

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 743

(See our File No. 714 for previous submission)

~~400 SW~~ 80B ~~6-7138~~

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10/30/81
DATE FOR REVIEW 11/9
DATE DUE 11/13/81

Adopted w/a hearing _____
Adopted w/o a hearing X
Temporary rule _____

Approved 11-13 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 11-13 Revisor approved _____
disapproved _____

____ Rule as Adopted

__✓__ Rule as Proposed

__✓__ Order Adopting 10.28.81 Date

__N/A__ Notice of Intent to Solicit Outside Opinion

__✓__ Order for rulemaking
_____ Date of Hearing

__N/A__ Certificate of Board's Authorizing Resolution

__✓__ Notice of rulemaking
__✓__ Sufficiency

__✓__ Affidavit of Mailing Notice or rulemaking
9.21.81 At least 30 days prior to ~~hearing~~/adoption

__✓__ Mailing list Certificate

__✓__ Publication in State Register
9.28.81 At least 30/~~20~~ days prior to ~~hearing~~/adoption

__N/A__ Hearing Examiner's Report

____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

__✓__ Agency's Findings of Fact

__N/A__ LCRAR Report or agency Affidavit

__N/A__ Certificate of Board's Resolution Adopting Rules

__N/A__ Order Approving Incorporation by Reference

__✓__ Statement of Need and Reasonableness

__N/A__ Petition for Adoption of a Rule

__N/A__ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

__✓__ Certificate of Compliance w/Rulemaking Procedures

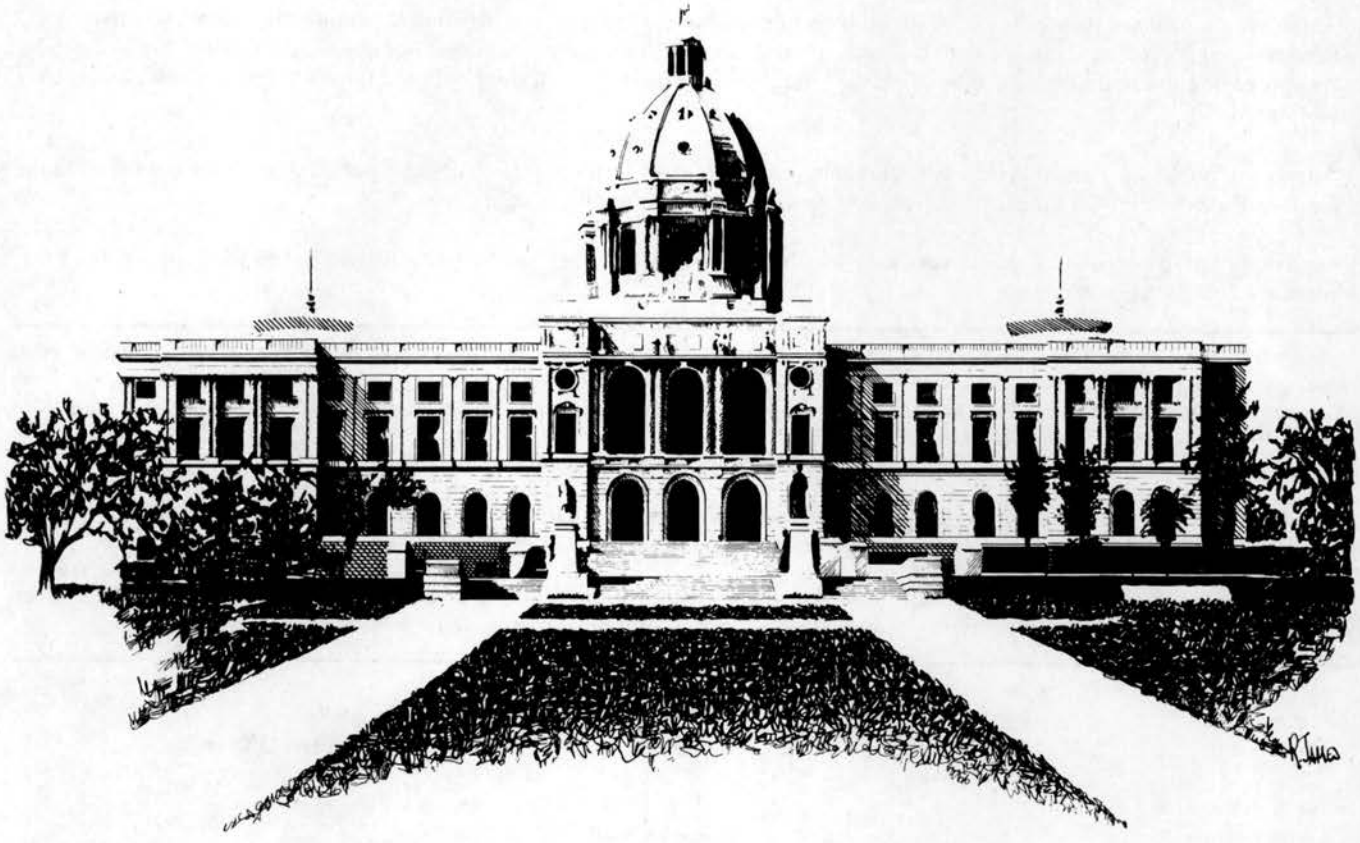
__N/A__ Affidavit of Mailing Notice of Submission to Attorney General

__N/A__ Notice of Submission to the Attorney General

per phone conversation w/ John McLagan 11/5/81
— JWW

STATE REGISTER

STATE OF MINNESOTA



VOLUME 6, NUMBER 13

September 28, 1981

Pages 501-548

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 6		
14	Monday Sept 21	Monday Sept 28	Monday Oct 5
15	Monday Sept 28	Monday Oct 5	Monday Oct 12
16	Monday Oct 5	Monday Oct 12	Monday Oct 19
17	Monday Oct 12	Monday Oct 19	Monday Oct 26

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

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

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

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $3.00 per copy.

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

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

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CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Cumulative listing for Issues 1-13 504

EXECUTIVE ORDERS

Executive Order No. 81-10

Providing for the Establishment of a Governor's Task Force on Low-level Radioactive Waste Management 506

PROPOSED RULES

Corrections Department

Programs and Services for Battered Women [notice to withdraw rules and notice of intent to adopt rules without a public hearing] 507

Economic Security Department

Unemployment Insurance Program Relating to Payment of Benefits and Collection of Employer Taxes [notice of hearing] 511

Minnesota Energy Agency
Alternative Energy Development Division

District Heating Preliminary Planning Grants [notice of intent to adopt rules without a public hearing] 533

Minnesota Housing Finance Agency

Downpayments under the Homeownership Assistant Fund [notice of intent to adopt rules without a public hearing] 536

Labor and Industry Department
Occupational Safety and Health Division

Proposed Revisions to the Occupational Safety and Health Standards [request for comment] 537

SUPREME COURT

Decisions Filed Friday, September 18, 1981

51803/Sp. Donald J. Kuchenmeister v. Illinois Farmers Insurance Company, Appellant. Washington County 539

51642/Sp. State of Minnesota v. Johnnie N. Walker, Appellant. Hennepin County 539

52078/Sp. Aetna Life & Casualty, Casualty & Surety Division, Appellant, v. Edward Clifford Anderson. Hennepin County 539

51040/Sp. State of Minnesota v. Robert Keith Johnson, Appellant. Carver County 539

51645/Sp. State of Minnesota v. Helen L. Hinkle, Appellant. Hennepin County 539

51638/Sp. Red Owl Stores, Inc., petitioner, v. Commissioner of Agriculture, Appellant. Hennepin County 540

51548/23 Donald E. Bolin, *et al.*, Appellants, v. State of Minnesota, Department of Public Safety and Commissioner of Personnel. Ramsey County ... 540

50992 In Re the Marriage of: Harry Rydell, petitioner, v. Marjorie E. Rydell, Appellant. Ramsey County 540

51348 Carrie L. Tlougan, an infant, by Michael D. Klampe, her guardian ad litem, v. Auto-Owners Insurance Company, Appellant. Olmsted County ... 540

51380 Joseph E. Romain, *et al.*, Appellants, v. Pebble Creek Partners, *et al.*, The Griffin Companies, Inc., Raymond F. Vavrosky Realty. Hennepin County 540

51861 Richard Forcier, individually and as trustee for the heirs of Elvern Forcier and Dolly Forcier, and the Special Administrator for the Estates of Elvern Forcier and Dolly J. Forcier, *et al.*, v. State Farm Mutual Automobile Insurance Company, Appellant. Hennepin County 540

49526/335 (1979) International Society for Krishna Consciousness, Inc., *et al.*, Appellants, v. Michael Heffron, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, *et al.* Ramsey County 540

Decision Filed Tuesday, September 15, 1981

81-625 State of Minnesota, Appellant, v. Elizabeth Cheryl Kanzenbach. Rice County 541

STATE CONTRACTS

Commerce Department
Office of Consumer Services

Analysis of Cost Allocation Methods and Rate Design Issues 541

Housing Finance Agency

Loan Portfolio Servicing 541

OFFICIAL NOTICES

Ethical Practices Board

Notice of Special Public Meeting 542

Transportation Department
Technical Services Division

Appointment and Scheduled Meeting of a State Aid Standards Variance Committee 542

Petition of the City of Litchfield for a Variance from State Aid Standards for Street Width 543

Petition of the County of Faribault for a Variance from State Aid Standards for Diagonal Parking and Street Width 543

Waste Management Board

Outside Opinions and Information Sought on Proposed Rules on Supplementary Review of Certain Solid and Hazardous Waste Facilities 543

Outside Opinions and Information Concerning Rules for Solid Waste Demonstration Program 544

Outside Opinions and Information Sought on Rules for Accepting, Evaluating and Selecting Applications for Permits for Certain Hazardous Waste Facilities 545

Minnesota Water Resources Board

Hearing on the Petition to Withdraw Territory 545

Administration Department
State Register and Public Documents Division

Statement of Ownership, Management and Circulation 546

NOTICE

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

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

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

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

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

MCAR AMENDMENTS AND ADDITIONS

MCAR AMENDMENTS AND ADDITIONS

TITLE 1 CONSTITUTIONAL OFFICES

Part 2 Secretary of State
1 MCAR § 2.001 (Temporary) (proposed) 71
1 MCAR § 2.001 (Temporary) (adopted) 280
1 MCAR § 2.001 (Temporary) (proposed) 393

TITLE 2 ADMINISTRATION

Part 1 Administration Department
2 MCAR §§ 1.201-1.206 (adopted) 265
2 MCAR §§ 1.207-1.208 (withdrawn) 265
2 MCAR §§ 1.209-1.216 (adopted) 265
2 MCAR §§ 1.218-1.221 (adopted) 265
Advisory Forms A-E (adopted) 265
Advisory Form F (withdrawn) 265

TITLE 3 AGRICULTURE

Part 1 Agriculture Department
3 MCAR §§ 1.0260-1.0263, 1.0270-1.0282 (proposed) 129

TITLE 4 COMMERCE

Part 3 Public Service Department
4 MCAR § 3.0600 (proposed) 37

Part 4 Cable Communications Board
4 MCAR § 4.100 (proposed) 185

Part 6 Accountancy Board
4 MCAR §§ 6.001-6.009, 6.040-6.046, 6.050, 6.053, 6.060, 6.070-6.075, 6.110, 6.150, 6.160, 6.200 (adopted) 262

Part 7 Board of Architecture, Engineering, Land Surveying and Landscape Architecture
4 MCAR §§ 7.004, 7.009-7.010, 7.012-7.015, 7.017, 7.019, 7.021 (proposed) 102

Part 11 Board of Electricity
4 MCAR § 11.032 (proposed) 157
4 MCAR § 11.032 (adopted) 233

Part 14 Small Business Finance Agency
4 MCAR §§ 14.001, 14.005-14.006, 14.020-14.023 (adopted) 281

TITLE 5 EDUCATION

Part 1 Education Department
5 MCAR §§ 1.0040 (EDU 40) (proposed) 344
5 MCAR § 1.0127 (adopted) 412
5 MCAR §§ 1.0667-1.0672 (adopted) 413
5 MCAR §§ 1.0820-1.0823, 1.0860-1.0863, 1.0881-1.0883 (adopted) 457

TITLE 6 ENVIRONMENT

Part 2 Energy Agency
6 MCAR §§ 2.001 (Temporary)-2.006 (Temporary) (proposed) 136
6 MCAR § 2.007 (Temporary)-2.015 (Temporary) (proposed) 347
EA 101-107 (proposed repeal) 347
6 MCAR §§ 2.2401-2.2409 (adopted) 457
6 MCAR §§ 2.4001-2.4007 (proposed) 534

Part 3 Environmental Quality Board
6 MCAR §§ 3.001-3.036 (proposed) 354
6 MCAR §§ 3.024-3.032, 3.040, 3.047 (proposed for repeal) 354

Part 4 Pollution Control Agency
6 MCAR § 4.0041 (withdrawn) 218
6 MCAR § 4.0041 (proposed) 218

Part 8 Waste Management Board
6 MCAR §§ 8.001, 8.002, 8.005, 8.009, 8.010, 8.011, 8.014 (adopted) 49

TITLE 7 HEALTH

Part 1 Health Department
7 MCAR §§ 1.145-1.147, 1.149 (proposed) 434

Part 6 Nursing Home Administrators Board
7 MCAR §§ 6.010, 6.013 (adopted) 21
NH 22-23 (proposed repeal withdrawn) 21

TITLE 8 LABOR

Part 1 Labor and Industry Department
8 MCAR § 1.7001 (MOSHC1) (proposed) 218
8 MCAR §§ 1.7230-1.7232, 1.7240-1.7247, 1.7292, 1.7295, 1.7297, 1.7304 (proposed) 446
RS 1 (proposed) 450

Part 4 Economic Security Department
8 MCAR § 4.0012 (proposed) 5
8 MCAR §§ 4.3000-4.3011, 4.3100-4.3108 (proposed) 511

TITLE 9 LAW

Administrative Hearings Office
9 MCAR §§ 2.301-2.305, 2.307-2.325 (adopted) 396
9 MCAR § 2.306 (withdrawn) 396

TITLE 11 PUBLIC SAFETY

Part 2 Corrections Department
11 MCAR §§ 2.201-2.207 (proposed) 507

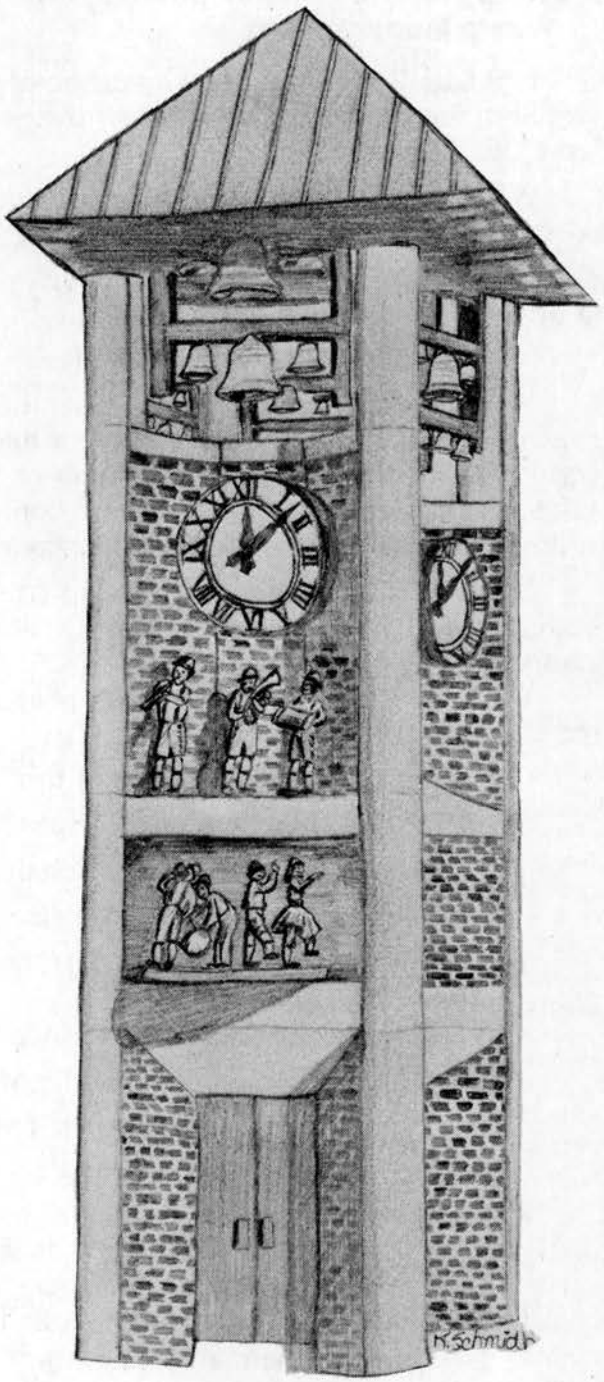
TITLE 12 SOCIAL SERVICE

Part 2 Public Welfare Department
12 MCAR § 2.001 (temporary) (proposed) 477
12 MCAR § 2.027 (proposed) 235
12 MCAR § 2.036 (proposed repeal) 249
12 MCAR § 2.036 (proposed) 249
12 MCAR § 2.064 (adopted) 484
12 MCAR § 2.079 (proposed) 13
12 MCAR § 2.221 (proposed) 452

Part 3 Housing Finance Agency
12 MCAR §§ 3.002, 3.133 (proposed temporary) 69
12 MCAR §§ 3.002, 3.133 (proposed temporary, notice of correction) 159
12 MCAR § 3.002 (proposed) 213
12 MCAR § 3.133 (proposed) 214
12 MCAR § 3.134 (proposed) 536
12 MCAR §§ 3.053, 3.054 (proposed) 216

TITLE 14 TRANSPORTATION

Part 1 Transportation Department
14 MCAR § 1.5050 (withdrawn) 38



THE GLOCKENSPIEL **— The German heritage of New Ulm, Minnesota is commemorated by a glockenspiel, or performing clock, located on the town's main business street. Originally planned by a Clara Schoniau as a memorial to her late husband, Theodore (founder of State Bond and Mortgage Co.), the carillon clock features 37 bells and animated figures in Bavarian costume. A contest among New Ulm students produced the winning design by Danene Possis. The clock was built by Schulmerich Carillons, Inc., of Pennsylvania at a cost of $200,000, half of which was donated by Mrs. Schoniau. The remaining funds came from 645 other contributors. At 3:00 p.m. and 5:00 p.m. daily, residents enjoy the clock's historical pageant to the strains of "Blue Danube" and other German and Austrian tunes. (Pencil drawing by Kim Schmidt, New Ulm Junior High School student)**

EXECUTIVE ORDERS

Executive Order No. 81-10

Providing for the Establishment of a Governor's Task Force on Low-level Radioactive Waste Management

I, ALBERT H. QUIE, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution of the State of Minnesota and applicable statutes, do hereby issue this Executive Order:

WHEREAS, the United States government has placed responsibility on each state to provide for the management of low-level radioactive waste generated within its borders; and

WHEREAS, Minnesota must develop plans for the disposal of low-level radioactive waste in order to discharge this responsibility;

NOW, THEREFORE, I ORDER:

1. The Minnesota Commissioner of Health is designated as the lead official for the executive branch for the development and implementation of plans for low-level radioactive waste management. The commissioner or his designee is responsible for negotiating with other states the establishment of interstate compacts for the purpose of joining with those states to address future directions for the management and disposal of low-level radioactive waste.

2. The establishment of the Governor's Task Force on Low-Level Radioactive Waste Management pursuant to Minnesota Statutes, Section 15.0593 and other applicable state statutes.

3. The Task Force shall be composed of no more than fifteen (15) members appointed by the Governor and shall consist of:

a. One (1) citizen member of the Environmental Quality Board (EQB).

b. Two (2) members of the House of Representatives.

c. Two (2) members of the Senate.

d. Three (3) representatives of generators of low-level radioactive waste.

e. Two (2) representatives of private citizen groups dedicated to the protection and preservation of the environment.

f. Two (2) representatives of local government.

g. One (1) representative of the Minnesota Geological Survey.

h. One (1) public health expert from the faculty of an institution of higher education.

i. One (1) medical doctor.

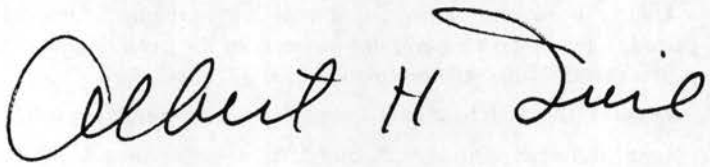
At least two Task Force members shall be farm owners and operators. The Commissioner of Health and the executive director of the Pollution Control Agency or their designees shall serve as non-voting ex-officio members of the Task Force. The Governor shall select the chairman of the Task Force from among its members.

4. The terms of the members of the Task Force shall expire upon completion of its charge as determined by the chair, but not more than two years from the date of this order. Per diem shall not be paid to members. Expenses shall be reimbursed according to the rules of the Department of Employee Relations.

5. The Task Force shall be responsible for advising the Commissioner of Health, the Governor,and the Legislature on all policy issues related to the management of low-level radioactive waste including, but not limited to, interstate compact negotiations.

Pursuant to Minnesota Statutes, Section 4.035 (1980), this order shall be effective fifteen (15) days after filing with the Secretary of State and publication in the *State Register* and shall remain in effect until it is rescinded by proper authority or it expires in accordance with Minnesota Statutes, Section 4.035, subdivision 3.

IN TESTIMONY WHEREOF, I have herunto set my hand this 11th of September, 1981.



PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

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

and

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

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Corrections

Proposed Rules Governing Programs and Services for Battered Women

Notice to Withdraw Rules and Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Corrections is withdrawing the first set of the above-entitled rules which were published at *State Register,* Volume 5, Number 46, May 18, 1981, pp. 1857-1860 (5 S.R. 1857). These rules are withdrawn because the Attorney General found that improper notice was given to the public.

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.

Notice is hereby given that the Department of Corrections 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, § 15.0412, subd. 4h (1980).

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 the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subd. 4-4f.

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

John McLagan, Director of Standards Development Unit, 430 Metro Square Building, St. Paul, Minnesota 55101, (612) 296-1312.

Authority for the adoption of these rules is contained in Minnesota Statutes, § 241.63. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies that data and information relied upon to support the proposed rules has been prepared and is available from John McLagan, Director of Standards Development Unit, 430 Metro Square Building, St. Paul, Minnesota 55101, 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 sumbit a written statement of such request to John McLagan, Director of Standards Development Unit, 430 Metro Square Building, St. Paul, Minnesota 55101.

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

This is the second notice and publication of these rules. The first notice was found by the Attorney General to be improper notice. These rules are essentially the same as those published earlier although there are a few substantive changes.

Additional copies of this notice and the proposed rules are available and may be obtained by contacting John McLagan, Director of Standards Development Unit, 430 Metro Square Building, St. Paul, Minnesota 55101.

September 11, 1981

Jack G. Young
Commissioner of Corrections

Rules as Proposed (all new material)

11 MCAR § 2.201 Introduction. Minn. Stat. § 241.63, clause (g), requires that the Commissioner of Corrections promulgate all rules necessary to implement the provisions of Minn. Stat. §§ 241.61-241.66 and 256D.05, subd. 3, including emergency rules.

11 MCAR § 2.202 Definitions. For the purpose of 11 MCAR §§ 2.201-2.207, the terms defined in this rule have the meanings given them.

A. "Service provider" means any public agency or private nonprofit corporation which plans, designs, and implements any of the following:

1. Emergency shelter services and support services for battered women;

2. Support services for battered women;

3. Public education programs designed to promote public and professional awareness of the problems of battered women; or

4. Programs for violent partners.

B. "Purchase of service agreement" means a contract or grant agreement between the department and service provider which specifies the programs or services to be provided, the method of delivering the programs or services, the responsibilities of the staff, the budget, and a commitment to assist in the necessary data collection and evaluation research to be completed on the program or service.

C. "Department" means the Department of Corrections.

D. "Emergency shelter services" means housing facilities which regularly provide food, secure lodging, and a crisis phone

line with 24-hour accessibility for women and children seeking safety from assault primarily by a spouse, male relative, or male with whom they are residing or have resided in the past.

E. "Support services" means any of the following: advocacy, emotional support, counseling, legal information, medical referral, transportation, child care, information and referral services, and other services needed by battered women and their families.

F. "Public education programs" means programs designed to promote public and professional awareness of the problems of battered persons.

G. "Commissioner" means the Commissioner of the Department of Corrections.

H. "Data" means summary data as defined in Minn. Stat. § 15.162, subd. 9.

I. "Law enforcement agencies" means police and sheriff's departments operating in Minnesota.

J. "Request for proposals" means solicitation of applications in a uniform format for distribution of funds allocated by the Legislature for programs and services for battered women.

11 MCAR § 2.203 Establishment of an advisory task force.

A. The commissioner shall appoint a nine member advisory task force to advise him on implementation of Minn. Stat. §§ 241.61-241.66. The provisions of Minn. Stat. § 15.059, subd. 6 shall govern the terms, compensation and removal of members of the advisory task force.

B. Prior to the appointment of any new task force member, the existing task force shall choose no more than five organizations, one of which shall be the Department of Corrections, to send representatives to a review committee which shall recommend a slate of applicants based on the following:

1. Criteria mandated in Minn. Stat. § 241.64, subd. 2;
2. Applicant's understanding of problems facing battered women;
3. Representatives from both metro and non-metro areas of the state;
4. Representation from at least three minority groups.

C. If other qualifications are equal, priority in appointments shall be given to persons who have personally experienced partner abuse.

11 MCAR § 2.204 Project coordinator.

A. The advisory task force shall screen applicants for the position of project coordinator and shall recommend to the commissioner the names of five applicants. In appointing the project coordinator, the commissioner shall give due consideration to the list of applicants submitted to him by the advisory task force.

B. If the commissioner takes action contrary to the recommendation of the advisory task force, the commissioner or his designee shall meet with the task force or with representatives of the task force, appointed by its chair, to discuss the rationale for his decision.

C. The project coordinator shall be available to attend all meetings of the advisory task force and its subcommittees.

11 MCAR § 2.205 Awarding grants and contracts.

A. The department shall issue a request for proposals from service providers. The advisory task force shall use uniform procedures and criteria in considering all proposals which comply with the request for proposal outline.

B. The department shall solicit proposals from interested public and private nonprofit organizations, women's organizations, and diverse cultural groups in the state.

C. The department shall establish award criteria and procedures with the participation of the advisory task force prior to any request for proposals. The criteria and procedures shall be available to the public upon request.

D. The advisory task force shall review grant applications and recommend to the commissioner names of applicants recommended to receive funds and the amount of funds recommended for each applicant.

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.

E. The department shall disburse funds appropriated for the battered women's projects.

F. A portion of the funds appropriated by the Legislature shall be retained by the department for the purpose of implementing public education programs if the commissioner determines that the department can use the funds for their designated purpose more effectively than by purchase of service agreements. The advisory task force shall advise the department on the use of retained funds.

G. All planning, development, data collection, funding and evaluation of programs and services for battered women which are funded under 11 MCAR §§ 2.201-2.207 shall be conducted with the advice of the advisory task force.

11 MCAR § 2.206 Responsibilities of service providers.

A. To be eligible for initial funding consideration from the department for the establishment and operation of programs and services for battered women, service providers shall submit a proposal which includes, at a minimum, the following information:

1. The full name and address of the service provider;

2. The proposed location of the program or service;

3. A budget on forms provided by the department which itemizes such major categories as:

a. Personnel;

b. Travel;

c. Equipment and supplies;

d. Contracted services;

e. Printing;

f. Communications;

g. Other program or service costs;

h. Costs for assistance to individuals, including emergency loan funds for residents, rent deposits, legal fees, and moving costs;

i. Costs related to the rent, maintenance, or purchase of the facility operated by or occupied by the applicant; and

j. Evaluation;

4. A narrative for each line item on the budget request;

5. A description of other funding sources, fund-raising efforts, in kind contributions and services and other items relevant to financial status during the period funds are requested;

6. A description of the duties of each staff position;

7. A statement of the extent to which battered women in the community have been involved and participated in the proposal;

8. A statement of the ways in which potential service providers have solicited support and cooperation from potentially interested or relevant community agencies or groups such as law enforcement agencies, courts, social service agencies, and local boards or departments of health:

9. A timetable for operation;

10. A description of the types of programs or services to be available;

11. A description of the role to be played by volunteers, if any, in the operation of the emergency shelter service or public education program;

12. A statement of compliance with program or service evaluation requirements as established by the commissioner with the consultation of the advisory task force; and

13. Definition of the target group expected to be served.

B. To be eligible for renewed funding consideration from the department for continued operation of services and programs for battered women, service providers shall submit a report which includes, at a minimum, the following information:

1. The full name of the service provider;

2. A budget for the year funding is requested, on forms provided by the department, which itemizes such major categories as:

a. Personnel;

b. Travel;

c. Equipment and supplies;

d. Contracted services;

e. Printing;

f. Communications;

g. Other program or service costs;

h. Costs for assistance to individuals, including emergency loan funds for shelter residents, rent deposits, legal fees, and moving costs;

i. Costs related to the rent, maintenance, or purchase of the facility operated by or occupied by the applicant; and

j. Evaluation;

3. A narrative for each line item on the budget for funds requested;

4. A description of other funding sources, fund-raising efforts, in kind contributions and services and other items relevant to financial status during the period when funds are requested; and

5. A statement of compliance with program or service evaluation requirements.

C. Purchase of service agreements shall provide for the following:

1. The collection, recording and reporting of descriptive data on persons served and the services provided as requested by the commissioner;

2. Complete reports requested by the commissioner; and

3. Implementation of a fiscal policy.

D. Any emergency shelter program operated on the basis of this appropriation shall show evidence that it is licensed by the Department of Health or the Joint Commission on Hospital Accreditation and has passed local fire inspection.

11 MCAR § 2.207 Submission of data—mandatory.

A. Reports on battered women shall be submitted to the department in accordance with Minn. Stat. § 241.66.

B. Reports shall, at a minimum, include summary data which discloses the date of occurrence, location, and characteristics of battering.

Department of Economic Security

Proposed Rules Governing the Unemployment Insurance Program Relating to Payment of Benefits and Collection of Employer Taxes (8 MCAR §§ 4.3001-4.3999)

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, § 15.0412, subd. 4, in the above entitled matter in room 116A, Administration Building, 50 Sherburne Ave., St. Paul, Minnesota on October 30, 1981, commencing at 9:00 a.m. and continuing until all persons or representatives of interested groups have had an opportunity to be heard concerning adoption of the proposed rules. 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 by asking questions and making comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon L. Lunde, Office of Administrative Hearings, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, either before the hearing or within

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five working days after the public hearing ends. Mr. Lunde's telephone number is (612) 296-5938. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days.

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 and by 9 MCAR §§ 2.101-1.113 (Minnesota Code of Agency Rules). If you have any questions about this procedure, call or write the hearing examiner.

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

The agency's authority to adopt the proposed rules is contained in Minn. Stat. § 268.12, subd. 3.

The proposed rules relate to various areas in the benefit and tax operations of the Unemployment Insurance Program. These rules expand upon Minn. Reg. ES 1-30 which are being codified. Current regulations (rules) which address subject matter covered in the proposed rules will be repealed.

The rules relating to benefits cover what constitutes Able to Work, Available to Work, Actively Seeking Work, Suitable Work, Re-employment Offer, a credit week and a week of unemployment. It will also cover the Benefit Claims Procedure.

The rules relating to employer taxes covers the definition of employment, what is included in employment; what wages are taxable and nontaxable; record-keeping, reports, and payments; voluntary contributions as it pertains to tax rates; and agricultural and domestic employment.

The department estimates that the cost of implementing the above captioned rules will not exceed $100,000 per year for local public bodies for the two years immediately following their adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Copies of the rules are available and at least one free copy may be obtained by writing or calling James Connolly, Director, Program Development, Department of Economic Security, 390 N. Robert St., St. Paul, Mn. 55101. Mr. Connolly's telephone is (612) 296-8356. A copy of the proposed rules is attached. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rules, contact Mr. Connolly.

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

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

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

September 9, 1981

Rolf Middleton
Commissioner of Economic Security

Rules as Proposed (all new material)

Chapter One: General Definitions

8 MCAR § 4.3000 Definitions. For the purpose of chapters one, two and three the following terms have the meanings given them.

A. Commissioner. "Commissioner" means the Commissioner of the Department of Economic Security or his duly authorized representative.

B. Department. "Department" means the Minnesota Department of Economic Security.

C. Unemployment office. "Unemployment office" means a location where the department offers unemployment insurance claim services.

Chapter Two: Benefits

8 MCAR § 4.3001 Applicability. Rules 8 MCAR §§ 4.3001-4.3011 apply to determinations of a claimant's eligibility for benefits pursuant to Minn. Stat. §§ 268.03-268.24.

8 MCAR § 4.3002 Definitions. For the purposes of 8 MCAR §§ 4.3001-4.3011 the following terms have the meanings given them.

A. Credit week. "Credit week" means any week within the base period for which wages in the required amount have been paid or were due and payable but not paid for performing services or for vacation periods. Except for vacation payments, those payments which are wages as defined in Minn. Stat. § 268.04, subd. 25 or department rules but for which the individual performs no services within the calendar week shall not be used to establish a credit week.

B. Labor market area. "Labor market area" means the geographic area in which the claimant can reasonably be expected to seek and find employment.

C. Seasonal worker. "Seasonal worker" means a claimant whose employer customarily suspends or significantly curtails operations for regularly recurring periods or whose usual occupation cannot be performed for any employer in the labor market area because climatic conditions prohibit performance of the normal duties of the occupation.

8 MCAR § 4.3003 Able to work.

A. Generally. A claimant to be able to work must have the physical and mental ability to perform the usual duties of his customary occupation or other work for which he is reasonably fitted by training, experience or capability and which is gainful employment engaged in by others as a means of livelihood as an employee under conditions ordinarily existing during a normal work week. The burden of establishing ability to work is on the claimant.

B. Particular situations. In determining whether a claimant is able to work the department will consider the facts and circumstances of the claimant's particular situation. The determination shall be made by applying the criteria listed in 1.-4.

1. Medical evidence. Where doubt exists as to the claimant's ability to work the department may require him to furnish medical evidence of his ability to work. Failure of the claimant to furnish requested medical evidence may result in a suspension or a denial of benefits.

2. Medical separation from work. A claimant who was separated from employment due to his own serious illness must demonstrate his ability to perform other work to be deemed able to work.

3. No presumption of inability to work. There will be no presumption a claimant is not able to work.

4. Ability to work part-time only. Normally a claimant is required to be able to work and available for full-time work for all shifts which are customary for his occupation. However, a claimant whose physical or mental condition restricts his availability to part-time work or to a particular shift will be deemed able to work if there is a reasonable possibility of obtaining work within these restrictions.

8 MCAR § 4.3004 Available for work.

A. Generally. A claimant is considered available for work only if he is ready and willing to accept suitable employment. There must be no restrictions, either self-imposed or created by circumstances, which prevent accepting employment. A restriction does not prevent accepting employment if there are good prospects for obtaining employment within the restrictions within a reasonable period of time.

B. Absence from labor market area. A claimant who is absent from his labor market area for personal reasons is presumed to be not available for work. However, an absence of two days or less from his labor market area due to a family emergency or for other compelling personal reasons does not make him unavailable for those days.

C. Alien status. A claimant who is an alien must present proof that he is authorized to work in the United States to be available for work.

D. Change of residence. A claimant who has moved permanently to an area where his chances of securing work are

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materially lessened and who does not make a diligent work search, expand his availability to other occupations, and accept the prevailing wages, hours and other conditions of work is not available for work.

E. Claimant cannot be contacted. Unless good cause exists for the failure to be reachable a claimant who cannot be reached by the department for referral to possible employment is not available for work.

F. Failure to report. A claimant who fails without good cause to report as directed to an unemployment office or to a job service office of the Department of Economic Security is not available for work.

G. Incarcerated. A claimant who is incarcerated and who is unable to accept employment under a work release program is not available for work.

H. Labor market area. A claimant must offer his services unequivocally to the labor market area to be available for work.

I. Length of unemployment. As a claimant's duration of unemployment lengthens, to be available for work he may be required to broaden the geographic area in which he will accept work, seek and accept employment on a different shift, accept counseling for possible retraining or change in occupation, or seek and accept employment and the prevailing wages in a new occupation.

J. Seasonal worker. A seasonal worker who is not willing to accept suitable work in other occupations during the off season is not available for work.

K. Self-employment. A claimant is not available for work if he is no longer seeking work as an employee because of his being self-employed or planning to be self-employed and he is devoting time and effort to his self-employment so that he cannot accept work during customary hours for his occupation or other suitable work.

L. Time or shift restriction. A claimant who imposes restrictions on the hours of the day or days of the week which he is willing to work which are not normal for his usual occupation or other suitable work is not available for work. A claimant who imposes restrictions on the hours of the day or days of the week which he is willing to seek work which prevent him from meeting the work search requirements of the department is not available for work.

M. Transportation. A claimant to be available for work must have transportation from his residence to his labor market area.

N. Union membership. A claimant who is seeking work only through his union is not available for work unless he is in an occupation or trade where it is customary that substantially all the hiring in that locality is done through his union. He must submit evidence, when required by the department, that he is a union member in good standing, is registered with the union for work and is in compliance with other union rules.

O. Wage restriction. A claimant who has demanded wages exceeding those customary in his labor market area for the type of work he is seeking is not available for work.

8 MCAR § 4.3005 Actively seeking work.

A. Generally. A claimant must make reasonable, diligent efforts to actively seek suitable work for each week for which he files a claim. Reasonable, diligent efforts are those that a person in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions in the labor market area. A claimant who fails to make reasonable, diligent efforts to actively seek work or who limits the search to positions that are not available or are above his training, experience and qualifications is not actively seeking work.

B. Scope of work search. A claimant is not actively seeking work if he has not sought work in accordance with specific and reasonable instructions of the department. The claimant may be required to do any or all of the following to establish that he is actively seeking work:

1. Register with the department's job service;
2. Register with his union hiring or placement facility and meet the union requirements concerning dispatch to a job;
3. Register with a placement facility of his professional organization;
4. Register with a placement facility of a school, college, or university;
5. Apply for employment with former employers;
6. Make application with employers who may reasonably be expected to have suitable openings;
7. Make applications or take examinations for openings in the civil service of a governmental unit;
8. Respond to want ads for suitable work; or
9. Perform any other action which the department finds to constitute an effective means of seeking work suitable to the claimant.

C. Number of contacts. The number of employer contacts required to be considered actively seeking employment varies. In determining adequacy of work search in terms of the number of contacts required the department will consider the employment opportunities as well as the qualifications of the claimant and normal practices and methods of seeking work.

D. Type of work sought. A claimant will generally be allowed to seek work in his usual trade or occupation before being required to seek other types of work that may be suitable. The length of time allowed to seek work at his usual trade or occupation will be governed by the availability of that work in the labor market area where he is seeking work. A claimant will be required to seek work outside his customary occupation if one of the following conditions prevails:

1. There are available openings outside the claimant's customary occupation and there are few workers unemployed in the locality for whom these openings would be more suitable than for the claimant;

2. The claimant's prospects of securing work in his customary occupation are not as favorable as his prospects of securing work outside his customary occupation; or

3. Work which exists outside the claimant's customary occupation is suitable for the claimant.

E. Permanent and temporary work. Claimants are required to actively seek suitable permanent work. However, a claimant who is on a temporary layoff and who has a verifiable assurance of return to work may limit his search for employment to temporary work.

F. Seasonal workers. A claimant who is seasonally unemployed is not relieved of the responsibility to actively seek work.

G. Incarcerated worker. A claimant who is incarcerated and who is unable to seek work is not actively seeking work.

H. Filing and reporting only. If due to economic conditions within the labor market area the department finds that for a particular occupation or class of claimants the existence of suitable job openings other than those listed with a union hiring hall, professional organization or similar placement facility or the department are so few that any effort to search for openings would be fruitless to the claimant and burdensome to employers, then registering with and maintaining the requirements for referral by the hiring hall or placement facility or the department shall constitute an active search for employment.

8 MCAR § 4.3006 Suitable work.

A. Applicability. Rules 8 MCAR §§ 4.3006-4.3008 shall be used in determining if an individual failed to apply for or accept suitable work or suitable reemployment without good cause.

B. Policy. The suitable work provisions of Minn. Stat. §§ 268.03-268.24 and 8 MCAR §§ 4.3006-4.3008 shall be administered so as to promote the department's dual responsibilities of ensuring that benefits are paid to only those persons who are involuntarily unemployed through no fault of their own and, as promptly as possible, matching workers with jobs which best utilize their skills, knowledges, and abilities. Toward this end, "suitable work" is to be interpreted to recognize a worker's skills and abilities but not to provide a haven for those who do not wish to work.

Ideally, the department could match job seekers with jobs in their usual occupation with wages, hours, and other conditions of work identical to those previously enjoyed. As a practical matter economic conditions prohibit this ideal and so a reasonable alternative must be developed. Any reasonable alternative should be based on the policy that it is best for employers, workers and society as a whole to maximize use of existing skills and abilities for the largest number of workers possible under the existing economic conditions, temporary or permanent, of the labor market area.

C. General. The primary guidelines for determining suitable work must give consideration to the nature of the unemployment whether it be temporary or permanent and the prospects of the individual finding work in his usual or related occupations. The specific statutory interpretations of 8 MCAR §§ 4.3007-4.3008 shall be considered in light of the following general guidelines:

1. For persons who have a verifiable assurance of work in the near future suitable work consists of available, temporary work in their usual or a related trade or occupation in the labor market area;

2. For persons with a verifiable assurance of work in the more distant future suitable work is available, temporary work for which the claimant is reasonably suited by virtue of education, training, work experience or ability and which is a reasonable departure from his usual occupation;

3. For seasonal workers suitable work is temporary work in their usual occupation or a related occupation which provides conditions of employment approximating their past employment; however, other employment is suitable if it meets the following conditions:

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a. There are available openings in a lower skilled or paid occupation;

b. There are few, if any, unemployed workers for whom these openings would be more suitable;

c. The opening is one for which the claimant is reasonably fitted by virtue of his being able to perform the work; and

d. The work pays a wage equaling at least 150 percent of the claimant's weekly benefit amount.

4. For persons without a verifiable assurance of work, suitable work is permanent work in their usual or related occupations which provides wages and conditions of employment approximating those of their past employment if their prospects of finding the work are favorable. If prospects are unfavorable, work at lower skill or wage levels is suitable if there are few, if any, workers unemployed in the locality for whom these openings would be more suitable than for the claimant, the claimant is reasonably suited for the work by virtue of education, training, work experience or ability and the work offered is a reasonable departure from his usual occupation.

In general, "near future" as used in 1. means six weeks or less and "more distant future" as used in 2. means more than six weeks.

8 MCAR § 4.3007 Statutory terms interpreted.

A. Generally. The terms and phrases used in Minn. Stat. § 268.09, subd. 2 as guidelines for determining suitability of work shall have the meanings and explanations given in B.-R.

B. To apply. "To apply" means that the claimant must comply with all necessary application processes, beginning with the notice to appear for the interview with the job service and including actually calling at the place of business of the prospective employer when so advised by the department.

C. Failure to apply. "Failure to apply" includes any willful action or neglect which demonstrates a lack of good faith in applying for employment.

D. Failure to accept. "Failure to accept" may consist of a direct statement of refusal by the claimant or the claimant's failure to take reasonable steps to accept the job after it has been offered to him.

E. Available, suitable work. "Available, suitable work" means that there is a definite job or vacancy to apply for or accept. Work is not available to the claimant when the employer finds the claimant unqualified for the position.

F. Of which he was advised. "Of which he was advised" means that a claimant was made aware of a job by the department and offered an opportunity to apply for it. Although the employer's name need not be provided to the claimant unless he accepts the referral, the job must be described in sufficient detail so the claimant is aware of the terms and conditions of employment.

G. Risk involved to his health and safety. Work is not suitable for a claimant if the employment presents a risk to his health or physical condition which is not usually customary to that occupation. Extra hazardous work shall not be suitable work unless the claimant has training or experience in that occupation. When a claimant has a demonstrated fear of performing a particular employment that employment shall not be suitable employment. A claimant's loss of ability to avoid previously accepted hazards must be considered.

H. His physical fitness. To determine suitability of work in terms of the claimant's physical fitness the department shall consider the type of work the claimant has most recently performed, any existing physical conditions, whether the work requires any strenuous physical ability the claimant does not possess, and other factors affecting his physical ability to perform the work. If the claimant's physical condition prevents him from doing the work the work is unsuitable. Medical evidence may be required to support the claimant's statement that the work offered is not suitable because of the claimant's physical condition.

I. Prior training and experience. Work that requires a skill or particular training which the claimant does not already possess may be unsuitable. However, if the claimant lacks the skills and training needed to perform offered work, that work may be suitable if as part of the job the claimant is provided with the training necessary to develop the work skills needed or if the time and effort required to develop the skills is minimal.

J. Prospects of securing work in his customary trade or occupation. If the prospects of a claimant finding work in his usual trade or occupation are unfavorable, then work in other occupations may be suitable work if the general conditions of 8 MCAR § 4.3006 are satisfied.

K. Distance of the available work from his residence. To determine suitability in terms of distance, all factors must be considered, including distance, proximity to transportation, cost of transportation, type of transportation, transportation schedules and time required for transportation. This determination is made not only in comparison to the claimant's most recent job but also in relation to that which is customary in his occupation. If it is customary in the claimant's occupation to relocate or change job sites, regardless of distance, then the work requiring relocation is suitable. To determine the suitability of work located outside the locality of the claimant's residence, the factors to be considered are the claimant's prospects for equally

steady work in his home area, the duration of his unemployment, the remuneration offered as related to the cost of transportation, and the distance to the place of employment.

L. Wages. The wages offered must approximate the prevailing wage for the work to be suitable. To determine suitability of work in terms of wages the total earnings must be considered. These include the wage rate, hours of work, method of payment, overtime practices, bonuses, incentive payments and fringe benefits. When the offered work is at a rate of pay lower than the claimant's former rate consideration must be given to the length of the claimant's unemployment and the proportion of difference in the rates. The importance of the difference between the wages offered and the previous rate decreases as the period of unemployment increases. Work which may not be suitable because of lower wages during the early weeks of the claimant's unemployment may become suitable for him as his duration of unemployment lengthens and it becomes evident that prospects are remote for obtaining work in line with prior wages. A wage that is below the person's previous wage may be suitable if it is not substantially less favorable than that prevailing for similar work in the community.

M. Hours. To determine suitability of work in terms of hours, the arrangement of hours in addition to the total number of hours are to be considered. An offer to work on a second, third, rotating or split shift is suitable work if workers are generally hired on those shifts.

N. Other conditions of work. The suitability of the work may be determined by considering the provisions of the employment agreement, whether express or implied, including the physical conditions under which the work is done pursuant to the agreement. The term "other conditions of work" includes but is not limited to provisions for work rules, safety rules, sanitation, heat, light, and ventilation.

O. Substantially less favorable to the individual. Whether provisions of the work offered are substantially less favorable to the individual can be determined only by comparison of the conditions of the work offered to those prevailing for similar work in the local labor market area. The conditions of work offered are not compared to the previous work of the individual. Both the extent of the difference as well as its effect on the worker shall be considered. If the work offered has differences of no substantial consequence for the worker, it will not be considered to be substantially less favorable. If the wages offered are more than ten percent below the prevailing rate of pay or less than the applicable federal or state minimum wage for the type of work being considered, it will be considered to be substantially less favorable than that prevailing for similar work in the locality.

P. Prevailing. Prevailing wages, hours and other conditions of work are those which are offered to those who commence employment in similar work in the locality.

Q. Locality. Locality means the claimant's labor market area.

R. Good cause. A claimant has good cause for refusal of suitable work only when there is some necessitous and compelling reason for refusal. Good cause for refusing a job need not be attributable to the employer. Good cause reasons for refusal are usually personal to the claimant and extraneous to the employment. Good cause for refusal of suitable employment must be temporary and emergency in character so as not to detach the claimant from the labor market.

8 MCAR § 4.3008 Reemployment offer. A claimant is considered to have refused an offer of suitable reemployment from a base period employer unless the terms and conditions of the offer are substantially less favorable than the terms and conditions under which the principal part of the wage credits in the claimant's base period were earned with that employer.

A refusal of reemployment shall be with good cause if the claimant had previously quit the employment for good cause attributable to the employer and the conditions which were the basis for good cause still exist.

A refusal of reemployment shall be with good cause if the claimant previously separated from that employment because of his own serious illness and the work offered would adversely affect that illness.

8 MCAR § 4.009 Partial benefits exemption. 8 MCAR §§ 4.3001-4.3008 shall not apply to a claimant with respect to a claim for partial unemployment benefits.

8 MCAR § 4.3010 Benefit claim procedure.

A. Purpose and scope. This rule defines claim procedure and eligibility criteria under Minn. Stat. § 268.08, subd. 1.

B. Initial claim. To file a new claim for benefits or to reactivate an inactive claim, an individual shall report in person at an unemployment office and shall there:

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1. Present a valid social security account number card or other acceptable evidence of his social security number;

2. File an initial claim for benefits on a prescribed form; and

3. Register for work, except that the initial claim for benefits may also constitute the individual's registration for work if it is determined that normal registration should be waived or postponed.

The claim shall be effective on the Sunday of the calendar week in which the claim is reactivated or filed.

C. Claim acceptance form. If the unemployment office cannot provide claim service on a given day an individual shall be given a claim acceptance form to verify his attempt to file a claim on that date. If the individual presents a claim acceptance form to one of the local unemployment service offices within 14 days from the date of issuance of the claim acceptance form or when service is next provided in a part-time unemployment office, the initial claim shall be backdated as if filed in the calendar week in which the claim acceptance form was issued.

D. Part-time unemployment office. Any individual who resides in an area in which there is a part-time unemployment office may report in person at that office and file a new or reactivated claim for benefits effective as of the Sunday of the first week of the individual's unemployment, provided that his first day of unemployment is subsequent to the last previous day that service was provided by the part-time unemployment office. No claim shall be effective more than 28 days prior to the calendar week in which the individual reports to file the claim.

E. Permitted benefit years. An initial claim for benefits shall not establish a benefit year which begins prior to the Sunday next following the end of any previous benefit year except as otherwise provided by rule or law.

F. Withdrawal of claim. An initial claim for benefits which has been filed with the department may not be withdrawn by the claimant or otherwise terminated by the department except as provided by other rule or law.

G. Continued claim. To establish eligibility for benefits or waiting period credit for a week or weeks of unemployment following a new or reactivated claim an individual shall continue to report in person or by mail as directed by the department to the office responsible for the administration of his unemployment insurance, in this or any other state.

H. Transferred claim. Any claimant filing continued claims covering more than four weeks of benefits through a single area office in this or some other state other than the area office where his initial claim or transferred claim is filed shall transfer his claim to that single office. No claimant shall be ineligible for failure to transfer his claim to another office unless, prior to the filing of a continued claim, the claimant has been directed to transfer his claim and has failed without good cause to comply.

I. Late filed claim. Any individual who fails to file a continued claim in the manner and at the time and place specified by the department may report in person or by mail and file the claim within 14 days following the date specified by the department. Waiting period credit or benefits for each week that was covered by the delinquent claim shall be authorized if the claimant is otherwise eligible. No credit or benefits shall be authorized for subsequent weeks which were not claimed properly.

Any individual who for good cause fails to file a continued claim in the manner and at the time and place specified by the department may file the claim in person or by mail not more than 35 days following the expiration of his benefit year. The claimant, if otherwise eligible, shall be entitled to waiting period credit or benefits for each week that good cause for failure to report is established.

8 MCAR § 4.3011 Week of unemployment.

A. Scope and purpose. This rule further defines "week" as defined under Minn. Stat. § 268.04, subd. 23.

B. Week calculated, labor dispute. An individual's week of unemployment shall consist of the consecutive seven-day period beginning with the day on which registration is made effective except following the termination of a labor dispute. Following termination of a labor dispute, week of unemployment is the remainder of the calendar week in which the labor dispute ended. An individual, if otherwise eligible, shall be entitled to one-fifth credit for each day, excluding Saturday, following the date on which the labor dispute ended.

Chapter Three: Taxation

8 MCAR § 4.3100 Definitions.

A. Generally. Unless the context otherwise requires, terms used in 8 MCAR §§ 4.3100-4.3108 shall be construed in the sense in which they are defined in Minn. Stat. §§ 268.03-268.24, or in these or other rules of the department.

B. Pay period. "Pay period" means that period of time during which the wages due on any regular pay day were earned. If the period exceeds 31 days, then 31 days shall be deemed to constitute a pay period.

8 MCAR § 4.3101 Wages.

A. Purpose. This rule further defines "wages" as defined in Minn. Stat. § 268.04, subd. 25, and used in Minn. Stat. §§ 268.03-268.24, 8 MCAR §§ 4.3101-4.3108, interpretations, forms and other official pronouncements issued by the department.

B. Types of wages, generally. "Wages" means remuneration for services. The remuneration may take any form, be paid at various times, and be computed in various ways. Remuneration may be in cash or in a medium other than cash, on the basis of piece work or percentage of profits, or by commission. Remuneration may be paid on an hourly, daily, weekly, monthly, annual or other basis.

C. Paid and payable wages. Wages includes remuneration payable and remuneration paid. "Remuneration payable" is wages that have been earned but that were not paid when due. "Remuneration paid" is wages that have been actually or constructively delivered to, or for the benefit of, an employee.

D. Types of wages. Wages include the monetary value of:

1. Dwelling unit rent, utilities, meals, exchange of services or other goods or services that are to compensate for an employee's services;

2. Vacation pay or payment in lieu of vacation;

3. Termination, severance, or dismissal payment or payment in lieu of notice whether notice is required or not;

4. That portion of the payment which compensates for services rendered received in the form of an award or allowance in accordance with a contractual agreement or settlement reached through any arbitrator, regulatory agency or court;

5. Profits, sometimes referred to as dividends, other than those designated as capital gain distributions or return of capital, distributed or allocated to officers and shareholders who perform services for a corporation organized under the rules of Subchapter S of the Internal Revenue Code of 1954. The distribution or allocation of undistributed profits is reportable at the time it is received by, or credited to the account of, the officers and shareholders;

6. The value of any consideration, award, bonus or prize which accrues before separation from employment;

7. Payments for accrued sick leave when not related to a specific absence due to sickness or injury, regardless of whether or not the employer maintains a sick pay plan as defined in Minn. Stat. § 268.04, subd. 25, clause (2);

8. Idle time or standby compensation paid by an employer for a guaranteed minimum number of hours of employment per week when employees are to be available for a specific period of time and payment is made to them for idle time even if they do not render services for the minimum number of hours;

9. Advances or draws against future earnings, when paid, unless the payments are designated as a loan or return of capital on the books of the employer at the time of payment;

10. Amounts paid to corporate shareholders and officers, although designated as loans, where repayments are not made pursuant to a payoff schedule, lack business purpose and fail to provide for the payment of reasonable interest, if the shareholders or officers perform services for the corporation for remuneration below that which would approximate reasonable compensation for services;

11. Payments made directly or indirectly to an individual to perform or assist in performing the work of any employee of the employer provided that the employer had actual or constructive knowledge that the work was being performed;

12. Payments made for services as a caretaker. Unless there is a contract or other proof to the contrary, remuneration shall be considered as being equally received by a married couple where the employer makes payment to only one spouse, or all tenants of a household who perform services where two or more individuals share the same dwelling and the employer makes payment to only one individual;

13. Payments made for services by a migrant family. Where services are performed by a married couple or a family and an employer makes payment to only one individual each worker shall be considered as having received an equal share of the remuneration unless there is a contract or other proof to the contrary;

14. An employer's vehicle furnished to an employee to the extent the vehicle is used for personal purposes. If the employee has use of the vehicle without charge, the amount deemed to be wages shall be $200 per month or, if for less than a calendar month, $7 for each day that the employee has use of the vehicle for personal purposes. If the employee reimburses the employer, the amount deemed to be wages shall be determined as follows:

a. If the employee reimburses the employer at an established rate of less than 20 cents per mile for each mile of personal use, the amount deemed to be wages shall be the difference, if any, between the amount reimbursed and 20 cents per mile; or

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b. If the employee reimburses the employer at an established daily, weekly or monthly rate, the amount deemed to be wages shall be the difference, if any, between the amount reimbursed and $200 per month or, if for less than a month, $7 for each day that the employee has use of the vehicle for personal purposes;

15. Amounts withheld or deducted from an employee's earning because of a deferred compensation agreement which an employee agrees to participate in or which is part of an employment contract. A deferred compensation agreement generally means an arrangement between the employee and the employer for the withholding or deduction of a specific amount from his earnings, to be distributed by the employer or a third person at a later time, usually in post-retirement years.

E. Tips and gratuities.

1. Accounted for to the employer. Tips and gratuities are accounted for to the employer in various manners or forms including if they are:

a. Added to the customer's bill by the employer;

b. Added to the bill by a customer using credit for the purchase;

c. Disbursed by the employer from a tip pool; or

d. Reported to the employer in compliance with the Internal Revenue Code of 1954.

2. Paid to an employee by a customer. Tips and gratuities are considered paid to an employee by a customer if they are:

a. Received directly from the customer;

b. Distributed from a tip pool, whether controlled by the employer or employees; or

c. Received as part of a plan or system under which the person initially receiving them, whether directly from the customer or from a tip pool, distributes a portion of the tips to other employees.

Under a.-c. the tips are considered as being paid by the customer to the person ultimately receiving them.

F. Valuing non-cash remuneration.

1. Except as this rule may otherwise provide, the cash value of remuneration for personal services payable in any medium other than cash shall be:

a. The fair market value of meals or any value agreed upon between the employer and employee if it is not less than the allowance as provided in Minn. Stat. §§ 177.21-177.35, the Minnesota fair labor standards act, and rules promulgated thereunder;

b. The value of rent of a house, apartment or other lodging, furnished to an employee that would be paid by an employee for similar or equivalent accommodations, but in no event less than the allowance provided in Minn. Stat. §§ 177.21-177.35 and rules promulgated thereunder; or

c. The fair market value, determined when received, of any other remuneration for services unless a higher value is agreed upon between the employer and the employee.

2. If the department determines that the reasonable fair market value is other than as determined by the employer it may, after affording the employer reasonable opportunity for the submission of relevant information, determine the reasonable cash value of board, rent, housing, meals, or similar advantage.

G. Employee equipment.

1. The wages of the operator and supplier of a truck, bulldozer, tractor or similar equipment whose remuneration includes wages for personal services as well as the cost of operating and hiring the equipment shall, in the absence of an agreement between the parties, be determined as follows:

a. The value of that part of the total remuneration received which is wages for personal services shall not be less than the prevailing wage scale for similar services by operators of equipment of the same size and type in the locality where the services are performed; or

b. If there is no prevailing wage in the locality in which the services are performed, 40 percent of the total remuneration received from the employer shall constitute wages.

2. Payments to an employee that include advances or reimbursements for use of his personal vehicle of up to 9,000 pounds gross vehicle weight in the employer's business are wages unless the amount attributable to the use of the vehicle is separately paid or stated as prescribed in H.8. and the advance or reimbursement is not unreasonable or arbitrary in which case only the amount attributable to services performed shall be wages.

3. If the commissioner finds that the wage determination of the equipment operators or employees who use their

personal vehicles in the employer's business prescribed by 1. and 2. would be unreasonable or arbitrary in the particular case, then the commissioner may determine the amount of the wages of the employee involved.

H. Exempt wages. The term "wages" shall not include:

1. The value of any special discount or mark down allowed to an employee in goods purchased from or services supplied by the employer where the purchases are optional and do not constitute regular or systematic remuneration for services rendered;

2. Customary and reasonable directors' fees paid to individuals who are not otherwise employed by the corporation of which they are directors;

3. Moneys allowed to employees for reimbursement of meal expenses when employees are required to perform work after their regular hours;

4. Any payment made to or on behalf of an employee by the employer for legal or dental service plans if provided for all employees generally or for a class or classes of employees;

5. Payments for periods of sickness or injury after the end of six calendar months after the calendar month in which the employee last worked for the employer, if the payments are made by an employer who does not maintain a regular sick pay plan as defined in Minn. Stat. § 268.04, subd. 25, clause (2);

6. Compensation, reimbursement, fees, meals or other remuneration paid or provided through a court to an individual for services performed as a juror;

7. Royalties to an owner of a franchise, license, copyright, patent, oil, mineral or other right;

8. Amounts paid specifically as advances or reimbursements for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer. Traveling and other reimbursed expenses must be identified either by making separate payments or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment;

9. Remuneration paid to radio and television artists which represents residual payments and are accrued subsequent to the production of musical jingles, spot announcements, radio transcriptions and film sound tracks; or

10. Any payment to or on behalf of an employee under a plan or system established by an employer, which makes provisions for his employees generally or for a class or classes of his employees for the supplementation of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument if the plan or system provides benefits which are only supplemental to, and does not replace or duplicate any state or federal unemployment compensation. The plan or system must provide that funds are to be used solely for the supplementation of state unemployment benefits. Potential recipients of the plan or system must be required to file for unemployment benefits in accordance with state law. The plan or system shall not allow the assignment of benefits or the payment of any consideration in lieu of any benefit upon the employee's withdrawal from the plan or system, his termination of employment or the termination of the plan or system. The plan or system must not be designed for the purpose of avoiding the payment of unemployment taxes on moneys disbursed from its plan or system.

8 MCAR § 4.3102 Employment.

A. Definitions. For the purpose of 8 MCAR § 4.3102 the following terms have the meaning given to them.

1. "Control" is the power to instruct, direct or regulate the activities of an individual whether or not the power is exercised.

2. "Employing unit" has the meaning given to it in Minn. Stat. § 268.04, subd. 9, and includes any individual or type of organization that engages, retains, or secures the services of, an individual.

3. "Employment" has the meaning given to it in Minn. Stat. § 268.04, subd. 12, and includes the services of any individual performed for an employing unit under its direction, rule or control as to both the method of performing or executing the services and the result to be effected or accomplished. Whether an individual is performing services in employment shall be determined by the preponderance of the evidence.

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4. "Method" is the way, procedure or process for doing something; the means in attaining a result as distinguished from the result itself.

B. Procedures for determining control. The department may determine if control exists by:

1. Reviewing written contracts between the individual and the employing unit;

2. Interviewing the individual or employing unit;

3. Obtaining statements of third parties;

4. Examining regulatory statutes governing the organization, trade or business;

5. Examining the books and records of the employing unit; and

6. Any other appropriate means.

C. Evidence of control. Paragraphs 1.-12. describe criteria for determining if there is control over the method of performing or executing services. The total circumstances must be considered to determine if control is present.

1. Authority over individual's assistants. Hiring, supervising, and payment of an individual's assistants by the employing unit shows control over the individual.

2. Compliance with instructions. Control exists when an individual is required to comply with instructions about when, where and how he is to work. Some individuals may work without receiving instructions because they are highly proficient in their line of work; however, the control factor is present if the employing unit has the right to instruct or direct. Instruction may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished.

3. Oral or written reports. Control is indicated if regular oral or written reports relating to the method in which the services are performed must be submitted to the employing unit. Periodic reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion of a job. Completion of receipts, invoices and other forms customarily used in the particular type of business activity does not constitute written reports.

4. Place of work. Doing the work on the employing unit's premises is not control in itself; however, it does imply that the employer has control, especially when the work could be done elsewhere. When work is done off the premises it does indicate some freedom from control; however, in some occupations, the services are necessarily performed away from the premises of the employing unit and are still considered to be in employment.

5. Personal performance. If the services must be rendered personally it indicates that the employing unit is interested in the method as well as the result. Personal performance might not be indicative of control if the work is very highly specialized and the worker is hired on the basis of his professional reputation, as in the case of a consultant known in academic and professional circles to be an authority in the field. Lack of control may be indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.

6. Establishment of work sequence. If a person must perform services in the order or sequence set for him by the employing unit it indicates the worker is subject to control. Often, because of the nature of an occupation, the employing unit does not set the order of the services, or sets them infrequently; however, it is sufficient to show control if the employing unit retains the right to do so.

7. Right to discharge. The right to discharge is a very important factor indicating that the right to control exists particularly if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. An independent worker generally cannot be terminated if he produces an end result which measures up to his contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative of the right to control. That a right to discharge is restricted because of a contract with a labor union or with other entities does not mean there is not control.

8. Set hours of work. The establishment of set hours of work by the employing unit indicates control. Where fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times is an element of control.

9. Training. Training of an individual by an experienced employee working with him, by required attendance at meetings, and by other methods, is a factor of control especially if the training is given periodically or at frequent intervals.

10. Amount of time. If the worker must devote his full time to the activity, control is indicated. Full time does not necessarily mean an eight hour day or a five or six day week. Its meaning may vary with the intent of the parties, the nature of the occupation and customs in the locality. Full time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels him to devote all of his working time to that business, or he may not be permitted to work for anyone else.

11. Tools and materials. The furnishing of tools, materials and supplies by the employing unit is indicative of control over the worker. When the worker furnishes these items it indicates a lack of control, but lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

12. Expense reimbursement. Payment by the employing unit of either the worker's approved business or traveling expenses, or both, is a factor indicating control over the worker. A lack of control is indicated when the worker is paid on a job basis and has to take care of all incidental expenses.

D. Independent contractor or employee, factors to consider. Among the factors to be considered, in addition to factors of control, when determining if services are employment are those listed in 1.-7.

1. Availability to public. That an individual makes his services available to the general public on a continuing basis is usually indicative of independent status. An individual may offer his services to the public in a number of ways including having his own office and assistants, displaying a sign in front of his home or office, holding a business license, having a listing in a business directory or a business listing in a telephone directory, or advertising in a newspaper, trade journal or magazine.

2. Compensation on job basis. A person working in employment is usually paid by the hour, week or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirements for repayment of the excess over earning indicates the existence of employment.

3. Realization of profit or loss. An individual who is in a position to realize a profit or suffer a loss as a result of his services is generally independent, while the individual who is working in employment is not in that position.

4. Obligation. An individual working in employment usually has the right to end his relationship with his employer at any time he wishes without incurring liability, although he may be required to provide notice of his termination for some period in advance of the termination. An independent worker usually agrees to complete a specific job. He is responsible for its satisfactory completion and is liable for failure to complete the job.

5. Substantial investment. A substantial investment by a person in facilities used by him in performing services for another tends to show an independent status. The furnishing of all necessary facilities by the employing unit tends to indicate the absence of an independent status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. A substantial expenditure of time or money for an individual's education is not necessarily indicative of an independent relationship. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation or vocation.

6. Simultaneous contracts. If an individual works for a number of persons or firms at the same time, it indicates an independent status because the worker is usually free from control by any of the firms. It is possible that a person may work for a number of people or firms and still be an employee of one or all of them.

7. Responsibility. An employing unit is usually responsible for the negligence, personal behavior and work actions of a person working in employment in his contacts with customers and the general public during times that he is performing services for the employing unit. An independent worker is usually accountable for his own actions.

E. Services in the course of the employing unit's organization, trade or business. Services that are in the course of the employing unit's organization, trade or business consist of services which are a part or process of the employing unit's organization, trade or business and ancillary or incidental services. An individual who performs services which are a part or process of the employing unit's trade or business is in employment and does not have independent status. "Part" and "process" are not synonymous. Process refers to those services which directly carry out the fundamental purposes for which the organization, trade or business exists, for example, painting and repairing automobile bodies in an automobile body paint and repair shop. Part refers to any other services which are essential to the operation or maintenance of the organization, trade or business, for example, routine cleaning of premises and maintenance of tools, equipment and buildings. Ancillary or incidental services include landscaping the areas around an automobile body paint and repair shop. Other services that meet the part, process or ancillary classification are those services in connection with purchasing, receiving, storing, pricing, displaying,

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selling and delivery of merchandise and housekeeping services required for the safety and comfort of customers and the general public or to maintain the premises in a manner as to promote business.

F. Independent status, determination. When determining if an individual is in employment or is an independent contractor the factors considered must be weighed to make a determination of the relationship under the facts of the particular case. The weight to be given to a factor is not always constant and there may be other factors not specifically identified in this rule that should be considered. The degree of importance may vary depending upon the occupation or work situation being considered and why the factor is present in the particular situation.

G. Agent-drivers and salespersons. Certain classes of agent-drivers, salespersons and commission persons are statutory employees even though they are independent contractors under common law rules. Minn. Stat. § 268.04, subd. 12, clause (1)(b) sets forth the conditions which must be present for members of each class to be employees.

1. Full-time. In the case of a traveling or city salesperson, other than an agent-driver or commission-driver, Minn. Stat. § 268.04, subd. 12 provides that the individual must be engaged on a full-time basis. "Full-time" means the number of hours in the calendar week during which individuals engaged in the same or similar occupations usually or customarily perform services, except that any week during which an individual worked 40 hours or more providing those services shall be deemed to be full-time.

2. Substantial investment in facilities. Agent-drivers, commission-drivers, and traveling or city salespersons to be employees must not have a substantial investment in facilities, other than facilities for transportation, used in connection with the performance of the services.

a. "Facilities" means equipment or premises necessary to perform the work. Inventory, clothing and items not actually required to adequately perform the assigned tasks are not facilities.

b. "Substantial investment" refers to a monetary investment representing something of considerable worth in relation to the overall investment requirements in the distribution or sale of the particular product involved.

H. In employment by federal law. An individual is in employment if he performs services which are subject to Section 3300 of the Internal Revenue Code of 1954 (Federal Unemployment Tax Act) or performs services which are required by federal law to be covered employment by state law.

I. In employment, general inclusions. The following services described in 1.-3. are considered to be in employment:

1. Services performed by an employee as an insurance agent, insurance solicitor or real estate salesperson for the pay period in which payments for the services not constituting commissions were paid or became due and payable. The exclusionary provisions of Minn. Stat. § 268.04, subd. 12, clauses (15)(m) and (o) apply to services which require a Minnesota real estate or insurance agent's sales license and to those individuals, except corporate officers, possessing the license. Services of corporate officers, who are employees by statute, shall not be considered in the application of this exclusionary provision. Noncommission remuneration includes guaranteed salary, training allowance, bonus, and draws or advances against future earnings as described in 8 MCAR § 4.3101 D.9. For the purpose of this paragraph commission means remuneration paid to individuals as a direct result of a sale, including the percentage of the sale price paid to the salesperson responsible for the sale, and payments including overrides, listing fees, and closing fees which are related to the sale;

2. Services performed as election judges; and

3. Services performed by factory demonstrators who are placed by a manufacturer or distributor in stores and other locations to aid in the sale of products, who are hired by, paid directly or indirectly by, and who work under the direction of the manufacturer or distributor, although this direction may be delegated to the retailer, and they are in the employment of the manufacturer or distributor making the placement. If the retailer, not acting as an agent for the manufacturer or distributor, hires, directs and pays the demonstrator directly, the retailer is the employer. If the wages are paid in part by the manufacturer or distributor, and in part by the retailer, the demonstrator is in the employment of both. Each is required to pay contributions on the part of the remuneration which he pays, provided that they are employers under Minn. Stat. §§ 268.03-268.24.

J. Casual labor.

1. Casual labor not in the course of the employing unit's trade or business, although excluded from the term employment by Minn. Stat. § 268.04, subd. 12, clause (15)(b), is conditionally included as employment under the provisions of Chapter 23, Section 3300 of the Internal Revenue Code of 1954 (Federal Unemployment Tax Act). Minn. Stat. § 268.04, subd. 12, clause (6) provides that the term employment shall include any service which is deemed to be employment under the Federal Unemployment Tax Act; therefore, casual labor is considered employment unless it meets the exclusionary provisions of that act. The exclusionary provisions of that act are in 2.

2. Service not in the course of the employing unit's trade or business, performed in any calendar quarter by an employee is excluded employment unless the cash remuneration earned for the service is $50 or more, and the service is performed by an

individual who is regularly employed by the employing unit. For the purpose of this paragraph, an individual shall be deemed to be regularly employed if for some portion of each of 24 days or more, whether or not consecutive, during the current or preceding quarter the individual performs service that is not in the course of the employing unit's trade or business. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, or other goods or commodities, is disregarded in determining if the cash remuneration test is met. Casual labor not in the course of the employing unit's trade or business includes service that does not promote or advance the trade or business of the employing unit; for example, work performed in connection with the employing unit's hobby or recreational activities, or work as an employee in repairing the employing unit's private home. Service for a corporation cannot be considered as nonbusiness or casual labor.

K. Localized employment.

1. If an employee works in more than one state, it is necessary to determine if the employment is localized in, and reportable to Minnesota. In making this determination, only the regular services for which the employee was hired, and not those characterized as incidental, temporary, transitory or an isolated transaction are to be considered. An employee's services are considered localized in Minnesota in any calendar quarter in which 80 percent or more of his regular services are performed in Minnesota.

2. Regular services include those services performed in an office located in the home of the employee if all of the following conditions are met:

a. The employer does not provide other facilities;

b. The office meets the requirements of the Internal Revenue Code of 1954 for the deduction of related expenses; and

c. The services performed are an integral part of the employee's regular duties.

3. Incidental, temporary, transitory and isolated services include:

a. Attending periodic meetings or returning to one's residence which is located outside his area or territory, by salespersons or others who normally perform services within a given area or territory; and

b. Any other services which are apart from or not a permanent part of an employee's regular duties.

L. Multi-state employment. When an individual's services are not localized, and absent any reciprocal agreement provided for in Minn. Stat. § 268.13, subd. 1, clause (1), the employee is a "multi-state" worker and the application of the tests listed in 1.-4. below is required.

1. Base of operations. If an individual's services are not localized in any state and some services, other than those determined to be incidental, temporary, transitory or isolated transactions, are performed in Minnesota and the base of operations is in Minnesota, the employee's entire services are reportable to Minnesota. "Base of operations" means the place, usually permanent in nature, from which the employee starts his work, to which he customarily returns, and to which the employer may direct instructions to the employee. A branch office of the employer or the place of residence of the employee could be a base of operations.

2. Direction and control. If an individual's services are not localized in any state and the base of operations test does not apply, all of the services are reportable to Minnesota if Minnesota is the state from which the employer exercises general direction and control over the employee, and if some services, other than those determined to be incidental, temporary, transitory or isolated services, are performed in Minnesota.

3. Residence. If an individual's services are not localized within any state and the base of operations and the direction and control tests do not apply, the individual's entire services are reportable to Minnesota if the individual's residence is located in Minnesota and some services, other than those determined to be incidental, temporary, transitory, or isolated transactions are performed in Minnesota.

4. Service not covered under the laws of any other state or Canada. If 1.-3. do not apply, and the individual's services are not covered under the laws of any other state or Canada, the services are covered under Minn. Stat. §§ 268.03-268.24 if the services are directed and controlled from Minnesota.

M. Employment partially exempt within a pay period; 50 percent rule.

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1. Minn. Stat. § 268.04, subd. 12, clause (15)(p) does not apply to an individual who performs services as an independent contractor and in employment within the same pay period, but does apply to all employment defined in Minn. Stat. § 268.04, subd. 12, except clauses (10)(a) and (b), relating to certain employees of religious organizations.

2. If an individual's services within the pay period consist of 50 percent or more of excluded employment none of that individual's services for that pay period are taken into account nor does any of that individual's remuneration for that pay period constitute wages.

3. Although not applicable to services by an individual referred to in Minn. Stat. § 268.04, subd. 12, clauses (10)(1) and (b), other services performed by the same individual are subject to all other provisions of Minn. Stat. §§ 268.03-268.24.

N. Previously excluded employment. If within a calendar year an individual's services and remuneration should no longer be excluded because his employing unit met the employment or wage requirement for that individual's class of workers all of the previously excluded employment for that class within the same calendar year is subject to the provisions of Minn. Stat. §§ 268.03-268.24. The previously excluded wages for all workers in that class of employment are reportable in the calendar quarters in which the wages were paid or were due and payable.

O. Employment, general exclusions. Minn. Stat. § 268.04, subd. 12, clause (10)(d) excludes services which are performed as part of a program designed to relieve unemployment, if the specific program, and not just the employing unit, is assisted or financed by any federal agency or an agency of a state or political subdivision thereof. "Assistance" may be in the form of supervision, advice in organizing and operating the program, but it must be substantial and continuing. Occasional, intermittent or incidental services would not be sufficient to invoke the exclusion. Where other than incidental physical facilities or material are furnished the program by a federal agency, the state or any of its political subdivisions, the program has been "assisted or financed".

8 MCAR § 4.3103 Agricultural labor.

A. Purpose. This rule further defines and clarifies terms used in Minn. Stat. § 268.04, subd. 12, clause (15)(a) and in this rule.

B. Definitions.

1. Agricultural and horticultural commodity. "Agricultural or horticultural commodity" includes nuts, fruits, mushrooms, vegetables, honey and grain, flowers, cut flowers, trees, sod and shrubbery, animal feed or bedding, grass seed, vegetable and cereal seed, flax, soy beans, sunflower seeds, corn, medicinal herbs and other crops.

2. Commodity. "Commodity" refers to a single product. For example, all apples are one commodity. Apples and peaches are two separate commodities.

3. Crop purchase agreement. "Crop purchase agreement" means an agreement whereby a crop is raised under contract with a buyer.

4. Cultivating. "Cultivating" means cultivating of the soil, irrigating crops, spraying, dusting and other related operations.

5. Farm. "Farm," unless otherwise excluded in this rule, means land or buildings if their primary use is for raising agricultural or horticultural commodities or for activities generally associated with the operation of a ranch, range, livestock or dairy operation. A farm need not be a specific size and it need not be composed of contiguous plots. The performance of agricultural services does not by itself render the place where they are performed a farm.

6. Fur-bearing animals. "Fur-bearing animals" are animals raised for the eventual use of their fur in the manufacture of clothing or other products.

7. Harvesting. "Harvesting" includes baling hay and straw, shredding fodder, combining small grains, hulling nuts, and course grinding of alfalfa. Horticultural commodities including flowers, trees, shrubbery and plants are harvested when they are taken up for sale or storage.

8. Livestock. "Livestock" is any useful domestic animal kept for use on a farm or raised for sale and profit or for eventual consumption.

9. Poultry. "Poultry" is any domestic fowl raised for meat or eggs and includes chickens, turkeys, ducks and geese.

10. Primary. "Primary" means 70 percent or more.

11. Raising. "Raising" as it pertains to livestock, bees, poultry, fur-bearing animals and wildlife means any or all stages of development, including breeding, which are necessary in their maturing for use on the farm or for sale. Raising does not include services in potting, watering, heeling, or otherwise caring for trees, shrubbery, plants, flowers or similar items that are purchased in saleable condition for the purpose of resale.

12. Terminal market. A "terminal market" includes a packing or processing plant or any place where a farmer-producer customarily relinquishes his economic interest in the commodity, its future form or its destiny.

13. Wildlife. "Wildlife" refers to frogs, birds, fish and all animals belonging to a species or class generally considered wild regardless of the element which they inhabit.

C. Farms, exclusions.

1. Feedlots, hatcheries and horse breeding and training. Feedlots, hatcheries and horse training and breeding enterprises are not in themselves farms although they require services generally considered to be agricultural labor.

2. Wildland. Property left in its wild state with no effort expended to perform common farming operations is not a farm.

D. Farms, inclusions.

1. Wild rice. Land developed for seeding, cultivating and raising wild rice is a farm.

2. Christmas trees. A plot of land used primarily for raising Christmas trees is a farm.

3. Mushrooms. Land and structures used primarily for raising mushrooms is a farm.

4. Wildlife. A parcel of real property used for raising any form of wildlife is a farm.

5. Ranges. Land used primarily for grazing is a farm.

E. Crop purchase agreements, farms, agricultural labor.

1. Farm operator. A person agreeing to purchase a commodity grown under a crop purchase agreement does not by that reason qualify as an operator of a farm even though he conducts some or all of the operations necessary for the production and harvesting of the crops purchased.

2. Agricultural labor. Services performed on a farm in the employ of either party to a crop purchase agreement in connection with the raising and harvesting of crops is agricultural labor.

F. Agricultural labor on farms. Services connected with the following activities must be performed on a farm as defined in Minn. Stat. § 268.04, subd. 12, clause (15)(a)(5) and in this rule, to be agricultural labor:

1. Breeding and training horses;

2. Hatching poultry;

3. Aerial seeding, fertilizing, spraying and dusting including services related to the mixing of the spray or dust material or the loading of the material into the airplane, as well as services related to the measuring of the swaths and the marking and flagging of fields to be dusted or sprayed;

4. Clerical, bookkeeping and other office work in conjunction with the services referred to in Minn. Stat. § 268.04, subd. 12, clause (15)(a)(1); or

5. Holding, feeding and fattening livestock in feed lots.

G. Agricultural labor, specific cases.

1. Generally. The services described in 2.-5. are not agricultural labor unless they meet the specific requirements set forth in 2.-5. with regard to where and for whom they are performed. When reference is made to "incidental to ordinary farming operations", that means services of the character ordinarily performed by employees of a farmer or of a farmer's cooperative organization or group as a prerequisite to marketing in its unmanufactured state any agricultural or horticultural commodity produced by the farmer, organization or group.

2. Clerical work. Record keeping and other clerical or office work performed in connection with the functions described in Minn. Stat. § 268.04, subd. 12, clauses (15)(a)(2) and (4) unless they are:

a. Performed in the employ of the owner or tenant or other operator of a farm;

b. Rendered in major part on a farm; and

c. Performed incidentally to ordinary farming operations.

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3. Commodity retailing. Retailing agricultural or horticultural commodities, on or off the farm, unless:

a. The services are performed for, and the commodities are produced by the operator of the farm; and

b. Less than 50 percent of the employee's time is devoted to the services. The 50 percent test is to be applied to each employee with respect to either a pay period or 31 days, whichever is less.

4. Waterways work. Services in the construction of canals, reservoirs, waterways or drainage ditches, unless in the employ of the owner or tenant or other operator of a farm.

5. Land clearance. Services in the clearing of stumps, brush and debris from land in preparation for its use as a farm, unless in the employ of the owner tenant or other operator of the farm.

H. Agricultural labor exclusions.

1. Generally. Services connected with the following activities do not constitute agricultural labor:

a. Breeding, raising and caring for mice, rats and other rodents and creatures commonly held for sale in pet shops or raised for research and experimental purposes;

b. Breeding, raising, caring for, exhibiting and boarding dogs and cats;

c. Racing, exhibiting and boarding horses, including services connected with a riding stable or academy;

d. Lumbering or landscaping;

e. Collecting and processing maple sap into maple syrup or sugar;

f. Trapping animals;

g. Harvesting native wild rice not grown on land developed specifically for that purpose; or

h. Raising and harvesting worms.

2. Packing plants. Services performed in the employ of any person other than the operator of a farm in hauling crops to a packing plant and services within the plant do not constitute agricultural labor.

I. Agricultural labor, separate commodities. The services with respect to each commodity are to be considered separately in determining whether the conditions set forth in Minn. Stat. § 268.04, subd. 12, clause (15)(a)(4) have been satisfied.

8 MCAR § 4.3104 Domestic service.

A. Purpose. This rule further defines and clarifies terms used in Minn. Stat. § 268.04, subd. 12, clause (14) and in this rule.

B. Definitions.

1. Domestic service. "Domestic service" means work ordinarily performed as an integral part of household duties that contribute to the maintenance of the employer's private home or administers to the personal wants and comforts of the employer and other members of the employer's household. In general domestic service includes work performed by cooks, waiters, waitresses, butlers, housekeepers, housemen, watchmen, governesses, maids, companions, nursemaids, valets, baby sitters, laundresses, furnace men, caretakers, gardeners, footmen, grooms, seamstresses, handymen and chauffeurs of family automobiles. Domestic service performed for fraternities and sororities also include services performed by housemothers.

2. Local college club. "Local college club" means a club operated and controlled by and for the benefit of students enrolled at a university or college.

3. Private home. "Private home" means the fixed abode of one or more persons. Any shelter used as a dwelling may be considered as a private home including a tent, boat, trailer, or a room or suite in a hospital, hotel, sanatorium, or nursing home. A cooperative boarding and lodging facility may also be a private home. In an apartment house, each apartment, together with its stairways, halls, and porches is a private home. Parts of the premises devoted to common use, such as an office, furnace room, lawns, public stairways, halls and porches, are not a part of the private home. If a facility is used mainly as a commercial rooming or boarding house only that part of the house which is used as the operator's living quarters is considered to be a private home.

C. Domestic service, general.

1. Non-domestic service, treatment. If service performed by an employee in or around the private home of an employing unit is not domestic service within the meaning of this rule, it is subject to the other provisions of Minn. Stat. § 268.04, subd. 12.

2. Maintenance of the employer's private home. Domestic service in connection with the maintenance of an employer's private home is service which contributes directly to the protection, cleaning and normal maintenance, in contrast to major repair projects, of the home and surrounding area. It does not include service which is not ordinarily a part of home duties or which involves the use of skilled or specialized training including service performed by persons in the construction trades.

3. Administering to the personal wants and comforts of the employer. Certain services, although performed in or around the private home of the employer are not domestic services because they are too remotely associated with the requirement that they administer to the personal wants and comforts of the employer. Examples of non-domestic services include those performed by a private or social secretary, tutor, librarian, bookbinder, museum assistant and medical nurse.

4. Domestic service performed by relatives. Domestic service performed by relatives, other than that excluded from employment by Minn. Stat. § 268.04, subd. 12, clause (15)(d), is domestic service within this rule if there is a contractual agreement between a relative and the employing unit.

5. Service performed by employees of landlords or rental agencies. Service of a household nature performed in or around rental units by employees of landlords and rental agencies is not domestic service. Service performed by domestic workers in and around the private home of the landlord is not within this exception.

6. Workers obtained through a referral or placement agency. Domestic workers referred to jobs through employment placement agencies that neither supervise nor pay them directly are in the employ of the recipient of the services. However, if an agency is in the business of providing temporary services to clients the agency is the employing unit and the workers are not providing domestic services.

7. Service performed for a minister, priest, rabbi or any other member of a religious order. Service performed in the private home of a minister, priest, rabbi or any member of a religious order is considered domestic service if the worker is in the employ of the recipient of the service. If the worker is in the employ of the church or religious order the service is excluded employment. The recipient of the service is the employer if the funds for the payment of the domestic worker are not specifically provided by the church or religious order. Funds provided by a congregation of a church are considered as being provided by the church. If funds are not provided by the church specifically for domestic service and the spouse hires, directs and otherwise controls the worker, the spouse is the employer.

8. Registered and licensed practical nurses. Registered nurses performing private duty services are generally performing service as independent contractors if they have full discretion in administering their professional services and are not subject to direction and control. Registered and licensed practical nurses who are engaged by hospitals, nursing homes, physicians, government agencies or commercial businesses generally are not performing services as an independent contractor and the services are non-domestic.

9. Nurses aides and patient helpers. Nurses aides and patient helpers who are engaged to perform services in the private home of the patient, although they may occasionally administer medication, are usually performing services that are primarily domestic in nature. Patient helpers who are selected by patients who require their services, either in the hospital or after returning to their homes, are generally in the employ of the patient.

10. Service authorized or provided by agencies. Any agency providing or authorizing the hiring of homeworkers or personal care attendants in the private home of an individual is the employer of those individuals performing the services and the services are not considered domestic if the recipient would not receive the care unless provided or funded for by the agency. It is immaterial whether the agency pays the homeworker or attendant directly or if the agency provides the funds to the recipient.

D. Location of domestic service.

1. Domestic service is service which is performed only in a private home of the employer, local college club, or local chapter of a college fraternity or sorority.

2. A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter or university faculty club.

8 MCAR § 4.3105 Employer records, reports and payments.

A. Scope. This rule clarifies an employer's duty with regard to records, reports and payments as required under Minn. Stat. §§ 268.06, subd. 1; 268.11, subds. 2 and 3; and 268.12, subd. 8.

B. Notification.

1. Change or transfer of business. The department shall be notified on reports prescribed by the department within 30 days of the start, change, transfer, sale, acquisition or termination of a business in whole or in part. Subsequent requests for

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additional information required in determining liability, modifying an existing account and assignment of experience rates must be completed and returned to the department within time limits established by the department.

2. Employer death. The executor, administrator or other legal representative of a deceased employer shall be responsible for notifying the department of the employer's death as soon as possible.

3. Bankruptcy. In the case of bankruptcy or receivership proceedings, or any proceedings for the relief of a debtor who is an employer, the trustee in bankruptcy, receiver, or person designated by order of the court as in control of the assets of the debtor shall promptly file notice of that with the department.

C. Records. Each employing unit shall establish, maintain and preserve records with respect to individuals performing personal services for it for a period of not less than five years after the calendar year in which the remuneration for the services was paid or payable. The records shall show for each individual the following:

1. Name;

2. Social security number;

3. Days in which the individual performed personal services;

4. Location where services were performed;

5. Wages paid and wages due but not paid for personal services, showing separately:

a. Money wages, excluding special payments;

b. Wages paid and wages due but not paid, in any medium other than money, excluding special payments;

c. Special payments such as bonuses, gifts, and prizes, showing separately money payments, other special payments and character of the payments;

d. Days for which sick pay was paid; and

e. Tips and gratuities paid to an employee by a customer and accounted for by the employee to the employer as defined in 8 MCAR § 4.3101 E.1. and 2.

6. Rate and base unit of pay;

7. Amounts paid as allowances or reimbursement for travel or other activity pertaining to the furtherance of the employing unit's business which were not included as wages. The account shall show each item of expense incurred during each pay period or calendar month, or if paid per diem, the dates the employee was away from home overnight;

8. The date of separation and the reason, in detail, for the termination;

9. The complete resident address of the employee; and

10. For each pay period:

a. The beginning and ending dates of the period;

b. The total amount of wages paid and wages due but not paid for personal services performed; and

c. The date of payment.

D. Records, instate and outstate. For services performed within and without Minnesota the records required by C. shall include:

1. The city or county and state in which the employing unit maintains a base of operations, as defined in 8 MCAR § 4.3102 L.1., used by the individual;

2. The city or county and state from which the services are directed and controlled, if the employing unit does not have a base of operations in the states in which an individual performs services; and

3. A list of the states in which the individual performs other than temporary or incidental services and the dates services were performed at each location.

E. Records, covered and uncovered employment. For services performed in both employment and excluded employment within a pay period the records required by C. shall include the hours spent performing services in employment and the hours spent performing excluded services.

F. Filing reports. An employer's tax report must be filed on a form prescribed by the department not later than the due date for payment of quarterly contributions. Failure to receive forms from the department shall not constitute a valid reason for not filing reports on or before the due date thereof or to pay any contribution due. Consolidated reports of corporations having common ownership shall be recognized or permitted only if expressly allowed under 8 MCAR § 4.3106. If the report first

submitted is erroneous, the employer shall promptly submit the corrected information on forms prescribed by the department and make any additional payment due.

8 MCAR § 4.3106 Consolidated reports.

A. When permitted. Consolidated reports of parent and subsidiary corporations, or other employing units having common ownership, shall be recognized or permitted only in the case of two or more related corporations:

1. Who concurrently employ the same individuals, including officers, whose wages during the calendar quarter are paid by one of the related corporations as a common paymaster; and

2. Whose application for a joint account has been approved by the commissioner or his delegated representative.

B. Related corporations tests. For the purpose of this rule and Minn. Stat. § 268.06, subd. 21, clause (2), corporations are related for an entire calendar quarter if they satisfy one of the following four tests of 1.-4., at any time during that calendar quarter.

1. Test one. They are either:

a. Members of a parent-subsidiary controlled group which is a group of two or more corporations connected through stock ownership with a common parent corporation if more than 50 percent of the total combined voting power or more than 50 percent of the total value of shares of all classes of stock of each corporation, except the common parent corporation, is owned by one or more of the corporations and the common parent corporation owns stock with more than 50 percent of the total combined voting power of at least one of the other corporations. There shall be excluded in computing the percentage of voting power or value, any treasury stock owned by the subsidiary corporation;

b. Members of a brother-sister controlled group consisting of two or more corporations in each of which five or fewer of the same individuals, estates or trusts own stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of all shares of all classifications of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

c. Members of a combined group, which is a group of three or more corporations each of which is a member of a parent-subsidiary or brother-sister controlled group and one of which is a common parent corporation included in a parent-subsidiary controlled group and is included in a brother-sister controlled group; or

d. Life insurance companies subject to income tax under Section 802 of the Internal Revenue Code and the provisions of a., b. or c. are met and all other members of the controlled group are subject to Section 802 of the Internal Revenue Code.

2. Test two. They are a corporation that does not issue stock and 50 percent or more of the board of directors, or other governing body, of each of the corporations are the same, or the same holders possess 50 percent or more of the voting power to elect directors to each corporation.

3. Test three. Fifty percent or more of one corporation's officers are concurrently officers of the other corporation.

4. Test four. Thirty percent or more of one corporation's employees are concurrently employees of the other corporation.

C. Stock defined. For the purpose of this rule "stock" does not include:

1. Non-voting stock which is limited and preferred as to dividends;

2. Treasury stock; or

3. Stock that is treated as excluded stock.

D. Excluded stock, parent-subsidiary. "Excluded stock" for a parent-subsidiary controlled group means:

1. Stock in a subsidiary held in trust that is part of an employee's deferred compensation plan;

2. Stock in a subsidiary owned by an individual who is a principal stockholder or an officer of the parent corporation. A "principal stockholder" is one that owns five percent or more of the voting power or five percent or more of the value of all stock of the parent corporation; or

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3. Stock in a subsidiary corporation owned by an employee of the subsidiary corporation but only if the parent or subsidiary corporation restricts or limits the employee's right to dispose of the stock.

E. Excluded stock, brother-sister group. "Excluded stock" for a brother-sister controlled group means:

1. Stock in a member corporation held by an employee's trust if the trust is for the benefit of the employees;

2. Stock in a member corporation owned by an employee of the corporation but only if substantial limits or restrictions are imposed on the employee's right to dispose of the stock. A bona fide reciprocal stock repurchase arrangement will not be considered as one that restricts or limits the employee's right to dispose of the stock; or

3. Stock in a member corporation that is held by a nonprofit educational or charitable organization.

F. Limits on groups. A corporation may be treated as a component member of only one controlled group.

G. Concurrent employment. "Concurrent employment" as used in Minn. Stat. § 268.06, subd. 21 and this rule means the simultaneous existence of an "employment" relationship between an individual and two or more related corporations, as defined in Minn. Stat. § 268.04, subd. 12.

An employment relationship shall require the performance of services by the employee for the employing corporation in exchange for wages which, if not for the provisions of Minn. Stat. § 268.06, subd. 21, clause (2) and this rule, would be reportable by the employing corporation.

The fact that a particular employee is on leave or otherwise temporarily inactive is immaterial in the determination of concurrent employment. Employment is not concurrent with respect to one of the related corporations if there is no employment relationship with that corporation during periods when the employee is not performing services for that corporation.

An individual who does not perform substantial services in exchange for wages for a corporation is presumed not employed by that corporation.

Wages paid to an employee ceasing to be concurrent for services rendered while the employee was in concurrent employment is reportable by the common paymaster. If the employment relationship is nonexistent during a quarter, that employee may not be counted towards the 30 percent test set forth in B.4.

H. Cash payments only. This rule applies only to wages disbursed in money, check or similar instrument by one of the related corporations or its agent, and excludes the value of non-cash compensation such as room and board, received by the common employee from a member corporation other than the common paymaster.

I. Common paymaster.

1. A "common paymaster" of related corporations is any related member that disburses wages to employees of two or more of the related corporations on their behalf and that is responsible for keeping books and records for the payroll with respect to those employees.

2. The common paymaster is not required to disburse wages to all employees of two or more related corporations, but this rule does not apply to any wages that are not disbursed through a common paymaster.

3. Although a corporation may be treated as a component member of only one controlled group, the related corporations may designate more than one common paymaster but only one common paymaster may be designated for each class of employee.

J. Joint account. A joint account application shall be on forms prescribed by the department. A joint account shall be maintained as a separate unit of the employer account of the common paymaster until that account is terminated or notification is received of a change in the common paymaster. A joint account cannot be made retroactive prior to January 1 of the year preceding the year in which the application is received.

K. Joint and several liability. The common paymaster has the primary responsibility for the remittance of any contributions, penalties and interest due on wages it disburses as the common paymaster but each related corporation using the common paymaster is jointly and severely liable for its proportionate share of any unpaid contributions, penalties and interest.

L. Common paymaster responsibilities. The common paymaster has the sole responsibility for filing contribution reports, wage and separation information and protest and appeals pertaining to concurrent employees and to establish effective communications between the related corporations to ensure timely response on all matters affecting claims for unemployment benefits.

M. Reports. Each related corporation which is the employer of an individual will be responsible for reporting the individual's wages and remitting the appropriate contributions for calendar quarters where the related group or concurrent employment conditions are not met, regardless of which corporation disburses the wages.

N. Work other than for common paymaster. If an employee works for a related corporation other than the common paymaster prior or subsequent to the effective period of the agreement, the wages earned and reportable by the employing corporation shall not be combined with the wages reportable by the common paymaster in determining the maximum taxable wage described in Minn. Stat. § 268.04, subd. 25.

O. Non-related or noncurrent. Where related group or concurrent employment conditions are not met, each employing corporation of an individual shall be responsible for submitting wage and separation information, protests and appeals pertaining to any claim for unemployment benefits of that individual.

P. Wages, wage credits and experience rate factors of a joint account. All wages reportable and benefits charged under the joint account shall remain with that account for contribution, benefit eligibility and experience rating purposes.

Q. Relation cessation. If any corporation ceases to be related the common paymaster shall notify the department within 30 days of the end of the calendar quarter in which the cessation occurs.

R. Termination of agreement. The commissioner may immediately terminate the agreement if it is found that consolidated reporting is not in compliance with this rule, or it is determined that the approved related group changed its common paymaster for the purpose of attaining more favorable experience rates.

S. Written protest. If an application to report under the provisions of Minn. Stat. § 268.06, subd. 21, clause (2) and this rule is denied, or an existing agreement is terminated at the discretion of the commissioner, the denial or termination shall be final unless a written protest is filed with the commissioner as set forth in Minn. Stat. § 268.06, subd. 20.

8 MCAR § 4.3107 Payments of interest.

A. Scope. This rule establishes the conditions upon which interest on contributions due may be waived as provided for in Minn. Stat. § 268.16, subd.1.

B. Waiver. The commissioner may waive all or part of the interest charges on contributions that are not paid by the due date if:

1. The late payment was caused by department error or misinformation; or
2. The late payment was the result of unreasonable delay not attributable to the employer.

C. Application. Each application for waiver of interest under this rule must be made in writing by the employer or his authorized representative, except that the commissioner may on his own motion waive interest if in the best interest of the State of Minnesota.

8 MCAR § 4.3108 Contribution rates.

A. Notice of rate. Any employer determined liable by the department prior to January 1 shall be assigned a contribution rate pursuant to Minn. Stat. § 268.06 which shall be mailed on or before March 15 of the year effective.

B. Time limit on voluntary contributions. In no event shall a voluntary contribution paid by an employer pursuant to Minn. Stat. § 268.06, subd. 24 after the expiration of the first 120 days for the period the rate is effective be used in the computation of a new experience ratio.

Repealer. Department of Economic Security rules ES-1, ES-2, ES-3, ES-4, ES-5, ES-6, ES-8, ES-9, ES-10, ES-11, ES-12, ES-17, ES-19, ES-20, ES-27, and ES-28 are repealed.

Minnesota Energy Agency
Alternative Energy Development Division

Proposed Rules Relating to District Heating Preliminary Planning Grants

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Energy Agency ("agency") intends to adopt the above-entitled rules without a public hearing. The director of the agency has determined that the adoption of the rules will not be controversial and has elected to follow the procedures set out in Minn. Stat. § 15.0412, subd. 4h.

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The 1981 Legislature appropriated $300,000 for district heating preliminary planning grants to municipalities for planning related to the development of district heating systems. Laws of 1981, ch. 356, § 30. Grant requests must be submitted to the agency for analysis and for further consideration by the legislative advisory commission, which will recommend certain projects for approval by the governor. The proposed rules set out the contents of grant requests, the ranking criteria, the evaluation process and the terms of the agreement successful applicants must enter into with the state. Two notices of intent to solicit opinions concerning the subject matter of the proposed rules were published earlier at 6 S.R. 26-27 (July 6, 1981) and 6 S.R. 174-76 (August 10, 1981). Copies of the proposed rules may be obtained by writing or calling Mr. Sundberg at the address or telephone number given below.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed rules to submit comments in writing on the proposed rules and to object to the lack of public hearing on the proposed rules. Your written comments or request for hearings should be submitted to the Minnesota Energy Agency c/o Ronald Sundberg, 980 American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota 55101. Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, no public hearing will be held. If seven or more persons request hearings on the proposed rules, the agency will order public hearings in accordance with Minn. Stat. § 15.0412, subds. 4-4f. The agency may modify the proposed rules if modification is supported by the data and views submitted in written comments and if no substantial change results from the modification.

If no hearing is required, and the agency decides to adopt the rules as proposed, or as modified if written comments justify modification, the agency will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the rules as proposed, the rules as adopted, the order adopting the rules, any written comments received by the agency, the agency's statement of need and reasonableness supporting adoption of the rules, and any written comments received by the agency in response to the earlier notices seeking outside opinions. Any person may request notification of the date the agency makes the submission to the Attorney General. If you desire to be so notified, you must inform the agency in writing during the 30-day comment period.

The agency has prepared a statement of need and reasonableness in support of the proposed rules which is also available from the agency by writing to the address indicated above or calling (612) 296-9096.

The agency's authority to promulgate the proposed rules can be found in Minn. Stat. § 116H.08(a) and Laws of 1981, ch. 356, § 30.

Please be advised that Minnesota Statutes, chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. 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.

Dated: September 14, 1981.

Mark Mason
Director

Rules as Proposed (all new material)

6 MCAR § 2.4001 Authority and purpose.

A. Authority. Rules 6 MCAR §§ 2.4001-2.4007 implementing the district heating preliminary planning grants program are promulgated by the agency pursuant to Laws of 1981, ch. 356, § 30.

B. Purpose. The objective of the district heating preliminary planning grant program is to encourage the development and expansion of economically viable district heating systems which have the potential to save energy and displace scarce fuels such as oil and natural gas. The program shall encourage: construction of new hot water district heating systems; reconstruction or major expansion of existing steam district heating systems; and expansion of district heating systems by development of satellite systems or heat islands which could be connected to an existing or proposed major central heating system later.

6 MCAR § 2.4002 Definitions. For the purpose of 6 MCAR §§ 2.4001-2.4007 the words or terms defined in this rule have the meanings given them.

A. Agency. "Agency" means the Minnesota Energy Agency.

B. Applicant. "Applicant" means a municipality as defined in F. as well as any organization submitting a joint application with the municipality. No application shall be accepted unless submitted by a municipality as sponsor or co-sponsor.

C. Community heatload survey and map. "Community heatload survey and map" means a description of the district heating market including location of heat source, location, type and age of heating systems of potential nonresidential customers, annual energy consumption and temperature requirements and approximate load duration for process heat customers.

D. Director. "Director" means the director of the Minnesota Energy Agency.

E. Major central system. "Major central system" is one that does not rely on oil or natural gas.

F. Municipality. For purposes of applying for grants under this program, "municipality" means a city however organized.

G. Project. "Project" means the preliminary planning project.

H. Satellite or heat island. A "satellite or heat island" system relies on oil, natural gas or the combustion of waste material and is a heating system which in the future would become a part of a major central system.

6 MCAR § 2.4003 Preliminary planning grant program.

A. Application schedule. The agency shall accept grant applications on two-month intervals after the effective date of 6 MCAR §§ 2.4001-2.4007. Applications received shall be ranked, and the director shall recommend ranked applications which meet all the criteria to the legislative advisory committee for approval and funding. No municipality shall be awarded more than two grants out of the same appropriation.

B. Review process. Applications shall be reviewed and ranked by the agency. The director shall prepare and submit to the legislative advisory committee a list of all district heating grant requests. The list shall contain the necessary supporting information. The recommendations of the legislative advisory committee shall be transmitted to the Governor. The Governor shall approve, disapprove, or return for further consideration each project recommended for approval by the legislative advisory committee. Upon approval by the Governor, a grant agreement shall be negotiated with the agency in accordance with 6 MCAR § 2.4006. Comments on applications not selected for grant awards shall be forwarded to the applicant. Applications not funded shall be included in the next funding round unless withdrawn. Applicants may modify or supplement their proposals for the next funding interval if desired.

6 MCAR § 2.4004 Contents of preliminary planning grant applications. Applications shall contain the information required by Laws of 1981, ch. 356, § 30, and at least the following information:

A. A community heatload survey and map. The survey shall contain a description of the heat source and an estimate of the district heating market.

1. If plans call for an existing heat source such as an electric generation plant or a coal-fired boiler, the application shall include at least a discussion of: type, size, age, fuel, present use and emission controls. If a new heat source is proposed to be used, the application shall include: fuel, estimated cost of fuel and fuel availability.

2. The estimate of the district heating market shall contain nonresidential building information including location, type and age of heating system, type of fuel and annual energy consumption and a description of process load including temperature requirements and load duration.

3. The map shall show the location of the heat source and major load concentrations.

B. Community benefit. Briefly discuss the impact of the district heating system on the community and how it would relate to community development plans.

C. Community commitment. Include written expressions of interest and commitment from major potential loads, owner of heat source, and the municipal governing body.

D. Project plan. The project plan shall include a list of tasks, time estimates for each task and a list of deliverables. It should also include rough estimates of time required in successive stages such as design and construction.

E. Project budget. Include an estimate of expenditures by categories such as personnel and travel and estimates of costs by project plan task.

F. Project organization chart and use of consultants. Assistance in preparing applications can be obtained from the agency.

6 MCAR § 2.4005 Ranking criteria. Applications will be ranked according to the following criteria, which are listed in order of importance:

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.

A. Estimated capital cost per million BTU of energy sold per year;

B. Benefit to the community;

C. Project plan;

D. Community commitment;

E. Thoroughness of community heatload survey;

F. Qualifications of project personnel;

G. Clarity and conciseness.

6 MCAR § 2.4006 Agreement. After approval by the Governor, the applicant shall enter into an agreement with the agency.

A. Contents. The agreement shall specify the grant amount and the duration of the grant. The agreement shall include assurance that the local share will be provided and that the agreed upon work program will be carried out. A grant agreement based upon a joint application must be executed by the lead applicant. Amendments and extensions may only be made in writing and must be signed by all parties.

B. Funding period. Planning grants will be approved for a period of up to one year.

C. Grant limitations. Planning grants shall not exceed 90 percent of eligible planning costs. No single grant shall exceed $20,000.

D. Disbursement schedule. Ninety percent of grant monies shall be disbursed at the outset upon receipt of invoice to the agency of project costs. The remaining ten percent shall be disbursed upon completion and receipt of a satisfactory final report.

E. Required reports. The grantee shall submit to the agency on the first of each month a report briefly stating the activities that have transpired during the month. The grantee shall provide the agency with three copies, one of which shall be a camera-ready copy, of the final preliminary planning report.

F. Records. The grantee shall maintain for a period of not less than three years from the date of the execution of the contract all records relating to the receipt and expenditures of grant monies.

G. Contract deviations. No grant funds shall be used to finance activities by consultants or local staff if the activities are not included in the grant contract, unless agreed upon in writing by the agency. Unless agreed upon by the agency, a municipality may not contract out all its energy-related activities to consultants.

6 MCAR § 2.4007 Evaluation.

A. Evaluation. The agency shall conduct an evaluation within 60 days of the submission by the grantee to the agency of the final report and all the required reports and financial documents. The evaluation shall assess:

1. Whether the local share contributed was equal to or greater than ten percent of the total cost of the preliminary planning project;

2. Whether the agreed-upon work program was complete;

3. Whether the governing body has formally reviewed the completed preliminary district heating plan.

B. Review. Upon completion of a satisfactory evaluation the remaining ten percent of the grant shall be disbursed to the grant recipient. If the results of the evaluation are unfavorable to the grantee and the grantee does not agree with the findings of the evaluation, the grantee may request a review by the director.

Minnesota Housing Finance Agency

Proposed Rules Amending Provisions Relating to Downpayments under the Homeownership Assistance Fund

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h(1980).

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 the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

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

Monte Aaker, Research Coordinator
Research Division
Minnesota Housing Finance Agency
Suite 200—Nalpak Building
333 Sibley Street
St. Paul, Minnesota 55101
Telephone (612) 296-9952

September 28, 1981

James J. Solem, Executive Director

Rule as Proposed

12 MCAR § 3.134 Homeownership assistance fund; downpayment assistance. The agency may provide interest-free downpayment assistance loans to eligible recipients who are determined, on the basis of normal credit procedures, to lack the cash or land equity necessary to pay the required downpayment, plus closing costs, expenses, and origination fees on the dwelling to be purchased. The amount of the downpayment assistance loan shall equal the amount by which the sum of the downpayment, closing costs, expenses, and origination fees exceeds five percent of the purchase price of the dwelling, but i<u>t</u>shall not exceed the lesser of 50 percent of the downpayment or ~~$1,000~~ <u>$1,500</u>.

Department of Labor and Industry Occupational Safety and Health Division

Proposed Revisions to the Occupational Safety and Health Standards

Request for Comment

Please take notice that Russell B. Swanson, Commissioner of the Department of Labor and Industry, has determined that the following revisions to the Occupational Safety and Health Codes shall be promulgated pursuant to Minn. Stat. § 182.655 (1980) establishing, modifying, or revoking Occupational Safety and Health Standards described below. These standards and revisions to existing standards have already been adopted by the Federal Occupational Safety and Health Administration.

Complete copies of the specific standards, changes, additions, deletions, and corrections are available by writing: Occupational Safety and Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101.

Interested persons are hereby afforded a period of 30 days to submit written data or comments on the rules proposed. Any interested person may file with the commissioner written objections to the proposed rules stating the grounds therefor; such person may request a public hearing on those objections.

Russell B. Swanson
Commissioner

Rules as Proposed

8 MCAR § 1.7001, which adopts Federal Occupational Safety and Health Standards by reference, is hereby changed by incorporating and adopting by reference the following additions made to Title 29 of the Code of Federal Regulations, Part 1910 "Occupational Safety and Health Standards for General Industry" as published in Part II, Volume 39, No. 125 of the Federal Register on October 24, 1978 and corrected on November 7, 1978:

KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. ~~Strike~~ ~~outs~~ indicate deletions from proposed rule language.

A. Subpart L "Fire Protection," as published in *Federal Register*, Volume 45, No. 179, on September 12, 1980.

This revision to Subpart L of 29 CFR Part 1910 replaces the previously adopted fire protection standards. New Subpart L is intended to minimize employee exposure to hazardous situations involving unwanted fires in workplaces and to provide for fire protection equipment and services for the safe evacuation or rescue of employees endangered by unwanted workplace fires. Three general areas are covered: portable fire protection equipment, fixed fire protection systems, and fire brigades.

Section 1910.156, "Fire Brigades," contains requirements for the organization, training, and personal protective equipment for fire brigades. This standard does not require an employer to establish a fire brigade; however, whenever fire brigades are established, the requirements of this section apply. Whether the fire brigade performs incipient stage firefighting or interior structural firefighting, the employer is required to prepare and maintain a written statement which establishes the existence of the fire brigade, describes functions the fire brigade is to perform, and describes the type, amount and frequency of training fire brigade members are to receive. Employers who have fire brigades are required to provide training to those employees commensurate with the functions the fire brigade is expected to perform.

Fire brigades expected to perform interior structural firefighting must be equipped with appropriate protective clothing. Section 1910.156 includes requirements for protection of feet, legs, body, hands, head, eyes and face. Protective clothing purchased after the effective date of this standard in Minnesota must meet the requirements of this section. All personal protective clothing in use after July 1, 1985 must meet these requirements.

In addition to protective clothing, this standard requires the use of respiratory protective devices by fire brigades expected to perform interior structural firefighting. Self-contained breathing apparatus purchased after the effective date of this standard in Minnesota must be of the positive-pressure type. After July 1, 1983, all self-contained breathing apparatus in use must be of the pressure-demand type.

Fire brigade members who are expected to perform interior structural firefighting must meet the physical capability requirements outlined in the standard. Employees assigned to fire brigades before the effective date of this standard in Minnesota must meet these requirements by September 15, 1990. Employees assigned to fire brigades after the effective date of this standard in Minnesota, must meet these requirements before being assigned to the fire brigade.

The requirements of this fire protection standard apply to all general industry locations; the standard does not apply to forest firefighting or airport "crash-rescue" type operations, nor does it apply to construction, agricultural or maritime industries. Because the Minnesota Occupational Safety and Health State Plan provides coverage for public as well as private industry employees, the requirements of Subpart L will apply to all public employees. Therefore, fire departments will be required to meet requirements of the fire brigade portion of this standard; i.e. training and education, personal protective clothing, and respiratory protection. For the purpose of enforcement of this standard, the Department of Labor and Industry will define "fire departments" as those organized, officially established fire departments that meet the requirements to qualify for state aid as described in Minn. Stat. § 69.001, subd. 4 (1980).

Also included in Subpart L are requirements for the design, installation, inspection and maintenance of standpipe equipment; the selection, distribution, maintenance, inspection and testing of portable fire extinguishers; minimum design and installation criteria for automatic sprinkler systems, general requirements for all fixed extinguishing systems as well as specific design and installation requirements for fixed extinguishing systems using dry chemical, gaseous agents, and water or foam solution as the extinguishing agents; and requirements for fire detection systems.

This standard is written as a "performance" rather than a "specification" standard allowing employers greater flexibility for compliance. A non-mandatory appendix, included as part of the standard, provides assistance to employers in meeting requirements.

B. Subpart E, "Means of Egress," as published in *Federal Register*, Volume 45, No. 179 on September 12, 1980.

Section 1910.38 has been added to Subpart E and describes employee emergency action plans and fire prevention plans. This standard does not require an employer to establish such plans; it only contains criteria to follow when such plans are required by other OSHA Standards.

Paragraph (a) describes minimum elements that should be part of an emergency action plan. An emergency action plan is a pre-emergency plan developed by an employer to organize employee and employer actions during an emergency in order to assure employee safety during fires or other emergencies. The emergency action plan must be in writing and must describe those actions each employee and the employer must take in an emergency. The plan must include methods of announcing an emergency, types of evacuation, emergency escape routes and procedures, rescue and medical duties of appropriate personnel, and training.

Paragraph (b) describes criteria for establishing and implementing fire prevention plans in workplaces. The fire prevention plan must also be in writing and should include descriptions or lists of major workplace fire hazards, potential ignition sources, proper storage and handling practices for hazardous materials, types of fire protection equipment and systems, housekeeping

procedures, names or titles of personnel responsible for fire protection systems and equipment, maintenance procedures for equipment and systems, and training.

Appropriate changes have been made to § 1910.35 to include definitions of an "emergency action plan" and "emergency escape route." Section 1910.37(n) has been revised to delete existing testing and maintenance requirements for alarm and fire protection systems; a cross-reference to new § 1910.165 of the fire protection standard has been substituted. An appendix has been included as part of Subpart E to aid employers in meeting the requirements of this section.

C. Subpart H, "Hazardous Materials" as published in *Federal Register*, Volume 45, No. 179, on September 12, 1980.

The changes in Subpart H, specifically to 1910.107, 1910.108 and 1910.109, are primarily editorial in nature and do not change the technical substance of the specific requirements. The changes eliminate the incorporation by reference of outdated national concensus standards and references appropriate sections of Subpart L.

D. Corrections made to Subparts E, H, and L of Part 1910 as published in *Federal Register*, Volume 46, No. 84, on May 1, 1981.

This document corrects inadvertent errors and omissions in the September 12, 1980 publication of 29 CFR Part 1910 Subparts E, H, and L as described above. These corrections are of typographical errors and errors in metric conversions.

SUPREME COURT

Decisions Filed Friday, September 18, 1981

Compiled by John McCarthy, Clerk

51803/Sp. Donald J. Kuchenmeister v. Illinois Farmers Insurance Company, Appellant. Washington County.

The trial court did not err in determining that the insurer failed to make the statutorily required offer of underinsured motorist coverage. See Minn. Stat. § 65B.49, subd. 6 (1978) (repealed 1980).

An insurer's failure to make the required offer of underinsured motorist coverage will result in that coverage being implied in law as included in the insured's policy.

Affirmed. Sheran, C. J.

51642/Sp. State of Minnesota v. Johnnie N. Walker, Appellant. Hennepin County.

Evidence on the issue of identification was sufficient, and trial court did not prejudicially err in evidentiary rulings on identification evidence, other-crime evidence, or the use of prior convictions for impeachment purposes.

Affirmed. Otis, J.

52078/Sp. Aetna Life & Casualty, Casualty & Surety Division, Appellant, v. Edward Clifford Anderson. Hennepin County.

Where an employee settles with the third party tortfeasor without the consent of employer's workers' compensation insurer, insurer may credit a portion of the settlement to the workers' compensation liability and, in addition, bring an action against the third party for the amount of liability in excess of the credit.

Reversed and remanded with instructions. Otis, J.

51040/Sp. State of Minnesota v. Robert Keith Johnson, Appellant. Carver County.

Evidence was sufficient to support a second-degree conviction and trial court did not prejudicially err (a) in allowing a juror to remain on the jury after she staed that she had seen a truck similar to defendant's truck in her driveway after the trial started or (b) in refusing to give a requested instruction as part of its instructions on self-defense.

Affirmed. Peterson, J.

51645/Sp. State of Minnesota v. Helen L. Hinkle, Appellant. Hennepin County.

Evidence of defendant's guilt of aggravated robbery was sufficient, and trial court did not prejudicially err in evidentiary rulings or in instructions to the jury.

Affirmed. Peterson, J.

51638/Sp. Red Owl Stores, Inc., petitioner, v. Commissioner of Agriculture, Appellant. Hennepin County.

The provision of the Dairy Unfair Trade Practices Act prohibiting sales below cost, Minn. Stat. § 32A.04, subd. 1(o) (1978), which incorporates by reference the definition of cost set forth in Minn. Stat. § 325.01, subd. 5 (1978), does not violate due process, and the commissioner's determination that sales were made of certain dairy products below cost for the purpose or with the effect of injuring a competitor or destroying competition is sustained.

Reversed. Peterson, J.

51548/23 Donald E. Bolin, *et al.*, Appellants, v. State of Minnesota, Department of Public Safety and Commissioner of Personnel. Ramsey County.

Where a restriction on a first amendment right is involved, the least restrictive means available to achieve the governmental purpose served by the restriction must be adopted.

Reversed. Amdahl, J. Dissenting, Simonett, J., Sheran, C. J., Otis, J., and Peterson, J.

50992 In Re the Marriage of: Harry Rydell, petitioner, v. Marjorie E. Rydell, Appellant. Ramsey County.

An award of spousal maintenance in a separation decree does not preclude the court in a subsequent marriage dissolution proceeding from modifying the award where there has been a material change in circumstances, consisting of a substantially increased need, in the interval.

Reversed and remanded. Simonett, J.

51348 Carrie L. Tlougan, an infant, by Michael D. Klampe, her guardian ad litem, v. Auto-Owners Insurance Company, Appellant. Olmsted County.

Injury to a child playing with matches in the cab of a pickup truck did not arise out of the maintenance or use of a motor vehicle under Minnesota's no-fault auto insurance statute.

Reversed. Simonett, J.

51380 Joseph E. Romain, *et al.*, Appellants, v. Pebble Creek Partners, *et al.*, The Griffin Companies, Inc., Raymond F. Vavrosky Realty. Hennepin County.

This earnest money purchase agreement is not subject to the cancellation notice requirement of Minn. Stat. § 559.21 (1978) where the parties provided the contract would end if they did not reach agreement on an essential term of the contract by a certain time.

The awarding of deposition expense to the prevailing party lies within the sound discretion of the trial judge.

Affirmed. Simonett, J.

51861 Richard Forcier, individually and as trustee for the heirs of Elvern Forcier and Dolly Forcier, and the Special Administrator for the Estates of Elvern Forcier and Dolly J. Forcier, *et al.*, v. State Farm Mutual Automobile Insurance Company, Appellant. Hennepin County.

An auto insurer was not limited by Minn. Stat. §§ 72A.1493 and 72A.1494 (1969) to offer just the three supplemental insurance coverages contained therein but could, in addition, offer coverages both less than and greater than the limits specified.

"Necessary" funeral expenses for medical pay benefits under Minn. Stat. § 72A.1492, subd. 5 (1969), include flowers, vocalists and organist but not certified copies of death certificates.

A good-faith settlement of an uninsured motorist claim wherein medical pay benefits may have been deducted is not to be set aside when this court had not yet ruled that such medical pay benefits were not to be deducted. As to uninsured motorist claims still pending, *Van Tassel v. Horace Mann Mut. Ins. Co.*, 296 Minn. 181, 207 N.W.2d 348 (1973), governs.

A class action for recovery of necessary funeral expenses is not appropriate under section (1) (A) of Minn. R. Civ. P. 2302; the case is remanded to determine if a class action is appropriate under section (3) of that rule.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. Simonett, J.

49526/335 (1979) International Society for Krishna Consciousness, Inc., *et al.*, Appellants, v. Michael Heffron, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, *et al.* Ramsey County.

Affirmed. Per Curiam.

Decision Filed Tuesday, September 15, 1981

81-625 State of Minnesota, Appellant, v. Elizabeth Cheryl Kanzenbach. Rice County.

State's right to appeal sentences in criminal cases under Minn. Stat. § 244.11 (1980) applies only to sentences for crimes committed before May 1, 1980, when the Sentencing Guidelines became effective.

Appeal dismissed. Sheran, C. J.

STATE CONTRACTS

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

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

Department of Commerce
Office of Consumer Service

Notice of Request for Proposals for Analysis of Cost Allocation Methods and Rate Design Issues

Kris Sanda, Director, Office of Consumer Services, Department of Commerce, is soliciting proposals from qualified consultants to perform an analysis of cost allocation methods and rate design in connection with Interstate Power Company's proposal to increase its rates by $5.6 million. The matter is currently before the Minnesota Public Utilities Commission.

Final submission date: October 16, 1981
Estimated cost: $15,000

The formal RFP may be requested and inquiries should be directed to:

Leonard A. Nelson, Manager
Residential Utility Consumer Unit
Office of Consumer Services
162 Metro Square Building
7th and Robert Streets
St. Paul, MN 55101
(612) 296-6032

Minnesota Housing Finance Agency

Notice of Intent to Enter into a Contract for Loan Portfolio Servicing

Notice is given that the Housing Finance Agency intends to enter into a 2 year contract commencing November 1, 1981, for the servicing of a portion of its loan portfolio. The estimated amount of the contract is $70,000. Any inquiries should be addressed to Kathleen Anderson, Rehabilitation Loan Program Coordinator, Minnesota Housing Finance Agency, 333 Sibley Street, St. Paul, MN 55101, on or before October 12, 1981.

OFFICIAL NOTICES

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

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

Ethical Practices Board

Notice of Special Public Meeting

The Ethical Practices Board will hold a special meeting on Wednesday, October 7, 1981, at 9 a.m. in Room 51, State Office Building, at 435 Park Street in the Capitol Complex, St. Paul. The board seeks comments by lobbyists, elected officials and their campaign committees, political parties, governmental associations, and the public on the subject of fundraising projects by elected state officeholders while the Legislature is in active session.

Written and oral statements are welcomed. To schedule an oral statement, individuals are asked to write or call the Board office, 41 State Office Building, St. Paul, MN 55155 (612) 296-5148.

Information gathered will be used by the board in its current study of this issue. The board is authorized by the Ethics in Government Act to report and offer legislative recommendations to the Legislature about the conduct of campaigns for public office.

Department of Transportation Technical Services Division

Appointment and Scheduled Meeting of a State Aid Standards Variance Committee

Notice is hereby given that the Commissioner of Transportation has appointed a State Aid Standards Variance Committee who will conduct a meeting on Tuesday, September 29 at 10:00 a.m. in Room 419, State Transportation Building, John Ireland Boulevard, St. Paul, Minnesota.

This notice is given pursuant to Minnesota Statutes, § 471.705.

The purpose of the open meeting is to investigate and determine recommendation(s) for variances from minimum State Aid roadway standards as governed by 14 MCAR § 1.5032 M.4.b., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978), as amended.

The agenda will be limited to these questions:

1. Petition of County of Dodge for a variance from Standards for Design Speed on Mantorville Town Road 51 between Trunk Highway 57 and 0.85 mile East.

2. Petition of the County of Faribault for a variance from Standards for Street Width along CSAH 60 (Broadway Avenue) between Franklin Street and 2nd Street North in the City of Wells.

3. Petition of City of Cloquet for a variance from Standards for Street Width along Doddridge Avenue between 7th Street and 14th Street.

4. Petition of City of Litchfield for a variance from Standards for Street Width on Ripley Street between Swift Avenue and Sibley Avenue.

The cities and counties listed above are requested to follow the following time schedule when appearing before the Variance Committee:

1:00 p.m.	Dodge County
1:30 p.m.	Faribault County
2:00 p.m.	City of Cloquet
2:30 p.m.	City of Litchfield

Dated this 21st day of September, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the City of Litchfield for a Variance fom State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Litchfield has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Ripley Street between Swift Avenue and Sibley Avenue.

The request is for a variance from 14 MCAR § 1.5032 H.1.C., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 44 feet with parking permitted instead of a roadway width of 46 feet.

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

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

Dated this 21st day of September, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the County of Faribault for a Variance from State Aid Standards for Diagonal Parking and Street Width

Notice is hereby given that the County Board of the County of Faribault has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along CSAH 60 (Broadway Avenue) between Franklin Street and 2nd Street North in the City of Wells.

The request is for a variance from 14 MCAR § 1.5032 H.4. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit 30° diagonal parking on a roadway width of 60 feet instead of 45° diagonal parking on a roadway width of 66 feet.

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

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

Dated this 21st day of September, 1981

Richard P. Braun
Commissioner of Transportation

Waste Management Board

Notice of Intent to Solicit Outside Opinions and Information Concerning Proposed Rules on Supplementary Review of Certain Solid and Hazardous Waste Facilities

Notice is hereby given that the Minnesota Waste Management Board is seeking opinions and information from sources outside the agency for the purpose of preparing rules on supplementary review of certain proposed solid and hazardous waste facilities. Such rules are authorized by Minn. Stat. § 115A.32.

Supplementary review of facilities is authorized by the Waste Management Act only when a facility has been issued permits required by the Pollution Control Agency *and* a political subdivision has refused to approve the establishment or operation of the facility. Only certain entities may request supplemental review. See Minn. Stat. §§ 115A.32-115A.39 and Laws of 1981, ch. 352, § 23. They are as follows:

A. A generator of sewage sludge within the state who has been issued permits by the Pollution Control Agency for a facility to dispose of sewage sludge or solid waste resulting from sewage treatment;

B. A political subdivision which has been issued permits by the Pollution Control Agency, or a political subdivision acting on behalf of a person who has been issued permits by the Pollution Control Agency, for a solid waste facility which is no larger than 250 acres, not including any proposed buffer area, and is located outside the metropolitan area;

C. A generator of hazardous waste within the state who has been issued permits by the Pollution Control Agency for a hazardous waste facility to be owned and operated by the generator, on property owned by the generator, and to be used by the generator for managing the hazardous wastes produced by the generator only;

D. A person who has been issued permits by the Pollution Control Agency for a commercial hazardous waste processing facility at a site included in the Waste Management Board's inventory of preferred sites for such facilities adopted pursuant to section 115A.09; and

E. A person who has been issued permits by the agency for a disposal facility for the nonhazardous sludge, ash, or other solid waste generated by a permitted hazardous waste processing facility operated by the person.

Minn. Stat. § 115A.36 (1980) requires *at least* the following factors be considered in the supplementary review process:

A. The risk and effect of the proposed facility on local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of wastes during transportation to the facility; water, air and land pollution; fire or explosion, where appropriate; and the degree to which the risk or effect may be alleviated.

B. The consistency of the proposed facility with, and its effect on, existing and planned local land use and development; local laws, ordinances, and permits; and local public facilities and services.

C. The adverse effects of the facility on agriculture and natural resources and opportunities to mitigate or eliminate the adverse effects by additional stipulations, conditions, and requirements respecting the proposed facility at the proposed site.

D. The need for the proposed facility, especially its contribution to abating solid and hazardous waste disposal, the availability of alternative sites, and opportunities to mitigate or eliminate need by additional and alternative waste management strategies or actions of a significantly different nature.

E. Whether, in the case of solid waste resource recovery facilities, the applicant has considered the feasible and prudent waste processing alternatives for accomplishing the purposes of the proposed project and has compared and evaluated the costs, and the effects of the alternatives on the cost to generators.

Written or oral information and comments on these factors, additional factors which should be considered, the structure of the supplementary review process or any other matter related to the supplementary review process should be addressed to:

Waste Management Board
Attn: Madeline Harris
123 Thorson Building
7323-58th Avenue North
Crystal, Minnesota 55428
612/536-0816

All statements of information or comment should be received by November 1, 1981. Written material received by this date will become part of the record of any rules hearing held on this subject.

September 18, 1981

Robert G. Dunn, Chairman
Waste Management Board

Waste Management Board

Notice of Intent to Solicit Opinions and Information Concerning Rules for Solid Waste Demonstration Program

Notice is hereby given that the Minnesota Waste Management Board is seeking opinions and information from sources outside the agency for the purpose of preparing rules for administering a solid waste demonstration program. Such rules are authorized by Minn. Stat. § 115A.49 (1980).

Under Minn. Stat. § 115A.53 (1980) the Waste Management Board may provide technical and financial assistance in the form of grants and loans to eligible applicants and projects to stimulate and encourage the acquisition and betterment of waste processing facilities and transfer stations. Financial assistance provided under this program may only be used for capital costs of a project. The rules, if adopted, would regulate at least the following aspects of the solid waste demonstration program: (1) application and review procedures, (2) criteria for eligibility, (3) levels of local funding required, and (4) priority criteria for funding eligible projects. The Waste Management Act requires the board in administering these programs to give priority to areas where natural geologic and soil conditions are unsuitable for land disposal of solid waste and areas where the capacity of existing solid waste disposal facilities is less than five years. In addition, in areas outside the metropolitan area, priority must be given to projects serving more than one local governmental unit.

Any person desiring to submit information or comment on the subject of the proposed rules may do so either orally or in writing. All statements of information or comment should be received by November 1, 1981. Written material received by this date will become part of the record of any rules hearing on this subject. Written or oral information or comment should be addressed to:

Robert Pulford
Minnesota Waste Management Board
123 Thorson Building
7323-58th Avenue North
Crystal, Minnesota 55428
612/536-0816

September 18, 1981.

Robert C. Dunn, Chairman
Minnesota Waste Management Board

Waste Management Board

Notice of Intent to Solicit Outside Opinions and Information Concerning Rules on Accepting, Evaluating, and Selecting Applications for Permits for Certain Hazardous Waste Facilities

Notice is hereby given that the Waste Management Board is seeking opinions and information from sources outside the agency for the purpose of preparing rules on accepting, evaluating, and selecting applications for permits for certain hazardous waste facilities. Such rules are authorized by Minn. Stat. § 115A.10 (1980).

Under Minn. Stat. §§ 115A.09, 115A.18-.30 (1980), the Waste Management Board is required to select at least one hazardous waste disposal facility for the state and to prepare an inventory of sites for the chemical processing, incineration, and transfer and storage of hazardous waste. The rules referred to in this notice will establish a basis for accepting, evaluating, and selecting applications for permits for facilities to be located at these sites. The rules must address at least the following subjects: (1) standards and procedures for making determinations on minimum qualifications, including technical competence and financial capability, of permit applicants for processing and disposal facilities; and (2) standards and procedures for soliciting and accepting bids or permit applications and for selecting developers and operators of hazardous waste disposal facilities at sites chosen by the Board, including a preference for qualified permit applicants who control a site chosen by the Board.

Any person desiring to submit information or comment on the subject of the proposed rules may do so either orally or in writing. All statements of information or comment should be received by November 1, 1981. Written information or comment received by this date will become part of the record of any rules hearing on this subject. Written or oral information or comment should be addressed to:

Waste Management Board
Attn: Madeline Harris
123 Thorson Building
7323 - 58th Avenue North
Crystal, Minnesota 55428
612/536-0816

September 18, 1981

Robert G. Dunn, Chairman
Waste Management Board

Minnesota Water Resources Board

Notice of Hearing on the Petition to Withdraw Territory

A hearing on a Petition to Withdraw Territory from the Minnehaha Creek Watershed District will begin at 7:30 p.m. on Wednesday, October 7, 1981, at the Medina City Hall, 2052 County Road 24 (located near the intersection of County Road 24 and Medina Road) in Medina, Minnesota.

A complete notice of and order for hearing will be published in the Crow River News, Osseo, Minnesota, on September 16 and 23, 1981.

Copies of the complete notice are also available from the Minnesota Water Resources Board's office at 555 Wabasha Street, Room 206, St. Paul, Minnesota 55102 (612-296-2840).

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(Required by 39 U.S.C. 3685)

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EDITOR *(Name and Complete Mailing Address)*

Carol Anderson Porter, State Register & Public Documents Division
117 University Avenue, St. Paul, MN 55155

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PS Form
June 1980 *3526 (Page 1)*

(See instruction on reverse)

STATE OF MINNESOTA

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FOR LEGISLATIVE NEWS

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Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

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This Week—weekly interim bulletin of the House. Contact House Information Office.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JACK YOUNG
Commissioner of Corrections

DATE: 11/18/81

ATTN : James M. Bradford
Assistant Attorney General

FROM : H. THEODORE GRINDAL for JMB
Special Assistant Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Rules Governing Programs and Services for Battered Women

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

HTG/cae

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

STATE OF MINNESOTA

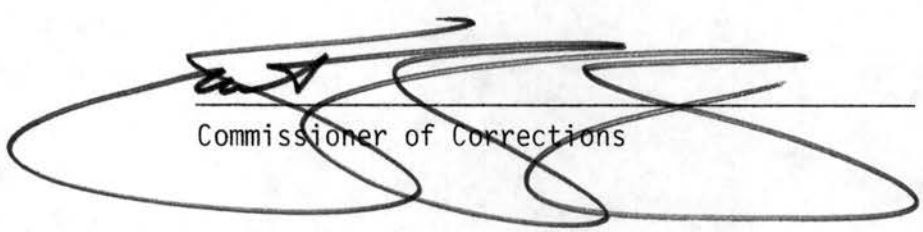
DEPARTMENT OF CORRECTIONS

IN THE MATTER OF THE PROPOSED RULES GOVERNING PROGRAMS AND SERVICES FOR BATTERED WOMEN

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 25th day of August, 1981 that Notice of Intent to Adopt Rules Without Pulbic Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Corrections for that purpose and be published in the State Register.

State of Minnesota



Commissioner of Corrections

Department of Corrections

Adopted Rules Governing Programs and Services for Battered Women

Rules as Adopted

11 MCAR S 2.201 Introduction. Minn. Stat. S 241.63, clause (g), requires that the Commissioner of Corrections promulgate all rules necessary to implement the provisions of Minn. Stat. SS 241.61-241.66 and 256D.05, subd. 3, including emergency rules.

11 MCAR S 2.202 Definitions. For the purpose of 11 MCAR SS 2.201-2.207, the terms defined in this rule have the meanings given them.

A. "Service provider" means any public agency or private nonprofit corporation which plans, designs, and implements any of the following:

1. Emergency shelter services and support services for battered women;

2. Support services for battered women;

3. Public education programs designed to promote public and professional awareness of the problems of battered women; or

4. Programs for violent partners.

B. "Purchase of service agreement" means a contract or grant agreement between the department and service provider which specifies the programs or services to be provided, the method of delivering the programs or services, the responsibilities of the staff, the budget, and a commitment to assist in the necessary data collection and evaluation research to be completed on the program or service.

C. "Department" means the Department of Corrections.

D. "Emergency shelter services" means housing facilities which regularly provide food, secure lodging, and a crisis phone line with 24-hour accessibility for women and children seeking safety from assault primarily by a spouse, male relative, or male with whom they are residing or have resided in the past.

E. "Support services" means any of the following: advocacy,

emotional support, counseling, legal information, medical referral, transportation, child care, information and referral services, and other services needed by battered women and their families.

F. "Public education programs" means programs designed to promote public and professional awareness of the problems of battered persons.

G. "Commissioner" means the Commissioner of the Department of Corrections.

H. "Data" means summary data as defined in Minn. Stat. S 15.162, subd. 9.

I. "Law enforcement agencies" means police and sheriff's departments operating in Minnesota.

J. "Request for proposals" means solicitation of applications in a uniform format for distribution of funds allocated by the Legislature for programs and services for battered women.

11 MCAR S 2.203 Establishment of an advisory task force.

A. The commissioner shall appoint a nine member advisory task force to advise him on implementation of Minn. Stat. SS 241.61-241.66. The provisions of Minn. Stat. S 15.059, subd. 6 shall govern the terms, compensation and removal of members of the advisory task force.

B. Prior to the appointment of any new task force member, the existing task force shall choose no more than five organizations, one of which shall be the Department of Corrections, to send representatives to a review committee which shall recommend a slate of applicants based on the following:

1. Criteria mandated in Minn. Stat. S 241.64, subd. 2;

2. Applicant's understanding of problems facing battered women;

3. Representatives from both metro and non-metro areas of the state;

4. Representation from at least three minority groups.

C. If other qualifications are equal, priority in appointments shall be given to persons who have personally

experienced partner abuse.

11 MCAR S 2.204 Project coordinator.

A. The advisory task force shall screen applicants for the position of project coordinator and shall recommend to the commissioner the names of five applicants. In appointing the project coordinator, the commissioner shall give due consideration to the list of applicants submitted to him by the advisory task force.

B. If the commissioner takes action contrary to the recommendation of the advisory task force, the commissioner or his designee shall meet with the task force or with representatives of the task force, appointed by its chair, to discuss the rationale for his decision.

C. The project coordinator shall be available to attend all meetings of the advisory task force and its subcommittees.

11 MCAR S 2.205 Awarding grants and contracts.

A. The department shall issue a request for proposals from service providers. The advisory task force shall use uniform procedures and criteria in considering all proposals which comply with the request for proposal outline.

B. The department shall solicit proposals from interested public and private nonprofit organizations, women's organizations, and diverse cultural groups in the state.

C. The department shall establish award criteria and procedures with the participation of the advisory task force prior to any request for proposals. The criteria and procedures shall be available to the public upon request.

D. The advisory task force shall review grant applications and recommend to the commissioner names of applicants recommended to receive funds and the amount of funds recommended for each applicant.

E. The department shall disburse funds appropriated for the battered women's projects.

F. A portion of the funds appropriated by the Legislature shall be retained by the department for the purpose of

implementing public education programs if the commissioner determines that the department can use the funds for their designated purpose more effectively than by purchase of service agreements. The advisory task force shall advise the department on the use of retained funds.

G. All planning, development, data collection, funding and evaluation of programs and services for battered women which are funded under 11 MCAR SS 2.201-2.207 shall be conducted with the advice of the advisory task force.

11 MCAR S 2.206 Responsibilities of service providers.

A. To be eligible for initial funding consideration from the department for the establishment and operation of programs and services for battered women, service providers shall submit a proposal which includes, at a minimum, the following information:

1. The full name and address of the service provider;

2. The proposed location of the program or service;

3. A budget on forms provided by the department which itemizes such major categories as:

a. Personnel;

b. Travel;

c. Equipment and supplies;

d. Contracted services;

e. Printing;

f. Communications;

g. Other program or service costs;

h. Costs for assistance to individuals, including emergency loan funds for residents, rent deposits, legal fees, and moving costs;

i. Costs related to the rent, maintenance, or purchase of the facility operated by or occupied by the applicant; and

j. Evaluation;

4. A narrative for each line item on the budget request;

5. A description of other funding sources, fund-raising efforts, in kind contributions and services and other items relevant to financial status during the period funds are requested;

6. A description of the duties of each staff position;

7. A statement of the extent to which battered women in the community have been involved and participated in the proposal;

8. A statement of the ways in which potential service providers have solicited support and cooperation from potentially interested or relevant community agencies or groups such as law enforcement agencies, courts, social service agencies, and local boards or departments of health;

9. A timetable for operation;

10. A description of the types of programs or services to be available;

11. A description of the role to be played by volunteers, if any, in the operation of the emergency shelter service or public education program;

12. A statement of compliance with program or service evaluation requirements as established by the commissioner with the consultation of the advisory task force; and

13. Definition of the target group expected to be served.

B. To be eligible for renewed funding consideration from the department for continued operation of services and programs for battered women, service providers shall submit a report which includes, at a minimum, the following information:

1. The full name of the service provider;

2. A budget for the year funding is requested, on forms provided by the department, which itemizes such major categories as:

a. Personnel;

b. Travel;

c. Equipment and supplies;

d. Contracted services;

e. Printing;

f. Communications;

g. Other program or service costs;

h. Costs for assistance to individuals, including emergency loan funds for shelter residents, rent deposits, legal

fees, and moving costs;

i. Costs related to the rent, maintenance, or purchase of the facility operated by or occupied by the applicant; and

j. Evaluation;

3. A narrative for each line item on the budget for funds requested;

4. A description of other funding sources, fund-raising efforts, in kind contributions and services and other items relevant to financial status during the period when funds are requested; and

5. A statement of compliance with program or service evaluation requirements.

C. Purchase of service agreements shall provide for the following:

1. The collection, recording and reporting of descriptive data on persons served and the services provided as requested by the commissioner;

2. Complete reports requested by the commissioner; and

3. Implementation of a fiscal policy.

D. Any emergency shelter program operated on the basis of this appropriation shall show evidence that it is licensed by the Department of Health or the Joint Commission on Hospital Accreditation and has passed local fire inspection.

11 MCAR S 2.207 Submission of data--mandatory.

A. Reports on battered women shall be submitted to the department in accordance with Minn. Stat. S 241.66.

B. Reports shall, at a minimum, include summary data which discloses the date of occurrence, location, and characteristics of battering.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Corrections

Rule Numbers: 11 MCAR S 2.201-11 MCAR 2.207

Rule Title: Adopted Rules Governing Programs and Services for Battered Women

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
Nov. 13 1981
WARREN SPANNAUS, ATTORNEY GENERAL
BY H Theodore Trendel
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 13 1981
Joan Anderson Growe
Secretary of State
3:25 PM

Name: Lorna M. Breiter
Lorna M. Breiter

Title: Assistant Revisor

Phone: 296-2778

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:
Robert P. Kittel

Rules as Proposed (all new material)

11 MCAR S 2.201 Introduction. Minn. Stat. S 241.63, clause (g), requires that the Commissioner of Corrections promulgate all rules necessary to implement the provisions of Minn. Stat. SS 241.61-241.66 and 256D.05, subd. 3, including emergency rules.

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B. "Purchase of service agreement" means a contract or grant agreement between the department and service provider which specifies the programs or services to be provided, the method of delivering the programs or services, the responsibilities of the staff, the budget, and a commitment to assist in the necessary data collection and evaluation research to be completed on the

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program or service.

C. "Department" means the Department of Corrections.

D. "Emergency shelter services" means housing facilities which regularly provide food, secure lodging, and a crisis phone line with 24-hour accessibility for women and children seeking safety from assault primarily by a spouse, male relative, or male with whom they are residing or have resided in the past.

E. "Support services" means any of the following: advocacy, emotional support, counseling, legal information, medical referral, transportation, child care, information and referral services, and other services needed by battered women and their families.

F. "Public education programs" means programs designed to promote public and professional awareness of the problems of battered persons.

G. "Commissioner" means the Commissioner of the Department of Corrections.

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B. Prior to the appointment of any new task force member, the existing task force shall choose no more than five organizations, one of which shall be the Department of Corrections, to send representatives to a review committee which

shall recommend a slate of applicants based on the following:

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2. Applicant's understanding of problems facing battered women;

3. Representatives from both metro and non-metro areas of the state;

4. Representation from at least three minority groups.

C. If other qualifications are equal, priority in appointments shall be given to persons who have personally experienced partner abuse.

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A. The advisory task force shall screen applicants for the position of project coordinator and shall recommend to the commissioner the names of five applicants. In appointing the project coordinator, the commissioner shall give due consideration to the list of applicants submitted to him by the advisory task force.

B. If the commissioner takes action contrary to the recommendation of the advisory task force, the commissioner or his designee shall meet with the task force or with representatives of the task force, appointed by its chair, to discuss the rationale for his decision.

C. The project coordinator shall be available to attend all meetings of the advisory task force and its subcommittees.

11 MCAR S 2.205 Awarding grants and contracts.

A. The department shall issue a request for proposals from service providers. The advisory task force shall use uniform procedures and criteria in considering all proposals which comply with the request for proposal outline.

B. The department shall solicit proposals from interested public and private nonprofit organizations, women's organizations, and diverse cultural groups in the state.

C. The department shall establish award criteria and procedures with the participation of the advisory task force prior to any request for proposals. The criteria and procedures

shall be available to the public upon request.

D. The advisory task force shall review grant applications and recommend to the commissioner names of applicants recommended to receive funds and the amount of funds recommended for each applicant.

E. The department shall disburse funds appropriated for the battered women's projects.

F. A portion of the funds appropriated by the Legislature shall be retained by the department for the purpose of implementing public education programs if the commissioner determines that the department can use the funds for their designated purpose more effectively than by purchase of service agreements. The advisory task force shall advise the department on the use of retained funds.

G. All planning, development, data collection, funding and evaluation of programs and services for battered women which are funded under 11 MCAR SS 2.201-2.207 shall be conducted with the advice of the advisory task force.

11 MCAR S 2.206 Responsibilities of service providers.

A. To be eligible for initial funding consideration from the department for the establishment and operation of programs and services for battered women, service providers shall submit a proposal which includes, at a minimum, the following information:

1. The full name and address of the service provider;

2. The proposed location of the program or service;

3. A budget on forms provided by the department which itemizes such major categories as:

a. Personnel;

b. Travel;

c. Equipment and supplies;

d. Contracted services;

e. Printing;

f. Communications;

g. Other program or service costs;

h. Costs for assistance to individuals, including

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emergency loan funds for residents, rent deposits, legal fees, and moving costs;

i. Costs related to the rent, maintenance, or purchase of the facility operated by or occupied by the applicant; and

j. Evaluation;

4. A narrative for each line item on the budget request;

5. A description of other funding sources, fund-raising efforts, in kind contributions and services and other items relevant to financial status during the period funds are requested;

6. A description of the duties of each staff position;

7. A statement of the extent to which battered women in the community have been involved and participated in the proposal;

8. A statement of the ways in which potential service providers have solicited support and cooperation from potentially interested or relevant community agencies or groups such as law enforcement agencies, courts, social service agencies, and local boards or departments of health;

9. A timetable for operation;

10. A description of the types of programs or services to be available;

11. A description of the role to be played by volunteers, if any, in the operation of the emergency shelter service or public education program;

12. A statement of compliance with program or service evaluation requirements as established by the commissioner with the consultation of the advisory task force; and

13. Definition of the target group expected to be served.

B. To be eligible for renewed funding consideration from the department for continued operation of services and programs for battered women, service providers shall submit a report which includes, at a minimum, the following information:

1. The full name of the service provider;

2. A budget for the year funding is requested, on forms provided by the department, which itemizes such major categories

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as:

a. Personnel;

b. Travel;

c. Equipment and supplies;

d. Contracted services;

e. Printing;

f. Communications;

g. Other program or service costs;

h. Costs for assistance to individuals, including emergency loan funds for shelter residents, rent deposits, legal fees, and moving costs;

i. Costs related to the rent, maintenance, or purchase of the facility operated by or occupied by the applicant; and

j. Evaluation;

3. A narrative for each line item on the budget for funds requested;

4. A description of other funding sources, fund-raising efforts, in kind contributions and services and other items relevant to financial status during the period when funds are requested; and

5. A statement of compliance with program or service evaluation requirements.

C. Purchase of service agreements shall provide for the following:

1. The collection, recording and reporting of descriptive data on persons served and the services provided as requested by the commissioner;

2. Complete reports requested by the commissioner; and

3. Implementation of a fiscal policy.

D. Any emergency shelter program operated on the basis of this appropriation shall show evidence that it is licensed by the Department of Health or the Joint Commission on Hospital Accreditation and has passed local fire inspection.

11 MCAR S 2.207 Submission of data--mandatory.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

A. Reports on battered women shall be submitted to the department in accordance with Minn. Stat. S 241.66.

B. Reports shall, at a minimum, include summary data which discloses the date of occurrence, location, and characteristics of battering.

OFFICE OF THE REVISOR OF STATUTES
PROPOSED RULES

Agency Department of Corrections

Division

Agency Contact John Mc Lagan Phone Number 6-6041

Title: Proposed Rules Governing Programs and Services for Battered Women

Type of Rules: Permanent X Temporary_____

Incorporations by References:

Rule Number	Material Incorporated Author Title Place Publisher Date Cost Places Available
None. Statutory references need not be included.	

See Additional references on back Yes____ No X

Duplication of Statutory Language

Rule Number	Statutory Section Duplicated
None	

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Robert P. Kittel
Robert P. Kittel

Title: Senior Assistant Revisor

Phone: 6-0218

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

IN THE MATTER OF THE PROPOSED RULES GOVERNING PROGRAMS AND SERVICES FOR BATTERED WOMEN.

NOTICE TO WITHDRAW RULES AND NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING.

Notice is hereby given that the Department of Corrections is withdrawing the first set of rules in the above-entitled rules which were published in the State Register Volume 5, Number 46, May 18, 1981 pp. 1857-1860. These rules are withdrawn because the Attorney General found that improper notice was given to the public.

Notice is hereby given that the Department of Corrections 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 section 15.0412, subdivision 4h (1980).

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 the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f.

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

John McLagan, Director of Standards Development Unit, 430 Metro Square Building, St. Paul, Minnesota 55101, (612)296-1312.

Authority for the adoption of these rules is contained in Minnesota Statutes section 241.63. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies that data and information relied upon to support the proposed rules has been prepared and is available from John McLagan, Director of Standards Development Unit, 430 Metro Square Building, St. Paul, Minnesota 55101, 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 John McLagan, Director of Standards Development Unit, 430 Metro Square Building, St. Paul, Minnesota 55101.

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

This is the second notice and publication of these rules. The first notice was found by the Attorney General to be improper notice. These rules are essentially the same as those published earlier although there are a few substantive changes.

Additional copies of this Notice and the proposed rules are available and may be obtained by contacting John McLagan, Director of Standards Development Unit, 430 Metro Square Building, St. Paul, Minnesota 55101.

September 11, 1981

State of Minnesota

Commissioner of Corrections

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

IN THE MATTER OF THE PROPOSED RULES GOVERNING PROGRAMS AND SERVICES FOR BATTERED WOMEN.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

Patricia M. Palmer, being first duly sworn deposed and says:

That on the 21st day of September, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Corrections for the purpose of receiving notice of the proposed adoption of rules by the Department of Corrections.

Patricia M. Palmer

Subscribed and sworn to before me
this 21st day of September, 1981.

Mary A. Kahnke

MARY A. KAHNKE
NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
My Commission Expires May 9, 1984

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

IN THE MATTER OF THE PROPOSED
RULES GOVERNING PROGRAMS AND
SERVICES FOR BATTERED WOMEN.

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Department of Corrections for the purpose of receiving notice of the proposed adoption of rules, is accurate and complete as of 1:30 P.M., this 21st day of September, 1981.

Ruth A Kraemer

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Correctional Services Group
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TTENTION: Ellen Pence
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luth, MN 55805

CENTRAL MN TASK FORCE ON B.W.
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12

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) East Fourth Street
t. Paul, MN 55101

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TTN: Joy Bussert, Trainer/Clgy
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UTHWEST MENTAL HEALTH CENTER
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rthington, MN 56187

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. O. Box 1655
rgo, North Dakota 58107

UTHERN MN CRISIS SUPPORT CENTR
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irmont, MN 56031

IX

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chester, MN 55901

RRIET TUBMAN WOMEN'S SHELTER
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nneapolis, MN 55407

N IN VIOLENT RELATIONSHIPS
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LTERS & DOC FUNDED ORGANIZATIONS

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ef River Falls, MN 56701

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idji, MN 56601

EN'S COALITION
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ENTION: Pat Teiken
O. Box 815
gus Falls, MN 56537

-MINNESOTA WOMEN'S CENTER
ENTION: A. Louise Seliski
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inerd, MN 56401

VI
LTER HOUSE
ENTION: Louise Mack
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Ilmar, MN 56201

VII
AN HOUSE
ENTION: Maxine Pollock
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. Cloud, MN 56301

VIII
JTHWEST WOMEN'S SHELTER, INC.
TENTION: Gara Swenson
O South First
rshall, MN 56258

IX
MMITTEE AGAINST DOMESTIC ABUSE
TENTION: Kathy Treb-Pollock
O. Box 466
nkato, MN 56001

X
MEN'S SHELTER, INC.
TENTION: Carol Huyck

XI
ALEXANDRA HOUSE
ATTN: Jean Rambow
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XI
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XI
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III
ITASCA COUNTY ADULT PROT. CNCL.
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County Courthouse
Grand Rapids, MN 55744

VIII
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XI
HISPANOS EN MINNESOTA
ATTENTION: Tonia Vargas
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XI
LUTHERAN DEACONESS HOSPITAL
ATTENTION: Norby Blake
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XI
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ATTN: Mary Pat Brygger
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XI
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STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

In the matter of the Proposed Adoption of Rules of the State of Minnesota Governing Programs and Services for Battered Women

FINDINGS OF FACT

NOTICE of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on Monday, September 28, 1981 and was sent by United States Mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on September 21, 1981. After affording interested and affected persons an opportunity to submit comments for thirty days after Notice, and receiving no written requests for a public hearing within the thirty-day comment period, and after submitting these rules to the Revisor of Statutes' office in accordance with 15.0412;

NOW, THEREFORE, I find no need to amend these rules.

STATE OF MINNESOTA

October 28, 1981
Date

COMMISSIONER OF CORRECTIONS

STATE OF MINNESOTA

In the Matter of the Proposed
Adoption of Rules Governing
Programs & Services for Battered
Women

STATEMEMT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, James M. Bradford, Assistant Attorney General, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedures Act, the rules of the Office of Administration Hearings, and the rules of the Attorney General have been followed.

10/27/81
Date

James M. Bradford
Assistant Attorney General

STATEMENT OF NEED AND REASONABLENESS

FOR

PROGRAMS AND SERVICES FOR BATTERED WOMEN

September 24, 1981

II MCAR §2.202 Definitions.

rationale: Definitions are needed to define the terms used in the proposed rules. Adoption of the proposed rules will affect emergency shelter services and service providers as defined in the proposed rules. Consequently it is imperative that all concerned individuals, agencies, and units of government have a clear understanding of terms used in the proposed rules and are in agreement with the terms defined in the proposed rules.

evidence: Testimony from evidence witnesses may be presented in support of definitions.

Minnesota Statutes 241.61, Subds. 2, 3, 4, 5
Minnesota Department of Finance Object Codes
Minnesota Office of Contract Management; Policies and Procedures
Minnesota Statutes 15.162, Subd. 9

II MCAR §2.203 Establishment of an Advisory Task Force.

rationale: A. A task force must be established to conform with legislative mandate. The task force provides information, technical assistance, and professional opinion to the department by acting as an advisory body to the Commissioner.

evidence: Minnesota Statutes 241.63 C
Minnesota Statutes 241.64, Subd. 1
Minnesota Statutes 15.059, Subd. 6

rationale: B. Establishment of a review committee is necessary to ensure that minority organizations and those people affected by the program, as coordinated by the department, participate in the selection of the task force.

Minnesota Law states that "persons appointed shall be knowledgeable in the fields of health, law enforcement, social services,

or the law. Five members of the advisory task force shall be representatives of community or governmental organizations which provide services to battered women, and four members of the advisory task force shall be public members."

Other criteria cited ensure that the task force will be composed of persons with 1) knowledge about the problems facing battered women, 2) understanding of both rural and urban problems in developing services, and 3) the special needs of minority women who are physically abused.

evidence: Minnesota Statutes 241.64, Subd. 1

rationale: C. This stipulation is necessary because policy decisions can better be made with the input of persons who have personally experienced battering.

It is anticipated that a great number of applicants will apply for positions on the advisory task force. In filling the task force complement as required by law, many individuals may have similar qualifications. This being the case, preference will be given to individuals who have experienced abuse in their relationships.

evidence: Grassroots Services for Battered Women: A Model for Longterm Change, by Lisa Leghorn, January 1978.

II MCAR §2.204 Project Coordinator.

rationale: A. Procedure for the selection of project coordinator is governed by Minnesota Laws.

evidence: Minnesota Statutes 241.64, Subd. 3 a

rationale: B. This rule ensures that the Commissioner has full knowledge of the rationale used by the advisory task force in making a recommendation, and conversely this ensures that the advisory task force can receive an explanation as to why the Commissioner is taking a particular action. Further, this rule ensures a strong working relationship based on open communication and trust.

evidence: Minnesota Statutes 241.63 c
Minnesota Statutes 241.64, Subd. 3 c and d

rationale: C. Duties of the project coordinator include serving as a liaison between the advisory task force and the Commissioner. As coordinator, he/she has knowledge of advisory task force actions, discussion and rationale for decisions. Likewise, he/she is aware of department policy, procedures and philosophy. To maintain a working relationship between the department and advisory task force, the project coordinator must attend advisory task force meetings enabling exchange of information between the two bodies.

evidence: Minnesota Statutes 241.63, Subd. d

II MCAR §2.205 Awarding Grants and Contracts.

rationale: A. This rule ensures a broad based participation in state funded programs by service providers. By encouraging competitive proposals, the department will potentially receive better quality proposals due to wider participation in the program.

Establishing uniform procedures for reviewing proposals will minimize bias and maintain objectivity during the screening process. This procedure should ensure funding of quality programs.

evidence: Minnesota Office of Contract Management; Policies and Procedures
Minnesota Statutes 241.65

rationale: B. Solicitation provides an equal opportunity for applicants to receive adequate notice and information about the program by utilizing extensive advertising in a broad range of media.

evidence: Minnesota Statutes 16.098, Subd. 3
Department of Corrections, Programs for Battered Women resource list

rationale: C. Award criteria will be developed with advisory task force participation (prior to proposal submission) to standardize the method of proposal review, and to minimize potential bias by adopting criteria favorable to a particular applicant. Applicants must have access to criteria prior to submission of their proposals so they can develop their program in accordance with requirements.

evidence: Minnesota Statutes 241.63 f
Minnesota Statutes 241.64, Subd. 3 c

rationale: D. This rule is necessary to define the responsibilities of the advisory task force in advising the Commissioner with regard to grant applications.

evidence: Minnesota Statutes 241.65, Subd. 3 c

rationale: E. A specified amount of funds were allocated by the Minnesota Legislature for establishment of emergency shelter programs and facility rehabilitation. Rule 2.205 E. clarifies the department function as administrator of these funds and not a direct service provider. The rule further ensures that funds are distributed for the purposes for which they were intended.

evidence: Minnesota Statutes 241.63
Minnesota Department of Corrections Budget 1980-81
Victim Services Division

rationale: F. This rule conforms with Minnesota Law which states that "education grant monies may be used by the Commissioner to produce educational and promotional materials to encourage the development and utilization of emergency shelter services."

In many instances educational materials can be produced more economically by the state agency utilizing state resources. Materials to be distributed statewide can be accomplished efficiently through the department.

As the citizen organization providing input to the department on program funding, it is important to obtain recommendations from the advisory task force when expending these funds. Their ideas and discussion will enhance the quality of educational materials produced and distributed by the department.

evidence: Minnesota Statutes 241.62, Subd. 4

rationale: G. People knowledgeable about the issues of battering must participate in the stated functions to provide a broad base of

opinions, ideas, and discussions to ensure that fair and equitable recommendations are forwarded to the Commissioner.

evidence: Minnesota Statutes 241.64, Subd. 1

II MCAR §2.206 Responsibilities of Service Providers

Overall, §2.206.A ensures uniformity of information submitted by applicants to simplify proposal review.

rationale: A.1. This rule is needed to identify and locate organizations for the purpose of contacting applicants, as well as for contract purposes if funded.

evidence: Minnesota Statutes 241.62, Subd. 2 e

rationale: A.2. Organization location must be stated for task force and Commissioner's information so they may assess the service area and accessibility to persons needing services. It is important to know the location of the program in relationship to the location of the contracted corporation if the organization is funded.

evidence: Minnesota Statutes 241.62, Subd. 2 e

rationale: A.3. This rule is necessary so task force members and Commissioner can review each budget item to determine if:

1) the proposed budget item can adequately fund services as outlined,

2) the budget is unnecessarily high for delivery of proposed services,

3) categories correspond with State of Minnesota accounting categories.

evidence: Minnesota Statutes 241.62, Subd. 2 b
Minnesota Department of Finance Object Codes

rationale: A.4. This rule is necessary so task force members and Commissioner can review each budget item to determine if:

1) the proposed budget item can adequately fund services as outlined,

2) the budget is unnecessarily high for delivery of proposed services,

3) categories correspond with State of Minnesota accounting categories.

evidence: Minnesota Statutes 241.62, Subd. 2 b
Minnesota Department of Finance Object Codes

rationale: A.5. The amount of state funds available for shelter services and other programs for battered women is not sufficient, in most cases, to cover all expenses. To ensure that a program is financially viable, it is necessary to know what funding sources will make up any deficits.

evidence: Minnesota Statutes 241.62, Subd. e

rationale: A.6. This rule provides the task force and Commissioner with information about the proposed staffing patterns for shelter operation. It is important to know the levels of decision-making authority in the program, the number of staff positions servicing women and children, and the responsibilities of person(s) handling fiscal matters. The program scope can be assessed from the content of job descriptions.

evidence: Minnesota Statutes 241.62, Subd. e

rationale: A.7. Many women who have experienced violence in their relationships have had direct contact with law enforcement officials, medical personnel, social service providers, court personnel and

other representatives of the helping system. Many women have also been housed in shelters. It is important for development of programs and provision of ongoing support, to have input from women who are familiar with problems in the helping system, who know what kind of services battered women need and who will present a perspective that only someone who has experienced the problem can provide.

evidence: Minnesota Statutes 241.62, Subd. e

rationale: A.8. Battered women must rely on numerous helping systems to obtain assistance in stopping abusive behavior or in establishing a home if they choose to leave the situation. Helping systems called on most frequently are law enforcement, judicial, social services, medical and human service agencies. Since representatives of these systems are in frequent contact with battered women, it is necessary to solicit their input and support when developing programs for abused women. Representatives from these systems can also define needs in their own agencies that battered women programs could address.

evidence: Minnesota Statutes 241.62, Subd. d

rationale: A.9. This rule is needed by Commissioner and task force to determine if proposed programs have realistic time lines for accomplishing goals and objectives, and to later assess if grantees are accomplishing their goals and objectives as specified in their time line.

evidence: Minnesota Statutes 241.62, Subd. e

rationale: A.10. It is necessary to have information about services to be provided by program applicants to:

1) determine if applicants are responding to needs of people requiring services,

2) determine if services to be provided can be accomplished with funds in the proposed budget,

3) serve as a measure for evaluation upon completion of the program.

evidence: Minnesota Statutes 241.62, Subd. a

rationale: A.11. Since many programs receive only partial funding from the Department of Corrections, it is important to know how each service will be provided and by whom. If programs do not have adequate funds to employ a sufficient number of staff members, services must be provided by volunteer workers. If a program plans to utilize volunteers, it is important to have information regarding the types and numbers of volunteers needed, methods of volunteer recruitment, volunteer training and other information pertaining to volunteers.

evidence: Minnesota Statutes 241.62, Subd. e

rationale: A.12. The department may require some form of program evaluation at any time in a given contract period. It is necessary to obtain a statement of compliance with program evaluation requirements to ensure that grantees agree to cooperate with department requirements.

evidence: Minnesota Statutes 241.62, Subd. c

rationale: A.13. The department is responsible for issuing numerous grants for battered women's programs. To determine if an applicant is providing services to populations that are targeted by the task force and Commissioner, applicants must describe the population receiving their proposed services.

A description of the targeted population provides further information to the task force and Commissioner as they assess services to be delivered and their potential impact on the target group.

evidence: Minnesota Statutes 241.62, Subd. e

Overall, §2.206, B ensures uniformity of information submitted by applicants to simplify proposal review.

rationale: B.1. This rule is needed to identify and locate organizations for the purpose of contacting applicants, as well as for contract purposes if funded.

evidence: Minnesota Statutes 241.62, Subd. 2 e

rationale: B.2. and B.3. This rule is necessary so task force members and Commissioner can review each budget item to determine if:

1) the proposed budget item can adequately fund services as outlined.

2) the budget is unnecessarily high for delivery of proposed services,

3) categories correspond with State of Minnesota accounting categories.

evidence: Minnesota Statutes 241.62, Subd. 2 b
Minnesota Department of Finance Object Codes

rationale: B.4. The amount of state funds available for shelter services and other programs for battered women is not sufficient, in most cases, to cover all expenses. To ensure that a program is financially viable, it is necessary to know what funding sources will make up any deficits.

evidence: Minnesota Statutes 241.62, Subd. e

rationale: B.5. The department may require some form of program evaluation at any time in a given contract period. It is necessary to obtain a statement of compliance with program evaluation requirements to ensure that grantees agree to cooperate with department requirements.

evidence: Minnesota Statutes 241.62, Subd. c

rationale: C.1. Objective information in the form of descriptive data is a useful evaluative tool for the Commissioner and advisory task force. Descriptive data can further be of use as an educational tool when discussing battered women services. By limiting data reporting requirements to descriptive data, the confidentiality of persons seeking assistance from funded agencies is protected.

evidence: Minnesota Statutes 241.62, Subd. 3

rationale: C.2. It is necessary to require that funding agencies submit reports as another means to substantiate that goals are being met. Reports provide written records of activities of funded programs for a given period.

evidence: Minnesota Statutes 241.62, Subd. 3

rationale: C.3. To ensure that funded programs adhere to their proposed budget and that all financial transactions are recorded, it is necessary to require the implementation of a fiscal policy.

evidence: Minnesota Statutes 241.62, Subd. 3

rationale: D. This rule ensures that shelter facilities are adequately maintained to provide for the safety of its occupants. In addition, this rule provides a cost efficient method of inspecting shelters by utilizing existing fire, health and building inspectors from the local communities.

evidence: Minnesota Building Code 1980, Building Code Division
Local Health Officers and Communicable Diseases, Minnesota Health Department 1 and 2
Minnesota Health Department Plumbing Code 1979
Minnesota Public Safety Department Fire Marshal, Fire Code 1973 and amendments

11 MCAR §2.207 Submission of Data - Mandatory.

rationale: 1. This rule is mandated by Minnesota Laws.

evidence: Minnesota Statutes 241.66, Subd. 1

rationale: 2. This rule assures that the data collected under this law is useful while not invading the privacy of Minnesota citizens. The collation of data to determine characteristics of batterers and victims, in addition to number of incidents, is essential in the development of public policy to meet the needs of persons abused by their partners.

evidence: Minnesota Statutes 241.66, Subd. 1