

85, April 22

# STATE REGISTER

STATE OF MINNESOTA

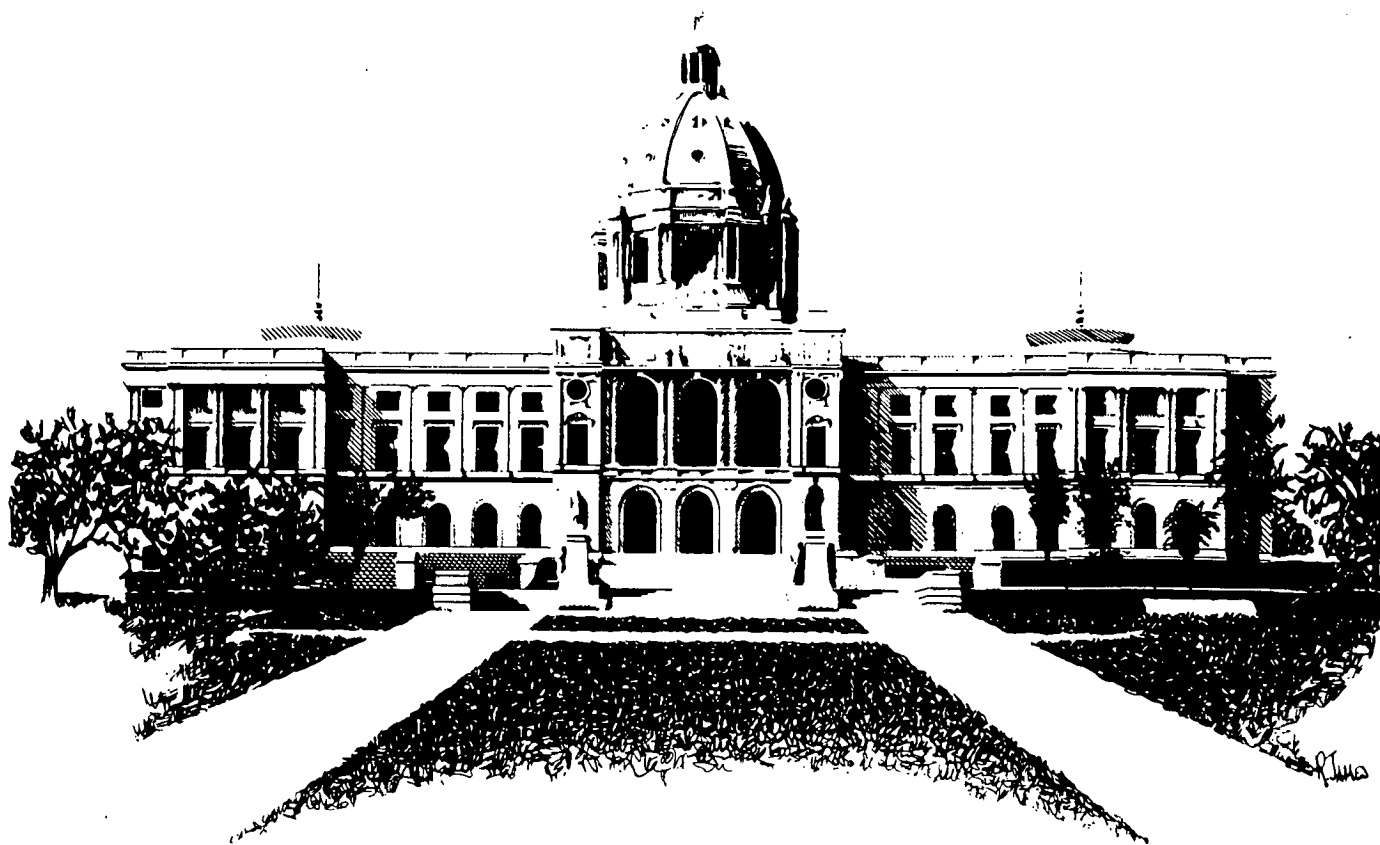
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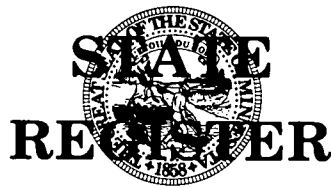
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VOLUME 9, NUMBER 43

April 22, 1985

Pages 2359-2394



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### 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			
44	Monday Apr 15	Monday Apr 22	Monday Apr 29
45	Monday Apr 22	Monday Apr 29	Monday May 6
46	Monday Apr 29	Monday May 6	Monday May 13
47	Monday May 6	Monday May 13	Monday May 20

\*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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Rudy Perpich  
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Marsha Storck  
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Commissioner  
Department of Administration

Robin PanLener, Paul Hoffman,  
Margaret Connelly, Ruth Werness  
Editorial Staff

Stephen A. Ordahl  
Director  
State Register and  
Public Documents Division

Debbie Kobold  
Circulation Manager

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

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

#### The PROPOSED RULES section contains:

- Calendar of public hearings on proposed rules.
- Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
- Proposed amendments to rules already in existence in the Minnesota Rules.
- Proposed emergency rules.
- Withdrawal of proposed rules (option; not required).

#### The ADOPTED RULES section contains:

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

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

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

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

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

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

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

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# EXECUTIVE ORDERS

## Executive Order No. 85-10

### Providing for the Establishment of a Special Commission to Perform Responsibilities Pursuant to Minnesota Statutes 351.03 and 351.04 (1984)

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, the Governor may remove from office a County Attorney when it appears to him by competent evidence that the County Attorney has been guilty of malfeasance or nonfeasance in the performance of his or her official duties;

WHEREAS, when charges are made against a County Attorney, the Governor shall appoint a special commissioner to conduct a hearing and take testimony for and against the County Attorney, and provide the County Attorney an opportunity to be heard in his or her defense;

WHEREAS, a petition has been received setting forth charges of malfeasance or nonfeasance against Kathleen Morris, Scott County Attorney;

NOW, THEREFORE, I order:

1. The Honorable Lynn C. Olson, Judge of District Court, Tenth Judicial District, is hereby appointed as a Special Commissioner pursuant to Minnesota Statutes 351.04 (1984) to take and report all pertinent evidence at a hearing to determine whether there is a basis to remove Kathleen Morris as Scott County Attorney.

2. Judge Olson will be assisted at the hearing and in making recommendations concerning the petition for removal by Julius Gernes of Winona, the Winona County Attorney, and Irene Scott of Bloomington, an attorney in practice in Minneapolis.

3. The Commissioner and her colleagues are to determine and implement procedures appropriate to this matter and consistent with law. The Commissioner is empowered to issue subpoenas to compel testimony and the presentation of other evidence concerning this matter.

4. The Scott County Attorney shall be entitled to be represented at the hearing by an attorney of her own choice.

5. The Attorney General shall appoint counsel to organize and present evidence to the Commission.

6. The Commissioner created by this Order shall report to me its findings and recommendations.

Pursuant to Minnesota Statutes, Section 4.035, this Order shall be effective fifteen (15) days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Minnesota Statutes, Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF I have set my hand this 25th day of March, 1985.



# PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

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

## Department of Health Maternal and Child Health

### Proposed Rule Relating to Newborn Metabolic Screening Program; Duties of Responsible Parties

#### Notice of Intent to Amend Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Commissioner of Health (hereinafter "Commissioner") proposes to adopt amendments to Minnesota Rules, part 4615.0500 which relates to the duties of responsible parties involved in the newborn metabolic screening program.

The Commissioner has determined that the proposed amendments will be noncontroversial in nature and has elected to follow the provisions of Minnesota Statutes, sections 14.22 to 14.28 (1984). Sections 14.21 to 14.28 provide for an expedited process for the adoption of administrative rule changes without the holding of a public hearing.

The implementation of these amendments will not require the expenditure of public money by local bodies of greater than \$100,000.00 in either of the two years following their adoption, nor do the amendments have any impact on agricultural land. The small business considerations in rulemaking do not apply to these amendments pursuant to Minnesota Statutes, section 14.115, subdivision (7c)(1984).

#### THE PUBLIC IS HEREBY ADVISED THAT:

1. They have 30 days in which to submit comment in support of or in opposition to the proposed amendments, and comment is encouraged;
2. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed;
3. If twenty-five or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held;
4. All comments and any written requests for a public hearing shall be submitted to Edward L. Hendricks, MD, MPH, Director, Maternal and Child Health Division, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440;
5. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed;
6. The proposed amendments may be modified if modifications are supported by the data and views submitted and do not result in a substantial change in the proposed language;
7. Under this expedited procedure, if a hearing is not required the department must submit any action on its rules to the

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

## PROPOSED RULES

attorney general for review of the form and legality of the rule change. Notice of the date of submission of the proposed amendments to the attorney general for review will be mailed to any person who requests to receive the notice. Requests to receive notice must be submitted to Dr. Hendricks at the above address;

8. Authority to amend Minnesota Rules part 4615.0500 is contained in Minnesota Statutes, section 144.125 (1984). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendment has been prepared and is now available. Anyone wishing to receive a copy of this document may contact Dr. Hendricks at the above address;

9. If twenty-five or more persons request a public hearing on this matter, notice of any such hearing will be published in the *State Register*;

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

April 3, 1985

Sister Mary Madonna Ashton  
Commissioner of Health

### Rule as Proposed

#### 4615.0500 DUTIES OF RESPONSIBLE PARTIES INVOLVED IN THE NEWBORN METABOLIC SCREENING PROGRAM.

The responsible party shall do all of the following:

A. [Unchanged.]

B. Collect or have collected a specimen for screening no later than the fifth day after the infant's birth, unless the parents lawfully object to such screening. If this specimen is taken ~~prior to the third day of life or~~ prior to 24 hours after ~~beginning breast or milk formula feeding birth~~, the responsible party shall notify the parents or legal guardian verbally and in writing of the necessity of having the PKU test repeated on their newborn not later than the 14th day of life. If taking a blood sample at the times specified above is medically contraindicated, the sample shall be taken as soon as the infant's condition permits.

C. [Unchanged.]

D. Send the specimen and the following information to the Minnesota Department of Health laboratory within 24 hours after collection:

- (1) newborn infant's name;
- (2) sex;
- (3) mother's name;
- (4) home address;
- (5) date of birth;
- (6) date of first feeding;
- (7) date specimen collected;
- (8) name and address of attending physician and hospital submitting specimen;
- (9) county;
- (10) ~~premature~~ (yes or no birth weight or gestational age; and
- (11) bottle, breast, both.

E. [Unchanged.]



## **Department of Human Services**

### **Proposed Rules Relating to Prior Authorization For Health Services and Second Surgical Opinion as a Condition For MA and GAMC Reimbursement**

#### **Notice of Hearing**

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room D, Fifth Floor, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155, on May 28, 1985, commencing at 9 a.m. and continuing until all interested persons have an opportunity to be heard. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon Lunde, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota, 55415, telephone 612/341-7645, either before the hearing or within five working days after the public hearing ends.

The Administrative Law Judge may, at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. The written responses shall be added to the rulemaking record.

Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, section 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.01-14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, parts 9505.5000 to 9505.5105 establish the procedures for prior authorization of health services and the requirement of a second surgical opinion as conditions of reimbursement to providers of health services for recipients of medical assistance and general assistance medical care. These rules establish standards and criteria for deciding which medical assistance and general assistance medical care services require prior authorization and for deciding whether a second medical opinion is required for an elective surgery.

The rules include a definition section; prior authorization requirements; provisions for retroactive authorization; department responsibilities; criteria for selecting health services subject to the prior authorization requirements; criteria for approval of prior authorization requests; general requirements for surgical procedures requiring a second surgical opinion; exemptions to the second surgical opinion requirements; criteria to determine when a second opinion is required; provisions for a third surgical opinion; requirements of physicians recommending surgery and qualifications of physicians offering second or third opinions; penalties for failure to comply with parts 9505.5000 to 9505.5100; provisions for reimbursement of the cost of second and third surgical opinions; time limits for obtaining second and third opinions and for performing the surgery; physician responsibilities; consequences for failure to obtain the required opinions; department responsibilities; documentation requirements for exemptions; provisions permitting independent physician evaluation; and fair hearing and appeals procedures.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256.991. The cost to local public bodies of implementing the proposed rule changes will not exceed \$100,000 for either of the first two years following passage of the rule.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Ron Hook, Department of Human Services, Professional Services Section, Second Floor—Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101, telephone 612/296-8821. Additional copies will be available at the hearing. If you have any questions on the content of the rule amendments, contact Ron Hook.

Notice is hereby given that a Statement of Need and Reasonableness is available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument justifying the proposed rules.

**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

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fying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Note: Any person may request notification of the date on which the 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 rule has been adopted and filed by the agency with the Secretary of State.

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 Administrative Law Judge (in the case of the Administrative Law Judge's report), or to the agency (in the case of the agency's submission to the Secretary of State).

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, 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, St. Paul, Minnesota 55155, telephone 612/296-5615.

April 3, 1985

Leonard W. Levine, Commissioner  
Department of Human Services

### Rules as Proposed (all new material)

#### 9505.5000 APPLICABILITY.

Parts 9505.5000 to 9505.5105 establish the procedures for prior authorization of health services and the requirement of a second surgical opinion as conditions of reimbursement to providers of health services for recipients of medical assistance and general assistance medical care.

These parts shall be read in conjunction with title XIX of the Social Security Act, Code of Federal Regulations, title 42, sections 430.00 to 489.57; Minnesota Statutes, sections 256B.01 to 256B.40; 256B.56 to 256B.71; 256D.01 to 256D.22; and parts 9500.0750 to 9500.1100; 9505.1000 to 9505.1040; and 9505.1750 to 9505.2150.

#### 9505.5005 DEFINITIONS.

**Subpart 1. Scope.** The terms used in parts 9505.5000 to 9505.5105 have the meanings given them in this part.

**Subp. 2. Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or an authorized designee.

**Subp. 3. Consultant.** "Consultant" means an individual who is licensed or registered according to state law or meets the credentials established by the respective professional organization in an area of health care or medical service; is employed by or under contract with the Department of Human Services; advises the department whether to approve, deny, or modify prior authorization requests in his or her area of expertise; advises the department on and recommends to the department policies concerning health services and whether health services meet the criteria in part 9505.5045; and performs other duties as assigned.

**Subp. 4. Department.** "Department" means the Minnesota Department of Human Services.

**Subp. 5. Emergency.** "Emergency" means a medical condition that, if not immediately diagnosed and treated, could cause a recipient serious physical or mental disability, continuation of severe pain, or death.

**Subp. 6. Fair hearing.** "Fair hearing" means an administrative proceeding under Minnesota Statutes, section 256.045 and as provided in part 9505.5105, to examine facts concerning the matter in dispute and to advise the commissioner whether the department's decision to reduce or deny benefits was correct.

**Subp. 7. General assistance medical care of GAMC.** "General assistance medical care" or "GAMC" means the health services provided to a recipient under the general assistance medical care program according to Minnesota Statutes, chapter 256D.

**Subp. 8. Health services.** "Health services" means the services and supplies furnished to a recipient by a provider as defined in subpart 15.

**Subp. 9. Investigative.** "Investigative" means:

A. A health service procedure which has progressed to limited human application and trial, which lacks wide recognition as a proven and effective procedure in clinical medicine as determined by the National Blue Cross and Blue Shield Association Medical Advisory Committee, and utilized by Blue Cross and Blue Shield of Minnesota in the administration of their program.

B. A drug or device that the United States Food and Drug Administration has not yet declared safe and effective for the use prescribed. For purposes of this definition, drugs and devices shall be those identified in the Food and Drug Act.

**Subp. 10. Local agency.** "Local agency" means a county or a multicounty agency that is authorized under Minnesota Statutes as the agency responsible for the administration of the medical assistance and general assistance medical care programs.

**Subp. 11. Local trade area.** "Local trade area" means the geographic area surrounding the recipient's residence which the local agency identifies as commonly used by other persons in the same area to obtain necessary goods and services.

**Subp. 12. Medical assistance or MA.** "Medical assistance" or "MA" means the Medicaid program established by title XIX of the Social Security Act and Minnesota Statutes, chapter 256B.

**Subp. 13. Medicare.** "Medicare" means the health insurance program for the aged and disabled established by title XVIII of the Social Security Act.

**Subp. 14. Physician.** "Physician" means a person licensed to provide services within the scope of his or her profession as defined in Minnesota Statutes, chapter 147. For purposes of the second surgical opinion requirement in parts 9505.5035 to 9505.5100, "physician" shall also mean:

A. a person licensed to provide dental services within the scope of his or her profession as defined in Minnesota Statutes, section 150A.06, subdivision 1; or

B. a person who is certified by or eligible for certification from the appropriate specialty board, if applicable, to perform the surgical procedure for which his or her opinion is being requested.

**Subp. 15. Prior authorization.** "Prior authorization" means the written approval and issuance of an authorization number by the department to a provider prior to the provision of a covered health service, as specified in part 9500.5010.

**Subp. 16. Provider.** "Provider" means an individual or organization under an agreement with the department to furnish health services to persons eligible for the medical assistance or general assistance medical care programs.

**Subp. 17. Recipient.** "Recipient" means a person who is eligible for and receiving benefits from the medical assistance or general assistance medical care programs.

**Subp. 18. Referee.** "Referee" means an individual who conducts fair hearings under Minnesota Statutes, section 256.045 and recommends orders to the commissioner.

**Subp. 19. Working days.** "Working days" means Monday through Friday, excluding state recognized legal holidays.

#### **9505.5010 PRIOR AUTHORIZATION REQUIREMENT.**

**Subpart 1. Provider requirements.** Except as provided in part 9505.5015, a provider shall obtain prior authorization as a condition of reimbursement under the medical assistance and general assistance medical care programs for health services designated under part 9505.5025. Prior authorization shall assure the provider reimbursement for the approved health service only if the service is given during a time the person is a recipient and the provider meets all requirements of the medical assistance or general assistance medical care programs.

**Subp. 2. Expiration of eligibility.** When root canal therapy, removable dental prosthodontics, and other custom fabricated prosthetic, orthotic, or prosthodontic appliance services were started on a recipient who was eligible but whose eligibility for medical assistance or general assistance medical care expired prior to completion of the service, the department shall prorate its allowable reimbursement for the service based on the percentage of the service completed prior to the expiration of the recipient's eligibility, provided that the provider was not aware of or should not have been aware of the impending expiration of eligibility.

**Subp. 3. Submission of forms.** The provider shall submit to the department a prior authorization form, DPW-1855, which has been completed according to instructions in the appropriate provider handbook, and other information necessary to address the criteria in part 9505.5030. The provider shall bear the burden of establishing compliance with the criteria in part 9505.5030 and shall

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submit information which demonstrates that the criteria in part 9505.5030 are met. The provider who administers or supervises the recipient's care shall personally review and sign the form and any attached documentation.

**Subp. 4. Consequences of failure to comply.** A provider who furnishes health services without complying with the prior authorization requirements of parts 9505.5010 to 9505.5030 shall not be reimbursed. A physician, hospital, or other provider who is denied reimbursement because of failure to comply with parts 9505.5010 to 9505.5030 shall not seek payment from the recipient and the recipient shall not be liable for payment of the service for which reimbursement is denied.

### **9505.5015 RETROACTIVE AUTHORIZATION.**

**Subpart 1. Exceptions.** As provided in subparts 2 to 4, medical assistance or general assistance medical care programs reimbursement shall be given for a health service for which the required authorization was requested after the health service was delivered to the recipient.

**Subp. 2. Emergencies.** A health service requiring prior authorization shall be reimbursed without prior authorization in an emergency if the provider submits the prior authorization form, DPW-1855, no later than five working days after providing the initial service and the provider documents the emergency by submitting materials, reports, progress notes, admission histories, and other information which substantiates that the service was necessary to treat the recipient.

**Subp. 3. Retroactive eligibility.** When the health service was provided on or after the date on which the recipient's eligibility began, but before the date the case was opened, a health service requiring prior authorization shall be authorized retroactively if the health service meets the criteria in part 9505.5030, and if an authorization request is submitted to the department within 20 working days of the date the case was opened. The request for retroactive authorization must be submitted to the department in the manner set in part 9505.5010.

**Subp. 4. Medicare denial.** A health service originally billed to Medicare for which reimbursement was denied shall be reimbursed without prior authorization if the service meets the criteria of part 9505.5030 and if the authorization request is submitted to the department along with a copy of the explanation of Medicare benefits (EOMB), within 20 working days of the date of the EOMB.

### **9505.5020 DEPARTMENT RESPONSIBILITIES.**

**Subpart 1. Notification requirements.** If the information submitted by the provider does not meet the requirements of part 9505.5030, the department shall notify the provider of what is necessary to complete the request and the time limit for its submission. If the department does not receive the requested information within 20 working days of the date appearing on the notice which was sent to the provider, the request for prior authorization shall be denied unless an extension is requested and granted. The department shall send the provider, within 30 working days of receipt of all the information required in part 9505.5010, a notice of the action taken on the request for prior authorization. If the prior authorization request is denied, the department shall send the recipient within the same time period a copy of the notice sent to the provider and a statement of the recipient's right to appeal as provided in Minnesota Statutes, section 256.045.

**Subp. 2. Publication requirements.** The department shall annually publish in the last issue of the *State Register* for October a list of health services that require prior authorization. In addition, the department shall publish any revision of the list at least 45 days before the effective date if the revision imposes a prior authorization requirement on a health service. When a list is published, the department shall send each provider a copy of the list.

**Subp. 3. Retention of information submitted by provider.** The department shall have the right to retain information submitted to the department by the provider in accordance with part 9505.5010.

### **9505.5025 CRITERIA FOR SELECTING HEALTH SERVICES SUBJECT TO PRIOR AUTHORIZATION REQUIREMENT.**

**Subpart 1. Criteria.** The commissioner with the advice of consultants shall use the criteria in items A to H to determine which health services shall be subject to the prior authorization requirement:

- A. the health service is of questionable medical necessity;
- B. utilization of the health service needs monitoring in order to control the expenditure of program funds;
- C. less costly appropriate alternatives to the health service are generally available;
- D. the health service is investigative;
- E. the health service is newly developed or modified;
- F. the health service is of a continuing nature and requires monitoring to prevent its continuation when it ceases to be beneficial;
- G. the health service is determined to be obsolete by the commissioner; or

H. the health service is comparable to a service provided in a skilled nursing facility or hospital but which is provided in a recipient's home.

**Subp. 2. Health services provided outside of Minnesota.** In addition to the list of health services published in the *State Register* under part 9505.5020, subpart 2, prior authorization is required for health services to be provided outside of Minnesota. A health service that is provided to a Minnesota resident outside of Minnesota but within the recipient's local trade area and that would not require prior authorization if it were provided to a Minnesota resident within Minnesota shall be exempt from the prior authorization requirement.

**9505.5030 CRITERIA FOR APPROVAL OF PRIOR AUTHORIZATION REQUEST.**

A request for prior authorization of a health service under part 9505.5020, subpart 2, shall be evaluated by consultants using the criteria given in items A to E. A health service meeting the criteria in this part shall be approved, if the health service is otherwise a covered service under the MA or GAMC programs. The health service must:

- A. be medically necessary as determined by prevailing medical community standards or customary practice and usage;
- B. be appropriate and effective;
- C. meet quality and timeliness standards;
- D. be the least expensive appropriate alternative health service available; and
- E. represent an effective and appropriate use of program funds.

**9505.5035 SURGICAL PROCEDURES REQUIRING SECOND OPINION.**

**Subpart 1. General requirements.** Except as provided in part 9505.5040, second surgical opinions shall be required for medical assistance and general assistance medical care recipients for inpatient and outpatient elective surgical procedures according to the list published in the *State Register* under Minnesota Statutes, section 256B.02, subdivision 8. Publication shall occur annually in the last issue of the *State Register* for the month of October. In addition, the department shall publish any revision of the list at least 45 days before the effective date if the revision imposes a second surgical opinion requirement. The department shall send each provider a copy of the published list or a revision of the published list.

**Subp. 2. Requirements prior to eligibility determination.** The requirements of parts 9505.5035 to 9505.5100 must be applicable to individuals who have applied for MA or GAMC, but whose applications have not yet been approved or denied at the time the surgical procedure is proposed.

**9505.5040 EXEMPTIONS TO SECOND SURGICAL OPINION REQUIREMENTS.**

Provided the requirements of part 9505.5075 are met, a second surgical opinion is not required when:

- A. The surgical procedure is approved for reimbursement by Medicare.
- B. The surgical procedure is a consequence of, or a customary and accepted practice as an incident to, a more major surgical procedure which is subject to the second opinion requirement.
- C. The procedure is an emergency. For an emergency, the physician shall submit substantiating documentation such as medical reports, progress notes, an admission history, or any other pertinent information necessary to substantiate the characterization of the surgical procedure as an emergency.
- D. A visit to another physician to obtain a second opinion requires travel outside the local trade area.
- E. The recipient has good cause for not obtaining a second opinion. Good cause refers to circumstances beyond the recipient's control. Examples of good cause include illness of the recipient, illness of a family member requiring the presence of the recipient, weather conditions that prohibit safe travel, or the unavailability of transportation.
- F. The surgical procedure is performed before the individual's date of application for MA or GAMC, and retroactive eligibility was extended to cover the period of time during which the surgical procedure was performed.

**9505.5045 CRITERIA TO DETERMINE WHEN SECOND OPINION IS REQUIRED.**

The commissioner shall use the criteria in items A to E to determine which surgical procedures shall be subject to the second surgical opinion requirement.

- A. Authoritative medical literature identifies the surgical procedure as being overutilized.

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B. The surgical procedure is shown to be utilized to a greater degree within the Medicaid population than in the non-Medicaid population.

C. The utilization or cost of a surgical procedure falls within the top ten percent of all surgical procedures reimbursed under the MA and GAMC programs.

D. Another surgical procedure that uses less intrusive measures could be employed.

E. The surgical procedure has at least a five percent rate of failure to obtain the requisite two physician's approvals, as determined by the Minnesota Medical Assistance Second Surgical Opinion Program or a similar second surgical opinion program.

### **9505.5050 THIRD SURGICAL OPINION.**

When a second surgical opinion fails to substantiate the initial surgical opinion, a third surgical opinion shall be obtained if the recipient still wants the surgery. No opinion beyond the third opinion shall be considered in meeting the requirements of this part. The cost of an opinion beyond the third opinion shall not be reimbursed under the medical assistance or general assistance medical care programs.

### **9505.5055 SECOND OR THIRD OPINION BY A PHYSICIAN.**

**Subpart 1. Requirements of recommending physician.** The physician who initially recommends surgery shall provide to the recipient in need of a second or third surgical opinion, the names of at least two other physicians who are qualified to render a second or third opinion, or the name of an appropriate medical referral resource service, and information about the consequences of failing to obtain a second or third opinion. The physician offering the surgical service shall ensure that the required second opinion and, when required, third opinion, are obtained.

**Subp. 2. Qualifications of physician offering second or third opinions.** The recommending physician and the physician named to render a second or third opinion or the medical referral resource service shall have no common financial interest or referral relationship resulting in a financial gain. The physician who gives a second or third opinion must be a provider.

### **9505.5060 PENALTIES.**

The penalties for failure to comply with parts 9505.5000 to 9505.5100 shall be imposed in accordance with parts 9505.1750 to 9505.2150 in addition to parts 9500.0960 and 9500.1080.

### **9505.5065 REIMBURSEMENT OF COST OF SECOND AND THIRD SURGICAL OPINIONS.**

Reimbursement of the cost of second and third surgical opinions under the medical assistance and general assistance medical care programs shall be permitted up to the allowable fee maximums as maintained by the department. When the physician who provides the second or third surgical opinion also performs the surgery, reimbursement for the surgery shall be denied.

### **9505.5070 TIME LIMITS; SECOND AND THIRD OPINIONS; SURGERY.**

The second surgical opinions shall be obtained within 90 days of the date of the initial opinion. The third opinion, if required, shall be obtained within 45 days of the date of the second opinion. Approved surgery, if not performed within 180 days of the initial opinion, and if still requested by the recipient, shall require repetition of the second surgical opinion process as described in this part.

### **9505.5075 PHYSICIAN RESPONSIBILITY.**

The physician who provides a second or third opinion shall indicate his or her approval or disapproval of the requested surgical procedure, on a form supplied by the department. The completed form shall contain all the information considered necessary by the commissioner to substantiate the second opinion, shall be personally signed by each physician providing an opinion, shall be attached to a completed and signed prior authorization form, and shall be submitted to the department by the physician who is offering to provide the surgical service.

### **9505.5080 FAILURE TO OBTAIN REQUIRED OPINIONS.**

Failure to obtain a required second or third surgical opinion shall result in denial of reimbursement for all costs, direct and indirect, associated with the surgery, including costs attributable to other providers and hospitals except for the providers who rendered the second or third opinion. If the physician is unable to secure the required second or third opinions to support the surgical procedure, the second surgical opinion form shall be submitted to the department within 135 days of the date of the first opinion. Failure to comply with this subpart may result in termination of the providers' agreement with the Department.

### **9505.5085 PROHIBITION OF PAYMENT REQUEST.**

A physician, hospital, or other provider who is denied reimbursement because of failure to comply with parts 9505.5035 to 9505.5100 shall not seek payment from the recipient of the service and the recipient shall not be liable for payment for the service for which reimbursement was denied.

**9505.5090 DEPARTMENT RESPONSIBILITY.**

If two of the three physicians concur that the requested surgical procedure is appropriate, the department shall certify that the requirements of this part are met and shall assign an authorization number within 30 working days of the department's receipt of the necessary information and forms.

If two of the three physicians concur that the requested surgical procedure is inappropriate, then the department shall deny authorization of reimbursement for the requested surgical procedure. The department shall send the recipient a copy of the notice denying authorization for the surgery and a statement of the recipient's right to appeal as provided in Minnesota Statutes, section 256.045.

**9505.5095 DOCUMENTATION OF EXEMPTIONS.**

When the surgical procedure is exempt under part 9505.5040 from the second or third opinion requirement, the provider shall submit documentation to support the basis of the exemption with the claim for payment. In the alternative, approval of the exemption may be requested prior to providing the health service. The request shall be submitted on a form supplied by the department and attached to a prior authorization form. If the requests are approved, an authorization number will be assigned within 30 working days of the department's receipt of the request.

**9505.5100 INDEPENDENT PHYSICIAN EVALUATION.**

The commissioner shall have the right to order an independent evaluation by a physician selected by the recipient and approved by the commissioner when the commissioner has reason to believe, based on parts 9505.1750 to 9505.2150, that the requested surgical procedure is not necessary. If the recipient needs assistance locating an appropriate physician, the services of the local county medical society, or any other physician referral resource may be utilized. If the selected physician determines the procedure is not necessary, the commissioner shall deny authorization.

**9505.5105 FAIR HEARINGS AND APPEALS.**

**Subpart 1. Appealable actions.** A recipient may appeal any of the following department actions:

- A. the department has failed to act with reasonable promptness on a request for prior authorization or on an authorization request under the second surgical opinion program, as established under parts 9505.5020, subpart 1, and 9505.5090;
- B. the department has denied a request for prior authorization;
- C. the department has denied an authorization request under the second surgical opinion program; or
- D. the department has proposed a reduction in service as an alternative to authorization of a proposed service for which prior authorization was requested.

**Subp. 2. No right to appeal.** The right to appeal shall not apply to the list of surgical procedures established according to Minnesota Statutes, section 256B.02, subdivision 8.

**Subp. 3. Request for fair hearing.** When a recipient requests assistance from a local agency in filing an appeal with the department, the local agency shall provide the assistance.

The request for a hearing must be submitted in writing by the recipient to the appeals unit of the department. The request must be filed either:

- A. within 30 days of the date notice of denial of the prior authorization request or request for authorization of a surgical procedure was received; or
- B. no later than 90 days from the date notice of denial was received if the appeals referee finds there was good cause for the delay.

**Subp. 4. Fair hearing.** A referee shall conduct the hearing according to Minnesota Statutes, section 256.045, subdivision 4.

**Subp. 5. Commissioner's ruling.** Within 90 days of the date of receipt of the recipient's request for a hearing, the commissioner shall make a ruling to uphold, reverse, or modify the action or decision of the department. The commissioner's ruling shall be binding upon the department and the recipient unless a request for judicial review is filed pursuant to Minnesota Statutes, section 256.045, subdivision 7.

**REPEALER.** Minnesota Rules, parts 9500.0980; 9500.1070, subparts 4, items A, and B, subitems (1) and (5); 6, items A, subitem

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(3); B, subitem (3); C, subitem (1); D, subitem (1), and that part of subitem (2) which reads: "The medical assistance program will pay for multiple family group-psychotherapy or group-psychotherapy for up to two hours per week for a ten-week period"; 7, item A; 10, item E, subitems (1), (2), (3), and (4); 16, item A; and 18, item B; and that part of subpart 19, item D, which reads: "Prior authorization must be obtained on any services for which payment is claimed under this section,"; and 9505.1020, subpart 4, items Q and R, are repealed.

## Department of Revenue

### Proposed Rule Relating to Property; Utility Valuation

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

Notice is hereby given that the State of Minnesota Department of Revenue proposes to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes 14.21 to 14.28 (1984).

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

Unless 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes sections 14.14 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Ronald Cook  
Property Equalization Division  
Department of Revenue  
Centennial Office Building  
St. Paul, Minnesota 55145  
(612) 296-5137

Authority for the adoption of these rules is contained in Minnesota Statutes sections: 270.06 (14); 270.11, Subd. 1 and 6; 273.33, Subd. 2; 273.37, Subd. 2; and 273.38. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Ronald Cook at the above mentioned address, upon request.

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

The proposed rules if adopted will effectively amend the current rules of the Department of Revenue relating to ad valorem (property) taxes imposed on utilities. The present rules deal generally with the valuation, allocation and apportionment of property of electric, gas distribution, pipelines and cooperative electric companies. The proposed rules if adopted would: modify the income approach to value by increasing the capitalization rate by .5%; modify the cost approach to value by increasing the maximum depreciation allowances by 1% for electric utilities and 2.5% for pipelines and gas distribution companies and also specifically modify the cost approach to value for electric utility companies by revising the calculation and application of the average cost per kilowatt of installed capacity factor.

A copy of the proposed rule is included with this notice. Additional copies are available together with a statement of need and may be obtained by contacting Ronald Cook at the above mentioned address.

February 25, 1985

Arthur C. Roemer  
Commissioner of Revenue

#### Rule as Proposed

##### 8100.0300 VALUATION.

**Subpart 1. General.** Because of the unique character of public utility companies, such as being subject to stringent government



regulations over operations and earnings, the traditional approaches to valuation estimates of property (cost, capitalized income, and market) must be modified when utility property is valued. Consequently, for the ~~1982~~ 1985 and subsequent assessment years, until economic and technological factors dictate a change, the value of utility company property will be estimated in the manner provided in this chapter.

**Subp. 2.** [Unchanged.]

**Subp. 3. Cost approach.** The cost factor to be considered in the utility valuation formula is the original cost less depreciation of the system plant, plus improvements to the system plant, plus the original cost of construction work in progress on the assessment date. The original cost of any leased operating property used by the utility must be reported to the commissioner in conjunction with the annual utility report. If the original cost of the leased operating property is not available, the commissioner shall make an estimate of the cost by capitalizing the lease payments. Depreciation will not be allowed on construction work in progress. Depreciation will be allowed as a deduction from cost in the amount allowed on the accounting records of the utility company, as such records are required to be maintained by the appropriate regulatory agency.

Depreciation, however, shall not exceed the prescribed percentage of cost: for electric companies, ~~49~~ 20 percent; for gas distribution companies, ~~47-5~~ 50 percent; and for pipeline companies, ~~47-5~~ 50 percent.

A modification to the cost approach to value will be considered by the commissioner when valuing electric utility property. The original cost of an electric utility's major generating plants will be increased if the cost of the plant falls below a certain standard. The standard to be used will be a national average of the cost per kilowatt of installed capacity. The cost per kilowatt of installed capacity is the total construction cost of the generating plant divided by the number of kilowatts the plant is capable of producing. The national average to be used will be computed by totaling the construction costs, excluding the cost of land, for major generating plants within the 48 contiguous United States. The total cost of the plants will be divided by the total generating capacity of the same plants to arrive at an average cost per kilowatt of installed capacity. A separate average will be computed for each type of plant: gas turbine, hydroelectric, and steam-electric. The plants used in the calculation will exclude ~~federally constructed multipurpose projects, and~~ nuclear electric generating plants.

The information used to compute the average will be drawn from the latest ~~issues~~ issue of the ~~following~~ United States Department of Energy ~~publications: Hydro Electric Plant Construction Cost and Annual Production Expenses; Steam Electric Plant Construction Cost and Annual Production Expenses; and Gas Turbine Electric Plant Construction Cost and Annual Production Expenses~~ publication, Historical Plant Cost and Annual Production Expenses for Selected Electric Plants. The All plants which included in this publication will be used in the computation of the national average will be those plants built during the most recent 15 years included in these publications by type of plant.

An example of this computation of the national average cost per kilowatt of installed capacity is as follows:

Steam-Electric Generating Plants

Plant	Plant Cost Excluding Land	Plant Capacity
A	\$ 14,000,000	100,000 kw
B	13,000,000	90,000 kw
C	17,000,000	110,000 kw
D	14,500,000	80,000 kw
E	18,000,000	120,000 kw
F	10,000,000	70,000 kw
G	19,000,000	130,000 kw
H	9,000,000	60,000 kw
I	20,000,000	140,000 kw
J	8,000,000	50,000 kw
	\$142,500,000	950,000 kw

Total plant cost (\$142,500,000) divided by total plant capacity (950,000 kw) equals \$150 average cost per kilowatt of installed capacity.

The national average cost per kilowatt of installed capacity will be compared to the specific cost per kilowatt of installed capacity for each of the major generating plants owned by the utility being valued. If the national average cost per kilowatt is greater than the

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subject plant cost, the subject plant will have additional dollars incorporated into its cost in order to raise its cost per kilowatt to the national average. If the subject plant's cost per kilowatt equals or exceeds the national average, no cost will be added.

The following example illustrates this procedure:

### XYZ Utility Steam-Electric Generating Plants

	#1	#2
1. Plant		
2. Installed Capacity	100,000 kw	50,000 kw
3. Year in Service	1970	1950
4. Cost of Plant (Exclusive of Land)	\$15,200,000	\$5,000,000
5. Specific Plant Cost per kw	\$152	\$100
6. National Average Cost per kw	\$150	\$150
7. Deficiency	none	\$ 50
8. Additional Cost (Line 7 × Line 2)	none	\$2,500,000

This additional cost to be added to the original cost of the specific plant will be reduced by an allowance for pollution control equipment and an allowance for obsolescence.

The allowance for pollution control equipment will be computed annually by totaling the construction costs, exclusive of land, of all major generating plants within Minnesota by type of plant. A total will also be made of the cost of the equipment in these plants which has been approved for tax exempt status in accordance with Minnesota Statutes, section 272.02, subdivision 1, clause ~~(15)~~ (9). This total will also be computed by type of plant. The total of the approved pollution control equipment will be divided by the total construction cost, exclusive of land, of the plants in order to calculate a percentage. This percentage will be the ratio of dollars spent for pollution control equipment to total dollars spent to construct a specific type of power plant. This percentage will then be used to reduce the gross additional cost to be added to the cost of the specific generating plant. An example of this process is as follows:

### Steam-Electric Plants Within Minnesota

Plant	Plant Cost Excluding Land	Cost of Approved Pollution Control Equipment
A	\$15,200,000	\$1,500,000
B	10,000,000	1,000,000
C	5,000,000	700,000
D	20,000,000	2,000,000
E	16,500,000	1,470,000
	\$66,700,000	\$6,670,000

Total cost of approved pollution control equipment (\$6,670,000) divided by total plant cost (\$66,700,000) equals ten percent ratio of pollution control equipment expenditures to total expenditures for generating plant construction.

### XYZ Utility Steam-Electric Plant #2

1. Additional Cost Due to Computation of Average Cost per kw of Installed Capacity	\$2,500,000
2. 10% Allowance for Pollution Control Equipment	250,000
3. Additional Cost to be Added after Adjustment for Pollution Control Equipment	2,250,000

The allowance for obsolescence which will be applied to the additional plant construction cost will be computed annually for hydroelectric and steam-electric generating plants. The information needed to compute the obsolescence factors will be drawn from the same ~~publications~~ publication that ~~are~~ is used to compute the national average cost per kilowatt of installed capacity figure. Gas turbine plants will not have any obsolescence allowance applied to the additional cost added to the plants.

The obsolescence allowance for hydroelectric plants will be calculated through the use of a "plant factor." The plant factor is

computed by dividing the number of kilowatt hours a generating plant actually produced in a year by the number of kilowatt hours the plant was capable of producing. The plant factor is normally expressed as a percentage. The mathematical expression of this factor is: net generation (kwh) divided by annual installed capacity (hours in a year  $\times$  installed capacity (kw)). A standard plant factor will be computed for hydroelectric plants by averaging the plant factors of the ten plants with the highest plant factors in the ~~15 year~~ average cost per kilowatt of installed capacity study period. This standard will then be compared to an average of the most recent three years' plant factor of the subject plant. The amount the subject plant deviates from the standard is the amount of obsolescence which will be applied to the added cost.

An example of this obsolescence allowance computation is shown below.

#### Hydroelectric Plants

Plant	Net Generation kwh (000)	Plant Capability kwh (000)	Plant Factor
A	400,150	755,000	53%
B	300,040	577,000	52%
C	250,000	480,000	52%
D	600,000	1,250,000	48%
E	896,000	1,600,000	56%
F	700,000	1,400,000	50%
G	507,000	975,000	52%
H	450,000	1,000,000	45%
I	376,000	800,000	47%
J	810,000	1,800,000	45%
Average			50%

#### XYZ Utility

##### Hydroelectric Plant #4

Year	Net Generation kwh (000)	Plant Capability kwh (000)	Plant Factor
19XX	400,000	1,000,000	40%
19XX	500,000	1,000,000	50%
19XX	450,000	1,000,000	45%
Average			45%

Hydroelectric plant #4 plant factor (45 percent) divided by standard plant factor (50 percent) equals 90 percent. Therefore, hydroelectric plant #4 deviates from the standard by ten percent, or is ten percent obsolete.

The obsolescence allowance for steam-electric generating plants will be computed annually using two indicators. The first indicator will be the plant factor. The plant factor for steam-electric plants will be computed and applied in the same manner as the computation specified for hydroelectric plants. The only difference will be that the information used for the computation will be drawn from the latest ~~Steam-Electric Plant Construction Cost and Annual Production Expense~~ Fossil-Fueled Steam-Electric Plant Section of the latest Historical Plant Cost and Annual Production and Expenses for Selected Electric Plants publication rather than the Hydro-Electric plant ~~publication~~ section. Plant factors of the ten best steam-electric generating plants within the ~~15-year~~ study period will be averaged. This average will be compared to the most recent three-year average plant factor for the subject plant. The subject plant's deviation from the standard plant factor is the amount of indicated obsolescence.

The second indicator which will be used to compute an obsolescence allowance for steam-electric generating plants will be a thermal efficiency factor. The source of information for this computation will also be the latest issue of the United States Department of Energy's publication, ~~Steam-Electric Plant Construction Cost and Annual Production Expenses~~ Historical Plant Cost and Annual Production Expenses for Selected Electric Plants, Fossil-Fueled Steam Electric Plant Section. Thermal efficiency for a generating plant is measured by the number of British thermal units (Btu's) required to produce one kilowatt hour. This efficiency rating can be obtained by dividing the number of kilowatt hours produced by a generating plant by the number of Btu's needed to produce this power. The number of Btu's used can be obtained by multiplying the units of fuel burned by the generating plant—tons of coal,

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gallons of oil, or cubic feet of gas—by the average Btu content of the fuel unit. The standard thermal efficiency factor will be computed by averaging the thermal efficiency factor of the ten most efficient steam-electric generating plants within the ~~15-year~~ study period used to compute the average cost per kilowatt of installed capacity. This standard thermal efficiency factor will then be compared to the thermal efficiency factor of the subject plant. The amount the subject plant deviates from the standard is the amount of obsolescence indicated by this factor.

The two obsolescence figures for the subject plant as indicated by both the plant and thermal efficiency factors will then be averaged. This resulting average is the obsolescence allowance which will be applied to the cost added to the subject plant as a result of the average cost per kilowatt of installed capacity computation. In no instance shall the original cost of a generating plant be reduced by an allowance for obsolescence unless its cost is increased through the use of the average cost per kilowatt of installed capacity computation.

The following examples illustrate computation of the standard thermal efficiency factor; obsolescence indicated by the application of this factor to the subject plant; average obsolescence for steam-electric generating plants; and obsolescence allowance adjustment of the added cost due to the use of the average cost per kilowatt of installed capacity for the subject plant.

Steam-Electric Generating Plants			
Plant	Net Generation kwh (Millions)	Btu's Used (Millions)	Btu's per kwh
A	2,000	18,400,000	9,200
B	6,000	53,400,000	8,900
C	8,000	72,000,000	9,000
D	5,000	45,500,000	9,100
E	3,000	26,400,000	8,800
F	1,000	9,000,000	9,000
G	4,000	36,600,000	9,150
H	9,000	80,550,000	8,950
I	7,000	61,950,000	8,850
J	5,000	45,250,000	9,050
			Average 9,000

XYZ Utility Company		
Steam-Electric Plant #2		
Net Generation kwh (Millions)	Btu's Used (Millions)	Btu's per kwh
2,000	21,600,000	10,800

Steam-electric plant #2 thermal efficiency factor (10,800 Btu's per kwh) divided by standard thermal efficiency factor (9,000 Btu's per kwh) equals 120 percent. Therefore, steam-electric plant #2 deviates from the standard by 20 percent or is 20 percent obsolete.

XYZ Utility Company	
Steam-Electric Plant #2	
1. Obsolescence Indicated by Plant Factor	10%
2. Obsolescence Indicated by Thermal Efficiency Factor	20%
3. Obsolescence Allowance (Average of 1 and 2)	15%
4. Additional Cost due to Computation of Average Cost per kw of Installed Capacity	\$2,500,000
5. 15% Obsolescence Allowance	375,000
6. Additional Cost to be Added after Adjustment for Obsolescence	2,125,000

The cost indicator of value computed in accordance with this subpart will be weighted for each type of utility company as follows: electric companies, 85 percent; gas distribution companies, 75 percent; and pipeline companies, 75 percent.

The following example illustrates how the cost indicator of value would be computed for an electric company:

1. Utility Plant (Cost)		\$200,000,000
2. Construction in Progress		5,500,000
3. Additional Value From Average Cost per kw Computation		2,000,000
4. Total Plant		207,500,000
5. Nondepreciable Plant (Land, Intangibles, C.W.I.P.)	17,500,000	
6. Depreciable Plant	190,000,000	
7. <u>Book</u> Depreciation <u>or</u> (Maximum <del>19%</del> ; <u>20%</u> )		36,100,000
8. Total Cost Indicator of Value		171,400,000

Any company for which a modification is made under this subpart due to the average cost per kilowatt adjustment being made to original cost of a plant or plants located in Minnesota shall have an alternative cost indicator computation made without giving effect to the average cost per kilowatt adjustment of such plant or plants.

**Subp. 4. Income approach to valuation.** The income indicator of value will be estimated by weighting the net operating earnings of the utility company for the most recent three years as follows: most recent year, 40 percent; previous year, 35 percent; and final year, 25 percent. After considering, as far as possible, all conditions that may exist in the future that may affect the present annual return, including risk, life expectancy of the property, and cost of money, the capitalization rates used to compute value for the assessment will be: electric companies, ~~10.75~~ 11.25 percent; gas distribution companies, ~~11.0~~ 11.50 percent; and pipeline companies, ~~11.25~~ 11.75 percent. The income indicator of value computed in accordance with this subpart will be weighted for each class of utility company as follows: electric companies, 15 percent; gas distribution companies, 25 percent; and pipeline companies, 25 percent.

The following example illustrates how the income indicator of value would be computed for a gas distribution company:

	<u>1980</u> <u>1982</u>	<u>1981</u> <u>1983</u>	<u>1982</u> <u>1984</u>
1. Net Operating Income	\$ <u>570,240</u> \$ <u>596,160</u>	\$ <u>467,650</u> \$ <u>488,911</u>	\$ <u>554,400</u> \$ <u>579,600</u>
2. Capitalized Income @ <del>11%</del> <u>11.5%</u>	5,184,000	4,251,400	5,040,000
3. Weighting Factor	25 percent	35 percent	40 percent
4. Weighted Capitalized Income	1,296,000	1,488,000	2,016,000
5. Total Income Indicator of Value			4,800,000

**Subp. 5. and 6.** [Unchanged.]

**Subp. 7. Obsolescence allowances.** The commissioner shall adjust the value calculated under this part through the use of an obsolescence allowance. This allowance is intended to be used in order to recognize the effect the curtailment or termination of a pipeline's source of supply may have on its value. This allowance must be applied for each year at the time the utility files its Minnesota Department of Revenue Annual Utility Report. The utility's eligibility for this allowance will be based on the relevant facts for the specific valuation year. The application of an obsolescence allowance in any previous year shall have no bearing on the use of the allowance for a subsequent year. In order for a pipeline or a gas distribution company to be eligible for this allowance it must meet certain criteria or standards listed below. It is mandatory that standards in items A, B, and C be met by the utility. It is highly desirable that standards in items D and E also be met.

A. The utility shall demonstrate that its source of supply for gas or oil will be terminated within the next ten years.

B. The utility shall be at, or above, the maximum depreciation allowance specified by subpart 3.

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## PROPOSED RULES

C. The utility shall have made application to the appropriate regulatory agency for increased depreciation allowances, and the application shall not have been denied or rejected.

D. The utility must not have made any major capital expenditures within the last three years.

E. The utility must not have sold any long-term bonds or signed any long-term notes within the last three years.

If the utility has made major capital expenditures or entered into long-term debt obligations within the last three years, a satisfactory explanation of the rationale for these actions shall be made to the commissioner before an allowance for obsolescence will be granted.

The obsolescence allowances which may be applied to the utility's value will be calculated in the following manner:

(1) Method 1. A five-year average of the utility's annual throughput will be calculated. The throughput for the assessment year will be compared to this average and a percentage calculated. This percentage will be applied to the cost indicator of value calculated under subpart 3 in order to adjust the indicator for obsolescence. The adjusted cost indicator of value will be used in the calculation of the unit value under subpart 5. The following is an example of this procedure:

Year	Throughput in Barrels
<del>1977</del> <u>1979</u>	1,200,000
<del>1978</del> <u>1980</u>	1,300,000
<del>1979</del> <u>1981</u>	1,150,000
<del>1980</del> <u>1982</u>	1,100,000
<del>1981</del> <u>1983</u>	1,050,000
	5,800,000 Total
	1,160,000 Average Throughput
1. <del>1982</del> <u>1984</u> Throughput	1,000,000 Barrels
2. Percent of <del>1982</del> <u>1984</u> Throughput to Five-Year Average Throughput	86%
3. Cost Indicator of Value	\$6,300,000
4. Cost Indicator Adjusted for Obsolescence	5,418,000

(2) Method 2. The book depreciation shown on the books and accounts of the utility will be compared to the depreciation allowed by subpart 3. If the book depreciation exceeds the maximum depreciation allowance, 50 percent of the excess depreciation will be used in the calculation of the cost indicator of value. An example of this calculation is as follows:

1. Book Depreciation		\$ 6,000,000
2. Maximum Allowable Depreciation	<del>4,750,000</del>	<u>5,000,000</u>
3. Excess Depreciation	<del>1,250,000</del>	<u>1,000,000</u>
4. 50% of Excess Depreciation	<del>625,000</del>	<u>500,000</u>
5. Utility Plant		11,000,000
6. Construction Work in Progress		50,000
7. Total Plant		11,050,000
8. Nondepreciable Plant (Land, CWIP)		1,050,000
9. Depreciable Plant		10,000,000
10. Depreciation (Maximum <del>47.5%</del> <u>50%</u> )	<del>4,750,000</del>	<u>5,000,000</u>
11. Obsolescence Allowance	<del>625,000</del>	<u>500,000</u>
12. Cost Indicator of Value	<del>5,675,000</del>	<u>5,550,000</u>

(3) Method 3. The income indicator of value computed in accordance with subpart 4 will be calculated by capitalizing the utility's three-year weighted net operating earnings for a specific term of years rather than into perpetuity. The term of years to be used will be the number of years remaining until the expected expiration of the utility's source of supply for product (oil, gas), or the number of years remaining until the utility's major assets (pipeline, pump stations, storage tanks, and similar assets) are fully depreciated, whichever is greater. An example of this capitalization process is as follows:

## ADOPTED RULES

	<del>1979</del> <u>1982</u>	<del>1980</del> <u>1983</u>	<del>1981</del> <u>1984</u>
1. Net Operating Earnings	\$1,320,000	\$1,000,000	\$800,000
2. Weighting	25%	35%	40%
3. Weighted Net Operating Earnings	\$330,000	\$350,000	\$320,000
4. Total Weighted Net Operating Earnings		\$1,000,000	
5. Terms of years until major assets are fully depreciated			8
6. Capitalization rate pursuant to subpart 4		9%	<u>11.75%</u>
7. Capitalization rate converted to term of 8 years		<del>18.0674%</del>	<u>19.9548%</u>
8. Capitalized Income/Income Indicator of Value		<del>\$5,534,831</del>	<u>\$5,011,325</u>

The commissioner shall apply to the valuation process whichever of the three obsolescence methods is most appropriate in order to equitably recognize the effect of obsolescence on the utility's value.

**Subp. 8.** [Unchanged.]

## ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

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

### Adopted Emergency Rules Relating to the Technology Product Loan Program

The rules proposed and published at *State Register*, Volume 9, Number 28, pages 1544-1548, January 7, 1985 (9 S.R. 1544) and Volume 9, Number 29, pages 1612-1613, January 14, 1985 (9 S.R. 1612) are adopted with the following modifications:

#### Rules as Adopted

#### 8300.4101 [Emergency] DEFINITIONS.

**Subp. 6. Derivative product.** "Derivative product" means a product that ~~takes~~ contains or uses part of a previous product ~~in its~~ make up.

**Subp. 8. Product.** "Product" means something produced by a business and that exists in a usable form. Product includes, but is not limited to, a technology related product, a conceptual product, or a prototype product, and all technical and user documenta-

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## ADOPTED RULES

tion, drawings, prototypes, models, test results, and source codes associated with the product.

### 8300.4102 [Emergency] TECHNOLOGY PRODUCT LOAN PROGRAM.

**Subpart 1. Purpose.** The authority shall make technology product loans to eligible applicants in compliance with Minnesota Statutes, chapter 116M in order to help create or retain jobs for the state. The authority shall also consider the value of the product to promote the public good of the state, especially in education and training. Loans may be made to eligible applicants for the development and marketing of technology-related products that exist as completed products, prototypes, or as conceptual ~~product~~ designs products.

**Subp. 5. Maximum term.** The maximum term of the loan may not exceed the average useful life of the computer and other technology-related equipment, or the following limit, whichever is less:

- A. computer ~~or~~ and other technology-related equipment, four years;
- B. working capital, three years;
- C. combination of items A and B, weighted average.

**Subp. 7. Security requirements.** In addition to security interests in collateral as specified in part 8300.3013 [Emergency] as proposed at *State Register*, volume 9, page 826 (October 22, 1984), and as adopted at *State Register*, volume ~~9~~, page ~~1615~~, (January ~~14~~, 1985), the authority shall require a security interest in the product in the form of a royalty on the product and, in case of default, full rights to the product, including all patents, copyrights, mask work, trade secrets, trademarks, service marks, and any other intellectual property rights. The royalty payment must be based upon net receipts of the product not to exceed 25 percent and must be set forth in a security agreement that shall be entered into at the same time the loan is made. Royalty payments must be made to the authority in accordance with the schedule appearing in the security agreement.

**Subp. 9. Loan payments; royalties.** Loan payments must be made as provided in the amortization schedule. The first principal payment is due ~~upon the date of completion of the product or~~ 12 months after the date of issuance of the final proceeds of the loan, ~~whichever occurs first~~.

### 8300.4105 [Emergency] LOAN DEFAULT.

If the commissioner determines the loan to be in default, the authority may take such actions provided in law or in equity to protect its interests. Upon default, the commissioner shall notify the loan recipient in writing of the default and give the loan recipient 60 days to re-establish the good standing of the loan. During this time period the commissioner may permit the borrower to sell or reassign the product rights or licenses, prepare derivative products, or undertake other measures that will increase the probability that remaining loan payments will be made. If the loan remains in default at the end of the initial 60-day time period, the commissioner may extend the time period for an additional 60 days if the loan recipient can demonstrate that the additional period of time is necessary to re-establish the good standing of the loan. If the loan remains in default at the end of the initial 60-day time period and any granted extension, all product rights as provided in the security agreement ~~revert~~ transfer automatically to the authority. The loan recipient shall also provide to the commissioner, if requested, all relevant materials including technical documentation, drawings, prototypes, models, test results, and source code associated with the product.

### 8300.4106 [Emergency] DISPOSITION OF ACQUIRED PRODUCTS.

**Subpart 1. Sales.** For product rights acquired under loan default, the authority may sell the acquired product and all intellectual property rights incident to in a commercially reasonable manner to any person or business.

### 8300.4107 [Emergency] CERTIFICATIONS.

For products financed by the authority, the eligible loan recipient shall agree to and execute a certification statement acceptable in form and content to the commissioner. This statement must certify at least the following:

- A. that the product is original;
- B. that the product does not infringe upon copyrights ~~and~~, patents, mask work, trade secrets, trademarks, service marks, and any other intellectual product rights;
- C. that the product will ~~basically~~ substantially perform the tasks it has represented in its documentation that it will perform;
- D. that the loan recipient will hold the authority harmless.

### 8300.4109 [Emergency] CONTENT OF APPLICATION.

In addition to the data required by part 8300.3012 [Emergency], as proposed at *State Register*, volume 9, page 826 (October 22, 1984), and as adopted at *State Register*, volume ~~9~~, page ~~1615~~, (January ~~14~~, 1985), an applicant for the technology product loan program shall provide the following information:



**8300.4111 [Emergency] ~~COPYRIGHT OR PATENT~~ INTELLECTUAL PROPERTY RIGHTS.**

The ~~copyright or patent for~~ Copyrights, patents, mask work, trade secrets, trademarks, service marks, and any other intellectual property rights in the product shall remain with the business unless specifically ~~acquired by~~ transferred to the authority.

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

### **Extension of Emergency Rules Governing The Special Assistance Program**

Notice is hereby given that Minnesota Rules 8300.3000 to 8300.3014 [Emergency] which governs The Special Assistance Program under the Minnesota Energy and Economic Development Authority, effective October 11, 1984, and published in the *State Register* at Volume 9, Number 11, September 10, 1984, page 544 [9 S.R. 544], are being continued in effect for an additional 180 days. This continuation is in accordance with Minnesota Statutes 14.35. The new expiration date for Minnesota Rules 8300.3000 to 8300.3014 [Emergency] will be August 11, 1985, or the date Minnesota Rules 8300.3000 to 8300.3014 [Emergency] are replaced by permanent rules; whichever is earlier.

## **Department of Public Safety**

### **Adopted Rules Governing Motor Vehicle Accident Prevention Courses**

The rules proposed and published at *State Register*, Volume 9, Number 30, pages 1653-1655, January 21, 1985 (9 S.R. 1653) are adopted with the following modifications:

#### **Rules as Adopted**

#### **7411.7600 REQUIREMENTS FOR APPROVAL AND OPERATION.**

**Subp. 3. Course length restrictions.** The course of study may not be less than a total of eight hours, with no more than ~~three~~ four hours of instruction required in a 24-hour period.

## **Department of Public Safety Fire Marshal Division**

### **Adopted Rules Governing Natural Gas Pipeline Safety Inspection Fees**

The rules proposed and published at *State Register*, Volume 9, Number 27, pages 1508-1510, December 31, 1984 (9 S.R. 1508) are adopted with the following modifications:

#### **Rules as Adopted**

#### **7510.6910 INSPECTION FEE.**

A person who engages in the transportation of gas or who owns or operates pipeline facilities subject to Minnesota Statutes, sections 299F.56 to 299F.64 is subject to payment of a fee to recover the state's share of the cost of administering the natural gas pipeline safety activity.

~~A. The department shall quarterly ascertain the total of its expenditures for the preceding three months that are attributable to the natural gas pipeline activity.~~

~~B.~~ The department shall maintain records on the amount of time each pipeline safety inspector spends performing duties related to each public or private natural gas pipeline company in Minnesota.

~~C.~~ B. The department shall charge each natural gas pipeline owner or operator for the actual hours spent by pipeline safety inspectors in the conduct of duties under Minnesota Statutes, sections 299F.56 to 299F.64, plus a share of other related expendi-

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## **ADOPTED RULES**

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tures including supplies, materials, and overhead, prorated on the basis of the inspector hours. These charges must reflect the portion of expenses not reimbursable by the United States or a federal department or agency, under Minnesota Statutes, section 299F.64. The natural gas owner or operator must be provided an itemized statement of its charges upon request.

~~D.~~ C. The department shall submit invoices to operators within 30 days after the end of the calendar quarter. Owners or operators shall remit payment to the department within 30 days after the date of the department invoice.

## **OFFICIAL NOTICES**

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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.

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### **Department of Administration Building Codes and Standards Division**

#### **Outside Opinion Sought Regarding Amendments to the State Building Code, Including the Adoption of the 1985 Uniform Building Code**

Notice is hereby given that the State Building Codes and Standards Division is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing the State Building Code. The promulgation of these rules is authorized by Minnesota Statutes Section 16B.59 which permits the agency to amend the State Building Code.

The State Building Codes and Standards Division requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment in writing. Written statements should be addressed to:

Peggi Opalinski  
Building Codes & Standards Division  
408 Metro Square Building  
7th & Robert Sts.  
St. Paul, MN 55101

All statements of information and comments shall be accepted until June 1, 1985 at 4:30 p.m. Any written material received by the State Building Codes and Standards Division shall become part of the record in the event the rules are promulgated.

Richard A. Brooks, Director

### **Department of Administration Building Codes and Standards**

#### **Outside Opinion Sought Regarding Proposed Rules Governing Recertification of Building Officials**

Notice is hereby given that the State Building Codes and Standards Division is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing the recertification of building officials. The promulgation of these rules is authorized by Minnesota Statutes Section 16B.65 Subd. 7.

The State Building Codes and Standards Division requests information and comments concerning the subject matter of these

rules. Interested or affected persons or groups may submit statements of information or comment in writing. Written statements should be addressed to:

Building Codes & Standards Division  
408 Metro Square Building  
7th & Robert Sts.  
St. Paul, MN 55101

All statements of information and comments shall be accepted until June 1, 1985 at 4:30 p.m. Any written material received by the State Building Codes and Standards Division shall become part of the record in the event the rules are promulgated.

Richard A. Brooks, Director

## **Minnesota Pollution Control Agency Solid and Hazardous Waste Division**

### **Outside Opinion Sought Concerning Amendments to Minnesota Rules Chapter 7045 Governing Hazardous Waste**

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is seeking information and opinions from sources outside the MPCA regarding possible amendments to Minnesota Rules, Chapter 7045 governing hazardous waste.

Consideration is being given to the addition of dioxins, dibenzofurans and chlorinated aliphatic hydrocarbons to the lists of hazardous wastes and to the addition of special management requirements for the treatment, storage or disposal of dioxins and dibenzofurans. These amendments are considered in response to similar amendments to the federal hazardous waste regulations.

The MPCA requests information and comments concerning the subject matter of the proposed amendments. Written or oral information or comments will be accepted until May 15, 1985. Written statements should be addressed to: Karen A. Ryss, Minnesota Pollution Control Agency, Solid and Hazardous Waste Division, 1935 West County Road B2, Roseville, Minnesota, 55113. Oral statements will be received during regular business hours at 612/297-1793.

April 12, 1985

Thomas J. Kalitowski  
Executive Director

## **Board of Vocational Technical Education**

### **Notice of Public Hearing**

A Public Hearing pursuant to M.S. 136C.28, Subd. 3, will be held for the purpose of post-secondary vocational aid allocations for F.Y. '85-'86. The hearing will be held on May 13, 1985, Radisson St. Paul Hotel, 11 East Kellogg Boulevard, St. Paul, Minnesota, at 9:00 a.m. For more information, contact Ronald Dreyer, 559 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, phone (612) 297-1477.

# 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 Energy Conservation Division

### Request for Proposals to Firms Interested in Third Party Financing for Converting Existing Heating Plants to Burn Wood, Peat or Other Alternate Fuels

The Department of Administration, Energy Conservation Division, has been requested to select firms to provide energy conservation measures in accordance with Minnesota Statutes, section 16B.16 (1984). Section 16B.16 authorizes state agencies to obtain energy conserving equipment and services on a shared-savings and guaranteed-savings basis through contracts of greater than one year duration but not exceeding ten years.

Firms that wish to be considered for these projects should request a copy of the rules for "Request for Proposal" and submit a separate proposal for each facility based on the rules on or before 4:00 p.m., Monday, July 8, 1985, to Donald T. Johnson, Energy Conservation Division, Room 110, Park Professional Bldg., St. Paul, MN 55103 (612) 296-8204.

The following facilities to be considered for energy modification are:

- |  |   |
|--|---|
| 1. Ah-Gwah Ching Nursing Home<br>Ah-Gwah Ching, MN | 3. Brainerd Community College<br>Brainerd, MN     |
| 2. Faribault State Hospital<br>Faribault, MN       | 4. Red Wing Correctional Facility<br>Red Wing, MN |

#### Scope:

In a shared-savings program, an energy service firm purchases, installs and services heating plant conversions at no cost to the State. In return, the State agrees to share with the firm a percentage of whatever energy cost savings result. As a pre-condition to concluding shared-savings with the State, a firm is required to collect certain data for the accurate determination of the State's anticipated energy cost savings. Collection of the data can be accomplished through an engineering audit comparable to the Minnesota Maxi Audit. The Audit may be limited to specific building systems such as the heating plants. By virtue of the Audit, the firm is apprised of the size and type of buildings involved, the nature of the energy consuming equipment, the patterns and type of fuel used, and other factors that may influence energy consumption. The basis for determining savings can be calculations through an energy audit or through the use of metering instruments. The energy service firm is required to determine which alternative fuel system is needed to produce the energy savings (BTU savings and energy cost savings).

## Department of Administration Procurement Division

### Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
26-073-17667	Editing System	St. Cloud State University	St. Cloud	Contact buyer
29-000-37760	Used Truck	Natural Resources	Rochester	Contact buyer
78-630-06258	Mattresses	MN Correctional Facility	Oak Park Heights	Contact buyer
29-000-36763	Purchase of Portable Computer	Natural Resources—Forestry	St. Paul	Contact buyer

# STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
79-000-46741	Geodetic Survey Disks	Transportation—Maintenance	Maplewood	Contact buyer
55-000-90825	Transcribing Equipment	Human Services	St. Paul	Contact buyer
29-001-08508	Reroof Clubhouse	Natural Resources	Lake Itasca	Contact buyer
79-990-00284	10' Wooden Straight Edges	Transportation	St. Paul	Contact buyer
27-148-45946	Furnish & Install Golf & Batting Cage	Rochester Community College	Rochester	Contact buyer
02-307-45635	Riding Tractor Mowers	State of Minnesota	St. Paul	Contact buyer
07-300-33238	Intoxilyzer	Public Safety—Bureau of Criminal Apprehension	St. Paul	Contact buyer
55-105-06799	Dishwasher	St. Peter State Hospital	St. Peter	Contact buyer
21-200-09445	PBX Telephone System	Economic Security	St. Paul	Contact buyer
55-000-90942	Dual Image Reading System	Human Services—Services for the Blind	St. Paul	Contact buyer
04-121-26912	Aerial Spraying	Agriculture	St. Paul	Contact buyer
29-002-10677, 10678, 10679	Aerial Spraying of Herbicides	Natural Resources		Contact buyer
29-002-10634	Herbicides	Natural Resources	Grand Rapids	Contact buyer
26-074-10027, 7512	Winona State University Student Guide	Winona State University	Winona	Contact buyer
26-074-10028, 7510	Winona State University Divisional Brochures	Winona State University	Winona	Contact buyer
Contract	Photographic Lamps	Various	Various	Contact buyer
29-001-08479	Rental of Dragline With Operator	Natural Resources	Roseau	Contact buyer
01-000-04260	Window Cleaning	Military Affairs—International Airport	Minneapolis	Contact buyer
43-000-06008	Construct Water Access Section Six Mine	Iron Range Resources & Rehabilitation Board	Calumet	Contact buyer
Contract	Genuine Leroi Engines & Air Compressors Repair parts	Various	Various	Contact buyer
26-070-10900	Purchase of Laser Printer	Bemidji State University	Bemidji	Contact buyer
78-620-20786	Solvent Recovery System	MN Correctional Facility	Stillwater	Contact buyer
67-190-10459, 7459	Income Tax Withholding Tax Tables	Revenue	St. Paul	Contact buyer
29-000-37839, 7472	1985 Big Game Hunting Reg. w/Map	Natural Resources	St. Paul	Contact buyer
67-340-10456, 7460-1-2	Cigarette Tax Decal Stamps	Revenue	St. Paul	Contact buyer
67-270-10450-2-3, 7481-2-4	Sales & use Tax Return	Revenue	St. Paul	Contact buyer
99-906-27491-2-3, 7426-7-8	Bonds	Finance	St. Paul	Contact buyer
79-000-46622	Airport Lighting System	Transportation—Aeronautics	Stanton	Contact buyer
27-156-43693	Repair & Resurface Tennis Court	Normandale Community College	Bloomington	Contact buyer
26-071-14979	Computer Room Air Conditioner	Mankato State University	Mankato	Contact buyer
Contract	Liquid Bleach	Various Locations	Various	Contact buyer
29-005-07693	Quarry Rock	Natural Resources—Fisheries	Rochester	Contact buyer

## STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
43-000-05980	Excavation & Lot Grading Aurora	Iron Range Resources & Rehabilitation Board	Calumet	Contact buyer
26-073-17578	Controlled Reader	St. Cloud State University	St. Cloud	Contact buyer
55-000-90967, 7526	Application Information	Human Services	St. Paul	Contact buyer
99-650-28282	Purchase of Photocopy Machine	Waste Management Board	Crystal	Contact buyer
26-073-17666	Fiberoptics Cable	St. Cloud State University	St. Cloud	Contact buyer
22-400-00831, 7565	Printed Envelopes	Energy & Economic Development—Tourism	St. Paul	Contact buyer
29-000-37858 & 9, 7570 & 1	Hunting Regulations	Natural Resources	St. Paul	Contact buyer
26-070-10986, 7589	Graduate Catalogs	Bemidji State University	Bemidji	Contact buyer
29-000-37934	Evaluation Service	Natural Resources—Ecological Service Station	St. Paul	Contact buyer

Contact 296-6152 for referral to specific buyers.

## Department of Human Services

### Assistance Payments Policy Operations Division

#### Request for Proposals for Refugee Services

Notice is hereby given that the Assistance Payments Policy Operations Division, Minnesota Department of Human Services, is seeking proposals concerning the delivery of various social services to refugee persons residing in Minnesota. The services for which proposals are being requested include English as a Second Language (ESL), Employment and others as outlined in the Request for Proposals.

The estimated total amount of social services funds will not exceed \$1,200,000.

If the Department receives additional federal funds in a nationwide competition, proposals will be approved up to the amount awarded. Neither the timing nor the amount of the potential additional award is known at this time.

All proposals must be received by 4:20 p.m., Tuesday, May 14, 1985. The Department reserves the right not to act on this request for proposals. A pre-bidders' conference is scheduled for Friday, April 26, 1985, from 1:00 to 3:00 p.m., in Room D, Veterans Services Building, Left Tower, St. Paul, MN.

Please direct requests for the complete information package, questions and proposals to:

Refugee Program Office  
444 Lafayette Road, 2nd Floor  
St. Paul, MN 55101  
Tel: 612-296-1383

## Department of Human Services Office of Child Support Enforcement

### Request for Proposals for Preparation of Public Service Announcement

The Office of Child Support Enforcement is seeking proposals from advertising agencies for professional and technical services to develop, produce and distribute public service announcements about child support enforcement services to the broadcast media as required by Public Law 98-378.

The proposal shall include scripting, production, distribution, and project direction costs for three (3) television and three (3) radio spot public service announcements.

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 best interest.

Additional information on child support enforcement is available by contacting:

Bonnie L. Becker, Director  
Office of Child Support Enforcement  
444 Lafayette Road—2nd Floor  
St. Paul, Minnesota 55101  
(612) 296-2499

Proposals will be accepted until 4:00 p.m., May 13, 1985.

## **Iron Range Resources and Rehabilitation Board**

### **Request for Proposals for Consultant for Capacity Analysis/Facility Planning Feasibility Study of the Giants Ridge Recreation Area**

The IRRRB intends to engage a consultant to conduct a capacity analysis/facility planning study addressing contemplated changes and/or additions at the Giants Ridge Recreation Area at Biwabik, Minnesota.

Specific areas of study include the following:

- Alpine ski area expansion
- Chalet space analysis and corresponding building program, including preliminary cost estimates
- Waterpark complex feasibilities
- Recreational vehicle campground feasibilities

For further information and formal Request for Proposals documents, contact Mr. Michael Gentile, Director, Giants Ridge Recreation Area, P.O. Box 190, Biwabik, Minnesota 55708, (218) 865-4143.

The deadline for receipt of proposals is noon, MAY 6, 1985.

## **Department of Transportation Surveying and Mapping**

### **Contract Available for Photogrammetric Services**

The Minnesota Department of Transportation desires an aerial surveys firm to provide the following photogrammetric Services conforming to Mn/DOT specifications:

#### **1. Aerial Vertical Photography**

Provide negatives taken by the contractor using a precision aerial camera. The negatives shall be suitable for printing photographs and transparencies and for use in the States' photogrammetric instruments for analytical aerial triangulation and map compilation. The state may call for the use of panchromatic, color negative or infrared color emulsions in obtaining the photography.

#### **2. Aerial Oblique Photography**

Provide negatives taken by the contractor suitable for printing photography for illustrative purposes.

#### **3. Photographic Laboratory Services**

Provide, from aerial negatives, rectified, ratioed and controlled photographic enlargements and mosaics, 9½" × 9½" diapositives on glass or film suitable for photogrammetric compilation of topographic mapping and screened photographic film positives from mosaic negatives.

#### **4. Map Compilation**

Provide map compilation by Wild A-10 Autograph or equivalent type instrument for the compilation of topographic maps or photogrammetric cross-sections.

## STATE CONTRACTS

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Firms desiring consideration shall express their interest and submit their Federal Forms 254 and 255 on or before May 10, 1985. Services are requested for fiscal year 1986 (July 1, 1985 to June 30, 1986).

This is not a request for proposal. Send your response to:

Earl R. Larson  
Director of Surveying and Mapping  
Room 711  
Transportation Building  
St. Paul, Minnesota 55155

## SUPREME COURT

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### Decisions Filed Friday, April 12, 1985

Compiled by Wayne O. Tschimperle, Clerk

**C0-83-1101 State of Minnesota v. Heardian Montjoy, Appellant. Dakota County.**

Defendant received a fair trial and is not entitled to a reduction in his sentence.

Affirmed. Amdahl, C.J.

**CX-84-1133 Samuel E. Estes, et al., v. State Farm Fire and Casualty Company, Appellant. Court of Appeals.**

Petition granted; decision of the Court of Appeals modified. Amdahl, C.J.

**C9-84-1950 Evan J. Henry, petitioner, v. Minnesota Public Utilities Commission. Court of Appeals.**

Petition granted, order vacated and matter remanded to the Court of Appeals for decision on the merits of the appeal. Amdahl, C.J.

**C5-84-701 State of Minnesota v. Paul Luther Herem, Appellant. Court of Appeals.**

Notice of appeal should be liberally construed in favor of its sufficiency.

Reversed and remanded. Amdahl, C.J.

**CX-84-922 Thomas E. and Edna D. Carpenter Foundation v. County of Washington, Relator. Tax Court.**

The "year for which the taxpayer claims an exemption" under Minn. Stat. § 272.025, subd. 1 (1984) is the year the taxes are assessed.

Reversed. Amdahl, C.J.

**C6-83-1376 Neoma Peterson, as Trustee for the Heirs of Rodney R. Peterson v. Little-Giant Glencoe Portable Elevator Division of Dynamics Corporation of America; Easterlund Implement Inc., Appellant; Prince Manufacturing Corporation. Court of Appeals.**

The trial court did not abuse its discretion when instructing the jury about the mid-trial settlements between the defendants Glencoe and Prince.

Easterlund was not entitled to a directed verdict in strict liability on its cross-claim against Glencoe and Prince.

Easterlund, as a common enterpriser with the deceased worker's employer, is liable for contribution to other defendants to the extent of its percentage of negligence, but not more than the workers' compensation benefits due.

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

**CX-83-2059 State of Minnesota, Petitioner, v. Dennis Hinkel, Appellant. Court of Appeals.**

A search of the defendant, a patron of an illegal "afterhours joint," was valid under a search warrant authorizing the search of "all persons on the premises" of the afterhours establishment.

Reversed, Yetka, J.

### Order Filed April 2, 1985

**C6-84-335 In the Matter of the Application for the Discipline of John P. Fitzgerald, Jr., an Attorney at Law of the State of Minnesota. Supreme Court.**

Publicly reprimanded and suspended from the practice of law for 90 days. Amdahl, C.J.



## ORDER FORM

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