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STATE REGISTER

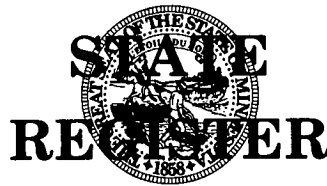
STATE OF MINNESOTA



VOLUME 9, NUMBER 17

October 22, 1984

Pages 789-868



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			
18	Monday Oct 15	Monday Oct 22	Monday Oct 29
19	Monday Oct 22	Monday Oct 29	Monday Nov 5
20	Monday Oct 29	Monday Nov 5	Monday Nov 12
21	Monday Nov 5	Monday Nov 12	Monday Nov 19

*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

Issues 14-25, inclusive

Issue 26, cumulative for 1-26

Issues 27-38, inclusive

Issue 39, cumulative for 1-39

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Issue 52, cumulative for 1-52

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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.

Office of Administrative Hearings

Proposed Rules Relating to Rulemaking Procedures of the Office of Administrative Hearings; and Proposed Rules Relating to Contested Case Hearings

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 14.14, subd. 1, in the above-entitled matter in Room 111 (the auditorium) of William Mitchell College of Law, 875 Summit Avenue, Saint Paul, Minnesota 55105, on November 28, 1984, commencing at 9:00 a.m. and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of the proposed amendments to the rules, by submitting either oral or written data, statements, or arguments. The hearing will be conducted by Administrative Law Judge Melvin B. Goldberg, William Mitchell College of Law, 875 Summit Avenue, Saint Paul, Minnesota 55105, telephone (612) 227-9171. The rule hearing procedure is governed by Minn. Stat. §§ 14.02 through 14.45 and 14.48 through 14.56, and by Minn. Rule 1400.0200-1400.1200 (Minnesota Rules). Questions regarding procedure may be directed to the Administrative Law Judge at the above listed address.

As a result of hearing process, the proposed amendments to the rules may be modified. Written comments may be submitted without appearing at the hearing by mailing them to the Administrative Law Judge. Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends. This comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge. In addition, following the close of the initial comment period, interested persons and the agency will be allowed to submit responses to any new information submitted in the comments received during the initial comment period. The responses must be filed within three working days of the close of the initial comment period. Additional evidence may not be submitted during this three-day period.

The Chief Administrative Law Judge proposes to adopt amendments to existing rules which relate to rulemaking and contested case proceedings, as well as the rules for hearings conducted under the Minnesota Revenue Recapture Act. Additionally, a rule is proposed to be adopted establishing policies for sanctions to be imposed for intentional and frivolous delay in discrimination cases brought under the Minnesota Human Rights Act. Authority for adoption of these rules is contained in Minn. Stat. §§ 14.51, 14.06, and in Laws of Minnesota, 1984, Ch. 567, § 3(8) and Ch. 640 § 7. The proposed amendments to the rules follow this Notice.

The proposed amendments to the rules relating to rulemaking make technical changes to the rules necessitated by changes to the Minnesota Administrative Procedure Act (Minn. Stat. Ch. 14) contained in Laws of Minnesota, 1984, Ch. 640. The amendments would also require agencies, when proposing to amend rules, to file statements with the Office relating to the impact of the rules on small businesses, and any adverse affect the rules might have on agricultural land, and a statement relating to discretionary additional public notice for the rules. The amendments also detail the requirements for the contents of the Statement of Need and Reasonableness which must be filed in each case prior to the time the agency gives its Notice of Hearing. The amendments would also clarify the provisions for the preparation and cost of transcripts of rulemaking hearings, add a requirement that agencies must obtain approval of the Revisor of Statutes for all modifications, require all documents to be filed in a standard 8½" × 11" size, and other grammatical changes.

The proposed amendments to the contested case rules, in addition to technical, grammatical or other changes required by the past legislative action, do several things. An amendment is contained recognizing mediation as a voluntary process and as an alternative to a contested case hearing. The amendments also formalize past practice of the Office in providing for the

conduct of settlement conferences by a person other than the Administrative Law Judge who would be normally assigned to conduct the adversarial hearing. The amendments merge the existing rules for Revenue Recapture Act hearings (Minn. Rules 1405.5100, *et seq.*) into the contested case rules and then repeal the previously adopted Revenue Recapture Act rules. The amendments would create two types of contested case hearings. The first is the formal contested case in which the procedures would be nearly identical to the existing rules. The second is a new classification for contested cases, which is called a "conference" contested case, in which the procedures would be similar to the procedures presently found in the Revenue Recapture Act hearings. The amendments would classify which types of cases would qualify for a conference contested case and allow for the conversion of a contested case from a conference to a formal proceeding. The rules would also require all formal documents or written materials filed in a contested case to be on standard size 8½" × 11" paper. The amendments would allow an agency to commence a contested case without actually setting a date for a hearing by filing the matter with the Chief Administrative Law Judge with the hearing date to be set in the future. A substantive amendment establishes sanctions to be applied for intentional and frivolous delay which occurs during the course of the investigation or subsequent to the initiation of a contested case proceeding in cases arising under the Minnesota Human Rights Act. Other amendments include: allowing a case to proceed by the use of initials rather than proper names in order to protect confidential or private data; requiring that the Notice of Hearing alert the parties to the existence of other types of informal disposition which the agency might consider; clarifying the extent to which intervenors may be allowed to participate in formal contested cases; establishing a procedure for the consolidation of contested cases; changing the rules of discovery to allow discovery without the necessity of obtaining advance approval of the Administrative Law Judge; clarifying the rule allowing the filing of copies of documents; clarifying the burden of proof in contested cases; clarifying what constitutes "good cause" for continuances; clarifying when motions will be certified to the agencies; changing the rule on cameras or other recording devices from a rule prohibiting their use to a rule allowing their use at hearings; subject to approval of the Administrative Law Judge; and clarifying the jurisdiction on motions for reconsideration or rehearing. The amendments would merge the Revenue Recapture Act rules into the existing contested case rules and then repeal the existing Revenue Recapture Act rules.

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

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

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

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

Notice is hereby given that a Statement of Need and Reasonableness is available for review at the Office of Administrative Hearings and at the office of the Administrative Law Judge who will be conducting the hearing. This Statement of Need and Reasonableness does include a nearly verbatim repetition of all the evidence and argument which the Office of Administrative Hearings anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Pursuant to Laws of Minnesota, 1983, Ch. 188, codified as Minn. Stat. § 14.115, subd. 1, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. It is the position of the Office of Administrative Hearings, as detailed further in the Statement of Need and Reasonableness, that the amendments to the rules will have a positive impact on small business by reducing the costs and time involved in the processing of administrative hearings.

Notice: Any person may request notification of the date on which the Administrative Law Judge's Report will be available, after which the Office of Administrative Hearings may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request

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PROPOSED RULES

notification by sending a written request to the Administrative Law Judge. The Office will give notice of the adoption of and the filing of the rules with the Secretary of State. Any person wishing to have notice of the adoption and filing may so indicate at the hearing or send a written request to the Chief Administrative Law Judge.

One free copy of this Notice and the proposed rules may be obtained by contacting Sandra Haven, Minnesota Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415 (612/341-7642). Additional copies will be available at the door on the date of the hearing.

Dated: October 8, 1984.

Duane R. Harves
Chief Administrative Law Judge

Rules as Proposed—Rulemaking Procedures

1400.0250 SIZE OF MATERIALS.

All materials submitted to the administrative law judge or chief administrative law judge in a rulemaking proceeding, except handwritten comments from members of the public and illustrative exhibits, must be on standard size 8½-inch by 11-inch paper.

1400.0300 INITIATION OF HEARING.

Subpart 1. Filing documents. Any agency desiring to initiate a rule hearing pursuant to Minnesota Statutes, sections ~~14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.48 to 14.56~~ 14.14 to 14.20, shall first file with the chief hearing examiner administrative law judge or his a designee the following documents:

A. A copy of the proposed rule or rules, with a certification of approval as to form by the revisor of statutes attached.

B. An order for hearing that shall contain the following: a proposed time, date, and place for the hearing to be held; a statement that the notice of hearing shall be given to all persons who have registered with the agency for that purpose, and a statement that the notice of hearing shall be published in the *State Register*; and the signature of the person authorized to order a hearing. If a board is ordering the hearing, the person signing the order must be so authorized and a document of authority must be attached to the order for hearing.

C. The notice of hearing proposed to be issued that shall contain the following:

(1) A proposed time, date, and place for the hearing to be held.

(2) A statement that all interested or affected persons will have an opportunity to participate.

(3) A statement or a description of the subjects and issues involved. If the proposed rules ~~themselves~~ are not included with the notice of hearing, then the notice must clearly indicate the nature and extent of the proposed rules, and a statement shall be included announcing the availability and the means of obtaining upon request at least one free copy of the proposed rules.

(4) A citation to the agency's statutory authority to ~~promulgate~~ adopt the proposed rules.

(5) A statement describing the manner in which interested persons may present their views and advising persons that the proposed rule may be modified as a result of the hearing process.

(6) A statement advising interested persons that lobbyists must register with the state Ethical Practices Board, which statement shall read as follows:

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

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

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

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

PROPOSED RULES

(7) A statement that written ~~material~~ comments may be submitted and recorded in the hearing record for five working days after the public hearing ends, ~~and a statement that the comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the hearing examiner~~ administrative law judge at the hearing, and a statement that the agency and interested persons may respond in writing within three business days after the submission period ends to any new information submitted, provided that no additional evidence may be submitted during the three-day period.

(8) A separate paragraph which shall read as follows:

Notice: Any person may request notification of the date on which the ~~hearing examiner's~~ administrative law judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. ~~Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the attorney general by the agency.~~ If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the ~~hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the attorney general)~~ administrative law judge. Any person may request notification of the date on which the rule was adopted and filed with the secretary of state. The notice must be given on the same day that the rule is filed. If you desire to be so notified you may so indicate at the hearing or so request of the agency at any time prior to the filing of the rule with the secretary of state.

(9) A separate paragraph will read as follows:

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

(10) If required by Minnesota Statutes, section 14.11, subdivision 1, a statement relating to the expenditure of public ~~monies~~ money by local public bodies.

(11) If required by Minnesota Statutes, section 14.115, subdivision 4, a statement that the rule will have an impact on small business and a designation of the probable quantitative and qualitative impact of the proposed rule upon small business.

(12) If required by Minnesota Statutes, section 14.11, subdivision 2, a statement that the rule may have a direct and substantial adverse effect on agricultural land as defined in Minnesota Statutes, section 17.81, subdivisions 2 and 3.

(13) A statement that the rule hearing procedure is governed by Minnesota Statutes, sections ~~14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45 and 14.48 to 14.56~~ 14.14 to 14.20 and by parts 1400.0200 to 1400.1200 and a statement that questions about procedure may be directed to the ~~hearing examiner~~ administrative law judge.

(14) A blank space for the addition of the name, office address, and telephone number of the administrative law judge who will be assigned to conduct the hearing.

D. A statement by the agency of the number of persons expected to attend the hearing and the estimated length of time that will be necessary for the agency to present its evidence at the hearing.

E. A statement of need and reasonableness complying with part 1400.0500.

F. A statement by the agency documenting its consideration of giving discretionary additional public notice of the proposed rules, authorized by Minnesota Statutes, section 14.14, subdivision 1a, and the extent of any such discretionary additional notice to be given.

Subp. 2. Appointing examiners administrative law judge. Within ten days of receipt of the aforementioned documents, the chief ~~hearing examiner~~ administrative law judge shall appoint a ~~hearing examiner~~ administrative law judge to preside at the hearing, and the ~~hearing examiner~~ administrative law judge shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected interests and shall advise the agency as to whether or not the proposed notice of hearing is proper as required by Minnesota Statutes, section 14.50.

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

1400.0400 NOTICE OF HEARING.

The notice of hearing shall be given pursuant to ~~provisions of~~ Minnesota Statutes, section 14.14, subdivision 1a. The agency shall include in the notice of hearing, as published, the name, office address, and telephone number of the administrative law judge appointed pursuant to part 1400.0300, subpart 2.

1400.0500 STATEMENT OF NEED AND REASONABLENESS.

Subpart 1. Contents. Each agency desiring to adopt rules shall prepare a statement of need and reasonableness which shall be prefiled pursuant to part ~~1400.0600~~ 1400.0300, subpart 1. The statement of need and reasonableness ~~shall be a document containing, at the minimum, must contain~~ a summary of all of the evidence and argument which is anticipated to be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed ~~rule/rules~~ rule or rules, including citations to any statutes or case law to be relied upon, citations to any economic, scientific, or other manuals or treatises to be utilized at the hearing or included in the record, and a list of any ~~expert~~ witnesses to be called by the agency to testify on its behalf of the agency, together with a brief summary of the ~~expert opinion~~ testimony to be elicited from witnesses solicited to testify on behalf of the agency. The statement need not contain evidence and argument in rebuttal of evidence and argument presented by the public.

The statement of need and reasonableness must also contain the following:

A. a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

B. a determination of whether there are less costly methods or less intrusive methods, as respects affected persons, for achieving the purpose of the proposed rule;

C. a description of the short-term or long-term consequences of the rules, if adopted;

D. if required by Minnesota Statutes, section 13.04, subdivision 3, a description of why any public, private, or confidential data on individuals authorized by the rule to be collected and stored, or any private or confidential data on individuals authorized by the rule to be used and disseminated is necessary for the administration and management of programs specifically authorized by the legislature, local governing body, or mandated by the federal government;

E. if required by Minnesota Statutes, section 14.115, a statement relating to the agency's consideration of the factors enumerated in Minnesota Statutes, section 14.115, subdivision 2;

F. if required by Minnesota Statutes, sections 14.11, subdivision 2, and 17.80 to 17.84, a description of the possible adverse effect on agricultural land, stating the alternatives the agency considered to avoid or reduce the effect and indicating why it chose to proceed with the proposed adoption of the rule;

G. if required by Minnesota Statutes, sections 115.43, subdivision 1, and 116.07, subdivision 6, a statement regarding the agency's consideration of economic factors as the same shall affect the feasibility and practicability of the proposed rule;

H. if required by Minnesota Statutes, section 144A.29, subdivision 4, a description of the anticipated costs and benefits of the proposed rule;

I. if required by Minnesota Statutes, section 16A.128, subdivision 1, the approval of the commissioner of finance if the rule modifies a fee charged; and

J. a statement complying with the requirements of any other law or rule prescribing in any manner the matters to be included in the statement of need and reasonableness or which the agency is required by law or rule to consider in the adoption of a rule.

To the extent that an agency is proposing amendments to existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.

Subp. 2. Specificity. The statement shall be prepared with sufficient specificity so that interested persons will be able to fully prepare any testimony or evidence in favor of or in opposition to the ~~rule/rules~~ rules as proposed. Presentation of evidence or testimony (other than bona fide rebuttal), not summarized in the statement of need and reasonableness may result in the ~~hearing examiner~~ administrative law judge, upon proper motion made at the hearing by any interested person, recessing the hearing to a future date in order to allow all interested persons an opportunity to prepare testimony or evidence in opposition

to ~~such~~ the newly presented evidence or testimony, ~~which recessing~~. The recess shall be for a period not to exceed 25 calendar days, unless the 25th day is a Saturday, Sunday, or legal holiday, in which case, the next succeeding working day shall be the maximum date for the resumed hearing.

Subp. 3. Verbatim agency presentation. If the agency ~~so~~ desires, the statement of need and reasonableness may contain the verbatim affirmative presentation by the agency and, provided that copies are available for review at the hearing, may be introduced as an exhibit into the record as though read. In such instance, agency personnel or other persons thoroughly familiar with the rules and the agency's statement shall be available at the hearing for questioning by the hearing examiner administrative law judge and other interested persons or to briefly summarize all or a portion of the statement of need and reasonableness if requested by the hearing examiner administrative law judge.

1400.0600 DOCUMENTS TO BE PREFILED.

At least 25 days prior to the date and time of the hearing, the agency shall file with the hearing examiner administrative law judge assigned to the hearing copies of the following documents:

- A. the notice of hearing as mailed;
- B. the agency's certification that the mailing list required by Minnesota Statutes, section 14.14, subdivision 4 1a, which was used for the hearing, was accurate and complete;
- C. an affidavit of mailing of the notice to all persons on the agency's list;
- D. an affidavit of additional notice if such discretionary notice was given pursuant to Minnesota Statutes, section 14.14, subdivision 4 1a;
- E. ~~the statement of need and reasonableness;~~
- F. the petition requesting a rule hearing, if one has been filed pursuant to Minnesota Statutes, section 14.09;
- ~~G.~~ F. all materials received following a notice made pursuant to Minnesota Statutes, section 14.10, together with a citation to said copy of the State Register containing the notice;
- ~~H.~~ G. the names of agency personnel who will represent the agency at the hearing, together with the names of any other witness solicited by the agency to appear on its behalf;
- ~~I.~~ H. a copy of the *State Register* in which the notice and rules or rule amendments were published.

1400.0700 HEARING EXAMINER ADMINISTRATIVE LAW JUDGE DISQUALIFICATION.

The hearing examiner administrative law judge shall withdraw from participation in a rulemaking proceeding to which he or she has been assigned if, at any time, he or she deems himself or herself disqualified for any reason. Upon the filing in good faith by an affected person of an affidavit of prejudice against the hearing examiner administrative law judge, the chief hearing examiner administrative law judge shall determine the matter as a part of the record provided that the affidavit shall be filed no later than five working days prior to the date set for hearing.

1400.0800 CONDUCT OF HEARINGS.

Subpart 1. Statutory proceedings. All hearings held pursuant to Minnesota Statutes, sections ~~14.05 to 14.36~~ 14.14 to 14.20, shall proceed substantially in the following manner.

Subp. 2. Registration of participants. All persons intending to present evidence or ask questions shall register with the hearing examiner administrative law judge prior to the presentation of evidence or questions by writing their names, addresses, telephone numbers, and the names of any individuals or associations that the persons represent in connection with the hearing on a register to be provided by the hearing examiner administrative law judge. ~~The register shall include a section in which~~ Persons may indicate to the administrative law judge in writing their desire to be informed of the date on which the hearing examiner's administrative law judge's report will be available and the date on which the agency submits the record to the attorney general adopts the final rule, if it does so, and files the rule with the secretary of state.

Subp. 3. Notice of ~~purpose and record inclusion~~ procedure. The hearing examiner administrative law judge shall convene the hearing at the proper time and shall explain to all persons present the purpose of the hearing and the procedure to be followed at

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the hearing. The ~~hearing examiner~~ administrative law judge shall notify all persons present that the record will remain open for five working days following the hearing, or for a longer period not to exceed 20 calendar days if ordered by the ~~hearing examiner~~ administrative law judge, for the receipt of written statements concerning the proposed rule or rules. The administrative law judge must also notify all persons present that, within three business days after the close of the submission period, any person, including the agency, may respond in writing to any new information submitted, provided that additional evidence may not be submitted during the three-day period, and that such responses must be included in the rulemaking record.

Subp. 4. Registration of lobbyists. The ~~hearing examiner~~ administrative law judge shall advise the persons present of the requirements of Minnesota Statutes, chapter 10A concerning the registration of lobbyists.

Subp. 5. Agency representatives. The agency representatives and any others who will be presenting the agency position at the hearing shall identify themselves for the record.

Subp. 6. Proposed rule copies. The agency shall make available copies of the proposed rule at the hearing.

Subp. 7. Exhibits. The agency shall introduce its exhibits relevant to the proposed rule including written material received prior to the hearing as exhibits the documents required to be filed with the administrative law judge or the chief administrative law judge pursuant to parts 1400.0300, subpart 1, items D and E; and 1400.0600.

Subp. 8. Showing. The agency shall make its affirmative presentation of facts showing the need for and the reasonableness of the proposed rule and shall present any other evidence it deems necessary to fulfill all relevant, substantive, and procedural statutory or regulatory requirements. Pursuant to part 1400.5000, subpart 3, the agency may rely on its statement of need and reasonableness for the affirmative presentation of facts required by this subpart, and it may also present oral evidence subject to part 1400.0500, subparts 1 and 2.

Subp. 9. Opportunity for questions. Interested persons shall be given an opportunity to address questions to the agency representatives or witnesses. Agency representatives may question interested persons making oral statements. Such questioning may extend to an explanation of the purpose of intended operation of a proposed rule, or a suggested modification, or may be conducted for other purposes if material to the evaluation or formulation of the proposed rule.

Subp. 10. Opportunity for presenting questions statements. Interested persons shall be given an opportunity to be heard on present oral and written statements regarding the proposed rule and/or to present written evidence. All interested persons submitting oral statements are subject to questioning by representatives of the agency.

Subp. 11. Questioning by ~~examiner~~ administrative law judge. The ~~hearing examiner~~ administrative law judge may question all persons, including the agency representatives.

Subp. 12. Further agency evidence. The agency may present any further evidence that it deems appropriate in response to statements made by interested persons. Upon such presentation by the agency, interested persons may respond thereto.

Subp. 13. Powers of ~~examiner~~ administrative law judge. Consistent with law, the ~~hearing examiner~~ administrative law judge shall be authorized to do all things necessary and proper to the performance of the foregoing and to promote justice, fairness, and economy, including but not limited to the power to preside at the hearing, administer oaths or affirmations when he deems it deemed appropriate, hear and rule on objections and motions, question witnesses where he deems it deemed necessary to make a complete record, and rule on the admissibility of evidence and strike from the record objectionable evidence, and limit repetitive or immaterial oral statements and questioning.

1400.0850 RECEIPT OF WRITTEN MATERIALS.

The administrative law judge shall allow written materials to be submitted and recorded in the hearing record for a period of five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if he or she so orders. The agency and all interested persons must be allowed three business days after the submission period ends to respond in writing to any new information submitted. Additional evidence may not be submitted during the three-day period. The written response must be included in the rulemaking record.

1400.0900 HEARING RECORD.

The record shall be closed upon the last date for receipt of written statements. The record in each hearing shall include all of the documents enumerated in part 1400.0600, all written comments or other evidence received prior to, during, or subsequent to the hearing but prior to the close of the record, and a tape recording of the hearing itself, unless a court reporter has taken the proceedings. In the event a transcript of the proceedings has been prepared, it shall be part of the record, and copies will be available to persons requesting them at a reasonable charge. The charge for transcripts shall be set by the chief hearing examiner, and all moneys received for transcripts shall be payable to the state treasury and shall be deposited in the Office of Administrative Hearings' account in the state treasury. The agency and any other persons so requesting of the hearing examiner

shall be notified of the date of the completion of the transcript responses filed pursuant to Minnesota Statutes, section 14.15, subdivision 1.

The rulemaking record shall include:

- A. all documents enumerated in parts 1400.0300, subpart 1, and 1400.0600;
- B. copies of all publications in the *State Register* pertaining to the rules;
- C. all written petitions, requests, submissions, or comments received by the agency, the administrative law judge, or the chief administrative law judge pertaining to the rules;
- D. the official transcript of the hearing if one was prepared, or the tape recording of the hearing if a transcript was not prepared;
- E. the report of the administrative law judge;
- F. the report of the chief administrative law judge, if any;
- G. the rule in the form last submitted to the administrative law judge;
- H. the agency's order adopting the rule;
- I. the revisor of statutes certificate approving the form of the rule; and
- J. a copy of the adopted rule as filed with the secretary of state.

1400.0950 AVAILABILITY OF TRANSCRIPT; USE OF COURT REPORTERS.

A transcript of a rulemaking hearing will be made upon the request of the agency, the attorney general, the chief administrative law judge, or any interested person. If the transcript is prepared at the request of an interested person, that person shall pay for the cost of the preparation of the original and one copy, the original being filed with the administrative law judge. Otherwise, the agency shall pay for the cost of the original and any copies it requires. The use of court reporters to keep the record of the hearing is governed by Minnesota Statutes, section 14.52.

1400.1000 HEARING EXAMINER'S REPORT OF ADMINISTRATIVE LAW JUDGE.

Subpart 1. No substantial change. Subsequent to the close of the record, the hearing examiner administrative law judge shall make ~~his or her~~ a report pursuant to Minnesota Statutes, section 14.50. If the report contains findings that the rules as last proposed by the agency prior to the close of the record are needed and reasonable and are not substantially changed from those which were published in the *State Register*, and that the agency has fulfilled the relevant substantive and procedural requirements imposed on the agency by rule or law, the hearing examiner administrative law judge shall file the original of said report, together with the complete record of the proceedings, with the agency. Both the agency, if authorized by statute, and the Office of Administrative Hearings shall make a copy of ~~said~~ the report available to any interested person upon request at a reasonable charge.

Subp. 2. Substantial change. If the hearing examiner's administrative law judge's report contains findings that the rules as last proposed by the agency prior to the close of the hearing record are substantially changed from those which were published in the *State Register*, or that the agency has failed to demonstrate the need or reasonableness of the rules, or has not fulfilled the relevant substantive and procedural requirements imposed on the agency by rule or law, he or she shall submit the report, together with the complete record of the proceedings, to the chief hearing examiner administrative law judge for review pursuant to Minnesota Statutes, ~~section~~ sections 14.15 and 14.16.

Subp. 3. Chief hearing examiner's administrative law judge's review. Upon receipt of a report from the hearing examiner administrative law judge, the chief hearing examiner administrative law judge shall complete his or her review and submit ~~his~~ a report, along with the complete record and the report of the hearing examiner administrative law judge, to the agency within ten calendar days.

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1400.1100 DETERMINING SUBSTANTIAL CHANGE.

Subpart 1. Substantial change prohibited. An agency may not adopt a rule that is substantially different from the proposed rule contained in the published notice of proposed rule adoption. However, an agency may terminate a rulemaking proceeding and commence a new rulemaking proceeding for the purpose of adopting a substantially different rule.

Subp. 2. Determination of substantial change. In determining whether the proposed final rule is substantially different, the hearing examiner administrative law judge shall consider the degree extent to which it affects classes of persons not represented at the previous rulemaking hearing, or goes to a new subject matter of significant substantive effect, or makes a major substantive change that was not raised by the original notice of hearing in such a way as to invite reaction at the hearing, or results in a rule fundamentally different in effect from that contained in the notice of hearing.

1400.1200 RULE ADOPTION.

Subpart 1. After report from examiner Finding of no defect by administrative law judge. Upon receipt of a report directly from the hearing examiner If the administrative law judge finds no defects in the proposed rules, the agency shall, if it adopts the rules in accordance with the recommendations of the hearing examiner, submit the complete hearing record and a copy of the proposed rules to the attorney general for a review as to form and legality, pursuant to Minnesota Statutes, sections 14.14, subdivision 3, 14.16 and 14.17 administrative law judge, obtain the approval of the revisor of statutes as to the form of the rules, file two copies of the rules as approved by the revisor of statutes with the secretary of state, and publish notice of adoption of the rules in the State Register.

Subp. 2. Agency adoption of changes not recommended by administrative law judge. If the agency proposes to adopt the rules with changes other than as recommended by the hearing examiner administrative law judge, it shall, prior to submitting them to the attorney general, submit the complete hearing record a copy of the rules as initially proposed, a copy of the agency's findings and order adopting rules, and a copy of the rules as proposed to be adopted, showing the changes, to the chief hearing examiner administrative law judge for a determination as to substantial change between the final proposed rules and the proposed rules published in the State Register, pursuant to Minnesota Statutes, sections 14.14 14.15, subdivision 3, and 14.16 and 14.17. The chief administrative law judge may require the agency to submit the entire rulemaking record for a proper determination regarding substantial change.

Subp. 2. 3. After report from chief hearing examiner Finding of defect in proposed rules. Upon receipt of a report from the chief hearing examiner, If the administrative law judge finds a defect in the proposed rules and the chief administrative law judge approves the finding of a defect by the administrative law judge, the chief administrative law judge must advise the agency of the actions that will correct the defect found. The agency shall, prior to submitting the proposed rules and the complete hearing record to the attorney general, either take the actions prescribed by the chief hearing examiner administrative law judge to correct any defects in the proposed rules, or withdraw the rules, unless the defect found relates to the required showing of need and reasonableness of the proposed rules. With respect to defects found relating to the required showing of need and reasonableness of the proposed rules, the agency may alternatively proceed under the provisions of Minnesota Statutes, section 14.15.

Subp. 4. Revisor of statutes approval of changes in proposed rule. No agency shall adopt in its findings and order adopting rules any change in a rule as initially published in the State Register, whether proposed by the agency or recommended by the administrative law judge or required by the chief administrative law judge without first obtaining from the revisor of statutes an approval as to the form of the proposed change to the rule as initially published in the State Register.

Rules as Proposed—Contested Case Hearings

CONTESTED CASE HEARINGS

1400.5100 DEFINITIONS.

Subpart 1. Hearing examiner Administrative law judge or judge. "Hearing examiner Administrative law judge" or "judge" means the person or persons assigned by the chief hearing examiner administrative law judge pursuant to Minnesota Statutes, section 14.50 to hear the contested case.

Subpart 1a. Agency, claimant agency. "Agency" or "claimant agency" means the state or public agency asserting a claim to a tax refund or for whom a contested case hearing is being conducted.

Subp. 1b. Chief judge. "Chief judge" means the chief administrative law judge of the Office of Administrative Hearings.

Subp. 1c. Conference contested case. "Conference contested case" means a contested case hearing which fails within one or more of the following categories:

- A. a matter in which there is no disputed issue of material fact;

B. a matter in which there are one or more disputed issues of material facts, if the matter involves only:

(1) a monetary amount of not more than \$5,000;

(2) a disciplinary sanction against a public employee which does not involve discharge from employment, a demotion, or a suspension for more than 30 calendar days;

(3) a disciplinary action against a licensee or permittee which does not involve a revocation or a withdrawal of the authority previously granted, a suspension for more than 90 calendar days, or the involuntary amendment of the license or permit; or

(4) an action involving the amendment, at the request of the licensee or permittee, of an existing license or permit; or

C. Cases conducted pursuant to the Minnesota Revenue Recapture Act, Minnesota Statutes, sections 270A.01 to 270A.12.

Subp. 1d. Formal contested case. "Formal contested case" means a contested case hearing which is required to be heard under Minnesota Statutes, chapter 14, and which does not qualify as a conference contested case.

Subp. 1e. Office. "Office" means the Office of Administrative Hearings.

Subp. 2. Party. "Party" means each person named as a party by the agency in the notice of and order for hearing, or persons granted permission to intervene pursuant to part 1400.6200. The term "party" shall include the agency except when the agency participates in the contested case in a neutral or quasi-judicial capacity only.

Subp. 3. Person. "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit, or agency other than a court of law.

Subp. 4. Service; serve. "Service" or "serve" means personal service or, unless otherwise provided by law, service by first class United States mail, postage prepaid and addressed to the party at his last known address. An affidavit of service shall be made by the person making such service. Service by mail is complete upon the placing of the item to be served in the mail. Agencies of the state of Minnesota may also serve by depositing the item to be served with Central Mailing Section, Publications Division, Department of Administration may be accomplished by either delivering a document to an individual in person, or by leaving a document at the person's home with someone of suitable age and discretion who resides in the same house, or by mailing the document to the person by first class United States mail.

If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution.

Postage shall be prepaid. Mail to a person other than a state agency shall be addressed to the last known address of the person. Agencies of the state of Minnesota may also deposit the document with the Central Mailing Section, Publications Division, Department of Administration, addressed as above.

1400.5200 SCOPE; CONVERSION OF CONTESTED CASE.

The procedures contained in parts 1400.5100 to ~~1400.8500~~ 1400.8400 shall govern all contested cases required to be conducted by the office of Administrative Hearings and cases conducted pursuant to the Revenue Recapture Act, Minnesota Statutes, sections 270A.01 to 270A.12.

At any point in a contested case hearing the judge may convert the contested case from one type to another if the conversion is appropriate, is in the public interest, and does not substantially prejudice the rights of any party. A conversion of a contested case of one type to another may be effected only upon notice to all parties to the original case. To the extent feasible and consistent with the rights of parties and the requirements of parts 1400.5100 to 1400.8400 pertaining to the new contested case, the record of the original case must be used in the new case.

After a contested case is converted from one type to another, the judge shall give additional notice to parties as is necessary

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to satisfy the requirements of parts 1400.5100 to 1400.8400 pertaining to the new case; dispose of the matters involved without further hearings or proceedings if sufficient hearings have already been held to satisfy the requirements of parts 1400.5100 to 1400.8400 pertaining to the new contested case; and conduct any additional hearings or proceedings necessary to satisfy the requirements of parts 1400.5100 to 1400.8400 pertaining to the new contested case.

1400.5250 WAIVER.

Upon request of all parties, the administrative law judge shall waive or modify any of these rules, provided that such waiver or modification does not conflict with any provision of Minnesota Statutes, sections 14.48 to 14.70 or 270A.01 to 270A.12.

1400.5275 DOCUMENTS FILED.

Forms, documents, or written materials used or filed in contested proceedings before the office must be on standard size 8½-inch by 11-inch paper.

1400.5300 REQUEST FOR EXAMINER ADMINISTRATIVE LAW JUDGE.

Any agency desiring to order a contested case hearing shall first file with the chief ~~hearing examiner~~ judge or designee a request for assignment of a ~~hearing examiner~~ judge together with the notice of and order for hearing proposed to be issued which shall include, unless the agency requests the judge to set a hearing at a later date, a proposed time, date, and place for the hearing. The agency shall also indicate whether the case is to be set as a formal or a conference contested case.

If the agency is not sure whether the case is a formal or conference contested case, it shall request a determination by the chief judge at the time it requests the assignment. Subject to the provisions for conversion of a contested case from one form to another as provided in part 1400.5200, the case shall be set based on the determination by the chief judge. The chief judge shall maintain a public file of all determinations made pursuant to this paragraph.

1400.5400 ASSIGNMENT OF EXAMINER ADMINISTRATIVE LAW JUDGE.

Within ten days of the receipt of a request pursuant to part 1400.5300, the chief ~~hearing examiner~~ judge shall assign a ~~hearing examiner~~ judge to hear the case, ~~and~~. Unless the chief judge or designee has already agreed with the agency, the ~~hearing examiner~~ judge shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected persons. In cases where the hearing is to be set at a later time, the judge shall advise the agency on the location and time for the hearing when appropriate. In offering this advice, the judge shall consider the location of known parties, witnesses, and other participants so as to maximize convenience and minimize costs. After reaching agreement with the chief judge or designee, or upon receiving advice from the judge, the agency shall issue the notice of and order for hearing, unless the substantive law requires it to be issued otherwise.

1400.5500 DUTIES OF EXAMINER ADMINISTRATIVE LAW JUDGE.

Consistent with law, the ~~hearing examiner~~ judge shall perform the following duties:

- A. grant or deny a demand for a more definite statement of charges;
- B. grant or deny requests for discovery including the taking of depositions;
- C. receive and ~~set~~ recommend action upon requests for subpoenas where appropriate and consistent with part 1400.7000;
- D. hear and rule on motions;
- E. preside at the contested case hearing;
- F. administer oaths and affirmations;
- G. grant or deny continuances;
- H. examine witnesses where ~~he deems it~~ deemed necessary to make a complete record;
- I. prepare findings of fact, conclusions, and recommendations or a final order where required by law;
- J. make preliminary, interlocutory, or other orders as ~~he deems~~ deemed appropriate;
- K. recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot or for other reasons;

L. permit testimony, upon the request of a party or upon his or her own motion to be prefiled in whole or in part where the prefiling will expedite the conduct and disposition of the case without imposing an undue burden on any party;

M. do all things necessary and proper to the performance of the foregoing; ~~and~~

N. in his or her discretion, perform such other duties as may be delegated ~~to him~~ by the agency ordering the hearing; and

O. grant or deny a request to substitute the use of initials from proper names in the hearing record or in findings of fact, conclusions, and recommendations or order.

1400.5600 NOTICE AND ORDER FOR HEARING.

Subpart 1. Commencing a contested case. A contested case is commenced, subsequent to the assignment of a ~~hearing examiner~~ judge, by the service of a notice of and order for hearing by the agency.

Subp. 2. Contents of notice and order. Unless otherwise provided by law, a notice of and order for hearing, which shall be a single document, shall be served upon all parties and shall contain, among other things, the following:

A. The time, date, and place for the hearing or a prehearing conference, or a statement that the matter has been referred to the office and that a hearing or prehearing time, date, and place will be set by the judge;

B. Name, address, and telephone number of the ~~hearing examiner~~ judge;

C. A citation to the agency's statutory authority to hold the hearing and to take the action proposed;

D. A statement of the allegations or issues to be determined together with a citation to the relevant statutes or rules allegedly violated. If a debt arises from more than one event or transaction, each event or transaction shall be noted;

E. Notification of the right of the parties to be represented by ~~legal counsel~~ an attorney, ~~by a person of their choice~~, or by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law;

F. A citation to parts 1400.5100 to ~~1400.8500~~ 1400.8400, to any applicable procedural rules of the agency, and to the contested case provisions of Minnesota Statutes, chapter 14 and notification of how copies may be obtained;

G. A brief description of the procedure to be followed at the hearing;

H. A statement advising the parties to bring to the hearing all documents, records, and witnesses they need to present their position;

I. A statement that subpoenas may be available to compel the attendance of witnesses or the production of documents, referring the parties to part 1400.7000 relating to subpoenas;

J. A statement advising the parties of the name of the agency official or member of the attorney general's staff to be contacted to discuss informal disposition pursuant to part 1400.5900 along with an explanation of the types of informal disposition which the agency might consider, or discovery pursuant to parts 1400.6700 and 1400.6800;

~~H. K.~~ K. In formal contested cases, a statement advising the parties that a notice of appearance must be filed with the ~~hearing examiner~~ judge within 20 days of the date of service of the notice of and order for hearing if a party intends to appear at the hearing unless the hearing date is less than 20 days from the issuance of the notice of and order for hearing; ~~and~~

L. A statement advising existing parties that failure to appear at the hearing may result in the allegations of the notice of and order for hearing being taken as true, or the issues set out being deemed proved, and a statement which explains the possible results of the allegations being taken as true or the issues proved; ~~and~~

M. A statement advising the parties that if nonpublic data is admitted into evidence it may become public unless a party objects and asks for relief under Minnesota Statutes, sections 14.60, subdivision 2.

Subp. 3. Service. Unless otherwise provided by law, the notice of and order for hearing in a formal contested case shall be served not less than 30 days prior to the hearing and not less than 20 days for a conference contested case. Provided, however,

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that a shorter time may be allowed, where it can be shown to the chief hearing examiner judge that a shorter time is in the public interest and that interested persons are not likely to be prejudiced.

Supb. 4. Publication. Where the agency participates in the hearing in a neutral or quasi-judicial capacity, the notice of and order for hearing shall be published as required by law or as ordered by the agency, and copies of the notice of and order for hearing may be mailed by the agency to persons known to have a direct interest.

Supb. 5. Amendment. At any time prior to the close of the hearing, the agency may file and serve an amended notice of and order for hearing, provided that, should the amended notice and order raise new issues or allegations, the parties shall have a reasonable time to prepare to meet the new issues or allegations if requested.

Supb. 6. Alternative documents and procedures. With the prior written concurrence of the chief hearing examiner judge, an agency may substitute other documents and procedures for the notice of and order for hearing provided that the documents and procedures inform actual and potential parties of the information contained in subpart 2.

1400.5700 NOTICE OF APPEARANCE FOR FORMAL CONTESTED CASES.

Each party intending to appear at a formal contested case hearing shall file with the hearing examiner judge and serve upon all other known parties a notice of appearance which shall advise the hearing examiner judge of the party's intent to appear and shall indicate the title of the case, the agency ordering the hearing, the party's current address and telephone number, and the name, office address, and telephone number of the party's attorney or other representative. The notice of appearance shall be filed with the hearing examiner judge within 20 days of the date of service of the notice of and order for hearing, except that, where the hearing date is less than 20 days from the commencement of the contested case, the notice of appearance shall not be necessary. The failure to file a notice may, in the discretion of the hearing examiner judge, result in a continuance of the hearing if the party failing to file appears at the hearing. A notice of appearance form shall be included with the notice of and order for hearing for use by the party served.

1400.5800 RIGHT TO COUNSEL.

~~Any party~~ Parties may be represented by ~~legal counsel~~ an attorney throughout the proceedings in a contested case ~~before an agency, by themselves, or by a person of his their choice, or by himself~~ if not otherwise prohibited as the unauthorized practice of law.

1400.5900 CONSENT ORDER, SETTLEMENT, OR STIPULATION.

Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings. Parties may enter into these agreements on their own or may utilize the mediation procedures in part 1400.5950 or the settlement conference procedures in part 1400.6550.

1400.5950 MEDIATION.

Subpart 1. Definition. "Mediation" is a voluntary process where parties to a dispute jointly explore and resolve all or a part of their difference with the assistance of a neutral person. The mediator's role is to assist the parties in resolving the dispute themselves. The mediator has no authority to impose a settlement on the parties against their will.

Subp. 2. Office to provide. The office will provide mediation services to any state agency, court, or political subdivision either prior to or subsequent to the initiation of a rulemaking or contested case proceeding or other contested matter. For purposes of this part only, "agency" means either a state agency, court, or political subdivision of the state.

Subp. 3. Initiating mediation. Mediation may be initiated in the following ways:

A. Prior to the initiation of a rulemaking or contested case proceeding, an agency may proposed mediation by filing a written request for mediation services with the chief judge. In contested case proceedings, a copy of the request shall be served upon all persons whom the agency would name as parties in the notice of and order for hearing.

B. Subsequent to the initiation of a rulemaking or contested case proceeding, the agency, a party to a contested case, or the judge assigned to the rulemaking or contested case may propose that the case be mediated by filing a request for mediation services with the chief judge. A copy of the request must be served upon the agency, the judge, and all parties. In rulemaking proceedings, persons who can show they will be directly affected by the rules may also request mediation.

C. Upon receipt of a request for mediation, the chief judge or designee shall contact, either orally or in writing, the agency and all parties or directly affected persons to determine whether they are willing to participate in mediation. No matter shall be ordered for mediation if the agency, any party, or directly affected person is opposed.

D. If the chief judge determines that no party, directly affected person, or the agency is opposed to mediation, the chief judge shall appoint a mediator and issue an order for mediation, which shall set forth:

- (1) the name, address, and telephone number of the mediator; and
- (2) a date by which the mediator must initiate the mediation proceedings.

The order shall be served upon the agency, the parties, or directly affected persons, and the judge assigned to the contested case or rulemaking proceeding, if any.

E. The mediator must initiate the mediation proceedings by contacting the agency and each party or directly affected person no later than the date set forth in the order for mediation.

Subp. 4. Confidentiality. The mediator shall not communicate, either directly or indirectly, regarding any facts or issues in the mediation with any person not participating in the mediation unless authorized to do so by the parties to the mediation.

Subp. 5. Termination. The mediation process shall terminate when any party, any directly affected person, or the agency announces its unwillingness to continue mediation; or the parties and the agency sign a settlement agreement setting forth the resolution of the disputed issues.

Upon termination, the mediator shall either forward the signed settlement agreement to the agency or the judge, if applicable, for appropriate action; or inform the agency or the judge, if applicable, that the mediation has been terminated without agreement.

1400.6000 DEFAULT.

The agency or the judge, where authorized, may dispose of a contested case adverse to a party which defaults. Upon default, the allegations of or the issues set out in the notice of and order for hearing or other pleading may be taken as true or deemed proved without further evidence. A default occurs when a party fails to appear at a hearing or fails to comply with any interlocutory orders of the ~~hearing examiner~~ judge.

1400.6100 TIME.

Subpart 1. Computation. In computing any period of time prescribed by ~~these rules~~ parts 1400.5100 to 1400.8400 or the procedural rules of any agency, the day of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday.

Subp. 2. Extra time: service by mail. Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon ~~him~~ the party, or whenever ~~such~~ service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period. In the event an agency chooses to utilize the Central Mailing Section, Publications Division, Department of Administration, four days shall be added to the prescribed period.

1400.6200 INTERVENTION IN PROCEEDINGS AS PARTY.

Subpart 1. Petition. Any person ~~desiring~~ not named in the notice of hearing who desires to intervene in a contested case as a party shall submit a timely written petition to intervene to the ~~hearing examiner~~ judge and shall serve the petition upon all existing parties and the agency. Timeliness will be determined by the ~~hearing examiner~~ judge in each case based on circumstances at the time of filing. The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case, ~~and;~~ shall show how the petitioner may be directly affected by the outcome and that petitioner's participation is in the public interest; shall set forth the grounds and purposes for which intervention is sought; and shall indicate petitioner's statutory right to intervene if one should exist. The agency may, with the consent of the ~~chief hearing examiner~~ judge, and where good reason appears therefor, specify in the notice of and order for hearing ~~(if one is used)~~ or prehearing the final date upon which a petition for intervention may be submitted to the ~~hearing examiner~~ judge.

Subp. 2. Objection. Any party may object to the petition for intervention by filing a written notice of objection with the ~~hearing examiner~~ judge within seven days of service of the petition if there is sufficient time before the hearing. The notice shall state the party's reasons for objection and shall be served upon all parties, the person petitioning to intervene and the agency. If there is insufficient time before the hearing for a written objection, the objection may be made orally at the hearing.

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Subp. 2a. Hearing on petition. In formal contested cases, where necessary to develop a full record on the question of intervention, the judge shall conduct a hearing on the petition to determine specific standards that will apply to each category of intervenor, and to define the scope of intervention.

Subp. 3. Order. The hearing examiner judge shall allow intervention upon a proper showing pursuant to subpart 1 unless the hearing examiner judge finds that the petitioner's interest is adequately represented by one or more parties participating in the case. An order allowing intervention shall specify the extent of participation permitted the intervenor and shall state the judge's reasons. An intervenor may be allowed to:

A. file a written brief without acquiring the status of a party;

B. intervene as a party with all the rights of a party; or

C. intervene as a party with all the rights of a party but limited to specific issues and to the means necessary to present and develop those issues.

Subp. 4. By agency in a neutral capacity. Where the agency participates in the hearing in a neutral or quasi-judicial capacity, the agency staff, or a portion of the agency staff, may petition to intervene under the rule.

Subp. 5. Participation by public. The hearing examiner judge may, in the absence of a petition to intervene, nevertheless hear the testimony and receive exhibits from any person at the hearing, or allow a person to note his appearance, or allow a person to question witnesses, but no person shall become, or be deemed to have become, a party by reason of such participation. Persons offering testimony or exhibits may be questioned by parties to the proceeding.

1400.6350 CONSOLIDATION OF CASES.

Subpart 1. Standards for consolidation. Whenever two or more separate contested cases present substantially the same issues of fact and law, that a holding in one case would affect the rights of parties in another case, that consolidating the cases for hearing would save time and costs, and that consolidation would not substantially prejudice any party, the cases may be consolidated for hearing under this part.

Subp. 2. Agency consolidation. Subject to a motion for severance as provided in subpart 7, prior to referring cases to the office for hearing an agency may consolidate two or more cases for hearing.

Subp. 3. Service of petition. A party requesting consolidation shall serve a petition for consolidation on all parties to the cases to be consolidated, on the agency if the agency is not a party, and shall file the original with the judge assigned to the cases, together with a proof of service showing service as required herein. Any party objecting to the petition shall serve and file their objections within ten calendar days following service of the petition for consolidation.

Subp. 4. Determination of petition. When more than one judge is assigned to the cases which are the subject of the petition for consolidation, the petition will be determined by the judge assigned to the first case submitted to the office.

Subp. 5. Order. Upon determining whether cases should be consolidated, the judge shall serve a written order on all parties and the agency, if the agency is not a party. The order shall contain, among other things, a description of the cases for consolidation, the reasons for the decision, and notification of a consolidated prehearing conference if one is being scheduled.

Subp. 6. Stipulations. Nothing contained in this part shall be deemed to prohibit parties from stipulating and agreeing to a consolidation which shall be granted upon submission of a written stipulation, signed by all parties, to the judge. A judge may consolidate two or more cases presently pending before that judge on the judge's own motion, applying the standards in subpart 1.

Subp. 7. Petition for severance. Following receipt of a notice of or order for consolidation, any party may petition for severance by serving it on all other parties and the agency, if the agency is not a party, and filing it with the judge at least seven business days prior to the first scheduled hearing date. If the judge finds that the consolidation will prejudice the petitioner, the judge shall order the severance or other relief which will prevent the prejudice from occurring.

1400.6400 HEARING EXAMINER ADMINISTRATIVE LAW JUDGE DISQUALIFICATION.

The hearing examiner judge shall withdraw from participation in a contested case at any time if he or she deems himself or herself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the chief hearing examiner judge shall determine the matter as a part of the record provided the affidavit shall be filed no later than five days prior to the date set for hearing.

1400.6500 PREHEARING CONFERENCE.

Subpart 1. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined, to consider amendment of the agency's order if necessary, to obtain stipulations in regard to foundation for testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, to determine the extent of and deadlines for the completion of any discovery, to establish hearing dates and locations if not previously set, to determine whether the issues in the case are susceptible to mediation, to consider such other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

Subp. 2. Procedure. Upon the request of any party or upon his or her own motion, the hearing examiner judge may, in his or her discretion, hold a prehearing conference prior to each contested case hearing where the amount in controversy exceeds \$1,000. The hearing examiner judge may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the hearing examiner judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing examiner judge. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the hearing examiner judge.

1400.6550 SETTLEMENT CONFERENCE.

Subpart 1. Purpose. A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing as in part 1400.6500, subpart 1.

Subp. 2. Scheduling. Upon the request of any party or the judge, the chief judge shall assign the case to another judge for the purpose of conducting a settlement conference. The conference shall be conducted at a time and place agreeable to all parties and the judge. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference.

Subp. 3. Procedures at conference. All parties shall attend or be represented at a settlement conference. Parties or their representatives attending a settlement conference shall be prepared to participate in meaningful settlement discussions and must have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 4. Preconference discussions. The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

Subp. 5. Information provided. At the settlement conference, the parties shall be prepared to provide the information and to discuss all matters required by part 1400.6500, subpart 1.

Subp. 6. Orders. If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the judge presiding over the settlement conference shall issue an order confirming and approving, if necessary, those matters agreed upon. The order is binding on the judge who is assigned to hear the case.

1400.6600 MOTIONS.

Any application to the hearing examiner judge for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions provided for in these rules require a written notice, to parts 1400.5100 to 1400.8400 shall be served on all parties and to, the agency, to be served five days prior to the submission of the motion to the hearing examiner, except where impractical. The hearing examiner may, at his discretion, require a hearing before an order on the motion will be issued if it is not a party, and the judge. The written motion shall advise other parties that should they wish to contest the motion they must file a written response with the judge and serve copies on all parties, within five working days after it is received. If any party desires a hearing on the motion, they shall make a request for a hearing at the time of the submission of their motion or response. A response shall set forth the nonmoving party's objections. A hearing on a motion will be ordered by the judge only in formal

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contested cases and only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. All orders on such motions, other than those made during the course of the hearing, shall be in writing and shall be served upon all parties of record and the agency if it is not a party. In ruling on motions where ~~these rules parts 1400.5100 to 1400.8400~~ are silent, the hearing examiner judge shall apply the Rules of Civil Procedure for the District Court for the state of Minnesota to the extent that ~~he or she determines that it is~~ it is determined appropriate ~~to do so~~ in order to promote a fair and expeditious proceeding.

1400.6700 DISCOVERY.

Subpart 1. Witnesses; statement by parties or witnesses. Each party shall, within ten days of a demand by another party, disclose the following:

A. The names and addresses of all witnesses that a party intends to call at the hearing. All witnesses unknown at the time of said disclosure shall be disclosed as soon as they become known.

B. Any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements. Any party unreasonably failing upon demand to make the disclosure required by this subpart may, in the discretion of the hearing examiner judge, be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

Subp. 2. Discovery of other information. ~~Upon the motion of a party, the hearing examiner may order discovery of any other relevant material or information, provided that privileged work product (e.g. that of attorneys, investigators, etc.) shall not be discoverable. The hearing examiner shall also recognize all other privileged information or communications which are recognized at law. Upon proper motion made to the hearing examiner, in formal contested case proceedings, any means of discovery available pursuant to the Rules of Civil Procedure for the District Court of Minnesota may be is allowed provided that such request can be shown to be.~~ If the party from whom discovery is sought objects to the discovery, the party seeking the discovery may bring a motion before the judge to obtain an order compelling discovery. In the motion proceeding, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of a the party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive the discovery. In ruling on a discovery motion, the judge shall recognize all privileges recognized at law.

Subp. 3. Noncompliance. Upon the failure of a party to reasonably comply with an order of the hearing examiner judge made pursuant to subpart 2, the hearing examiner judge may make a further order as follows:

A. an order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order;

B. an order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting ~~him~~ that party from introducing designated matters in evidence.

Subp. 4. Protective orders. When a party is asked to reveal material ~~which he~~ considered to be proprietary information or trade secrets, ~~he that party~~ shall bring the matter to the attention of the hearing examiner judge, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

Subp. 5. Filing. Copies of a party's request for discovery as well as the responses to those requests and copies of discovery depositions shall not be filed with the office unless otherwise ordered by the judge or unless they are filed in support of any motion or unless they are introduced as evidence in the hearing.

1400.6800 REQUESTS FOR ADMISSION OF FACTS OR OPINIONS.

A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least 15 days prior to the hearing, and it shall be answered in writing by the party to whom the request is directed within ten days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to make a written answer ~~shall~~ within ten days will result in the subject matter of the request being deemed admitted unless it can be shown that there was a justifiable excuse for failing to respond.

1400.6900 DEPOSITIONS TO PRESERVE TESTIMONY.

Upon the request of any party, the hearing examiner judge may order that the testimony of any witness be taken by deposition to preserve ~~his~~ that witness' testimony in the manner prescribed by law for depositions in civil actions. The request shall indicate the relevancy of the testimony and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause and that the issues or amounts in controversy warrant expenditure of the time and costs of the deposition.

1400.7000 SUBPOENAS.

Subpart 1. Written request. Requests for subpoenas for the attendance of witnesses or the production of documents, either at a hearing or for the purpose of discovery, shall be made in writing to the hearing examiner and judge, shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought and, shall identify any documents sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena.

Subp. 2. Service. A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the District ~~Court~~ Courts of the state of Minnesota unless otherwise provided by law. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. The person serving the subpoena ~~shall is not required to make proof of service by filing the subpoena with the hearing examiner, together with his affidavit of service judge.~~ However, a filing with an affidavit of service will be required with the motion of a party seeking an order imposing sanctions for failure to comply with any subpoena issued under parts 1400.5100 to 1400.8400.

Subp. 3. ~~Motion to quash~~ Objection to subpoena. ~~Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, the hearing examiner may quash or modify the subpoena if he finds that it is unreasonable or oppressive.~~ Any person served with a subpoena who has an objection to it may file an objection with the judge. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The judge shall cancel or modify the subpoena if it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and whether or not there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers, or other tangible things.

1400.7050 SANCTIONS IN DISCRIMINATION CASES.

Subpart 1. Precomplaint procedure. If, at any time prior to the issuance of a complaint in any matter pending before the Minnesota Department of Human Rights, the department on behalf of the charging party or the respondent believes that the other is intentionally and frivolously delaying any precomplaint proceedings, it may petition the chief judge for an order imposing sanctions. For the purpose of this subpart, a respondent is any person against whom a charge has been filed. The sanctions and the procedures are as follows:

A. A party requesting the imposition of sanctions shall file a petition with the chief judge which shall include proof that a copy of the petition has been served on the other party.

B. A petition for the imposition of sanctions shall state, with specificity, the acts of the other party which are alleged to be intentional and frivolous delay; the sanctions requested; whether an oral hearing is requested; and shall include sworn affidavits of persons having first-hand knowledge of the alleged acts.

C. The party against whom sanctions are sought shall have five working days following receipt of the petition to file an objection to the petition. The objection shall respond to each alleged act of delay with specificity; shall include sworn affidavits of persons having first-hand knowledge of the alleged acts; and shall state whether an oral hearing is requested. Objections are timely filed only if received by the office at or before 4:30 p.m. of the fifth working day. The objection shall include proof that it was served on the other party.

D. Upon receipt of a petition and objection under this part, the chief judge shall either determine the matter or assign it to a judge for determination. If either party has requested an oral hearing, it shall be conducted no earlier than ten calendar days following the receipt of a notice of the hearing.

E. Intentional and frivolous delay occurs when a party deliberately delays proceedings for immaterial, meritless, trivial, or unjustifiable reasons. In determining whether intentional and frivolous delay has occurred, the judge shall also give consideration to the number of issues and amount of damages in controversy, any pattern of similar acts by the party, the department's existing caseload, statutory priorities for the investigation and processing of charges, and effects of the delay.

F. If it is determined that intentional and frivolous delay has occurred, the judge shall enter an order requiring the

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offending party to cease and desist from the act; compelling cooperation in all phases of the proceedings; or imposing any other sanctions, other than fines, deemed necessary to compel expeditious cooperation and completion of the investigation.

G. In the event the investigation results in a finding of probable cause and issuance of a complaint, the determination of intentional and frivolous delay and compliance with any orders issued under item F shall be taken into consideration in awarding damages and attorney's fees, where applicable.

Subp. 2. Procedure during proceedings. If during the pendency of a contested case before the office either the department or the respondent believe that the other is intentionally and frivolously delaying the proceedings, it may bring a motion before the judge by following the procedures in part 1400.6600. If the judge determines, using the criteria in subpart 1, item E, that intentional and frivolous delay has occurred, the judge shall issue an order containing any of the following:

- A. that the party shall cease and desist from the acts;
- B. compelling cooperation during further pendency of the case;
- C. dismissing any or all charges or defenses to charges, whichever may be appropriate;
- D. foreclosing the testimony of specified witnesses or the presentation of evidence on specified issues;
- E. that the delay will be taken into consideration in awarding damages or attorney's fees; or
- F. any sanctions available in civil cases in the district courts of Minnesota.

THE HEARING

1400.7100 RIGHTS AND RESPONSIBILITIES OF PARTIES.

Subpart 1. Generally. All parties shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses.

Subp. 2. Necessary preparation. A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party.

Subp. 3. Responding to orders. If the judge orders that parties do an act or not do an act, the parties shall comply with the order. If a party objects to an order, the objection shall be stated in advance of the order as part of the record. If the party had no advance knowledge that the order was to be issued, any objection shall be made as part of the record as soon as the party becomes aware of the order.

Subp. 4. Copies. The judge shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the judge shall simultaneously send a copy to all other parties; provided, however, that this requirement shall not apply to requests for subpoenas.

Subp. 5. Representation by attorney. A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

1400.7150 RIGHTS AND RESPONSIBILITIES OF NONPARTIES.

Subpart 1. Offering evidence. With the approval of the judge, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the judge.

Subp. 2. Questioning witnesses. The judge may allow nonparties to question witnesses if deemed necessary for the development of a full and complete record.

1400.7200 WITNESSES.

Any party may be a witness ~~or~~ and may present witnesses on ~~his~~ the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon ~~his~~ the judge's own motion, the ~~hearing examiner~~ ~~may~~ judge shall exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

1400.7300 RULES OF EVIDENCE.

Subpart 1. Admissible evidence. The ~~hearing examiner~~ ~~may~~ judge shall admit all evidence which ~~possesses probative value~~ logically tends to prove or disprove an important fact, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The ~~hearing examiner~~ judge shall give effect to

the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious ~~may~~ shall be excluded.

Subp. 2. Evidence part of record. All evidence to be considered in the case, including all records and documents in the possession of the agency or a true and accurate photocopy ~~thereof~~, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

Subp. 3. Documents. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the ~~hearing examiner~~ judge or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised as to the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy in lieu of the original.

Subp. 4. Official notice of facts. The ~~hearing examiner~~ judge may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

Subp. 5. Burden of proof. The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard. A party asserting an affirmative defense shall have the burden of proving the existence of the defense by a preponderance of the evidence. In employee disciplinary actions, the agency or political subdivision initiating the disciplinary action shall have the burden of proof.

Subp. 6. Examination of adverse party. A party may call an adverse party or ~~his~~ a managing agent, or employees or an officer, director, managing agent, or employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate ~~him~~ that party by leading questions and contradict and impeach ~~him~~ that party on material matters in all respects as if ~~he~~ that party had been called by the adverse party. The adverse party may be examined by ~~his~~ that party's counsel upon the subject matter of ~~his~~ that party's examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by ~~his~~ the testimony.

1400.7400 HEARING RECORD.

Subpart 1. Content. The ~~hearing examiner~~ judge shall maintain the official record in each contested case until the issuance of ~~his~~ the judge's final report, at which time the record, except for the audiomagnetic recordings of the hearing, shall be sent to the agency.

The record in a contested case shall contain all pleadings, motions, and orders; evidence ~~received~~ offered or considered; offers of proof, objections, and rulings thereon; the ~~hearing examiner's~~ judge's findings of fact, conclusions, and recommendations; all memoranda or data submitted by any party in connection with the case; and the transcript of the hearing, if one was prepared.

Subp. 2. Transcript. The verbatim record shall be transcribed if requested by the agency, a party, or in the discretion of the chief ~~hearing examiner~~ judge. If a transcription is made, the chief ~~hearing examiner~~ judge shall require the requesting person and other persons who request copies of the transcript ~~from him~~ to pay a reasonable charge ~~therefor~~. the charge shall be set by the chief ~~hearing examiner~~ judge, subject to the approval of the commissioner of finance, and all ~~moneys~~ money received for transcripts shall be payable to the state treasurer and shall be deposited in the ~~state~~ Office of Administrative Hearings' account in the state treasury. In cases where the transcript is prepared by nongovernmental sources, the charge to the parties and the agency shall be the same as the source charges the office.

1400.7500 CONTINUANCES.

Requests for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for continuance of the hearing shall be made in writing to the hearing examiner judge and shall be served upon all parties of record and the agency if it is not a party. A request for continuance filed not less than five days prior to the hearing may, in the discretion of the hearing examiner, be granted upon a showing of good cause. In determining whether good cause exists, due regard shall be given to the ability of the part requesting a continuance to effectively proceed without a continuance. A request for a continuance filed within five business days of the hearing shall be denied unless good cause exists and the reason for the request could not have been earlier ascertained.

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"Good cause" shall include: death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties provided that it is shown that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the case and the parties and the judge have agreed to a new hearing date, or, the parties have agreed to a settlement of the case which has been or will likely be approved by the final decisionmaker.

"Good cause" shall not include: intentional delay; unavailability of counsel or other representative due to engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; and failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the hearing examiner, in his discretion, may judge shall either order the additional testimony be taken by deposition or continue the hearing to a future date and such oral notice on the record shall be sufficient.

A continuance shall not be granted when to do so would prevent the case from being concluded within any statutory deadline.

1400.7600 CERTIFICATION OF MOTIONS TO THE AGENCY.

No motions shall be made directly to or be decided by the agency subsequent to the assignment of a hearing examiner judge and prior to the completion and filing of the hearing examiner's judge's report unless the motion is certified to the agency by the hearing examiner judge. No motions will be certified in conference contested cases or in cases where the judge's report is binding on the agency. Uncertified motions shall be made to and decided by the hearing examiner judge and considered by the agency in its consideration of the record as a whole subsequent to the filing of the hearing examiner's judge's report. Any party may request that a pending motion or a motion decided adversely to that party by the hearing examiner judge before or during the course of the hearing, other than rulings on the admissibility of evidence or interpretations of parts 1400.5100 to 1400.8400, be certified by the hearing examiner judge to the agency. In deciding what motions should be certified, the examiner judge shall consider the following:

- A. whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or
- B. whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or
- C. whether or not the delay between the ruling and the motion to certify would adversely affect the prevailing party; or
- D. whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or
- E. whether it is necessary to promote the development of the full record and avoid remanding; or
- F. whether the issues are solely within the expertise of the agency.

1400.7700 ~~HEARING EXAMINER'S~~ ADMINISTRATIVE LAW JUDGE'S CONDUCT.

The hearing examiner judge shall not communicate, directly or indirectly, in connection with any issue of fact or law with any person or party including the agency concerning any pending case, except upon notice and opportunity for all parties to participate. When these rules authorize communications contrary to this part, the communications shall be limited to only those matters permitted by these rules. The judge may respond to questions relating solely to procedures for the hearing without violating this part.

1400.7800 CONDUCT OF HEARING.

In the absence of a specific provision to the contrary, all contested case hearings are open to the public. Unless the hearing examiner judge determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

- A. The judge shall open the hearing by reading the title of the case, briefly stating the facts as alleged in the notice and order for hearing which give rise to the hearing, including, where applicable, the amount of any monetary claim made by any party.

B. After opening the hearing, the hearing examiner judge shall, unless all parties are represented by counsel or otherwise familiar with the procedures, state the procedural rules for the hearing including the following:

(1) All parties may present evidence and argument with respect to the issues and cross-examine witnesses. At the request of the party or the attorney for the party whose witness is being cross-examined, the hearing examiner judge may make such rulings as are necessary to prevent repetitive or irrelevant questioning and to expedite the cross-examination, to the extent consistent with disclosure of all relevant testimony and information.

(2) All parties have a right to be represented by an attorney at the hearing.

(3) The rules of evidence, ~~as set forth~~ in part 1400.7300, subpart 1.

~~B. C.~~ Any stipulations, settlement agreements, or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

~~C. D.~~ The party with the burden of proof may make an opening statement. All other parties may make ~~such~~ statements in a sequence determined by the hearing examiner judge.

~~D. E.~~ After any opening statements, the party with the burden of proof persuasion shall begin the presentation of evidence unless the parties have agreed otherwise or the administrative law judge determines that requiring another party to proceed first would be more expeditious and would not jeopardize the rights of any other party. ~~He~~ It shall be followed by the other parties in a sequence determined by the hearing examiner judge.

F. In conference contested cases, testimony may be given in narrative fashion by witnesses rather than by question-and-answer format.

~~E. G.~~ Cross-examination of witnesses shall be conducted in a sequence and in a manner determined by the hearing examiner judge to expedite the hearing while ensuring a fair hearing. At the request of a party whose witness is being cross-examined, the judge shall make rulings as are necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

H. Any party may be a witness or may present other persons as witnesses at the hearing. All evidentiary testimony presented to prove or disprove a fact at issue shall be under oath or affirmation.

~~F. I.~~ When all parties and witnesses have been heard, opportunity shall be offered to present oral final argument, in a sequence determined by the hearing examiner judge. ~~Such~~ In formal contested cases, final argument may, in the discretion of the hearing examiner judge, be in the form of written memoranda or oral argument, or both. Final argument need not be recorded, in the discretion of the hearing examiner judge. Written memoranda may, in the discretion of the hearing examiner judge, be submitted simultaneously or sequentially and within ~~such~~ time periods as the hearing examiner judge may prescribe.

G. J. After final argument, the hearing shall be closed ~~or continued at the discretion of the hearing examiner~~ unless a continuance has been ordered under part 1400.7500. If continued, it shall be either: continued to a certain time and day, announced at the time of the hearing and made a part of the record; or continued to a date to be determined later, which must be upon not less than five days' written notice to the parties.

H. K. The record of the contested case proceeding shall be closed upon receipt of the final written memorandum, transcript, if any, or late filed exhibits which the parties and the hearing examiner judge have agreed should be received into the record, whichever occurs latest.

1400.7900 PARTICIPATION BY AGENCY.

An agency which is a party to a contested case may only participate in the hearing by the giving of testimony and through its designated representative or counsel. Where the agency is not a party and participates in the hearing in a neutral or quasi-judicial capacity, the agency head or a member of the governing body of the agency or ~~his~~ delegate designee may engage in ~~such~~ examination of witnesses as the hearing examiner judge deems appropriate.

1400.8000 DISRUPTION OF HEARING.

Subpart 1. Cameras. ~~No~~ Television, newsreel, motion picture, still, or other ~~camera~~ cameras, and ~~no~~ mechanical recording

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devices, ~~other than those provided by the office of Administrative Hearings or at its discretion, shall~~ may be operated in the hearing room during the course of the hearing unless after permission is obtained from the hearing examiner prior to the opening of the hearing judge and then subject only pursuant to such any conditions as the hearing examiner judge may impose to avoid disruption of the hearing.

Subp. 2. Other conduct. Pursuant to and in accordance with ~~the provisions of Minnesota Statutes, section 624.72, no person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of the hearing. In the event of such interference or, disruption, or threat thereof, the hearing examiner judge shall read this subpart to those persons causing such interference or disruption and thereafter proceed as he deems deemed appropriate, which may include ordering the disruptive person to leave or be removed from the hearing.~~

1400.8100 HEARING EXAMINER'S ADMINISTRATIVE LAW JUDGE'S REPORT.

Subpart 1. Based on the record. No factual information or evidence which is not a part of the record shall be considered by the hearing examiner judge or the agency in the determination of a contested case.

Subp. 2. Administrative notice. The hearing examiner judge and agency may take administrative notice of general, technical, or scientific facts within their specialized knowledge in conformance with ~~the requirements of Minnesota Statutes, section 14.60.~~

Subp. 3. Completion and distribution. Following the close of the record, the hearing examiner judge shall make ~~his~~ a report pursuant to Minnesota Statutes, ~~sections 14.15 and section 14.50, and, upon completion, a copy of said the report shall be served upon all parties by personal service, by first class mail, or by depositing it with the Central Mailing Section, Publications Division, Department of Administration.~~

1400.8200 AGENCY DECISION.

Following receipt of the hearing examiner's judge's report, the agency shall proceed to make its final decision in accordance with Minnesota Statutes, sections 14.61 and 14.62 and shall serve a copy of its final order upon the hearing examiner office by first class mail.

1400.8300 RECONSIDERATION OR REHEARING.

Once a judge has issued a report, unless that report is binding on the agency, the judge loses jurisdiction to amend the report except for clerical or mathematical errors. Unless the report is a final order, binding on the agency, petitions for reconsideration or rehearing must be filed with the agency. An agency notice of and order for rehearing shall be served on all parties in the same manner prescribed for the notice of and order for hearing provided that the hearing examiner judge may permit service of the notice and order for rehearing less than 30 days prior to rehearing or 20 days in conference contested cases. The rehearing shall be conducted in the same manner prescribed for a hearing.

REPEALER. Minnesota Rules, parts 1400.6300, 1400.8500, 1405.5100, 1405.5200, 1405.5300, 1405.5400, 1405.5500, 1405.5600, 1405.5700, 1405.5800, 1405.5900, 1405.6000, 1405.6100, 1405.6200, 1405.6300, 1405.6400, 1405.6500, 1405.6600, 1405.6700, 1405.6800, 1405.6900, 1405.7000, 1405.7100, 1405.7200, and 1405.7300 are repealed.

EFFECTIVE DATE. These rules apply to all contested cases initiated pursuant to part 1400.5300 after the effective date of the rules.

Department of Commerce

Proposed Rules Governing Credit Unions

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, sections 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the 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.

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 Allyn R. Long, Assistant Commissioner, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-2750. Any person requesting a public hearing should state her/his name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request and any change proposed and to send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 46.01, subd. 2. 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 by contacting Linda Phillips at the above address.

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. If a hearing is not required, notice of the date of submission of the proposed rules to the Attorney General for review will be mailed to any person requesting to receive the notice. 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 Linda Phillips, 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 Linda Phillips at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2765.6100 BOOKS, RECORDS, AND REPORTS.

Subpart 1. [See repealer.]

Subp. 2. ~~Recordkeeping services~~ Data processing off premises. Any credit union receiving recordkeeping services from another credit union or from a service corporation shall provide the following:

A- a certificate from the other credit union receiving such services or service corporation, stating that it will comply its agreement to perform the services in compliance with the provisions of Minnesota Statutes, section 52.06 and giving full assurance that the performance of such recordkeeping services by the other credit union, or the respective clerical service corporation (name of either to be given), will be subject to Banking Division rules in the same manner as if such services were being performed by the credit union itself and on its own premises;

B- a certificate to be furnished by the credit union furnishing such clerical services, or the clerical service corporation, agreeing as to performing such services as outlined in Minnesota Statutes, section 52.06 that its performance thereof will be subject to regulation and examination by the commissioner of banks to the same extent as if such services were being performed by the serviced credit union itself on its own premises. The certificate must acknowledge that it is subject to regulation and examination to the same extent as if the services were being performed by the credit union on its premises.

Subp. 2a. Daily closing. Credit unions that maintain in excess of \$500,000 in accounts subject to draft withdrawal shall post all assets and liabilities daily.

Subp. 3. Semiannual audit report. The supervisory committee shall file a report in duplicate on forms furnished by the commissioner of banks Department of Commerce, within 30 days after the date of each semiannual audit.

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Subp. 4. Cash receipts and assets Commingled funds. All cash receipts and assets of the credit union must be kept intact and ~~not commingled with any~~ separate from other funds under any circumstances.

Subp. 5. [See repealer.]

Subp. 5a. Statement of accounts. A statement of account that itemizes all transactions must be issued at least monthly for sharedraft accounts. A statement must be issued at the end of a dividend period on all other accounts, except that a statement need not be issued more often than quarterly and must be issued at least annually.

Subp. 5b. Inactive and segregated accounts. If the board determines that an account is inactive and segregated, it must be issued a statement at least annually. Statements on inactive accounts must be issued under the control of the supervisory committee.

Subp. 5c. Passbooks. When issued, passbooks must show the current position of shares, deposits, and loans. The credit union shall annually notify members to bring passbooks into the credit union office for current posting. A credit union may not hold a passbook.

Subp. 6. ~~Individual ledger cards~~ Issuing account numbers. A number shall must be assigned to each member in sequence upon his election to membership, and ~~no such that number shall ever~~ may never be reissued to ~~any other~~ another member. Each member's assigned number shall must appear on his ~~passbook and individual ledger card~~ record of accounts for shares, deposits, and loans. ~~All ledger cards must be kept so that the year can be readily ascertained.~~

2675.6110 PURCHASE OF REAL ESTATE.

~~No~~ A credit union shall may not purchase real estate unless approved by the commissioner of banks other than for credit union premises.

2675.6111 INVESTMENTS IN CREDIT UNION PREMISES.

Investments in credit union premises or leasehold investments may not exceed 50 percent of total reserves of the credit union unless the Department of Commerce grants a prior approval.

2675.6120 OTHER REAL ESTATE.

Subpart 1. Transfers. Whenever real estate is acquired by a credit union through foreclosure or by deed in lieu thereof of foreclosure, it shall must be transferred from loans to an account titled "other real estate" on the date upon which the credit union actually acquired title.

Subp. 2. Repair and restoration costs. No Costs of repairs ~~or~~ and costs of restoration of ~~such~~ the property may not be added to the real estate account, ~~except such~~ unless the expenditures ~~as represent~~ are for permanent improvements. Taxes delinquent when title is acquired may, when paid by the credit union, be added to the book value of the property.

Subp. 3. Additions to book value. No Additions to book value may not be made after the date of sale in cases of foreclosure except as noted in the preceding paragraph subpart 2. If a deed is taken in lieu of foreclosure, real estate must be carried at a figure not exceeding the balance due on the mortgage, plus delinquent taxes and assessments paid by the credit union at the time of acquiring title thereto.

When sales are made on a contract for deed at a price exceeding the book value of the real estate, the profit involved shall be considered a deferred profit and held in a reserve account and only credited to actual profit after one-third of the purchase price has been paid on the contract, excluding interest payments.

"Other real estate" must be charged off annually at the rate of at least ten percent of the original amount and the first charge off must be made not later than 12 months after the date of acquisition.

Subp. 4. Sale of other real estate. A credit union may finance the sale of other real estate or credit union premises under the terms and conditions available to any seller or owner of real property. A profit on the sale of other real estate sold on contract is considered deferred profit and must be held in reserve to be realized after two consecutive years of contracted payments have been made.

Subp. 5. Unsold other real estate. Other real estate that is not sold must be charged off annually through earnings at the rate of at least ten percent of the original amount. The first charge off must be based on the number of full months in which other real estate was booked.

2675.6141 REAL ESTATE MORTGAGES.

Subpart 1. Loans. Credit unions may make loans upon the security of real estate if it is a first lien on the real estate. Additionally, credit unions may take a junior lien if the loan is made:

A. to secure debts previously contracted;

B. if at least 80 percent of the principal balance is guaranteed or insured by a governmental agency or nationally recognized insurer;

C. to secure a loan if the total unpaid aggregate of all outstanding liens against the same real estate, including the credit union's proposed lien, does not exceed 80 percent of its appraised value. A loan made under Minnesota Statutes, section 52.165 is deemed to comply with this rule if it was in compliance at the date of its origination.

Subp. 2. Appraisal report. Real estate appraisal reports are required for each mortgage. The appraisal and the reasonableness of its accuracy is the responsibility of the credit committee or, in the absence of a credit committee, the board of directors. The appraisal report and its acceptance by the board or credit committee must be made part of the mortgage file.

Subp. 3. Valid lien. An attorney's opinion or a title insurance policy is required on all real estate loans and must describe the status of fee title, the validity of the credit union's lien, and the position of the lien.

Subp. 4. Insurance. Evidence of adequate insurance with loss payable clause payable to credit union is required for mortgages on improved property.

Written binders of insurance are acceptable evidence of insurance. A credit union may not refuse to accept a binder tendered at the time of closing as evidence of insurance coverage required as a condition of a loan agreement; provided that the binder conforms with usual and customary conditions as to designation of loss payee and mortgagor.

Subp. 5. Fees. As specified by board policy, a credit union may require members to pay fees in connection with the making, closing, disbursing, extending, readjusting, or renewing of real estate loans. Upon acceptance of an application for a real estate loan, the borrower shall be provided with an estimate of all costs other than interest authorized by law. Additionally, the applicant shall be provided with an estimate of costs to be refunded in the event the loan is not granted.

Subp. 6. Exempt loans. Real estate lending policies may exclude the title perfection requirements of part 2675.6141 on advances of \$7,500 or less. These loans will not be considered real estate secured loans for examination purposes or for purposes of transferring or imposing fees as provided by part 2675.6141, subpart 5.

2675.6142 PERSONAL LOANS.

Subpart 1. Fees. Charges, other than interest authorized by law, may not be made for any non-real estate loan except that there may be charged to the borrower or included in the amount financed:

A. Fees paid or to be paid by the credit union to any public officer for filing, recording, or releasing in a public office an instrument securing the loan.

B. Premiums or charge for insurance protecting the lender against the risk of loss from not filing or recording a security agreement or financing statement and in lieu of filing the agreement or statement. The premium or charge may not exceed the actual premium or charge made by the insurance company to the lender or the actual costs if the documents were filed, recorded, or released in any public office.

C. The premium on any life, accident and health, property, or other insurance written upon or in connection with a loan; provided notification is given in writing that the borrower has the option of furnishing this coverage through existing policies of insurance owned or controlled by him or of furnishing the coverage through any insurer authorized to transact business in this state. The premium may not be included as part of the loan and must be accounted for as a separate receivable unless advanced as part of the principal at the time of origination or payments are increased to provide amortization of the premium within the original maturity of the loan.

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Subp. 2. Financial statements. An unsecured loan in an amount indicated below must be supported by a signed financial statement of the borrower, comaker, and guarantors that lists the assets and obligations and shows the net worth of the borrower, comaker, or guarantor:

- A. an unsecured loan in excess of \$1,500 in a credit union with assets of less than \$1,000,000;
- B. an unsecured loan in excess of \$3,000 in a credit union with assets of \$1,000,000 to \$10,000,000; or
- C. an unsecured loan in excess of \$5,000 in a credit union with assets of \$10,000,000 or more.

Current financial information is also required on loans which the commissioner or his examiners consider inadequately secured. The loan application must show the estimated value of any collateral offered at the time a loan is granted.

2675.6143 DELINQUENT LOANS.

Subpart 1. Installment loans. A note due on a monthly installment basis must be scheduled for delinquency. The whole principal balance is considered past due if any portion of an installment remains unpaid 60 days after the scheduled payment date. Delinquent loans must be shown by categories coded as follows:

- A. 60 days to 180 days, code A;
- B. 181 days to 364 days, code B; and
- C. 365 days or more, code C.

Subp. 2. Single payment loans. A single payment loan is considered past due the next day after maturity and must be coded past due from that date according to the schedule in subpart 1.

Subp. 3. Extensions. A loan is not considered current by extension unless accrued interest has been paid to the date of extension. Special consideration for unusual circumstances affecting the general membership may be permitted by a detailed application to the Department of Commerce.

Subp. 4. Delinquent loan report. A detailed report on delinquent loans must be reviewed at each board meeting and made a part of the minutes. The report must include a summary of collection activity, the number of new additions to the delinquent loan list, and a review of loans on the prior month's delinquent loan list which have been extended or rewritten. The board shall verify by direct examination or otherwise that the record of delinquent loans is reasonably accurate.

Subp. 5. Delinquent loan reserve requirement. Before declaration of a dividend the board of directors shall ascertain that the statutory reserve as of the date of declaration exceeds the sum of:

- A. ten percent of code A loans;
- B. 25 percent of code B loans; and
- C. 100 percent of code C loans.

No net earnings or undivided earnings may be used to pay dividends until the statutory reserve exceeds the above calculations or the commissioner of commerce has approved payment.

Subp. 6. Interest earned not collected. Interest earned not collected reflected on a credit union's books under the accrual method of accounting may not be continued on a loan which is more than 90 days delinquent. Accrued interest must be reversed to earnings or undivided profits at the time a loan is charged off to the statutory reserve fund or at the time an allowance for loan losses is established.

2675.6180 BOARD OF DIRECTORS.

Subpart 1. Change. Notice of any change in officers, directors, or committee members between annual meetings must be forwarded to the ~~commissioner of banks~~ Department of Commerce within ten days after ~~such~~ of the effective date of the change.

Subp. 2. Review of examiner's report. When the examiner's report is received by a credit union, it must be reviewed by the board of directors at a regular or special meeting ~~within 30 days after its receipt~~ and a reply must be submitted to the Department of Commerce within 60 days of the receipt of the report or as instructed in the transmittal letter. The letter from ~~this~~ the Department of Commerce which accompanies the report must also be read at the directors' meeting. The directors'

reply must be on the form attached to the face of the examiner's report. The minutes must show the fact that the directors reviewed the report and also any action taken.

Subp. 3. [See repealer.]

Subp. 4. Minute book. The minutes of any meeting must be written up as soon as practicable and signed by the secretary and the presiding officer at the next meeting ~~as soon as approved upon approval. They should~~ The minutes must be kept in a book and be available along with the credit union records for inspection by the commissioner of ~~banks~~ commerce or his representatives at all times with or without previous notice.

2675.6210 ASSET RECEIPT.

Whenever it becomes necessary to remove any asset from the files for any reason whatsoever, ~~an authentic~~ a properly executed receipt attached to a copy of ~~such~~ the asset must replace it.

2675.6220 CHARGED OFF ASSETS.

A record of all assets charged off, either to the statutory reserve fund or undivided earnings, along with recoveries thereto must be maintained. This record ~~should be kept current and~~ must be available to the examiners at each examination.

2675.6230 FURNITURE AND FIXTURES ACCOUNT.

Purchases capitalized to the furniture and fixtures account shall be amortized at the minimum rate of ten percent annually, ~~with such exceptions as may be unless exception is made by the commissioner of banks commerce. Each such annual charge shall be based on the remaining book value at the end of each year~~ The charge off may be based on the number of full months in which the item was capitalized. Adequate records must be maintained to facilitate a determination of the unamortized amount of each capitalized item.

2675.6250 SURETY FIDELITY BONDS.

Subpart 1. ~~Minimum provisions~~ Requirements. A ~~credit unions~~ union operating under Minnesota law ~~shall be~~ is required to be protected by a blanket bond with the following provisions: all officers, committee members, employees, bank messengers, and attorneys representing the credit union shall be covered by the bond. The credit union shall be protected against losses from a lack of honesty ~~or a lack of faithful performance,~~ burglary or robbery, forgery or alteration, and misplacement or mysterious and unexplainable disappearance. ~~The schedule of basic coverage required shall be as set forth in part 2675.9910.~~ The bond must be approved by the Department of Commerce. The bond must provide that the commissioner of commerce will be given notice of pending cancellation within 60 days of final termination.

Subp. 2. [See repealer.]

Subp. 3. Minimum provisions. The board of directors shall at least once a year approve the amount of fidelity insurance to be carried for the ensuing year. The board of directors may establish minimum amounts of bond coverage and maximum deductible amounts.

2675.6270 INVESTMENT RECORDS INVESTMENTS.

Subpart 1. Records required. During the period in which investments are carried on a credit union's books, ~~it shall be required that:~~

~~A.~~ original invoices of bond purchases and sales must be retained as a part of the records of a credit union;

~~B.~~ A record must be maintained of all securities bought and sold showing date of purchase or sale, interest rate, maturity, par value, description, from whom purchased, to whom sold, selling price, and where deposited for safekeeping;

~~C.~~ Any investment, other than ~~U.S.~~ United States governments direct and/or guaranteed, ~~shall~~ must be supported by full credit information at the time of purchase (dealer's circular or prospectus); ~~and.~~

~~D.~~ **Subp. 2. Bond price exceeding par.** Purchase of a security bond at a price exceeding par is prohibited, unless the credit union shall:

~~(1)~~ A. charge off the premium when the securities are placed on the books; ~~or~~

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(2) B. provide for the regular amortization of the premium paid so that the premium shall be entirely extinguished at or before the maturity of the security and the security (including premium) shall at no intervening date be carried at an amount in excess of that at which the obligor may legally redeem such security; or

(3) C. set up a reserve account to amortize the premium, said account to be credited periodically with an amount not less than the amount required for amortization under ~~subitem (2)~~ item B.

Subp. 3. Charges. Accrued interest paid on securities must be charged to interest received under the cash basis of accounting. Bond commissions and all costs of sales or purchase must be charged to expense.

Subp. 4. Security at price less than par. Upon the purchase of a security at a price less than par, the credit union shall place ~~such~~ the security on its books at cost and may provide for the regular accretion of the discount, ratably over the period from purchase to maturity of the security.

2675.6290 INSURANCE.

Subpart 1. Insurance agency. A credit union may establish, operate, or maintain an insurance agency as a separate corporation or agency within its physical premises.

Subp. 2. Policyholder. A credit union may be the policyholder of either a group insurance plan or a subgroup under a master policy plan.

Subp. 3. Remission of premiums. Premiums may be remitted by the credit union to an insurer or the holder of a master policy on behalf of a credit union member provided that ~~said~~ the credit union has obtained written authorization from ~~such~~ the member.

~~The credit union may accept reimbursement from the insurer for the actual cost of ministerial tasks performed pertaining to insurance. This reimbursement shall not exceed ten percent of gross premiums. The credit union may not accept a commission on the insurance sale.~~

Subp. 4. Election by member. Where a credit union is engaged in the facilitation of its members' voluntary purchase of ~~types~~ of insurance incidental to the borrowing of money ~~for provident and productive purposes~~, including but not limited to fire, theft, automobile, life, and temporary disability insurance, a member shall be given the elective of purchasing any required insurance from the vendor of his choice, and the members' file shall contain his signed written elective.

Subp. 5. Canceled insurance. If the insurance is canceled, the unearned premium shall be paid to the member or credited to the member's share or deposit or loan account ~~as the case may be.~~

2675.6301 CERTIFIED PUBLIC ACCOUNTANT REPORT IN LIEU OF EXAMINATION.

Subpart 1. Request for approval. A credit union may request prior approval by the Department of Commerce to submit a certified public accountant report in lieu of examination. If approval is given, the department retains the authority to reject the report if it is inadequate by the standards of the department.

Subp. 2. Contents of report. A report submitted in lieu of examinations must include a balance sheet examination and the classifying of assets in a manner consistent with Department of Commerce credit union examinations. The report must be submitted on the same forms and in the same manner that Department of Commerce credit union examiners employ.

REPEALER Parts 2675.6100, subparts 1 and 5; 2675.6130; 2675.6140; 2675.6150; 2675.6160; 2675.6170; 2675.6180, subpart 3; 2675.6190; 2675.6240; 2675.6250, subpart 2; 2675.6280; 2675.6300; and 2675.9910 of the Department of Commerce are repealed.

Energy & Economic Development Authority

Proposed Rules Governing School Energy Conservation Investment Loans

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Energy & Economic Development Authority (hereinafter "the Authority") proposes to adopt the above entitled rules without a public hearing. The Authority 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.

PROPOSED RULES

Authority for the adoption of these rules governing the administration of the Public School Energy Conservation Investment Loan Program is contained in MN Statute § 116J.37, Section 1, subdivision 7.

Additionally, a Statement of Need & Reasonableness that describes the need for and 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 Mr. de Fiebre upon request at the address below. The Statement of Need & Reasonableness also may be reviewed by the public during regular business hours by contacting Mr. de Fiebre.

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 Authority 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 Authority 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 & 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 Mr. de Fiebre.

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 & 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:

Jeremy de Fiebre
Energy Finance Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Boulevard
(612) 297-1221

Mark B. Dayton
Chairman, Energy & Economic
Development Authority

Rules as Proposed (all new material)

8300.2500 PURPOSE.

The purpose of parts 8300.2501 to 8300.2509 is to establish procedures for application by public school districts for energy conservation investment loans, criteria for state agency review of loan applications, and procedures and guidelines for monitoring, evaluation, and closure of loan accounts under the school energy loan program.

8300.2501 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 8300.2500 to 8300.2509, the following terms have the meaning given them.

Subp. 2. Applicant. "Applicant" means a public school district in Minnesota.

Subp. 3. Authority. "Authority" means the Minnesota Energy and Economic Development Authority.

Subp. 4. Building. "Building" means an existing building owned and operated by a public school district.

Subp. 5. Conservation measure. "Conservation measure" means an energy conservation measure that is an installation or modification of an installation to a building and that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

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

Subp. 6. Maxi-audit. "Maxi-audit" means a detailed engineering analysis of energy-saving building improvements, including modifications to building structure; heating, ventilating and air conditioning systems; operation practices; lighting; and other factors that relate to energy use. The purpose of a maxi-audit is to quantify the economic and engineering feasibility of energy-saving improvements or major operational modifications.

Subp. 7. Payback. "Payback" means the simple payback that is equal to the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 8. Project. "Project" means all proposed work in an application for a loan to a school district.

8300.2502 SCHOOL ENERGY LOAN ELIGIBILITY CRITERIA.

Subpart 1. In general. The authority shall approve school energy loans to applicants to cover the costs of capital expenditures that are conservation measures that have paybacks of ten years or less as specified in a maxi-audit in compliance with Minnesota Statutes, section 116J.37 and parts 8300.2502 to 8300.2505.

Loans are available to applicants that have not previously received or been offered loan funds under this program, for new projects in school districts that previously received or were offered loan funds under this program, and as amendments to loans for projects in progress that are experiencing cost overruns or for previously unidentified but related work necessary to successful implementation of a previously approved project if the payback remains at ten years or less. With the exception of amendments as described above, the authority shall not approve more than one loan for the same conservation measure in the same building.

Subp. 2. Prior approval required. Except for a loan amendment to cover cost overruns or costs associated with previously unidentified but related work necessary to the successful implementation of a previously approved and funded project, projects that have been contracted for or begun before the authority notifies the school district that the loan application is approved are not eligible. This prior approval requirement applies to the design, acquisition, and installation costs as identified in the maxi-audit.

Subp. 3. Existing buildings; new construction. Only projects for existing buildings are eligible. New construction is not eligible except if it is a necessary part of successful implementation of a conservation measure for an existing building.

8300.2503 MAXIMUM LOAN AMOUNT.

To assure equitable statewide distribution of loan funds, given that loans will be issued on a first-come-first-served basis, the authority shall establish three equal allocations of the \$30 million appropriated to this program to be divided among small, medium, and large school districts. Small districts are defined as having less than 900 students and four classroom buildings or less. Small districts are eligible for up to \$250,000 per district. Large districts are defined as having greater than 5,000 students or more than ten classroom buildings. Large districts are eligible for up to \$1,000,000 per district. All other districts are defined as medium school districts and are eligible for up to \$500,000 per district. Cooperative vocational centers and any other eligible educational facilities that are not included in school districts are limited to \$250,000. If less than 33 percent of any of the three allocations is used within six months from the effective date of parts 8300.2500 to 8300.2509, the authority may redistribute funds among the three allocations.

8300.2504 SCHOOL ENERGY LOAN APPLICATION CONTENTS AND PROCEDURES.

Subpart 1. In general. An applicant shall submit an application to the authority on a form provided by the authority. An application must be completed, dated, and signed in ink by a duly authorized official of the applicant and must include the authorized official's title.

Subp. 2. Contents. The application must contain: the school district or vocational center number; complete mailing address of the school district including the county; contact person's name, title, and telephone number; federal employer identification number; list of buildings included in the request and the dollar amount requested per building; name and address of each building, including the county; the total floor area in square feet for each building; original construction date for each building and building additions; the state legislative district; and a summary description of each conservation measure, its maxi-audit item number, its estimated cost, the loan amount requested, its estimated annual energy cost savings, its estimated annual fuel and electric savings, its estimated payback, and the estimated dates the conservation measure will be started and completed; and a certification to assure proper and efficient operation of the building once the project is completed. An application for an amendment for cost overruns must also contain a copy of the bid selected.

An application must also contain an irrevocable resolution of the school board to annually levy or otherwise collect sufficient funds to guarantee loan repayment and a maxi-audit for each building involved in the project. One copy of the application is required.

8300.2505 SCHOOL ENERGY LOAN APPLICATION REVIEW.

Subpart 1. Administrative review. The authority shall examine the loan application to verify that the applicant is eligible, that the required forms and reports are included and are correctly completed, that an irrevocable resolution of the school board on school district or school board letterhead is included, and that the estimated start and end dates of the conservation measures included in the project are reasonable.

Subp. 2. Technical review. A technical review must be based on the maxi-audit submitted for each building included in a loan application. The applicant shall submit the maxi-audit with the loan application on forms provided by the authority. The minimum requirements for a maxi-audit are given at Code of Federal Regulations, title 10, section 455.42 (May 21, 1981). A maxi-audit must be performed by or under the direction of and signed by a professional mechanical or electrical engineer or by an architect registered in Minnesota.

Conservation measures with paybacks of ten years or less that are identified and described in maxi-audits are eligible. Loans may not be awarded to buildings with a remaining useful life less than or equal to the payback of the conservation measures proposed. Loans may not be awarded for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

The authority shall examine a maxi-audit that accompanies a loan application to verify that conservation measures requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed measures are eligible.

Subp. 3. Review results. The authority shall accept, reject, or modify a loan application request as necessary based on this review. The authority shall give to an applicant whose application is rejected a written notice of problems encountered in the review process and options available to correct them for resubmission of the application. If only certain of the conservation measures included in the project are rejected or modified, the applicant may decide to accept a loan for the approved portions or resubmit the project proposal at a later date after making the necessary changes.

8300.2506 LOAN APPROVAL.

Subpart 1. Authority approval. The authority shall approve loans that comply with parts 8300.2502 to 8300.2505, on a first-come-first-served basis based as eligible and complete loan applications are received by the authority. If eligible and complete loan applications received at the same time cannot all be funded due to lack of available funds, the authority shall approve loans so that each affected application receives an equal percentage of the eligible loan amount request.

Subp. 2. Execution of loan contract and disbursement of funds. Upon approval of a school energy loan, the authority shall send a loan contract to the applicant. The authority shall attach to a loan contract a loan repayment schedule based on the approved loan application according to Minnesota Statutes, section 116J.37, subdivision 4, paragraph (b). The applicant shall have a duly authorized official execute and return the loan contract to the authority for execution of the loan contract by state officials and for disbursement of the loan funds. Loan funds must be issued upon execution of and according to the terms of the loan contract.

8300.2507 REPORTS AND MONITORING FOR SCHOOL ENERGY LOAN PROGRAM.

Subpart 1. In general. A school district that receives a loan from the authority shall submit the reports listed in subparts 2 to 5.

Subp. 2. Annual project status report. The school district shall submit to the authority on forms provided by the authority an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed. The project status report must indicate the progress of the implementation of the measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the school district fails to substantially comply with the start and end dates given in the loan application as approved, and if the school district cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

Subp. 3. Quarterly financial report. The school district shall submit to the authority, on forms provided by the authority, a quarterly financial status report that indicates expenditures of loan funds through the last date of each quarter. This report is due within 30 days of the end of each calendar quarter until the project is completed.

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PROPOSED RULES

Subp. 4. Final report. Within 60 days of the completion of the project, the school district shall submit to the authority, on forms provided by the authority, a final project status report and a financial status report that gives actual expenditures of the measures implemented.

Subp. 5. Annual energy report. The school district shall submit to the authority, on forms provided by the authority, an annual energy use and energy expenditure report by fuel type due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the authority cancels this requirement prior to the end of the loan contract period.

8300.2508 SCHOOL ENERGY LOAN PROGRAM EVALUATION.

The authority shall evaluate the program's effectiveness in reducing the energy cost of participating school districts 18 months after the effective date of these permanent rules and annually thereafter until all loan funds are issued. The school district shall provide the authority with information that is reasonably needed to conduct an evaluation of the loan program, which shall include but not be limited to the reports required in part 8300.2507.

8300.2509 CLOSURE OF SCHOOL ENERGY LOAN ACCOUNT.

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize closure of the loan account upon full repayment.

Minnesota Energy & Economic Development Authority

Emergency Proposed Rules Relating to General Procedures, Small Business Development Loan Program, and Minnesota Fund Loans

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for loan application procedures, Small Business Development Loans, Minnesota Funds, Special Assistance and amending the adopted rules governing authority procedures, pollution control financial assistance and business financial assistance. The agency is authorized by Minnesota Statutes, section 116J.91, subdivision 4, to adopt emergency rules for its financial assistance programs.

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency in support of or in opposition to the proposed emergency rules, and comments are encouraged. With publication of this notice in the October 22, 1984, *State Register*, written comments must be received by the agency no later than 4:30 p.m. on November 16, 1984. Written comments should be sent to:

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

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the agency will become part of the record in this matter.

The proposed emergency rules with any modifications adopted by the agency, will be submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the agency of such desire at the address given above. The Attorney General has ten working days to approve or disapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days, although the proposed emergency rules may be continued in effect for an additional period of up to 180 days if the agency publishes a separate notice to such effect in the *State Register* and mails the same notice to all persons on the agency's list to receive notice of rulemaking proceedings.

A full copy of the proposed emergency rules is available by contacting Ms. Callahan at the above address.

Dated: October 5, 1984

Mark B. Dayton, Commissioner of
the Department of Energy
& Economic Development &
Chairman of the Minnesota
Energy & Economic Development
Authority

Emergency Rules as Proposed (all new material)

8300.3010 [Emergency] SCOPE.

Parts 8300.3010 to 8300.3014 [Emergency] are general rules that apply to all applications for financial assistance made available by the authority under the act and Minnesota Statutes, chapter 472, as now in effect, and as amended from time to time. Parts 8300.3020 to 8300.3035 [Emergency] specify procedures and criteria for financial assistance from particular programs of the authority.

8300.3011 [Emergency] DEFINITIONS.

Subpart 1. Statutory terms. The definitions in Minnesota Statutes, sections 116J.88 and 472.03 and part 8300.0100 apply to parts 8300.3010 to 8300.3035 [Emergency].

Subp. 2. Project. "Project" means that which is funded or is proposed to be funded by financial assistance.

8300.3012 [Emergency] PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS.

Subpart 1. In general. To apply for assistance from the authority, an applicant shall submit an application form to the commissioner on a form provided by the commissioner. An application must be completed, dated, and signed by an owner, general partner, or an authorized officer of the applicant. The commissioner shall follow the procedures under part 8300.3014 [Emergency].

Subp. 2. Contents. An application must contain at a minimum the following information:

A. a written history of the business entity;

B. the source and use of funds to finance the project;

C. financial statements that include a balance sheet, an operating statement, a statement of the sources and uses of funds, and footnotes to the statements if available for the following time periods:

(1) Financial statements from the previous three years, if applicable. If unaudited, the statements must be signed by an authorized financial officer of the business making application.

(2) A current quarterly financial statement that was compiled within 90 days of the date the application was submitted, if quarterly financial statements are regularly prepared.

(3) Federal tax returns filed by the business for the previous three years if applicable, if the applicant is an individual or partnership.

(4) A proforma balance sheet and income statement for the 24 months following the financial assistance closing that shows the financial position of the applicant and that includes the proposed financing.

D. A marketing plan that describes:

(1) the industry the project is in;

(2) the industry outlook for the next three to five years; and

(3) the major characteristics of the industry, names, locations, products or services provided, duration and conditions of contracts in the plan, and the percentage of annual sales volume for each major customer over the previous three years.

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PROPOSED RULES

E. Current resumes of key personnel and signed personal financial statements dated as of the date of the application for any person who owns 20 percent or more interest in the business.

F. A resolution of support or other comparable preliminary approval from the local government unit.

G. A statement of informed consent by the individual subject regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d). If the subject of the data is a corporation, then an authorized representative shall provide a statement of informed consent in a form similar to that provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

H. Certification that the employer does not discriminate in employment.

I. Certification of business compliance with all federal, state, or local laws or regulations that affect the conduct of business in the state.

Subp. 3. Business plan. As part of the application, the applicant shall submit to the commissioner a comprehensive business plan. The business plan must include, but is not limited to, the following:

A. a management summary of the plan including:

- (1) name of the business;
- (2) business location and plan description;
- (3) discussion of the product, market, and competition;
- (4) expertise of management team;
- (5) summary of financial projections;
- (6) amount of financial assistance requested;
- (7) form of and purpose for the financial assistance; and
- (8) business goals;

B. a description of the company including the following:

- (1) date and state of incorporation, date and state of formation of partnership, or date and state of formation of sole proprietorship;
- (2) history of the company; and
- (3) principals and the roles they played in the evolution of the company;

C. a market analysis including:

- (1) description of the current industry status and industry trends;
- (2) effects of major social, economic, technological, or regulatory trends on the industry;
- (3) description of the total market, principal market participants, and their performance; and
- (4) discussion of the target market and competition;

D. a description of the product or product line including:

- (1) list of patents, copyrights, licenses, or statement of the proprietary interest in the product or product line;
- (2) discussion of technical and legal considerations;
- (3) comparisons to competitors' products or product lines; and
- (4) description of research and development and future plans for research and development;

E. a description of the marketing strategy including:

- (1) overall strategy;
- (2) pricing policy;
- (3) sales channels and terms;
- (4) method of selling, distributing, and servicing product;
- (5) estimated sales and market share; and
- (6) advertising, public relations, and promotion;

F. the management plan including:

- (1) form of business organization;
- (2) board of directors composition, if applicable;
- (3) officers organization chart and responsibilities; and
- (4) resumes of key personnel;

G. an operating plan including:

- (1) schedule of upcoming work for the next one to two years;
- (2) facilities plan or planned capital improvements for the next three years;
- (3) manufacturing processes; and
- (4) staffing plan (number of employees);

H. a schedule indicating the completion dates for realizing the significant aspects of the business plan;

I. a discussion of the risks and problems inherent to the business plan, including both the negative factors and plans to minimize the impact of those factors; and

J. financial data including:

- (1) a funding request indicating the desired financing, capitalization, use of funds, and future financing;
- (2) financial statements for the past three years, if applicable;
- (3) current financial statements;
- (4) monthly cash flow financial projections including the proposed financing for two years; and
- (5) projected balance sheets, income statement, and statement of changes in financial position for two years including the proposed financing.

8300.3013 [Emergency] COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

Subpart 1. Collateral requirements. The authority shall require collateral in accordance with generally accepted commercial lending practices as it deems necessary to protect the interests of the authority in the financial assistance. At a minimum, the collateral will take one or more of the following forms:

- A. mortgage on real property;
- B. security position on personal property;
- C. security of its financial assistance with assets being financed by the financial assistance and other assets of the company to protect the interests of the state's financial participation;
- D. letter of credit or equivalent instrument;
- E. guarantees of affiliates of the applicant;
- F. guarantees of shareholders or partners who have 20 percent or more ownership in the applicant; and
- G. bond insurance or other credit enhancements.

Subp. 2. Additional information or certifications. The following additional information is required by the authority, if applicable, prior to disbursing financial assistance and other information that the authority in its sole discretion deems advisable for prudent financial management of authority financial assistance:

- A. a lease agreement on property or equipment;
- B. a listing of collateral, including serial numbers for machinery and equipment that will serve as collateral to the financial assistance;
- C. certification of insurance for workers' compensation and employer's liability;
- D. a statement provided by the Internal Revenue Service of tax clearance;

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PROPOSED RULES

E. an appraisal of collateral offered to the authority for the financial assistance; and

F. a certificate of the insurers of all collateral that insurance is in force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the commissioner with evidence that the policy has been renewed, replaced, or is no longer required.

8300.3014 [Emergency] PROCEDURES FOR APPLICATION PROCESSING.

Subpart 1. Deadline for submission. The applicant shall submit a complete application to the commissioner by the first business day of any month in order for the authority to consider it in that month. If an application is received after the first of the month and can be reviewed by the commissioner for eligibility and financial feasibility prior to the authority agenda deadline, the authority may consider the application at the meeting in that month.

Subp. 2. Completed applications. An application is complete when the commissioner receives all required documentation and exhibits, together with the required fee.

Subp. 3. Incomplete applications. If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 60 days, the application is deemed to be rejected and the applicant shall reapply to be further considered.

Subp. 4. Review of eligibility of project and applicant. The commissioner shall review all completed applications to determine if the project and the applicant are eligible and meet the requirements of the act and any of parts 8300.3010 to 8300.3014 [Emergency] and any parts relating to the financial assistance for which the applicant has applied.

If the project and applicant are eligible, the commissioner shall review the application for economic feasibility as provided in subpart 6.

Subp. 5. Ineligible project or applicant. The commissioner shall notify the applicant in writing if the applicant or the project is ineligible. The applicant has 30 days from the date of the commissioner's notification to amend the application.

Upon receipt of an amended application, the commissioner shall review the amended application under subpart 4. The commissioner shall reject the amended application if the project and applicant are ineligible. If the project and applicant are eligible, the commissioner shall review the amended application for economic feasibility under subpart 6.

If the application is not amended within 30 days, the application must be rejected and will not receive any further consideration.

Subp. 6. Economic feasibility review. The commissioner shall review the application in accordance with generally accepted commercial lending practices, including the use of the standards as printed in the most current annually updated version of the Annual Statement Studies, issued by Robert Morris Associates, Philadelphia, PA.

The commissioner shall obtain any other credit information when available from private credit rating agencies including, but not limited to, Standard & Poors and Dun & Bradstreet. In accordance with generally accepted commercial lending practices, the commissioner may check personal references.

The commissioner shall determine if the applicant can generate sufficient cash flow and maintain a sound financial condition.

The commissioner shall determine if there is sufficient collateral for the financial assistance.

Subp. 7. Rejection of application based on economic feasibility. The commissioner shall notify the applicant in writing if the application is not economically feasible and the application is rejected.

If the application is rejected due to economic feasibility, the applicant may, within 30 days after written notification by the commissioner, request that the commissioner submit the rejected application to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established.

If the authority approves the application at its board meeting, the application will be treated in accordance with subpart 9.

Subp. 8. Findings of public purpose for small business and business loans. In addition to the economic feasibility review in subpart 6, the applicant must certify that the project assists in fulfilling the purposes of the act, including the applicable preferences and priorities in Minnesota Statutes, section 116J.89, including, but not limited to one or more of the following criteria:

A. The applicant is located in an area of the state that is experiencing one of the most severe unemployment rates in the state.

B. The applicant is located in a border community that experiences a competitive disadvantage due to location and with this financial assistance the applicant would be induced to stay in Minnesota rather than to move to another state.

C. The applicant is likely to expand within the state and to create additional taxable property to local units of government.

D. This financial assistance will help induce the applicant to locate in an area of economic distress or to provide jobs that would not otherwise be available to that area without the inducement of this financial assistance.

E. This financial assistance will create or maintain sufficient numbers and types of jobs to justify participation in the financial assistance programs.

F. Energy sources and public facilities will be sufficient to support the successful operation of the project.

G. If the financial assistance shall have the effect of a transfer of employment from one area of the state to another, the authority shall determine that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state.

Subp. 9. Authority evaluation procedure. Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval. If the authority disapproves the application, the commissioner shall so notify the applicant. If the authority approves the financial assistance, it shall pass a preliminary or a final resolution giving approval to the project to be financed and stating the name of the owner, a brief description of the project, the maximum amount of the financial assistance, and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority financial assistance. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. If the financial assistance is funded by bonds, then passage of a preliminary and a final resolution as provided in subpart 10 are required before financial assistance is approved. Throughout this process if the authority does not extend financial assistance, the authority shall remain without liability to the applicant.

Subp. 10. Funding of financial assistance by bonds. If the authority intends to fund the financial assistance by issuing bonds, the authority shall first pass a preliminary resolution. The preliminary resolution must not obligate the authority to issue bonds or to fund financial assistance, but must only constitute an expression of current intention of the authority to issue bonds or to fund the financial assistance. If the authority subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant, market conditions, availability of bond issuance authority, and other financial conditions that the authority deems necessary and the authority decides to fund the financial assistance, the authority shall pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance. The final resolution must specify the terms and conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the authority at any time prior to the final resolution of the authority without liability to the authority, and may impose any conditions or requirements that the authority deems desirable. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the authority does not extend financial assistance, the authority shall remain without liability to the applicant.

Subp. 11. Preparation of documents. The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the authority.

SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

8300.3020 [Emergency] PURPOSE OF SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

The small business development loan program issues financial assistance in a form involving a guarantee or insurance from the economic development fund or any account thereof and revenue bonds to finance small business loans.

8300.3021 [Emergency] ELIGIBLE APPLICANTS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

Persons, partnerships, firms, or corporations engaged in and determined by the authority to constitute a small business as defined in the regulations of the United States Small Business Administration, Code of Federal Regulations, title 13, part 121, are considered eligible small businesses or eligible applicants.

8300.3022 [Emergency] ELIGIBLE LOANS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

Subpart 1. In general. The authority shall make small business loans to applicants in compliance with the act and parts 8300.3010 to 8300.3024 [Emergency] in order to help create or retain jobs for the state.

Subp. 2. Purpose of loan. A small business loan must be used to provide interim or long-term financing for certain capital

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expenditures as provided in the act, and for expenditures that meet the requirements of federal industrial development bond laws, including:

- A. acquisition costs of land, buildings, or both;
- B. site preparation;
- C. construction costs;
- D. engineering costs;
- E. costs of equipment, machinery, or both;
- F. bond issuance costs;
- G. underwriting or placement fees;
- H. trustee's fees;
- I. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;
- J. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;
- K. certain contingency costs;
- L. interest costs during construction;
- M. legal fees, including those of the authority's bond counsel; and
- N. debt service reserve fund.

Working capital loans are not eligible for financial assistance under this loan program.

Subp. 3. Size of eligible loans. The principal amount of any financial assistance to be financed by the authority may be greater than \$250,000, but may not exceed the maximum amount permitted to be loaned to an eligible small business as defined in the act for the total value of eligible items listed in subpart 2.

Subp. 4. Equity requirements. The maximum loan percentage of the project costs for equipment is 75 percent and for all other authorized expenses is 80 percent. The authority may require a lower loan to project percentage based upon the economic feasibility of the application. The authority may accept letters of credit or other credit enhancements as part of the equity contribution by the applicant.

Subp. 5. Maximum term. The maximum term of a small business development loan may not exceed the average useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

- A. real property, land or buildings, 21 years;
- B. equipment or machinery, 11 years;
- C. combination of items A and B, weighted average.

Subp. 6. Interest rate. The authority shall set interest rates at a negotiated rate that approximates the market rate of interest for securities of equivalent value at the time the bonds are initially sold.

Subp. 7. Security requirements. Financial assistance, either for real property or equipment, must be secured as follows:

- A. A mortgage or other adequate security as determined by the authority on the real property to be financed.
- B. A lien or other adequate security as determined by the authority on equipment to be financed by the authority.
- C. Other security as determined by the commissioner to have a value at least equal to the principal amount to be financed by the authority less the value, as determined by the authority, of the security provided in items A and B, which other security shall be in form and kind satisfactory to the authority and may consist of some or all of the following:
 - (1) a senior, junior, or parity lien on other assets of the applicant; or
 - (2) a senior, junior, or parity lien on assets of certain owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses).
- D. A guarantee of owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses), or other related entities such as subsidiaries or parent corporations of the applicant.
- E. Additional forms of security, if necessary to strengthen the authority's collateral position on the financial assistance.

F. In addition to or in substitution for any of the items A to E, any guarantee as required by insurers of the bonds, other than the authority.

8300.3023 [Emergency] DEBT SERVICE RESERVE FUND FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

In conjunction with each amount of financial assistance it extends, the authority shall establish and fund a debt service reserve fund sufficient to cover approximately 12 months' debt service. The reserve must be funded through the proceeds of the bonds to be issued and sold in conjunction with each particular amount of financial assistance extended. The interest earned on the debt service reserve fund must accrue to the benefit of the applicant. This amount must be applied to offset the principal and interest payments on an annual basis provided the financial assistance is current.

8300.3024 [Emergency] FINAL RESOLUTION FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

After the authority passes a preliminary resolution, the authority may pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance to the applicant, both as discussed in part 8300.3014, subpart 10. The final resolution for an application under the program depends, in part, upon a determination that there are no adverse changes in the financial condition or key personnel of the applicant, market conditions, availability of bond issuance authority, and other financial conditions that the authority deems necessary.

Upon passage of the final resolution the authority shall commence to issue bonds in accordance with market conditions and the other legal conditions that govern the issuance of its bonds and notes. This issuance must be in accordance with the contents of any insurance contracts, agreements with lenders providing letters of credit, or other forms of financial assistance and other terms and conditions necessary to effectuate a bond sale. Funds will not be disbursed at the loan closing until it has been determined by the commissioner that there are no adverse changes in the financial condition or key personnel of the business entity applying for the financial assistance. After the bonds are issued and sold, there will be a loan closing where the funds are transferred and documents are signed in accordance with the terms of the final resolution and the respective bond resolution.

MINNESOTA FUND LOANS

8300.3030 [Emergency] PURPOSE FOR MINNESOTA FUND LOANS.

The Minnesota Fund loan program issues business loans for fixed-asset financing for new and existing businesses. The authority shall make business loans for fixed asset financing for new and existing businesses from the Minnesota Fund in compliance with the act, Minnesota Statutes, chapter 472, as now in effect, and as amended from time to time and parts 8300.3010 to 8300.3014 [Emergency] and 8300.3030 to 8300.3035 [Emergency].

8300.3031 [Emergency] ELIGIBILITY OF PROJECT FOR MINNESOTA FUND LOANS.

An applicant for financial assistance from the Minnesota Fund established under Laws of Minnesota 1984, chapter 582, section 12, shall submit to the commissioner an application form approved by the authority. The amount applied for cannot exceed 20 percent of the eligible project costs. The applicant shall provide the commissioner with written verification that an amount at least equal to ten percent of the eligible project costs has been or will be committed by the applicant or local development agency to the project. The applicant shall provide the commissioner with a written commitment from the lender who provides the 70 percent financing. The project must meet the requirements of the act, Minnesota Statutes, chapter 472, as now in effect and as amended from time to time and parts 8300.3010 to 8300.3014 [Emergency] and 8300.3030 to 8300.3035 [Emergency]. If the money to be loaned is from a source other than the Minnesota Fund, then the eligibility criteria required by the source will be imposed.

8300.3032 [Emergency] ELIGIBLE PROJECT COSTS FOR MINNESOTA FUND LOANS.

Eligible project costs for financing by the authority include land or building acquisition, site preparation, building construction or improvement, and architectural engineering, equipment, and machinery.

8300.3033 [Emergency] INTEREST RATE FOR MINNESOTA FUND LOANS.

The interest rate of financial assistance from the Minnesota Fund is five percent points below a full faith and credit obligation of the United States government of comparable maturity, as of five working days before closing.

8300.3034 [Emergency] TERM OF FINANCIAL ASSISTANCE FOR MINNESOTA FUND LOANS.

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The maximum term of financial assistance from the Minnesota Fund is 20 years. The term of financial assistance will not exceed the maximum useful life of the project financed.

8300.3035 [Emergency] SERVICING OF FINANCIAL ASSISTANCE FOR MINNESOTA FUND LOANS.

The commissioner shall monitor the repayment of the principal and interest as set out in the amortization schedule. The commissioner shall monitor the terms and conditions of the contract to the financial assistance.

The commissioner may restructure the financial assistance at the request of the applicant or upon his or her own initiative if the commissioner determines that restructuring the financial assistance will increase the probability that the financial assistance will be repaid to the state.

If the applicant requests the commissioner to restructure the financial assistance, the commissioner shall charge the applicant a fee in the amount of one-half percent on the outstanding principal amount of the financial assistance.

APPLICATION. Until their expiration, Minnesota Rules, parts 8300.3010 to 8300.3035 [Emergency] supercede the following permanent parts: 8300.1500, 8300.1600, 8300.1700, 8300.1800, 8300.1900, 8300.2100, and 8300.2200, whenever a conflict in meaning appears in parts 8300.0100 to 8300.2200 and parts 8300.3000 to 8300.3004 [Emergency].

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.

State Board of Education

Department of Education—Operations Division

Adopted Rules Governing Automobile and Motorcycle Driver Education Programs

The rules proposed and published at *State Register*, Volume 9, Number 3, pages 168-173, July 16, 1984 (9 S.R. 168) are adopted as proposed.

Department of Health

Office of Health Systems Development

Republishing of Rules Governing Health Care Costs Information Requirements

Minnesota Laws 1984, Chapter 534 amended Minn. Stat. 1982 § 144.695 to 144.703, changing the central purpose of the Minnesota Hospital Rate Review System. In keeping with the statutory changes, certain portions of the rules adopted under sections 144.695 to 144.703 were repealed. See Minnesota Laws 1984, Chapter 534, Section 11. This section also directed the commissioner of health to publish in the *State Register* rules already adopted under sections 144.695 to 144.703 which have not been repealed. These rules are published below. The rule parts have been renumbered for clarity.

Throughout the rules, the term "Minnesota health care cost information system" replaces "Minnesota hospital rate review system," and the term "voluntary nonprofit reporting organization" replaces the term "voluntary nonprofit rate review organization." The term "facility" replaces the term "hospital" where appropriate. Definitions of certain terms previously contained in parts of the rule which are repealed now appear in part 4650.0102 (Definitions). These changes conform to the changes made in the statute.

4650.0102 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 4650.0102 to 4650.0176, the following terms have the meanings given them.

Subp. 2. Accounting period. "Accounting period" means the fiscal year of a facility which is a period of 12 consecutive months established by the governing authority of a facility for purposes of accounting.

Subp. 3. Admissions. "Admissions" means the number of patients accepted for inpatient services in beds licensed for inpatient hospital care exclusive of newborn admissions.

Subp. 4. Applicant. "Applicant" means a voluntary nonprofit reporting organization that has applied to the commissioner of health for approval or renewed approval of its reporting and review procedures.

Subp. 5. Auxiliary enterprises. "Auxiliary enterprises" means significant continuing revenue-producing activities which, while not related directly to the care of patients, are businesslike activities commonly found in health care institutions for the convenience of employees, physicians, patients, or visitors. An activity is significant if either its revenues or direct costs exceed 20 cents per inpatient day. An activity is businesslike if it has related direct costs equal to at least 25 percent of its revenues. All parking lots, private physicians' offices, and retail operations are considered to be auxiliary enterprises.

Subp. 6. Bad debts. "Bad debts" means amounts considered to be uncollectable from accounts and notes receivable which were created or acquired in providing services. Accounts receivable and notes receivable are designations for claims arising from the rendering of services, and are collectable in money in the near future. These amounts should not include any amount attributable to a reclassification of any expenses incurred due to the provision of charity care. Income reductions due to charity allowances, and contractual allowances should be recorded as such in the records of a facility and not as bad debts.

Subp. 7. Beds. "Beds" means the number of acute care beds licensed by the Minnesota Department of Health, pursuant to Minnesota Statutes, sections 144.50 to 144.58.

Subp. 8. Charges. "Charges" means the regular amounts charged less expected bad debts, contracted allowances, and discounts to patients or insurers, prepayment plans, and self-insured groups on the patient's behalf. The terms "charges" and "rates" are synonymous for the purposes of parts 4650.0102 to 4650.0176. "Gross charges" means charges irrespective of any discounts, deductions, or other reductions which may be applicable by contract or other agreement. The terms "gross charges," "gross acute care charges," and "gross rate" are synonymous for the purpose of parts 4650.0102 to 4650.0176.

Subp. 9. Charity allowances. "Charity allowances" means the provision of care at no charge to patients determined to be qualified for care according to Code of Federal Regulations, title 42, section 53.111(f) and (g), in hospitals required to provide free care, under the Hill-Burton Act, United States Code, title 49, section 291, et. seq. The annual amount of charity care must not exceed the amount of the Hill-Burton grant or Hill-Burton guaranteed loan amortized in equal installments over the life of the facility's Hill-Burton free care obligation.

Subp. 10. Cost. "Cost" means the amount, measured in money, of cash expended or other property transferred, services performed, or liability incurred, in consideration of goods or services received or to be received.

Subp. 11. Direct patient care expenses. "Direct patient care expenses" means costs incurred by the facility for salaries, wages, employee fringe benefits, services, supplies, normal maintenance, minor building modification, and any applicable taxes.

Subp. 12. Discount or price differentials. "Discount" or "price differentials" means those discounts or prices granted or charged to certain payors (patients, groups of patients, or third party payors), which result in receipts by a hospital of something less than the average expected dollar amount received for services rendered of comparable type, kind, and quality in the absence of such discounts or prices.

Subp. 13. Educational program expenses. "Educational program expenses" means the net cost to the facility of providing educational activities which:

A. are approved educational activities directly contributing to the care of patients who are in facilities during the time the cost is incurred; or

B. contribute to the preventive health education of the population of areas of patient origin which the facility serves.

"Approved educational activities" means formally organized or planned programs of study usually engaged in by facilities in order to enhance the quality of patient care in a facility. These activities shall be licensed where required by state law. Where

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licensing is not required, the facility shall be able to demonstrate that it has received approval for its activity from a recognized national professional organization for the particular activity. Approved educational activities include those programs defined as approved by Code of Federal Regulations, title 20, section 405.116(f) and Code of Federal Regulations, title 20, section 405.421(e).

"Net cost" means the cost of approved educational activities, including stipends of trainees, compensation of teachers, and other costs, less any reimbursement from grants, tuition, and specific donations. "Orientation" and "on-the-job training" costs are operating costs of facilities for employees of the facility.

Subp. 14. Emergency services. "Emergency services" are those inpatient or outpatient hospital services or freestanding outpatient surgical center services that are necessary to prevent immediate loss of life or function due to the sudden onset of a severe medical condition.

Subp. 15. Emergency visit. "Emergency visit" means an acceptance of a patient by a facility for the purpose of providing emergency services in a distinct emergency service center.

Subp. 16. Expanded facility. "Expanded facility" means any expansion or alteration in the scope of service of an institution which is subject to the Minnesota Certificate of Need Law, Minnesota Statutes, sections 145.832 to 145.845, or section 1122 of the Social Security Amendments of 1972, Public Law Number 92-603.

Subp. 17. Expenses. "Expenses" means costs that have been incurred in carrying on some activity and from which no benefit will extend beyond the period for which the expense is recorded.

Subp. 18. Facility. "Facility" means an acute care hospital or a freestanding outpatient surgical center licensed according to Minnesota Statutes, sections 144.50 to 144.58.

Subp. 19. Fiscal year. "Fiscal year" means that period of 12 consecutive months established by the state for the conduct of its business.

Subp. 20. Governmental contractual allowances. "Governmental contractual allowances" means discounts from the established gross charges required due to governmental reimbursement practices established pursuant to regulations authorized by governmental programs created by United States Social Security Act, title V, title XVIII, and title XIX.

Subp. 21. Inpatient hospital services. "Inpatient hospital services" means the following items and services furnished by a hospital to an inpatient of a hospital:

- A. bed and board;
- B. nursing services and other related services;
- C. use of hospital facilities;
- D. medical social services;
- E. drugs, biologicals, supplies, appliances, and equipment;
- F. certain other diagnostic or therapeutic items or services; and
- G. medical or surgical services provided by certain residents-in-training.

Subp. 22. Interest expense. "Interest expense" means costs incurred by the facility due to necessary and proper interest on funds borrowed for operating and plant capital needs. Interest on funds borrowed for operating needs is the cost incurred for funds borrowed for a relatively short term. This interest is usually attributable to funds borrowed for purposes such as working capital for normal operating expenses. Interest on funds borrowed for plant capital needs is the cost incurred for funds borrowed for plant capital purposes, such as the acquisition of facilities and equipment, and capital improvements. These borrowed funds are usually long-term loans.

Subp. 23. Inventories. "Inventories" means the dollar amount in inventories at the end of an accounting period.

Subp. 24. Loss. "Loss" means the excess of all expenses over revenues for an accounting period or the excess of all or the appropriate portion of the net book value of assets over related proceeds, if any, when items are sold, abandoned, or either wholly or partially destroyed by casualty or otherwise written off.

Subp. 25. Net accounts receivable. "Net accounts receivable" means the dollar amount accounts receivable at the end of an accounting period less estimated discounts and differentials and reserve for uncollectables.

Subp. 26. Nonrevenue center. "Nonrevenue center" means a service center which incurs direct operating expenses but which does not generate revenue directly from charges to patients for services. These centers, which rely on revenue from revenue centers to meet their expenses, may include service centers of a facility as the following:

- A. general services, including: dietary services, plant operation and maintenance services, housekeeping services, laundry services, and other services;

- B. fiscal services;
- C. administrative services; and
- D. medical care evaluation services.

Subp. 27. Orientation costs and on-the-job training costs. "Orientation costs" and "on-the-job training costs" are operating costs of facilities for employees of the facility.

Subp. 28. Other net payables. "Other net payables" means total payables at the end of an accounting period less all liabilities owed to third party payors and less the current portion of plant capital expenditure from the plant capital fund.

Subp. 29. Outpatient services. "Outpatient services" mean those services offered by a hospital which are furnished to ambulatory patients not requiring emergency care and which are not inpatient services.

Subp. 30. Outpatient visit. "Outpatient visit" means an acceptance of a patient by a hospital for the purpose of providing outpatient services.

Subp. 31. Plant capital needs. "Plant capital needs" means finances which relate to land, land improvement, building and building equipment, and movable equipment. The annual increment shall be reported as the annual straight-line depreciation expense on land improvements, building, building equipment, and movable equipment.

Subp. 32. Program. "Program" means the reporting and review procedures proposed by an applicant.

Subp. 33. Quarter. "Quarter" means that period of the fiscal year corresponding to a three-month period of time for which the state regularly gathers information for the conduct of its business. For purposes of parts 4650.0102 to 4650.0176, a fiscal year is composed of four quarters corresponding to the following groupings of months. The quarters are defined by the following time periods:

- A. the months of July, August, and September;
- B. the months of October, November, and December;
- C. the months of January, February, and March; and
- D. the months of April, May, and June.

Subp. 34. Rate. "Rate" means "gross charges" as defined in subpart 8. "Aggregate rate" means the average gross revenue per adjusted admission for a full accounting period determined by dividing total gross revenue by the number of adjusted admissions:

Total Gross Revenue

Number of Adjusted Inpatient Admissions

Adjusted admissions are determined by:

Outpatient & Emergency Visits	X	Total Outpatient & Emergency Gross Revenue
		Number of Outpatients & Emergency Visits

X 1

Inpatient Gross Revenue Per Admission	PLUS	The Number of Inpatient Admissions
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The aggregate rate for the budget year must always be based upon annually projected admissions as stated in the rate revenue and expense report.

Subp. 35. Research program expenses. "Research program expenses" means costs incurred by a facility due to research programs which directly relate to daily patient care.

Subp. 36. Revenue or income. "Revenue" or "income" means the value of a facility's established charges for all facility services rendered to patients less expected or incurred bad debts, contracted allowances, and discounts granted to patients or

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insurers, prepayment plans, and self-insured groups. "Gross revenue" or "gross income" means "revenue" or "income" regardless of the amounts actually paid to or received by the facility.

Subp. 37. Revenue center. "Revenue center" means a service center which incurs direct operating expenses and which generates revenue from patients on the basis of charges customarily made for services that center offers directly to patients. Revenue centers may include the following service centers of a facility:

A. Daily patient services (routine services) including: medical services, surgical services, pediatric services, intensive care services, psychiatric services, obstetric-gynecological services, newborn nursery services, premature nursery services, and other routine services.

B. Other nursing services (ancillary services), including: operating room services, recovery room services, delivery and labor room services, central services and supply services, intravenous therapy services, emergency services, and other ancillary services.

C. Other professional services (ancillary services), including: laboratories, blood bank, electrocardiology, radiology, pharmacy, anesthesia, physical therapy, and other special services.

Subp. 38. Service center. "Service center" means an organizational unit of a facility for which historical and projected statistical and financial information relating to revenues and expenses are accounted. A service center may be a routine, special, or ancillary service center. A service center may also be a revenue center or a nonrevenue center.

Subp. 39. System. "System" means the Minnesota health care cost information system and any applicant approved to operate it or the commissioner of health.

Subp. 40. Third party payors. "Third party payors" mean insurers, health maintenance organizations licensed under Minnesota Statutes, chapter 62D, nonprofit service plan corporations, self-insured or self-funded plans, and governmental insurance programs, including the health insurance programs authorized by the United States Social Security Act, title V, title XVIII, and title XIX.

4650.0104 SCOPE.

All acute care hospitals and freestanding outpatient surgical centers licensed under Minnesota Statutes, sections 144.50 to 144.58 are subject to the Minnesota health care cost information system established by parts 4650.0102 to 4650.0176.

Beds located in acute care hospitals, which are not licensed as acute care beds under Minnesota Statutes, sections 144.50 to 144.58, are not subject to the Minnesota health care cost information system. Where costs incurred through the operation of these beds are commingled with the costs of operation of acute care beds in a facility subject to the system, associated revenue and expenses and other related data must be separated in a manner consistent with the normal requirements for allocation of costs as stated by Code of Federal Regulations, title 20, section 405.453.

Citations of federal law or federal regulations incorporated in parts 4650.0102 to 4650.0176 are for those laws and regulations then in effect on April 1, 1976.

4650.0106 MINNESOTA HEALTH CARE COST INFORMATION SYSTEM.

The Minnesota health care cost information system is established. This system shall be operated by the commissioner of health and any voluntary nonprofit reporting organization whose reporting and review procedures have been approved by the commissioner according to parts 4650.0154 to 4650.0164. The system shall consist of reports and administrative procedures.

4650.0108 REPORT REQUIREMENTS.

The system shall require annual financial information and rate revenue, expense, and interim increase reports.

4650.0110 ANNUAL FINANCIAL INFORMATION REPORT.

Subpart 1. Basic contents. A facility shall submit an annual financial information report to the system. This report must include a balance sheet detailing the assets, liabilities, and net worth of the facility and include the requirements of subpart 2.

Subp. 2. Balance sheet. The balance sheet must include information on:

A. Current assets, including: cash; marketable securities; accounts and notes receivable; allowances for uncollectable receivables and third party contractals; receivables from third party payors; pledges and other receivables; due from other funds; inventory; and prepaid expenses.

B. Plant capital allowances, including historical cost of, price level increments related to, and accumulated depreciation related to: land; land improvements; buildings; leasehold improvements; building equipment; movable equipment; and construction in progress.

C. Deferred charges and other assets, including: other assets; investments in nonoperating property, plant, and equipment; accumulated depreciation on investments in nonoperating plant and equipment; and other intangible assets such as good will and unamortized borrowing costs.

D. Current liabilities, including: notes and loans payable; accounts payable; accrued compensation and related liabilities; other accrued expenses; advances from third party payors; payable to third party payors; due to other funds; income taxes payable; and other current liabilities.

E. Deferred credits and other liabilities, including: deferred income taxes; deferred third party revenue; long-term debt; and fund balances (identifying donor restricted and unrestricted funds).

F. In the case of facilities owned by, operated by, affiliated with, or associated with an organization, corporation, or other facility, a statement of the flow of funds between the facilities and that organization, corporation, or other facility. This statement shall detail all transactions between the facility and the organization, corporation, or other facility.

G. If a facility maintains a balance sheet which includes information that differs from the information required by the balance sheet recommended by subpart 1, the facility may substitute its balance sheet. This balance sheet must include a narrative description of the scope and type of differences between its balance sheet and that balance sheet recommended by subpart 1.

Subp. 3. Income and Expenses. The statement of income and expenses must include:

A. gross revenues from and expenses directly attributable to revenue centers;

B. all operating revenues and expenses other than those directly associated with patient care;

C. reductions in gross revenues that result from charity care, contractual adjustments, administrative and policy adjustments, provision for bad debts, and other factors;

D. direct expenses incurred by the research and educational, general, fiscal, and administrative service centers;

E. direct gross revenue and gross expense received or incurred from nonfacility operations; and

F. a statement of expenses by a natural classification of expenses for the facility as a whole. The natural classification of expenses may include such factors as:

(1) salaries and wages, including: management and supervision; technicians and specialists; registered nurses; licensed practical nurses; aides and orderlies; clerical and other administrative employees; environment and food service employees; physicians; nonphysician medical practitioners; vacation, holiday, sick pay, and other nonworked compensation.

(2) employee benefits, including: FICA; state and federal unemployment insurance; group health insurance; pension and retirement; workers' compensation insurance; and group life insurance.

(3) professional fees, medical, including: physician's remuneration; and therapists and other nonphysicians.

(4) other professional fees, including: consulting and management services; legal services; auditing services; and collection services.

(5) special departmental supplies and materials.

(6) general supplies, including: office and administrative supplies; employee wearing apparel; instruments and minor medical equipment which are nondepreciable; minor equipment which is nondepreciable; and other supplies and materials.

(7) purchased services, including: medical-purchased services; repairs and maintenance-purchased services; medical school contracts-purchased services; and other purchased services.

(8) other direct expenses, including: depreciation, amortization, and rental or lease expenses necessary to maintain an adequate plant capital fund, under part 4650.2400; utilities-electricity; utilities-gas; utilities-water; utilities-oil; other utilities; insurance-professional liability; insurance-other; licenses and taxes other than income taxes; telephone and telegraph; dues and subscriptions; outside training sessions; travel; and other direct expenses.

G. If a facility maintains accounts that include information resulting in detailed statements of income and expense which differ from the information required by the statement of income and expense recommended by subpart 2, the facility

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may substitute its statement of income and expenses. This statement must include a narrative description of the scope and type of differences between its statement of income and expenses and that statement recommended by subpart 2.

H. An unaudited copy of the facility's cost report filed under United States Social Security Act, title XVIII, stated in Code of Federal Regulations, title 20, section 405.406(b), and the uniform cost report required under Public Law Number 95-142, section 19. These cost reports must correspond to the same accounting period as that used in the compilation of data for other requirements for the report of annual financial information.

I. Attestation by the governing authority of the facility or its designee that the contents of the report are true.

J. Attestation by a qualified, independent public accountant that the contents of the balance sheet and statement of income and expense have been audited.

K. A statement of changes in financial position showing the source and application of all funds.

L. A statement of all fund balances.

M. All notes and footnotes to the balance sheet, statement of income and expense, statement of changes in financial position, and statements of fund balances.

4650.0112 RATE REVENUE AND EXPENSE REPORT.

Subpart 1. Statistical and financial information. A facility shall submit a report of rate revenue and expense to the system on an annual basis. This report must include statistical and financial information for:

A. The facility's last full and audited accounting period prior to the accounting period during which a facility files this report with the system. This period shall be known as the prior year. Information for the prior year must be actual.

B. The facility's full accounting period during which a facility files this report with the system. This period shall be known as the current year. Information for at least the first six months of the current year must be actual; information for the remaining months of the current year may be estimated.

C. The facility's next full accounting period following the accounting period during which the report is filed with the system. This period must be known as the budget year. Information for the budget year must be projected.

Subp. 2. Statistical information. Statistical information for the rate revenue and expense report must include:

A. The number of inpatient days excluding nursery days for the facility, and each appropriate service center.

B. The number of admissions for the facility and for each appropriate service center.

C. The average number of full-time-equivalent employees during each accounting period for the facility and for each of its service centers. An employee or any combination of employees which are reimbursed by the facility for 2,080 hours of employment per year is a full-time-equivalent employee.

D. The number of beds (licensed), the number (the statistical mean) of beds physically present, and the number (the statistical mean) of beds actually staffed and set up for the facility and each appropriate service center, excluding nursery bassinets.

E. The number of outpatient clinic visits for the facility.

F. The number of emergency visits for the facility.

G. The number of units of service provided by each of the facility's other service centers. The facility shall select the statistic that best measures the level of activity for a particular function or service center and that, in addition, is compiled on a routine basis by the facility to serve as the appropriate unit of service for each of its service centers.

For example, although patient days might be used as the unit of service for daily patient services, treatments, procedures, visits, hours, or other statistics would be the applicable measure of activity in other service centers.

Subp. 3. Financial information. Financial information for the rate revenue and expense report must include:

A. An interim financial statement of the facility which must include an interim balance sheet and an interim income and expense statement for the current year only. The balance sheet and income and expense statement must conform to part 4650.0110, items A and B. This financial statement must contain a minimum of six months of actual information for the current year.

B. A statement of expenses for the facility and for each of its service centers and a statement according to natural classifications of expenses as provided by part 4650.0110, item B, subitem (6).

C. A statement detailing the accounting method used to allocate expenses from among the nonrevenue centers to revenue centers.

D. A statement of total direct and indirect costs for the facility and for each of its service centers before and after the allocation of expenses.

E. A statement of the accounts receivable by type of purchaser of services and a statement of the average aggregate number of days' charges outstanding at the end of each period.

F. A statement of the capital budget of the facility.

Subp. 4. Additional information. The report of rate revenue and expense must also contain the following information:

A. The pricing policy of the facility which incorporates the overall pricing policy and financial objectives of the institution. This must be supplemented by a statement of budgeted increases in charges, revenue, and aggregate rates for the budget year including these items:

(1) dates on which gross charges and gross revenue will be adjusted;

(2) for each date, the resulting aggregate dollar amount and weighted average percent of increase in budget year aggregate rates and gross charges for each revenue center;

(3) for each date, the resulting aggregate dollar and weighted average percent of increase in budget year total facility gross revenues;

(4) for each date, the resulting aggregate dollar amount and percent of increase in the budget year aggregate rate.

B. In the case of a facility with expanded facilities, a copy of the facility's report used to obtain a certificate of need for the expanded facility which projects the patient and service activity levels of the expanded facility for its first five years of operation.

Subp. 5. Accounts as substitute for rate revenue and expense report. If a facility maintains its accounts in a way that results in detailed statements of income, expense, and statistics differing in form and content from those recommended by parts 4650.0108 to 4650.0114 and 4650.0130, subpart 1, the facility may substitute the information it has available. However, in all such cases the facility shall submit a detailed reconciliation of the differences between the two sets of information and presentations in conjunction with the rate revenue and expense report.

4650.0114 INTERIM INCREASE REPORTS.

Subpart 1. To amend or modify aggregate rates. A facility shall submit an interim increase report if it wishes to amend or modify the aggregate rates for the budget year stated in the rate revenue and expense report then on file with the system. When changes in rates during the budget year are the result of legislative policy and appropriations to facilities subject to parts 4650.0102 to 4650.0176 and operated by the commissioner of human services, an interim increase report is not required.

Subp. 2. Content of report. The interim increase report must include statistical and financial information for:

A. The period of the budget year immediately preceding the effective date of amendments or modifications to the rates for the budget year which are stated in the rate revenue and expense report then on file with the system. Data for this period must be actual for all expired months of the budget year, but may be projected for the 60-day period immediately preceding filing.

B. The period beginning on the effective date of these amendments or modifications and ending at the end of the last day of the budget year. Information for this period must be projected on the basis of these rate amendments or modifications.

Subp. 3. Statistical information on report. Statistical information for each period established by subpart 2 for the interim increase report must include that required of a facility for the rate revenue and expense report under part 4650.0112, subparts 2 and 5. The information must be recorded for each period stated by subpart 2. This information must show any change in the budget year from the projected information then on file with the system.

Subp. 4. Financial information on report. Financial information for each period established by subpart 2 for the interim increase report must include that required of a facility for the rate revenue and expense report under part 4650.0112, subparts 3 and 5. The information must be recorded for each period stated by subpart 2. This information must show any change in the budget year from the projected information then on file with the system.

Subp. 5. Rationale for increase. This report must also include a narrative statement describing the reason for amendments or modifications to the facility's aggregate rates.

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

4650.0116 ALTERNATIVE REPORTING REQUIREMENTS.

A facility meeting the criteria specified in part 4650.0118 may file annual rate revenue and expense reports and interim increase reports according to part 4650.0120, in lieu of information required under part 4650.0112, subparts 2 and 3.

4650.0118 SELECTION CRITERIA.

Nonstate, nonfederal acute care hospitals and freestanding outpatient surgical centers licensed in Minnesota may report under part 4650.0120 if they belong to the set of facilities comprising 15 percent of the total gross acute (inpatient plus outpatient) charges for all nonstate, nonfederal acute care hospitals and freestanding outpatient surgical centers in the state. The facilities to be included in the set shall be determined as follows:

A. The total gross acute charges used shall be for the facility's 1977 fiscal year, under part 4650.0112, item A.

B. The facility with the lowest total gross acute charges shall be selected first. The facility with the second lowest total gross acute charges shall be selected second and its gross acute charges shall be added to the first selected facility's. The facility with the third lowest gross acute charges shall be selected third and its total gross acute charges shall be added to the sum of the gross acute charges of the facilities selected first and second. The procedure shall continue in direct ascending order so as to maximize the number of facilities included, but the sum of gross patient charges included shall not exceed 15 percent of the total gross acute charges for all nonstate and nonfederal acute care hospitals and freestanding outpatient surgical centers.

4650.0120 RATE REVENUE AND EXPENSE REPORT.

Subpart 1. Submission of report. A facility entitled to use the alternative reporting requirements shall submit a report of rate, revenue, and expense according to part 4650.0134. This report shall include statistical and financial information for: the prior year as provided by part 4650.0112, subpart 1, item A; the current year as provided by part 4650.0112, subpart 1, item B; the budget year as provided by part 4650.0112, subpart 1, item C.

Subp. 2. Statistical information on report. Statistical information submitted in the rate revenue and expense report must include:

A. The number of inpatient days for the facility.

B. The number of admissions for the facility.

C. The average number of full-time-equivalent employees during each accounting period for the facility and each service center. An employee or any combination of employees which is reimbursed by the facility for 2,080 hours of employment per year is a full-time-equivalent employee.

D. The number of beds licensed, the number (the statistical mean) of beds physically present, and the number (the statistical mean) of beds actually staffed and set up for the facility.

E. The number of outpatient and emergency visits for the facility.

Subp. 3. Financial information of report. Financial information submitted in the rate revenue and expense report must include:

A. an interim financial statement as provided by part 4650.0112, subpart 3, item A;

B. a statement of expenses for the facility according to natural classifications of expenses as provided by part 4650.0110, item B, subitem (6);

C. a statement indicating the accounting method used to allocate expenses from among the "nonrevenue producing centers" to "revenue producing centers" as provided by part 4650.0112, subpart 3, item C;

D. a statement of total "direct" and "indirect" costs and revenues where applicable for the facility and for each of the following, both before and after allocation of indirect expenses: daily services, ancillary services (enumerating inpatient, outpatient, and emergency), and nonrevenue producing services;

E. a statement of the accounts receivable in total and of gross revenue by type of payor;

F. a statement of the capital budget of the facility; and

G. all information as provided by part 4650.0112, subparts 4 and 5.

4650.0122 INTERIM INCREASE REPORTS.

Interim increase reports must be filed as required under part 4650.0114, subpart 1. Statistical and financial information must be filed as required under part 4650.0114, subparts 2 to 5, except when in conflict with information required in the rate revenue and expense report as provided by part 4650.0120. When conflicts occur, the facility shall submit the information required by part 4650.0120.

ADMINISTRATIVE PROCEDURES**4650.0130 PROVISIONS FOR FILING REPORTS.**

Subpart 1. Forms to be specified. The system shall design and issue forms as necessary for meeting the requirements of reports established by parts 4650.0102 to 4650.0176. These forms must contain clear instructions for their completion.

Subp. 2. Filed personally. Documents must be filed personally or by the United States Postal Service with the system at the system's official offices during normal business hours.

Subp. 3. Recordkeeping system. The system shall establish a method of recordkeeping which ensures that reports and other documents are ordered, stored, designated, and dated so as to provide easy public access to their contents as required by parts 4650.0102 to 4650.0176. These records must be open to public inspection during normal business hours.

Subp. 4. Record complete. No report required by these parts is filed until the system has determined whether the report is complete according to part 4650.0150.

4650.0132 FILING REPORT OF ANNUAL FINANCIAL INFORMATION.

Subpart 1. Filing report. Every year, a facility shall file a report of annual financial information as required by part 4650.0110 with the system within 120 days after the close of that facility's full accounting period. The cost report of the facility filed under the requirements of the United States Social Security Act, title XVIII, Code of Federal Regulations, title 20, section 405.406(b), may be filed separately from the other requirements for the report of annual financial information, provided:

A. It is filed no later than the time it is required to be filed with the Medicare Fiscal Intermediary as identified according to Code of Federal Regulations, title 20, section 405.651, et. seq. The facility shall inform the system of this date when filing other information required by this report.

B. The report of annual financial information is considered incomplete until the receipt of the unaudited cost report, but the facility is not considered in violation of rules until the date required by the Medicare fiscal intermediary for the submission of the unaudited Medicare cost report.

C. The audited Medicare cost report is submitted as soon as possible to substitute for the unaudited Medicare cost report. The submission of an audited Medicare cost report shall not affect the official filing date of a report of annual financial information.

Subp. 2. Failure to file. Any facility which fails to file the annual financial information report, and which has not requested an extension of time under part 4650.0140 to file that report, is in violation of parts 4650.0102 to 4650.0176. The system shall notify the commissioner, the appropriate health systems agency, and professional standards review organization to this effect.

4650.0134 FILING OF REPORT OF RATE REVENUE AND EXPENSE.

Subpart 1. Filing report. Each year, a facility shall file a report of rate revenue and expense up to 60 days before the beginning of any accounting period of the facility. No change in rates may be made until 60 days have elapsed from the date of filing.

Subp. 2. Failure to file. Any facility which fails to file a report of rate revenue and expense, and which has not requested an extension of time under part 4650.0140 to file that report, is in violation of parts 4650.0102 to 4650.0176. The system shall notify the commissioner of health, the appropriate health systems agency, and professional standards review organization to this effect.

A facility which fails to file a report of rate revenue and expense, and which has requested an extension of time under part 4650.0140 to file that report, may be charged an additional late fee as authorized by part 4650.0172. A facility which fails to file a report of rate revenue and expense, and which has not requested an extension of time under part 4650.0140 to file that report, shall not amend or modify its rates until 60 days after it files the report with the system.

4650.0136 FILING OF INTERIM INCREASE REPORTS.

A facility shall file an interim increase report if:

A. amendments or modifications to its aggregate rates are to become effective after the first day and before the end of the last day of the budget year; and

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ADOPTED RULES

B. these amendments or modifications were not included in the report of rate revenue and expense then on file with the system.

The interim increase report must be filed 60 days before the effective date of the amendments or modifications.

4650.0138 FILING OF REPORTS IN MULTI-FACILITY CORPORATIONS AND OTHER ORGANIZATIONS OPERATING MORE THAN ONE FACILITY.

The system requires the filing of all reports for each individually licensed acute care hospital and each individually licensed freestanding outpatient surgical center, as provided by parts 4650.0108 to 4650.0114. A multi-facility corporation or organization operating more than one facility may act as the organization which reports for the facility to the system. This organization shall provide all information separately for each facility it operates. The organization which reports for the facility shall also provide with this information a statement detailing the financial relationship between each facility it operates and the organization, as required by part 4650.0110, for the annual financial information report.

4650.0140 FILING OF REPORTS; EXTENSIONS.

If a facility shows reasonable cause, the system may extend any period of time established for the submittal of a report or other information, or any period of time established for performance of another act permitted or prescribed by parts 4650.0102 to 4650.0176, for an additional and specified period of time.

REVIEW OF REPORTS

4650.0150 COMPLETENESS.

Subpart 1. Review by system. The system shall review each report required by parts 4650.0102 to 4650.0176 in order to ascertain that the report is complete. A report is filed when the system has ascertained that the report is complete. "Complete" means that the report contains adequate data for the system to begin its review in a form determined to be acceptable by the system according to parts 4650.0110 to 4650.0114.

Subp. 2. Timely reply that report is incomplete. If the system has not responded to the facility within ten working days after receiving a report, the report is complete and filed the first day the system received the report. The system may stipulate any additional time it may need to ascertain a report's completeness in which case the ten-working-day period does not apply. The stipulated additional time must not exceed 30 days after the day the system first receives a report. If a report is not found to be incomplete during the additional period, it shall be deemed to be complete and filed as of the day the system first received the report.

Subp. 3. Incomplete report. A report determined by the system to be incomplete must be returned immediately by the system to the facility with a statement describing the report's deficiencies. The facility shall resubmit an amended report to the system. Such a return and resubmittal shall be recorded in that facility's file as maintained by the system. If the resubmitted report is determined to be complete by the system, then it shall be deemed to be filed on the date the resubmitted report is received by the system.

Subp. 4. Reports filed prior to effective date. Reports filed with the system by facilities before the effective date of parts 4650.0102 to 4650.0176 shall be deemed to be temporarily complete. Subsequent to the effective date of parts 4650.0102 to 4650.0176, the system may require facilities to amend these reports to conform with parts 4650.0102 to 4650.0176.

Subp. 5. Amending rules. If a facility discovers any error in its statements or calculations in any of its submitted reports ascertained by the system to be complete, it shall inform the system of the error and submit an amendment to a report. In the case of an interim increase report or a rate revenue and expense report, the submittal of an amended report by a facility to the system shall not affect the date of filing or the 60-day period required, provided the facility informs the system of any errors before the system publishes the facility's financial information. An amended rate revenue and expense report or interim increase report not meeting the conditions established by this part must be refiled as if it were a new report.

Subp. 6. Error in reports. If the system discovers a significant error in the statements or calculations in a report filed with it, it may require the facility to amend and resubmit the report by a date determined by the system to be reasonable. The initial filing date is not affected if the facility resubmits the report by the determined date. If the facility fails to resubmit the amended report by that date, the date of filing shall be the date the system receives the resubmittal.

4650.0152 REVIEW OF RATE REVENUE AND EXPENSE REPORTS AND INTERIM INCREASE REPORTS.

Reports shall be reviewed on a basis of the rate and cost history of each facility on an institutional and a service center basis. Statistical and financial information available for a facility as a whole institution may be compared with the same type of information for other peer facilities which share common characteristics. In instances where service centers among facilities

sharing common characteristics themselves share common characteristics, facilities may be compared on a service center basis. Common characteristics may include:

- A. similarity in available number of beds and related occupancy rates;
- B. similarity in composition of areas of patient origin;
- C. similarity in composition of patient services;
- D. the status of a facility as a teaching or nonteaching institution;

E. similarity in size and composition of full-time-equivalent staff of the facility and ratios of that staff to patient admissions; and

F. other data determined by the system to be appropriate which may be available pursuant to annual licensing report requirements as established pursuant to part 4640.1300, subpart 1.

4650.0154 APPROVAL FOR OPERATION OF SYSTEM.

The commissioner of health may approve the operation of the system by any voluntary, nonprofit reporting organization. An organization desiring this approval may apply for approval by the procedure in parts 4650.0156 to 4650.0164.

4650.0156 OPEN APPLICATION PERIOD.

A voluntary, nonprofit reporting organization may apply for approval of its reporting and review procedures after January 1 and before March 31 of a fiscal year, or within 90 days after the effective date of parts 4650.0102 to 4650.0176, for operation of the Minnesota health care cost reporting system during the next subsequent fiscal year.

4650.0158 CONTENTS OF APPLICATION.

An application for approval shall include:

A. a detailed statement of the type of reports and administrative procedures proposed by the applicant which shall demonstrate that, in all instances, the reports and procedures are substantially equivalent to those established by the system, pursuant to parts 4650.0108 to 4650.0114, and 4650.0130 to 4650.0152;

B. a statement that all reports determined to be complete and information filed with the applicant from its participating facilities will be available for inspection by the commissioner of health and the public within five working days after completeness of reports is proposed to be determined;

C. a proposed enrollment period for facilities which must not extend beyond March 31 of any fiscal year, or beyond 90 days after the effective date of parts 4650.0102 to 4650.0176 in the first instance, for any eligible facility that wishes to participate in the proposed program of the applicant for the next three subsequent fiscal years;

D. proposed criteria whereby the applicant may judge whether a facility is eligible for participation in its proposed program; and

E. any additional statements or information which is necessary to ensure that the proposed reporting and review procedures of the applicant are substantially equivalent to all the rules established for the system, pursuant to parts 4650.0108 to 4650.0114, and 4650.0130 to 4650.0152.

4650.0160 REVIEW OF APPLICATION.

Subpart 1. Commissioner's decision. Within 45 calendar days after receiving an application for approval from a voluntary, nonprofit reporting organization, the commissioner of health shall issue a decision that the procedures for reporting and review proposed by the applicant are approved or disapproved. Approval by the commissioner is effective immediately.

Subp. 2. Disapproval. The commissioner of health may disapprove any application on demonstration that the reporting and review procedures of any voluntary, nonprofit reporting organization are not substantially equivalent to those established by the commissioner.

Subp. 3. Reapplication. An organization whose application has been disapproved by the commissioner of health may submit a new or amended application to the commissioner within 15 calendar days after disapproval of the initial application. An organization may only reapply for approval on one occasion during any fiscal year.

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ADOPTED RULES

4650.0162 ANNUAL REVIEW OF APPLICANT.

Subpart 1. Annual review statement. By March 31 of each year, any voluntary, nonprofit reporting organization whose reporting and review procedures have been approved by the commissioner of health for the fiscal year then in progress which desires to continue operation of the system shall submit an annual review statement of its reporting and review procedures. The annual review statement must include: attestation by the applicant that its practice has not been amended or modified contrary to the initially approved application; or details of any amendments or modifications to the initially approved application and justifications for them.

Subp. 2. Additional information. The commissioner of health may require additional information from the applicant supporting that the applicant's reports and procedures are substantially equivalent to those established for the system.

Subp. 3. Decision on renewal. Forty-five days from the receipt of the annual review statement, the commissioner of health shall issue a decision that the applicant has renewed approval or that the applicant has been denied renewed approval. Renewed approval is immediately effective.

Subp. 4. Denial of renewed approval. The commissioner of health may deny renewed approval on the demonstration that the reporting and review procedures of any applicant are no longer substantially equivalent to those established for the system.

Subp. 5. Reapplication. An applicant whose renewed approval has been denied by the commissioner of health may submit a new or an amended annual review statement to the commissioner within 15 calendar days after denial of the initial statement. An applicant may reapply only once during the fiscal year.

Subp. 6. Review for subsequent fiscal years. A facility enrolled with an applicant whose renewed approval has been denied and which has not enrolled with any other applicant whose reporting and review procedures have been approved by the commissioner of health becomes subject to the system as operated by the commissioner for the next three subsequent fiscal years.

4650.0164 REVOCATION OF APPROVAL.

The commissioner of health may revoke approval of any applicant's reporting and review procedures at any time upon demonstration that the reporting and review procedures of that organization are no longer substantially equivalent to those required by the system.

4650.0166 FEES.

Facilities whose rates are reviewed by the commissioner of health as distinct from a voluntary, nonprofit reporting organization shall submit filing fees with rate revenue and expense reports and interim increase reports which are submitted to the commissioner. These fees are based on the cost of reviews and the number of beds licensed as acute care beds in a facility, pursuant to Minnesota Statutes, sections 144.50 to 144.58.

4650.0168 RATE REVENUE AND EXPENSE REPORT FEE.

Whenever a facility submits a rate revenue and expense report to the commissioner of health as distinct from a voluntary, nonprofit reporting organization, it shall accompany this report with a filing fee based upon the following schedules if the report is timely:

A. If the facility's gross revenue is under \$2,500,000, the filing fee is 0.0005 times gross revenue or \$200 (whichever is less) to a maximum of \$800.

B. If the facility's gross revenue is at least \$2,500,000 but not more than \$19,999,000, the filing fee is 0.004 times gross revenue to a maximum of \$5,500.

C. If the facility's gross revenue is \$20,000,000 or more, the filing fee is 0.003 times gross revenue to a maximum of \$7,500.

The schedules shall be adjusted annually for inflation.

4650.0170 INTERIM INCREASE REPORT FEE.

Whenever a facility submits an interim increase report to the commissioner of health as distinct from the voluntary, nonprofit reporting organization, it shall accompany this report with a filing fee. This fee shall be one-half of the rate revenue and expense report fee, as established by part 4650.0168, provided the report is timely.

4650.0172 TIMELY REPORT.

Subpart 1. Late fee schedule. "Timely" means that each report has been submitted within the time prescribed by part 4650.0134, subpart 1 or 4650.0136, subpart 1, as appropriate; that an extension of these reporting times, as permitted by part 4650.0140, has not been necessary; and that the report has been determined to be complete under part 4650.0150. If a report

does not meet these standards, the commissioner may require the submission of an additional late fee according to the following late fee schedule.

Subp. 2. Late report due to submission after reporting times. A report submitted after the reporting times established by part 4650.0134, subpart 1 or 4650.0136, subpart 1, as appropriate, for which an extension in time has been permitted, pursuant to part 4650.0140, is liable for a late fee in addition to the filing fee established by part 4650.0168 or 4650.0170, as appropriate. This late fee is ten percent of the filing fee established by part 4650.0168 or 4650.0170, and as appropriate for that facility.

Subp. 3. Late report due to incomplete report. A report submitted by a facility which is determined not to be complete, under part 4650.0150, is liable for a late fee for each resubmittal under part 4650.0150. This late fee for each occasion of resubmittal is five percent of the filing fee paid on submittal of the initial report to the commissioner of health by the facility as established by part 4650.0168 or 4650.0170.

Subp. 4. Reports not filed. Reports not submitted, or submitted after the reporting times established by part 4650.0134, subpart 1, or 4650.0136, subpart 1, as appropriate, without an extension under part 4650.0140, are liable for the cost of a full audit by an independent public accountant, as necessary for the completion of the report and for the filing fee established by part 4650.0168 or 4650.0170, as appropriate.

4650.0174 SUSPENSION OF FEES.

The commissioner of health may suspend all or any portion of the filing fees and late fees if a facility shows cause. Cause may consider such factors as:

A. the inability of a facility to pay the fees without directly affecting the rates;

B. the occurrence of any emergency financial condition of a facility, including natural disasters or difficulties associated with completion of reports related to sickness or other absences of related facility employees or other administrative complications resulting in delay in the completion of reports; and

C. other factors which relate to the economic or administrative condition of a facility.

4650.0176 OFFICIAL OFFICES.

For purposes of part 4650.0102 to 4650.0176, the official office of the commissioner of health is: Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440.

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 Commerce Board of Architecture, Engineering, Land Surveying and Landscape Architecture

Notice of Special Meeting of Board

The Board of Architecture, Engineering, Land Surveying and Landscape Architecture will meet Tuesday, November 13, 1984 at 9:30 a.m. in Hearing Room A, Department of Commerce, Fifth Floor, Metro Square, St. Paul.

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

OFFICIAL NOTICES

Department of Energy and Economic Development Energy Division

Outside Opinion Sought Concerning Rules Relating to Heat Loss, Lighting and Climate Control

Notice is hereby given that the Department of Energy and Economic Development, Energy Division is seeking information and opinions from sources outside the Division in preparing revisions to Chapter 4215. The authority for these rules is contained in Minn. Stat. § 116J.12, subd. 4.

Pursuant to this statute, the DEED, Energy Division is considering revisions to the State Building Code, including:

1. Modifying the requirements for foundation wall insulation in residential buildings.
2. Clarifying the definition and installation requirements for vapor barriers in residential buildings.
3. Making corrections in the section for building design by acceptable practice.

Any person with information, comments or questions on the subject of the proposed rules should submit them either orally or in writing before December 3, 1984. Address correspondence to:

Bruce D. Nelson, Senior Engineer
Department of Energy and Economic Development
Energy Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 296-8279

The division expects to publish proposed rules in January, 1985. Written materials received will be made part of the record if rules are proposed.

Environmental Quality Board

Notice of Annual Hearing

The Minnesota Environmental Quality Board will hold the annual public hearing on the Power Plant Siting and Transmission Line Routing Program, as required by the Power Plant Siting Act, Minnesota Statutes § 116.58, on Saturday, November 17, 1984, in St. Paul, Minnesota. The public hearing is designed to afford interested persons an opportunity to be heard regarding any aspects of the Board's activities, duties or policies pursuant to the Act. The meeting will be held at 9:00 a.m. in Conference Room A, Capitol Square Building, St. Paul.

All persons will be afforded the opportunity to be heard through the presentation of oral or written statements. Direct all inquiries to:

George Durfee, Manager
Power Plant Siting Program
Minnesota Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
(612) 296-2878

Department of Human Services Income Maintenance Bureau

Outside Opinion Sought Concerning Rules Governing Lump Sum Settlements and Compromise Agreements in Paternity Actions

Notice is hereby given that the Minnesota Department of Human Services solicits opinion on proposed permanent rules governing the procedures for lump sum settlements and compromise agreements in paternity actions.

This rule is authorized under Minnesota Statutes, section 257.60, in conjunction with Minnesota Statutes, chapter 14.

The rule will govern the procedure for submission of a lump sum settlement or compromise agreement in paternity actions to which the Commissioner of Human Services and the child are parties under Minnesota Statutes, section 257.60; the specific provisions to be included in the agreement; and the procedures to be followed by the Office of Child Support Enforcement as authorized representative of the Commissioner in reviewal and approval of lump sum settlements or compromise agreements.

All interested or affected persons or groups are invited to participate. Statements of information and comment may be made orally or in writing.

Oral statements of information or comments will be received during regular business hours over the telephone at 612/296-2555.

Written statements of information and comment may be addressed to:

Mary L. Anderson, Program Advisor
Office of Child Support Enforcement
Department of Human Services
Space Center Building, Second Floor
444 Lafayette Road
St. Paul, MN 55101

All statements of information and comment will be accepted by the Department until further notice. Any written material received by the Department shall become part of the hearing record.

Metropolitan Council

Public Hearing on Amendments to the System Plan Section of Part 1 of the Water Resources Management Development Guide/Policy Plan

The Metropolitan Council will hold a public hearing on Thursday, Nov. 15, 1984 from 2:00-3:30 p.m., in the Metropolitan Council Chambers, 300 Metro Square Bldg., 7th and Roberts Sts., St. Paul, Minnesota 55101, for the purpose of receiving public comments on the proposed amendments to Part 1 of the Water Resources Management Development Guide/Policy Plan. Changes proposed include phasing out of the Savage Wastewater Treatment Plant (WWTP) to the Seneca WWTP, construction of a new Middle Belt Line Interceptor, and several system improvement studies. The amendments are prepared in accordance with the Metropolitan Council's authority under Minn. Stat. § 473.145. All interested persons are encouraged to attend the hearing and offer comments on the proposed amendments. Persons wishing to speak at the hearing are encouraged to register in advance by contacting the Council's public hearing coordinator at 291-6521. Those who register first will be scheduled to speak first. Written comments may be submitted until Dec. 3, 1984. Copies of the hearing documents are available for public inspection beginning Monday, Oct. 15, 1984 at the following locations:

Metropolitan Council Library
300 Metro Square Building
St. Paul, Minnesota 55101

Minneapolis Public Library
Government Documents Room
300 Nicollet Mall
Minneapolis, Minnesota 55401

St. Paul Public Library
Science and Industry Room
90 W. Fourth Street
St. Paul, Minnesota 55102

Anoka County Library—Blaine Branch
707 Highway 10
Blaine, Minnesota 55434

Carver County Library—Burnsville Branch
314 Walnut Street
Chaska, Minnesota 55318

OFFICIAL NOTICES

Dakota County Library—Burnsville Branch
1101 W. County Rd. 42
Burnsville, Minnesota 55337

Hennepin County Library—Southdale Branch
7001 York Avenue
Edina, Minnesota 55435

Ramsey County Library—Roseville Branch
2180 N. Hamline Avenue
Roseville, Minnesota 55113

Scott County Library—Shakopee Branch
235 S. Lewis Street
Shakopee, Minnesota 55379

Washington County Library—Park Grove Branch
7520-80th Street S.
Cottage Grove, Minnesota 55106

Copies of the amendments may be obtained free of charge from the Council's Public Information Office at the above address, telephone 291-6464.

Chair
Metropolitan Council

Pollution Control Agency

Outside Opinion Sought Regarding Amendment of State Water Quality Rules (Minn. Rule Part 7050.0210)

Notice is hereby given that the Minnesota Pollution Control Agency (agency) is seeking information and opinions from sources outside the agency on the proposed modification of the fecal coliform effluent limitation found in Minn. Rule Part 7050.0210 Subpart 6.

The fecal coliform effluent limitation includes (1) a monthly logarithmic mean limitation of 200 organisms per 100 milliliters, (2) a requirement that no more than ten percent of the monthly samples individually can exceed 400 organisms per 100 milliliters, and (3) a requirement that at least five samples be taken per month. The agency is considering deleting parts (2) and (3) from the fecal coliform effluent limitation to minimize the amount of chlorine dischargers must use to maintain the fecal coliform water quality standard.

Any person may submit data or views on this proposal. Comments may be submitted in writing or orally. Any written material received in response to this notice will become a part of the rulemaking record generated in this matter.

Written comments and data may be submitted to Mr. David Maschwitz at the address listed below:

Minnesota Pollution Control Agency
Division of Water Quality
1935 West County Road B-2
Roseville, Minnesota 55113

Oral comments and inquiries may be directed to Mr. Maschwitz during normal business hours at the agency office or over the telephone at (612)296-7252.

Written and oral comments will be accepted until November 9, 1984.

October 15, 1984

Thomas J. Kalitowski
Executive Director

Pollution Control Agency Solid and Hazardous Waste Division

Outside Opinion Sought Concerning Proposed Rules Relating to the Abatement of Waste Tire Nuisances

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is seeking information or opinions from sources outside the MPCA in preparing rules pursuant to Minnesota Laws 1984, Chapter 654, Article II, Section 95 which authorizes the MPCA to abate a tire dump nuisance by processing and removing the tires. Before taking any action to abate a nuisance, the MPCA is required to give notice to the tire collector responsible for the nuisance that the tires constitute a nuisance and demand that the tires be shredded or chipped or removed within a specified period. Failure of the tire collector to take the required action within the specified period shall result in the issuance of an MPCA order to abate the nuisance. The abatement order may include entering the property where the nuisance is located, taking tires into public custody, and providing for their processing and removal.

The abatement rules will apply to waste tire collectors who will be required to abate their stockpiles, and will address abatement procedures and requirements, guidelines for abatement compensation, and public participation.

The MPCA requests information and opinions concerning the subject of these rules.

Written or oral information and comments may be submitted to Karen A. Ryss at the address listed below or at 612/297-1793 during regular business hours.

Karen A. Ryss
Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
1935 West County Road B2
Roseville, Minnesota 55113

Information or comments will be accepted until November 12, 1984. Any written material received by the MPCA shall become part of the background record regarding these abatement rules.

October 12, 1984

Thomas J. Kalitowski
Executive Director

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is November 13, 1984.

SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL has 1 vacancy open immediately for a member. The council advises the Commissioner of Administration on the small business procurement programs, reviews complaints from vendors, and reviews compliance reports. Members are appointed by the Governor. Members receive no compensation. For specific information contact the Small Business Procurement Advisory Council, 112 Administration Bldg., St. Paul 55155; (612) 297-4412.

HIGHER EDUCATION COORDINATING BOARD has 1 vacancy open for a citizen of the fifth congressional district. Must have knowledge or interest in post-secondary education. Shall not be an employee of or receive compensation from a public or private post-secondary institution while serving on the Board. The board analyzes and develops plans to meet present and long range higher education needs. Members must file with EPB. Members are appointed by the Governor and confirmed by the Senate. Members receive \$35 per diem. Monthly meetings, Capitol area and occasionally out-state. For specific information contact the Higher Education Coordinating Board, 400 Capitol Square Bldg., St. Paul 55101; (612) 296-3974.

ADVISORY COUNCIL ON UNIFORM FINANCIAL ACCOUNTING AND REPORTING STANDARDS has 2 vacancies open: 1 for a representative of the Minnesota Dept. of Education and 1 for a certified public accountant. The council provides the Board of Education with uniform accounting and reporting standards for school districts; formulates and recommends rules; changes in statutes, modifications of financial accounting codes, manuals, procedures and reporting

OFFICIAL NOTICES

forms. Members are appointed by the Board of Education. Monthly meetings at the Capitol complex, St. Paul. Public employee members receive no compensation; others are compensated for expenses. For specific information contact the Advisory Council on Uniform Financial Accounting and Reporting Standards, 807 Capitol Square Bldg., St. Paul 55101; (612) 296-9786.

METROPOLITAN AIRPORTS COMMISSION has 1 vacancy open for a member. Must be a resident of the appropriate MAC precinct. The commission promotes air transportation locally, nationally and internationally, by developing the Twin Cities as an aviation center; coordinates with all other governmental agencies to provide economical and effective use of aeronautic facilities and services; may acquire, build and operate an airport within a thirty-five mile radius of the City Hall of Minneapolis or St. Paul; adopts and enforces regulations to manage all metropolitan airports; controls airport land use and provides for airport noise control. Members are appointed by the Governor. Members must file with EPB. Monthly meetings; members receive \$50 per diem. For specific information contact the Metropolitan Airports Commission, 6040 28th Ave. S., Mpls. 55450; (612) 726-1892.

LOCAL PROJECT REVIEW COMMITTEES OF THE WASTE MANAGEMENT BOARD has 1 vacancy open immediately. Applicants must reside in or near Aitkin County. The Aitkin County candidate site was designated by the Minnesota Waste Management Board (WMB) for possible establishment of a long-term, above-ground storage facility for hazardous waste residue. The committee will exist, and its members will serve as long as the Aitkin County candidate site remains under consideration of the WMB. The committee serves as a liaison between the WMB and the residents of Aitkin County. It also works with the Board to develop reports to the Minnesota legislature regarding hazardous waste management in the state, including an Estimate of Need for an in-state disposal facility. Members are appointed by the Governor. One or two meetings a month near Hill City. Members receive per diem expenses. For specific information contact the Local Project Review Committees of the Waste Management Board, Kevin Johnson, Minnesota Waste Management Board, 7323 58th Ave. N., Crystal 55428; (612) 536-0816, 1-800-652-9747.

ADVISORY TASK FORCE ON THE WOMAN OFFENDER IN CORRECTIONS has 1 vacancy open for a member to reflect a statewide geographical representation. The task force consults with the Commissioner of Corrections regarding choice of model programs to receive funding. Review and make recommendations to the Commissioner on matters affecting women offenders. Identify problem areas and make recommendations for problem resolution. Assist the Commissioner when and where possible in seeking improved programming for women offenders. Members are appointed by the Commissioner of Corrections. Members receive expenses, in the same manner and amount as state employees. Meetings are held the 1st Wednesday of each month at the Dept. of Corrections. For specific information contact the Dept. of Corrections, 430 Metro Square Bldg., St. Paul 55101; (612) 296-3525.

Department of Revenue Alcohol, Tobacco and Special Taxes Division

Outside Opinion Sought Regarding Proposed Rules Governing the Alcoholic Beverage Excise Tax

NOTICE IS HEREBY GIVEN that the Minnesota Department of Revenue is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing the assessment and collection of the alcoholic beverage excise tax. The promulgation of these rules is authorized by M.S. 340.47, subd. 2b; 340.485, subd. 1 and 3; and 340.492.

Interested persons or groups may submit written statements of information. Statements will be accepted until November 5, 1984, and should be sent to:

Howard W. Anderson
Minnesota Department of Revenue
Alcohol, Tobacco and Special Taxes Division
P.O. Box 64446
St. Paul, Minnesota 55164

Any written material shall become part of the record in the event a rule is proposed and a public hearing is held.

October 18, 1984

STATE CONTRACTS

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

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

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
55-103-03396	Milk carton dispensers	Moose Lake State Hospital	Moose Lake	Contact buyer
43-000-05514	Purchase of photocopier machine	Iron Range Resources & Rehabilitation Board	Chisholm	Contact buyer
55-520-03230	Purchase of photocopier machine	Oak Terrace Nursing Home	Minnetonka	Contact buyer
79-000-44627	Microprocessor monitor	Transportation	St. Paul	Contact buyer
55-000-90211	XL camera	Human Services—Services for the Blind	St. Paul	Contact buyer
32-100-12081	Fluorimeter	Pollution Control Agency	Roseville	Contact buyer
07-300-32094	Combination fluor/pol scope	Public Safety—Criminal Apprehension Bureau	St. Paul	Contact buyer
32-100-12093	Automated gas chromatograph	Health	Minneapolis	Contact buyer
12-200-81503	Ion chromatograph	Health	Minneapolis	Contact buyer
32-100-12091	Automatic liquid sampler	Pollution Control Agency	Roseville	Contact buyer
07-100-32062	Alcosensor III	Public Safety—Criminal Apprehension Bureau	St. Paul	Contact buyer
55-101-06059	Misc. hosp. supplies	Fergus Falls Hospital	Fergus Falls	Contact buyer
80-300-03116	Gas chromatography system	Public Service	Minneapolis	Contact buyer
55-000-90159	Cafeteria booth seating	Human Services—Services for the Blind	Duluth	Contact buyer
55-000-90008-900-11 & 12	Vending machines	Human Services—Services for the Blind	Fridley	Contact buyer
55-000-90013, 14, 15, 16	Vending machines	Human Services—Services for the Blind	Fridley	Contact buyer
26-074-09604	Boiler retubing heating plant	Winona State University	Winona	Contact buyer
79-000-44400	Sand spreaders	Transportation	St. Paul	Contact buyer

STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
78-630-06200	Instant barrier	MN Correctional Facility	Oak Park Heights	Contact buyer
29-000-36666, etc.	All terrain vehicles	Natural Resources	Various	Contact buyer
29-000-36722	Protocal conversion equipment	Natural Resources—South Service Center	St. Paul	Contact buyer
29-000-36731	Aluminum tags	Natural Resources	St. Paul	Contact buyer
55-000-90022	Visualtek vogyager	Human Services—Services for the Blind	St. Paul	Contact buyer
Sch. 93 Rebid	Light heating fuel oil requirement	Various	Various	Contact buyer
26-073-16790, 2638	Outlook	St. Cloud State University	St. Cloud	Contact buyer
Contract	Audio visual cassette recorders/players	Various	Various	18,100.-20,000.
02-520-44387	Paper jogger & work bench	Administration—Printing & Mailing	St. Paul	Contact buyer
55-000-90203 & 06	Viewscan text system & disc unit	Human Services—Services for the Blind	St. Paul	Contact buyer
79-000-44506	Bituminous tank car heater	Transportation	Morris	Contact buyer
29-000-36733	Premier seals	Natural Resources	Same	Contact buyer
Contract	“SECO” web foot mops	Various	Various	9,000.-11,000.
17-000-01608	Purchase of photocopy machines	Human Rights	St. Paul	Contact buyer
Contract,	Rubbish disposal	Anoka Ramsey Community College	Coon Rapids	Contact buyer
27-152-42900	Van	Natural Resources	St. Paul	Contact buyer
29-000-36741	Treated lumber Rebid	Natural Resources	St. Paul	Contact buyer
29-004-05729	Earth work, cleaning & fine grading	Iron Range Resources & Rehabilitation Board	Calumet	Contact buyer
43-000-05566	& road access to Archery Lane W of Hibbing	Natural Resources—S. Service Center	St. Paul	Contact buyer
29-000-36721	Data communication system using data switch	Natural Resources	St. Paul	Contact buyer
29-000-36715	Fish food	Natural Resources	Altura	Contact buyer
Contract	Printing: business cards	Various	Various	5,000.-9,000.
Contract;	Rubbish disposal	Minneapolis Community College	Minneapolis	—
27-151-43069	Steel office furniture	Various	Various	approx. 37,000.
Contract	Super unleaded with 10% ethanol (gasohol) rebid	Various	International Falls	Contact buyer
Sch 92-BO Rebid	Supply & install insulated units	Administration	St. Paul	Contact buyer
02-307-44829	First aid bags	Various	Various	Contact buyer
07-500-29586	Wood pellets	Iron Range Resources & Rehabilitation Board	Biwabik	Contact buyer
43-000-05778	Employer's quarterly unemployment tax report	Economic Security	St. Paul	Contact buyer
21-200-08797, 2949	Printed electronic circuit card	Mankato State University	Mankato	Contact buyer
26-071-14731	Elevator maintenance	Economic Security	Various	Contact buyer
21-200-07859	Stripping used sign blanks	Transportation	Various	30,000.-40,000.
Contract	Rental of fully operated hydro axe	Transportation	Brainerd	Contact buyer
79-300-03026				

<u>Requisition #</u>	<u>Item</u>	<u>Ordering Division</u>	<u>Delivery Point</u>	<u>Estimated Dollar Amount</u>
Various	Pharmaceuticals	Various		Contact buyer
79-000-43952	Air sampling pump	Transportation	St. Paul	Contact buyer
29-000-36723	Data-over-voice wiring system	Natural	St. Paul	Contact buyer
		Resources—S.		
		Service Center		
Contract	Drinking cups	Central Stores	139 E. 12th St.	15,000.-17,000.
	Contact the receptionist at 296-2513 for referral to specific buyers.			

Department of Agriculture

Request for Proposal Regarding the Selection of a Consultant for the Agricultural Resource Loan Guaranty Board

I. Introduction

Minnesota Laws 1984, Ch. 502, Article 10 (the "Act") established the Agricultural Resource Loan Guaranty Program to further develop the state's agricultural resources and improve the market for its agricultural products. The program is designed to provide financial guaranties for a portion of the cost of viable agricultural resource projects to enable qualified developers to secure private financing which would not otherwise be available. Eligible projects include the construction, conversion, or expansion of facilities to produce marketable products from agricultural resources, including crop, animal, and wood production, waste, and residues.

The Agricultural Resource Loan Guaranty Board ("Board") is charged with administration of the program and the selection of projects eligible for agricultural resource loan guaranties in accordance with applicable rules and law. Selection will be made from applications submitted by county authorities in the county where the proposed project is located.

The Board has determined that success of the loan guaranty program will best be assured by employment of a consultant to investigate and evaluate the viability of proposed projects and to make recommendations to the Board regarding the eligibility of the projects and the terms and conditions of the loan and guaranty agreements.

II. Purpose.

The Board desires to contract with one or more consultants in order to obtain professional assistance with the evaluation of applications to ensure that loan guaranties are approved for viable projects, proposed by competent developers, which are technologically, commercially and financially feasible and meet applicable environmental standards. Factors which the consultant would evaluate in the assessment would include the financial plan for the project; the business and management experience of the borrower; the engineering and technological feasibility of the project; the market research and potential for the product and its present and potential commercial feasibility; and the environmental review of the project including compliance with environmental requirements. These factors are more fully set forth in the Act and will be elaborated in the proposed rules of the Board.

III. Duties of the Selected Consultant

The contemplated contract between the consultant(s) and the Board will provide, among other terms, the following duties for the consultant:

A. Perform a preliminary review of loan guaranty applications to determine completeness and compliance with the authorizing statute and the Board's rules.

B. Consult with the Board and, as necessary, with applicants as to any incomplete or additional information required in applications.

C. Evaluate applications and report in writing to the Board the consultant's findings and conclusions regarding the viability of the project as proposed, together with the consultant's recommendations for changes in the project or terms and conditions of the loan or loan guaranty.

D. Respond to questions from applicants, borrowers, lenders, and the Board in connection with the review and evaluation of applications and the Board's determination whether to guaranty an agricultural resource development loan.

IV. Submission of Proposals

STATE CONTRACTS

The consultants' responses to this request for a proposal must include the following information, as well as any additional information which the responder deems beneficial to the Board's objectives:

1. Upon review of the Act, the consultant's recommendations regarding the roles to be played by the respective parties to the application process. For example, response should be made to the following questions, among others:

A. What information and analyses should the borrower assemble prior to submission of the application? Should the Board require that feasibility studies be prepared in advance of application in all cases; or are there circumstances in which feasibility studies are more constructively prepared after application, perhaps by the Board's consultant?

B. To what extent can the Board rely upon the county authority to project and evaluate tax increment revenues and the likely market for bonds with respect to a project?

C. What role can the lender play in evaluating the financial feasibility of the project and the required security and collateral for the loan?

D. What criteria or factors can best be evaluated by an independent consultant with no financial interest in the project or the program?

2. The consultant's recommendations regarding the most efficient, expeditious, and economical procedures for review and evaluation of applications, with a description of the roles to be played by the respective parties.

3. A detailed description of the experience, qualifications, and resources of the consultant and/or the consultant's firm as it relates to the role described in the RFP and the subject areas related to the program, including agricultural processing, commercial lending and financing of similar or related projects, agricultural economics, engineering, chemistry and other natural sciences related to the projects. Identify subject areas and/or duties which the consultant would subcontract to other persons or entities, specifying the subcontractors proposed.

4. A statement of the hourly charges for the consultant's services and charges for other services or expenses anticipated in connection with the review and evaluation of applications, consultations, and recommendations to the Board.

Responses and proposals should be submitted to the Board with ten copies addressed as follows:

Gerald Heil
Department of Agriculture
90 West Plato Boulevard
St. Paul, Minnesota 55107
ATTN: Agricultural Resource Loan Guaranty Board

V. Timetable

Consultants' proposals are due 30 days after publication of notice of this RFP in the *State Register*.

VI. Information Contracts

The Board's *exclusive* agent for purposes of responding to consultant's inquiries regarding RFP requirements is:

Gerald Heil
Department of Agriculture
90 West Plato Boulevard
St. Paul, Minnesota 55107
(612) 296-7686

The Board shall not be bound by and consultants may not rely on information regarding RFP requirements obtained from other persons.

VII. Proposal Selection

A. Nature of Procurement

This procurement is undertaken by the Board pursuant to the provisions of Minn. Stat. § 16.098. 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 Board shall select the consultant(s) whose proposal demonstrates clear capability to best fulfill the purpose of the RFP in a cost effective manner. The Board reserves the right to accept or reject proposals in whole or in part and to negotiate terms different from those specified herein as necessary to serve the best interests of the program and the State of Minnesota.

B. Selection Criteria

The evaluation of proposals will be based on:

1. The quality and completeness of the consultant's response as it relates to the Board's needs and the duties described in the RFP.
2. The consultant's demonstrated knowledge and experience in subject matters related to the program.
3. The consultant's ability as demonstrated by successful prior experience and current capacity to carry out the tasks outlined in this RFP.
4. The comparative costs of the responder's services.

VIII. Additional Proposal and Contract Requirements

A. Public Status of Proposals Submitted

Pursuant to Minnesota law, all proposals submitted in response to the 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.

B. 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 CD-00032, attached as Exhibit A.

Department of Agriculture Minnesota Trade Office, Communications Division

Request for Proposals for Art and Publications Design Assistance

The Minnesota Trade Office is seeking individuals and firms to design a logo and provide publication design and artwork for collateral publications. The specific projects include:

1. Creation of a Trade Office logo;
2. Create a graphic identity system to unify publications;
3. Provide a manual with grids and reproduction stats of the logo, as well as recommendations on typestyles, type sizes, paperstocks and preferred ink colors for future publications; and
4. Provide, as needed, artwork or photography that can be used to illustrate (cover and inside pages) collateral publications.

These services, which will be provided under contract, are outlined in detail in the Request for Proposal (RFP). The formal RFP may be requested and inquiries directed to:

Lynn Schwartz
Communications Division
Minnesota Trade Office
90 West Plato Blvd.
St. Paul, MN 55107
612/296-2259

It is anticipated that the activities required to accomplish this project will be accomplished for between \$3,000 and \$6,000. The deadline for submitting completed proposals is 4:30 p.m., November 12, 1984. Late proposals will not be accepted.

Department of Education Executive Division

Request for Proposals for Microcomputer Financial Accounting and Reporting Information Systems

The Executive Division, Elementary, Secondary, Vocational (ESV) Computer Council is seeking a microcomputer finance accounting and reporting system for pilot testing in Minnesota school districts as an alternative to mandated large scale, mainframe computer system use.

STATE CONTRACTS

The pilot test procedures and the requirements for any system to be selected for testing are described in detail in the Request for Proposals (RFP) Statement of System Requirements.

The formal RFP may be requested and inquiries should be directed to:

Joanne Carlson, Executive Director
ESV Computer Council
Room 849, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

RFP amendments and written answers to prospective responder questions, if any, will be mailed to all prospective responders on October 31, 1984.

The deadline for submission of completed proposals will be the close of the working day on November 15, 1984.

Department of Energy and Economic Development Energy Division

Request for Proposals for Television Commercial Production

The Energy Division of the Minnesota Department of Energy and Economic Development is requesting proposals from television production studios to produce 1-3 television commercials promoting energy conservation. The Division has a total advertising budget of \$80,000 to cover production costs and the purchase of commercial time. We have budgeted between \$8,000 and \$12,000 to produce the spots which are planned to be aired in January, 1985.

Production studios submitting bids should be able to coordinate selection of actors and voice talent to be used for the ads. All proposals should include the fees for acting talent and the comparative costs of film versus video production. Commercial time will be purchased separately by Division staff.

Copies of the request for proposals, storyboards on which to base bids, and other necessary information can be obtained from:

Greg Smith
Energy Division
Department of Energy and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-4614

Department of Human Services Health Care Programs

Request for Proposals for Medical Assistance Revenue Enhancement

This request is for proposals (RFP) for collecting additional revenues and for reviewing the appropriateness of acute care hospital billings for services provided to public assistance clients. Minnesota Laws 1984, Chapter 654, Article 5, § 21 authorizes the Commissioner of the Department of Human Services (DHS) to develop and implement special projects to maximize reimbursements which result in the recovery of money to the State. This project includes revenue generation and an audit of past hospital expenditures.

This request for proposals does not obligate the State to complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its interest.

A. Scope of the Project

The purpose of this project is to assist DHS in:

1. Maximizing recoveries for costs for medical services incurred under the Medical Assistance (MA) or the General Assistance Medical Care (GAMC) programs which should have been paid by third party payers.

2. Auditing expenses for acute care medical services incurred by the MA or the GAMC programs and identify expenses not covered but paid by the program.

3. Maximizing reimbursement for costs incurred by the Department as income maintenance recipient grants when the obligation for such support is the legal responsibility of other individuals.

If the responding organization has reasons to believe that additional revenue collection efforts may be justifiably undertaken, the proposal should discuss such reasons. Proposals submitted under this solicitation should not address recoveries in state institutions or state geriatric facilities.

B. Objectives

To assist DHS in increasing recoveries in a number of program areas.

C. Project Tasks

—To identify potential areas where additional recoveries may be realized including, at a minimum, the three areas listed in "A" above.

—To develop a strategy for realizing such recoveries.

—Establish and document systems and procedures required to allow DHS to maximize third party reimbursement on an ongoing basis.

—Develop training material for state agency personnel.

—To finalize a detailed work plan within the first two weeks.

—To submit quarterly reports.

—To submit a written, final report summarizing collection activity and addressing project tasks.

D. Departmental Contacts

DHS has prepared a brief background paper with program figures. This material is available for prospective responders.

Prospective responders who have any procedural questions or want the background material regarding this Request for Proposal may call or write:

Robert Baird
Health Care Programs Division
Minnesota Department of Human Services
1st Floor Space Center
444 Lafayette Road
St. Paul, MN 55101
Phone: 612/296-2766

E. Submission of Proposals

All proposals must be sent to and received by Robert Baird at the address given above by November 21, 1984, not later than 4:30 p.m. Late proposals will not be accepted.

Submit three copies of the proposal sealed in a mailing envelope or package with the responder's name and address marked clearly on the outside. Each copy of the proposal must be signed by an authorized member of the firm or person making the bid. Terms of the proposal, as stated by the responder, must be valid for the length of the project.

Proposals should not exceed 15 pages in length exclusive of attachments and supporting documentation.

F. Project Cost

The costs of this project will be paid entirely by the contractor. In making this solicitation DHS intends to share recoveries with the contractor on a contingency basis of funds recovered by DHS as a result of contractor efforts. Responses to this request must submit a proposal as to a percentage split of the recoveries.

G. Project Completion Date

The contractor must specify in his response a proposed completion date.

H. Proposal Content

The proposal must contain:

1. A restatement of the objectives, goals, and tasks to demonstrate how the responder views the methodological issues surrounding the development of a comprehensive recovery strategy for each of the areas in "A" above.

STATE CONTRACTS

2. A detailed outline of the proposed processes that will lead to the recoveries in each of the areas in "A" above including responsibilities of both DHS and the responder.

3. A description of the deliverables to be provided by the responder.

4. A projection of the amount of recoveries including a detailed explanation of the methodologies and assumptions used in making the projection.

5. An outline of the responder's background and corporate capabilities with particular emphasis on:

—Past work with state or local government Medicaid or Income Maintenance programs.

—Past work with state or local government collection activities.

—Past experience in private sector collection activities.

—Identification of personnel to conduct the work including references and past work and training experiences. No change in personnel assigned to the project will be permitted without prior notification and approval of the state project manager.

—A detailed cost and work plan identifying the major tasks and deliverables to be accomplished and a scheduling timetable.

I. Evaluation of Proposals

All proposals received by the deadline will be evaluated by representatives of the Minnesota Department of Human Services and the Office of the Attorney General. An interview may be requested. Factors upon which proposals will be judged include but are not limited to:

1. An expressed understanding of project objectives.

2. Past experience in developing and implementing collections and recoveries activities for state and local governments.

3. An expressed understanding of the Minnesota Human Services financing system.

4. Project work plan.

5. Proposed arrangements for the sharing of recoveries.

6. Estimates of the potential recoveries and the soundness of the methodologies by which they are projected.

7. Corporate capabilities and qualifications of project personnel.

Selection will be completed by December 21, 1984, with project contracts developed after the award.

Results will be sent by mail to all responders.

It shall be the responsibility of the entity selected to advise the department of how it will comply with Laws of Minnesota 1984, Chapter 544, Section 24, Subdivision 6, set aside.

State Designer Selection Board

Request for Proposals for State Projects

TO ARCHITECTS AND ENGINEERS REGISTERED IN MINNESOTA:

The State Designer Selection Board has been requested to select designer for a project for the Community College System. Design firms who wish to be considered for this project should submit proposals on or before 4:00 P.M., November 14, 1984, to George Iwan, Executive Secretary, State Designer Selection Board, Room G-10, Administration Building, St. Paul, Minnesota 55155-1495.

The proposal must conform to the following:

1. Six copies of the proposal will be required.

2. All data must be on 8½" × 11" sheets, soft bound.

3. The cover sheet of the proposal must be clearly labeled with the project number, as listed in number 7 below, together with the designer's firm name, address, telephone number and the name of the contact person.

4. The proposal should consist of the following information in the order indicated below:

- a) Number and name of project.
- b) Identity of firm and an indication of its legal status, i.e. corporation, partnership, etc.
- c) Names of the persons who would be directly responsible for the major elements of the work, including consultants, together with brief descriptions of their qualifications. If the applicant chooses to list projects which are relevant in type, scale, or character to the project at hand, the person's role in the project must be identified.
- d) A commitment to enter the work promptly and to assign the people listed in "C" above and to supply other necessary staff.
- e) A list of design projects in process or completed in the three (3) years prior to the date of this request for agencies or institutions of the State of Minnesota, including the University of Minnesota, by the firm(s) listed in "b" together with the approximate fees associated with each project.
- f) A section of not more than fourteen (14) faces containing graphic material (photos, plans, drawings, etc.) as evidence of the firm's qualification for the work. The graphic material must be identified. It must be work in which the personnel listed in "c" have had significant participation and their roles must be clearly described.

The proposal shall consist of no more than twenty (20) faces. Proposals not conforming to the parameters set forth in this request will be disqualified and discarded without further examination.

5. In accordance with the provisions of Minnesota Statutes, 1981 Supplement, Section 363.073; for all contracts estimated to be in excess of \$50,000, all responders having more than 20 full-time employees at any time during the previous 12 months must have an affirmative action plan approved by the Commissioner of Human Rights before a proposal may be accepted. Your proposal will not be accepted unless it includes one of the following:

- a) A copy of your firm's current certificate of compliance issued by the Commissioner of Human Rights; or
- b) A statement certifying that your firm has a current certificate of compliance issued by the Commissioner of Human Rights; or
- c) A statement certifying that your firm has not had more than 20 full-time employees in Minnesota at any time during the previous 12 months.

6. Design firms wishing to have their proposals returned after the Board's review must follow one of the following procedures:

- a) Enclose a self-addressed stamped postal card with the proposals. Design firms will be notified when material is ready to be picked up. Design firms will have two (2) weeks to pick up their proposals, after which time the proposals will be discarded.
- b) Enclose a self-addressed stamped mailing envelope with the proposals. When the Board has completed its review, proposals will be returned using this envelope.

In accordance with existing statute, the Board will retain one copy of each proposal submitted.

Any questions concerning the Board's procedures or their schedule for the project herein described may be referred to George Iwan at (612) 296-4656.

7. PROJECT—42-84

**Cambridge Community College
College Center
Cambridge, Minnesota**

Total Building Appropriation: \$815,000.00

Full consulting services are required for expansion of the present 6,000 sq. ft. metal systems building to achieve a facility of 18,000 sq. ft. for classrooms, faculty offices, administrative and possibly laboratories.

Scope of the work will also include the development of the 70,000 sq. ft. site for adequate student, staff and guest parking, along with appropriate lighting and landscaping.

Questions concerning this project may be referred to Don Wagner at 296-3759.

John D. Nagel, Chairman
State Designer Selection Board

SUPREME COURT

Decisions of the Supreme Court Filed Friday, October 12, 1984

Compiled by Wayne O. Tschimperle, Clerk

CX-83-537 State of Minnesota v. Herbert Milbrad, Appellant. Ramsey County.

Criminal defendant has a limited right to refuse probation and insist on execution of a stayed prison term.

Reversed and remanded. Amdahl, C.J.

C4-83-999 AFSCME Council 96, for Itself and on Behalf of Its Member Employee, Carl Hammerberg v. Arrowhead Regional Corrections Board, Appellant. St. Louis County.

Veteran in public employment who has received notice of intent to terminate employment has the right to both a Veteran's Preference Hearing under Minn. Stat. § 197.46 (1982) and to arbitration of the dismissal under the terms of the collective bargaining agreement negotiated pursuant to PELRA.

Principles of res judicata and collateral estoppel do not apply to either arbitration or veteran's preference hearings on the question of "just cause" for termination of veteran who is a public employee.

Affirmed. Amdahl, C.J.

Concurring specially, Simonett, J., Peterson, J., Kelley, J., and Coyne, J.

CX-83-702 State of Minnesota v. Michael W. Kosloski, Appellant. Hennepin County.

Defendant received a fair trial and was properly convicted of criminal sexual conduct in the first degree.

Affirmed. Peterson, J.

C5-83-879 Zobel & Dahl Construction, Plaintiff, Counterclaim Defendant, and Third Party Plaintiff, v. David Crotty, Defendant and Counter-Claimant, Appellant, v. Builders Supply Company, Third Party Defendant, Summit Masonry, et al., Third Party Defendants, Bob Olson, Third Party Defendant. St. Louis County.

In a contract for construction of a home, an owner who unreasonably fails to allow the contractor to complete construction excuses the contractor's performance and breaches the contract.

In construction contracts, if the work has begun and the buyer breaches, the contractor is entitled to the unpaid contract price less the amount it would have cost to complete the performance.

The court will not answer hypothetical or speculative questions or render an advisory opinion.

Affirmed in part; reversed in part and remanded.

Todd, J.

C9-84-667 Arnold Gustafson, Relator, v. A.W. Kuettel & Sons, Travelers Insurance Company. Workers' Compensation Court of Appeals.

When the employee and his mother stated under oath, prior to approval of a settlement of his workers' compensation and third-party claims, that they fully understood employee's rights to medical treatment and nursing care under the Workers' Compensation Act, the Workers' Compensation Court of Appeals did not err in refusing to vacate the provision of the settlement concerning future medical expenses and nursing care on the ground of mistake allegedly resulting from the failure of employee's attorney to apprise employee and his mother of their rights under the statute.

Although the settlement suspended the insurer's statutory obligation to furnish medical treatment and to pay the reasonable cost of nursing services until a \$20,000 credit therefor was exhausted, the statutory obligation resumed when the credit was exhausted.

Cause for vacating an award under Minn. Stat. §§ 176.461 and 176.521 (1982) may exist if an employee has suffered a substantial change in condition. Even if a person is permanently and totally disabled, his physical condition may nevertheless worsen substantially. There is some indication in the workers' compensation file that this has occurred since the 1970 settlement, so the matter is remanded with directions to afford the parties a hearing at which they may submit evidence on that issue, following which the Workers' Compensation Court of Appeals shall determine whether employee's condition has changed so substantially as to furnish grounds for vacating the settlement provision relating to future medical expenses and nursing care.

Affirmed and remanded for further proceedings.

Todd, J.

C6-84-416 Marie K. Sparks, Relator, v. Country Club Markets, Inc., and American Hardware Mutual Insurance Company. Workers' Compensation Court of Appeals.

Findings that employee's psychiatric illness is unrelated to her work and that she is totally disabled from employment as a substantial result of that illness are supported by substantial evidence. The finding that employee's arm injury is not a substantial contributing factor in her total disability is unsupported by substantial evidence.

Affirmed in part, reversed in part, and remanded.

Todd, J.

CX-83-182 State of Minnesota v. Willard J. Hince, Jr., Appellant. Pennington County.

Defendant was properly convicted of criminal sexual conduct in the first degree, but was improperly given a consecutive sentence.

Affirmed as modified. Yetka, J.

C7-83-544 State of Minnesota v. John J. DeBaere, Appellant. Lyon County.

Evidence was sufficient to support defendant's convictions of burglary and criminal sexual conduct in the first degree.

Trial court did not err in admitting *Spreigl* evidence concerning sexual assaults by defendant of five other women; error in refusing to let defense counsel ask one of these women on cross-examination if she previously had had a consensual sexual relationship with defendant was nonprejudicial error.

Affirmed. Simonett, J.

C2-83-483 State of Minnesota v. Steven L'Italien, Appellant. Washington County.

Defendant, who was convicted of nonresidential burglary, was adequately represented by a public defender at the omnibus hearing, and the omnibus court properly denied defendant's motion to suppress, there being a sufficient basis for the stop of defendant as he fled the crime scene.

Affirmed. Kelley, J.

C2-82-1641 State of Minnesota v. George Albert Aitkins, Appellant. Ramsey County.

Defendant received a fair trial and was properly found guilty of aggravated robbery.

Affirmed. Kelley, J.

C4-83-1022 Howard J. Miels, Deceased Employee, by Marilyn Miels, Petitioner, Relator, v. Northwestern Bell Telephone Company, Self-Insured. Workers' Compensation Court of Appeals.

Death by suicide is compensable under the Workers' Compensation Act if it is established by substantial evidence that the employee's work-related injury and its consequences directly caused a mental derangement of such severity that it overrode normal, rational thinking and judgment and that the chain of causation between the work-related injury, the mental derangement, and the suicide is unbroken. The work-related injury need not be the sole cause of the suicide, but it must be a substantial cause.

In calculating the amount of compensation payable to or for the benefit of a deceased employee's dependents, the limitation imposed by Minn. Stat. § 176.111, subd. 21 (1982), shall first be applied to the combined total of weekly government survivor benefits, including mother's insurance benefits and benefits for surviving dependent children, and workers' compensation benefits. The allocation provisions of section 176.111, subd. 10, shall then be applied to such workers' compensation benefits as are awarded after application of the limitation imposed by subdivision 21.

Reversed and remanded. Coyne, J.

C1-84-730 Terrence Jendro v. Brown Boveri Turbo Machinery Co., Relator, Zurich-American Insurance Co., Relator, Minnesota Department of Public Welfare. Workers' Compensation Court of Appeals.

A physician's written medical report in which he expressed conclusions about the nature of the injury employee had sustained and the extent of his permanent partial disability, based in part on another physician's interpretation of a CAT scan performed by the latter, was admissible pursuant to Minn. Stat. § 176.155, subd. 5 (1983 Supp.), and furnished competent evidence to support the finding employee had sustained a 25 percent permanent partial disability of the back.

Affirmed. Coyne, J.

SUPREME COURT

C8-83-150 Complaint Concerning The Honorable Robert Crane Winton, Jr., Judge of District Court, Hennepin County, State of Minnesota. Supreme Court.

Motion denied. Per Curiam.

Took no part, Todd, J.

ERRATA

Department of Human Services Bureau of Mental Health

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

The following typographical error was printed in the October 8, 1984 (Cite 9 S.R. 735) Extension Notice:

The emergency rules were incorrectly cited as "8 MCAR § 1.7001". The correct cite is 12 MCAR §§ 2.02001-2.02011 (Emergency).

Department of Labor and Industry Prevailing Wage Division

Notice of Correction of Prevailing Wage Rates for Plumbers in Polk County for Commercial Construction

Due to an error in reporting, the prevailing wage rate certified July 13, 1984 and published in the *State Register* July 23, 1984 for Plumbers in Polk county for Commercial construction has been corrected.

The correct rate, effective October 9, 1984, can 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

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