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STATE REGISTER



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STATE OF MINNESOTA



VOLUME 9, NUMBER 15

October 8, 1984

Pages 717-756



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 9			
16	Monday Oct 1	Monday Oct 8	Monday Oct 15
17	Monday Oct 8	Monday Oct 15	Monday Oct 22
18	Monday Oct 15	Monday Oct 22	Monday Oct 29
19	Monday Oct 22	Monday Oct 29	Monday Nov 5

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

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

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

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

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NOTICE

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

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION** also.

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 Rules.
- Proposed emergency rules.
- Withdrawal of proposed rules (option; not required).

The **ADOPTED RULES** section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the *State Register* unless an agency requests this.)
- Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
- Notice of adoption of emergency rules.
- Adopted amendments to emergency rules (changes made since the proposed version was published).
- Extensions of emergency rules beyond their original effective date.

The **OFFICIAL NOTICES** section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
- Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before July 31, 1983 are published in the *Minnesota Rules 1983*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after July 31, 1983 will be included in a supplement scheduled for publication in mid-1984. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the *State Register* but are generally not published in the *Minnesota Rules 1983* due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The *State Register* publishes partial and cumulative listings of rule in the **MINNESOTA RULES 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
Issues 27-38, inclusive	

The listings are arranged in the same order as the table of contents of the *Minnesota Rules 1983*.

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PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Rules Relating to Nonrenewal of Homeowners Insurance

Notice of Intent to Adopt Rules without a Public Hearing

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

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

PROPOSED RULES

No public hearing will be held unless twenty-five (25) 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 Robin Hanson, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 65A.29. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Robin Hanson, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

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

Copies of this notice and the proposed rules are available and may be obtained by contacting Robin Hanson at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2880.0050 APPLICABILITY.

Parts 2880.0050 to 2880.0800 do not apply to commercial dwellings or farms, nor to policies under joint underwriting agreements where one of the insurers is a township mutual.

2880.0100 DEFINITIONS.

Subpart 1. Scope. For the purpose of parts 2880.0050 to 2880.0800, the terms defined in this part have the meanings given them.

Subp. 2. Experience period. "Experience period" means the period of three years immediately preceding the insurer's nonrenewal of a policy of homeowners insurance.

Subp. 3. Multiline contract. "Multiline contract" means a single insurance contract which provides coverage for homeowners insurance and for at least one other line of insurance authorized under Minnesota Statutes, section 60A.06, subdivision 9.

Subp. 4. Nonrenewal. "Nonrenewal" means an action taken by an insurer on an existing policy, at the end of the policy period, to:

A. terminate the policy;

B. reduce the policy's coverage, unless all the existing policies and those policies to be accepted as new business by the insurer in this state will have the same coverages;

C. increase the policy's deductible, unless all existing policies and those policies to be accepted as new business in this state, by the insurer, will provide for the same higher deductible; or

D. transfer a named insured from one rating plan to another within the same company, or from one company to another within a group of insurance companies, if the transfer results in a higher premium. A surcharge applied to a premium for a condition which increases the potential for loss, or the deletion of a claims free discount do not constitute a transfer of rating plans.

A policy of homeowners insurance written for a term longer than one year is not subject to nonrenewal until the end of the policy term even if the insurer can reate the policy annually.

Subp. 5. Nonrenewal notice. "Nonrenewal notice" means a written notice to a named insured clearly and expressly informing the named insured of the insurer's intention not to renew the policy as of the renewal date.

Subp. 6. Policy of homeowners insurance. "Policy of homeowners insurance" means a policy providing property and liability coverage on dwellings and includes policies which are generally described as homeowners policies, mobile homeowners policies, dwelling owners policies, condominium owners policies, and tenants policies.

2880.0200 GROUNDS FOR NONRENEWAL.

No insurer shall refuse to renew a policy of homeowners insurance unless based on one or more reasons which shall be limited to the following:

- A. The reasons stated for cancellation in Minnesota Statutes, section 65A.01, subdivision 3a.
 - B. Use of the premises for an illegal activity.
 - C. The termination of an agency contract, unless the insurer assigns the terminated agent's book of business to another agent.
 - D. Violations of local laws or ordinances which increase the possibility of a loss.
 - E. Refusal of the insured to eliminate known conditions which increase the potential for loss after notification by the insurer that the condition must be removed. Before a nonrenewal notice can be issued under this item, two written requests stating the condition to remove and the reason why the condition increases the potential for loss must be sent to the insured. The first notice must inform the insured as to any time limits for compliance. The second notice must inform the insured of the intent to nonrenew the policy if the condition is not removed.
 - F. A substantial change in the quality or availability of fire protection services.
 - G. If the insured has two or more losses during the experience period, but not to include:
 - (1) losses caused by natural causes including but not limited to lightning, wind, or hail; or
 - (2) losses for which no payment was made by the insurer; or
 - (3) losses for which the insurer recovers 80 percent or more of the payment through subrogation.
 - H. The insurer ceases to write homeowners insurance in Minnesota.
 - I. Failure of the named insured to provide necessary underwriting information upon written request from the insurer, provided that before a nonrenewal notice can be issued under this item, two written requests asking for the information must be sent to the insured stating the reasons why the information is necessary. The second request must inform the insured of the intent to nonrenew the policy if the information is not received.
 - J. If real property taxes owing on the insured property have been delinquent for two or more years and continue delinquent at the time notice of nonrenewal is issued.
 - K. The named insured no longer owns the property or resides at the insured location, unless the spouse resides at the insured location and retains ownership, in which event the spouse will be endorsed onto the policy as the named insured.
- If an insurer has more than one homeowners policy on a named insured and if the insurer has grounds for nonrenewing any of the homeowners policies, the insurer may nonrenew all the homeowners policies. If the policies are issued through different agents and one of the agent's contract is terminated by the insurer, the grounds for nonrenewal stated in part 2880.0200, item C, cannot be used to nonrenew the policies.
- L. The reasons stated in Minnesota Statutes, section 72A.20, subdivision 13.

2880.0300 WAIVER OF PENALTIES.

If an insurer encounters a situation in which the insurer believes that the nonrenewal is not addressed by parts 2880.0050 to 2880.0800, the insurer may seek a waiver of penalties under the following procedure:

- A. Notify the commissioner in writing, at least 90 days prior to the policy renewal date, by referring to this part and by stating the reasons for the proposed nonrenewal action.
- B. If the commissioner determines that the situation is not covered by parts 2880.0050 to 2880.0800, but warrants a nonrenewal, the penalties in part 2880.0800 must be waived. The commissioner may decline to render an opinion.

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. The waiver of penalty decision must be retained by the insurer. A copy of the waiver of penalty decision must be returned to the commissioner by the insurer with its response to a written complaint made by the insured.

D. The commissioner's decision regarding waiver of penalties will have no bearing on the final decision as to the approval or disapproval of the nonrenewal action.

E. There is no precedential value in the commissioner's action under this part and each request must be judged on individual considerations.

2880.0400 NONRENEWAL NOTICES.

A nonrenewal notice must be on a form approved by the department of commerce and the following information must be furnished to the insured on the front of the notice:

A. The specific reasons for the termination, which if based on loss experience must include the date of the loss, the type of loss, and amount of payment.

B. A statement advising the insured of the right of complaint with wording such as: "Minnesota law and rules limit the reasons for which your homeowners insurance policy may be nonrenewed, reduced as to the limits of coverage or coverage eliminated, or for which the policy may be canceled. If you believe this termination notice is in violation of Minnesota law or rule, you may, within 30 days of receiving this notice, send a written letter of complaint to the Commissioner of Commerce."

C. A statement advising the insured of the availability of homeowners insurance from the Minnesota Property Insurance Placement Facility with wording such as: "You may be eligible to obtain homeowners insurance coverage through the Minnesota Property Insurance Placement Facility. Your agent can assist you in arranging this coverage."

The named insured cannot waive his or her right to receive a nonrenewal notice under the nonrenewal statutes and parts 2880.0050 to 2880.0800.

2880.0500 VALIDITY OF NOTICE AND NONRENEWAL.

No nonrenewal and no notice of nonrenewal of a homeowners policy is valid unless done in compliance with parts 2880.0050 to 2880.0800.

2880.0600 RECORDKEEPING.

Each insurance company shall keep a register of all nonrenewals and company initiated cancellations, except those for nonpayment of premium. The register must be retained for three years and be available to the commissioner of commerce, or a designee, during business hours at the insurance company's place of business.

2880.0700 NONRENEWAL OF MULTILINE CONTRACTS.

Nothing in parts 2880.0050 to 2880.0800 prohibits an insurance company from nonrenewing a multiline insurance contract. However, if parts 2880.0050 to 2880.0800 prevent nonrenewal of the homeowners insurance portion of the contract, then the insurance company shall issue to the named insured a policy of homeowners insurance providing coverage as included in the multiline contract.

2880.0800 PENALTIES.

Subpart 1. Generally. An insurer failing to comply with parts 2880.0050 to 2880.0800 is subject to the following penalties during each calendar year period:

- A. first violation, \$100;
- B. second violation, \$300; and
- C. third and subsequent violations, \$500.

Subp. 2. Waiver. Monetary penalties will not be levied if the commissioner determines that the nonrenewal notice was based on a good faith judgment supported by evidence that was in the possession of the insurer at the time of the sending of the nonrenewal notice, or if the nonrenewal was subject to the waiver of penalty provisions in part 2880.0300.

Subp. 3. Additional penalties. Nothing contained in parts 2880.0050 to 2880.0800 prohibits the commissioner of commerce from applying additional penalties or remedies as may be imposed under Minnesota Statutes, chapter 72A.

Department of Energy and Economic Development

Proposed Rule Governing Allocation of Industrial Development Bond Issuance Authority

Notice of Intent to Adopt Rules without a Public Hearing

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

Authority for the adoption of these rules governing the allocation of the Department's allocation of industrial development bond issuance authority is contained in Laws of Minnesota 1984, § 1 and § 14, subdivision 3. Additionally, a Statement of Need and Reasonableness that describes the need for the reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Ms. Callahan upon request at the address below. The Statement of Need and Reasonableness also may be reviewed by the public during the Department's regular business hours by contacting Ms. Callahan.

Persons interested in these rules shall have thirty (30) days to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless twenty-five (25) or more persons submit written requests for a public hearing on the proposed rules within the thirty (30) day comment period, a public hearing will not be held. Any person submitting a written request for a hearing should state his or her name and address and the Department encourages that person to identify the portion of the proposed rule which they wish addressed at the hearing, the reason for the request, and any change proposed.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised in writing 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 Ms. Callahan.

A copy of the proposed rules follows this notice.

Persons who wish to obtain copies of this notice, the proposed rules or the Statement of Need and Reasonableness or to submit comments, a written request for a public hearing or a written request to be informed when the rules are submitted to the Attorney General should submit such comments or requests to:

Mary A. Callahan
Financial Management Division
Department of Energy and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-1543

Mark B. Dayton
Commissioner of Energy and
Economic Development

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

Rule as Proposed (all new material)

4340.0100 ALLOCATION OF INDUSTRIAL DEVELOPMENT BOND ISSUANCE AUTHORITY.

Subpart 1. Definitions. The definitions in Laws of Minnesota 1984, chapter 582, section 13 and in this subpart apply to subparts 2 and 3:

A. "Allocation" means the aggregate limit of industrial development bond issuance authority granted to the Department of Energy and Economic Development by Laws of Minnesota 1984, chapter 582, section 14, subdivision 3.

B. "Authority" means the Minnesota Energy and Economic Development Authority.

C. "Commissioner" means the commissioner of the Department of Energy and Economic Development or a designee.

D. "Department" means the Department of Energy and Economic Development.

E. "Supplemental allocation" means any additional amount of industrial development bond issuance authority that may be available for allocation or reallocation under Laws of Minnesota 1984, chapter 582, section 16.

Subp. 2. Allocation. Under the authority granted in Laws of Minnesota 1984, chapter 582, sections 1; and 14, subdivision 3, the department shall allocate its total allocation to the authority by order of the commissioner if the authority meets the following requirements:

A. the authority operates programs of statewide application, including but not limited to business loans, small business loans, energy loans, farm loans, or pollution control loans located within a statewide jurisdiction;

B. the authority is a state entity or an agency with a statewide jurisdiction that has bond issuance authority and that is subject to the federal limitations act, but is not allocated bond issuance authority under Laws of Minnesota 1984, chapter 582, section 14; and

C. the authority submits a resolution requesting the allocation from the department on or after the effective date of the federal limitations act in 1984 and on or before January 1 of subsequent years.

Subp. 3. Supplemental allocation. If the authority received all of the allocation under subpart 2 and if the authority submits a resolution to the department requesting additional bond issuance allocation, the department shall apply for a supplemental allocation from the pool amount on behalf of the authority according to Laws of Minnesota 1984, chapter 582, section 16, subdivision 1.

Department of Labor and Industry

Proposed Rules Governing Pipefitters' Fees

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the State of Minnesota, Department of Labor and Industry (hereinafter "agency") proposes adoption of amendments to Minnesota Rules 5230.0100 without a public hearing. A public hearing will not be held on the proposed adoption of these amendments because the commissioner has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedure set forth in Minn. Stat. §§ 14.22-14.28 (as amended by Minn. Laws 1984, ch. 640, sec. 12-15).

Persons interested in these amendments have 30 days to submit comments in support of or in opposition to the proposed amendments. Comment is encouraged. Each comment should identify the portion of the proposed amendment addressed, the reason for the comment, and any change proposed. The proposed amendment may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed language. Persons who wish to submit comments should submit such comments within 30 days following the publication of this notice to:

Georgiana Henning
Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-2193

Authority for the adoption of these amendments is contained in Minn. Stat. §§ 16A.128 and 326.46, 326.47 and 326.50 as amended by Minn. Laws 1984, ch. 481. Additionally, a Statement of Need and Reasonableness that describes the need for and the reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from Ms. Henning upon request.

The proposed amendments will have an impact on small business. Small businesses, like large businesses, will have to purchase a permit and pay inspection fees to construct or install high pressure piping systems. The permit fee is a flat fee and is the same for all businesses. The inspection fee is a fee based on the cost of bids awarded. The inspection fee will be proportionate to the size of the project being built, which will evenly distribute the burden between large and small businesses. The fees for licensing pipefitters and pipefitter contractors are a codification of the statutory fees currently in effect and will not place an increased burden on small businesses.

Upon adoption of the final amendments without a public hearing, the proposed amendments, this notice, the Statement of Need and Reasonableness, all written comments received and the final amendments as adopted will be delivered to the Attorney General for review as to legality and form to the extent that form relates to legality, the issue of substantial change, whether the agency has authority to adopt these amendments, and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed amendments. Persons who wish to be advised of the submission of this material to the Attorney General should submit a written request for notification to Ms. Henning. The notification of submission to the Attorney General will state whether the proposed amendments have been modified.

A copy of the proposed amendments follows this notice in the *State Register*. Copies of the proposed amendments are also being mailed to all persons and groups who have requested that their names be placed on the list maintained by the Minnesota Department of Labor and Industry for that purpose pursuant to Minn. Stat. § 14.22 (1982) (as amended by Minn. Laws 1984, ch. 640, § 12).

Copies of this notice and the proposed amendments are available and may be obtained by contacting Ms. Henning.

September 21, 1984

Steve Keefe
Commissioner
Department of Labor and Industry

Rules as Proposed

5230. 0100 FEES FOR EXAMINATIONS.

Fees shall be for the examination and to cover the cost of a license for the remainder of the calendar year in which the examination is taken or for which the application is made if the applicant qualifies for a license.

After February a license may be reinstated upon payment of the regular examination fee; however, the council may at its discretion require the applicant to be reexamined and pass an examination before being reinstated as a licensed steamfitter.

The fees for examination and license are as follows:

- A. pipefitter journey (examination and license), \$25;
- B. renewal of pipefitter journey license, \$15;
- C. contracting pipefitter (examination and license), \$75;
- D. renewal of contracting pipefitter license, \$60;
- E. contracting pipefitter-bond and insurance processing, \$25;
- F. temporary pipefitter license, \$25; and
- G. late fee, \$5.

Payment of all examination and license fees must accompany the application. There will be no refund of fees paid. All licenses, except the temporary pipefitter license, will expire December 31, but may be renewed upon application made the following January or February. Applications in February will be processed only upon payment of the late fee.

A temporary pipefitter license must be renewed every 12 months. An individual may not hold a temporary license for more than 36 months.

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PROPOSED RULES

Any person, firm, or corporation that intends to construct or install power piping systems must file an application for a permit with the Department of Labor and Industry or with a municipality that is authorized by law to issue that type of permit. The department's fees for a permit to construct or install power piping systems are:

A. filing fee (application for permit), \$25; and

B. inspection fee, 0.005 percent of the first \$1,000,000, plus one-half mill of the amount over \$1,000,000 of the cost of bids awarded for the construction or installation of the power piping systems as defined under part 5230.0260.

Department of Labor and Industry

Proposed Rules Relating to Workers' Compensation; Rehabilitation Claims Handling

Notice of Intent to Adopt Amendments without a Public Hearing

Notice is hereby given that the Department of Labor and Industry, Workers' Compensation Division, proposes to adopt the above-captioned amendments to Minn. Rules, parts 5220.0100-5220.1900 without a public hearing. The Department has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28 (1982) (as amended by Minn. Laws 1984, ch. 640, §§ 12-15).

Persons or groups interested in these amendments shall have 30 days to submit comments on the proposed amendments. Comments in support of or in opposition to the proposed amendments are encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period. If a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1982) (as amended by Minn. Laws 1984, ch. 640, §§ 7-11). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Steve Keefe
Commissioner, Department of Labor and Industry
5th Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-2342

Authority for the adoption of these amendments is contained in Minn. Stat. § 176.83(c) (Supp. 1983). A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments, identifies the data and information relied upon to support the proposed amendments and assesses the impact of the proposed amendments on small business and on local public bodies has been prepared and is available from the Commissioner upon request at the above address.

Upon adoption of the final amendments without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests for hearing received, and the final amendments as adopted, will be delivered to the Attorney General. The amendments will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the amendments and the existence of a rational basis for the need for and reasonableness of the proposed amendments. Persons who wish to be notified of the submission of this material, including modifications to the amendments as originally proposed, to the Attorney General, or who wish to receive a free copy of the final amendments as adopted, should submit a written request to the Commissioner at the above address.

The text of the proposed amendments follows this notice in the *State Register*. The amendments modify reporting requirements for rehabilitation providers and establish a procedure for approval of claims handlers. The amendments also incorporate new deadlines for initiation of rehabilitation services to reflect recent revisions to Minn. Stat. § 176.102, subd. 4.

PROPOSED RULES

One free copy of the proposed amendments may be obtained by contacting the Commissioner at the above address or by calling (612) 297-4792.

September 21, 1984

Steve Keefe
Commissioner, Department of
Labor and Industry

Rules as Proposed

5220.0100 Definitions.

Subpart 1. Scope. For the purposes of parts 5220.0100 to ~~5220.1900~~ 5220.1910, the following terms have the meanings given them.

Subp. 1a. Approved claims handler. “Approved claims handler” means a claims handler who meets the requirements of part 5220.1910.

Subp. 2 to 4. [Unchanged.]

Subp. 5. Qualified rehabilitation consultant. “Qualified rehabilitation consultant” means a person who is professionally trained and experienced and who is approved by the commissioner to develop and monitor an appropriate plan for evaluation and provision of physical and vocational rehabilitation services for an employee entitled to rehabilitation benefits under Minnesota Statutes, section 176.102. A qualified rehabilitation consultant must be either affiliated as defined in subpart 6 or independent as defined in subpart 7.

Subp. 6. Qualified rehabilitation consultant/affiliated. “Qualified rehabilitation consultant/affiliated” means a consultant who is affiliated with an employer, insurer, or adjusting company, and who is approved by the commissioner to develop and monitor rehabilitation plans. A qualified rehabilitation consultant/affiliated as defined in this subpart is permitted to provide rehabilitation consultation only on the claims of the entity with which the consultant is affiliated.

Subp. 7. and 8. [Unchanged.]

Subp. 8a. Qualified rehabilitation consultant firm or firm. “Qualified rehabilitation consultant firm” or “firm” means a public or private business, whether organized as a sole proprietorship, partnership, association, corporation, or other form, which is held out to the public as a business entity engaged in rehabilitation consultation. Only a qualified rehabilitation consultant independent shall be associated with or employed by a firm as defined in this subpart.

Subp. 9. to 10. [Unchanged.]

Subp. 10a. Rehabilitation Services or Rehabilitation and Medical Services. “Rehabilitation Services” or “Rehabilitation and Medical Services” means the ~~Division of Rehabilitation and Medical Services of Section in~~ the Department of Labor and Industry.

Subp. 11. Registered rehabilitation vendor. “Registered rehabilitation vendor” means a public or private entity existing wholly or in part for the provision of rehabilitation services to the qualified employee and which has been registered to provide specific rehabilitation services in accord with a rehabilitation plan authorized by the commissioner. Vendors as defined in this subpart shall not employ or otherwise engage the services of qualified rehabilitation consultants.

Subp. 12. and 13. [Unchanged.]

Subp. 14. Required rehabilitation report. “Required rehabilitation report” means a report which must be submitted to rehabilitation services whenever a rehabilitation plan is initiated or proposed to be altered, suspended, or terminated.

Subp. 15. Required progress record. “Required progress record” means a record maintained by the qualified rehabilitation consultant which documents rehabilitation provider services and the employee’s rehabilitation progress. The record shall include, among other things, case notes and all written reports (whether or not submitted to rehabilitation services) and correspondence received or prepared by the qualified rehabilitation consultant regarding an employee’s rehabilitation.

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PROPOSED RULES

5220.0210 WORK STATUS REPORT.

Subpart 1. Time for filing. The employer shall file with the commissioner a work status report, to which current medical reports are attached, in conformity with the following deadlines:

- A. within 15 days of receipt of an employee's request for rehabilitation services;
- B. within ten days of referral to a qualified rehabilitation consultant to develop and monitor an appropriate plan for evaluation and provision of physical and vocational rehabilitation services;
- C. within five days after the employee has 30 days of lost work time due to a back injury or within five days after the employee has 60 days of lost work time due to a personal injury other than a back injury; or
- D. Within five days after an employer receives medical information prior to the times specified in items A to C that the employee will be unable to turn to the job the employee held at the time of injury.

Subp. 2. Contents. The work status report shall either:

- A. refer the employee to a qualified rehabilitation consultant for rehabilitation consultation; or
- B. include a completed rehabilitation indicators form as prescribed by the commissioner which indicates that the employee has returned or will return to work in the near future or that rehabilitation consultation will not be useful in returning the employee to work.

Subp. 3. Waiver of rehabilitation consultation. A rehabilitation indicators form must be submitted where the employer requests a waiver of rehabilitation services on the work status report.

If the commissioner denies the request, notice of the denial shall be mailed to the employer within 15 days of the commissioner's receipt of the request. Within 15 days of the date of denial, the employer shall appoint a qualified rehabilitation consultant, or the commissioner shall appoint a qualified rehabilitation consultant to provide the consultation at the expense of the employer.

If the commissioner grants the request, no notice to the employer is required. The waiver, if granted, shall be effective for 60 days from the date of the commissioner's receipt of the request. If the employee does not return to work during this 60-day period, the employer shall at the expiration of the 60 days and every 60 days thereafter file another work status report as required by this part.

5220.0300 INITIATION OF REHABILITATION SERVICES.

Subpart 1. Employer's duty. For the purpose of Minnesota Statutes, section 176.102, subdivision 4, the employer shall, in consultation with the employee, refer the employee to a qualified rehabilitation consultant. This shall be done within ~~30~~ five days after an employer has medical information that an employee is ~~unable, due to personal injury or occupational disease, to return to his preinjury occupation~~ is unable to return to the job the employee held at the time of the injury, has 60 days of lost work time due to a personal injury other than a back injury, or 30 days of lost work time due to a back injury.

Subp. 2. Employee's objection. If the employer has made a selection of a qualified rehabilitation consultant, the employee may object to the employer's selection and shall make his or her own selection and notify the commissioner and the employer in writing. The employee has the final decision on which rehabilitation consultant is to be utilized. Upon receipt of the notice, the commissioner may schedule an administrative conference to discuss a requested change of qualified rehabilitation consultant.

Subp. 3. Delay by employer. When the commissioner receives information that the employee is qualified for rehabilitation benefits and the employer has not provided rehabilitation consultation within ~~30~~ five days after receipt of similar information, the commissioner shall notify the employer that rehabilitation consultation shall be provided by the employer within 15 days of the notice or a qualified rehabilitation consultant ~~within the division of vocational rehabilitation~~ shall be authorized by the commissioner to provide that consultation.

5220.0500 PLAN MODIFICATION.

Upon request of the employer ~~or~~, employee, or commissioner, the commissioner may suspend, terminate, or alter a rehabilitation plan for good cause, including, but not limited to:

- A. a new or continuing physical limitation that significantly interferes with the implementation of the plan;

- B. the employee's performance indicates that he or she is unlikely to complete the plan successfully; ~~or~~
- C. the employee is not cooperating with the plan; or
- D. the plan or its administration is substantially inadequate to achieve the rehabilitation plan objectives.

The commissioner may alter a plan on the request of an employee if the employee believes that the occupation for which he or she is being trained is not suited to him or her, provided that the employee's request shall be made within 90 days from the plan's implementation date and that no more than one change shall be permitted for this reason. Any decision of the commissioner regarding a change in a plan may be appealed to the review panel within ~~45~~ 30 days of the filing of and service of the decision on the interested parties.

5220.1000 ~~COMPENSATION DURING REHABILITATION~~ RETRAINING.

~~Payment of rehabilitation~~ When the employee is entitled to additional compensation pursuant to Minnesota Statutes, section 176.102, subdivision 11, ~~or, if the rehabilitation involves for retraining, or to after-tax compensation for on-the-job training, pursuant to Minnesota Statutes, section 176.102, subdivision 5,~~ the compensation shall commence on the day the employee begins the vocational rehabilitation phase of the rehabilitation plan designed to prepare the employee for suitable, gainful employment an approved retraining or on-the-job training program.

5220.1300 QUALIFIED REHABILITATION CONSULTANT AND REGISTERED REHABILITATION VENDOR.

Subpart 1. and 2. [Unchanged.]

Subp. 3. Approval as a vendor or consultant. An entity may be approved either to provide rehabilitation services as a vendor or to develop and monitor rehabilitation plans as a qualified rehabilitation consultant. These roles are distinct therefore a single entity shall not qualify for both functions. There shall be no ownership or financial relationships of any kind whatsoever between any vendor and consultant or ~~organization approved for the employment of consultants between any vendor and firm.~~ The rehabilitation vendor shall provide all physical rehabilitation and work evaluation and work adjustment services if they are included in a rehabilitation plan. Any number of vendors may provide services for a single rehabilitation plan.

With the written approval of the commissioner, an employer who would qualify as a vendor may hire a qualified rehabilitation consultant/affiliated to develop and monitor rehabilitation plans for their own employees. In such cases, the consultant shall certify that the employee has been advised of his or her right to object to the affiliated rehabilitation consultant. It is expected that the rehabilitation consultant/affiliated shall use outside vendor services if the employer cannot provide them.

Subp. 4. to 8. [Unchanged.]

5220.1400 QUALIFYING ELIGIBILITY CRITERIA FOR REHABILITATION CONSULTANT.

Subpart 1. [Unchanged.]

Subp. 2. Educational background. A qualified rehabilitation consultant/affiliated/independent shall possess the following credentials as applicable:

A. Holder of a masters or doctorate degree in vocational rehabilitation or related fields of counseling and guidance, counseling (including family counseling, community counseling, or other counseling degree with a similar designated specialization), psychology (including counseling psychology, educational psychology, or other psychology degree with a similar designated specialization), social work, or physical rehabilitation (occupational therapy, physical therapy, nursing) from an accredited institution, plus a current license as appropriate, plus one year of experience in vocational rehabilitation or physical rehabilitation. At least one year shall have been spent as a qualified rehabilitation consultant intern in rehabilitation of injured workers.

B. Holder of a baccalaureate degree in vocational rehabilitation or related fields of counseling and guidance, counseling (including family counseling, community counseling, or other counseling degree with a similar designated specialization), psychology (including counseling psychology, educational psychology, or other psychology degree with a similar designated specialization), social work, or physical rehabilitation (occupational therapy, physical therapy, nursing), from an accredited

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PROPOSED RULES

institution, plus a current license as appropriate, plus two years of experience in vocational rehabilitation or physical rehabilitation. At least one year shall have been spent as a qualified rehabilitation consultant intern in rehabilitation of injured workers.

Subp. 3. to 5. [Unchanged.]

5220.1500 PROCEDURE FOR QUALIFYING AS REHABILITATION CONSULTANT.

Subpart 1. [Unchanged.]

Subp. 2. Appeal process. The appeal process provides a mechanism for applicants to request reconsideration of a rejected application for registration, renewal, and reinstatement.

A written notice of appeal shall be filed with the commissioner within ~~45~~ 30 days of mailing of notice of disapproval.

The decision shall be reviewed by the review panel. The applicant shall be advised of the date, time, and place of the review at least ten days prior to the hearing date, and is encouraged to be present.

Subp. 3. to 5. [Unchanged.]

5220.1600 PROCEDURE FOR APPROVAL AS ~~ORGANIZATION REGISTERED FOR EMPLOYMENT OF QUALIFIED REHABILITATION CONSULTANTS/INDEPENDENT~~ A FIRM.

Subpart 1. Criteria. The ~~organization~~ firm shall be licensed to do business in the state of Minnesota and shall maintain an administrative office within the state. The management staff shall consist of at least one member who meets the qualifications of a rehabilitation consultant. Eighty percent of the nonclerical staff shall be eligible, qualified rehabilitation consultants or consultant interns. Management shall provide ongoing continuing education opportunities in workers' compensation rehabilitation for approval by the commissioner and to meet the criteria for registration renewal of rehabilitation consultants. The ~~organization~~ firm shall not provide the services designated only as rehabilitation vendor services.

Subp. 2. Application. A private or public entity desiring to be approved as ~~an organization registered for the employment of qualified rehabilitation consultants~~ a firm shall submit to the commissioner a complete application consisting of the following:

A. to D. [Unchanged.]

Subp. 3. to 5. [Unchanged.]

5220.1801 PROFESSIONAL CONDUCT.

Subpart 1. [Unchanged.]

Subp. 2. Assigned qualified rehabilitation consultant. Only the assigned qualified rehabilitation consultant, or a qualified rehabilitation consultant designated by the assigned qualified rehabilitation consultant, shall be involved at any given time in the employee's rehabilitation effort, except as stated in subparts 4 and 5. The assigned qualified rehabilitation consultant must submit the rehabilitation plan to rehabilitation services and to the employer within 30 days of referral and must submit subsequent rehabilitation progress reports every 30 days to the office of rehabilitation services and the other parties. ~~The assigned qualified rehabilitation consultant must submit records or reports to the employer or employee as requested by the employer or employee. This part subpart shall not apply to a qualified rehabilitation consultant acting on behalf of the reinsurance association in a monitoring or advisory capacity on a reinsurance claim file.~~

Subp. 3. to 8. [Unchanged.]

5220.1802 COMMUNICATIONS.

Subpart 1. [Unchanged.]

Subp. 2. Submission of reports. All required rehabilitation reports shall be submitted in accordance with ~~rehabilitation services' department forms~~ as prescribed by the commissioner under Minnesota Statutes, section ~~176.165~~ 176.83, clause (j).

Subp. 3. to 9. [Unchanged.]

Subp. 10. Providing reports records. The qualified rehabilitation consultant or vendor assigned to a case shall ~~provide maintain all reports written by all parties required progress records regarding a case to rehabilitation services and shall make these records available or provide copies to rehabilitation services upon request by the commissioner.~~ This subpart shall not apply to the reinsurance association, unless the reinsurance association has assumed primary responsibility for the claim pursuant to Minnesota Statutes, section 79.35, clause (g).

Subp. 11. [Unchanged.]

5220.1805 BUSINESS PRACTICES.

All registered qualified rehabilitation consultants, qualified rehabilitation consultant interns, and vendors shall abide by the following rules concerning a provider's business practices:

A. and B. [Unchanged.]

C. If a fellow rehabilitation provider violates parts 5220.0100 to ~~5220.1900~~ 5220.1910, a rehabilitation provider having actual personal knowledge about the violation must direct the information to rehabilitation services.

D. to I. [Unchanged.]

5220.1900 REHABILITATION SERVICES AND FEES.

Subpart 1. Fee monitoring. Rehabilitation services has the responsibility and jurisdiction under Minnesota Statutes, section 176.102, subdivisions 2 and 9 to monitor and determine reasonable rehabilitation costs, the necessity of services provided, and to resolve any disputes that may arise between the parties according to part 5220.1300.

The employer/insurer has the primary responsibility for monitoring and paying the cost of necessary rehabilitation services provided. Either the employer/insurer or a rehabilitation provider may request rehabilitation services to make a determination of reasonable costs and necessity of services.

Rehabilitation services shall conduct periodic audits of costs ~~and~~ services, and compliance with reporting and recordkeeping requirements. The employer/insurer and the rehabilitation provider shall provide rehabilitation services with itemized services and costs upon request. Rehabilitation services must contact the parties to discuss costs and services deemed questionable by rehabilitation services or one of the parties. Rehabilitation services may order an administrative conference to discuss services and fee disputes, whether initiated by one of the parties or by rehabilitation services.

Subp. 2. Reasonable and necessary services. A qualified rehabilitation consultant or vendor shall bill for only those necessary and reasonable services which are rendered in accordance with rehabilitation services rules during completion of a plan. Reasonable and necessary services and fees shall be determined by the commissioner. The commissioner's review must include all the following factors:

A. to E. [Unchanged.]

F. an evaluation of whether Minnesota Statutes, chapter 176, and rehabilitation services' parts 5220.0100 to ~~5220.1900~~ 5220.1910 have been followed by the provider.

No registered qualified rehabilitation consultant, qualified rehabilitation consultant intern, or registered vendor shall attempt to collect reimbursement for an unnecessary or unreasonable procedure, service, or cost from any other source, including the employee, another insurer, the special compensation fund, or any government program.

Subp. 3. Reporting requirements. The qualified rehabilitation consultant assigned to an employee must provide rehabilitation services with the following information regarding an employee's case for purposes of rehabilitation services' monitoring of services and overall record keeping requirements. This subpart shall not apply to the reinsurance association, unless the reinsurance association has assumed primary responsibility for the claim pursuant to Minnesota Statutes, section 79.35, clause (g).

The qualified rehabilitation consultant shall provide rehabilitation services with an initial evaluation narrative report concerning the employee which will include the following information in summary fashion: medical status, vocational history, educational history, social and economic status, transferable skills, employment barriers, and recommendations.

Thereafter, the qualified rehabilitation consultant shall provide additional narrative progress reports summaries, if ~~needed~~ requested by the commissioner, of up to one page.

The qualified rehabilitation consultant shall send, attached to the narrative progress ~~reports summaries~~, completed copies of all vendor reports, medical, psychological, and vocational reports regarding an employee's case.

~~The qualified rehabilitation consultant shall also forward to rehabilitation services copies of completed reports prepared for other parties by him or her.~~

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PROPOSED RULES

The requesting party shall pay for all costs incurred by a rehabilitation provider in creating a report not required or requested by rehabilitation services.

Subp. 4. Estimated goal dates and costs. When developing the rehabilitation plan and progress reports when submitting required rehabilitation reports, required progress records, or other documents, the qualified rehabilitation consultant must make a professional judgment regarding any projected goal date and estimated costs. This shall include projected goal date and estimated costs submitted by any vendor. When the date or cost has been exceeded, the qualified rehabilitation consultant and any rehabilitation vendor must submit to rehabilitation services an itemized billing and no more than a one page rationale regarding continued provision of rehabilitation services. The rehabilitation provider is to submit the rationale to the employer/insurer. If the parties are unable to agree about continued rehabilitation services, any party may request a review by rehabilitation services.

Subp. 5. and 6. [Unchanged.]

5220.1910 APPROVED CLAIMS HANDLER.

Subpart 1. Qualifications. A person meeting all the requirements of this subpart is eligible for certification as an approved claims handler.

A. at least one year of experience handling Minnesota workers' compensation claims and making decisions on acceptance or denial of Minnesota workers' compensation claims; and

B. completion of a training session conducted by the commissioner; and

C. the person is not a rehabilitation provider as defined in part 5220.0100, subpart 9a.

Subp. 2. Procedure for obtaining approval. The employer, insurer, or adjusting company shall certify to the commissioner that the claims handler meets the requirements of this part. Approval is effective upon the commissioner's receipt of the certification. The approval remains in effect until the claims handler leaves the employ of the certifying entity, or the certification is withdrawn by the certifying entity. At the request of the commissioner, the certifying entity must consult with the commissioner regarding withdrawal of certification. The commissioner may withdraw approval if the claims handler does not meet the requirements of subpart 1.

REPEALER. Minnesota Rules, part 5220.0200 is repealed.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *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 strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after 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 emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Commerce

Adopted Rules Regulating Self-Insurers Under the Minnesota No-Fault Automobile Insurance Act

The rules proposed and published at *State Register*, Volume 8, Number 44, pages 2331-2334, April 30, 1984 (8 S.R. 2331) are adopted as proposed.

Department of Energy and Economic Development

Adopted Emergency Rules Governing Allocation of Industrial Development Bond Issuance Authority

The rule proposed and published at *State Register*, Volume 9, Number 7, pages 315-316, August 13, 1984 (9 S.R. 315) is adopted with the following modifications:

Emergency Rule as Adopted

8300.2400 [Emergency] ALLOCATION OF INDUSTRIAL DEVELOPMENT BOND ISSUANCE AUTHORITY.

Subpart 1. Definitions. The definitions in Laws of Minnesota 1984, chapter 582, section 13 and in this subpart apply to subparts 2 and 3:

C. "Commissioner" means the commissioner of the Department of Energy and Economic Development ~~Authority~~ or a designee.

Department of Human Services Bureau of Income Maintenance

Extension of Adopted Emergency Rules Governing the Certification of Admission Programs for Inpatient Hospitals Participating in the Medical Assistance Program

Notice of Continuation of Emergency Rules

Notice is hereby given that the above-entitled emergency rules (12 MCAR §§ 2.0481-2.0484) which were effective on May 3, 1984, and published in the *State Register* on May 28, 1984, (8 SR 2571), are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled emergency rules will be in effect until April 28, 1985 unless they are superseded by permanent rules or legislative action.

Department of Human Services Bureau of Mental Health

Extension of Adopted Emergency Rules Governing Semi-Independent Living Services for Mentally Retarded Persons

Notice of Continuation of Emergency Rules

Notice is hereby given that the above-entitled emergency rules (8 MCAR § 1.7001), which were effective on June 21, 1984, and published in the *State Register* on July 9, 1984 (9 SR 112), are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled emergency rules will be in effect until June 16, 1985 unless they are superseded by permanent rules or legislative action.

Bureau of Mediation Services

Adopted Rules Governing Questions of Representation; Fair Share Fees and Public Employee Dispute Resolution

The rules proposed and published at *State Register*, Volume 8, Number 47, pages 2447-2464, May 21, 1984 (8 S.R. 2447) are adopted with the following modifications:

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ADOPTED RULES

Rules as Adopted

5510.0110 APPLICATION.

Parts 5510.0110 to 5510.2310 apply to proceedings before the director involving matters of representation and fair share fee challenges under the Public Employment Labor Relations Act.

5510.0210 POLICY.

Parts 5510.0110 to 5510.2310 shall be liberally construed to accomplish the purposes and provisions of the act. Any requirements of these parts may be waived by agreement of all parties and the approval of the director.

The director shall grant approval unless the director determines that waiving the particular requirements in question is likely to result in significant harm to the general public or to specific nonparties or is likely to result in substantial impairment or frustration of the intent or purposes of the act.

The joint request for waiver shall be made in writing to the director in a timely fashion. The director shall set forth in writing the reasons for granting or denying the waiver.

5510.0310 DEFINITIONS.

Subp. 14. Holiday or legal holiday. “Holiday” or “legal holiday” means those dates designated by Minnesota Statutes, section 645.44, subdivision 5, as holidays for the state of Minnesota.

Subp. ~~14~~ 15. Open-window period. “Open-window period” means the following period of time prior to the expiration of a labor contract:

Subp. ~~15~~ 16. Party. “Party” means any exclusive representative, employee organization, or public employer recognized by the director whose legal rights, duties, and privileges will be directly determined in the proceedings; or any public employee who has filed a fair share fee challenge or decertification petition.

Subp. ~~16~~ 17. Petition. “Petition” means a written document containing information required by the director.

Subp. ~~17~~ 18. Representation petition. “Representation petition” means a petition filed by an employee organization stating that the exclusive representative no longer represents the majority of employees in an appropriate unit; and at least 30 percent of the employees in the appropriate unit wish to be represented by the petitioner.

Subp. ~~18~~ 19. Service or serve. “Service” or “serve” means service of a document required by parts 5510.0110 to 5510.2310, in person or by the United States Postal Service, postage prepaid and addressed to the bureau or a party at its last known address, unless some other manner of service is required by law. Unless otherwise provided by these parts, service upon the director or a party is effective upon receipt.

Subp. ~~19~~ 20. Showing of interest or interest. “Showing of interest” or “interest” means the submission of authorization signatures in the form of individual authorization cards to show support for a petition filed with the director.

Subp. ~~20~~ 21. Time. “Time” means, in computing any period of time prescribed or allowed by parts 5510.0110 to 5510.2310, that the day or any act or event on which the designated period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or legal holiday.

Subp. ~~21~~ 22. Transfer of exclusive representative status. “Transfer of exclusive representative status” means the transfer of the rights and obligations of an exclusive representative to another employee organization.

Subp. ~~22~~ 23. Unfair election practice. “Unfair election practice” means any prohibition defined in part 5510.2100, or a violation of an election order issued by the director, and any unfair practice as defined by Minnesota Statutes, section 179A.13, committed by an employer or its agents or an employee organization or its agents, or an employee, which affects the result of a certification, representation, or decertification election.

Subp. ~~23~~ 24. Unit clarification or clarification petition. “Unit clarification” or “clarification petition” means a determination of the director regarding an appropriate unit involving:

5510.0410 FILING PETITION.

Subpart 1. Conditions. To file a petition an employee organization or exclusive representative must:

A. have a written constitution or bylaws that provides for:

(2) filling of vacancies in elected offices; and

5510.0510 LIMITATION ON FILING PETITION.

Subp. 5. Fair share fee challenge. A petition challenging the fair share fee assessment must be received by the director no

later than 30 days after receipt of the written notice of assessment by the petitioner and must be accompanied by the proper filing fee.

5510.0710 CERTIFICATION, REPRESENTATION, AND DECERTIFICATION PETITIONS.

Subpart 1. Filing of petition. An employee organization or an employer may file a certification, representation, or decertification petition. A petition for certification, representation, or decertification must include:

5510.0810 AUTHORIZATION SIGNATURES.

Subp. 2. Valid authorization signatures. Authorization signatures submitted in accordance with Minnesota Statutes, section 179A.12, must be in the form of individual authorization cards which include:

5510.0910 UNIT CLARIFICATION PETITION.

Subpart 1. Filing of petition. An exclusive representative or an employer may file a unit clarification petition. A petition for unit clarification must include:

5510.1010 AMENDMENT OF CERTIFICATION PETITION.

Subpart 1. Filing petition. An exclusive representative or an employer may file an amendment petition. A petition for amendment of certification must include:

5510.1110 CHALLENGE TO AFFILIATION PETITION.

Subpart 1. Filing petition. An employee, employer, or employee organization may file a petition challenging the affiliation of an employee organization in accordance with Minnesota Statutes, section 179A.06, subdivision 2. A petition challenging affiliation under Minnesota Statutes, section 179A.06, subdivision 2 must include:

Subp. 3. Status of contract. Upon the withdrawal of the status of exclusive representative pursuant to a determination of improper affiliation, any labor contract within the meaning of Minnesota Statutes, section 179A.20, which covers employees of the unit for which withdrawal was ordered and to which the involved organization is a party is null and void as of the date of the director's determination.

5510.1210 TRANSFER OF EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. Filing petition. An exclusive representative may file a transfer petition. A petition transferring exclusive representative status must include:

Subp. 7. Order. Based on the record of hearing or an investigation, the director may:

5510.1310 ABANDONMENT OF EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. Filing petition. An exclusive representative may file an abandonment petition subject to parts 5510.0110 to 5510.2310. A petition abandoning the status of exclusive representative must contain a statement that clearly indicates that the exclusive representative no longer wishes to represent the appropriate unit at the expiration of the contract or the one-year certification period.

5510.1410 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. Advance notice of fair share fee assessment. Notice of the fair share fee must be provided. The exclusive representative must provide written notice of the amount of the fair share fee assessment to the director, the employer, and each employee assessed:

- A- upon initial implementation of the fair share fee assessment;
- B- to employees hired after the original notice has been issued; and
- C- upon a change in the amount of the fair share fee assessment.

Subp. 2. Notice of assessment. ~~The exclusive representative must provide advance written notice of the amount of the fair share fee assessment to the director, the employer, and each employee assessed.~~ The notice must contain:

Subp. 3 2. Employer provided information. The employer shall provide to the exclusive representative the name, home

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.

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mailing address, and social security number or other necessary payroll deduction information for all employees in the appropriate unit. Questions of necessary payroll deduction information shall be determined by the director.

Subp. 4 3. Mailing notice. The notice of the fair share fee assessment shall be mailed by the exclusive representative to the employee's last known home mailing address provided by the employer.

Subp. 5 4. Assessment. On the effective day of the fair share fee assessment and thereafter, the amount of the assessment shall be deducted by the employer from the pay of the employee. The amounts deducted must be held in escrow by the employer and not remitted to the exclusive representative for a period of 30 calendar days from the ~~effective date of the deduction~~ notice is provided under subpart 1.

If at the end of the 30-day period an employee has not challenged the fair share fee assessment, assessments shall be remitted to the exclusive representative without the need for escrow by the employer.

If an employee challenges the fair share fee assessment, the assessment for that employee shall continue to be deducted, but must be held in escrow by the employer until otherwise ordered by the director.

5510.1510 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. Filing petition. ~~An employee being assessed a fair share fee or an employee who has been notified of a fair share fee assessment may file a fair share fee challenge petition.~~ A petition challenging a fair share fee assessment may be filed by individual employees and must include:

Subp. 2. Filing petition. A petition challenging the fair share fee assessment must be filed in person or by mail with the director. ~~The petition must be received by the director no later than 30 days after receipt by the employee of the notice of assessment.~~

Subp. 3. Filing fee. The challenge petition must be accompanied by a certified check or other guaranteed form of payment in the amount of \$10, made payable in the proper amount to "Treasurer, State of Minnesota." A challenge petition filed without the proper filing fee shall be returned to the individual filing the petition.

Subp. 5. Service on exclusive representative and employer. A copy of the challenge petition shall be served by the petitioner upon the exclusive representative and the employer, in person or by mail, within the 30-calendar-day challenge period. A petition not timely served shall be dismissed.

5510.1710 FAIR SHARE FEE APPLICATION.

The determination of the validity of the amount of the fair share fee assessment shall apply from the effective date of the assessment being challenged to all employees in an appropriate unit who have an employment relationship which is similar to the petitioner, and who were assessed the same fair share fee.

Fair share fee determinations based on lack of proper notice ~~applies apply~~ only to employees who have filed ~~or joined~~ a challenge.

5510.1910 HEARINGS OR INVESTIGATIONS.

Subp. 4. Procedures. Upon receipt of a petition, the director shall hold hearings or conduct an investigation as required. Following receipt of a petition, the director may issue ~~a cease and desist~~ an order prohibiting negotiations and maintaining the status quo, in part or in whole, of the employees' terms and conditions of employment.

Subp. 10. The record. The director shall maintain the record in each case. The record shall contain:

E. an audiomagnetic or stenographic recording of the hearing.

The director ~~must~~ shall retain the audiomagnetic or stenographic recording of the hearing for a period not less than 60 calendar days after the issuance of his order. ~~The record shall be transcribed, in whole or in part, at the request of any party to the hearing, provided the request is timely and the party requesting the transcript pays a charge per page as established by the director.~~ In the event that an appeal of the director's order is initiated by any party to the hearing on the matter, the record shall be transcribed, in whole or in part, at the request of any party, provided the request is timely and the party requesting the transcript pays a charge per page, as established by the director, for transcript production and for duplication of other requested or necessary parts of the record. In the event a party to a hearing before the director requests that all or part of the record be transcribed absent a pending appeal from or prior to the issuance of the director's order in such matter, the director shall require the party to pay the full costs associated with the production of the transcript. In all cases, the director shall maintain original documents as a part of bureau records and parties requesting copies of the record for any purpose shall be required to pay a charge per page, as established by the director.

Subp. 15. Order pending appeal. Any order appealed to the board shall continue in effect unless ordered otherwise by the board or unless stayed by the director upon request of one or more parties.

5510.2010 ELECTIONS.

Subp. 3. Order. An election order shall be mailed to all parties at least ten calendar days prior to the date of the on-site election or the date of the tabulation for a mail ballot election. The election order shall:

- H. identify the date of mailing ballots in a mail ballot election;
- I. include any other conditions which are necessary for the conduct of a fair election; and
- J. provide for posting by the employer of the election order and attachments.

Subp. 5. Correction of voter eligibility list.

C. Names shall be deleted from the voter eligibility list based on:

- (1) transfer, promotion, or demotion of an employee out of the unit which is not prohibited by ~~the cease and desist~~ an order maintaining the status quo;

Subp. 9. Election procedures. An election shall be held on the premises where the voters are employed during hours the director determines, unless the director determines that the election shall be held at another location, by mail ballot, or by a combination of on-site and mail balloting.

The parties to an on-site election may designate one observer who is permitted to be present at each polling location during the casting of the ballots and their tabulation. The director may ~~require~~ allow attendance of more than one observer per party.

The parties to a mail ballot election may each designate one observer who is permitted to be present during the tabulation of the ballots. The director may ~~require~~ allow attendance of more than one observer per party.

The role of the observer is to identify employees eligible to vote and the observers are subject to orders of the director.

Subp. 10. Marking ballot. The ballot shall be marked in accordance with the instructions on the ballot. A ballot which is defaced or identifies the voter shall be voided. When a voter inadvertently spoils a ballot, the voter shall immediately return the ballot to the director who shall destroy the spoiled ballot and provide another ballot to the voter.

When a voter states that, because of physical disability or inability to read or write, the voter cannot mark the ballot the director shall assist the voter privately in marking the ballot.

A voter who has been mailed an absentee ballot by the director shall not be permitted to vote at the on-site election under any circumstances.

Subp. 13. Tabulation of election results. Upon the conclusion of the election, the director shall prepare and sign a tabulation of election results. A copy of the tabulation of election results shall be furnished to each ~~party~~ observer present. Following the completion of the tabulation, the director shall retain all election ballots and materials for at least 60 calendar days.

5510.2110 UNFAIR ELECTION PRACTICES.

Subpart 1. Definition of charges. The following acts are prohibited and constitute unfair election practices if committed by an employer or its agents, an employee organization or its agents, or an employee:

- D. committing an unfair practice as defined by Minnesota Statutes, section 179A.13; or
- E. ~~violation of~~ violating an election order.

Subp. 2. Filing charges. A party to an election may file a charge of an unfair election practice with the director. A copy of the charge shall be served by the charging party on all other parties to the election. A charge shall be filed within ten calendar days from the date of the ~~tabulation of ballots~~ certification of election results. The charge shall be in writing, be signed by the charging party, and state the name and address of the party against whom made. The charge shall specify the alleged unfair election practice and the facts supporting the charge.

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

ADOPTED RULES

~~Subp. 3. Charge filed prior to election.~~ If the alleged unfair election practice appears to materially affect the results of an election to be held, the director may:

- ~~A. postpone the election until the charge has been heard or investigated;~~
- ~~B. hold the election and conduct a hearing or an investigation at a later date to determine whether the election should be voided; or~~
- ~~C. hold the election and impound the ballots until a hearing or an investigation has been completed.~~

~~Subp. 4. Charge filed after election.~~ If a charge of an unfair election practice is filed after an election has been held, the director may:

Subp. 5-3. Determination. Based on a hearing or investigation, the director shall issue an order. If an unfair election practice is established, the election may be voided and a new election may be ordered.

5510.2510 POLICY.

Parts 5510.2410 to 5510.3210 must be liberally construed to effectuate the purposes and provisions of the act. Any requirements of parts 5510.2410 to 5510.3210 may be waived by agreement of all parties and the approval of the director.

The director shall grant approval unless the director determines that waiving the particular requirements in question is likely to result in significant harm to the general public or to specific nonparties or is likely to result in substantial impairment or frustration of the intent or purposes of the act.

The joint request for waiver shall be made in writing to the director in a timely fashion. The director shall set forth in writing the reasons for granting or denying the waiver.

5510.2710 NEGOTIATION NOTICE.

A written notification of the desire to meet and negotiate an original contract, renewal of a contract, or a reopener of a contract must be served on the other party and the director. The written notice shall include:

- A. the name, address, and phone number of the exclusive representative;
- B. the name, address, and phone number of the exclusive representative's representative;
- C. the name, address, and phone number of the employer;
- D. the name, address, and phone number of the employer's representative;
- E. a description of the appropriate unit for which such notice is being given;
- F. the date of expiration of the current labor contract, if any;
- G. the total number of employees employed by the employer;
- H. the number of employees in the appropriate unit covered by the notice;
- I. the date the notice is signed; and
- J. the name and title of the person signing the notice.

5510.2910 RENEWAL OF EXISTING CONTRACT; MEDIATION PERIOD, IMPASSE, ARBITRATION, AND STRIKE NOTICE FOR PUBLIC EMPLOYEES EXCEPT CONFIDENTIAL, ESSENTIAL, MANAGERIAL, SUPERVISORY EMPLOYEES, AND PRINCIPALS AND ASSISTANT PRINCIPALS.

Subp. 5. Certification of impasse to board. Following receipt of a joint request to arbitrate or receipt of an acceptance of a single-party offer to arbitrate, the director ~~must~~ shall notify the board of the existence of an impasse. The notice of impasse must contain a statement that the negotiations between the parties are at impasse, a list of the issues determined by the director to be at impasse, and any final positions submitted by the parties.

B. If the final offer arbitration option is agreed to, the parties may not withdraw or amend the final positions filed with the director unless otherwise agreed to in writing by the parties. The agreement may include, but is not limited to an agreement:

- (3) to amend the submitted final positions on any or all items certified to be at impasse. ~~An~~ Such agreement must specify the conditions and manner in which the final positions are to be amended.

Subp. 7. Notice of intent to strike.

E. The director ~~must~~ shall notify the parties in writing of the date of any strike notice, the date upon which the right to strike matures, and the date upon which the right to strike expires.

5510.3010 RENEWAL OF EXISTING CONTRACT; MEDIATION, IMPASSE AND ARBITRATION FOR CONFIDENTIAL, ESSENTIAL, SUPERVISORY EMPLOYEES, AND FOR PRINCIPALS AND ASSISTANT PRINCIPALS.

Subp. 2. Impasse. During mediation of the dispute, the parties, individually or jointly, may request the director to declare the negotiations at impasse. If the director determines that further mediation efforts would not resolve the dispute, he shall declare the negotiations to be at an impasse and notify the parties in writing of that determination. The notice by the director ~~must~~ shall include:

Subp. 4. Final positions. If the final offer arbitration option is agreed to, the parties may not withdraw or amend the final positions filed with the director unless otherwise agreed to in writing by the parties. The agreement to amend may include, but is not limited to, an agreement:

C. to amend the submitted final positions on any or all items certified to be at impasse. ~~A#~~ Such agreement must specify the conditions and manner in which the final positions are to be amended.

5510.3110 NEW OR DIFFERENT EXCLUSIVE REPRESENTATIVE; MEDIATION, IMPASSE, ARBITRATION, AND STRIKE NOTICE FOR PUBLIC EMPLOYEES.

Subp. 3. Mediation period. The 60-day or 45-day mediation period provided under part 5510.2910 commences on the day following certification of a new or different exclusive representative or resolution of a question of representation by the director receipt by the bureau of a petition for mediation or the day following issuance of notice that the director has initiated mediation.

OFFICIAL NOTICES

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

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

**Department of Agriculture
Soil and Water Conservation Board****Notice of Meeting Cancellation**

The Minnesota Soil and Water Conservation Board has cancelled their regular monthly meeting scheduled for October 9, 1984.

The Board will resume their regular monthly schedule November 13, 1984.

**Department of Energy and Economic Development
Financial Management Division****Notice of Availability of Issuance Authority in Competitive Pool**

Pursuant to Minn. Laws 1984, ch. 582 § 17, subd. 2, to be codified as 474.20, the Department gives notice that the amount of industrial development bond issuance authority available in the competitive pool as of October 5, 1984, is \$81,753,118.00, and

OFFICIAL NOTICES

will be available to qualifying industrial development bond issuers submitting qualification criteria applications by October 20, 1984. Pursuant to Minn. Laws 1984, ch. 582 § 16, to be codified as 474.19, nonentitlement issuers must submit an application, a preliminary resolution, an application deposit and any other supporting documents required.

Balance of Competitive Pool on September 5, 1984—\$86,033,118.00

Add:

Unused Entitlement Allocations as of August 31, 1984:	\$	N/A
Returned Allocations:	\$	50,000.00
Total Pool Available as of October 5, 1984:		<u>\$86,083,118.00</u>

Allocations awarded from the competitive pool during the month ending October 5, 1984, are:

<u>Issuer</u>	<u>Project</u>	<u>No. of Points</u>	<u>Amount</u>
Albertville	Howard Larson (Radiation Products Design)	4	380,000
Circle Pines	Centennial Bank	5	950,000
St. Charles	No. Star Foods, Inc.	11	1,000,000
Waseca	Waseca Mall Asso.	8	2,000,000
Total Allocations Awarded:			<u>\$ 4,330,000</u>
Amount of Issuance Authority Available as of October 5, 1984			<u>\$81,753,118</u>

Department of Labor and Industry Prevailing Wage Division

Notice of Adjustment to Certified Prevailing Wage Rates for Carpenters

The certified prevailing wage rates for carpenters have been updated in Cottonwood, Jackson, Lincoln, Lyon, Martin, Murray, Nobles, Rock and Watonwan counties effective October 1, 1984 for Commercial construction.

Copies of the adjusted prevailing wage determinations may be obtained by contacting the State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155.

Steve Keefe, Commissioner
Department of Labor & Industry

Metropolitan Waste Control Commission

Applications Sought for Deputy Chief Administrator

The Metropolitan Waste Control Commission is seeking applicants for the position of Deputy Chief Administrator. This immediate opening requires a minimum of ten years experience in an administrative or supervisory capacity with a proven working knowledge of local and/or state government. Background in government financial and budget systems, human resource development, and long range planning techniques is preferred. An understanding of technical and scientific subject matter is desirable but not required. Most importantly a demonstrated skill in written and oral communications is necessary. The successful applicant will be responsible for the daily operation of this metropolitan agency and must have the ability to direct a large work force. Qualifications require a bachelor's degree in public/business administration or a technical or scientific field combined with administrative experience. Please send resumes to Peter Fleming, Personnel Manger, Metropolitan Waste Control Commission, 350 Metro Square Building, St. Paul, MN, 55101 by October 19, 1984. We are an equal opportunity employer.

Department of Transportation

Petition of Benton County for a Variance from State Aid Standards for Inslopes

Notice is hereby given that the County Board of Benton County has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a base and surfacing project on CSAH 22 from CSAH 7 to CSAH 9.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9910 adopted pursuant to Minnesota Statutes Chapters 161 and 162, so as to permit an inslope of 3:1 instead of the required 4:1.

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.

September 25, 1984

Robert McDonald
for:
Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of Orono for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the City Council of Orono has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a resurfacing project on MSAS 101 (Willow Drive) from Fox Street to B.N.R.R. Bridge.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9914 adopted pursuant to Minnesota Statutes Chapters 161 and 162, so as to permit a design speed of 30 instead of the required design speed of 40 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.

September 27, 1984

Robert McDonald
for:
Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of St. Paul for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of St. Paul has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a reconstruction project on CSAH 42 (Ford Parkway) from Howell Street to Mississippi River Boulevard.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapters 161 and 162, so as to permit a street width of 59 feet with a 9-foot median instead of 63 feet with a 9-foot median, and no parking lanes, and also 73 feet with a 9-foot median instead of 85 feet with a 9-foot median and two parking lanes.

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.

September 27, 1984

Robert McDonald
for:
Richard P. Braun
Commissioner of Transportation

OFFICIAL NOTICES

Water Resources Board

Notice of Cancellation of Regular Board Meeting

The regular meeting of the Water Resources Board scheduled for October 12, 1984 has been cancelled.

The Water Resources Board will resume its regular meeting schedule on November 9, 1984.

Mel Sinn
Executive Director

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.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
27-149-42793	Purchase of Photocopy Machine	Northland Community College	Thief River Falls	Contact buyer
29-000-36638, 2534	Snowmobile Safety Laws, Rules and Regulations	Natural Resources	St. Paul	Contact buyer
29-004-05729	Treated Lumber	Natural Resources— Trails	St. Paul	Contact buyer
43-000-05720, etc.	Lease/Purchase Grooming Vehicles	Iron Range Resources & Rehabilitation Board	Biwabik	Contact buyer
26-071-14657	Towers	Mankato University	Mankato	Contact buyer
07-700-32172	Winter Overcoats	Public Safety	Eagan	Contact buyer
Contract Sch. 4	Triumph Mower Repair Parts	Various	Various	\$5,000-\$10,000
	Meat & Meat Products for the Month of November 1984	Various	Various	Contact buyer
02-310-13443	Steam Traps	St. Cloud University	St. Cloud	Contact buyer
42-703-07377, 42-206-07435	Open Space Work Stations	Labor & Industry	St. Paul	Contact buyer
79-000-44509	Open Space Work Stations	Transportation	St. Paul	Contact buyer
21-200-08632, 2389	Unemployment Insurance Benefits Claim Folder	Emergency Services	St. Paul	Contact buyer

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Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
02-511-41470, 2353	Employee's Bi-Weekly Time Report	Central Stores	St. Paul	Contact buyer
07-300-32082	Automatic Film Processor	Public Safety	St. Paul	Contact buyer
27-157-42553	Music Equipment	Inver Hills	Inver Grove Heights	Contact buyer
55-000-89746	Talking Cash Register	Community College	St. Paul	Contact buyer
55-000-90009-0007	Vending Machines	Services for the Blind	Fridley	Contact buyer
55-201-06062	Repair Hot Water Heater	Cambridge State Hospital	Cambridge	Contact buyer
55-000-89848, 2498	Printed Envelopes	Human Services	St. Paul	Contact buyer
78-620-20489	Washer/Extractor	MN Correctional Facility	Stillwater	Contact buyer
55-000-89864, 2982	AFDC Notice of Action	Human Services	St. Paul	Contact buyer
26-073-16847	Elevator Maintenance Service	St. Cloud State University	St. Cloud	Contact buyer
04-111-25113	Truck	Agriculture	St. Paul	Contact buyer
02-410-43871	Cable	Administration—Information Systems Bureau	St. Paul	Contact buyer
07-500-31998	Radio Communication Equipment	Public Safety	Various	Contact buyer
55-000-89858, 2984	Eligibility Information	Human Services	St. Paul	Contact buyer
27-156-43459	Purchase of Software, Terminals, Memory and Communication Devices	Normandale Community College	Bloomington	Contact buyer
78-550-04694	Truck	MN Correctional Facility	Lino Lakes	Contact buyer
07-300-31965	Electrophoresis Supplies	Bureau of Criminal Apprehension	St. Paul	Contact buyer
79-000-44230	Controller Parts	Transportation	St. Paul	Contact buyer
79-050-15821	Traffic Controller	Transportation	St. Paul	Contact buyer
29-007-32711	Sugar Pine	Natural Resources	Grand Rapids	Contact buyer
29-000-36299	Lumber	Natural Resources	Various	Contact buyer
78-630-06193	Dishes	MN Correctional Facility	Same	Contact buyer
21-200-08764	Parts for Honeywell Security System	Economic Security	St. Paul	Contact buyer
55-201-06062	Addendum # 1 Hot Water Heater	Cambridge State Hospital	Cambridge	Contact buyer

Contact the receptionist at 296-6152 for referral to specific buyers.

Department of Energy and Economic Development Governor's Council on Rural Development

Notice of Request for Proposals for 1986 and 1987 Minnesota Rural Youth Institute

The Governor's Council on Rural Development is requesting proposals from Minnesota institutions and organizations interested in conducting the annual Minnesota Youth Institutes to be held during the summers of 1986 and 1987.

The purpose of the Rural Youth Institute is to provide one week of intensive rural development leadership training to a minimum of 100 high school juniors and seniors from across the state. The Council is looking for innovative ideas for the Rural Youth Institute. Ideas to consider are hands-on experience, projects and demonstrations to be conducted. Active participation by youth will be an important element in determining the selection of the Rural Youth Institute host organization. The Governor's Council on Rural Development annually budgets \$30,000 for the purpose of co-sponsoring the

STATE CONTRACTS

Rural Youth Institute. A minimum of a twenty-five (25) percent cash or in kind match is required of the host organization. This local match may be secured from sources other than the host organization.

The deadline for notification of intent to submit a proposal is February 1, 1985. Final proposal deadline is March 15, 1985. Please refer questions and requests for proposal guidelines to:

Glynnis Jones
Governor's Council on Rural Development
900 American Center Building
150 E. Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-3546

Department of Energy and Economic Development Minnesota Racing Commission

Request for Proposals to Assess Feasibility of North Central Minnesota Horse Racing Track

The selection of an individual or business capable of assessing (herein after proposer), the feasibility of locating a horse racing track in North Central Minnesota.

I. INTRODUCTION

The Minnesota Racing Commission (MRC) is charged with: (1) promulgating rules regarding parimutuel horse racing in Minnesota, (2) awarding various classes of licenses in accordance with its rules and applicable law, and (3) regulating the horse racing industry. The Department of Energy and Economic Development is charged with studying and developing ways and means of promoting and encouraging economic development and tourism in Minnesota.

Before the MRC may issue a license to an applicant seeking to construct and operate a facility (Class A license) it must conclude that:

- A. Issuance of the license will not adversely affect the public health, welfare and safety;
- B. The racetrack will be operated in accordance with applicable laws and rules;
- C. Issuance of the license will not create a competitive situation that will adversely affect racing and the public interest; and
- D. The applicant is financially able to operate a licensed racetrack.

The statutes governing the MRC (Minnesota Statute Chapter 240) provide that only one Class A license may be issued in the seven-county metropolitan area but no such limitation exists regarding other areas in Minnesota. At present, the MRC has issued only the Class A license for the seven-county metropolitan area.

II. BACKGROUND OF THE MRC

The MRC was established in 1983 by Minn. Stat. Ch. 240. It is composed of nine citizen members. Staff services are provided by an Executive Secretary, Assistant Executive Secretary, and two other support staff.

III. PURPOSE

A study to determine the feasibility of locating a racetrack in North Central Minnesota will be undertaken. The Minnesota Department of Energy and Economic Development (DEED) will provide funding for the study and work with the Minnesota Racing Commission in selecting the proposer and directing the study. DEED and MRC believe it necessary to employ an experienced individual or business to assist in making a circumspect feasibility decision.

VI. PROPOSER RELATIONSHIPS

The selected individual or business will ultimately be reporting and accountable to the MRC as a whole and the Department of Energy and Economic Development. The proposer will work closely with DEED and MRC staff and will need to consult with business and community leaders in North Central Minnesota.

V. DUTIES OF THE PROPOSER

During the period of the proposer's contract with the MRC and DEED, the proposer shall, at a minimum:

- A. Develop a detailed methodology to assess the feasibility of locating a racing facility in North Central Minnesota;

B. Gather and consider all relevant data, including but not limited to, information regarding:

1. Demographics;
2. Infrastructure;
3. Environmental matters;
4. Community support;
5. Projected use of such a facility;
6. Impact on other industries in North Central Minnesota.

C. Utilize the methodology and data to prepare a documented, written report which must be submitted to the MRC by not later than December 31, 1984. The report must contain:

1. A thorough explanation of the methodology used and facts considered;
2. The proposer's recommendation regarding the feasibility of locating a racetrack in North Central Minnesota;
3. If the proposer recommends that a North Central Minnesota racing facility is feasible, the report must also specify:
 - a. The type of racing facility and type(s) of racing which are most feasible;
 - b. The most feasible location(s) for the racetrack;
 - c. A recommended timetable for construction and opening of the facility;
 - d. Why issuance of a license will not adversely affect the public health, welfare, and safety;
 - e. Why issuance of a license will not create a competitive situation that will adversely affect racing and the public interest;

4. Any other recommendations or data which the consultant deems relevant;

D. Meet with the MRC and the DEED staff at their request or meet with third parties at the request of the MRC or DEED staff;

E. Provide interim written or oral reports to the MRC and DEED staff at their request;

F. Make a formal oral report to the MRC and DEED regarding proposer's written feasibility report.

G. Responder may propose additional tasks or activities if they will substantially improve project results.

VI. PREPARATION OF PROPOSER'S PROPOSAL

The proposer's response to this request for a proposal shall be organized in the following manner:

A. A statement of the proposer's interpretation of the required duties;

B. A resume of the proposer or statement of firm's experience in the field of financial analysis; and resumes of staff that will actually be working on the project. There shall be no change in personnel assigned to the project without prior approval of the state director.

C. A detailed description of the time and cost estimates to fulfill the proposer's duties, with costs to be calculated on the basis of a stated hourly rate; not to exceed \$20,000.

D. A statement of any expected tasks or contributions by the State of Minnesota, including members of the MRC and its staff and DEED staff necessary to provide documents or other data for use by the proposer.

E. The proposer shall submit twelve (12) copies of the RFP response to the MRC at the address listed in Section VII of this RFP.

VII. PROJECT TIMETABLE

<u>Event</u>	<u>Date</u>
A. RFP issued to prospective proposers.	10/8/84
B. Proposer's proposals due. (Minnesota Racing Commission Suite 400, United Labor Centre, 312 Central Avenue Minneapolis, Minnesota 55414). NO PROPOSALS RECEIVED AFTER 4:30 P.M. OCTOBER 26, 1984, WILL BE CONSIDERED	10/26/84

STATE CONTRACTS

- | | |
|--|----------|
| C. MRC and DEED proposal evaluation and award. | 11/2/84 |
| D. Contract completed and executed. | 11/10/84 |
| E. Final report due to project director. | 12/31/84 |

VIII. INFORMATION CONTRACTS

The MRC and DEED exclusive agent for purposes of responding to proposer's inquiries regarding RFP requirements is:

Richard G. Evans
Executive Secretary
Suite 400, United Labor Centre
312 Central Avenue
Minneapolis, Minnesota 55414
Telephone: (612) 341-7555

The MRC and DEED shall not be bound by and proposers may not rely on information regarding RFP requirements obtained from other persons.

IX. PROPOSAL SELECTION

A. Nature of Procurement

This procurement is undertaken by the MRC pursuant to the provisions of Minn. Stat. § 16B.17 (1984). As such it is not governed by strict competitive bidding requirements frequently associated with the purchase of supplies and materials by the State.

Accordingly, the MRC and DEED shall select the proposer whose proposal demonstrates clear capability to best fulfill the purposes of the RFP in a cost-effective manner. The MRC and DEED reserves the right to accept or reject any and all proposals in whole or in part and to negotiate separately as necessary to serve the best interests of the State of Minnesota.

B. Selection Criteria

The evaluation of proposals will be based on:

1. The quality and completeness of the proposer's work plan as it relates to the prescribed duties.
2. The proposer's demonstrated knowledge and experience in the areas related to the project.
3. The proposer's ability as demonstrated by successful prior experience and current capacity to carry out the tasks outlined in this RFP.
4. The cost of the project.

X. ADDITIONAL PROPOSAL AND CONTRACT REQUIREMENTS

A. Duration of Offer

All proposals must indicate that they are valid for a minimum of thirty (30) calendar days.

B. Public Status of Proposals Submitted

Pursuant to Minnesota law, all proposals submitted in response to this RFP shall become the property of the State of Minnesota. Such proposals shall also constitute public records and shall be available for viewing and reproduction by any person.

C. Contractual Terms

The contract resulting from this procurement shall, in addition to terms negotiated by the parties, contain the terms and conditions set forth in State of Minnesota Form 1051, attached as Exhibit A.

Department of Human Services Chemical Dependency Program Division

Notice of Intent to Identify the Need for a Competitive Bid Process on Existing Grants

The Chemical Dependency Program Division (CDPD) of the Department of Human Services is considering the continuation of a grant award to the Minnesota Institute on Black Chemical Abuse in the areas of public attention and prevention.

The CDPD will open this grant to competitive selection if requested to do so by a qualified potential vendor. The potential vendor must demonstrate its capability to deliver an equal or superior service at a comparable cost.

Potential vendors should submit a letter outlining their qualifications to provide the services described to Lee Gartner, 4th Floor, Centennial Office Building, St. Paul, MN 55155 no later than the close of business (4:20PM) Monday October 29, 1984.

This grant is for prevention and public education activities in the Black communities of Minneapolis and St. Paul, to be delivered between January 1, 1985 and December 31, 1985. The grant award will be approximately \$40,500. Activities of this project include continuous support of organizations implementing the social policy project standards; increase by eight the number of organizations participating in the social policy project; provide or facilitate 120 educational presentations; coordinate and provide information booths at 13 community events; and provide training and planning assistance to five community groups engaged in developing prevention projects.

The grantee will also be expected to augment these prevention efforts with those funded by other sources and to coordinate and cooperate with other prevention and community resources.

Lawyer Trust Account Board

Notice of Grant Cycle, January 1, 1985 to June 30, 1985

The Minnesota Supreme Court has established a program to use the interest on lawyer trust accounts to improve the delivery of legal services to the poor, to promote the development of law-related education for the public, and to develop programs to enhance the administration of justice.

The Lawyer Trust Account Board has announced a grant program to distribute funds to projects in any of the three program areas. The Board will support not only traditional approaches, but will encourage projects that show innovative approaches to recognized needs throughout the state. The Board is soliciting proposals. For application information, contact the Executive Director, 300 Legal Education Center, 40 North Milton Street, St. Paul, MN 55104. The application deadline is October 31, 1984.

August 27, 1984

City of Mankato

Request for Proposals for Consultant for Pulse Transit Center Feasibility Study

Notice is hereby given that the City of Mankato is requesting proposals for consulting services related to a pulse transit center feasibility study. Copies of the Request for Proposals are available from the office of the City of Mankato Public Works Director, 202 East Jackson Street, Mankato, Minnesota 56001.

All proposals must be submitted in accordance with the requirements set forth in the RFP, and must be received in the office of the City Clerk, 202 East Jackson Street, Mankato, Minnesota, 56001 at or before 12:00 noon, Mankato time, December 18, 1984.

The scope of the consultant's work includes determining the economic, sociological and transportation impact and viability of a pulse transit center in Mankato. Specifically, the consultants must:

1. Identify community and regional goals and criteria related to the pulse transit center construction and operation;
2. select the pulse transit center site;
3. complete preliminary pulse transit site design work; and
4. present a construction and operational implementation schedule

The City is extremely interested in actively soliciting and involving community input in the formulation of the feasibility study. Consequently, the consultant will be required to involve business representatives, the general public, elected officials and staff from the City in all phases of the consultant's feasibility study formulation.

The successful proposer will be required to comply with all Equal Opportunity Rules and Regulations.

The City of Mankato hereby notifies all proposers that any contract entered into pursuant to this Request for Proposals, advertisement, or solicitation, that minorities, women or other disadvantaged business enterprises will be afforded full opportunity to submit proposals and will not be subject to discrimination on the basis of race, color, creed, religion, national origin, disability, sex or status regarding public assistance.

STATE CONTRACTS

The City of Mankato reserves the right to postpone, accept or reject any and all proposals and to waive any informality in the R.F.P. process as the City of Mankato deems in its best interest.

Proposers are fully responsible for delivery of proposals. Reliance upon mail or public carries is at the proposer's risk. Late proposals will not be considered.

William A. Bassett
City Manager
City of Mankato

Metropolitan Council

Request for Proposals (RFP) for Landfill Capacity Determination

I. INTRODUCTION

The Metropolitan Council solicits proposals for entering into a contract for aerial photography, topographic mapping and volume computations in order to determine remaining capacities of the region's eight operating mixed municipal solid waste landfills.

Six copies of the proposal should be submitted to the Metropolitan Council, Environmental Planning Department, Suite 300, Seventh and Robert Sts., St. Paul, MN 55101. Attention: Craig Skone.

The Council, by this Request for Proposal, does not promise to accept the lowest, or any other, proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualifications and experience of any proposer, to reject any provision in any proposal, to obtain new proposals, or to proceed to do the work otherwise. All proposals received on or before 4 p.m., Oct. 19, 1984 will be considered by the Council. In the event a proposal is accepted, the Council will notify the successful proposer in writing within 10 days following its consideration of the proposal.

The Council hereby notifies all bidders that businesses owned and controlled by minorities or women will be afforded maximum feasible opportunity to submit bids and/or proposals and will not be subjected to discrimination on the basis of race, color, sex, age, religion, ancestry, handicap, public assistance status, marital status, national origin, or political affiliation.

The requested services will be funded solely by the Council.

Proposals should include the following representation signed by an authorized contracting officer. The representation may be made on the front of the proposal or in a transmittal letter.

This proposal constitutes an offer by the undersigned to enter into a contract to perform the described services for the compensations specified herein and containing the terms and conditions in the standard Council contract for consultant services.

Contents of the proposal would include the following:

1. Description of proposed services and products;
2. List of photogrammetric equipment available for plotting and scale consistency.
3. Proposed period of performance;
4. Requested compensation for proposed services; and
5. Statement of commitment to utilize minority business enterprises in the performance of the contract.

The following material should be in appendices or a separate document;

1. Related experience;
2. Qualifications of key personnel;
3. Staff complement by race and sex and utilization analysis of minority and women consultants including percentage goals for the dollar value of work to be awarded minority business enterprises; and
4. Procedures to ensure that minority business enterprises will have an equitable opportunity to compete for subcontracts.

Proposals not sufficiently detailed or in unacceptable form may be returned for completion, or may be rejected by the Council.

II. REQUESTED SERVICES

A. Background

The capacity remaining for utilization at mixed municipal solid waste landfills in the Twin Cities Area is currently estimated using data from landfill operators, the MPCA, counties and others. Information is not coordinated for a single point in time. Some data is contradictory.

Accurate estimates of remaining capacity will be a critical determinant for the Council in specifying the amount of additional capacity needed for the region's waste management system, the timing and staging of future facility development. The purpose of this RFP is to provide for a new common, accurate data base.

B. Consultant Tasks

The consultant will provide photogrammetric services and analysis of the remaining capacity of the eight municipal solid waste landfills operating in the Twin Cities Area: Anoka, Burnsville, Dakhue, Flying Cloud, Freeway, Louisville, Pine Bend, and Wood Lake.

The consultant will take and prepare aerial photographs of each landfill at a 1" = 50' or 1" = 100' scale, digitize and compile planimetric detail, plot topographic maps with a two-foot contour interval, digitize the final grade of each of the landfills (maps to be furnished by the Council) and compute remaining landfill capacity. Remaining capacity computations will be based on the difference between final Minnesota Pollution Control Agency permitted surface configurations and the consultant's photogrammetric determination of existing surface configurations.

Arrangements for ground control needed to provide the above services will primarily be the responsibility of the consultant.

III. SELECTION CRITERIA

The following selection criteria are included in this RFP for reference by the consultant in preparing proposals.

- A. Specialized experience and professional competence of the respondent and its personnel (including joint venture or association subcontract) as demonstrated in the proposal and interview if necessary;
- B. The conceptual and technical approach to conduct of the study;
- C. Capacity of the respondent to perform the work within the time limitations, taking into consideration the current and planned workload of the respondent;
- D. Past record of performance on contracts with the grantee or with others, including such factors as control of costs, quality of work, and ability to meet schedules;
- E. Special consideration for small and minority businesses; and
- F. Avoidance of personal and organization conflicts of interest prohibited under state and local law.

IV. REQUIRED PERIOD OF PERFORMANCE

The Council requires that results of the landfill capacity determinations be provided by December 10, 1984. The consultants final report should be completed and submitted by the Council by December 31, 1984.

V. MAXIMUM COMPENSATION AND MANNER OF PAYMENT

Payments will be based on invoices submitted by the consultant showing labor hours, labor costs and other direct costs. Ninety percent of each invoice will be paid within 30 days of receipt. The 10 percent withheld and other outstanding amounts will be paid upon satisfactory completion of the contract.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota Tax Court

Burlington Northern Airmotive, Inc., Appellant, v. The Commissioner of Revenue, Appellee, Docket No. 4002

Findings of Fact, Conclusions of Law, and Order for Judgment Dated September 21, 1984

This is an appeal from an Order of the Commissioner of Revenue dated September 7, 1983, assessing additional special fuel tax against the Appellant in the amount of \$1,776.19. Due to an error in calculation, said Order was amended on March 27, 1984, increasing the amount of special fuel tax to \$3,829.67 plus interest in the amount of \$287.63 for a total of \$4,117.30.

The above entitled matter came on for hearing before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court. The hearing was held at the Tax Court hearing room in the Space Center Building, 444 Lafayette Road, St. Paul, Minnesota, on March 28, 1984. The Appellant contends that the audit in question is legally impermissible as an assessment on sales, rather than on purchases. It is the Commissioner's contention that the tax is being assessed on all taxable gallons as substantiated by the Appellant's records.

John D. Boelter, Esq. appeared on behalf of the Appellant, and Amy Eisenstadt, Special Assistant Attorney General, appeared for the Appellee.

The Court, having heard and considered the evidence adduced at the trial, the files and records herein and having reviewed the briefs filed by the respective parties herein, now makes the following:

FINDINGS OF FACT

1. Appellant Burlington Northern Airmotive operates an airplane servicing business. It provides maintenance, parking facilities and fueling services for corporate aircraft. It is licensed by the State of Minnesota as a special fuel dealer.
2. Appellant has 500 credit customers and an unknown number of cash customers.
3. Approximately 10,000 planes are serviced in a year. Eighty percent of the planes serviced in a year are fueled by Appellant.
4. Appellant employs approximately 130 people and approximately 26 employees work as line service operators.
5. When an airplane is serviced, it is defueled by the line service operators. The fuel is removed from the aircraft and placed in fuel trucks or underground storage tanks.
6. Line service operators are supposed to record the amounts of all defueled gallons, however, it is not unusual for an operator to fail to make such records.
7. When a plane is refueled and a record of defueled gallons has been made, the defueled gallons that are recorded on the pump meter during the refuel are billed as a "no sale".
8. When a plane is refueled and no records kept of the number of defueled gallons, the customer is charged for the entire tank of fuel, including the special fuel excise tax. No credit is given these customers for the gallons previously defueled unless they bring the mistake to BNA's attention.
9. For various reasons, fuel may be pumped from the fuel trucks to the underground storage tanks. When this occurs, the fuel is pumped through and registered on the meters, although there has been no taxable sale. The line operators are supposed to keep records of the amounts of fuel pumped into the storage tanks, but they do not always do so. There are other instances when fuel is pumped through and registered on the truck meters although there has been no taxable sale. These include the transfer of fuel from one truck to another truck, a fuel truck recirculating fuel through the pumping system to eliminate air pockets in the pumping systems, and fuel spilling out of the pumping system.
10. It is possible that line service operators will defuel an aircraft and maintenance people, who are unaware of any defueling, will refuel the plane.
11. Appellant filed its returns in accordance with the provisions of Minn. Stat. § 296.12, subd. 4(1), under which special fuel dealers are required to report on the basis of purchases.
12. Virtually all fuel purchased by Appellant is sold in taxable sales.

13. The Department of Revenue performed an audit of Appellant's monthly returns for the period of April, 1982, to April, 1983. The audit covered a one-year period to allow an offset for the expansion of the fuel in the summer months and its contraction in the winter months.

14. In its audit, the Department first compared BNA's purchase invoices with its reported purchases. It was determined that BNA paid the tax due on all purchases for which there were invoices.

15. The audit determined that more fuel had been run through the meters than had been reported purchased. A credit was allowed for all amounts that were substantiated as having been pumped through the meter, but not sold, as those are considered "allowable gain". The auditors were advised that there were additional instances when fuel was pumped through and registered on the meters when there was no taxable sale, but no credit was allowed because these instances were not substantiated. An assessment was issued for the remaining unreported gallons in the amount of \$1,776.19. After the Appellant pointed out a clerical error, the assessment was readjusted and a new Order issued assessing \$3,829.67 tax and \$287.63 interest.

16. The Memorandum attached hereto is hereby made a part of these Findings.

CONCLUSIONS OF LAW

1. Appellant has failed to sustain the burden of proving that the Commission's Order is incorrect.

2. The Commissioner's Order must be affirmed.

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

September 21, 1984

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

ERRATA

Board of Nursing

Corrections to Proposed Licensing Rules

The following typographical errors were printed in the June 11, 1984 printing (8 SR 2652) of the Board's Proposed Licensing Rules (pages 2652-2661, Minnesota Rules 6310.2900, 6310.7600, 6315.0100-.0700):

- 1) 6315.0400 Subp. 5.A.(4) ". . . 65 years or older" should read: ". . . 65 years and older" (page 2657);
- 2) 6315.0400 Subp. 11 ". . . and the late filing fee is applicable" should read: "and the late filing fee if applicable" (page 2658);
- 3) 6315.0400 Subp. 11 ". . . the day prior to the examination" should read: ". . . the day prior to an examination" (page 2658);
- 4) 6315.0400 Subp. 12.A. ". . . lare filing fee" should read: "late filing fee" (page 2658).

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