimony in person or in writing:

b. The evaluator may present witnesses on the evaluator's behalf.

e. Agency Department staff may present written or oral testimony, as well as witnesses.

3. The ~~manager~~ director of the office of conservation division shall make a judgment based on the information presented in the review hearing. That judgment shall be presented in writing to the evaluator within three working days of the review.

F. Failure to report. Certification shall must be revoked if the reports required in 6 MCAR § 2.2504 A. are not submitted to the agency department as ~~requested~~ required.



**6 MCAR § 2.2510 Calculation procedures.**

The following procedures ~~shall~~ must be the basis for calculating energy savings for ~~program measures~~ each standard.

**A. Energy conserving measures.**

1.-3. [Unchanged.]

**4. Furnace efficiency modifications.**

a. Replacement furnaces or boilers.

Equation #3. 
$$\Delta E = E_0 \frac{1 - N_0}{N_1}$$

b.-d. [Unchanged.]

5.-21. [Unchanged.]

**B. [Unchanged.]**

Repealer. Rules of the Department of Administration, 2 MCAR §§ 1.16220-1.16230 are repealed.

**Board of Nursing**

**Proposed New Rules Identified as 7 MCAR §§ 5.4000-5.4006 Establishing Criteria for and A Listing of Advanced Nursing Programs for Certified Registered Nurse Anesthetists and Certified Nurse Midwives**

**Notice of Intent to Adopt Rules without a Public Hearing**

NOTICE IS HEREBY GIVEN that the Minnesota Board of Nursing (hereinafter "Board") proposes to promulgate 7 MCAR §§ 5.4000-5.4006 of the Rules of the Minnesota Board of Nursing relating to criteria for programs of advanced study for Certified Registered Nurse Anesthetists and Certified Nurse Midwives and listing current programs which fulfill those criteria. A copy of the proposed rules is attached.

The Board has determined that these proposed rules will be noncontroversial in nature. Therefore, the Board has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 through 14.28 (1982) which provide for an expedited process for the adoption of noncontroversial administrative rule changes without the holding of a public hearing. The rules are proposed to comply with Minn. Laws 1983, ch. 221, § 2, Subd. 3a.

The public is hereby advised that:

1. There is a period of 30 days in which to submit comment on the proposed rule;
2. No public hearing will be held on this matter unless seven or more persons make a written request for hearing within the 30 day comment period;
3. All comments and any written requests for a public hearing shall be submitted to Joyce M. Schowalter, Executive Secretary, Minnesota Board of Nursing, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414;
4. The proposed rules may be modified if modifications are supported by the data and views submitted, and do not result in a substantial change in the proposed language;
5. Authority to adopt these rules is contained in Minn. Laws 1983, Ch. 221, § 2, Subd. 3a. Additionally, a Statement of Need

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

## PROPOSED RULES

and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules has been prepared and is now available. Anyone wishing to receive a copy of this document may contact Joyce M. Schowalter at the above-listed address;

6. Under this expedited procedure, the agency must submit any action on its rules to the Attorney General for review of the form and legality of the rule change. Notice of the submission of this matter to the Attorney General will be made to all persons who request to be informed of the submission. Requests to be informed must be submitted to Joyce M. Schowalter at the above-listed address;

7. If seven or more persons request a public hearing on this matter, notice of any such hearing will be given in the same manner as has this notice and the agency will then proceed pursuant to Minn. Stat. §§ 14.13-14.20 (1982);

8. Any rule change made pursuant to this proceeding shall be effective five working days after publication in the *State Register* of notice of the adoption of the change.

January 10, 1984

Joyce M. Schowalter  
Executive Secretary  
Minnesota Board of Nursing

### Rules as Proposed (all new material)

#### THIRD PARTY REIMBURSEMENT LAW ADVANCED NURSING PRACTICE

##### 7 MCAR § 5.4000 Purpose.

Rules 7 MCAR §§ 5.4000-5.4004 establish criteria for programs of study of advanced nursing practice. Rules 7 MCAR §§ 5.4005 and 5.4006 list programs that fulfill the criteria. The criteria and list are established under Laws of Minnesota 1983, chapter 221, section 2, subdivision 3a in order to qualify advanced nursing services for reimbursement by third parties.

##### 7 MCAR § 5.4001 Definitions.

A. Advanced nursing practice. "Advanced nursing practice" means the performance of health services by certified registered nurse anesthetists (CRNA) and certified nurse midwives (CNM) as defined in Laws of Minnesota 1983, chapter 221, section 2, subdivision 3a.

B. Board. "Board" means the Minnesota Board of Nursing.

C. Professional nursing organization for nurse anesthetists. "Professional nursing organization for nurse anesthetists" means the American Association of Nurse Anesthetists' Council on Accreditation of Nurse Anesthesia Educational Programs/Schools which accredits the programs of study and the American Association of Nurse Anesthetists' Council on Certification which certifies nurse anesthetists.

D. Professional nursing organization for nurse midwives. "Professional nursing organization for nurse midwives" means the American College of Nurse Midwives of which the Division of Accreditation accredits the programs of study and the Division of Certification certifies the nurse midwives.

E. Program of study. "Program of study" means an organized set of classes which include theory and clinical practice designed to prepare registered nurses for advanced practice as nurse anesthetists or nurse midwives.

##### 7 MCAR § 5.4002 Criteria for inclusion on list of programs of study.

In order to be included on the lists found in 7 MCAR §§ 5.4005 and 5.4006, a program of study must consist of subject matter beyond that required for registered nurse licensure and meet one of the following criteria:

A. programs preparing nurse anesthetists must be accredited by the Council on Accreditation of Nurse Anesthesia Education Programs/Schools; or

B. programs preparing nurse midwives must be accredited by the Division of Accreditation, American College of Nurse Midwives.

##### 7 MCAR § 5.4003 How a program of study may demonstrate compliance with the criteria.

A program of study which has submitted written evidence that it meets the criteria listed in 7 MCAR § 5.4002 shall be included on the list. Such evidence shall include a copy of the curriculum and a copy of the official notification that the program received accreditation status by the required organization.

##### 7 MCAR § 5.4004 Maintenance of lists.

A. List updating. Each January and July the board shall add to the list programs which have met the criteria within the previous six months and remove from the lists programs which no longer meet the criteria.

---

---

## PROPOSED RULES

B. New accreditations. Upon receipt of notification by a professional nursing organization that a program of study has received accreditation, that program shall be added to the list the next time the list is updated..

### 7 MCAR § 5.4005 List of nurse anesthesia programs of study.

#### A. Alabama:

1. Baptist Medical Centers-Samford University School of Anesthesia, Birmingham;
2. University of Alabama in Birmingham, School of Community and Allied Health Anesthesia for Nurses Program, Birmingham;
3. Manley L. Cummins School of Anesthesia for Nurses, Southeast Alabama Medical Center, Dothan; and
4. School of Anesthesia for Nurses-University of South Alabama Medical Center, Mobile.

#### B. California:

1. Loma Linda University-School of Allied Health Professions, Department of Anesthesia, Loma Linda;
2. Kaiser-Permanente School of Anesthesia for Nurses/CSULB, Los Angeles;
3. Los Angeles County, Martin Luther King, Jr./Drew Medical Center, Los Angeles;
4. UCLA Program of Nurse Anesthesia, Los Angeles; and
5. United States Navy School of Nurse Anesthesia, San Diego.

#### C. Colorado: United States Army Academy of Health Sciences/State University of New York at Buffalo, Aurora.

#### D. Connecticut:

1. Bridgeport Hospital School of Nurse Anesthesia, Bridgeport;
2. New Britain School of Nurse Anesthesia, New Britain; and
3. Hospital of St. Raphael, School of Anesthesia, New Haven.

#### E. Delaware:

1. Wesley College-Kent General Hospital School of Anesthesia, Dover; and
2. Wilmington Medical Center School of Anesthesia, Wilmington.

#### F. District of Columbia:

1. Greater Southeast Community Hospital/George Washington University, School of Nurse Anesthesia, Washington; and
2. United States Army Academy of Health Sciences/State University of New York at Buffalo, Washington.

#### G. Florida:

1. Nurse Anesthesia Training Program, University of Florida/College of Medicine, Gainesville; and
2. Bay Memorial Medical Center, School of Anesthesia, Panama City.

#### H. Georgia:

1. Georgia Baptist Hospital School of Anesthesia for Nurses, Atlanta; and
2. United States Army Academy of Health Sciences/State University of New York at Buffalo, Fort Gordon.

#### I. Hawaii: United States Army Academy of Health Sciences/State University of New York at Buffalo, Tripler.

#### J. Illinois:

1. Ravenswood Hospital Medical Center School of Nurse Anesthesia, Chicago;
2. Rush University Anesthesia Nurse Practitioner Program, Chicago; and
3. Decatur Memorial Hospital Nurse Anesthesia Program, Decatur.

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

## PROPOSED RULES

---

---

### K. Kansas:

1. University of Kansas, Nurse Anesthesia Education, Kansas City;
2. St. Francis Regional Medical Center School of Anesthesia for Nurses/Kansas Newman College, Wichita;
3. Wesley Medical Center School of Anesthesia for Nurses, Friends University, Wichita; and
4. The Wichita Clinic School of Anesthesia, Wichita.

### L. Kentucky: Appalachian Regional Hospitals, Inc., Program of Nurse Anesthesia, Harlan.

### M. Louisiana: Charity Hospital School for Nurse Anesthesia, New Orleans.

### N. Maine:

1. Eastern Maine Medical Center School of Nurse Anesthesia, Bangor;
2. St. Mary's General Hospital School of Anesthesia for Nurses, Lewiston; and
3. Mercy Hospital School of Anesthesiology, Portland.

### O. Maryland:

1. The Johns Hopkins Hospital School of Anesthesia for Nurses, Baltimore;
2. United States Navy Nurse Corps Anesthesia Program, Naval School of Health Sciences, National Naval Medical Center, Bethesda; and
3. Prince George's General Hospital School of Anesthesia (George Washington University), Cheverly.

### P. Massachusetts:

1. Carney Hospital School of Anesthesia, Boston;
2. Tuft's-New England Medical Center Hospital School of Nurse Anesthesia, Boston;
3. Berkshire Medical Center School of Nurse Anesthesia, Pittsfield; and
4. St. Vincent Hospital School of Nurse Anesthesia, Worcester.

### Q. Michigan:

1. The University of Michigan Hospitals Program of Nurse Anesthesia, Ann Arbor;
2. Henry Ford Hospital School of Anesthesia/University of Detroit, Detroit;
3. Mt. Carmel Mercy Hospital/Mercy College, Detroit;
4. Wayne State University College of Pharmacy and Allied Health Professions Nurse Anesthesia Educational Program, Detroit; and
5. Hurley Medical Center School of Anesthesia, Flint.

### R. Minnesota:

1. Austin School of Anesthesia, Austin;
2. St. Mary's Hospital, Duluth;
3. Central Mesabi Medical Center School of Anesthesia, Hibbing;
4. Hibbing General Hospital School of Anesthesia, Hibbing;
5. Abbott-Northwestern Hospital (St. Mary's College), Minneapolis;
6. Northwestern Hospital, Minneapolis;
7. Minneapolis Veterans Administration Medical Center School of Anesthesia, Minneapolis;
8. St. Mary's Hospital School of Anesthesia, Minneapolis;
9. Minneapolis Training Program, % Asbury Hospital, Minneapolis;
10. Mayo School of Health-Related Sciences Nurse Anesthesia Program, Rochester;
11. School of Anesthesia, Division of Education, Mayo Foundation, Rochester;
12. Mayo Clinic, Rochester;
13. Rochester State Hospital School of Anesthesia for Nurses, Rochester;
14. St. Cloud Hospital, St. Cloud;

15. Minneapolis School of Anesthesia (St. Mary's College), St. Louis Park;

16. Bethesda Lutheran Hospital, St. Paul; and

17. St. Paul-Ramsey Medical Center School of Nurse Anesthesia, St. Paul.

S. Mississippi: School of Health Related Professions, Department of Nurse Anesthesiology, University of Mississippi Medical Center, Jackson.

T. Missouri:

1. Truman Medical Center, School for Nurse Anesthetists, Kansas City;

2. Barnes Hospital School of Nurse Anesthesia, St. Louis; and

3. Southwest Missouri School of Anesthesia (Southwest Missouri State University), Springfield.

U. Nebraska:

1. Bryan Memorial Hospital/Nebraska Wesleyan University, School of Nurse Anesthesia, Lincoln; and

2. Creighton University Nurse Anesthesia Program, Omaha.

V. New Hampshire: Mary Hitchcock Memorial Hospital, School of Nurse Anesthesia, Hanover.

W. New Jersey:

1. Our Lady of Lourdes Hospital School of Anesthesia for Nurses, Camden; and

2. Jersey Shore Medical Center, School of Anesthesia, Neptune.

X. New York:

1. Albany Medical Center Hospital, School for Nurse Anesthetists, Albany;

2. Albany Veterans Administration Medical Center School of Anesthesia for Nurses, Albany;

3. Kings County School of Anesthesia (Brooklyn College/SUNY), Brooklyn;

4. Roswell Park Memorial Institute, School of Anesthesia for Nurses, Buffalo;

5. Nurse Anesthetist Program, Department of Graduate Education, School of Nursing, State University of New York at Buffalo, Buffalo;

6. Harlem School Center/School of Anesthesia for Nurses, New York;

7. Columbia University/Roosevelt Hospital, School of Anesthesia, New York; and

8. New York Medical College-Metropolitan Hospital Center School of Anesthesia for Nurses, New York.

Y. North Carolina:

1. Charlotte Memorial Hospital and Medical Center, School of Nurse Anesthesia, Charlotte;

2. Durham County General Hospital School of Anesthesia for Nurses, Durham;

3. Warren Wilson College/Asheville Anesthesia Associates, School of Anesthesia, Swannanoa; and

4. North Carolina Baptist Hospital and Bowman Gray School of Medicine, Nurse Anesthesia Program, Winston-Salem.

Z. North Dakota:

1. Central North Dakota School of Anesthesia; St. Alexius Hospital, Bismarck;

2. St. Luke's Hospital School of Anesthesia, Fargo; and

3. The Grand Forks School of Anesthesia, The United Hospital, Grand Forks.

AA. Ohio:

1. Aultman Hospital School of Nurse Anesthesia, Canton;

2. University Hospital School of Nurse Anesthesia, Cincinnati;

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

## PROPOSED RULES

---

3. Cleveland Clinic School of Nurse Anesthesia, Cleveland;
4. Mt. Sinai Medical Center School of Nurse Anesthesia, Cleveland;
5. The Ohio State University Nurse Anesthesia Division, Columbus;
6. Ohio Valley Hospital School of Anesthesia, Steubenville;
7. St. Vincent Hospital and Medical Center, School of Anesthesia for Nurses, Toledo; and
8. St. Elizabeth Hospital Medical Center School of Nurse Anesthetists, Youngstown.

### BB. Pennsylvania:

1. Mercy Hospital, School of Anesthesia, Altoona;
2. Geisinger Medical Center/Susquehanna University, Danville;
3. Hamot Medical Center School of Anesthesia (Edinboro State College), Erie;
4. Westmoreland-Latrobe School of Anesthesia, Greensburg;
5. Harrisburg Area School of Anesthesia, Harrisburg Hospital, Harrisburg;
6. Lee Hospital/University of Pittsburgh at Johnstown, School of Anesthesia for Nurses, Johnstown;
7. St. Joseph Hospital and Health Care Center, School of Anesthesia, Lancaster;
8. McKeesport Hospital School of Nurse Anesthesia/California State College, McKeesport;
9. Allegheny Valley Hospital School of Anesthesia (LaRoche College), Natrona Heights;
10. Montgomery Hospital School of Anesthesia, Norristown;
11. Medical College of Pennsylvania and Hospital, Program of Nurse Anesthesia, Philadelphia;
12. Lankenau Hospital School of Anesthesia for Nurses, Philadelphia;
13. The Nazareth Hospital School of Anesthesia for Nurses, Philadelphia;
14. La Roche College Nurse Anesthesia Program, Pittsburgh;
15. Mercy Hospital School of Anesthesia for Nurses, Pittsburgh;
16. St. Francis General Hospital, La Roche College, Pittsburgh;
17. Shadyside Hospital School of Nurse Anesthesia/California State College, Pittsburgh;
18. Western Pennsylvania Hospital School of Anesthesia, Pittsburgh;
19. University Health Center of Pittsburgh, School of Anesthesia for Nurses, Pittsburgh;
20. Mercy Hospital School for Nurse Anesthetists, Scranton;
21. The Washington Hospital School of Anesthesia for Nurses (California State College), Washington;
22. The Reading Hospital and Medical Center School of Nurse Anesthesia, West Reading; and
23. Wilkes-Barre General Hospital School of Anesthesia, Wilkes-Barre.

### CC. Rhode Island:

1. St. Joseph Hospital School of Anesthesia for Nurses, North Providence; and
2. The Memorial Hospital School of Nurse Anesthesia, Pawtucket.

### DD. South Carolina:

1. Anesthesia for Nurses Program, College of Allied Health Sciences, Medical University of South Carolina, Charleston; and
2. Richland Memorial Hospital School of Anesthesia, Columbia.

### EE. South Dakota:

1. McKennan Hospital School of Anesthesiology for Registered Nurses (University of South Dakota), Sioux Falls; and
2. Mount Marty School of Anesthesia, Mount Marty College, Yankton.

### FF. Tennessee:

1. Erlanger Medical Center, School of Nurse Anesthesia, Chattanooga;

2. Nurse Anesthesia Program, Holston Valley Hospital and Medical Center, Kingsport;
3. University of Tennessee Memorial Hospital, School of Nurse Anesthesia, Knoxville; and
4. Middle Tennessee School of Anesthesia, Madison.

**GG. Texas:**

1. United States Army Academy of Health Sciences/State University of New York at Buffalo, El Paso;
2. United States Academy of Health Sciences/State University of New York at Buffalo, Fort Hood;
3. Harris Hospital-Methodist School of Nurse Anesthesia in Association with Texas Wesleyan College, Fort Worth;
4. Baylor College of Medicine Nurse Anesthesia Program, Houston;
5. University of Texas Health Science Center, Houston;
6. United States Academy of Health Sciences/State University of New York at Buffalo, San Antonio;
7. Nurse Anesthetist Course, Wilford Hall USAF Medical Center/SGHSAA, San Antonio; and
8. Wichita General Hospital School of Anesthesia for Nurses, Wichita Falls.

**HH. Virginia:**

1. Allegheny Regional Hospital, School of Anesthesia, Clifton Forge;
2. The Fairfax Hospital School of Anesthesia for Nurses (Affiliated with George Washington University), Falls Church;
3. DePaul Hospital School of Anesthesia, Norfolk;
4. Medical Center Hospital-Norfolk General Division, Old Dominion University, Norfolk;
5. United States Navy Nurse Corps Anesthesia School, Phase II, George Washington University, Portsmouth;
6. Medical College of Virginia, Virginia Commonwealth University, Richmond; and
7. Potomac Hospital, School of Nurse Anesthesia, Woodbridge.

**II. Washington:**

1. Sacred Heart Medical Center/Gonzaga University, Spokane; and
2. United States Army Academy of Health Sciences/State University of New York at Buffalo, Tacoma.

**JJ. West Virginia:**

1. Charleston Area Medical Center School of Nurse Anesthesia, Charleston; and
2. St. Joseph's Hospital School of Anesthesia for Nurses, Parkersburg.

**KK. Wisconsin:**

1. St. Francis School of Anesthesia, LaCrosse;
2. Milwaukee County Medical Complex-School of Nurse Anesthesia, Milwaukee;
3. Mercy Medical Center School of Anesthesia for Graduate Nurses, Oshkosh; and
4. Wausau Hospital Center, School of Anesthesia; Wausau.

**7 MCAR § 5.4006 List of nurse midwifery programs of study.**

**A. Arizona:** University of Arizona College of Nursing, Tucson.

**B. California:**

1. University of California at San Diego, Nurse-Midwifery, La Jolla;
2. University of Southern California, Nurse-Midwifery Program, Women's Hospital, Los Angeles;
3. Stanford University, Women's Health Care Training Project, Primary Care Program, Palo Alto; and
4. University of California at San Francisco, San Francisco General Hospital, San Francisco.

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

## PROPOSED RULES

---

---

- C. Colorado: University of Colorado Health Sciences Center School of Nursing, Denver.
- D. Connecticut: Yale University Maternal Newborn (Nurse-Midwifery) Program, New Haven.
- E. District of Columbia: Georgetown University School of Nursing, Washington.
- F. Florida:
  - 1. University of Miami School of Nursing, Coral Gables; and
  - 2. University of Florida at Gainesville, T. Hillis Miller Health Center College of Nursing, Gainesville.
- G. Georgia: Emory University, Nell Hodgson Woodruff School of Nursing, Atlanta.
- H. Illinois:
  - 1. Rush-Presbyterian-St. Luke's Medical Center, Chicago; and
  - 2. University of Illinois at the Medical Center, College of Nursing, Chicago.
- I. Kentucky:
  - 1. Frontier School of Midwifery and Family Nursing, Frontier Nursing Service, Hyden; and
  - 2. University of Kentucky College of Nursing, Lexington.
- J. Maryland: United States Air Force (USAF), Nurses Only, Nurse-Midwifery Program, Malcom Grow USAF Medical Center, Andrews Air Force Base.
- K. Minnesota: University of Minnesota School of Nursing, Minneapolis.
- L. Mississippi: University of Mississippi Nurse-Midwifery Education Program, Jackson.
- M. Missouri: St. Louis University Department of Nursing, St. Louis.
- N. New Jersey: University of Medicine and Dentistry of New Jersey, School of Allied Health Professions, Nurse-Midwifery Program, Newark.
- O. New York:
  - 1. State University of New York, Downstate Medical Center, College of Health Related Professions, Nurse-Midwifery Program, Brooklyn; and
  - 2. Columbia University Graduate Program in Maternity Nursing and Nurse Midwifery, Columbia Presbyterian Medical Center, New York.
- P. Ohio: Case Western Reserve, Frances Payne Bolton School of Nursing, Cleveland.
- Q. Oregon: Oregon Health Sciences University School of Nursing, Portland.
- R. Pennsylvania:
  - 1. Booth Maternity Center, Philadelphia; and
  - 2. University of Pennsylvania School of Nursing, Philadelphia.
- S. South Carolina: Medical University of South Carolina Nurse-Midwifery Program, Charleston.
- T. Tennessee: Meharry Medical College Nurse-Midwifery Program, Nashville.
- U. Utah: University of Utah College of Nursing, Salt Lake City.

## Department of Public Welfare Bureau of Income Maintenance

### Proposed Temporary Rules Governing the Certification of Admission Programs for Inpatient Hospitals Participating in the Medical Assistance Program (12 MCAR §§ 2.0481-2.0484, Temporary)

#### Notice of Intent to Adopt Temporary Rules

The State Department of Public Welfare proposes to adopt the above-entitled temporary rules to implement Laws of Minnesota 1983, chapter 312, article 5, section 38, (to be codified at Minnesota Statutes, chapter 256 B.503).



Persons interested in these rules have until February 13, 1984 to submit written comments. The proposed temporary rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Written comments should be sent to:

Thomas JoliCoeur  
Health Care Programs  
Department of Public Welfare  
2nd Floor, Space Center  
444 Lafayette Road  
St. Paul, MN 55101  
612/297-2022

Upon adoption of these temporary rules, this notice, all written comments received, and the adopted temporary rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

The adopted temporary rules will not become effective without the Attorney General's approval and the Revisor of Statute's certification of the rule's form.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these temporary rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation by publishing notice in the *State Register* and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The temporary rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

The purpose of 12 MCAR §§ 2.0481-2.0484 (Temporary) is to establish by uniform rules criteria for determining the appropriateness of hospital admissions and standards that safeguard against unnecessary or inappropriate use of inpatient Medical Assistance services. These rules apply to admitting providers and hospitals seeking Medical Assistance or General Assistance Medical Care payment for inpatient hospital services provided to Medical Assistance or General Assistance Medical Care recipients under Minnesota Statutes, sections 256B and 256D. These rules contain provisions on the responsibilities of admitting physicians and other providers with admitting privileges, responsibilities of hospitals, responsibilities of medical review agents, responsibilities of the Commissioner of the Department of Public Welfare, and hospital admission criteria.

These temporary rules will not result in any additional state or county spending beyond the amount of funds appropriated under Laws of Minnesota 1983, chapter 312.

Copies of this notice and the proposed temporary rules may be obtained by contacting Sandra Searles (612/296-3386).

January 9, 1984

Leonard W. Levine, Commissioner  
of Public Welfare

### **Temporary Rules as Proposed (all new material)**

#### **12 MCAR § 2.0481 [Temporary] Authority and applicability.**

##### **A. Authority.**

1. Minnesota Statutes, chapter 312, article 5, section 38 (to be codified at Minnesota Statutes, chapter 256B.503), authorizes the commissioner to establish, by uniform rules, criteria for determining the appropriateness of hospital admissions and standards that safeguard against unnecessary or inappropriate use of inpatient medical assistance services;

2. The provisions of 12 MCAR §§ 2.0481-2.0484 [Temporary] are to be read in conjunction with Code of Federal Regulations, titles XVIII and XIX and Minnesota Statutes, chapters 256, 256B, and 256D, The Minnesota Department of Public Welfare, the state agency responsible for the administration of the medical assistance and general assistance medical care programs, may issue instructional bulletins, manual materials, and forms, as necessary to assist in compliance with these rules.

**B. Applicability.** Rules 12 MCAR §§ 2.0481-2.0484 [Temporary] apply to admitting providers and hospitals seeking medical assistance or general assistance medical care payment for inpatient hospital services provided to medical assistance or general assistance medical care recipients under Minnesota Statutes, chapters 256B and 256D. The department retains the authority to approve prior authorizations established under 12 MCAR §§ 2.047 and 2.058. For the purposes of 12 MCAR §§ 2.0481-2.0484

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

## PROPOSED RULES

[Temporary] out-of-state hospitals and admitting providers are exempt. Out-of-state admitting providers who admit to an in-state hospital must comply.

### 12 MCAR § 2.0482 [Temporary] Definitions.

- A. **Applicability.** As used in 12 MCAR §§ 2.0481-2.0484 [Temporary], the following terms have the meanings given them.
- B. **Admission.** "Admission" means the act that allows the recipient to officially enter a hospital under the professional care of a member of the medical staff to receive medical care.
- C. **Admission certification.** "Admission certification" means that the commissioner or the medical review agent has determined that inpatient hospitalization is medically necessary based on the criteria contained in 12 MCAR §§ 2.0481-2.0484 [Temporary] and that medical assistance or general assistance medical care funds may be used to reimburse the admitting provider and hospital for providing such services, subject to the requirements of 12 MCAR §§ 2.047 and 2.058.
- D. **Admitting provider.** "Admitting provider" means the deliverer of medical services who orders the admission to the hospital and who enters into a provider agreement with the Department of Public Welfare.
- E. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Public Welfare or a designated representative.
- F. **Department.** "Department" means the Department of Public Welfare.
- G. **General assistance medical care or GAMC.** "General assistance medical care" or "GAMC" means payment of part or all of the cost of care and services not provided by title XVIII, XIX, or XX of the Social Security Act for eligible individuals whose income and resources are insufficient to meet all such costs.
- H. **Hospital.** "Hospital" means an institution properly staffed and equipped which provides services, facilities, and beds for the reception and care for a continuous period longer than 12 hours of one or more nonrelated persons who require diagnosis, treatment, or care for illness, injury, or pregnancy. A hospital regularly makes available clinical laboratory services, diagnostic x-ray services, and treatment facilities for (a) surgery, (b) obstetrical care, or (c) other definitive medical treatment of similar extent as defined in 7 MCAR § 1.076.
- I. **Inpatient hospital services.** "Inpatient hospital services" means those items and services ordinarily furnished by a hospital for the care and treatment of inpatients; and which are provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis. The hospital offering services must be licensed or formally approved as a hospital by the Minnesota Department of Health; and must be qualified to participate under title XVIII of the Social Security Act or is determined currently to meet the requirements for such participation under 7 MCAR § 1.076.
- J. **Local welfare agency.** "Local welfare agency" means the local agency under the authority of the county welfare board or county human service board which is responsible for determining medical assistance and general assistance medical care eligibility.
- K. **Medical assistance or MA.** "Medical assistance" or "MA" means the program established under title XIX of the Social Security Act and Minnesota Statutes, chapter 256B.
- L. **Medical emergency.** "Medical emergency" means a medical condition that, if not immediately diagnosed and treated, could cause a recipient serious physical or mental disability, continuation of severe pain, or death.
- M. **Medically necessary.** "Medically necessary" means a service or treatment appropriate and consistent with the recipient's diagnosis and which in accordance with accepted medical standards in Minnesota, cannot be provided on an outpatient basis.
- N. **Medical review agent.** "Medical review agent" means an agency contracting with the department to perform admission certification.
- O. **Peer review task force.** "Peer review task force" means the peers practicing in a speciality of the admitting provider, who are appointed to the review force by the medical review agent. The peer review task force hears reconsideration for a denied admission certification.
- P. **Prior authorization.** "Prior authorization" means prior approval under 12 MCAR §§ 2.047 and 2.058 of services and items of care by the department prior to the provision of service.
- Q. **Recipient.** "Recipient" means a person who has made application to the local welfare agency and meets the eligibility criteria for medical assistance or general assistance medical care.
- R. **Reconsideration.** "Reconsideration" means a review, based on additional information from the admitting provider of denied admission certifications. The review is conducted by the peer review task force of the medical review agent.

**12 MCAR § 2.0483 [Temporary] Inpatient admission certification process.**

All medical assistance (MA) and general assistance medical care (GAMC) admissions to hospitals must receive admission certification by the commissioner or a medical review agent if designated, prior to admission in order for the admitting provider or the hospital to receive MA or GAMC funds.

A. Admitting provider responsibilities. The admitting provider that seeks MA or GAMC reimbursement for hospital services to be provided to a recipient shall:

1. Request admission certification by contacting the commissioner or, if directed, a medical review agent, under procedures specified by the commissioner through provider bulletins. Admission certification will be denied unless the admitting provider requests it prior to the time the recipient is admitted to a hospital, except in the case of medical emergencies or deliveries of newborn babies, which are exempt from the admission certification process.
2. Obtain a certification number from the medical review agent.
3. Inform the hospital of the certification number.
4. Include the certification number on all invoices to the department.
5. Attach a copy of second or third surgical opinion to all appropriate invoices.
6. Receive prior authorization from the Professional Services Section of the department for any service requiring prior authorization under 12 MCAR §§ 2.047 and 2.058. Certification without prior authorization when needed or prior authorization without certification will result in denial of MA or GAMC reimbursement.
7. Provide the following accurate and complete information to the medical review agent or commissioner:
  - a. recipient's name;
  - b. MA or GAMC recipient's identification number;
  - c. admitting provider MA provider number;
  - d. operating physician, if applicable;
  - e. reason for admission;
  - f. primary diagnosis by diagnostic code;
  - g. secondary diagnosis by diagnostic code;
  - h. other condition by diagnostic code; and
  - i. information from the plan of care as necessary or requested by the commissioner or medical review agent, if designated, to determine if admission is medically necessary.

B. Hospital responsibilities. Hospitals may not receive MA or GAMC reimbursement for any services or treatment provided to MA or GAMC recipients admitted to the hospital unless:

1. The admitting provider has obtained admission certification from the commissioner or medical review agent.
2. The hospital has informed the commissioner or medical review agent of all emergency admissions within one working day. The hospital shall inform the admitting provider of the admission certification number.
3. The hospital uses the admission certification number from the commissioner or medical review agent on all invoices to the department seeking MA or GAMC funds.
4. The hospitals may not seek information certification on any person whose application for MA or GAMC is pending.
5. The hospital may seek admission certification for persons found retroactively eligible for MA or GAMC after the date of admission. Hospitals shall inform the admitting provider of the admission certification number.

C. Medical review agent responsibility. The medical review agent shall:

1. Determine within one working day whether admission certification is appropriate based on the criteria in 12 MCAR § 2.0484 [Temporary].
2. Complete the admission certification form as specified by the department.

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

## PROPOSED RULES

---

3. Mail or deliver a written notification of the admission certification determination on forms specified by the commissioner, the admitting provider, hospital, and the department within five working days.

4. Determine if admission certification is appropriate based on criteria in 12 MCAR § 2.0484 [Temporary] for a recipient determined eligible for MA or GAMC funds as the result of a pending application or retroactive determination by the local welfare agency even though services may already have been provided.

5. Provide for a reconsideration of an admission certification denial through a peer review task force. The determination of the peer review task force is binding on the admitting provider, hospital, and commissioner.

D. Commissioner responsibility. Upon receipt of admission certification forms from the medical review against the commissioner shall:

1. Process the certification number in the department billing system;
2. Review admission certification forms for utilization and readmission patterns of admitting providers and recipients;
3. Deny payment of MA or GAMC funds to the admitting provider and hospital if the admission certification has been denied or the procedure performed was not authorized as required;
4. Take steps to identify underutilization or early discharge practices of hospitals and admitting provider;
5. Ensure that the medical review agent is performing admission certifications according to the provisions of this rule;
6. When acting as the medical review agent:
  - a. determine within one working day whether admission certification is appropriate based on the criteria contained in 12 MCAR § 2.0484 [Temporary].
  - b. complete the admission certification form as specified by the department.
  - c. mail or deliver a written notification of the admission certification on forms specified by the commissioner, the admitting provider, hospital, and the department within five working days.
  - d. determine if admission certification is appropriate based on criteria in 12 MCAR § 2.0484 [Temporary] for a recipient determined eligible for MA or GAMC funds as the result of a pending application or retroactive determination by the local welfare agency even though services may already have been provided;
  - e. provide for a reconsideration of admission certification denial by the Professional Advisory Committee under Minnesota Statutes, section 256B, who shall make a recommendation to the commissioner who shall make the final determination.

### 12 MCAR § 2.0484 [Temporary] Admission certification criteria.

The admitting provider shall indicate the need for admission based on criteria contained in this rule. A recipient is eligible for admission to a hospital based on the criteria in A., B., or C.

A. Mentally ill. The recipient is diagnosed as mentally ill and one or more of the following needs or problems must describe the recipient's condition and be documented in a plan of care.

1. The recipient demonstrates a danger to self or others.
2. The recipient demonstrates a severe and disruptive social, occupational, school, or personal dysfunction.
3. The recipient demonstrates that there is a failure of existing support systems and there is a documented lack of alternatives.
4. The recipient's psychiatric condition substantially impedes functioning in daily activities.

B. Medical or surgical. The recipient has a diagnosis appropriate to the illness and one or more of the following needs or problems is demonstrated.

1. The recipient requires a medical service necessitating a major invasive procedure, or a treatment requiring monitoring that cannot be performed on an outpatient basis.
2. The recipient requires nursing or life support services which are professional intensive services that must be continued on a 24-hour basis that can only be provided in a hospital.
3. The recipient has a condition which is acute or unstable or has the potential for producing a disability which requires medical intervention.

C. Chemically dependent recipient. The recipient is diagnosed as chemically dependent based on the pattern of pathological use, impairment in social or occupational functioning due to pathological use, and at least one of the following needs or problems:

1. The recipient has a documented condition or disorder which in combination with chemical use presents a serious health risk.
2. The recipient has a documented condition or disorder which in combination with chemical use presents a serious mental health risk.
3. The recipient has an unsuccessful or incomplete chemical dependency treatment experience within the last 12 months which warrants a more structured setting.

---

---

**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 Labor and Industry  
Occupational Safety and Health Division****Adoption by Reference of Occupational Safety and Health Standards**

Pursuant to Minn. Stat. § 182.655 (1982) notice was duly published at *State Register*, Volume 8, Number 23, p. 1338 (8 S.R. 1338) dated December 5, 1983 specifying the establishment and modification of certain Occupational Safety and Health Standards; specifically, the corrections to the Hearing Conservation Amendment final rule—1910.95, and the new Safety and Health Standards for Marine Terminals—Part 1917.

No objections, comments or written requests for public hearing have been received; therefore, these Occupational Safety and Health Standards are adopted and are identical in every respect to their proposed form.

Steve Keefe  
Commissioner of Labor and Industry

**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.

# 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 February 14, 1984.

METROPOLITAN COUNCIL has 1 vacancy open immediately for a public member, (must be a resident of council district 11). The council coordinates planning and development of the 7 county Twin Cities metropolitan area; establishes a long range development plan containing regional plans for aging, the arts, aviation, health, housing, law and justice, parks and open space, solid waste, transportation, wastewater management and water resources; reviews the long range plans for local governments, and can require them to be consistent with the regional plans. Members are appointed by the Governor and confirmed by the Senate. Each council member shall reside in the council district he represents; members serve staggered four-year terms; must file with EPB. Meetings twice a month, Metro Square Bldg., St. Paul; members receive \$50 per diem plus expenses. For specific information contact the Metropolitan Council, 300 Metro Square Bldg., St. Paul 55101; (612) 291-6359.

BOARD FOR COMMUNITY COLLEGES has 1 vacancy open immediately for a member (must be a resident of the 1st Congressional District). The board sets rules and policies for management for community college system. Members are appointed by the Governor and confirmed by the Senate. Must file with EPB. Monthly meetings alternate between St. Paul and various community college campuses. For specific information contact the Board for Community Colleges, 301 Capitol Square Bldg., St. Paul 55101; (612) 296-3356.

SOLID WASTE MANAGEMENT ADVISORY COUNCIL has 1 vacancy open immediately for a representative of local government units. Experience is desirable but not required in the following areas: solid waste collection, processing and disposal, and solid waste reduction and resource recovery. The council makes recommendations to the Waste Management Board on its solid waste management activities. Members are appointed for 2 year renewable terms by the chairperson of the Waste Management Board. The current appointment term expires 6/30/84. Meetings twice monthly in the metropolitan area; members are compensated for expenses. For specific information, contact Robert Dunn, Chairman, Waste Management Board, 7323-58th Ave. N., Crystal, MN 55428; (612) 536-0816.

## Department of Commerce

### Meeting Notice, Minnesota Comprehensive Health Association

Minnesota Comprehensive Health Association  
Board of Directors and Nominating Committee  
Tuesday, January 17, 1984, at 10:30 a.m.  
Moss and Barnett  
1200 Pillsbury Center  
200 South Sixth Street  
Minneapolis, MN 55402

Changes in any scheduled meetings and notices of any additional meetings will be posted or otherwise be available upon inquiry at the Department of Commerce, Life and Health Section, from John Ingrassia, telephone (612) 296-9434.

## Department of Commerce

### Outside Opinion Sought Concerning the Impact on Small Business of the Previously Published Proposed Rules Governing Insurance Marketing Standards

The Department of Commerce is soliciting opinion on its insurance marketing standards rules published in the *State Register* on January 2, 1984 at 8 S.R. 1568, pages 1568-1576, as to how these rules will affect small businesses as defined in Minnesota

Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subdivision 1. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Richard Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101, (612) 297-2852.

All statements of information and comment shall be accepted until February 22, 1984. Any written material received by the Commerce Department shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch  
Commissioner of Commerce

## **Department of Commerce**

### **Outside Opinion Sought Concerning the Impact on Small Business of the Previously Published Proposed Rules Relating to Insurance Claims Settlement**

The Department of Commerce is soliciting opinion on its insurance claims settlement rules published in the *State Register* on January 2, 1984 at 8 S.R. 1562, pages 1562-1567, as to how these rules will affect small businesses as defined in Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subdivision 1. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Richard Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101, (612) 297-2852.

All statements of information and comment shall be accepted until February 22, 1984. Any written material received by the Commerce Department shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch  
Commissioner of Commerce

## **Department of Commerce**

### **Outside Opinion Sought Concerning the Impact on Small Business of the Previously Published Proposed Rules Relating to the Workers' Compensation Assigned Risk Plan**

The Department of Commerce is soliciting opinion on its workers' compensation assigned risk plan rules and amendments published in the *State Register* on December 5, 1983 at 8 S.R. 1294, pages 1294-1296, and on December 19, 1983 at 8 S.R. 1418, pages 1418-1419, as to how these rules will affect small businesses as defined in Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subdivision 1. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Richard Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101, (612) 297-2852.

All statements of information and comment shall be accepted until February 22, 1984. Any written material received by the Commerce Department shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch  
Commissioner of Commerce

## **Department of Corrections**

### **Notice of Modification of Statement of Need and Reasonableness for Proposed Rules Governing the Operation of the Office of Adult Release**

Notice is given that modifications have been made to the Statement of Need and Reasonableness for Proposed Rules of the Operation of the Office of Adult Release. Interested parties can receive a copy of the Statement of Need and Reasonableness by contacting John McLagan, Director, Standards Development Unit, 430 Metro Square Building, St. Paul, Minnesota 55101 (612-296-1312).

The Proposed Rules Governing the Operation of the Office of Adult Release were published at *State Register*, Volume 8, Number 31, page 981 (8 SR 981), dated October 31, 1983.

Orville B. Pung  
Commissioner of Corrections

## **Metropolitan Council Metropolitan Health Planning Board**

### **Notice of Preliminary Review Schedule 1984 Annual Implementation Plan**

The Metropolitan Council/Metropolitan Health Planning Board, as the federally-designated Health Systems Agency for the Seven-County Metropolitan Area, will begin its review of the 1984 Annual Implementation Plan. This yearly revision of the Annual Implementation Plan partially fulfills the requirements of the National Health Planning and Resources Development Act of 1974 (P.L. 93-641) as amended in 1979 (P.L. 96-79) for continued funding as the designated Health Systems Agency for Minnesota Region V, for which the Metropolitan Council intends to apply by April 2, 1984.

The 1984 Annual Implementation Plan has been developed from specific action recommendations in the current Health Systems Plan and other stated priorities of the Metropolitan Council and Metropolitan Health Planning Board. It serves as the work program for the community during 1984 to attain the long-range goals in the systems plan. The 1984 Annual Implementation Plan proposes four objectives for the year. They are:

- Collect and analyze price, access and other information from Area health care providers necessary in continuing a more price-competitive health care system. This objective is to be carried out by the actions of the Council of Community Hospitals, Foundation for Health Care Evaluation, Minnesota Blue Cross/Blue Shield, Minnesota Coalition on Health Care Costs, commissioner of health and the Minnesota State Legislature.
- Two major demonstration projects directed at testing various organizational structures for more affordable health care plans for specific target populations will become operational. This objective is to be accomplished by the Minnesota Department of Public Welfare and the Twin Cities Community Program for Affordable Health Care.
- Prepare public policy that addresses and directs the reshaping of the long-term care system in the Metropolitan Area. This objective is to be completed by a broad-based task force of community leaders and the Metropolitan Council and the Legislative Commission on Long-Term Care.
- Prepare public policy for the development and operation of a new model of vocational education and training for competitive employment of developmentally disabled adults. This objective is to be carried out by the Metropolitan Council's Developmental Disabilities Program, Metropolitan Council and three Area day activities centers.

Jan. 11, 1984	Planning Committee of the Metropolitan Health Planning Board—review the proposed plan.
Jan. 19, 1984	Metropolitan and Community Development Committee of the Metropolitan Council—review and recommend acceptance of the proposed plan for public hearing.
Jan. 25, 1984	Planning Committee of the Metropolitan Health Planning Board—review and recommend acceptance of the proposed plan for public hearing
Jan. 25, 1984	Metropolitan Health Planning Board—review and accept the proposed plan for public hearing.
Jan. 26, 1984	Metropolitan Council—review and accept the proposed plan for public hearing.
Feb. 29, 1984	Public hearing.
March 14, 1984	Hearing record closes.
March 14, 1984	Planning Committee of the Metropolitan Health Planning Board—review and recommend adoption of the final plan.
March 14, 1984	Metropolitan Health Planning Board—review and adopt final plan.
March 15, 1984	Metropolitan and Community Development Committee of the Metropolitan Council—review and recommend adoption of the final plan.
March 22, 1984	Metropolitan Council—review and adopt final plan.

## **Minnesota Job Skills Partnership Board**

### **Notice of Availability of Grant Funds for Customized Training Programs**

The Minnesota Job Skills Partnership is a commitment by the State of Minnesota to extend education and training resources of the State to provide Minnesota employers with a well-trained and skilled work force. Grants will be made quarterly by the Board of Directors to educational or other nonprofit institutions. For consideration at the March 10, 1984, meeting, grant proposals must be submitted by February 19. For consideration at the May 21, 1984, meeting, grant proposals must be submitted by May 1.

#### Legal Authority

The Minnesota Job Skills Partnership is authorized under Minnesota Statutes Section 116L.



**Purpose and Eligibility**

Matching grants to support skills training will be made to education and training agencies which develop customized training programs to meet specific employer needs. The match from the employer must equal the grant in monetary or in-kind form.

According to the enabling legislation: (a) The educational or other nonprofit institution is a provider of training within the state in either the public or private sector; (b) the program involves skills training in an area of employment need; and (c) preference will be given to educational or other nonprofit institutions which serve economically disadvantaged people, minorities, or those who are victims of economic dislocation.

**How to Apply for Funds**

Potential applicants are encouraged to request the General Information Packet and/or the Grant Proposal Form from the Partnership office. The latter contains the application materials, information on the review and selection process, and information about staff available to provide technical assistance concerning preparation of the grant application.

The completed application must be delivered or postmarked no later than the deadline identified above. When the postmark deadline falls on a weekend, in-person delivery must be made by the preceding Friday.

**Award of Funds**

Applications will be reviewed by the Board of Directors as submitted and grants awarded in accordance with the guidelines listed in the Grant Proposal Form.

**Duration of Funding**

Grants will generally be made for a six to twelve month period.

**Bidders Conference.**

All potential applicants are invited to a Bidders' Conference on February 2, 1984, at 10 AM in Conference Room A of Capitol Square, 550 Cedar Street, St. Paul, MN 55101.

For either the General Information Packet or the Grant Proposal Form, please contact:

Minnesota Job Skills Partnership  
101 Capitol Square  
550 Cedar Street  
St. Paul, MN 55101  
612-296-3985

## **Department of Natural Resources**

### **Notice of and Order for Hearing In the Matter of Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Mahnomen County**

IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter pursuant to Minn. Stat. § 105.391, subd. 1 (1980) will be held in the Red Apple Cafe, Mahnomen, MN, on February 1, 1984, commencing at 9:30 A.M. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative J. D. Smith, 405 8th St. S., Naples, FL, Department of Natural Resources representative Merlyn Wesloh, 2115 Birchmont Beach Road NE, Bemidji, MN, and County Soil and Water Conservation District representative Franklyn Preisler, Bejou, MN.

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

**A. PUBLIC WATERS****1. Watercourses.**

<u>Name</u>	<u>Section</u>	<u>From</u> <u>Township</u>	<u>Range</u>	<u>Section</u>	<u>To</u> <u>Township</u>	<u>Range</u>
None.						

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

# OFFICIAL NOTICES

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
**44-26 : Unnamed	4	145 (Clover)	39
**44-30 : Unnamed	16, 21	145 (Clover)	39
**44-33 : Double Lake	1, 2, 11, 12	146 (Island Lake)	39
**44-39 : Unnamed	7, 18	146 (Island Lake)	39
**44-40 : Unnamed	18	146 (Island Lake)	39
**44-41 : Unnamed	18	146 (Island Lake)	39
**44-46 : Gull Lake	19, 30; 24, 25	143 (Unorganized; Oakland)	39; 40
44-50 : Matt Ayers Lake	19; 24	146 (Island Lake; Heier)	39; 40
**44-53 : Unnamed	9, 10	143 (Oakland)	40
**44-59 : Fowl Lake	8, 17	143 (Oakland)	40
**44-65 : Unnamed	14	143 (Oakland)	40
44-72 : Paggen Lake	18	143 (Oakland)	40
**44-75 : Crooked Lake	21, 22	143 (Oakland)	40
**44-83 : Horseshoe Lake	28, 29, 32, 33	143 (Oakland)	40
**44-105: Crooked Lake	23, 26	144 (LaGarde)	40
**44-107: Unnamed	23, 26	144 (LaGarde)	40
**44-130: Unnamed	19	145 (Beaulieu)	40
**44-156: Unnamed	15, 22	146 (Heier)	40
**44-163: Unnamed	26	146 (Heier)	40
**44-165: Unnamed	26, 27	146 (Heier)	40
44-166: Unnamed	SW 27	146 (Heier)	40
**44-174: Skunk Lake	35, 36	146 (Heier)	40
**44-221: Warren Lake	10	145 (Chief)	41
**44-241: Unnamed	2	146 (Gregory)	41
**44-247: Unnamed	26, 35	146 (Gregory)	41
**44-248: Church Lake	28, 32, 33	146 (Gregory)	41
44-249: Unnamed	29	146 (Gregory)	41
44-257: Waubun Marsh	32, 33	143 (Popple Grove)	42
44-258: Unnamed	33	143 (Popple Grove)	42
44-263: Bejou Lake	15, 16, 21	146 (Bejou)	42
**44-271: Graveyard Lake	16	146 (Island Lake)	39
**44-272: Unnamed	3	143 (Oakland)	40
**44-277: Unnamed	22, 23	143 (Oakland)	40
**44-291: Unnamed	29	145 (Beaulieu)	40
**44-303: Unnamed	25, 26	146 (Heier)	40
+44-321: Grace Marsh	24	146 (Bejou)	42
**44-322: Unnamed	1; 36	145; 146 (Beaulieu; Heier)	40
44-333: Unnamed	16, 20, 21	146 (Gregory)	41
44-339: Unnamed	NE 35	146 (Gregory)	41
44-344: Unnamed	6	145 (Chief)	41
44-351: Unnamed	19, 30; 24, 25	145 (Beaulieu; Chief)	40; 41
44-355: Unnamed	10	146 (Bejou)	42
**44-356: Unnamed	11-14	146 (Bejou)	42
44-358: Unnamed	14	146 (Bejou)	42
44-360: Unnamed	21	146 (Bejou)	42
44-361: Unnamed	20, 21	146 (Bejou)	42
44-362: Unnamed	33	146 (Bejou)	42
**44-383: Unnamed	NE 4	143 (Lake Grove)	41
**44-393: Unnamed	30, 31	143 (Lake Grove)	41
**44-398: Unnamed	3; 34, 35	142; 143 (Becker Co.; Oakland)	40
**44-418: Unnamed	12	145 (Marsh Creek)	42
44-419: Unnamed	11-14	145 (Marsh Creek)	42
44-420: Unnamed	13	145 (Marsh Creek)	42
**44-423: Unnamed	23	145 (Marsh Creek)	42
44-428: Unnamed	25	145 (Marsh Creek)	42
**44-430: Unnamed	NW 26	145 (Marsh Creek)	42

44-432: Unnamed	11	143 (Popple Grove)	42
**44-440: Unnamed	27, 34	143 (Popple Grove)	42
**44-441: Unnamed	34	143 (Popple Grove)	42
44-450: Unnamed	27, 28	144 (Pembina)	42
**44-452: Unnamed	27	144 (Pembina)	42
**44-479: Unnamed	8	145 (Clover)	39
**44-496: Unnamed	1; 35, 36	145; 146 (Beaulieu; Heier)	40
44-508: Unnamed	8, 17	145 (Beaulieu)	40
**44-526: Unnamed	31; 36	143 (Oakland; Lake Grove)	40; 41
**44-528: Unnamed	32	143 (Oakland)	40
**44-545: Unnamed	4, 5, 8, 9	143 (Lake Grove)	41
**44-546: Unnamed	21	145 (Chief)	41
44-548: Unnamed	13, 14	146 (Bejou)	42
44-549: Unnamed	14	146 (Bejou)	42
44-551: Unnamed	16, 21	146 (Bejou)	42
44-552: Unnamed	22	146 (Bejou)	42
**44-557: Unnamed	13	144 (Pembina)	42
**44-559: Unnamed	NE 13	144 (Pembina)	42
*44-564: Wolbeck WPA	27	144 (Pembina)	42
**3-1116: WPA	26, 27, 34, 35; various	143; 142 (Popple Grove; Becker Co.)	42
**60-70 : Unnamed	4	146 (Heier)	40

B. WETLANDS

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
44-160: Unnamed	18	146 (Heier)	40
44-189: Sedivy Lake	11, 14	143 (Lake Grove)	41
44-192: Unnamed	15	143 (Lake Grove)	41
44-193: Unnamed	NE 16	143 (Lake Grove)	41
44-195: Unnamed	16, 21	143 (Lake Grove)	41
44-205: Unnamed	NW 36	143 (Lake Grove)	41
44-231: Unnamed	C 24	145 (Chief)	41
44-234: Unnamed	SE 24	145 (Chief)	41
44-238: Unnamed	35	145 (Chief)	41
44-243: Unnamed	10, 11	146 (Gregory)	41
44-245: Unnamed	SW 23	146 (Gregory)	41
44-256: Unnamed	21, 28	143 (Popple Grove)	42
44-260: Peshegeshig Lake	11-14	144 (Pembina)	42
44-285: Unnamed	27, 28	144 (LaGarde)	40
44-323: Unnamed	1	146 (Gregory)	41
44-327: Unnamed	9, 16	146 (Gregory)	41
44-330: Unnamed	15	146 (Gregory)	41
44-345: Unnamed	7	145 (Chief)	41
44-346: Unnamed	7, 18	145 (Chief)	41
44-374: Unnamed	13, 14	146 (Heier)	40
44-376: Unnamed	NE 23	146 (Heier)	40
44-386: Unnamed	9	143 (Lake Grove)	41
44-388: Unnamed	16, 17	143 (Lake Grove)	41
44-406: Unnamed	29, 30	144 (Rosedale)	41
44-407: Unnamed	31	144 (Rosedale)	41
44-429: Unnamed	25, 26	145 (Marsh Creek)	42
44-458: Unnamed	SW 7	145 (Beaulieu)	40
44-466: Unnamed	NW 32	145 (Beaulieu)	40
44-491: Unnamed	NE 33	145 (Beaulieu)	40
44-501: Unnamed	13	146 (Heier)	40
44-507: Unnamed	7, 18	145 (Beaulieu)	40
44-517: Unnamed	32	144 (LaGarde)	40

## OFFICIAL NOTICES

44-544: Unnamed	5, 6	143 (Lake Grove)	41
44-553: Unnamed	4	143 (Lake Grove)	41
44-558: Unnamed	12, 13, 24	143 (Popple Grove)	42
*44-565: Unnamed	7	143 (Lake Grove)	41
*44-566: Unnamed	18	143 (Lake Grove)	41

\* petitioned to be added

+ late petition

\*\* petitioned solely by the County Board to be changed from a "public water" to a "wetland"

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69 (1982), as amended by 1983 Minnesota Laws, Chapter 247.

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

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

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

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

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

January 13, 1984

Joseph N. Alexander, Commissioner  
Department of Natural Resources

## Department of Natural Resources Mahnomen County Hearings Unit

### Notice of and Order Postponing Receipt of Testimony In the Matter of Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Mahnomen County

PLEASE TAKE NOTICE that the Mahnomen County Hearings Unit hereby orders the following regarding the public hearing that must be convened in this matter:

The Mahnomen County Hearings Unit represented by a quorum thereof shall begin the hearing at the time and place ordered on February 1, 1984 for the limited purposes of receiving into the record the legal documents necessary to commence these proceedings and to handle any other necessary preliminary matters. However, because of the severe winter conditions and heavy snows resulting in the impossibility of viewing petitioned public waters and wetlands at this time, the Mahnomen County Hearings Unit hereby orders that it shall not receive any testimony from any person on any petitioned water on February 1, 1984, except testimony from any person withdrawing a petition requesting a hearing or testimony from Department of Natural Resources personnel consenting to removal of specific waters from the inventory. Department of Natural Resources personnel will be available to explain the inventory and answer any questions.

IT IS HEREBY FURTHER ORDERED AND NOTICE IS HEREBY FURTHER GIVEN that the Mahnomen County

Hearings Unit hereby orders postponement of the taking of all testimony except as noted above until 9:00 a.m. June 19, 1984, at which time the hearing shall be reconvened.

January 11, 1984

Mahnomen County Hearing Panel Chairperson

## **Department of Public Welfare Income Maintenance Bureau**

### **Outside Opinion Sought on the AFDC Rule**

Notice is hereby given that the Minnesota Department of Public Welfare is considering proposed amendments to the DPW Rule 44 (12 MCAR 2.044), Aid to Families with Dependent Children. The Aid to Families with Dependent Children program provides cash assistance to qualified families whose resources are not sufficient to meet their needs for food, shelter, clothing, and other essential items.

The amendments being considered by the Department include:

- a) changes needed to bring the rule into compliance with changes in federal and state law and in federal regulations;
- b) selection of and detailing of options allowed within these laws and regulations;
- c) changes needed to conform to recent court decisions; and
- d) various technical and grammatical changes to make the rule more specific, clear, and readable.

The subjects being considered for amendment include, but are not limited to, the following:

- 1) eligibility factors, such as the criteria for continued absence, unemployed parents, strikers, dependent children, pregnant women without any other children, and aliens; AFDC income and resource limitations; and treatment of stepparent income and resources;
- 2) grant computation policies, such as earned income exclusions, deductions, and disregards; treatment of lump sums, stepparent and alien sponsor income, and earned income tax credits; retrospective budgeting; and proration of initial grants;
- 3) administrative requirements, such as application processing; notice requirements; reporting responsibilities of applicants and recipients, including penalties for not reporting properly; methods to rectify incorrect payments; appeals for fair hearings; and penalties upon local welfare agencies for overdue eligibility review processing; and
- 4) miscellaneous provisions, such as emergency assistance eligibility and payment; special educational need situations; and relative responsibility.

All interested or affected persons or groups are invited to participate. Public comment was solicited earlier (see *State Register*, Volume 6, Number 39, Page 1654), and comments were received which the Department will consider as it drafts its proposed rule. Persons who commented in response to the earlier solicitation need not repeat those comments, unless they wish to amend or elaborate on their original comments.

Statements of information and comment in response to this Notice may be made orally or in writing. Only written comments related to this and the earlier solicitation shall become a part of the hearing record. Oral statements of information and comment will be received over the telephone at (612) 297-4666 between 9:00 a.m. and 4:00 p.m., Mondays through Fridays. Written statements may be addressed to:

Dianne Rachel  
Assistance Payments Division  
Minnesota Department of Public Welfare  
444 Lafayette Road—2nd Floor  
St. Paul, Minnesota 55101

All statements of information and comment will be accepted until further notice. However, comments received by March 31, 1984 will be especially useful to the Department in drafting its proposed rule. The public will be notified in the *State Register* when the Department has drafted the proposed rule and has scheduled a public hearing.

---

---

## OFFICIAL NOTICES

### Department of Transportation

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

Notice is hereby given that the City Council of Rochester has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width for the reconstruction of West Center Street from Fourth Street West to Seventh Street West.

The request is for a variance from 14 MCAR § 1.5032, H., I., d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a Street Width of 44 feet instead of the required 46 feet.

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

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

January 16, 1984

Richard P. Braun  
Commissioner of Transportation

### Department of Transportation

#### Petition of Nicollet County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Nicollet County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a special resurfacing project on CSAH 1 from CSAH 16 to TH 15 at Lafayette.

The request is for a variance from 14 MCAR § 1.5032, H., I., d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit design speeds of 43.7, 41.2, 44.7 and 37.4 instead of a required design speed of 45 miles per hour.

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

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

January 9, 1984

Richard P. Braun  
Commissioner of Transportation

---

---

## 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 Identify Potentially Eligible Clientele for Energy Assistance Programs

The Department of Economic Security through its Energy Assistance Program is available to assist low income households with home heating energy payments, to help reduce energy consumption costs. As a matter of public policy it is critically

important to determine what percentage of the potentially eligible population is served by the program. The department seeks the services of a firm or individual to research the characteristics of the EAP-eligible population in Minnesota, to determine what percentage of that population is being served.

The department has made available up to \$15,000 for this project. Proposals are due by 4:30 p.m. on Wednesday, February 15, 1984. Requests for copies of this proposal and any questions can be addressed to Bill Grant, Energy Assistance Program, 690 American Center Building, St. Paul, MN 55101 or by calling Mr. Grant at 612/297-3408.

## **Department of Energy and Economic Development Minnesota Energy and Economic Development Authority**

### **Notice of Request for Investment Banking Services**

The Minnesota Energy and Economic Development Authority is requesting proposals from qualified investment bankers or other interested financial institutions who wish to work with the Authority in the development and implementation of innovative economic and/or energy financing programs.

The Minnesota Energy and Economic Development Authority was created by the 1983 Minnesota State Legislature. It is authorized by Minnesota State Statute to assist business and energy development by providing attractive financing programs and other financial incentives for businesses wishing to begin or expand operations within the State. The Authority's objective is to assist business growth which would not otherwise occur, to create new jobs or retain existing jobs in areas of economic distress, and to stimulate the development of alternative energy and energy conservation resources within the State. A copy of the authorizing legislation is available upon request.

Applicants who submit proposals that are adopted by the Authority will have the opportunity to enter into contracts with businesses served by the Authority for the financing of business start-ups and expansions. These applicants will benefit through the payment of the customary fees and commissions on such contracts. Applicants must be willing to work closely with the Authority in the development of financial packages for individual businesses.

Proposals should draw upon the firm's own experience in designing and implementing similar financial programs in other states as well as embody the firm's most innovating thinking about new financing approaches. Proposals should identify the particular program or programs and where they are in use today. They should state the length of the program's operation, who actually implemented the program, and the results in terms of the amount of financing, number of businesses served, and the number of jobs created or retained. Proposals will be reviewed by the Authority with the intention of working with one or more such firms to implement the specific proposal. A two-page executive summary is requested for each proposal submitted.

The Department already has developed two programs: a self-insured bond fund and the Minnesota Plan for which it has an existing relationship with an investment banking firm. This request seeks ideas on new variations of these already developed programs and/or new program areas using credit enhancements. A copy of these existing programs as currently developed is also available upon request.

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

Proposals should be addressed to: Mark Dayton, Chairman of the Minnesota Energy and Economic Development Authority, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. All proposals must be received by 4:00 p.m., Feb. 10, 1984. No late proposals will be accepted.

---

---

**SUPREME COURT**

## **Decisions Filed Wednesday, January 11, 1984**

### **Compiled by Wayne O. Tschimperle, Clerk**

C8-83-1248 City of Chisago City, Respondent, v. Vernon E. Poulter, et al., Appellants. District Court, Chisago County.

Failure of an aggrieved property owner to submit written objections to a proposed assessment before or at a city's special

## SUPREME COURT

---

assessment hearing does not preclude the property owner from appealing to the district court if the appeal is timely filed and the reason for failing to submit written objections was due to lack of written notice of such hearing or other reasonable cause.

Reversed and remanded. Popovich, C.J.

**C7-83-1399 & C2-83-1424 Chrysler Credit Corp., Appellant, v. Donald P. Peterson, Respondent, and Keith P. Heller and Cedar Riverside Associates, Inc., Third-Parties-Respondents. District Court, Hennepin County.**

A judgment creditor who alleges a fraudulent conveyance of a debtor's limited partnership interest is entitled to a charge order that attaches to whatever limited partnership interest may later be determined to exist. Whether certain conveyances were fraudulent involves questions of fact to be decided in a plenary action.

Reversed in part, affirmed in part. Parker, J.

**C3-83-1173 In the Matter of the Welfare of J.R.D. District Court, Brown County.**

1. Hypnosis of a victim after she had described her assailant but before she had identified him in a photographic lineup did not render the subsequent identification inadmissible at a juvenile court reference hearing.

2. The juvenile court was justified in certifying the child for adult prosecution under Minn. Stat. § 260.125, upon finding that probable cause had been established and that the public safety is not served by continuing to handle the matter in juvenile court.

Affirmed. Parker, J.

**CX-83-1221 State of Minnesota by the Waste Management Board, Respondent, v. Mae M. Brueschoff, et al., Appellants. District Court, Carver County.**

1. Statutory terms must be construed according to their common and approved usage and agency powers must be construed in light of the purposes for which they were created.

2. The Waste Management Board's access authority under Minn. Stat. § 115A.06, subd. 5, is not limited to surface surveys and inspections. The board may enter private property to conduct electrical resistivity testing pursuant to the statute.

3. Electrical resistivity testing pursuant to Minn. Stat. § 115A.06, subd. 5, does not rise to the level of a constitutional taking. Such testing involves only a temporary, minimal intrusion. It does not substantially interfere with property rights or cause a measurable decline in market values.

4. The Waste Management Board did not impermissibly delegate determination of necessity to its staff. Reliance upon staff recommendations does not constitute illegal rulemaking.

5. A formal resolution of necessity is not absolutely required under Minn. Stat. § 115A.06, subd. 5. However, it is advisable for the board to pass such a resolution before seeking access to private property.

6. The Waste Management Board's determination of necessity was not arbitrary, capricious, fraudulent or contrary to law. Minn. Stat. § 115A.06, subd. 5, authorizes access for electrical resistivity testing, and such testing is reasonably necessary or convenient to further selection of suitable hazardous waste disposal sites.

Affirmed. Foley, J.

**C3-83-1271 Wing-Piu Chan, Relator, v. Pagoda, Inc., Respondent, and Commissioner of Economic Security, Respondent. Department of Economic Security.**

Affirmed. Wozniak, J.

**C0-83-1292 In the Matter of the Trust Created Under the Maurice J. Florance, Jr. Trust Agreement dated January 14, 1954. Patricia Florance and Frank Gaertner, Appellants, v. Mercantile National Bank at Dallas, Trustee, and Florence A. Florance, Respondent. District Court, Hennepin County.**

1. An amendment in the form of a notarized letter, written by settlor and mailed to the trustee, conformed to trust requirements that it be a written instrument executed with the same formalities as the trust.

2. An inter-vivos trust which provides that an amendment become effective one year after it has been filed with the trustee, and which does not require decedent to be alive on the date an amendment takes effect is not rendered ineffective by decedent's death within one year of filing of an amendment. Decedent did not, at the time he executed the trust agreement, intend that his death, before the expiration of the notice period, would render his amendment ineffective. The court will not read an additional unstated requirement into the settlor's power to amend his trust.

A one-year notice period is consistent with a purpose to benefit the trustee where the trustee has the power to waive the notice period, and where, due to the complex nature of the trust assets, it would require that period of time to implement the changes of the amendment.



3. Minnesota is the convenient forum because all of the individual trustees and all of the beneficiaries reside in Minnesota and the decedent's estate is being administered in Minnesota.

Affirmed in part, reversed in part, and remanded. Wozniak, J.

Took no part, Parker, J., Sedgwick, J.

**C4-83-1151 State of Minnesota, Respondent, v. Roosevelt Nash, Appellant. District Court, Hennepin County.**

1. Where defendant approached the victim, struggled with him and the victim felt his wallet being removed from his pocket by defendant's hand before defendant hit him, cutting his lip and knocking him down, the evidence was sufficient to justify conviction for aggravated robbery, notwithstanding the fact that the wallet was not found on defendant when he was apprehended a short time later.

2. The trial court properly instructed the jury on aggravated robbery and assault in the fourth degree pursuant to defendant's request.

3. The trial court did not err by imposing a 90-month prison sentence, which was presumptive under the guidelines for a defendant with a criminal history score of six, because victim suffered only minimal injury.

Affirmed. Sedgwick, J.

**C8-83-2044 Raymond Allen Souter and Robert Votava, Appellants, v. State of Minnesota, Respondent. District Court, Kandiyohi County.**

Denied. Popovich, C.J.

**C5-84-21 State of Minnesota, Respondent, v. Marjorie C. Hagen, Petitioner. District Court, Hennepin County.**

Denied. Popovich, C.J.

## **Decisions Filed Friday, January 13, 1984**

### **Compiled by Wayne O. Tschimperle, Clerk**

**C0-82-1217 State of Minnesota, Respondent, v. Richard Gene Stagg, Appellant. District Court, Cottonwood County.**

Defendant's conviction of intentionally aiding in the sale of unregistered security was based on sufficient evidence, and record on appeal fails to support defendant's contentions that complaint was prejudicially vague and unclear, that court prejudicially erred in admitting certain *Spreigl* evidence, and that prosecutor committed prejudicial misconduct in his closing statement to the jury.

Affirmed. Amdahl, C.J.

**C2-83-239 In the Matter of the Trusteeship Under the Last Will and Testament of Elmer Gold, Deceased. Trust A and B. District Court, Morrison County.**

Affirmed in part, reversed and remanded in part. Todd, J.

**C4-82-1110 State of Minnesota, Respondent, v. Robert W. Edwards, Appellant. District Court, Hennepin County.**

1. Evidence was sufficient to support defendant's conviction of second-degree intentional murder.

2. Trial court did not err in permitting the state to use defendant's prior convictions to impeach his credibility and in allowing the prosecutor to question defendant about the details underlying one of those convictions.

3. Trial court did not prejudicially err in refusing to submit heat-of-passion manslaughter and culpably-negligent manslaughter, in refusing to give a requested accident instruction, and in giving certain instructions on self-defense, the duty of counsel to present evidence, and the evaluation of unimpeached testimony.

Affirmed. Todd, J.

**C9-83-1033 State of Minnesota, Appellant, v. Thomas Daniel Lepley, Respondent. District Court, Chisago County.**

Motor homes, camper vans and similar vehicles used as motor vehicles are covered by the motor vehicle exception to the search warrant requirement.

Reversed and remanded for trial. Yetka, J.

**C8-82-1580 In the Matter of the Petition of Hilltop Development, a partnership for certain relief in connection with certificate of Title No. 199618, Hilltop Development, a partnership consisting of Robert N. Roninggen and Will Selbak, Appellant, v. Miller Hill Manor Company, a partnership consisting of Norman Hewitt and John Jackson, Respondent. District Court, St. Louis County.**

## SUPREME COURT

---

Where an option contract for the sale of real estate required the parties to close the transaction upon exercise by the buyer or not later than a specific date, the buyer effectively exercised the option by giving unambiguous notice that it was ready and willing to perform within the option period, and an executory contract of sale then arose between the parties.

Reversed and remanded. Scott, J.

**CX-82-1063, C1-82-1064** State of Minnesota, Respondent, v. Charles B. Randa, Appellant (CX-82-1063), Bradley Anderson, Appellant, (C1-82-1064). District Court, Itasca County.

Trial court properly denied motions by defendants to suppress evidence on Fourth Amendment grounds.

Affirmed. Scott, J.

**C2-82-294** State of Minnesota, Respondent, v. David Gerald Andring, Appellant. District Court, Washington County.

1. The confidentiality of patient records provisions of the federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act and the regulations promulgated thereunder do not preclude the use of patient records in child abuse proceedings to the extent required by the Minnesota Maltreatment of Minors Reporting Act.

2. Minn. Stat. § 626.556, subd. 8 (1982) abrogates the medical privilege only to the extent that it would permit evidentiary use of the information required to be contained in the maltreatment report — the identity of the child, the identity of the parent, guardian, or other person responsible for the child's care, the nature and extent of the child's injuries, and the name and address of the reporter.

3. The scope of the physician-patient/medical privilege extends to include confidential group psychotherapy sessions where such sessions are an integral and necessary part of a patient's diagnosis and treatment.

Certified question answered in the affirmative.

Reversed. Wahl, J.

Dissenting, Scott, J., Todd, J., Kelley, J.

**CX-82-1676** The Cretex Companies, Inc., Respondent, and Ess Brothers & Sons, Inc., Respondent, v. Construction Leaders, Inc., Defendant, Travelers Indemnity Company, Appellant, District Court, Washington County.

1. Under the third-party contract beneficiary doctrine in this state, a third party can recover on the contract if shown to be an "intended beneficiary" under either the "intent to benefit" or the "duty owed" test. This court adopts the intended beneficiary approach set out in Restatement (Second) of Contracts § 302 (1979).

2. Unpaid subcontractors and materialmen on a private property project are not intended third-party beneficiaries under the defaulting general contractor's performance bond.

Reversed. Simonett, J.

Dissenting, Yetka, J.

**C2-83-192** Gerald Mitlyng, et al., petitioners, Appellants, v. Darrell Wolff, Sheriff of Wright County, et al., Respondents. District Court, Wright County.

When a veteran is suspended from his public employment without pay while his discharge proceeding is pending and the same misconduct is substantially involved in both the suspension and the discharge, so that the practical effect would be to accelerate the discharge before a hearing, the suspension, to the extent it purports to be without pay, is contrary to the Veterans Preference Act and is invalid.

Reversed and remanded. Simonett, J.

**C0-83-76** Charles E. Wensman, petitioner, Appellant, v. State of Minnesota, Respondent. District Court, Hennepin County.

Postconviction court properly ruled that trial court did not err in denying pretrial motion to suppress on fourth amendment grounds.

Affirmed. Simonett, J.

**CX-82-1175** Joseph A. Merz, et al., Appellants, v. Andy Leitch, et al., Respondents, District Court, Otter Tail County.

1. A county commissioners board meeting at which county business was transacted prior to the regularly scheduled time for the meeting was a violation of Minnesota's Open Meeting Law. Minn. Stat. § 471.705 (1982).

2. Since *Moberg v. Independent School District No. 281*, 336 N.W. 2d 510 (Minn. 1983), neither good faith action by members of public boards and commissions nor the fact that no one was harmed by the action illegally taken is a defense to the imposition of civil penalties upon members who participated in an illegal meeting.

3. Action taken by members of a county board at an illegal meeting held before our decisions in *Moberg v. Independent School District No. 281*, 336 N.W. 2d 510 (Minn. 1983), and *St. Cloud Newspapers v. District 742 Community Schools*, 332 N.W. 2d 1 (Minn. 1983), will not result in the imposition of civil penalties on members of the board where the action was taken in good faith and no one was harmed by the illegal action.

Affirmed. Kelley, J.

Concurring specially, Simonett, J.

**C2-83-807** Steven C. Johnson and Barbara J. Johnson, Appellants, v. Helary, Inc., d.b.a. Charlie's Club, Respondent, Universal Surety Company, Lincoln, Nebraska, Respondent. District Court, St. Louis County.

Claimants' recovery of damages for injury caused by an illegal sale of intoxicating liquor forecloses their right to recover additional money under Minn. Stat. § 340.12 (1978).

Affirmed. Coyne, J.

**C4-82-1186** State of Minnesota, Respondent, v. Michael Kelley, Appellant. District Court, Morrison County.

1. Defendant received a fair trial and was properly convicted of second-degree intentional murder.
2. Trial court erred in denying a request for a sentencing hearing; therefore, a remand for resentencing is required.

Remanded for resentencing. Coyne, J.

**C1-82-1159** John Horton by Edward T. Horton, his guardian ad litem, Plaintiffs, v. Orbeth, Inc., d.b.a. C&C Boat Works, et al., defendants and third-party plaintiffs, Appellants, v. Timothy Johnson, third-party defendant, Respondent, David Melchert, third-party defendant, Respondent. District Court, Crow Wing County.

A tortfeasor liable for the injuries sustained by another is not entitled to contribution from a party whose conduct has been adjudged less negligent than that of the injured party.

Affirmed. Coyne, J.

Dissenting, Amdahl, C.J., Yetka, J.

Took no part, Simonett, J.

**C2-82-1039, C9-82-1250** Chanhassen Estates Residents Association, Michael E. Murphy, Thomas Katsonas, David Soenen, R. W. Lownsbury, R.W. Connell, Gary Arndt and Keith Boudrie, Respondents (C2-82-1039) Appellants (C9-82-1250), v. The City of Chanhassen, Respondent, and McDonald's Corporation, intervenor, Appellant (C2-82-1039) Respondent (C9-82-1250). District Court, Carver County.

Permitted and conditional use provision of a zoning ordinance are part of a comprehensive plan for the regulation of the use of land and buildings in a municipality, relate to the same subject and to each other, and should be construed together.

A fast-food restaurant with a "drive-thru" window is a permitted use under a zoning ordinance which designates restaurants as permitted uses and "drive-ins" as conditional uses in a C-2 commercial zone.

Reversed and remanded. Coyne, J.

Concurring Specially, Simonett, J., and Wahl, 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 Hennepin

G & T Investment Company,  
Petitioner,

v.

County of Hennepin,  
Respondent.

## Tax Court Regular Division

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

Court Files TC-1181  
TC-1658  
TC-2400

The above tax petitions came on for trial on September 9, 1983, before the Minnesota Tax Court at Hennepin County Government Center, Judge Earl B. Gustafson presiding. Testimony was concluded September 20 and the case was submitted on post-trial memoranda on October 31, 1983.

John M. Gendler of Lapp, Lazar, Laurie & Smith appeared on behalf of Petitioner.

Charles F. Sweetland, Assistant Hennepin County Attorney, appeared for Respondent.

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

#### FINDINGS OF FACT

1. Petitioner is the owner of real property located in the City of Minneapolis, County of Hennepin, described as follows:

Part of Lots 1 and 2, Block 26, 1st Division of Remington Park, according to the plat thereof. Property I.D. No. 08 028 24 42 0117

2. This is an appeal from the City of Minneapolis Assessor's estimated market values for the subject property as of January 2, 1980, 1981 and 1982 for taxes payable in 1981, 1982 and 1983.

3. The land is improved with a 8-story apartment building constructed in 1972 located two blocks west of Lake Harriet in Minneapolis.

4. Because two rental units are used for commercial purposes, the classification for taxes is split between "residential" and "commercial".

5. The assessor's estimated market values for the years in question are as follows:

<u>Assessment Year</u>	<u>Residential</u>	<u>Commercial</u>	<u>Total EMV</u>
1980	\$1,800,000	\$35,000	\$1,836,000
1981	\$1,980,000	\$41,500	\$2,021,500
1982	\$2,400,000	\$41,500	\$2,441,500

6. The Court finds the market values, prior to any equalization with other property, to be as follows:

<u>Assessment Year</u>	<u>Residential</u>	<u>Commercial</u>	<u>Total Market Value</u>
1980	\$2,000,000	\$40,000	\$2,040,000
1981	\$2,000,000	\$50,000	\$2,050,000
1982	\$2,000,000	\$50,000	\$2,050,000

7. Property in the same class in the City of Minneapolis and County of Hennepin for the assessment year 1980 was valued for taxes at approximately 86% of full market value. For assessment years 1981 and 1982, similar property was valued at approximately 88% of full market value.

8. After applying a ratio of 86% for 1980 and 88% for 1981 and 1982, we find the final estimated market values for the subject property to be as follows:

1980—\$1,754,400  
1981—\$1,804,000  
1982—\$1,804,000

9. The attached Memorandum is made a part of these Findings of Fact and Conclusions of Law.

CONCLUSIONS OF LAW

1. The estimated market values (EMV's) for real estate taxes should be reduced as follows:

<u>Assessment Year</u>	
1980	from \$1,836,000 to \$1,754,400
1981	from \$2,021,500 to \$1,804,000
1982	from \$2,441,500 to \$1,804,000

2. Real estate taxes due and payable in 1981, 1982 and 1983 should be recomputed accordingly and refunds, if any, paid to Petitioner 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.**

January 12, 1984

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

MEMORANDUM

The petitioner is protesting the real estate taxes on its 8-story, 57-unit apartment building at 2800 W. 44th Street in Minneapolis, two blocks west of Lake Harriet. The classification for taxes is split between "residential" and "commercial". Only the value of the larger "residential" portion is disputed by petitioner.

The assessor's estimated market values for the years in question are as follows:

<u>Assessment Year</u>	<u>Residential</u>	<u>Commercial</u>	<u>Total EMV</u>
1980	\$1,800,000	\$36,000	\$1,836,000
1981	\$1,980,000	\$41,500	\$2,021,500
1982	\$2,400,000	\$41,500	\$2,441,500

Based upon all of the evidence adduced, we find the correct market values, prior to any equalization with other property, to be:

<u>Assessment Year</u>	<u>Residential</u>	<u>Commercial</u>	<u>Total Market Value</u>
1980	\$2,000,000	\$40,000	\$2,040,000
1981	\$2,000,000	\$50,000	\$2,050,000
1982	\$2,000,000	\$50,000	\$2,050,000

After applying a ratio of 86% for 1980 and 88% for 1981 and 1982, we find the total final estimated market values for taxes to be as follows:

1980—\$1,754,400  
1981—\$1,804,000  
1982—\$1,804,000

Both appraisal witnesses, Robert J. Strachota of Shenhon & Associates, Inc. and Richard Stimmler from the City of Minneapolis Assessor's Office, relied heavily on the income approach in reaching their respective opinions of market value. The expert appraisal witnesses testified that, in their opinion, the entire property had the following market values as contrasted with the assessor's EMV's.<sup>1</sup>

<u>Assessment Year</u>	<u>Assessor's EMV</u>	<u>Respondent's Witness Stimmler</u>	<u>Respondent's Witness Stimmler</u>
1980	\$1,836,000	\$1,551,000	\$2,015,000
1981	\$2,021,500	\$1,663,500	\$2,245,000
1982	\$2,441,500	\$1,775,500	\$2,425,000

Both witnesses agreed that petitioner in recent years was charging something less than market rents for many of the

<sup>1</sup> The assessor's estimated market values for the commercial portion of the property are included in Mr. Strachota's totals. He offered no opinion on this portion because they were not in dispute.

# TAX COURT

apartments. Their projections for gross rental income, therefore, exceeded petitioner's actual receipts. We view Mr. Strachota's lower gross income projections as acceptable. Our inclination is to be very cautious about estimating income at a level considerably higher than an owner's actual experience.

In estimating expenses, we again feel that actual expenses should be given much greater weight than petitioner's higher "projected" expenses or respondent's reliance on some ratio derived from other properties.

By following these guidelines, we estimate the property would generate the following income:

	1980	1981	1982
Gross Income	\$256,000	\$280,000	\$305,000
Estimated Expense Before Real Estate Taxes	\$ 45,000	\$ 57,000	\$ 70,000
Net Operating Income	\$211,000	\$223,000	\$235,000

If we capitalize this income at 8% plus the tax rate, we arrive at the following indications of value:

1980—\$1,962,790  
1981—\$2,084,112  
1982—\$2,186,046

In reaching a decision on market value, we have considered all the evidence adduced and have not adopted one formula or approach to value but have given greatest weight to the income approach. Our conclusion is that the property, exclusive of the commercial units, had a market value of \$2,000,000 for each year and that the commercial portion had a market value of \$40,000 in 1980 and \$50,000 in 1981 and 1982.

The petitioner also makes the claim that its property has suffered unequal taxation because other property in the same class (non-homestead residential) within the same taxing district (City of Minneapolis and County of Hennepin) was systematically undervalued. The best tool the Court has to determine the level of assessment within a taxing jurisdiction is sales ratio studies prepared specially for the Tax Court by the Minnesota Department of Revenue. These studies indicate that apartment properties in Minneapolis and Hennepin County were assessed on an average of 80% to 82% when sales prices are matched with the assessor's estimated market values. Because these studies are not adjusted for "cash equivalency" or "time", we feel the ratios to apply in equalizing the values in this case should be raised to 86% for 1980 and to 88% for 1981 and 1982. For this reason we find the final values for tax purposes to be \$1,754,400 for 1980 and \$1,804,000 for 1981 and 1982.

We are, therefore, ordering the following reductions in the assessor's estimated market values for the subject property:

1980 reduced from \$1,836,000 to \$1,754,400  
1981 reduced from \$2,021,500 to \$1,804,000  
1982 reduced from \$2,441,500 to \$1,804,000

E.B.G.

## State of Minnesota County of Hennepin

Paul Klodt,  
Petitioner,

v.

County of Hennepin,  
Respondent.

## Tax Court Regular Division

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

Court Files TC-1211  
TC-1775  
TC-2371

The above tax petitions came on for trial on September 26, 1983, before the Minnesota Tax Court at Hennepin County Government Center, Judge Earl B. Gustafson presiding. Testimony was concluded October 4 and the case was submitted on post-trial memoranda.

Benjamin J. Smith of Lapp, Lazar, Laurie & Smith appeared on behalf of Petitioner.

Charles F. Sweetland, Assistant Hennepin County Attorney appeared for Respondent.

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

FINDINGS OF FACT

1. Petitioner is the owner of real property located in the City of Minneapolis, County of Hennepin, described as follows:  
 Lots 3, 4, 5, 20, 21, 22, 23 and 24, Block 1, Groveland Avenue Rearrangement, according to the plat thereof.  
 Commonly known as 48-50 Groveland Terrace,  
 Property I.D. No. 28-029-24-42-0042; 52 Groveland Terrace,  
 Property I.D. No. 28-029-24-41-0041; 311 Kenwood Parkway,  
 Property I.D. No. 28-029-24-41-0035.
2. This is an appeal from the City of Minneapolis Assessor's estimated market values for the subject property as of January 2, 1980, 1981 and 1982 for taxes payable in 1981, 1982 and 1983.
3. The land is improved with a four-building, 185-unit residential apartment complex in the Kenwood District near the Guthrie Theatre.
4. The property was valued as one combined parcel by both expert appraisal witnesses.
5. The assessor's estimated market values being contested are as follows:

<u>Assessment Year</u>	<u>Total E.M.V.</u>
1980	\$6,715,000
1981	\$6,715,000
1982	\$7,252,200

6. Respondent concedes these values are above actual market value and offered evidence at trial that the correct values are \$5,300,000 for 1980, \$5,800,000 for 1981 and \$6,600,000 for 1982.
7. The Court finds the market values, prior to any equalization with other property, to be \$5,000,000 for 1980, \$5,500,000 for 1981 and \$5,900,000 for 1982.
8. Property in the same class in the City of Minneapolis and County of Hennepin for the assessment year 1980 was valued for taxes at approximately 86% of full market value. For assessment years 1981 and 1982, similar property was valued at approximately 88% of full market value.
9. After applying a ratio of 86% for 1980 and 88% for 1981 and 1982, we find the final estimated market values for the subject property to be as follows:

1980 — \$4,300,000  
 1981 — \$4,840,000  
 1982 — \$5,192,000

10. The attached Memorandum is made a part of these Findings of Fact and Conclusions of Law.

CONCLUSIONS OF LAW

1. The estimated market values (EMV's) for real estate taxes should be reduced as follows:

<u>Assessment Year</u>	
1980	from \$6,715,000 to \$4,300,000
1981	from \$6,715,000 to \$4,840,000
1982	from \$7,252,200 to \$5,192,000

2. Real estate taxes due and payable in 1981, 1982 and 1983 should be recomputed accordingly and refunds, if any, paid to Petitioner 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.**

January 12, 1984

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

MEMORANDUM

This is a Chapter 278 real estate tax petition case in which the Petitioner claims his property is valued above its true market value and, in addition, has received unequal treatment in violation of the United States and Minnesota Constitutions.

# TAX COURT

The property is a large four-building, 185-unit apartment complex located within one block of the Guthrie Theatre in the City of Minneapolis. It is built along a bluff and bordered on the west by the Kenwood District, a neighborhood of prestigious higher priced homes, and on the east by the Guthrie Theatre and the Walker Art Center. It is within walking distance of downtown Minneapolis, Loring Park and Orchestra Hall. There is easy access to the area freeway system. The property is attractively landscaped and has an interior courtyard and patio with a terraced outdoor pool. Heated underground parking is available in three of the four buildings. Outside parking for guests is also available.

Although there are several contiguous parcels involved, the property will be referred to as one complex for valuation purposes. This is consistent with how it is owned and managed and with the approach taken by the appraisal witnesses for each side.

A two-thirds interest in the property was sold in 1981 for a proportionate share of a total price of 4.9 million dollars, the figure the buyer and seller agreed upon as the correct sale price for the entire fee interest.

The assessor's estimated market values being disputed are the following:

Assessment Year	
1980	\$6,715,000
1981	\$6,715,000
1982	\$7,252,200

The appraisal witnesses for both parties agree that the property was overvalued and offered the following opinions of market value:

Assessment Year	Respondent's Appraisal Witness Richard Stimmler	Petitioner's Appraisal Witness Peter Patchin
1980	\$5,300,000	\$5,000,000
1981	\$5,800,000	\$5,500,000
1982	\$6,600,000	\$5,900,000

As indicated, the appraisal witnesses did not differ greatly in their final opinions of value.

It is generally recognized that the income approach to value can be given substantial weight in valuing rental property. In their use of this approach, the most significant difference between the appraisal witnesses were their projections for operating expenses. Respondent's witness, Mr. Stimmler, estimated expenses at 27% of gross income. Petitioner's witness, Mr. Patchin, estimated expenses at nearly 32%, and we think this comes closer to past experience and what can be anticipated in the future.

There was no big dispute between the experts regarding the appropriate capitalization rate. Stimmler selected an 8% capitalization rate for all years while Patchin used 7.69% for 1980, 7.95% for 1981 and 9.24% for 1982.

After considering all of the evidence and the various approaches to value used by the expert witnesses and also considering the recent sale of the property, we conclude that the values offered by Mr. Patchin are correct.

We, therefore, find the market values, prior to any equalization to be \$5,000,000 for 1980, \$5,500,000 for 1981 and \$5,900,000 for 1982.

The Petitioner also makes a claim that the subject property has been treated unfairly and unequally in relation to other property in the taxing district.

To prevail in a claim of "discrimination" or unequal treatment in violation of the United States and Minnesota Constitutions, the Petitioner must show that other property of the same class in the taxing district was systematically and arbitrarily undervalued when compared with the subject property. *In Re Petition of Hamm vs. State*, 255 Minn. 64, 95 N.W. 2d 649 (1959). Where property is valued at approximately the same level as most other properties, intervention by the courts is not required or appropriate. *Federal Reserve Bank v. State*, 316 N.W. 2d 619 (Minn. 1981).

The leading Minnesota case on this subject is *In re Petition of Hamm v. State, Supra*, which states these principles in the following language:

"The right to uniformity and equality is the right to equal treatment in the apportionment of the tax burden. Uniformity of taxation does not permit the systematic, arbitrary, or intentional valuation of the property of one or a few taxpayers at a substantially higher valuation than that placed on other property of the same class . . . ."

"Absolute equality is impracticable of attainment and the taxpayer may not complain unless the inequality is substantial. Mere errors of judgment in estimating market value of property usually will not support a claim of discrimination." 255 Minn. 64, 95 N.W. 2d 649, 654.



The best tool the Court has to determine the level of assessment within a taxing jurisdiction is sales ratio studies prepared specially for the Tax Court by the Minnesota Department of Revenue. These studies indicate that apartment properties in Minneapolis and Hennepin County were assessed on an average of 80% to 82% when sales prices are matched with the assessor's estimated market values.

Although Minn. Stat. § 278.05, Subd. 4 permits the admission of these studies into evidence without laying a foundation, we do not, however, consider these studies conclusive or binding on the Court. The major weakness of these studies is their failure to adjust sale prices for terms or "cash equivalency."

In recent years many income producing properties have often sold with below market financing terms where the purchase price is higher than the actual cash value.

Recognizing this, we feel the ratios to apply in equalizing the values in this case should be raised to 86% for 1980 and to 88% for 1981 and 1982. For this reason we find the final values for tax purposes to be \$4,300,000 for 1980, \$4,840,000 for 1981 and \$5,192,000 for 1982.

E.B.G.

**State of Minnesota****Tax Court**

West Side Bar, Inc.,

Appellant,

v.

Commissioner of Revenue,

Appellee.

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

In the Matter of the Appeal from the Commissioner's Order dated May 20, 1983, relating to sales tax for the period March 1, 1979 through February 28, 1981.

Docket #3905

The above matter was tried on October 4 and 5, 1983, before the Minnesota Tax Court, Judge Carl A. Jensen presiding, at the County Courthouse in Little Falls, Morrison County, Minnesota.

Douglas P. Anderson, attorney, appeared on behalf of Appellant.

James W. Neher, Special Assistant Attorney General, appeared on behalf of Appellee.

**SYLLABUS**

The Order of the Commissioner of Revenue relating to additional assessment of sales taxes is prima facie valid and Appellant has failed to overcome that presumption in this case.

**FINDINGS OF FACT**

1. Appellant, West Side Bar, is a Minnesota corporation with its principal place of business at 115 West Broadway, Little Falls, Minnesota.
2. The Commissioner of Revenue issued an Order dated May 20, 1983, assessing \$10,097.90 in additional sales tax together with statutory interest after an audit of Appellant's sales tax returns and records.
3. The period covered by the audit and this decision is March 1, 1979, through February 28, 1981.
4. The audit by the Commissioner was based principally on bank deposits of Appellant together with other records.
5. Appellant agreed to part of the audit and disputed parts of the audit.
6. The Commissioner agreed that \$5,422.96 should be subtracted from the gross receipts shown in the Commissioner's audit and the tax recomputed accordingly.
7. Much of Appellant's evidence related to an attempt to show the net worth of Appellant at the beginning of the audit period and at the end of the audit period. Such evidence has very little probative value in determining sales taxes.
8. Appellant has failed to rebut the statutory prima facie validity of the Commissioner's Order.
9. Part of this appeal involved income taxes for the same period. That part of the appeal is reserved for later resolution.

**CONCLUSIONS OF LAW**

1. Appellant has failed to rebut the statutory prima facie validity of the Commissioner's Order and his Order of May 20, 1983,

## TAX COURT

is hereby affirmed except that \$5,422.96 is to be deducted from the gross receipts for the period involved and the sales tax recomputed accordingly.

2. That part of this appeal relating to income taxes for the same period is reserved for later resolution.

IT IS SO ORDERED.

January 11, 1984

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

### MEMORANDUM

Minnesota Statutes § 271.06, subd. 6 provides in part as follows:

"The Tax Court shall hear, consider, and determine without a jury every appeal de novo. . . . All such parties shall have an opportunity to offer evidence and arguments at the hearing; provided, that the order of the commissioner or the appropriate unit of government in every case shall be prima facie valid."

We find that the evidence of Appellant is lacking in many respects and that it has not overcome the prima facie presumption accorded to the Commissioner's Order. Appellant admitted that a substantial amount of additional sales tax, perhaps about \$6,000, was not in dispute. However, no specific evidence as to the exact amount not in dispute was presented.

The Commissioner audited the Appellant's records, principally the bank deposit records, for the period involved. Appellant's accountant had prepared the original determination of taxes due on the basis of bank deposits. It appeared that Appellant's accountant, in further auditing for the purpose of disputing the Commissioner's Order and this trial, apparently again used only the bank deposit records together with certain other information given to him by the owner of the Appellant corporation. It appeared that the cash register receipts were available to him, but they were not used. It would appear that cash register records would normally be a better method of determining amounts subject to sales tax.

Appellant used a rather peculiar system in his bank deposits, which complicated the audit. Appellant cashed a large number of payroll checks in its business, especially on certain days of the week. In order to cash these checks, Appellant would write out a check to itself or to cash and deposit this check with its deposits, but the bank would not run this check through as it would overdraw the account. The day after the payroll checks were cashed, Appellant would deposit the cash and redeem the check. The system used apparently resulted in a situation where it was somewhat difficult to determine which deposits should not be included in gross receipts.

It appeared to the Court that the Commissioner's auditor properly excluded the items that should not be included in gross receipts and made the proper allowance therefore. Appellant vaguely disputed some of these items but offered no very substantial evidence to support its claims, although the burden was on Appellant to do so.

Appellant's accountant determined his gross receipts' figure by using the net deposit, which excluded substantial cash withdrawals.

The Commissioner's auditor used the total deposit before cash withdrawals and then deducted those cash withdrawals which appear to have been made for the purpose of cashing checks. There were a substantial number of other cash withdrawals which the Commissioner's auditor included in gross receipts. Appellant attempted to show that these cash withdrawals should not be included in gross receipts, apparently on the basis that many of these cash withdrawals were for coins or currency to be taken back to be used in the business. If this was actually done, then they should not have been included in gross receipts. Appellant failed to substantiate its position. For example, August 12, 1980, Appellant deposited \$200 cash and \$3,178.34 in checks. It made a cash withdrawal of \$1,023.25, leaving a net deposit of \$2,355.09. If the \$1,023.25 was actually put back into the cash registers for change, then it should not have been included in gross receipts. However, there was no proof that this occurred and there was no showing as to what may have happened to the \$1,023.25.

The same or similar thing occurred on many days. For example, on October 29, 1980, there was a deposit of \$820 cash and \$1,336.07 in checks and a cash withdrawal of \$285 leaving a net deposit of \$1,871.07. We do not find that the evidence substantiated the fact that this \$285 went back into the cash registers. It appears to us that the cash register tapes might very well have revealed a more accurate picture of what gross receipts were subject to the sales tax. Appellant's accountant apparently had these daily cash register records available but did not see fit to use them. In view of the fact that Appellant had the burden of proof, it appears to us that it would have been incumbent on them to at least check out the cash register receipt records to see what they did in fact show.

Another area of dispute was whether or not the owner of Appellant corporation had put other money that he had received

from other sources into the business. For example, there was some indication that he had received \$25,000 in insurance proceeds and had used much of this money to pay some unpaid accounts. Appellant took the position that these amounts should be deducted from the gross receipts. This would have been true if Appellant had deposited these amounts in the checking account and then written checks on the account to pay the unpaid accounts. This is not what was done however. Appellant simply got cashier checks or something of that sort and paid off some of these unpaid accounts. Because of this, they never appeared in the deposits and, of course, never served to increase the gross receipts shown by the deposits. Except for the item of \$5,422.96, which we have allowed as a deduction, all of the other amounts that went into deposits appear to have come from sales in the business and, of course, subject to the sales tax except for that portion of sales which is not subject to sales tax.

Incidentally, at the beginning of the trial the parties stipulated that the finding of gross receipts for sales tax purposes would also be considered to be the gross receipts for income tax purposes. This appeal involves an assessment for both sales taxes and income taxes, but the determination of the income tax matter was not considered in this trial. We have no difficulty with the Stipulation, but we should note that if the owner of Appellant corporation put money from other sources into the corporation funds to pay corporation expenses, then this should be a deduction for income tax purposes if in determining the amount subject to income tax Appellant corporation had in fact not included the item as an expense. We make no real finding as to this as no facts were submitted relative to this matter.

Appellant attempted to prove the logic of its case by a net worth approach, but we found that evidence sadly lacking.

For one thing, the evidence showed that the owner of Appellant (hereafter referred to as owner) had no separate individual checking account and individual expenses were paid out of the corporate checking account. The owner attempted to show that his style of living had not materially changed so that he could not have been making a great deal of income. It might be of interest to know how much in personal checks was written on the corporate account. For example, if only \$4,000 or \$5,000 appeared as personal checks, then it would at least seem possible that some of the cash withdrawals were used for personal expenses. Also, if the cash register tapes had been used, it might show a discrepancy between the receipts on the cash register and the deposits. There is no proof either way relative to this, and the information to clear this up was in the hands of Appellant.

It appears that on March 1, 1979, the owner owed a total of \$275,040 and on February 28, 1981, he owed a total of \$267,600. It is really not possible to draw any conclusions from this since we have no knowledge as to where the money may have come from to pay the interest on these loans or whether or not other payments were made. The owner purchased the Blue Ox Bar in Brainerd during this period. Appellant's brief indicates that none of these loans were relative to the purchase of the Blue Ox Bar, but our recollection of the testimony does not necessarily substantiate this statement. Our notes indicate that the owner's testimony shows that he paid \$101,000 for the Blue Ox Bar at Brainerd and that he paid some of it out of the corporation account which shows in the checking account.

Appellant's brief indicates that according to Appellant's figures the gross income increased in Appellant's first year of operation by 39.75% over the gross income of the preceding year. He then points out that, according to the Commissioner's audit, this increase would have been 57.5%. He tries to make the point that it would be ridiculous to think that there could be a 57.5% increase. We agree that this is a very substantial increase, but so is an increase of 39.75%. We can really draw no conclusion from these figures at all.

We have taken into consideration the fact that the owner has never operated this kind of business before, but in this proceeding he has had the benefit of accountants and others and we find that Appellant's evidence taken as a whole does not overcome the presumption in favor of the validity of the Commissioner's Order.

C.A.J.

**State of Minnesota  
County of Ramsey**

**Empiregas, Inc. of Chester and  
Empiregas of Zumbro Falls,  
Appellants,**

v.

**The Commissioner of Revenue,  
Appellee.**

**Tax Court  
Regular Division**

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
ORDER, AND MEMORANDUM  
Docket Nos. 3864 and 3865**

The above-entitled matter came on for hearing on November 3, 1983, at the Tax Court Hearing Room in St. Paul, Minnesota, before Judge Carl A. Jensen.

# TAX COURT

---

---

Randy Coonce, Manager of Appellants' Tax Department, appeared for Appellants.

Amy Eisenstadt, Special Assistant Attorney General, appeared for Appellee.

## SYLLABUS

An Order of the Commissioner of Revenue assessing additional tax is presumed to be correct and the taxpayer has the burden of proof to show that the Commissioner's Order is in error. In this case Appellants failed to establish to the satisfaction of the Court that the Order of the Commissioner is in error and the Order is affirmed.

## FINDINGS OF FACT

1. Appellants are dealers of liquid petroleum (LP) products. Their deliveries are made by use of vehicles equipped with bulk tanks and special pumps. The vehicles are powered by special fuel. By use of a power take-off, the pumps are also powered by special fuel. The supply source for the vehicle and the power take-off are the same.

2. The Department of Revenue conducted an audit of Appellant Empiregas, Inc. of Chester for the period of April 1, 1981 through March 31, 1982, assessing \$737.80 in additional special fuel taxes. The Department of Revenue conducted an audit of Appellant Empiregas, Inc. of Zumbro Falls for the period of April 1, 1981 through December 31, 1982, assessing \$1,623.11 in additional special fuel taxes.

3. During the periods in question, Appellants were both licensed by the State of Minnesota as special fuel dealers.

4. During the periods in question, Appellants determined the amount of special fuel used by its vehicles and subject to special fuel tax by computing the number of miles actually driven by its vehicles and dividing that figure by its estimate of mileage obtained by each vehicle. The mileage figures used by Appellants were eight miles per gallon for its bulk delivery trucks and fifteen miles per gallon for its pick-up trucks.

5. The mileage estimates used by Appellant were based on a fuel consumption test it conducted in 1976 and an EPA estimate.

6. On June 15, 1976, Appellants conducted two mileage tests to determine the miles per gallon obtained by its vehicles using LP gas. These tests were conducted in Lebanon, Missouri. The vehicles tested were of the same make and model as the ones used by Appellants and were equipped similarly, but were made in different years.

7. The vehicles tested averaged 7.7 and 15 miles per gallon respectively. The EPA combined estimates for the trucks actually used by Appellants were 13.5 and 19 miles per gallon respectively.

8. Prior to April, 1979, Appellants reported and paid the special fuel tax due by reporting all amounts of fuel delivered into the supply tanks of its vehicles and supplied tickets substantiating these amounts.

9. For the periods at issue, Appellants did not keep tickets or invoices indicating the amounts of fuel pumped into the supply tanks of its own motor vehicles even though the Department of Revenue had advised Appellants that they must do so.

10. For the period in question, Appellants did not keep records to substantiate the amounts of fuel consumed in off-road use.

11. The audit in question was performed as an office audit, rather than a field audit, at Appellants' request. Appellants further requested that any audit be based on records it would provide. Appellants sent copies of its inventory reports to the Department of Revenue, Petroleum Division. Appellants have not provided any other records.

12. According to Appellants' inventory records, a figure of five miles per gallon was used to determine the number of gallons consumed by its vehicles for inventory purposes.

13. The Commissioner of Revenue assessed additional special fuel taxes based on the five miles per gallon figure utilized by Appellants in their inventory reports.

14. Appellants did not pay special fuel tax on all special fuel that it delivered into the storage tanks of its vehicles.

15. Appellants failed to introduce any evidence showing what amount of special fuel was consumed in the use of the power take-offs with which its vehicles were equipped.

16. Appellants failed to prove that the Commissioner's Order is in error and therefore the Commissioner's Order should be affirmed.

## CONCLUSIONS OF LAW

1. Under Minn. Stat. Ch. 296, Appellants are required to report either all special fuel delivered to it or all special fuel delivered into the supply tanks of its vehicles and must pay the special fuel tax on the amounts so reported.

2. Under Minn. Stat. Ch. 296, Appellants are entitled to credit for special fuel used in the operation of a power take-off only if they prove by documentation the amounts of special fuel so used.

3. The Orders of the Commissioner of Revenue at issue have not been proved erroneous and are affirmed in all respects.  
IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

January 11, 1984

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

MEMORANDUM

Appellants, Empiregas, Inc. of Chester and Empiregas, Inc. of Zumbrota Falls, are dealers of special fuel. They own two delivery trucks that use special fuel as a power source. The issue in this case is whether Appellants have proven that it was unreasonable for the Commissioner to use a figure of five miles per gallon to determine the amount of special fuel used during the period in question. We hold that they have not carried their burden of proof.

The authority for taxing Appellants comes from Minn. Stat. Sec. 296.025, Subd. 1 (1982). That statute states:

*"Tax imposed for motor vehicles.* There is hereby imposed an excise tax of the same rate per gallon as the gasoline excise tax on all special fuel. This tax shall be payable at the time, in the manner and by persons specified in this chapter."

During the periods in question there were two different rates at which special fuel was taxed. In April and May of 1981 the fuel tax was \$.11 per gallon. Minn. Stat. Sec. 296.02, subd. 1 (1981). The rest of the time the fuel tax was \$.13 per gallon. Minn. Stat. Sec. 296.02, subd. 1 (1982).

Special fuel is defined in Minn. Stat. Sec. 296.01, Subd. 6 (1982). Included in that definition are:

*"[A]ll combustible gases and liquid petroleum products or substitutes therefor, except gasoline, which are delivered into the supply tank of a licensed motor vehicle or into storage tanks maintained by an owner or operator of a licensed vehicle as a source of supply for such vehicle."*

Appellants admit that their vehicles used fuel meeting the definition of special fuel. They are, therefore, liable for the tax on such special fuel that they have used.

The determination of the amount of tax is based upon the state's reporting requirements. Minn. Stat. Sec. 296.12, Subds. 3 and 4 (1982) provide for two alternative methods of reporting.

The first method of reporting requires special fuel dealers to report and pay the special fuel excise tax upon the total number of gallons delivered to them during each month. In computing a dealer's tax liability credit is given for the tax due on special fuel used by the dealer in heating his business or sold for any purpose other than use in licensed motor vehicles and evidenced by an invoice issued at the time of the sale. Minn. Stat. Sec. 296.12, Subd. 4(1) (1982).

The second method of reporting allows the dealers, subject to the Commissioner's approval, to pay the special fuel excise tax only on the special fuel that is delivered into the supply tank of a licensed motor vehicle. Under this option the dealer is required to issue an invoice upon delivery of the special fuel showing, among other things, the number of gallons delivered. Minn. Stat. Sec. 296.12, Subd. 3 (1982). Dealers are required to report the total number gallons delivered into the supply tanks of licensed motor vehicles for each month and to pay the special fuel tax due for that amount to the Commissioner. Minn. Stat. Sec. 296.12, Subd. 4(2).

In addition to the statutory reporting requirements there is a requirement that all persons connected with special fuel keep and retain accurate records of all purchases, transfers, sales and use of special fuel in a manner approved by the Commissioner. Minn. Stat. Sec. 296.21, Subd. 1. Those records are to be made accessible to the Commissioner or his representative. Minn. Stat. Sec. 296.21, Subd. 2.

Prior to April, 1979, Appellants complied with the second method of reporting. They reported the amounts of fuel delivered into its supply tanks and kept records to document the amounts. For the period in question Appellants did not comply with the reporting requirements. Amounts of fuel delivered into supply tanks were determined by dividing the vehicles' estimated mileage per gallon into the number of miles traveled. They used figures of 15 m.p.g. and 8 m.p.g. for the two trucks. These figures were based on tests carried out on similarly equipped trucks and figures published by the E.P.A.

The Commissioner audited Appellants for 1981 and 1982. Appellants requested that the Commissioner conduct an office audit rather than a field audit. Appellants provided their inventory records to the Commissioner but did not provide the detailed records required in the statutes. They have refused to provide those records to the Commissioner. Because of Appellants failure to make its records available the Commissioner was forced to make an estimate of the number of gallons consumed by Appellants' trucks. The Commissioner used an estimate of 5 m.p.g. for a rate of consumption. This figure was chosen because it

## TAX COURT

---

was one that was used in the Appellants' own inventory records. The Commissioner's estimate of Appellants' special fuel use was substantially higher than the amount upon which Appellants had paid taxes. Under Minn. Stat. Sec. 296.12, Subd. 9 if the Commissioner determines that special fuel taxes have not been paid for all special fuel that the user has consumed, the user must be assessed the tax upon that amount.

Appellants apparently argue that the differences in the amount of special fuel totals can be accounted for by attributing the difference to amounts consumed in the operation of auxiliary equipment powered by a power take-off. Appellants argue that special fuel consumed in the operation of a power take-off is not taxable.

Under Minn. Stat. Sec. 296.12, Subd. 3 (1982), persons are liable for special fuel tax on all special fuel that are delivered into the tank. Credit is then given for fuel that is used other than in motor vehicles. Minn. Stat. Sec. 296.18, Subd. 1 (1982). Use in motor vehicles means "use in producing or generating power for propelling motor vehicles on the public highways. . . ." Minn. Stat. Sec. 296.01, Subd. 11 (1982).

Appellants are, therefore, entitled to deduct that amount of special fuel that was not consumed in propelling its motor vehicles on Minnesota highways. They are, however, required to pay the special fuel tax on the entire amount of special fuel put into their supply trucks and receive a credit for the proper amount. 13 Minn. Code Agency Rule 1.4012(c) provides the rules for motor vehicles using a power take-off:

"c. Motor vehicle with a power take-off. As used in this rule, the words "motor vehicle with a power take-off" mean any motor vehicle or licensed motor vehicle whose motor is used for the dual purpose of propelling the vehicle and the operation of special equipment by means of a power take-off.

"No refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off which can be operated while the vehicle is being propelled on the public highways unless such vehicle is equipped with an automatic metering device approved by the commissioner which accurately measures the amount of fuel which is consumed when the vehicle is stationary and not being propelled on the public highways.

"A refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off if the vehicle has two separate fuel supply tanks, one for use when the special equipment is being operated and the other when the vehicle is being propelled on the public highways, and if the use of the fuel from the appropriate supply tank is automatically controlled.

"A refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off provided that such claim is supported by complete and detailed records that will clearly and accurately establish the amount of gasoline or special fuel used for purposes other than propelling the vehicle on the public highways or provided such vehicle is equipped with an automatic metering device approved by the commissioner. Such records shall include, but not be limited to, all of the following information which is applicable to the claimant's situation: Type of operation, dates of operation, name of customer, miles traveled, hours of operation of special equipment, age of equipment, and results of tests determining engine performance during highway and power take-off operations. The use of separate fuel tanks and/or hubometers are not sufficient in themselves to qualify as complete and accurate records. *Estimates of the amount of fuel used, regardless of how reasonable they may be, are not acceptable.*" (Emphasis Added)

Appellants did not introduce any evidence regarding the amount of special fuel consumed by the use of their power take-offs. It is clear from the regulations cited above that they have the burden of proving that they are entitled to the credit. It is also clear that estimates are not acceptable.

We hold that the Commissioner's estimate of special fuel use based on an estimate of 5 m.p.g. was not unreasonable under the circumstances of this case.

C.A.J.

STATE OF MINNESOTA

State Register and Public Documents Division  
117 University Avenue  
St. Paul, Minnesota 55155  
297-3000

**ORDER FORM**

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

- \_\_\_\_\_ Annual subscription \$130.00
- \_\_\_\_\_ Trial subscription (13 weeks) \$40.00
- \_\_\_\_\_ Single copies \$3.25 each

**Minnesota Guidebook to State Agency Services 1982-83 A** 750-page reference guide to services provided by Minnesota agencies.

- \_\_\_\_\_ Single copy now \$4.50 + \$.27 sales tax = \$4.77\* each

**Minnesota Statutes Supplement—1983.** Pocket inserts for Minnesota Statutes 1982 10-volume set. \$23.00 + \$1.38 sales tax = \$24.38. No handling charge.

**Session Laws of Minnesota—1983.** Two volumes. Laws enacted during the 1982 legislative session. Inquire about back volumes. \$34 + \$2.04 (sales tax) = \$36.04.\* No handling charge.

**State Register Binder.** Durable 3½ inch, forest green binders imprinted with the *State Register* logo.

- \_\_\_\_\_ **State Register Binder** \$6.50 + \$.39 (sales tax) = \$6.89\* each

**State Register Index.** Contains cumulative findings aids to Volume 7 of the *State Register*, including MCAR Amendments and Additions, Executive Orders List, Executive Orders Index, Agency Index, Subject Matter Index. \_\_\_\_\_ Single copy \$5.00

**Worker's Compensation Decisions.** Volume 36. Selected landmark decisions of the Worker's Compensation Court of Appeals. Available by annual subscription, with quarterly update service. \_\_\_\_\_ Annual subscription \$80.00

**Minnesota Outdoors Catalog—1983.** Complete listing of material on the Minnesota outdoor activities. Bikeways, canoeing, county, lake and other maps. Books, charts, rules, laws, posters and more.

- \_\_\_\_\_ **FREE COPY**

\*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Minnesota Department of Revenue. Please enclose full amount for items ordered. Make check or money order payable to "State of Minnesota." All orders must be paid in advance, either in person, by mail, or by phone. To order by phone, call 297-3000. Phone orders are taken only with a Mastercard or Visa charge number.

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

Name \_\_\_\_\_

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

Street \_\_\_\_\_

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

Telephone \_\_\_\_\_

**FOR LEGISLATIVE NEWS**

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

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

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

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

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

Legislative Reference Library  
Room 111 Capitol

Interoffice